

A RESPONSE

to

Errors, Omissions and Misstatements

made in the

**Testimony of Gustavus Adolphus Puryear IV,
judicial nominee for the U.S. District Court
for the Middle District of Tennessee,**

before the

Senate Committee on the Judiciary

Feb. 12, 2008

Submitted by:

Alex Friedmann

**Vice President, Private Corrections Institute
Associate Editor, Prison Legal News**

this 20th day of February, 2008

Private Corrections Institute, Inc.

February 20, 2008

VIA HAND DELIVERY

U.S. Senate Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Federal Judicial Nomination of Gustavus A. Puryear IV

To the Honorable Members of the
Senate Committee on the Judiciary:

On Feb. 12, 2008, the Committee heard testimony from U.S. District Court nominees, including testimony from Mr. Gustavus Adolphus Puryear IV, who has been nominated for a position on the U.S. District Court for the Middle District of Tennessee.

This Response to Mr. Puryear's testimony, and to his answers in the Questionnaire provided to the Committee, addresses errors, omissions and misstatements made by Mr. Puryear. We submit that these matters require explanation by Mr. Puryear and a closer examination by the Committee so as to fully assess this judicial nominee.

The Private Corrections Institute, of which I serve as vice president, opposes prison privatization. I, personally, am a former prisoner who served six years at a CCA-run facility in Tennessee. We do not claim to be unbiased in terms of objecting to a federal judicial nominee who serves as general counsel for Corrections Corp. of America, the nation's largest for-profit private prison firm, and who, if nominated, would serve in the same jurisdiction where that company is headquartered.

Dee Hubbard
President

Alex Friedmann
Vice President

Stephen Raher
Secretary/Treasurer

Deb Phillips
Director

Ken Kopczynski
Executive Director

1114 Brandt Drive - Tallahassee, FL 32308

850-980-0887 - www.PrivateCI.org

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Beyond this bias, however, the factual issues discussed in this Response are restricted to testimony presented by Mr. Puryear at his Feb. 12, 2008 hearing, and to his answers in the Questionnaire provided to the Committee. We respond only to his statements.

As you will read in the following Response and the supporting exhibits attached thereto, Mr. Puryear's testimony before the Committee lacked candor; statistics he cited were partial but incomplete; and some of his testimony was factually incorrect. We request that this Response be made part of the record for Mr. Puryear's judicial nomination.

Please advise should you have any questions or require any additional information that we may be able to provide.

Sincerely,

Alex Friedmann
Vice President, PCI
Associate Editor, Prison Legal News

cc: PCI Board members
PLN Editor Paul Wright

Dee Hubbard
President

Alex Friedmann
Vice President

Stephen Rahe
Secretary/Treasurer

Deb Phillips
Director

Ken Kopczynski
Executive Director

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Response to Mr. Puryear's Testimony and Questionnaire Answers

1. Mr. Puryear's Testimony Related to the Death of Estelle Richardson

Senator Feinstein questioned Mr. Puryear regarding injuries sustained by Ms. Estelle Richardson, a female prisoner at the CCA-operated Metro-Davidson County Detention Facility in Nashville, Tennessee who was murdered on July 5, 2004. Ms. Richardson's death was determined to be a homicide by Medical Examiner Bruce Levy, who found she had a fractured skull, four broken ribs and damage to her liver, and died due to blunt force trauma to the head. Ms. Richardson was found unresponsive in a solitary cell after an altercation with CCA guards. Four CCA guards were indicted on murder charges in connection with her death; the charges were later dropped because Ms. Richardson's fatal injuries may have occurred several days earlier. In April 2006, CCA settled a federal suit filed on behalf of Ms. Richardson's children. No one has been held criminally responsible for her in-custody homicide at a CCA-operated facility.

Mr. Puryear testified that Ms. Richardson's broken ribs may have been caused by CPR performed in an effort to revive her. He did not address her fatal skull fracture. I spoke with Dr. Bruce Levy, and he categorically disagreed that the four broken ribs suffered by Ms. Richardson might have resulted from CPR. He stated, specifically, "The injuries sustained by Ms. Richardson, related to her broken ribs, were not consistent with injuries that could have resulted from CPR." A copy of Estelle Richardson's autopsy report is attached as Exhibit 1 – note that it does not cite CPR as being a possible cause of any of her injuries. Further, during phone interviews with two attorneys who were involved in the civil lawsuit filed against CCA (USDC MD TN, Case No. 3:04-cv-00661), neither recalled CPR being raised as a defense or explanation by the defendants relative to the injuries sustained by Ms. Richardson. The pleadings in the case that are available on the PACER federal docket system do not include reference to CPR being a potential cause of Ms. Richardson's injuries.

There was no basis in fact for Mr. Puryear's conjecture that CPR may have caused the four broken ribs suffered by Ms. Richardson, based upon the statement from Dr. Bruce Levy and the attached autopsy report; nor was there any basis in law, as CPR was not raised as a defense or explanation in the pleadings filed in the civil lawsuit.

