

I. Recitals

- A. Whereas,** Securus has contracted with Travis County to provide, among other things, recordings of telephone calls from inmates housed and/or detained in corrections facilities operated by Travis County.
- B. Whereas,** the Securus system allows attorneys who represent criminal defendants to register their numbers on a "private list" so that calls to their clients will be confidential, private; and not recorded, stored, collected, intercepted or monitored.
- C. Whereas,** Plaintiffs had previously asserted certain claims against District Attorney Lehmberg under the Federal and State Wiretap Acts, and the First, Fourth, Fifth and Sixth Amendments to the United States Constitution related to alleged breach of attorney-client privileged conversations between attorneys and inmates housed and/or detained at corrections facilities operated by Travis County and the Travis County Sheriff.
- D. Whereas,** Plaintiffs have dismissed their lawsuit against District Attorney Lehmberg and the two other Travis County Elected Officials that Plaintiffs sued in this Cause in their respective official capacities, County Attorney David Escamilla and Sheriff Greg Hamilton, (hereafter "Elected Officials") pursuant to FRCP 41(a)(1).
- E. Whereas,** Plaintiffs have amended their Complaint and repled their claims herein, substituting Travis County for the Elected Officials as the real party in interest.
- F. Whereas,** Plaintiffs' Second Amended Complaint asserts certain claims against Travis County and Securus under the Federal and State Wiretap Acts, and the First, Fourth, Fifth and Sixth Amendments to the United States Constitution related to alleged breach of attorney-client privileged conversations between attorneys and

inmates housed and/or detained at corrections facilities operated by Travis County and the Travis County Sheriff

G. Whereas, Plaintiffs' Second Amended Complaint does not assert any claim or allegation of intentional or knowingly wrongful or unlawful conduct by any Elected Official.

H. Whereas, District Attorney Lehmberg, although previously dismissed from this Cause by Plaintiffs pursuant to FRCP 41(a)(1), enters into this District Attorney Agreement to obtain a release of any and all potential claims that could have been asserted against her arising out of the facts made basis of this Cause.

I. Whereas, Plaintiffs specifically acknowledge herein that that there was no evidence of intentional misconduct by any Defendant originally sued in this Cause including: Securus, Travis County, County Attorney David Escamilla, District Attorney Rosemary Lehmberg or Sheriff Greg Hamilton.

J. Whereas, District Attorney Lehmberg denies any and all claims and allegations of misconduct and/or wrongdoing, including, but not limited to claims and/or allegations of knowing and/or intentional misconduct and/or wrongdoing.

K. Whereas, although no longer a party to this Cause, District Attorney Lehmberg, on behalf of Travis County, agrees to perform the terms and conditions pertaining to the Travis County District Attorney's Office ("TCDAO"), its elected official and employees as set forth more specifically in Section II. D. of this District Attorney Agreement herein.

L. Whereas, District Attorney Lehmberg, on behalf of Travis County desires to facilitate the full and final settlement of all claims that arise out of this Cause or could have arisen out of this Cause, and

M. Whereas, in addition to this District Attorney Agreement, two other agreements exist that fully resolve this Cause: (1) the "Main Agreement" between Plaintiffs and Defendants Securus, Travis County and Sheriff Greg Hamilton; and (2) the "County Attorney Agreement" between Plaintiffs and County Attorney David Escamilla. The Main Agreement and the County Attorney Agreement are fully incorporated herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein, including the recitals set forth herein above, the Parties agree as follows:

II. Consideration

A. No Admission: It is agreed that the consideration cited below has been extended by District Attorney Lehmberg on behalf of Travis County and accepted by Plaintiffs in order to eliminate and forego further controversy or litigation; that this District Attorney Agreement is a compromise of disputed claims; and that the consideration contained herein is not to be construed as an admission by any Party, all liability being expressly denied by District Attorney Lehmberg.

