



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 7, 2020

Dallas County Civil District Judges
George L. Allen, Sr. Courts Building
600 Commerce Street, 5th Floor New Tower
Dallas, Texas 75202

Dear Dallas County Civil District Judges:

Yesterday, I wrote a letter urging Judge Moyé to reconsider his order confining Ms. Shelley Luther “in a penal facility” for operating her small business.¹ As you know, the Texas Supreme Court today ordered that Ms. Luther be released.² Although her jailing was brief, it remains an affront to hard-working Texans everywhere who value freedom and the right to provide for their families. While this episode is concluded, your “collective response” to my initial letter demands a rejoinder as it is inaccurate in several important respects.

First, your characterization of my letter as “an *ex parte* communication” is incorrect. A communication is “*ex parte*” only if it is “[d]one or made at the instance and for the benefit of one party only, and without notice to, or argument by, anyone having an adverse interest.” *Ex parte*, Black’s Law Dictionary (11th ed. 2019). I am not a party in Ms. Luther’s case, nor do I represent a party. I represent the countless Texans outraged by Judge Moyé’s order jailing a mother trying to provide for her children.

That said, I am encouraged by your attention to judicial ethics. Perhaps you also will consider whether Judge Moyé should have recused himself from Ms. Luther’s case in light of his public celebration after a protestor reportedly contracted COVID-19. *See* Attached Social Media Post (“I am SO in love with that Lady named Karma!”); Tex. R. Civ. P. 18b. It is very disturbing that any Texan, much less a member of the bar and elected judge, would publicly delight in any person contracting COVID-19.

Second, your insinuation that anyone was kept in the dark is preposterous. My letter is publicly available online and has been widely reported in the press. Indeed, the attorneys representing the parties in Ms. Luther’s case were sent copies of it. Everyone who has a direct interest in this case has notice of my letter.

¹ Judgment of Contempt and Order of Confinement, *City of Dallas v. S&B Hot Mess Enters., LLC*, No. DC-20-06131 (May 5, 2020), <https://courtportal.dallascounty.org/DALLASPROD/DocumentViewer/Embedded/SsVFbMXUbTMZOmr16jiVKmt23jp8S3VxopsIjnjAIO4cUFdA0WWlxXN6XT5BSnS6Tcn8BgEZ9q7va7COvGdsQ2?p=0>; *see* Letter from Attorney General Paxton to Judge Moyé (May 6, 2020), https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Dallas%20Judge%20Letter_05062020.pdf.

² Miscellaneous Order, *In re Shelley Luther*, Case No. 20-0363, Tex. Sup. Ct. (May 7, 2020).

Third, your discussion of constitutional principles betrays a fundamental misunderstanding of Texas government. No one values the separation of powers more than I do. But your claim that the Executive Branch “offends the tradition of separation of powers” by “interject[ing] itself into the proceedings of the Judicial Branch” is baseless. Executive Branch participation in judicial proceedings is hardly unusual. In fact, that is one of my duties as Attorney General. *See, e.g.*, Tex. Const. art. IV, § 22. I regularly file arguments with courts across the country defending the rule of law and advancing the interests of Texas citizens.

Your letter stresses the importance of an independent judiciary. I could not agree more. In our system of government, judges are independent of the Executive Branch. *See* Tex. Const. art. II, § 1. That is why I could not order Judge Moyé to release Ms. Luther. But I can give voice to Texans’ outrage. That is why I wrote a letter urging Judge Moyé to reconsider his ruling.

Do not forget: Although judges are independent of the Executive Branch, they are not independent of the people. “All political power is inherent in the people.” Tex. Const. art. I, § 2. Judges cannot be immune from criticism. I trust you will not condemn other Texans who properly petition the courts for a redress of grievances. *See* U.S. Const. amend. I; Tex. Const. art. I, § 27.

Best regards,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style with a large initial "K".

KEN PAXTON
Attorney General of Texas



Eric V. Moyé



April 28 at 9:13 AM · 

I am SO in love with that Lady named Karma!



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Leader of North Carolina protests against stay-at-home tests positive for coronavirus