

Father-Son Duo Takes on Their Next Big Civil Rights Case

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By Natalie Posgate

(Sept. 6) – Steve Sumner has handled some fascinating cases in his career.

A mentee of Richard “Racehorse” Haynes, Sumner started his career on the defense team for Fort Worth oil heir Thomas Cullen Davis for all three of his capital murder trials and the subsequent civil wrongful death trial of his stepdaughter, Andrea Wilborn. The litigation inspired five books, a television movie and an upcoming television miniseries.

On the plaintiffs’ side, Sumner represented Amanda Mayhew Dealey (married into the prominent Dallas family) in a highly-televised wrongful death trial that resulted in a \$26 million jury verdict against her brother for the murder of their father.

In 1998, he set a new record for Houston’s largest civil rights verdict after a jury awarded his client, Barbra Piotrowski \$22.3 million, finding the City of Houston should have warned the former beauty queen after police received a tip about a murder-for-hire plot orchestrated by her ex-lover, health club tycoon Richard Minns. The case is the subject of the bestseller book, *Sleeping with the Devil*.



Steve Sumner

His accolades have caused him to be selective about what kinds of civil rights cases the corporate-focused law firm he founded more than 35 years ago takes on. But one that approached his desk last year suggested facts so egregious that Sumner didn’t hesitate to accept it.

Sumner and his son, Justin, are leading a federal lawsuit they filed in Houston on behalf of the family of Marinda Griggs, a 37-year-old who committed suicide in a Gatesville, Texas prison cell in 2015 by hanging herself from a bedsheet while in solitary confinement. At the time of her death, Griggs was serving a 20-year sentence in the Christina Melton Crain Unit after she attempted to rob a convenience store while on drugs.

The Wait

Filed last September on behalf of Griggs’ aunt, Joyce Griggs, the lawsuit alleges that prison officials placed her niece in solitary without her psychiatric medication despite knowledge of her chronic mental illness history, which included several similar suicide attempts. Days before she

went to solitary, the lawsuit says, an officer beat Marinda to the ground after she moved “out of the lineup” while suffering an epileptic seizure. She was hospitalized for several days as a result.

The lawsuit names the officer, James Casey Irby, as a defendant, as well as the Texas Department of Criminal Justice and three more officers, each identified only as “John Doe.”

Though filed nearly a year ago, the case is currently at a standstill as the parties wait for U.S. District Judge Alfred H. Bennett to rule on the state’s motion to dismiss. The ruling could come any day; at a June 12 hearing, Judge Bennett told the parties he would likely rule 60 to 90 days down the road.

Assistant Attorney General Jeanine Coggeshall, who is representing Irby and the Texas Department of Criminal Justice, did not respond to requests for comment. But in court documents, the state has argued that Joyce Griggs’ lawsuit should be dismissed on grounds both of sovereign immunity and Joyce Griggs’ standing to sue.

The state’s sovereign immunity is always a question in such cases, and the state argues that the facts thus far established are insufficient to overcome the state’s qualified immunity.

But the second issue is more complex.

The state claims that Joyce Griggs hasn’t established her authority to act on behalf of Marinda’s estate. Marinda’s mother, Patricia Griggs, is still alive, but is currently in prison. Joyce Griggs holds Marinda Griggs’ power of attorney, but the state argues that is insufficient to represent Marinda’s interests in the lawsuit. Moreover, the state argues, Joyce Griggs’ own criminal record would disqualify her as court-appointed representative of the estate. In a footnote to her motion, Coggeshall points out that Joyce was convicted of felonies two separate times in Lubbock: once for forgery in 1987 and another time for organized crime in 1989.

As is standard in lawsuits involving state agencies, TDCJ asked Judge Bennett to allow its lawyers to hold off on answering the plaintiff’s discovery requests until they get a ruling on the motion to dismiss. The judge granted the protective order at the June 12 hearing.

