

Private Corrections Institute, Inc.

April 21, 2008

SENT VIA FAX

The Honorable Patrick Leahy, Chairman
Senate Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Statement of Gustavus A. Puryear IV Related to *Johnson v. Miller*

Dear Chairman Leahy:

I am contacting you in reference to a statement made by Mr. Gustavus A. Puryear IV, related to his participation in a federal case titled *Johnson v. Miller* (USDC, Middle District of Tennessee, Case No. 3:92-cv-0422).

Mr. Puryear described this case in his Questionnaire submitted to the Committee, in response to question no. 19, as one of the "ten (10) most significant litigated matters which [he] personally handled." He also cited this case during his testimony on February 12, and mentioned it in his written answers to questions posed by the Committee members. The case involved a Tennessee state prisoner who was represented by Mr. Puryear and attorney Michael Dagley. Mr. Puryear indicated he had "primary responsibility" over the case. This was one of only two cases that Mr. Puryear has taken to trial; the jury ruled against his client, Christopher Johnson.

In his Questionnaire submitted to the Committee, Mr. Puryear indicated that after the trial, "Mr. Johnson, who had since been released, wished to represent himself on appeal. I sought and was granted leave to cease representing Mr. Johnson."

This characterization by Mr. Puryear is misleading at best. As with other comments made by Mr. Puryear, which have been addressed previously and are revisited below, his remarks related to the *Johnson* case do not tell the whole story and display a remarkable lack of candor.

Dee Hubbard
President

Alex Friedmann
Vice President

Stephen Rahe
Secretary/Treasurer

Deb Phillips
Director

Ken Kopczynski
Executive Director

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Specifically, according to documents recently obtained from the archived court file, Christopher Johnson, Mr. Puryear's client, sought to have Mr. Puryear removed from his case prior to trial in a Motion to Dismiss Counsel filed on June 15, 1995. According to Mr. Johnson, his attorneys, including Mr. Puryear, refused to raise issues included in Mr. Johnson's supplemental complaint concerning retaliation, placement in segregation and being called a degrading racial epithet by prison staff. Mr. Johnson informed the court that he had "requested counsel to include these 1st amendment claims and counsel has refused. Therefore plaintiff requests this court to dismiss counsel and allow these pleadings to be re-submitted to the court. Because plaintiff is not waiving these pleadings." [quoted from the original].

Mr. Johnson, although incarcerated, was a capable pro se litigator. Prior to Mr. Puryear and Mr. Dagley being assigned to his case, Mr. Johnson testified at an evidentiary hearing and survived a motion for summary judgment filed by the state Attorney General's office. He recognized that because he was represented by counsel he was unable to include the additional claims himself, and since his attorneys (including Mr. Puryear) refused to do so, he would have to dismiss his attorneys so he could raise the claims pro se, as he did not want them waived. The court denied his motion to dismiss counsel; Mr. Puryear subsequently took the case to trial, and lost.

Mr. Johnson then filed another motion to dismiss his attorneys, saying they had "intentionally failed to prepare for the trial and present all relevant evidence and proof." The court granted his motion. Mr. Johnson's two Motions to Dismiss Counsel are attached to this letter.

We bring this matter to your attention not because we suggest any wrongdoing in Mr. Puryear's refusal to argue his client's additional claims of retaliation, placement in segregation and being called a degrading racial epithet. Whether or not it is proper to add additional claims is largely an exercise of the attorney's discretion. Rather, our concern is due to Mr. Puryear's failure to fully and candidly inform the Committee about his client's requests to have him removed from the case, twice, and the reasons therefore. Certainly, Mr. Puryear's statement to the Committee that he withdrew from the case because "Mr. Johnson ... wished to represent himself on appeal" is far removed from his client's reasons as stated in the attached documents.

We believe this is part of a pattern displayed by Mr. Puryear in which he has not provided the Committee with complete and candid responses. For example, in addition to his remark related to his withdrawal as counsel for Mr. Johnson, consider the following:

Dee Hubbard
President

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Vice President

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* According to media reports, Mr. Puryear indicated to the Committee during his February 12 hearing that Estelle Richardson's cause of death "could not be determined." More accurately, the State Medical Examiner, Dr. Bruce Levy, found that Ms. Richardson had died due to blunt force trauma to the head and ruled her death a homicide. According to the Attorney General's office, her case is considered an unsolved murder. As Dr. Levy noted, "Her autopsy report and death certificate ... have remained unchanged since her death in 2004."

* Mr. Puryear opined during his February 12 hearing that Ms. Richardson's four broken ribs and damaged liver could have been caused by CPR, but apparently did not mention at the time that his opinion directly conflicted with the findings of the State Medical Examiner's office.

* Mr. Puryear stated during his Feb. 12 hearing that the four CCA guards who were indicted in connection with Ms. Richardson's death had been "exonerated." Actually, the charges against them were dismissed because the timing of Ms. Richardson's fatal injury could not be accurately determined. The guards were not exonerated. Mr. Puryear subsequently explained his comment by saying he had used the "common, colloquial meaning" of the term. However, even in layman terms, the word "exonerated" is not equivalent to a dismissal of charges.

