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The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

March 5, 2008

Dear Senator Feinstein:

Thank you for serving as the Chair of the Judiciary Committee's hearing on my nomination to serve as U.S. District Judge for the Middle District of Tennessee. I write to respond to your letter dated February 26, 2008, in which you asked certain follow-up questions, and to which you attached certain allegations presented to you by a group known as the Private Corrections Institute, Inc. ("PCI"). I appreciate your willingness to let me respond to the allegations raised by PCI. I will try to respond in a narrative fashion to both your follow-up questions and the PCI allegations.

1. **The Estelle Richardson Matter**

The death of Estelle Richardson on Monday, July 5, 2004 was a profoundly distressing event to me personally and professionally. Her two young children were left without a mother; I can only begin to imagine the suffering her death has caused them to endure. As the father of two young children, I mourn her children's loss. As I recalled at the hearing, the place and time I learned of her death are seared into my memory: I had just arrived at a lake near Nashville with my wife, children, and another family when my cell phone rang.

The circumstances surrounding the initial report of her death were truly disturbing: a female inmate in solitary confinement dies of apparent head injuries mere hours after she had to be extracted from her cell by four corrections officers (a cell extraction is categorized as a "use of force" incident in corrections). Her death led to both federal and local criminal investigations of CCA and its employees, as well as civil litigation.

As general counsel to CCA, my responsibility was to represent CCA. At all times, acting in consultation with executive management at CCA and its board of directors, I provided general supervision of CCA's approach to the handling of the criminal investigations related to Ms. Richardson's tragic death, as well as civil litigation brought on behalf of Ms. Richardson's family. At my direction, CCA fully cooperated with all law enforcement authorities. CCA believed that these investigations would determine the cause of her death, and who, if anyone, was responsible for it. CCA's outside lawyers (under my direction and supervision) also investigated the possible

causes of death through examination of records, interviews of cooperative witnesses, depositions taken during the civil case, and consultations with medical experts; this process involved more than two years' work. In fact, CCA's and the Richardson family's lawyers cooperated during the discovery process of the civil litigation, as all parties were seeking to understand the truth about what happened.

I was CCA's representative at a mediation between the Richardson family and CCA on February 22, 2006. The civil case between CCA and the Richardson family did settle shortly before midnight on that date. Criminal charges against the four corrections officers who were employees of CCA were ultimately dismissed in the light of the medical evidence developed jointly by the Richardson family and CCA.

In short, while I acted as the lead CCA lawyer on this matter, CCA cooperated fully with all law enforcement investigations into the death, and CCA cooperated with the Richardson family in the civil litigation. The Richardson family voluntarily dismissed its civil actions against the four corrections officers who were under indictment; further, the Richardson family and CCA settled the dispute over the exact causes of the death and CCA's liability, if any, in connection with those possible causes.

a. Investigatory Efforts

Your first two questions concern the nature of CCA's efforts to find out what happened to Ms. Richardson. First, CCA fully cooperated with law enforcement investigations into her death, and CCA believed that those investigations would identify the cause of her death. The initial reports CCA received suggested that this would not be a difficult case to resolve. Law enforcement began its investigation before I was even informed of Ms. Richardson's death on the morning of July 5, 2004. The investigation did not conclude as quickly as was expected. Federal and state investigations continued for more than two years. Numerous CCA employees were interviewed by investigators and/or gave grand jury testimony, CCA produced thousands of documents to investigators, and CCA cooperated fully in the hopes that justice would be served.

In addition, CCA's outside lawyers also investigated the possible causes of death for a two-year period through the examination of records, interviews of cooperative witnesses, depositions taken during the civil case, and consultations with medical experts. As discussed, CCA's and the Richardson family's lawyers and retained experts cooperated fully in an attempt to determine the truth about what happened.

b. Cause of Death and CPR

Your next two questions concern inconsistencies between my testimony on Ms. Richardson's cause of death, including injuries to her ribs and liver, and the autopsy findings. The explanation for such inconsistencies is that the autopsy findings are at odds with the conclusions of CCA's and the Richardson family's medical experts.

