

PRISON LEGAL NEWS

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April 2, 2008

SENT VIA FAX AND MAIL

The Honorable Todd J. Campbell
Chief Judge, U.S. District Court
801 Broadway
Nashville, TN 37203

RE: Alleged Attorney Misconduct in *Vilella v. CCA*, Case No. 3:04-0661

Dear Judge Campbell:

By way of introduction, I am the associate editor of *Prison Legal News*, a monthly publication that covers civil litigation related to corrections and criminal justice issues. I also serve as vice president of the Private Corrections Institute, a non-profit that opposes prison privatization.

I am further actively involved in opposing the pending judicial nomination of Mr. Gustavus A. Puryear IV for a position on the U.S. District Court for the Middle District of Tennessee. Mr. Puryear presently serves as general counsel for Corrections Corp. of America (CCA), a party in the above-referenced *Vilella* case, which involved the in-custody death of Estelle Richardson.

It was in this capacity that I learned of the Feb. 22, 2008 motion to unseal filed in the *Vilella* action. The parties had entered into a confidential settlement to resolve this suit in April 2006, and the motion to unseal related to the transcript of the hearing wherein the Court approved the minor settlement. The unsealed transcript was then submitted to the U.S. Senate Committee on the Judiciary in support of Mr. Puryear's judicial nomination, on February 26.

In moving to unseal the transcript, counsel for CCA, Mr. Joseph F. Welborn III, and counsel for the plaintiffs, Mr. David Randolph Smith, represented to the court that "The transcript does not contain terms of the minor settlement and will not violate the order of the Court that the settlement remain confidential" (see attached motion). That representation was not accurate.

The transcript contains obvious, sufficient details to ascertain that a \$2 million gross settlement was paid by CCA to Estelle Richardson's minor children. On page 12 of the transcript, Mr. Smith reveals the amount of his attorney fee and the percentage of that fee relative to the entire attorney fee (25%). As the percentage of the attorney fee is also revealed (40%), simple math deduces the settlement award of \$2 million. A copy of page 12 of the unsealed transcript is attached.

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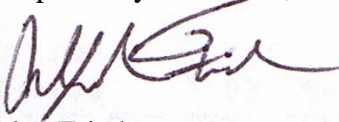
Mr. Smith did not inform his client that he had moved to unseal the hearing transcript – which thereby revealed the amount of the settlement – nor did he seek prior permission to do so from his client. I spoke with Mr. Phillip Vilella, the conservator on behalf of Estelle Richardson's two minor children, who confirmed that Mr. Smith had not contacted him in regard to unsealing the transcript and revealing the amount of the settlement. As the motion to unseal the transcript was for the purpose of supporting the pending judicial nomination of Mr. Puryear, it cannot be said that that action was in the best interests of Mr. Smith's client.

Both Mr. Smith and Mr. James F. Sanders, another CCA attorney involved in the *Vilella* case, have sent letters to the Judiciary Committee supporting Mr. Puryear's nomination. Mr. Sanders' letter included a copy of the unsealed transcript of the minor settlement, which has since been distributed to the media. A copy of his letter (sans enclosures) is attached.

Although a joint motion was filed to unseal the transcript of the Court's approval of the minor settlement, the information provided to the Court, that said transcript did "not contain terms of the minor settlement," was incorrect or at least misleading. Additionally, Mr. Smith failed to inform or seek permission from his client to unseal the transcript, and the motion to unseal the transcript was for the purpose of supporting the pending judicial nomination of Mr. Puryear, CCA's general counsel, which has no relation to the best interests of Mr. Smith's client. Indeed, Estelle Richardson's family is still very upset with CCA; Ms. Richardson's sister-by-adoption, Diane Buie, has sent a statement to the Judiciary Committee in that regard (also attached).

For these reasons, I request that the Court give due consideration to this matter and take any action deemed necessary and appropriate relative to the unsealing of the transcript of the minor settlement, the disclosure thereby of the amount of the confidential settlement paid to Estelle Richardson's minor children, and the conduct of counsel in filing the motion to unseal.

Respectfully submitted,



Alex Friedmann
Associate Editor, PLN
Vice President, PCI

Attachments

cc: Mr. David Randolph Smith
Mr. Joseph F. Welborn III
Sen. Patrick Leahy, Chairman, Judiciary Committee
Sen. Arlen Specter, Ranking Member, Judiciary Committee

WHEREFORE, the parties respectfully request that the Court unseal the transcript only.

