

# Deconstructing Gus:

## A Former CCA Prisoner Takes On, and Takes Down, CCA's Top Lawyer

by Paul Wright, *et al.*

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On June 13, 2007, former President Bush nominated Gustavus A. Puryear IV, 40, for a lifetime appointment to the U.S. District Court for the Middle District of Tennessee. While you've likely never heard of Gustavus Puryear, you may be familiar with the company he works for: Corrections Corporation of America (CCA), the nation's largest for-profit prison firm. CCA is conveniently located in the Middle District of Tennessee and Puryear serves as the company's general counsel – its top attorney.

Puryear's judicial nomination did not go unnoticed; it drew the attention of a former CCA prisoner turned criminal justice advocate who opposes private prisons. By conducting extensive research, securing widespread media attention, contacting members of the Senate Judiciary Committee and recruiting organizational allies, he coordinated an opposition campaign that managed to stall – and ultimately scuttle – Puryear's nomination.

Further, the ex-CCA prisoner who took down CCA's general counsel, denying him a federal judgeship in a humiliating defeat, happens to be employed by *Prison Legal News*.

### The Man Who Would Be Judge

So who exactly is Gustavus "Gus" Puryear? Born into a wealthy family in Atlanta, Georgia, Puryear graduated with a B.A. from Emory University in 1990 and received a J.D. degree with honors from the University of North Carolina School of Law in 1993. He excelled in debate, placing third in a national debate tournament while in college.

Puryear clerked for a year for Judge Rhessa H. Barksdale on the U.S. Court of Appeals for the Fifth Circuit before settling down in Nashville, Tennessee. There he landed a position with the law firm of Farris, Warfield & Kanaday (now Stites & Harbison), where his family had longstanding connections.

Following three years as a corporate lawyer, Puryear turned to politics. He served as counsel for the U.S. Senate Committee on Government Affairs under former Senator Fred Thompson, then from 1998 to 2000 was the legislative director for former Senator Bill Frist.

In what must have been a highlight of his political career, Puryear helped prepare former Vice President Dick Cheney for the election debates in 2000, and again in 2004.

Upon his return to Nashville he was introduced to John Ferguson, CCA's CEO. Puryear joined CCA as the firm's general counsel in January 2001, where he oversees all of the private prison company's litigation.

Puryear serves on the board of Nashville Bank & Trust, and is a Commissioner on the National Prison Rape Elimination Commission. He's a member of the prestigious Belle Meade Country Club and a deacon in the Presbyterian Church.

With a reputation for being extremely intelligent, charismatic and genteel, Puryear appeared to be a perfect candidate for a federal judgeship under the Bush administration. Indeed, he said the nomination was "like a dream come true."

## **And in the Other Corner ...**

Approximately one year before Puryear joined CCA as the company's top lawyer, Alex Friedmann was released from the Tennessee Dept. of Corrections (TDOC). He had served ten years in state prisons and county jails on convictions for armed robbery, assault with attempt to commit murder and attempted aggravated robbery.

Six of those years, from 1992 to 1998, were spent at the CCA-operated South Central Correctional Facility in Clifton, Tennessee. While at South Central, Friedmann was subjected to retaliatory cell searches, disciplinary charges and transfers due to his efforts to "degrade CCA with negative articles" and "create and disseminate information concerning negative incidents experienced by CCA," according to records produced by prison staff.

At one point CCA transferred him to a facility in the extreme northwest corner of the state, a decision that was overturned by the TDOC on appeal. CCA also refused to let him receive an article in *The Nation* that was critical of prison privatization, in which he was quoted. That blatant censorship was likewise overruled by TDOC officials. [See: *PLN*, June 1998, p.16]. During this period he became a contributing writer for *PLN*.

While most ex-prisoners prefer to put their prison experiences behind them, Friedmann felt the problems he witnessed in the criminal justice system – particularly in regard to private prisons – could not be forgotten.

Following his release on November 1, 1999, Friedmann worked for several law offices, using the legal skills he learned while incarcerated. He served one year with Reconciliation, a non-profit agency that advocates on behalf of prisoners' families and children, and became involved in criminal justice issues ranging from felon disenfranchisement to restorative justice. He has volunteered as a trained mediator, and returned to prison as a visitor as part of an Inside/Out program.

Continuing his anti-private prison activism, Friedmann joined the Private Corrections Institute ([www.privateci.org](http://www.privateci.org)), a Florida-based watchdog group that opposes the privatization of correctional services, where he serves in an unpaid capacity as vice president.

Friedmann was hired by *Prison Legal News* in 2005 as *PLN*'s full-time associate editor; his responsibilities include news research, editing, website support and a variety of other tasks. He contributed a chapter to *PLN*'s third anthology, *Prison Profiteers: Who Makes Money from Mass Imprisonment*, and has spoken on justice-related topics at Yale University, an annual meeting of the National Lawyers Guild, and Critical Resistance; at legislative committee hearings in two states; and before the U.S. House Subcommittee on Crime, Terrorism and Homeland Security.

## **Identifying the Issues**

In June 2007, an article about Puryear's judicial nomination crossed Friedmann's desk. After discussing the nomination with other criminal justice advocates, the general consensus was little could be done. Candidates for U.S. District Court positions are perceived as less important than those for the appellate courts or Supreme Court, and tend to sail through Senate Judiciary Committee hearings with little opposition.

Still, Friedmann did not want the nomination to go unchallenged; he believed Puryear was an unsuitable candidate for an appointment to the federal bench, beyond the moral issue that as a CCA executive Puryear profited from people's incarceration.

Further, U.S. District Courts decide the vast majority of cases in the federal court system, as the appellate courts issue relatively few rulings and the Supreme Court hears only a fractional number of cases. Thus, the district courts are arguably the most important rung on the federal judicial ladder, as they guard the entrance to the courthouse door.

“District court judges make life-and-death decisions on a regular basis, e.g. in capital punishment cases, and the appellate courts often give deference to fact finding by the district courts,” Friedmann noted. “A federal judgeship is no place for an inexperienced lawyer to ‘learn the ropes’ while ruling on important issues of Constitutional law.”