Thus, the wait on Judge Bennett’s ruling has been agonizing for the plaintiff. Though the state is arguing that evidence in the case is insufficient to overcome the immunity issues, until the judge rules, Grigg’s legal team is unable to collect even basic discovery, such as the disclosure of knowledgeable witnesses usually provided when a lawsuit is filed.

“They haven’t given us any names,” Justin Sumner said.

Despite the fact that many people were around to witness Irby’s assault on Marinda, Sumner added, the defendants have listed Irby and Joyce Griggs as the only two with knowledge of the incident.

“One is our client, so thank you very much,” Sumner said with a chuckle. “It sure seems like they don’t want us to have that information.”

So, why would the Sumners take on the case?



Justin Sumner

“Since the Barbra Piotrowsky case... I’ve gotten hundreds – and I’m not exaggerating – of civil rights cases because of the recognition of that case,” Steve Sumner told The Texas Lawbook. “We are incredibly select in accepting one of these cases. We just believe very strongly in this one or we would have never taken it because we decline so many.”

Justin Sumner concurred.

“We don’t take on every single plaintiff’s case that comes in the door... we have to feel like we’re on the right side of things, so to speak,” said the younger Sumner, who became a partner at his dad’s firm, Sumner Schick in March. “There’s a right and a wrong in everything, and this just didn’t pass the smell test from the very beginning. This was extraordinary.”

Joyce Griggs made the difference.

“She called and I talked with her at length for a long time,” Justin Sumner said. “What really stood out to me was how knowledgeable she was and how hard she had investigated this on her own. I almost couldn’t write fast enough... she had already interviewed [people] at the prison [and had] names and dates and times, and she was very meticulous in her own notes.”

The case approached Steve and Justin Sumner’s desks at a time the national dialogue about suicide heightens. A **report** released this summer by the Center for Disease Control said suicide rates increased by more than 30 percent in half of the United States since 1999.

According to the **Bureau of Justice Statistics**, the number of suicides in state prisons also increased by 30 percent, albeit in a much more recent period (2013 to 2014). Suicide accounted for 7 percent of all state prison deaths in 2014 – the largest percentage observed since 2001. But what got their attention was what seemed an extraordinary number of suicides at Gatesville over the 10 years prior to Marinda’s death.

“We did a public records request. We pulled all of the individuals who have died while incarcerated in that prison,” Justin Sumner said.

According to their findings, 16 inmates have committed suicide in the Gatesville prisons complex between 2005 and Griggs’ October 2015 death. What’s more, one of those suicides occurred just months before Griggs’ in the very same Christina Melton Crain Unit. Like Griggs’ death, it was also a hanging suicide.

Sumner said the team plans to hire an expert to put the number of Gatesville suicides in context compared to other prisons, but still: “this can’t be normal,” he said. “It seemed to be exorbitant to me.”

The Incident

According to the lawsuit, Griggs ended up in solitary after her hospitalization due to “falsified writeup/charges” that Irby and the other three unidentified officer defendants filed after the line-up incident. The lawsuit further states that Griggs was “keenly aware” the write-up would negatively affect her likelihood to qualify for parole, a consideration that was 16 months away at the time of her death.

TDCJ records indicate that Griggs filed a grievance against Irby after the assault and false report, which indicated to prison officials “how extremely upset and distraught she was” from the series of events, the lawsuit says.

Her emotional distress was amplified due to the fact that TDCJ had stopped administering medication for her multiple psychiatric conditions (diagnosed while in prison): schizophrenia, major depressive disorder, post-traumatic stress disorder, borderline intellectual functioning, antisocial personality disorder and psychosis.

“The emotional distress suffered by Marinda Griggs was so severe that she ultimately took her own life by hanging herself from the provided bedsheet,” the lawsuit says.

The Sumner Schick lawyers said prison officials began withholding her psychiatric medication because she was allegedly “hoarding” it, but still administered her epileptic medicine. Due to the deprivation of her schizophrenic medication, Griggs began undergoing hallucinations such as believing spiders were crawling all over her body.