RESPECTFULLY SUBMITTED:

/s/ Joseph F. Welborn
Robert J. Walker
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/s/ David Smith by JFW w/permission
David Randolph Smith
Law Offices of David Randolph Smith
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1913 21st Avenue South
Nashville, TN 37212

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following persons by electronic means or by First Class Mail on February 22, 2008:

Bart Durham
Robert L. Whitaker
Blair Durham
Bart Durham Injury & Accident Law Offices
1712 Parkway Towers
404 James Robertson Parkway
Nashville, TN 37219

David Randolph Smith
1910 Acklen Avenue
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Nashville, TN 37212

William McHenry
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James F. Sanders
Neal & Harwell
2000 One Nashville Place
150 Fourth Avenue, North
Nashville, TN 37219

/s/ Joseph F. Welborn

62091

1 know. We got multiple responsibility. You know, what are we
2 going to do about these large amount of expenses. We'll take
3 those out of our fee, and we'll calculate our fee, you know,
4 not off the top but after the deduction of expenses.

5 So that's what was agreed upon, Your Honor. And I
6 understand, I mean the one thing I would say is that granted
7 this was a little bit like a medical malpractice case, but it
8 involved a lot of time and expense in putting aside other
9 things. So in terms of the breakdown, I don't know if we
10 provided this to the Court, but the fee agreement provides
11 that 50 percent of the fee goes to the Fieger, Fieger, Kenney
12 & Johnson firm, 25 percent goes to the Law Office of Bart
13 Durham, and 25 percent goes to my firm. So that's --

14 THE COURT: That wasn't provided.

15 MR. SMITH: I don't know if that was provided to
16 you, Your Honor. That works out to be basically, you know, I
17 advanced 52 -- well, I actually advanced 102, but I am
18 recovering \$52,000. I am getting \$192,000 fee.

19 THE COURT: Does Mr. Feiger still have a law
20 license?

21 MR. SMITH: Yes, he does, Your Honor. He has been
22 very adept at staying one step ahead of the pokey or the
23 posse. He does. He does have. He's got some issues. Still
24 has some pending matters.

25 THE COURT: He has partners or associates; is that

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February 26, 2008

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Fax: 202-224-9516

Re: Gustavus A. "Gus" Puryear

Dear Senator Leahy:

I understand from press accounts of the confirmation hearing of Gustavus A. "Gus" Puryear before the Senate Judiciary Committee on February 12, 2008, that questions have arisen about the tragic death of Ms. Estelle Richardson and CCA's response to the investigations into that death and the civil action that arose out of it. I write as a person who represented CCA in both investigations and in the civil case and, in that capacity, I was in contact directly and often with Mr. Puryear.

Since I am writing you, I first volunteer my comments on Mr. Puryear's qualifications as a judge for the United States District Court for the Middle District of Tennessee. I clerked for Judge William E. Miller and Frank Gray, Jr., who both served as Chief Judge of that Court, and I have been a practicing trial lawyer for over thirty (30) years. It is my opinion that Gus Puryear is well-qualified and well-suited to be a federal judge. He has a good legal mind and he is intelligent, but he also has demonstrated to me an ability to see all sides of an issue impartially and to grasp applicable legal principles quickly and then to apply them to the situation at hand. I also have been impressed with his sense of fairness.

In respect to questions surrounding Ms. Richardson's death, I respectfully suggest that it is important to recognize that CCA cooperated fully both with the state and federal investigations and with plaintiffs' counsel in seeking to determine the cause of death and the time(s) Ms. Richardson sustained injuries. That was my instruction from Mr. Puryear and that is what was done.

I can tell you that the facts, particularly the medical evidence, showed conclusively that Ms. Richardson's death was not caused by the correctional officers extracting Ms. Richardson from a cell on July 4, 2005. Both plaintiffs' expert (Dr. George Nichols - a forensic pathologist and former Kentucky State Medical Examiner) and CCA's expert (Dr. William McCormick - a forensic pathologist and

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Deputy Chief Medical Examiner for the State of Tennessee) agreed on this critical point, and that opinion was based on the medical evidence. While I recognize that Dr. Bruce Levy's autopsy findings appear to be at odds with those of Drs. McCormick and Nichols, Dr. Levy was far from certain about the timing of the head injury and was then, and is now, less qualified on brain injuries than Dr. McCormick or Dr. Nichols; and their examination was broader and deeper than Dr. Levy's, who made and published his findings quickly. In short, there is no credible evidence to support Dr. Levy's homicide conclusion, other than the head injury and the death itself.

In this case, the medical evidence showed, and Drs. Nichols and McCormick both concluded, that Ms. Richardson's head injury occurred at least three days prior to her death. The authorities, the plaintiffs' lawyers, the correctional officers' lawyers, and CCA all searched for evidence as to the cause of Ms. Richardson's head injuries and none was found.