Delving into Puryear’s background through LEXIS and Westlaw searches, reviewing court dockets and related research, Friedmann developed a list of issues that could be raised in an opposition campaign.

Those issues included: 1) Puryear’s conflicts of interest in cases involving CCA, 2) his lack of litigation and trial experience, 3) the politically partisan nature of his nomination, 4) his questionable objectivity in prisoner lawsuits, 5) his concealment of information from the public, and 6) his membership in a discriminatory country club.

After some deliberation, Friedmann added one final issue – Puryear’s involvement in an investigation and litigation related to the death of Estelle Richardson, a female prisoner who died at a CCA jail. As it turned out, the Estelle Richardson case would prove to be one of the most important elements of the opposition campaign.

### **Conflict of Interest? What Conflict of Interest?**

Puryear was nominated to serve as a federal judge in the U.S. District Court for the Middle District of Tennessee – the same jurisdiction where CCA is headquartered, where hundreds of lawsuits against the company are filed.

Puryear’s annual compensation for fiscal year 2007 was around \$610,000, including bonuses, and since August 2007 he has sold shares of CCA stock valued at \$10 million. In short, CCA has made Puryear a multi-millionaire.

Pursuant to 28 U.S.C. § 455, “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” Given Puryear’s lucrative history with CCA, he would, in theory, have to recuse himself from cases naming CCA or the company’s subsidiaries or employees as parties.

This was a significant factor because a federal docket search indicated that CCA and its employees had been named in over 400 cases in the Middle District of Tennessee, with at least 260 of those cases filed since 2000.

During his February 12, 2008 nomination hearing before the Senate Judiciary Committee, Puryear took issue with the number of cases in which he would have a conflict of interest. He also commented that there were only six active cases pending in the Middle District court that would constitute a conflict.

But that was incorrect; Friedmann observed that as of the date of Puryear’s hearing there were 12 pending cases involving CCA or CCA employees – double the number he cited.

Puryear stated that if confirmed he would divest the remainder of his CCA stock and recuse himself from all cases involving CCA “for an extended period of time.” When questioned by Committee members about the length of that “extended period,” he did not provide a precise answer but said he was “hesitant” to commit to recusing himself beyond five years.

Yet Puryear would not be able to divest himself of his network of friends and political and business contacts, his social connections with CCA executives, or his inside knowledge regarding CCA’s litigation strategy and legal staff. As CCA presumably would still be around

after five years, and still face a significant number of lawsuits in the Middle District, a temporary recusal period would not resolve those problems.

### **“Less Courtroom Experience Than Most Inmates”**

According to the U.S. District Court in Middle Tennessee, Puryear has been named as counsel of record in 130 cases, which certainly sounds impressive. However, when Friedmann checked the dockets for each of those cases the results were telling.

Of the 130 cases, 85 had been dismissed by the court prior to service on the defendants while 39 were handled by another law firm or attorney. Puryear answered one lawsuit with a letter stating the defendant no longer worked for CCA. He was directly involved in just five other federal cases over his entire legal career, most recently a decade ago.

Additionally, Puryear had taken only two cases to jury trials – and lost one. A call to the U.S. Sixth Circuit Court of Appeals, which is over the Middle District of Tennessee, revealed that Puryear was not admitted to practice before that court. A check of his academic credentials through Westlaw found he had authored just one law journal article, in 1992.

“I could open an attorney directory, point randomly at a page and pick a candidate for federal court more qualified than Mr. Puryear,” Friedmann stated.

While incarcerated, Friedmann was personally involved in six federal lawsuits, including three he litigated pro se. In one of those cases, filed against CCA and prison employees, he obtained a preliminary injunction and a \$6,000 jury award against a former CCA unit manager following a default judgment. In another suit he prevailed in a pro se appeal before the Sixth Circuit Court of Appeals.

Further, in *Richardson v. McKnight*, 521 U.S. 399 (1997) [*PLN*, Sept. 1997, p.1], Friedmann provided the plaintiff’s counsel with a legal argument and supporting documentation that was used in their Supreme Court brief (*McKnight* held that private prison companies cannot raise a defense of qualified immunity).

From this perspective, Friedmann had more experience – and success – in the federal courts as a prisoner with no legal training than Puryear had as a practicing attorney. Indeed, Puryear’s apparent lack of familiarity with the federal courts led a reporter for *Mother Jones* magazine to observe he had “less courtroom experience than most inmates.”

As Puryear’s supporters couldn’t dispute the fact that he had little trial or litigation experience, they instead pointed to his rating from the American Bar Association (ABA), which evaluates judicial nominees. Although the ABA ratings are not binding on the Senate Judiciary Committee, they reflect a nominee’s professional abilities. The ratings consist of not qualified, qualified and well qualified. Puryear was rated “qualified.”

However, Puryear’s supporters, including Senator Lamar Alexander and former Senator Bill Frist, ignored the fact that of the 102 federal judicial nominees rated by the ABA during the 110th Congress, 79 – or almost 80 percent – received ratings of well qualified. Thus, Puryear ranked in the bottom 20 percent of his judicial nominee peers.

Referring to Puryear’s ABA rating, Vanderbilt University associate professor Stefanie Lindquist stated, “A ‘qualified’ rating is relatively weak. That’s going to hurt him.”

Or, as Friedmann put it, “Would you rather have surgery performed by a qualified surgeon or a well qualified surgeon? Would you want your child to be taught by a qualified teacher or a well qualified teacher? The same reasoning applies to the judiciary.”

So why would an obviously inexperienced and less-than-qualified attorney like Puryear, with such a sparse track record in the federal courts, be nominated for a lifetime position as a federal judge? An examination of his political connections supplied a likely answer.

## **It's Who You Know**

To say Puryear is a staunch Republican would be an understatement; he's practically a poster child for the GOP. He worked under former Senator Fred Thompson (R-TN) during an investigation into Democratic campaign fundraising, and served as the legislative director for former Senator Bill Frist (R-TN).