B. Consideration by Plaintiff for District Attorney Lehmberg: Plaintiffs hereby release District Attorney Lehmberg in any and all capacities from any and all claims and/or causes of action arising out of the Cause, or that could have arisen out of the Cause. The Parties further each acknowledge District Attorney Lehmberg is not paying any sum to settle this matter.

C. Covenant not to sue. Plaintiffs promise and covenant never to initiate any lawsuit, administrative or other legal action against District Attorney Lehmberg in any and all capacities arising out of the facts made basis of this Cause.

D. Promises in Facilitation of Settlement. In exchange for the release set forth in Section II. B., above, and III. below, District Attorney Lehmberg makes the following promises on behalf of Travis County in facilitation of the settlement reached herein:

a. Policies Pertaining to Attorney-Client Phone Call Breach.

i. Website. The current TCDAO policies pertaining to attorney-client phone call breach, attached as **Exhibit A**, will be placed on the website for District Attorney Lehmberg's office. This website section shall be subject to superseding legal requirements, if any.

ii. Effect. The policies set forth in **Exhibit A** will remain in effect while District Attorney Lehmberg remains in office.

iii. Notice of Policy Change. On behalf of Travis County, while she remains in office, District Attorney Lehmberg will provide written notice of any change to the policy set forth in **Exhibit A** to Plaintiffs' counsel and to the "Austin Criminal Defense Lawyers Association" (ACDLA) President. Such notice will be provided no less than four weeks prior to any change, unless such notice is not legally permissible. This provision is subject to superseding legal requirements, if any.

iv. Notice of Access. If a TCDAO prosecutor, or a TCDAO prosecutor's agent, accesses a defense attorney's privileged call with the defense

attorney's client, the TCDAO prosecutor will provide to the defense attorney a written notice or "access of a call" letter. An attorney's privileged call with their client has only been "accessed" by TCDAO if a TCDAO prosecutor or a TCDAO prosecutor's agent has listened to the phone call. Included in that letter will be a notice that the defense attorney may provide a written request to the Travis County Sheriff's Office for an access log (as described in the Main Agreement). If the TCDAO prosecutor or his or her agent accesses this call pursuant to a superseding legal requirement, such as a court order, subpoena, or a search warrant, this Notice of Access Section does not apply.

- v. **Case-by-Case.** Any violation of the TCDAO's policy pertaining to attorney-client phone call breach will be decided on a case-by-case basis by District Attorney Lehmberg.
- vi. **No Consent Decree.** The Parties have not and will not enter into a consent decree pertaining to this Cause.
- vii. **Not included in the Local Rules.** The above-referenced TCDAO policies set forth in **Exhibit A** will not become part of the Local Rules of the Travis County District and County Court at Law Criminal Courts.

III. Release by Plaintiffs.

Full and Final Release. For and in consideration of the above promises by Plaintiffs and District Attorney Lehmberg on behalf of Travis County, the sufficiency of which is hereby

acknowledged, and also in consideration of the mutual covenants and releases contained herein, Plaintiffs, for themselves and their heirs, executors, successors, and assigns, agree to and do hereby fully and forever Release, Acquit, and Discharge: District Attorney Rosemary Lehmberg in her individual capacity; and in her official capacity on behalf of Travis County, all of their past, present or future subsidiaries, affiliates, predecessors and successors in interest, heirs, executors, assigns, officers, directors, trustees, agents, employees, representatives and attorneys, (collectively, "Releasees") from any and all charges, liabilities, actions, causes of action, claims, demands, suits, losses, controversies, damages, debts, costs, and expenses (including attorney fees and costs), present or future, vested or contingent, known or unknown, of any kind or character whatsoever, whether at common law, statutory law, or otherwise, whether sounding in tort or in contract, whether direct or indirect, which were asserted or could have been asserted by Plaintiffs against District Attorney Lehmberg in her individual capacity or in her official capacity on behalf of Travis County, Texas through the date of the execution of this District Attorney Agreement ("Claim or Claims").