I attach to this letter the following documents that support the statements made above:

1. April 18, 2006 letter from Dr. William McCormick to Dr. Bruce Levy in which Dr. McCormick states: "I do not believe that it would be reasonably possible for anyone experienced in the temporal evaluation of brain contusions to give a date of less than 72 hours for the cortical contusion seen in the descendent, with a more probably date of 2 to 3 times that interval"; Dr. Levy never responded to Dr. McCormick, by letter or otherwise.
2. April 20, 2006 transcript of proceedings in the civil case in which plaintiffs' counsel, David Smith, states as follows to the federal court: "[T]he four guards who have been charged with homicide have been charged with homicide based upon medical evidence that the skull fracture occurred on July 4th. Our medical evidence (sic) that of the defense medical evidence indicates that actually this skull fracture occurred quite a bit earlier and that Ms. Richardson was suffering from a seizure disorder. And so, you know, we spent a lot of money on medical experts to nail down exactly when did this skull fracture occur. And I think it is very likely that the actual fact that the death occurred as a result of any of the guards who had presently been charged, you know, locally that this is a high likelihood that that

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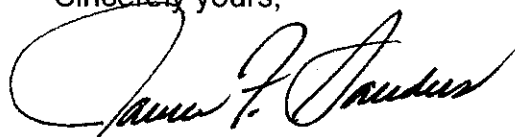
prosecution may fall apart based upon the medical evidence that the skull fracture did not occur on that day. The skull fracture still occurred while she was in solitary confinement, but our extensive investigation and depositions and over a year of discovery we have not been able to determine exactly who caused the skull fracture.”

3. February 19, 2008 letter from Dr. William McCormick confirming his conclusions as to the cause of Ms. Richardson’s rib and liver injuries: “The cause of the rib and liver injuries is almost certainly the resuscitative attempts made on Ms. Richardson ... CPR is known to produce anterolateral rib fractures....”

Finally, I can tell you that Mr. Puryear and the other lawyers who participated in this case (on all sides) acted ethically. It would have been ethically proper for CCA’s lawyers to take an adversarial position and insist that the investigators and the plaintiffs’ lawyers do their jobs. That was not the case here. Mr. Puryear instructed that we diligently search for the truth as to the cause of death (and the surrounding facts and circumstances) and disclose what we found to the plaintiffs’ representatives and the government investigators.

It is my hope that the foregoing will assist the Committee in resolving any questions concerning the Richardson matter and Mr. Puryear’s role in it.

Sincerely yours,



James F. Sanders

JFS:jmc

✓ Enclosures

✓ xcs:

The Honorable Arlen Specter, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Fax: 202-228-1698

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The Honorable Dianne Feinstein
United States Senate
Washington, DC 20510

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Elisebeth Cook, Acting Assistant Attorney General
Office of Legal Policy
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Fax: 202-307-3137

March 7, 2008

Dear Mr. Friedmann, Vice President, PC 1

My name is Diane Buis, I am
Estelle Ann Richardson's sister.

I live in Lansing, MI.

I am sure my sister Estelle Richardson's
death resulted from being beat up
every day that she was in CCA.

She was not around other inmates
CCA moved her to a one person's
cell and she only came out
maybe once hour a day for showers.

So how do they explain her having a
burst eardrum that bled for days
with out medical attention. She was
pepper sprayed while she was in a caged
shower. The Guard's then handcuffed, placed
in leg iron's and officer's put substantial
or significant pressure on my sister
Estelle Richardson's back while face
down and prone position after being
subdued and incapacitated. (This episode
was videotaped)

I know for a fact the four guard's
are guilty and charges should have
never been dropped.

In regard to my sister Estelle Richardson having four broken ribs, there's no way CPR being performed could have resulted from that. According to the Davidson County Medical Examiner, and I personally don't believe that, at all.

One on the guard's there working was a Pit Bull, so he used my sister as a punching bag. Damaged Liver, Tissue⁺ came from one of the guard punching, beating and pushing her in the wall. Estelle would never ~~hurt~~^{hurt} herself because she thought she was coming home to her two kids, who she dearly loved.

CCA never apologized to our family or Estelle's kids.

I'm very angry inside, for what CCA let happen to my sister, Estelle Ann Richardson, while in their ~~care~~ care. How could ~~for~~ CPR ~~and~~ allow a inmate^{to} be beaten up every day, then die?

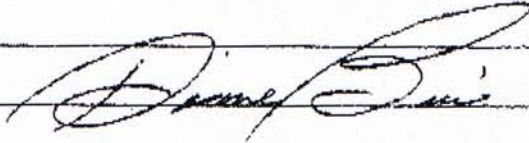
I feel Justice Was Not Served.
I was not a Party to the Settlement

and thus not bound by
~~and~~ any confidentiality provisions
(Please share with media.)

Sincerely

Diane Burt

Estelle Ann Richardson sister

A handwritten signature in cursive script that reads "Diane Burt". The signature is written in dark ink on lined paper.