* In his written answers submitted to the Committee, Mr. Puryear included an oblique reference to "additional in-service training concerning video camera procedures" as one of the remedial actions taken by CCA following Estelle Richardson's death, without elaboration or explanation. According to Assistant Attorney General Rob McGuire, investigators were told by CCA that the jail's video camera was not working and thus Ms. Richardson's cell extraction by four guards the day before her death was not recorded. However, one of the police investigators asked to see the camera, turned it on and noted that it appeared to be working properly. This sequence of events, and the absence of the videotape, were not mentioned by Mr. Puryear.

* Mr. Puryear has never mentioned the involvement of a fifth CCA guard, Shirley M. Foster, in relation to Ms. Richardson's injuries or death. In the civil lawsuit filed against CCA by Ms. Richardson's minor children, Ms. Foster was witnessed to have injured Ms. Richardson three days prior to her death, in an unmonitored shower area.

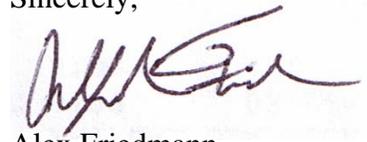
* Mr. Puryear indicated he was a member of the National Prison Rape Elimination Commission, but it was not until he was specifically questioned that he acknowledged he had missed half of the Commission's public hearings.

Senator Patrick Leahy
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We would expect that Mr. Puryear, as a judicial nominee, would be completely open and candid with the Committee. However, as indicated by the above examples, and in particular concerning the characterization of his withdrawal as counsel in *Johnson v. Miller* – as discussed above and reflected in the attached documents obtained from the original court file – Mr. Puryear has been neither open nor candid. We ask the Committee members to take this into consideration.

Thank you for your continued time and attention;

Sincerely,



Alex Friedmann
Vice President, PCI

cc: Senator Arlen Specter, Ranking Member

Dee Hubbard
President

Alex Friedmann
Vice President

Stephen Rahe
Secretary/Treasurer

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Director

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Executive Director

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2514

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN
MAY 06 1996
BY *[Signature]*
DEPUTY CLERK

CHRISTOPHER JOHNSON,
Plaintiff.

v.

No. 3-92-0422

BEN MILLER, et al.,
Defendants.

MOTION TO DISMISS COUNSEL

Comes now plaintiff, Christopher Johnson and moves this Court to dismiss counsel because counsel intentionally failed to prepare for the trial and present all relevant evidence and proof.

Respectfully Submitted
by *Christopher Johnson*
Prose Christopher Johnson
2514 Dodson Ave
Chattanooga, Tr. 37406

I Christopher Johnson swear under penalty of perjury that the above is true this 2nd day of May 1996

I Christopher Johnson hereby declare that a true copy has been mailed to attorney for defendants this 2nd day of May 1996.

CHRISTOPHER JOHNSON,
Plaintiff,

JUN 15 1995
BY DEB
DEPUTY CLERK

v.

No. 3-92-0422

Higgins

BEN MILLER, et al.,
Defendants.

MOTION TO DISMISS COUNSEL

Comes now plaintiff, Christopher Johnson, prose, and moves this Court to dismiss counsel for the following reasons:

1) The magistrate recommended counsel be appointed to verify the validity of the felony convictions in question, however, counsel has not complied.

2) Plaintiff filed supplemental complaint alleging that he was transferred from (R.M.S.I.) by defendants in retaliation of this lawsuit. The supplemental complaint was filed April 18, 1994. Plaintiff also alleged the transferr was also in conspiracy to raise his security custody. Such allegations has proven to be true. However, plaintiff requested counsel to pursue this claim, but it was ignored.

3) Plaintiff filed for injunction relief and restraining order on Feb. 1995 because due to transferr in retaliation to this lawsuit and the above conspiracy he had a rifle pointed at him while he was handcuff and left in the parking lot by Capt. Chapman with instruction to guard tower officer to shoot plaintiff if he moved. Plaintiff was thereafter threatened by counselor Jim McCarroll and officer Rick. Then he was

taken to punitive segregation and issued 4 false disciplinary reports. He was called nigger ~~to~~ by the prison officials. All of this was done to offset this lawsuit. This Court refused to grant injunction or restraining order on the ground that plaintiff has an attorney, thus indicating that attorney should file the said pleadings. However, counsel did nothing and did not file the pleadings.

4) Plaintiff requested counsel to include these 1st amendment claims and counsel has refused. Therefore plaintiff requests this court to dismiss counsel and allow these pleadings to be re-submitted to the Court. Because plaintiff is not waiving these pleadings.

Respectfully Submitted
by Christopher Johnson
N.E.C.C.
P.O. Box 5000
Mountain City, Tn. 37683-5000

I Christopher Johnson swear under penalty of perjury that the above is true this 10th day of June 1995.

I Christopher Johnson hereby declare that a true and exact copy has been mailed to attorney for defendants this 10th day of June 1995.