As you know, four corrections officers involved in a cell extraction hours before Ms. Richardson's death were indicted for homicide, though they steadfastly maintained their innocence. In the course of preparing for the civil litigation, both CCA's medical expert, Dr. William McCormick (a specialist in traumatic brain injuries who serves as Deputy Chief Medical Examiner of the State of Tennessee), and the family's medical experts (a neurosurgery expert from Stanford University Medical School and the former Chief Medical Examiner of the State of Kentucky) concluded that Ms. Richardson's death did not result from a brain injury within 24 hours of her death, and thus could not have been caused by the four officers who performed the cell extraction hours before her death.

I understand that the Committee has received a transcript of the settlement hearing in the federal civil case, which is now publicly available. In that hearing, the Richardson family's lawyer, David Randolph Smith, disputed the medical evidence underlying the criminal prosecution and noted that Ms. Richardson had a seizure disorder. He also opined that the homicide cases would likely "fall apart," as indeed they did. In a separate letter to the Judiciary Committee dated February 25, 2008, Mr. Smith further stated:

> [T]he circumstances and cause of Ms. Richardson's tragic death were complex and debated. Dr. Levy, the Tennessee medical examiner, attributed the cause of death to a recent traumatic brain injury (skull fracture). That opinion was contested vigorously by the defense and our own experts attributed the death to a seizure and concluded that the skull fracture was not caused by the four guards who had been indicted. ... There were also issues on whether CPR may have caused the liver and rib injuries.

(Emphasis added.)

I stated at my hearing that I understood that the broken ribs and liver injury could have been caused by the cardiopulmonary resuscitation ("CPR") that was performed on Ms. Richardson when she was found non-responsive in her cell. This was based on my recollection of an oral report made by CCA's medical expert, Dr. McCormick. In addition to Mr. Smith's letter, which notes that this was an issue, the Committee now also has a letter from Dr. McCormick to one of CCA's lawyers expressing in writing his view that these injuries are "almost certainly" attributable to CPR, though he cannot make a definitive conclusion because the medical examiner neither performed a microscopic examination of the injured tissue nor retained tissue samples that could be used to determine the precise timing of the injuries. Dr. McCormick also opines that such injuries commonly occur with CPR, and cites extensive medical literature to that effect.

It is unlikely that anyone will ever know definitively what caused the rib and liver injuries. What is known, however, is that CCA cooperated fully with all law enforcement investigations into the death, and that CCA cooperated fully with the Richardson family in the civil litigation. It is known that the Richardson family voluntarily dismissed its civil actions against the four corrections officers who were under indictment. It is known

that the Richardson family and CCA settled the dispute over the exact causes of the death and CCA's liability, if any, in connection with those possible causes. It is known that the District Attorney General met with both CCA's and the family's medical experts. Last, it is known that the District Attorney General, who had access to the medical examiner's opinions and all of the police investigatory materials relating to this matter, then dismissed the charges against the four corrections officers.

Unfortunately, the medical findings by both the family's and CCA's experts do not permit a definitive conclusion as to how Ms. Richardson died. In my testimony to the Committee, I relied in good faith on these opinions. My opinion that there is substantial uncertainty regarding the cause of Ms. Richardson's death is also shared by the lead lawyer for the Richardson family in his letter to the Committee. As CCA's lawyer, I regret that this uncertainty leaves a cloud over CCA; however, I know that the far greater tragedy is that the children of Estelle Richardson will likely never know exactly why their mother died.

2. **Recusal Issue**

I reiterate that, though I will completely divest myself from my remaining financial interest in CCA, I will recuse myself from all cases involving CCA for an extended period of time after my divestment. That recusal would also cover officers and employees of CCA being sued for their actions relating to CCA. On any recusal decision, I will, of course, abide by the then-current statutes and Code of Conduct for United States Judges to ensure both that there is no actual or apparent partiality and that the litigants receive due process of law.

In response to your question concerning how long this "extended period of time" would be, I simply cannot answer precisely today; however, in no event would that period be less than five years. Though I am aware that some judges have established defined time periods before they will hear cases involving their former law firms, some also recuse themselves for the duration of their careers. To me, some of the critical issues with respect to my recusal from CCA cases would include the following factors: the length of time since complete divestment from CCA; whether senior management of CCA is comprised of people with whom I worked; whether any such matter could still relate to facts and circumstances that arguably may have been known to me while at CCA; and whether sufficient time has passed that the bar and public have ceased to perceive me as a zealous advocate for CCA.