Plus, of course, Puryear was an advisor to former Vice President Dick Cheney during the 2000 and 2004 debates. He's also friends with Cheney's son-in-law, Philip Perry, who served as general counsel for the U.S. Dept. of Homeland Security.

Since 2001, Puryear has donated at least \$18,000 to Republican candidates and political committees. The *Nashville Post* referred to him as a "Republican heavyweight."

Puryear's employer, CCA, has been generous to the GOP, too – including to Tennessee's current Republican senators, Lamar Alexander and Bob Corker, who expressed strong support for Puryear's judicial nomination.

CCA's political action committee and the company's executives and their spouses gave more than \$36,000 to Alexander and \$27,000 to Corker from 2003 to 2008. CCA was Senator Alexander's fifth largest contributor over that time period.

Notably, neither Alexander nor Corker bothered to mention in any of their statements in support of Puryear's nomination that they had received significant campaign contributions from Puryear and CCA.

Senator Alexander's personal and political connections with CCA go way back. CCA co-founder Tom Beasley once rented an apartment in Alexander's house, and later helped manage one of his gubernatorial campaigns. Beasley, a former chairman of the Tennessee Republican Party, also reportedly gave Alexander's campaign \$100,000 in 1997-1998. Several staffers in Alexander's administration from when he served as Tennessee's governor later worked for CCA, including Charles L. Overby, who currently sits on CCA's board of directors.

"To say that CCA has long been in bed with the Republican Party diminishes the depth of their relationship," observed an article in the *Nashville Scene*, an independent weekly publication in CCA's home town.

Given the political connections and bona fides of Puryear and CCA, and Puryear's lightweight experience in the federal courts as an attorney, his judicial nomination smacked of partisan payback.

"This is, of course, political," said Friedmann. "I dislike politics. I believe the right person who is most qualified should be appointed to a position of public service – not someone who happens to be a member of one party or another and is being repaid for their political patronage. That being said, Mr. Puryear would be unqualified whether he was a Democrat or a Republican, whether he was nominated by Clinton or Bush. He's not qualified and not the right man for the job. Which transcends politics, or at least it should."

Yet political connections that lead to government appointments are nothing unusual, as most nominations for federal judges and Assistant U.S. Attorneys are partisan in nature (though not always as blatantly as in this case). Thus, the political aspect of Puryear's nomination was not raised to any significant extent during the opposition campaign.

## **Bad-Mouthing Prisoner Lawsuits**

Upon researching the sparse number of news articles that mentioned or quoted Puryear, Friedmann found two that raised disturbing questions.

In a July 2004 article in *Corporate Legal Times*, Puryear offhandedly remarked that “Litigation is an outlet for inmates. It’s something they can do in their spare time.” Another article in the October 2005 issue of *GC South* discussed Puryear’s “no settlement” policy and stated, “Of course [CCA] settles some suits, but Puryear’s overarching ‘no settlements’ goal stems from his belief that many inmates use litigation to fill their free time and that letting them win only encourages more jailhouse lawyering.”

Of course most judges, and legislators, don’t like litigious prisoners; e.g., witness the Prison Litigation Reform Act. But the notion that a federal judicial candidate did not take prisoners’ legal concerns seriously was troubling.

In his capacity as *PLN*’s associate editor, Friedmann had reported on many meritorious lawsuits filed by or on behalf of prisoners, including cases involving wrongful deaths, rapes and sexual abuse, grossly inadequate medical and mental health care, brutality by guards, abysmal conditions of confinement, and First Amendment and due process violations. The facts in those cases were often egregious; many resulted in settlements, jury awards or injunctive relief.

“All persons, including prisoners, deserve impartial consideration from our nation’s judges,” said Friedmann. “All people are entitled to equal justice under the law.”

Further, Puryear knew better than to disparage prisoners’ lawsuits as an “outlet” for their “free time,” because CCA had settled or been found liable in a variety of prison and jail-related cases, many of which were reported in *Prison Legal News*.

For example, a \$3 million South Carolina jury award for the abuse of juvenile offenders at a CCA facility [*PLN*, May 2001, p.17]; a \$1.6 million settlement in a lawsuit involving abuse at CCA’s Youngstown, Ohio prison [*PLN*, Aug. 1999, p.14]; a \$5 million settlement to a female prisoner who was raped by guards employed by TransCor, a CCA subsidiary [*PLN*, Sept. 2006, p.1]; a \$235,000 federal jury award for medical neglect involving a Tennessee prisoner [*PLN*, July 2001, p.12]; and a \$41,885 settlement in a CCA prisoner’s failure to protect case in New Mexico [*PLN*, Feb. 2002, p.11].

Those are just some of the highlights. From January 1, 2001 through December 31, 2003, during the first two years of Puryear’s tenure as general counsel at CCA, the company settled over 190 lawsuits or claims involving both prisoner and employee litigation for a combined total of \$7.39 million.

Predictably, upon questioning by the Senate Judiciary Committee, Puryear expressed his view that lawsuits brought by prisoners “deserve a fair hearing,” and that if confirmed he would “strive to be fair and impartial ... in all cases, including those brought by inmates.” He claimed that his earlier comments only referred to frivolous lawsuits, prompting Senator Arlen Specter to ask what he meant by “frivolous,” which Puryear was hard pressed to define.

To demonstrate he was not biased against prisoners, Puryear cited his position on the National Prison Rape Elimination Commission. The Commission, formed as part of the Prison Rape Elimination Act (45 U.S.C. § 15601), is developing standards to reduce incidents of rape and sexual assault in correctional facilities. [Note: *PLN* has submitted formal comments on the Commission’s draft standards].

However, when Friedmann called the National Prison Rape Elimination Commission he learned that Puryear had missed fully half – four of eight – of the Commission’s public hearings. Puryear acknowledged his poor attendance record only after being questioned by the Judiciary Committee.

Puryear also tried to counter accusations of bias against jailhouse lawyers by describing a 1992 case in which he had represented Christopher Johnson, a Tennessee state prisoner. Puryear took the case to trial in federal court (his only federal jury trial), where he lost. Then, he said,

“Mr. Johnson, who had since been released, wished to represent himself on appeal. I sought and was granted leave to cease representing Mr. Johnson.”