One of the basic tenets taught to young lawyers is that during cross examination, you should not ask a question if you don't already know the answer. Likewise, do not answer a question if you do not know the answer. Mr. Puryear failed this very elementary test by providing an answer to the Committee that had no basis in fact or law. A copy of the last amended complaint in the lawsuit related to Ms. Richardson's death is attached as Exhibit 2, which provides greater detail about the factual elements in that case.

Response to Mr. Puryear's Testimony and Questionnaire Answers

2. Mr. Puryear's Testimony Related to Cases Involving Conflicts of Interests

Mr. Puryear was questioned by Senator Specter relative to the number of lawsuits filed in the Middle District of Tennessee in which he may have a conflict of interest due to his past employment with CCA, which would require his recusal.

The Private Corrections Institute (PCI) had conservatively estimated the number of cases in which Mr. Puryear would have had a conflict of interest at more than 400, dating from 1994 to the present.* Mr. Puryear disagreed with that number and stated there were only 181 such cases from 2000 to the present. However, even using 2000 as a starting point, according to a PACER federal docket search, 260 lawsuits that would have constituted a conflict of interest were filed in the Middle District of Tennessee. A listing of these 260 cases is attached as Exhibit 3.

This list includes cases filed against CCA corporate office; CCA CEO John Ferguson; former CCA CEO Doctor Crants; TransCor (a CCA subsidiary); Prison Realty Trust (a CCA spinoff, no longer in existence); and former and current CCA wardens at prisons located in the Middle District – Kevin Myers, Cherry Lindamood, Glenn Turner, Brian Gardner and Stephen Dotson. The search time frame was from 1-1-2000 to 2-12-2008, the date of the Committee hearing. All habeas cases were excluded. For CCA wardens, only searches for prisoner civil rights categories were included.

Mr. Puryear stated the number of cases in which he would have had a conflict of interest during this time period was 181. The actual number was almost 44% higher. Mr. Puryear may have only been counting cases that named CCA corporate; however, he likewise would have conflicts of interest in cases naming CCA executives, subsidiary companies and CCA wardens. He apparently did not include such cases in the number he cited.

Further, Mr. Puryear stated that only six active cases were pending against CCA in the Middle District of Tennessee. According to a PACER docket search the actual number of active pending cases naming CCA or CCA employees is twelve. A list of those cases is attached as Exhibit 4. Mr. Puryear misstated the number of such cases by 100%.

* *PCI has consistently maintained that Mr. Puryear would have had conflicts of interest in more than 400 cases from 1994 to the present. The Alliance for Justice and AFSCME, in their letters of opposition, incorrectly stated there were 400+ such cases since 2000.*

Response to Mr. Puryear's Testimony and Questionnaire Answers

3. Mr. Puryear's Testimony Related to Concerns About Prisoners' Rights

Senator Specter questioned Mr. Puryear about a July 2004 article in *Corporate Legal Times*, in which Mr. Puryear was quoted as saying, "Litigation is an outlet for inmates. It's something they can do in their spare time. Most of these folks have had extensive contact with the legal system and are in facilities where they have access to legal materials. Many have turned themselves into jail-house lawyers." Mr. Puryear testified that he was only referring to frivolous lawsuits, not meritorious cases filed by prisoners. However, that was not what he said in the article; in fact, the term "frivolous" was not used in the 3,611-word write-up. A copy of the article is attached as Exhibit 5.

Mr. Puryear said during the Committee hearing that he was concerned about prisoners' rights; in support of that statement he noted that he serves on the National Prison Rape Elimination Commission (NPREC), and had once worked on a prisoner's lawsuit.

While Mr. Puryear serves as a Commissioner on the NPREC, he has missed fully half of the Commission's public hearings. The NPREC has held eight public hearings from June 2005 through Dec. 2007. Commission staff confirmed that Mr. Puryear was not present at four of those hearings. If Mr. Puryear is in fact sincerely concerned about the rights of the incarcerated, it is disconcerting that he missed half of the NPREC hearings.

Mr. Puryear further testified that he had been involved in one lawsuit involving an inmate plaintiff. That case was detailed by Mr. Puryear in his response to Question no. 19 of the Questionnaire provided to the Committee, which asked him to "Describe the ten (10) most significant litigated matters which you personally handled." The case in which Mr. Puryear represented a prisoner plaintiff, *Johnson v. Miller*, USDC MD TN, Case No. 3:92-0422, was one of only two federal cases included in his "top ten" list. He indicated he was co-counsel in the case.

According to an examination of the docket for that lawsuit, however, Mr. Puryear is not even listed as an attorney of record who represented the plaintiff, much less co-counsel. Thus, it is strange that he would include it in a list of cases that he "personally handled." A copy of the attorney list for the case, as maintained on the PACER federal docket, is attached as Exhibit 6.

Response to Mr. Puryear's Testimony and Questionnaire Answers

4. Mr. Puryear's Testimony Related to CCA's Production of Records

Mr. Puryear was questioned about an "after action" report that was generated following a hostage-taking and shooting at the CCA-operated Bay County Jail in Florida in Sept. 2004. *The News Herald* reported in Nov. 2004 that "Several groups, including *The News Herald*, have filed formal requests to review the report, but a CCA attorney said the after-action report never will become a public record. That's because the investigation was performed by a private law firm hired by CCA, legal counsel Gus Puryear said Thursday. The law firm, Puryear said, was brought in to protect the company from liability."