Facts outside of my control could have an impact on my assessment of these issues. Two hypothetical situations may help illuminate this thought: What if CCA were acquired by a private equity firm and the current executive management were completely replaced and the corporate headquarters relocated, but two prisons remained in the Middle District of Tennessee, run by wardens I did not know? What if a new management team at CCA divested its prison operations and decided to provide information technology consulting services to public prison systems? I am hesitant to commit to recuse myself beyond a five-year minimum, as these factors beyond my

control could shape my analysis of the recusal issue. I want to assure you that I will be driven by a desire to err on the side of recusal with this issue.

With respect to the attached PCI materials concerning the administration of justice issues allegedly raised by this recusal, I believe we fully discussed this matter at the hearing. Whether the number of cases filed against CCA since 2000 is 165 (as one press source has noted) or more than 400 (as PCI contends), that number must be seen within the context of a judicial district in which approximately 15,000 total cases were filed in that same period. Many of those filings against CCA may also have been dismissed quickly (in answering questions for Senator Kennedy, I have determined that more than 100 cases apparently filed against CCA since 2000 were dismissed on the day they were filed, without being referred to a district judge). My recusal will not impose a "substantial burden" on the other district judges if I am confirmed.

3. **Objectivity in Prisoner Cases**

I expressed at the hearing my view that all civil rights lawsuits, including inmate lawsuits, deserve a fair hearing. I reiterate my support of the right of inmates to assert civil rights claims. If confirmed as a judge, I will strive to be fair and impartial and to fulfill my sworn duty to the Constitution and laws of the United States in all cases, including those brought by inmates.

At the hearing, I had an opportunity to provide context for the single quotation on which PCI relies to assert that I would not be fair to inmate lawsuits. Furthermore, PCI's own presentation notes that I have authorized substantial payments to inmates who brought meritorious claims against CCA. I clearly know that there are serious, meritorious inmate lawsuits.

I think it important for you to know that my exposure to corrections systems over the years has made me very much aware that there are, in fact, individuals in the corrections field who commit grievous crimes against inmates – ranging from physical abuse to sexual exploitation. Indeed, it is my personal belief that some individuals may be attracted to careers in corrections because they seek to control and exploit others, and, no matter how careful a corrections employer is in attempting to screen out such individuals, some may wind up being hired. I also know that some corrections officers become compromised by simple errors in judgment, and that those errors can have terrible consequences.

I have also seen first-hand the good that can come from corrections. I remember encountering an inmate at a facility who tied beautiful flies for fishing. The delicacy and precision of his work caught my eye, even though I had never before fly-fished. We talked about how he became interested in that hobby; how long it took him to tie various flies; the names of the flies; and, ultimately, why he was in prison, when he hoped to get out, and what his dreams were for the future. I have likewise met former inmates who now work for CCA as counselors, who have movingly described their rehabilitation by the corrections system. Experiences like this have allowed me to see the humanity of

those who are, and have been, incarcerated, and have convinced me that the hope of rehabilitation must be carefully nurtured in environments that can be difficult.

In private practice, I saw a jury simply refuse to credit the testimony of a former inmate, who was my client, in spite of the fact that the corrections officials involved were effectively impeached and lacked credibility themselves – at least in my judgment. So I am aware that many in our society may never be willing to believe an ex-inmate, much less give that person a fair shake.

In short, I think my experiences will make me particularly sensitive to issues raised by inmate lawsuits. I think my exposure to the corrections arena has given me an awareness of the risks posed to those inmates. I regret that the discussion of a particular case at our hearing, as opposed to my general experiences while at CCA, made it difficult for me to express some of my personal convictions, and I appreciate this opportunity to share these thoughts with you.

Of course, you need not rely solely on my personal assurances on this issue. There are other, more objective actions that I believe help demonstrate my personal commitment to the humane treatment of inmates:

- Volunteering to serve as an appointee of the National Prison Rape Elimination Commission;
- Defending the civil rights of an inmate in a lawsuit against a Tennessee Department of Corrections warden and other staff;
- Instituting an aggressive, new quality assurance program while at CCA to promote inmate welfare and ensure high-quality operations;
- Settling meritorious inmate lawsuits for substantial monetary awards; and
- Implementing CCA's first corporate compliance program and drafting its first Code of Ethics and Business Conduct, which includes standards of conduct to protect inmates and provides for anonymous reporting by employees of possible mistreatment of inmates by staff.