That characterization was not entirely candid. After pulling the case file from the court’s archives, Friedmann discovered that Johnson had asked to have Puryear removed from the case twice – before trial because Puryear failed to raise issues in Johnson’s supplemental complaint alleging retaliation, placement in segregation and being called a racial epithet by prison staff, and again after trial because Puryear had purportedly “failed to prepare for the trial and present all relevant evidence and proof.”

The district court granted Johnson’s second motion to dismiss counsel and denied Puryear’s motion to withdraw as being moot. Thus, Puryear’s account of his representation of Johnson, and withdrawal as counsel, was at best misleading.

Friedmann cited Puryear’s disparaging comments about prisoner litigation, his poor attendance record at Commission hearings, and his position as CCA’s general counsel in which he defends against prisoner lawsuits as evidence that Puryear would not be fair or objective when hearing prisoners’ cases if confirmed as a federal judge.

### **The Public’s Right to Know ... Be Damned**

As a private company, CCA is not subject to the federal Freedom of Information Act or state public records laws in most cases. Therefore, government agencies that contract with CCA, and members of the public, must rely on documents that CCA produces either voluntarily or pursuant to its contractual obligations.

This includes documents concerning security-related incidents at CCA prisons such as sexual assaults, riots, escapes and unnatural deaths, which CCA terms “zero tolerance events.” The company tracks such data internally through its quality assurance division, which was placed under CCA’s legal department – and Puryear’s oversight – in 2005.

The opposition campaign raised this issue with the Senate Judiciary Committee, noting that Puryear and CCA had withheld information from government agencies and members of the public, who had a right to know about problems in the company’s prisons and jails.

As one example, following a hostage-taking at CCA’s Bay County, Florida jail in 2004, which resulted in a prisoner and hostage being shot by a SWAT team member, CCA refused to release an after-action report. Puryear arranged to have a private law firm prepare the report, and a CCA attorney said it would never become a public record.

When the Private Corrections Institute (PCI) requested a copy of the report, CCA claimed it had been “prepared by outside counsel in anticipation of litigation,” and thus was exempt from disclosure. Yet when Puryear responded to questions from the Judiciary Committee regarding the Bay County after-action report, he denied there was a written report and said it had been delivered verbally.

In another case, staff at the CCA-run Hardeman Co. Correctional Facility in Tennessee failed to report a May 2007 incident in which the warden physically assaulted a prisoner. State prison officials learned of the abuse two months later after they were contacted by the prisoner’s attorney. CCA staff had tried to cover-up the incident; the warden subsequently resigned, was prosecuted and pleaded guilty. [See: *PLN*, June 2008, p.10].

Due to CCA’s secretive nature, it was difficult to obtain details about other cases where information about security-related incidents had been concealed or withheld. But then came an unexpected development from an unlikely source.

In July 2007, PCI was contacted by Ronald T. Jones, a former senior manager in CCA’s quality assurance division who had recently resigned. PCI had filed an ethics complaint against

Jones in 2000 after he was hired by CCA within two years of leaving his state job with Florida's Correctional Privatization Commission, a violation of state law. Nevertheless, he had no hard feelings. He did, however, have a conscience, and wanted to blow the whistle on CCA.

According to Jones, a longtime Republican, CCA kept two sets of quality assurance audit reports. "I would prepare one report with all of the audit findings and auditor comments in it for 'internal purposes only' and a separate more generic report that contained only general information about audit results as a whole," he said in a written statement. The generic reports without the detailed audit results would be provided to government agencies.

Jones also stated, "When Mr. Puryear felt there was highly sensitive or potentially damaging information to CCA, I would then be directed to remove that information from an audit report." The unredacted, detailed audit reports were designated "attorney-client privileged," and Jones was "told by senior quality assurance department staff that Mr. Puryear wanted [that] language inserted into the detailed report to prevent that information from being accessible under Sunshine [public records] laws."

Jones further revealed that annual bonuses paid to CCA wardens and other company employees were based partly on the number of incidents reported at each facility. That supplied a financial incentive for CCA staff to underreport incidents – particularly zero-tolerance events – which in turn created a corporate culture of deception that undermined CCA's quality assurance data. According to an internal CCA newsletter, the practice of linking bonuses to a facility's audit score was discontinued in mid-2007.

PCI referred Jones to a reporter at *TIME* magazine, who broke the story in an online article on March 13, 2008. Citing information provided by Jones, the *TIME* article said CCA kept the unredacted quality assurance reports for in-house use only so as to "limit bad publicity, litigation or fines that could derail CCA's multimillion dollar contracts with federal, state or local agencies." Jones contended that Puryear's participation in this practice was unethical. The *Tennessean*, Nashville's daily newspaper, ran a front-page article about the accusations leveled against CCA and Puryear on March 14, 2008.

CCA officials responded by quickly contacting their government contract partners and telling them Jones' allegations were completely false – although the company acknowledged that "appropriate information gathered in the audits is separately provided to our legal department," and Puryear admitted that CCA "did not make our customers aware of these documents," referring to the detailed quality assurance reports kept for in-house use only.

CCA senior vice president J. Michael Quinlan, a former director of the federal Bureau of Prisons, referred to Jones as a "former disgruntled employee" and said he was "personally willing to stake my 37 years of correctional experience and reputation as a corrections professional on the integrity of our work." You could almost see the wagons being circled.

Incidentally, while employed with the BOP, Quinlan was sued by a male co-worker who alleged that Quinlan had sexually harassed him in a hotel room – a suit that was later settled. [See: *PLN*, June 2000, p.20]. He was also accused of silencing a federal prisoner who claimed to have sold drugs to then-Vice President Dan Quayle. [See: *PLN*, Feb. 1992, p.4; Oct. 2000, p.14]. So Quinlan's reputation might not count for much.

Regardless, the damage to Puryear's reputation before the Senate Judiciary Committee had already been done, even though no official investigation resulted from the disclosure that CCA was concealing information from government agencies and the public.