This complete District Attorney Agreement and Release includes, but is not limited to, a release of any rights arising out of alleged violations of any contract, express or implied, any covenant of good faith and fair dealing, express or implied, any tort, including any claim for negligence or gross negligence on the part of any of the Releasees, of any federal, state or other governmental statute, regulation, or ordinance, including, without limitation, the United States Constitution, the Texas Constitution, 42 U.S.C. § 1983, the Americans with Disabilities Act and the Federal and State Wiretap Acts. Excluded from this District Attorney Agreement are any claims that cannot be waived by law and any claims that arise after the date this District

Attorney Agreement is executed by Plaintiffs. Plaintiffs do waive and release, however, their right to any monetary recovery should any agency pursue any claims on Plaintiffs' behalf.

IV. Undertakings by Organizational Plaintiffs.

The organizational Plaintiffs, Austin Lawyers Guild and Prison Justice League, agree to work with their respective members to ensure the members are aware of the policies and procedures with respect to the District Attorney's Office's Policies pertaining to Attorney-Client Phone Call Breach, as set forth in II.(D.), above.

V. Representations by Plaintiffs.

Plaintiffs for themselves and on behalf of their heirs, executors, successors and assigns, hereby expressly warrant and represent to all of the Parties hereby released the following:

- A. Competent.** Plaintiffs are legally competent to execute this District Attorney Agreement.
- B. Authority of Plaintiffs' Counsel.** Plaintiffs' Counsel hereby promises that they have authority to represent the Plaintiffs in this Cause and to enter into this District Attorney Agreement on behalf of Plaintiffs.
- C. No Assignment of Claims.** Plaintiffs have not assigned, pledged or otherwise in any manner whatsoever sold or transferred, either by instrument, in writing or otherwise, any right, title, interest or claim that they have or may have by reason of the matters described as being released above.
- D. No Promise Outside Agreement.** No promise or representation of any kind has been made to District Attorney Lehmberg or by anyone acting on her behalf or on behalf of Releasees related to the matters released herein, except as is expressly stated in this District Attorney Agreement.

- E. Reliance of Plaintiffs.** Plaintiffs have relied solely on their own judgment and that of their attorneys in executing this District Attorney Agreement.
- F. Full and Final Release.** Plaintiffs understand that this is a full, complete, and final Release of any and all claims against District Attorney Lehmborg in any and all capacities.
- G. Full and Final Consideration.** Plaintiffs understand and fully realize that the above-stated consideration, as well as the consideration set forth in the Main Agreement and County Attorney Agreement, incorporated by reference in Section I. Recitals, (J.), herein, is full and final consideration to Plaintiffs and their counsel in resolution of this matter.
- H. No other Legal Actions.** Other than the current pending lawsuit, Plaintiffs have not filed any charges, lawsuits, or other legal actions or complaints with any court or governmental agency asserting any Claim released in Sections II. B. and III hereof, and agree never to do so. Excluded from this subsection are any rights to file a charge, lawsuit, or other legal action or complaint, which cannot be waived by law. Plaintiffs do waive and release, however, their right to any monetary recovery should any agency pursue any claims on Plaintiffs' behalf.
- I. No Fraud or Duress.** Plaintiffs have not entered into this District Attorney Agreement under fraud, duress, undue influence, or other improper conduct by District Attorney Lehmborg or any other Releasee, but enter into this District Attorney Agreement freely and voluntarily.

VI. Miscellaneous Provisions

- A. No Waiver.** No waiver, amendment, or modification of this District Attorney Agreement shall be valid unless in writing and signed by the Party against whom it is to be enforced.
- B. Governing law.** This District Attorney Agreement shall in all respects be interpreted, enforced, and governed under the laws of the State of Texas. Jurisdiction and venue for any action to interpret or enforce this District Attorney Agreement or any provision thereof shall be in a State District Court of Travis County, Texas.
- C. Severability.** In the event that one or more of the provisions, or portions thereof, of this District Attorney Agreement is determined to be illegal or unenforceable, the remainder of the District Attorney Agreement shall not be affected thereby and each remaining provision, or portions thereof, shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.
- D. Proper construction.** The language of all parts of this District Attorney Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The paragraph headings used in this District Attorney Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.
- E. Attorney's fees.** The Parties expressly acknowledge and agree that in the event any Party breaches any of the terms and covenants contained in this District Attorney Agreement, any other Party may bring suit to enforce its, his, or her rights, and the

successful Party in such litigation shall be entitled to recover of and from the breaching Party its, his or her reasonable attorney's fees and court costs incurred in bringing such action, together with any damages to which the Party may be entitled.