Mr. Puryear testified that someone at PCI had contacted him to request a copy of the after action report [the request was made by PCI executive director Ken Kopczynski]; however no part of the report was provided to PCI. Mr. Puryear indicated at his February 12, 2008 Committee hearing that CCA was responsive to requests for such reports.

PCI executive director Ken Kopczynski sent a letter to CCA on Oct. 12, 2004 requesting a copy of the Bay County Jail after action report. In a phone call in response, Mr. Puryear told him that while CCA had hired an outside law firm to look into the incident, no after action report had been produced. Mr. Kopczynski, in a follow-up letter dated Oct. 27, 2004, cited an article in *The News Herald* that quoted a CCA spokesperson as saying an after action report had been completed. No answer to that follow-up letter was received, and no copy of the report was ever produced. Following a subsequent request for the after action report, a law firm representing CCA denied the request by letter dated October 19, 2007, stating the report "was prepared by outside counsel in anticipation of litigation."

Which is the entire point – despite operating a jail housing county prisoners, in which a prisoner and a jail nurse were shot during a hostage-taking, CCA, with Mr. Puryear as chief counsel, had a law firm prepare the report so it would be shielded from the public's view. Additionally, when Prison Legal News (PLN) submitted a public records request to CCA on April 3, 2007, a law firm representing CCA flatly refused all requested records.

The letters sent from Mr. Kopczynski to CCA for the Bay County Jail after action report, the response from CCA's law firm, and the letter of denial related to PLN's April 3, 2007 public records request are attached as collective Exhibit 7. It cannot be said that CCA is responsive to records requests made by members of the public.

Response to Mr. Puryear's Testimony and Questionnaire Answers

5. Mr. Puryear's Questionnaire Response Related to Belle Meade Country Club

In his response to Question no. 12 on the Questionnaire provided to the Committee, Mr. Puryear listed the Belle Meade Country Club as one of his organizational memberships.

The Questionnaire asked Mr. Puryear to "indicate whether any of these organizations [to which he belongs] ... currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies."

His response was: "While I have no personal knowledge of any prior discriminatory policies by Belle Meade Country Club, I understand that there were no African-American members prior to 1994. To my knowledge, during my membership at the club, it has not discriminated on the basis of race, sex, or religion."

Former Sen. Bill Frist was a member of the Belle Meade Country Club until Dec. 1993, when he ran for the Senate. Prior to that time the Club was exclusively white. The 600+ member Club admitted its first minority member after Mr. Frist left, in 1994. The Belle Meade Country Club is the most exclusive private club in Nashville, and it is difficult to obtain information about its membership policies or diversity, including the current number of minority members. To the extent that only a very small number of members are minorities, the Club may practice de facto discrimination despite having an official non-discrimination policy. New members are sponsored by existing members, and it is unknown how many minority members, if any, have been sponsored by Mr. Puryear.

Further, I spoke with Mr. Ridley Wills II, a former Club member and current honorary member. He literally wrote the book about the Club's history, "The History of the Belle Meade Country Club" (2002). According to Mr. Wills, only men are full resident Club members. Women are admitted to the Club but only as so-called "Lady members." Lady members do not have voting privileges according to Mr. Wills, unlike the male members. Mr. Wills' book listed the Club's 2000 membership – with separate sections for Resident members and Lady members. The Club declined to comment on its member policies.

The Belle Meade Country Club, as a private club, is entitled to its policies. However, that Mr. Puryear maintains membership in an elitist, predominately white country club that did not admit its first minority member until 1994, and reportedly does not afford voting privileges to female members when such privileges are afforded to male members, is a matter of significant concern for a federal judicial nominee. It also calls into question his response regarding current or former discriminatory practices of the Club.

Response to Mr. Puryear's Testimony and Questionnaire Answers

6. Mr. Puryear's Questionnaire Response Related to Presbyterian Church

In his response to Questions no. 7 ("Institutions and Organizations") and no. 12 on the Questionnaire provided to the Committee, Mr. Puryear mentioned that he serves as a Deacon in the First Presbyterian Church.

Solely because Mr. Puryear cited his position as a Deacon with the Presbyterian Church, PCI would like to make the Committee aware that in 2003, the Advisory Committee on Social Witness Policy of the Presbyterian Church recommended the adoption of a resolution calling for the abolition of private prisons. The resolution was passed by the 215th General Assembly of the Church in 2003. The resolution states, in part:

"Since the goal of for-profit private prisons is earning a profit for their shareholders, there is a basic and fundamental conflict with the concept of rehabilitation as the ultimate goal of the prison system. We believe that this is a glaring and significant flaw in our justice system and that for-profit private prisons should be abolished."

Mr. Puryear was serving as CCA's general counsel at the time the above resolution was approved by the Presbyterian Church; he became a Deacon the following year.

A copy of the resolution adopted by the Presbyterian Church calling for the abolition of private prisons – which includes CCA, Mr. Puryear's employer, is attached as Exhibit 8.