## Country Club Connection

Puryear listed the Belle Meade Country Club as one of his organizational memberships in a questionnaire provided to the Judiciary Committee. Most people aren't familiar with the Belle Meade Country Club unless they have seven-figure bank balances; it's so elite that not even its website is accessible to the public.

The Club, founded in 1901, is the most exclusive private golf and social club in Nashville. It is also almost exclusively white, not having admitted its first (and still only) black member until 1994 – and since that member lives in a different state, he doesn't attend often. Not that there aren't any blacks at the Club; it's just that they mainly cut the grass, serve the food and clean the facilities.

With its stately columned facade and well-tended grounds, the Belle Meade Country Club is reminiscent of a quaint Southern mansion where Nashville's rich can role-play what it must have been like during the nostalgic era of slave plantations.

The Judiciary Committee's questionnaire asked Puryear to indicate whether any of the 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? While acknowledging a lack of racial diversity prior to 1994, Puryear stated, “To my knowledge, during my membership at the club, it has not discriminated on the basis of race, sex, or religion.”

Which is an interesting answer, not only considering the Club's almost completely lily-white membership, but also because female members (and the Club's single black member) do not have voting privileges.

Only members with Resident Member status are able to vote on Club business or hold office. As it so happens, the Club's approximately 600 Resident Members are all male. None are black. Women join the Club as “Lady Members” without voting privileges, and Non-resident Members, which include those who live in other states, likewise cannot vote.

While there is no official policy that prohibits women or blacks from being Resident Members, none are – and new members must be proposed and recommended by the existing all-male, non-black Resident Members. Not surprisingly, the Club's Constitution, By-laws and member handbook do not include a non-discrimination statement.

That the Club's Resident Members have never successfully proposed a black or female member for Resident Member status over the Club's 108-year history smacks of intentional discrimination – or at the very least *de facto* discrimination. But Puryear, who is by all accounts a highly intelligent attorney, maintained he was unaware of any discrimination.

Puryear defended his membership by noting that three federal judges, including Sixth Circuit Court of Appeals Judge Gilbert S. Merritt, were members of the Club (Judge Merritt is no longer an active member). Puryear also observed that as an Associate Member he did not have voting privileges himself – although that failed to explain the inability of *any* women members to vote, or why *all* of the Club's Resident Members were male and none were black.

Others are not so shortsighted. Puryear's ex-boss, former Senator Bill Frist, resigned his Club membership in 1993 shortly before he entered national politics. Rather than moot the controversy by canceling his membership, Puryear remains a member of the Belle Meade Country Club to this day.

Puryear's membership in an elitist country club with discriminatory practices did not go unchallenged. Friedmann contacted three women's rights groups, the National Organization for Women, the National Council of Women's Organizations and the Women's Equal Rights Legal

Defense and Education Fund, which sent letters to the Judiciary Committee sharply criticizing Puryear's affiliation with the Belle Meade Country Club.

"If Mr. Puryear is appointed to the federal bench, it is difficult for us to conceive how women defendants and plaintiffs, or indeed women attorneys, could appear before him and expect to receive impartial and equal consideration given Mr. Puryear's past membership in the Belle Meade Country Club and his defense of that membership," stated Susan Scanlan, Chair of the National Council of Women's Organizations.

### **Estelle Richardson's Death Revisited**

*PLN* has reported extensively on the death of Estelle Richardson, 34, a prisoner at the CCA Metro-Davidson County Detention Facility in Nashville, Tennessee who was found unresponsive in her segregation cell on July 5, 2004, one day after a cell extraction.

An autopsy revealed she had a fractured skull, four broken ribs and a lacerated liver. Chief Medical Examiner Dr. Bruce Levy, who ruled Estelle's death a homicide caused by blunt force trauma to the head, determined her injuries could not have been self-inflicted. "If she had fallen from a high window or if she had been hit by a car, I would expect to see these types of injuries," he said at the time.

Four CCA guards were indicted in connection with Estelle's death in September 2005; however, the charges were later dropped because the timing of her fatal head injury could not be accurately determined. In February 2006, CCA quietly settled a federal lawsuit filed on behalf of Estelle's two minor children. Her homicide remains unsolved. [See: *PLN*, April 2005, p.14; Feb. 2006, p.1; May 2006, p.19].

Initially, the opposition campaign raised the Estelle Richardson case as an example of Puryear's priorities in representing and defending CCA. While there were no allegations that he had done anything wrong in connection with the investigation into Estelle's death or the subsequent civil litigation, Puryear's primary concern was protecting CCA's interests – which, of course, is what he is paid millions of dollars to do.

"What about the public's interest in knowing who beat Estelle Richardson to death?," asked Friedmann. "What about bringing her killers to justice, whether they were CCA guards or other prisoners? That, apparently, was not one of Mr. Puryear's concerns, and a person who has no interest in ensuring that justice is served has no business being a judge."

Puryear faced tough questions about Estelle's case at his February 12, 2008 Judiciary Committee hearing, and provided some rather disturbing answers. He stated the four CCA guards arrested in connection with her homicide had been "exonerated"; the cause of Estelle's death could not be determined and she may have died accidentally; and her four broken ribs might have been caused by CPR, which he said was a "common" occurrence.

Puryear further informed the Judiciary Committee that Estelle's death was "profoundly distressing to me personally and professionally," and had been "seared" into his memory.

Despite such searing memories, Puryear forgot to mention the involvement of a fifth CCA guard in relation to Estelle Richardson's death. Other prisoners had reported seeing that guard, Shirley M. Foster, injure Estelle in an unmonitored shower area three days before Estelle died. Friedmann tracked down two of those witnesses, now incarcerated at the Tennessee Prison for Women, and they confirmed that Foster had yanked Estelle out of the shower, causing her to fall and hit her head. Foster was never charged.

Puryear also forgot to tell the Judiciary Committee that CCA officials claimed there was no video of Estelle's cell extraction the day before her death, allegedly because the camera was not working. Instead, he made an oblique reference to "additional in-service training concerning

video camera procedures” as one of the remedial actions taken by CCA following Estelle’s homicide.