“You still keep putting her in the same confinements where she keeps attempting suicide,” said Sumner Schick associate Jamie Wilson, who is also heavily involved in the case. “And not only that, but you take away her mental health medication. You’re just asking for something horrible to happen.”

Also, if they were so concerned about Griggs overdosing, Wilson adds, “You can O.D. on your epilepsy meds too.”

The lawyers believe they are only at the surface of uncovering wrongdoing by TDCJ. Justin Sumner said he recently received a call from someone in Houston who tipped him about Irby being a repeat offender to other inmates at other prisons he was previously employed at.



Jamie Wilson

“If this is true – that Irby had in fact done this before or multiple times – the state can’t just ignore that fact and keep an individual in that capacity to hurt and harm other people,” Sumner said.

If they uncover more evidence against Irby, Sumner said it will potentially open the door for the team to add a negligent hire or negligent supervision claim to the already long list of legal claims for which they bring the lawsuit. Currently, they are suing on 12 grounds, including violation of the Americans with Disability Act, violation of constitutional rights, wrongful death, and assault and battery.

While they wait for the motion to dismiss ruling, the lawyers have been interviewing the families of the other inmates who have committed suicide in the Gatesville prisons complex.

“We’re getting a lot of really interesting information,” Justin Sumner said. “A lot of very similar circumstances.”

“This is the kind of conduct that the Justice Department needs to know about,” Steve Sumner said. “All of those are issues we’re going to be developing in discovery, and specifically, there’s going to be some records. There are going to be people who have memories.”

The Past

Though he now runs a firm that handles complex commercial litigation and some of the most high-profile plaintiffs' cases, Steve Sumner had to push his way through the door into his legal career.

For a time, Sumner pursued a career of a different kind: Major League Baseball. He spent time as a pitcher in minor league organizations for the Chicago Cubs, Washington Senators and Houston Astros.

After he received his law degree from South Texas College of Law in 1975, Sumner returned to his hometown of Dallas but struggled to find a job.

“In those days, if you weren't from SMU, Texas or Baylor, the legal community was very institutionalized, and you just couldn't get a job,” he said.

He hung out his own shingle by visiting the night court and taking on any \$25 criminal case that the JP court clerk at the time, John Wiley Price, was willing to give him.

Eventually, renown criminal defense lawyer Phil Burleson hired Sumner to become the civil litigator of his namesake firm, Burleson, Pate & Gibson. Burleson, who died in 1995, was best known as the lawyer who secured a reversal of Jack Ruby's conviction at the appellate level.



Steve Sumner

Burleson's original intentions for Sumner went sideways the evening of Aug. 2, 1976, when a “man in black” arrived at the Stonegate Mansion nearly 40 miles away and opened fire. The mansion was home to Fort Worth oil heir T. Cullen Davis, his estranged second wife Priscilla and her 12-year-old daughter, Andrea Wilborn. The intruder murdered Andrea and Stan Farr, Priscilla's live-in boyfriend, a former TCU basketball player. Priscilla was wounded and left for dead.

Witnesses, including Priscilla, said the man in black was Davis, and he was arrested for the murders. When he stood trial, he turned to the flamboyant Richard “Racehorse” Haynes to defend him, as well as the lawyers at Burleson, Pate & Gibson. Sumner became instrumental to the criminal investigation, his son said, doing things like “meeting the alleged real killer” at the Dallas Arboretum at 3 in the morning when Justin was just a baby.

“He was this hardcore biker guy-murderer-drug dealer... when my mom tells the story, she says she told him: “Steve, you better come back, I've got two little kids,” Justin Sumner said. “He was doing some wild stuff.”

Davis was acquitted but was later tried for again for allegedly hiring a hitman to murder the judge who presided over his divorce case against Priscilla Davis. He retained the same defense team and was acquitted again.