Finally, long prior to this nomination, when commenting on my visits to corrections facilities operated by CCA, I made the following statement:

> [T]here is a human dimension to our business, not just for our employees, but also the inmates entrusted to our care. So you're aware, every day, that this company has to conduct itself with absolute integrity, because the lives of the people we're housing depend on it, the lives of the people who work for us depend on it, the lives of those outside of our facility who depend on us to protect them depend on it. So you're acutely aware of that dimension and of the good that can come from corrections.

Greg Land, "No More Get Out of Jail Free," GC South October 2005 at 21.

4. **Protecting Privileged Information**

At the hearing we discussed an after-action report concerning the hostage-taking incident at the Bay County Jail in 2004. In reviewing the PCI materials you have attached with respect to the Bay County hostage report, PCI does not assert that withholding any such after-action report was an improper assertion of CCA's rights. In fact, PCI acknowledges that I was "doing my job" as CCA's lawyer.

Your first follow-up question concerns whether the report was provided to Bay County. First, there was never a written report supplied to CCA; the outside counsel to CCA provided an oral report based on the notes and documents prepared in his investigation, and he shared his understanding of what had transpired and his mental impressions surrounding the defenses CCA could make in the litigation likely to result. So, there was not a written report to provide to Bay County. Nevertheless, and at the request of Bay County authorities, CCA did provide a written statement concerning remedial measures that were being undertaken at the Bay County Jail as a result of what had been learned about the hostage-taking episode.

You also ask whether, if Florida authorities conducted their own investigation, such a report would have been protected from disclosure by the work product doctrine. In fact, the Bay County Sheriff's Department and the Florida Department of Law Enforcement conducted their own investigations. So such a report may already exist. Although I am not an attorney licensed to practice in Florida, I believe state agencies may also assert work product protections. See Fla. Stat. Ann. § 119.07(1). In addition, there may be other grounds for withholding such a document under state law. The investigation related to the way in which physical security systems at the facility were defeated by a criminal act, and thus may not be a public record. See Fla. Stat. Ann. § 119.07 (6) (b) (exception for records for "active criminal intelligence information and active criminal investigative information"); Fla. Stat. Ann. § 109.071 (exception for records relating directly to the "physical security of a facility").

In response to your final question in this area, I do generally agree that factual information about a violent incident in a prison should be available to the public regardless of who operates the prison, provided such information does not compromise a criminal investigation or the ability of the prison to operate it securely (as might be the case in discussing how certain physical security features were defeated).

5. **Experience**

As you note, PCI has also raised issues relating to my qualifications. The American Bar Association's Standing Committee on the Federal Judiciary unanimously found me "Qualified" for this appointment.

As discussed at my hearing, while engaged in the private practice of law, I have tried two jury cases, one in federal court as first chair and one in state court as second chair. (I have excluded from this calculation trials handled in General Sessions Court, as

such trials are bench trials regarding smaller amounts.) In addition, I have handled the appellate argument of a commercial litigation matter. I have been in numerous motion hearings, including evidentiary hearings in federal court, such as hearings in support of temporary restraining orders.

I also believe that I have had other experiences that relate to my ability to serve as a district judge. I served as a law clerk to a distinguished federal court of appeals judge. I also served as counsel to a U.S. Senate committee special investigation, which was an intense experience very much like preparing for a major trial. Most significantly, for more than seven years I have served as the chief legal officer of a major corporation that today employs more than 16,000 people and cares for more than 73,000 inmates. In that role, I have been exposed to a broad and diverse set of substantive legal issues: federal tax issues; state and federal criminal investigations; state and federal employment issues; insurance litigation; federal civil rights matters; federal securities laws issues; multi-jurisdictional litigation; and federal regulatory matters, to name a few. I believe this experience has exposed me to more areas of the law than most traditional litigation practices, and this broad experience would help inform my judgment about the wide diversity of cases that come before a federal district judge if I am confirmed.

I thank you for your letter and for your consideration of these responses.

Sincerely,



Gus Puryear