Police investigators who inspected the camera reported that it appeared to be in working condition, and an Assistant District Attorney said the missing video was a contributing factor in the decision to indict the CCA guards, as it signified a possible cover-up.

After Puryear’s testimony at the Committee hearing, Friedmann did some fact checking. He spoke with the DA’s office and learned about the alleged non-existent videotape of Estelle’s cell extraction. He obtained a report from the Sheriff’s office on Estelle’s death that conflicted with statements made by Puryear; the report also detailed how CCA guards had maced Estelle and called her profane names such as “nasty bitch.”

Friedmann further obtained a copy of Estelle’s autopsy report, with its finding of homicide, and supplied copies to the Committee members. He spoke with Dr. Levy, the Chief Medical Examiner who had conducted Estelle’s autopsy, and asked him to comment on Puryear’s characterization of her injuries and cause of death.

Dr. Levy apparently took exception to Puryear’s remarks. On February 21, 2008 he sent a heated letter to the Senate Judiciary Committee, saying he “was frankly stunned” by Puryear’s testimony. The Chief Medical Examiner rejected Puryear’s statement that CPR could have caused Estelle’s rib fractures and liver damage, which he said was “misleading at best.”

“The Committee should be very concerned about a nominee for federal judge who is less than truthful when answering questions from the Senate Judiciary Committee,” Dr. Levy warned, adding, “I hope Mr. Puryear’s statements before the Committee earlier this week were an isolated misjudgment and not the alarming statements they appear to be.”

Puryear responded to questions about the Estelle Richardson case by noting that both medical experts in the lawsuit filed by Estelle’s family had disagreed with Dr. Levy about the cause of death. Further, the timing of the fatal head injury was disputed and likely occurred at least three days earlier.

Puryear also explained that CCA’s paid medical expert had opined Estelle’s broken ribs were “almost certainly” caused by CPR. Of course that same expert, Dr. William McCormick, had testified in an earlier, unrelated murder case that the death of a woman who had a skull fracture and internal injuries, and whose body was “covered with bruises from head to toe,” was an accident due to a fall down a few steps. The jury in that case rejected his expert opinion. See: *State v. Gray*, 960 S.W.2d 598 (Tenn.Crim.App. 1997).

In regard to his remark that the four CCA guards had been “exonerated,” Puryear said he had used that term in its “common, colloquial meaning,” and backpedaled by acknowledging that “a prosecutor’s decision not to prosecute a previously indicted defendant is different from a jury’s verdict of ‘not guilty.’”

In a February 26, 2008 letter to the Judiciary Committee, CCA attorney James F. Sanders tried to jump to Puryear’s defense. Presumably with a straight face, Sanders wrote, “there is no credible evidence to support Dr. Levy’s homicide conclusion, other than the head injury and the death itself.” This led one journalist who wrote about Estelle’s case to observe, “Ah, yes, just those bothersome little details. The head injury and the death itself.”

Meanwhile, Joseph F. Welborn III, one of the lawyers who defended CCA in Estelle Richardson’s wrongful death suit, and attorney David Randolph Smith, who represented Estelle’s children, filed a joint motion to unseal the settlement hearing transcript in that case. The unsealed transcript was then provided to the Senate Judiciary Committee in support of Puryear’s answers to questions concerning Estelle’s death.

Although Smith and Welborn had advised the court that “The transcript does not contain terms of the minor settlement and will not violate the order of the Court that the settlement

remain confidential,” the unsealed transcript in fact contained sufficient details to determine that CCA had paid approximately \$2 million to settle the lawsuit filed on behalf of Estelle’s children. [See: *PLN*, May 2008, p.28]. The transcript is posted on *PLN*’s website.

After being contacted by Friedmann, Estelle Richardson’s sister-by-adoption sent a letter to the Senate Judiciary Committee describing the circumstances of Estelle’s death. She told the Committee that CCA had “never apologized” to Estelle’s family or children. Apparently Puryear, who personally negotiated the settlement, felt \$2 million was sufficient compensation and no apology was necessary.

Silja J.A. Talvi, a *PLN* board member and senior editor at *In These Times*, a monthly news magazine, had been following the Estelle Richardson case for years. On May 5, 2008 she wrote a scathing two-part article on Puryear’s judicial nomination in the context of Estelle’s death, which was published as an exclusive on AlterNet.

Contrasting Puryear’s rich and privileged life with that of Estelle Richardson, a “low-income, African American mother of two,” Talvi noted that it would have been “unlikely that the two would have ever met under even the most random of circumstances.”

And yet their fates were strangely intertwined – Estelle, who died at a CCA jail alone in a segregation cell, and Gus Puryear, who years later had to answer uncomfortable and difficult questions about her death. Talvi was later interviewed by Amy Goodman on the news program *Democracy Now!*, where she discussed her reporting on the Puryear nomination.

Following the publication of Talvi’s article on AlterNet, an anonymous donor offered a \$35,000 cash reward for information in the Estelle Richardson case. The reward consisted of \$10,000 for the recovery or proof of existence of the elusive videotape of Estelle’s cell extraction the day before she died, and \$25,000 for information leading to the prosecution and conviction of those responsible for her death.

“The substantial reward offered in Estelle Richardson’s unsolved homicide demonstrates that the lives of prisoners are not worthless,” said Friedmann. “While for the past four years CCA officials have been unable to explain who was responsible for Ms. Richardson’s murder, this reward will hopefully shed some light on her tragic death.”

The Puryear opposition campaign devoted a separate website to Estelle’s case and the \$35,000 reward ([www.whokilledestelle.org](http://www.whokilledestelle.org)), and a Nashville civil rights group, Power to the People, took on Estelle’s death as a social justice issue and held a protest rally in Sept. 2008.

Ultimately, Estelle Richardson did what the other, more mundane issues raised by the opposition campaign could not. Her unsolved homicide put a human face on the prisoners held in CCA’s for-profit facilities; it also revealed Puryear to be little more than a corporate hack whose primary goal was protecting CCA’s interests, regardless of who died in the company’s lockups or under what circumstances.