F. Multiple originals. The Parties expressly acknowledge and agree that this District Attorney Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. Exact copies of this fully executed District Attorney Agreement shall be as enforceable as if they were an original.

G. Binding on heirs and others. Except as set forth in Section II. D, above, this District Attorney Agreement shall be binding on all Parties and upon their heirs, representatives, executors, administrators, successors, and assigns, and shall inure to the benefit of the Parties and others released in Section III and each of them, to their respective heirs, representatives, executors, administrators, successors, and assigns.

H. Acknowledgements. Plaintiffs acknowledge and agree that (i) they have carefully read this District Attorney Agreement; (ii) they fully understand their right to discuss all aspects of this District Attorney Agreement with their attorneys; (iii) they have availed themselves of this right to the full extent (if any) that they desired; (iv) they fully understand all provisions of this District Attorney Agreement; (v) this District Attorney Agreement constitutes the sole and entire agreement among the Parties; (vi) they have executed this District Attorney Agreement voluntarily and of their own free will and accord and for the consideration herein stated; and (vii) they enter into this District Attorney Agreement with full knowledge of the content and effect hereof.

I. Effective date. This District Attorney Agreement shall be effective upon its execution by all Parties.

ACCEPTED AND AGREED:

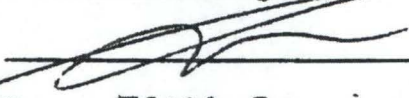
The Austin Lawyers Guild



By: Chaz Koss

Its: President

The Prison Justice League



By: ERICA GAMMILL

Its: EXECUTIVE DIRECTOR



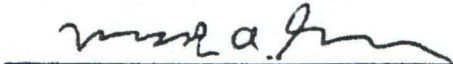
Carl Gossett

Date: 3-7-16



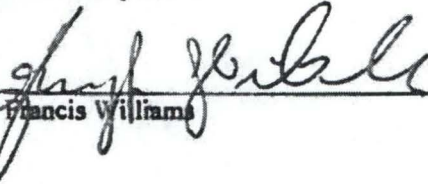
David Grassbaugh

Date: 3-10-16



Mark Sampson

Date: 3-7-16



Francis Williams

Date: 3-7-16

ACCEPTED AND AGREED:



Anthony J. Nelson
Laurie R. Eiserloh
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Attorneys for Travis County Defendants

Date: 3-10-16

From: Robert Smith
Sent: Friday, May 09, 2014 11:59 AM
To: DA_Everyone
Subject: IMPORTANT: Policy on Disclosure of Privileged Communications

Policy on Disclosure of Privileged Communications:

- A. All employees and agents of the Travis County District Attorney's Office are prohibited from listening to or recording privileged communications between lawyers and/or their representatives and a client held in custody. In the event any employee, agent or representative of the Travis County District Attorney's Office becomes aware of a communication between a lawyer and their representative and his client that has been recorded, the District Attorney employee shall immediately stop listening to the recording and immediately inform their direct supervisor, a Division Director, the First Assistant or the District Attorney. The attorney for the client shall be immediately informed of the recording.
- B. This policy applies to any and all communications between lawyers or their representatives and their clients, including telephone calls, video conferences, video visitations, in person visitations and written communications.
- C. This policy does not apply to cases where the prosecutor's office or any law enforcement agency has obtained a valid warrant to monitor communications. This policy does not apply where the client has waived the privilege in writing.

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