Then came the civil wrongful death trial of Wilborn in 1987, which Sumner led for Davis. It resulted in a hung jury, which cleared Davis of the \$16.5 million sought by his ex-wife and Wilborn's father, Jack Wilborn.

By that time, Sumner had started his own firm, which today has 11 lawyers and specializes in corporate law and complex business litigation – particularly qui tam and False Claim Act matters, information technology disputes, labor and employment, corporate fraud and white collar.

Though now following his father’s footsteps, Justin Sumner did not pursue a career in law to begin with – partially because of his upbringing.

“My childhood was pretty interesting – especially during the Cullen Davis case, when you’re getting threats and all kinds of things in the middle of the night, and getting scooped up and going to hotels,” Sumner recalled. “It was pretty wild.

“I saw how hard he (his father) worked too,” Sumner added. “Late nights and he’s getting ready for trial... I said, ‘I’ll never be a lawyer,’”

After graduating from the University of Arkansas in 1999, the Arkansas Razorbacks football player moved to Florida to work in advertising at the Orlando Sentinel. When the highly-televised Dealey-Mayhew wrongful death suit went to trial in 2002, Sumner would go home during his lunch break to watch his dad in action, who was representing Austin socialite Amanda Dealey.

Dealey sued her brother, Charles “Chuck” Mayhew Jr., accusing him of the murder of their 81-year-old father, who was slain at home while in bed in 1998. She alleged her brother, who struggled with alcohol abuse, murdered their father after previous threats to kill him and fear of being cut from family finances.

“It’s pretty cool to go home at lunch and watch your dad on national TV,” Sumner said. “They showed him taking depositions and cross-examining and I got all interested. I said, ‘Ah, that’s what I wanna do. I’m hooked.’”

The elder Sumner helped win the case for Dealey, who was awarded \$26 million – but his performance in the courtroom didn’t come without scrutiny.

“I’d call him up and say, ‘Why did you ask him this? Why did you ask him that?’ and he said, ‘Dude, that’s a lot of pressure,’” Justin Sumner recalled, laughing. “Nancy Grace covered the whole story and she was just very critical of his opening arguments, but then she came back [at the end] and said he’s a genius afterwards... that’s how I somehow got sucked into this game.”

The younger Sumner joined his father’s firm in 2006.



Steve and Justin Sumner

The Future

When the lawyers at Sumner Schick aren't in the trenches of big civil rights cases, they focus on areas on the corporate side that they see exploding with activity.

For example, the firm has recently begun widening its bandwidth in qui tam and whistleblower litigation, particularly on the plaintiff's side.

It began a couple years ago when Justin Sumner accepted Tracy Sifuentes as a client, a whistleblower who alleged his employer, Preferred Imaging, skimped on certain medical services while overbilling on Medicare and Medicaid claims.

Preferred Imaging ended up settling with the Department of Justice for \$3.5 million in June 2016, but Sumner made national headlines when he learned after the settlement that Preferred Imaging's CEO donated \$100,000 to Texas Attorney General Ken Paxton's legal defense fund while the company's investigation was still underway.

Paxton's office said repeatedly that it played a "very minimal" role in that investigation, but last fall, the Kaufman County District Attorney began investigating Paxton's acceptance of the gift and whether it violates any bribery and corrupt-influence laws.

Sumner says the firm has also been busy in IT outsourcing disputes, employment disputes and trade secret theft. One of their clients in the IT arena is DXC Technology, the spinoff company that was formed last year from the merger between Computer Sciences Corp. and the enterprise services business of Hewlett Packard Enterprise.

A couple of new Sumner Schick office openings might be in the pipeline, too. Sumner says he is currently getting licensed to practice in Arkansas, so he "could see us expanding" there. And due to abundant business the firm has on the East Coast, Sumner says the firm has an eye on New York.

"We're talking right now with a firm up there about opening an office," he said.

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