### **Fighting the Good Fight**

Friedmann formed an independent group to coordinate the opposition campaign, called Tennesseans Against Puryear. While that organization conducted most of the opposition efforts, Friedmann also participated in his capacities as *PLN*’s associate editor and vice president of the Private Corrections Institute, at his own expense.

Tennesseans Against Puryear worked with several organizational allies, including the Alliance for Justice, a national association of left-leaning advocacy groups. The Alliance for Justice was one of the first organizations to sound an alarm over Puryear’s nomination, saying he lacked “the fundamental commitment to transparency, integrity, honesty, and legal ethics required of those seeking a lifetime appointment to the federal courts.”

Other organizations that signed on to the opposition campaign included the National Lawyers Guild; the American Federation of State, County and Municipal Employees (AFSCME); Grassroots Leadership, a North Carolina-based civil rights organization; the California Correctional Peace Officers Association (CCPOA); and Architects/Designers/Planners for Social Responsibility, which opposes prison expansion as being against public policy.

AFSCME and the CCPOA joined mainly because they reject privatization, which is a threat to union jobs, and didn't want to see a pro-private prison advocate like Puryear on the federal bench.

Also, as noted previously, three national women's rights groups submitted letters of opposition to the Senate Judiciary Committee as a result of Puryear's membership in the Belle Meade Country Club.

Prior to Puryear's Feb. 12, 2008 hearing before the Judiciary Committee, Friedmann sent statements and proposed questions to the Committee members that addressed Puryear's conflicts of interest, lack of experience, bias against prisoner litigation, concealment of information from the public, and role in the Estelle Richardson case.

Not even Puryear's position as a deacon in the Presbyterian church was left unscathed, as Friedmann mentioned that the General Assembly of the Presbyterian Church had passed a resolution in 2003 condemning for-profit private prisons such as those operated by CCA.

To their credit, Committee members took note and grilled Puryear at his nomination hearing, using the documents and questions provided by Friedmann as a guide. One reporter described the proceedings as "testy." According to a spokesperson for Committee Chairman Patrick Leahy, "During that hearing, a lot of red flags were raised."

Afterwards, the opposition campaign submitted a formal response to the Committee that identified inaccuracies and inconsistencies in Puryear's testimony. Senators Leahy, Dianne Feinstein, Russ Feingold and Edward Kennedy sent written follow-up questions to Puryear. At least one senator sent a second round of questions.

On the home front, Friedmann wrote two editorials opposing Puryear's nomination that were published by the *Tennessean*. He worked closely with media contacts, issued press releases on new developments in the opposition campaign, and ran public notices in the *Tennessean* and *Nashville Scene*. During two trips to Washington D.C., Friedmann met with representatives of seven members of the Senate Judiciary Committee, including Chairman Leahy's staff.

Senator Leahy, as Chair of the Judiciary Committee, was a key part of the strategy to keep Puryear's nomination from going to the full Senate. In a small state like Vermont, citizens have extraordinary access to their congressional delegation. During the opposition campaign, *PLN* editor Paul Wright, who lives in Vermont, spoke a number of times with Senator Leahy's chief of staff and was able to mobilize several dozen voters – including members of the local bar and the Vermont chapter of the National Lawyers Guild – to express their concerns about Puryear's nomination. Those concerns were far from academic; more than 500 Vermont prisoners are housed at a CCA facility in Kentucky, where they have been mistreated.

The year-long effort to derail Puryear's nomination generated extensive coverage in the news media, both locally and nationally. The *Associated Press* ran two national wire stories about the opposition campaign, while both the *Tennessean* and *Nashville Scene* published front-page articles and numerous other commentaries. Puryear's contentious nomination was also reported in the *Nashville Post* and *Nashville City Paper*, and on the national level in *TIME* magazine, *Harper's Magazine*, *Mother Jones* and the *National Law Journal*. Additional coverage appeared on AlterNet and Democracy NOW!, and in a Think-MTV video exposé.

Some aspects of the Puryear opposition campaign were ineffective, such as unsuccessful bar complaints filed against the attorneys who had unsealed the confidential settlement transcript

in Estelle Richardson's wrongful death suit. Also, research into a methadone clinic that rented its property from a realty company owned by Puryear proved to be unproductive (except to disclose that the clinic was improperly disposing of patient records, which resulted in an investigation by state officials).

The touchstone and focal point of the opposition campaign was Friedmann's website, [www.againstpuryear.org](http://www.againstpuryear.org), which laid out the various arguments against Puryear's nomination and included links to supporting documents and nomination-related news coverage.

The site, which went live in January 2008, received almost 4,000 unique visitors over a 10-month period. According to analytics software, CCA kept a close watch on the Tennesseans Against Puryear website, visiting it 295 times – almost once a day. Other notable visits came from the U.S. Senate (54), federal courts (40) and U.S. Dept. of Justice (31). In order to thwart a counter site, Friedmann had also reserved the domain name for [www.forpuryear.org](http://www.forpuryear.org).

### **CCA Strikes Back**

It took Puryear and CCA some time to take the opposition campaign seriously, but once they did they mounted an earnest defense.

CCA found a media ally in the *Nashville City Paper*, a free daily publication with a conservative viewpoint. The *City Paper* ran several articles generally favorable of Puryear's nomination, reporting CCA's "renewed public relations push" and support for Puryear from other attorneys and notable figures.

Puryear obtained letters of endorsement from a number of well-heeled law firms, including Bass Berry & Sims, Baker Donelson, Neal & Harwell, and Walker Tipps & Malone. Further, he received a letter of recommendation from Thurgood Marshall, Jr., the son of late Supreme Court Justice (and former FBI informant) Thurgood Marshall.

Even the attorney who represented Estelle Richardson's children in their lawsuit against CCA, David Randolph Smith, sent a letter to the Judiciary Committee in favor of Puryear's nomination. Puryear would make "an excellent judge," Smith wrote.

However, Friedmann perceived a common thread. Almost all of the attorneys who sent letters in support of Puryear worked at firms that shared "financial, political and/or professional relationships" with CCA, he observed.

For example, Bass Berry & Sims had represented CCA in connection with securities offerings. The firm hired former CCA senior director Leslie Hafter to head its lobbying efforts; also, Bass Berry & Sims partner Lee Barfield II was the brother-in-law of former Senator Bill Frist, who had employed Puryear as his legislative director.

Likewise, Walker Tipps & Malone had represented CCA as a client, including in the Estelle Richardson case. It was a partner at that firm, J. Mark Tipps, who recruited Puryear to work for former Senator Fred Thompson. Tipps later recommended Puryear to then-Senator Bill Frist, and subsequently introduced him to CCA CEO John Ferguson.

And so on.

In regard to the letter of recommendation from Thurgood Marshall, Jr., Friedmann noted that Marshall sat on CCA's board of directors and owned 7,000 shares of the company's stock. "He thus has a substantial financial stake in CCA's continued success and, of course, has a duty as a board member to be supportive of the company and its officers, including Mr. Puryear," said Friedmann.

As for plaintiff's attorney David Randolph Smith, a Democrat, his support of Puryear stemmed at least in part from a desire not to see an even worse Republican candidate should Puryear's nomination fail. In a conversation with Friedmann, and later on the record with the

*Nashville Scene*, Smith said he did not want a “right-wing religious nutjob” appointed to the federal bench in lieu of Puryear, whom he viewed as a moderate. That Smith thought Puryear was the least objectionable nominee was not exactly a ringing endorsement.

On April 13, 2008, Puryear’s ex-boss, former Senator Bill Frist, weighed in with a *Tennessean* editorial in support of Puryear. Frist condemned “political posturing fed by outside groups” and the “political circus” that accompanies judicial nominations, and urged the Senate to “not play politics with the federal courts.”

Oddly, Frist failed to mention that during his tenure in Congress he had proposed the “nuclear option” to change Senate rules in order to prevent Democrats from using filibusters to block votes on judicial nominees, in a partisan attempt to ensure the confirmation of more Republican judges. Perhaps it slipped his mind.

At CCA’s annual shareholder meeting on May 16, 2008, which Friedmann attended, CEO John Ferguson acknowledged the company had spent funds on Puryear’s nomination for the purpose of countering “unfounded” accusations and “mischaracterizations” about CCA as a result of negative media coverage.

As part of those corporate expenditures, CCA hired MMA Creative, an advertising and marketing firm, and placed paid ads with the *City Paper* and *Nashville Post*.

CCA created a blog site on August 1, 2008 to “provide factual information” about the company and “separate the facts from the reported myths about private prisons.” While not specifically in response to the Puryear opposition campaign, the site ([www.thecca360.com](http://www.thecca360.com)) includes links to two pro-Puryear blogs, one of which has since been taken down.

The CCA 360 site also contains a section devoted to Friedmann. Titled “Who is Alex Friedmann?,” CCA answers that question by saying he is a convicted felon (without mentioning his felony convictions are almost two decades old) who “lacks academic training” and is “not a reliable media source.”

In response, Friedmann said the website “is exactly what I’d expect from CCA, and I’m flattered that they consider my efforts so effective that they have to resort to such infantile tactics.”

## **The End Game**

CCA’s public relations campaign proved to be too little too late. The *Tennessean*, the *Nashville Scene* and the *Associated Press* all ran articles casting doubt on Puryear’s judicial nomination. The *Nashville Post* reported that Puryear should “keep his day job.” Even the right-leaning *Nashville City Paper* referred to his nomination as “stalled.”

Senators Edward Kennedy and Dianne Feinstein, both members of the Judiciary Committee, reportedly put a hold on Puryear’s nomination, deeming him a controversial candidate rather than a consensus nominee. “I understand they have put Puryear in the ‘controversial’ category,” said Vanderbilt University law professor Brian Fitzpatrick. “It’s very rare for a district court nominee to become controversial.”

Finally, on September 23, 2008, after no movement on Puryear’s nomination in the Judiciary Committee for seven months, Senator Lamar Alexander, Puryear’s chief standard bearer, raised the white flag and acknowledged it was “not going to happen.”

Ironically it was one of Puryear’s ardent supporters, Alabama attorney Ed Haden, who may have driven the final nail into Puryear’s judicial nomination coffin. In an August 14, 2008 *Associated Press* article, Haden was quoted as saying Puryear could still be confirmed based on *quid pro quo* deal-making. “At the end of the session, it’s, ‘Who wants a bridge in Vermont?’”

he said, in a not-so-subtle reference to Vermont senator and Judiciary Committee Chairman Patrick Leahy.

While that may in fact be how things are done in Washington – and Haden would know, as he previously served as nominations counsel for Senator Orrin Hatch and chief counsel for Senator Jeff Sessions – it isn't prudent to say so publicly. Upon being informed of Haden's cavalier comment, Senator Leahy's chief counsel noted dryly that Haden "seems to have no idea how Senator Leahy approaches nominations."

In the end, the Puryear nomination concluded with a whimper, not a bang. After the Senate adjourned on January 2, 2009 his nomination was returned to the White House, dashing Puryear's dream of a federal judgeship. The vacancy on the U.S. District Court for the Middle District of Tennessee will now be filled by President Obama; in a written statement, Puryear blamed the demise of his nomination on "election-year politics."

The Puryear opposition campaign declared victory in a January 22, 2009 press release. "While some may consider it ironic that a former CCA prisoner managed to derail the judicial nomination of CCA's general counsel, the fact remains that Mr. Puryear was a questionable, partisan candidate who had conflicts and problematic issues, both past and present, that ensured his nomination would not survive scrutiny," Friedmann stated. "The opposition campaign simply provided the necessary level of scrutiny."

Although Puryear and Friedmann have never met, they both attended CCA's annual shareholder meeting last May. "I don't have anything personal against Mr. Puryear," said Friedmann. "And I'm sure he's enough of a professional to understand that the opposition campaign that killed his nomination was simply business. Just as his employment with CCA, in which he profits from people's incarceration, is simply business."

Sources: *www.againstpuryear.org*, *Tennessean*, *Nashville Scene*, *Nashville City Paper*, *Nashville Post*, *Mother Jones*, *TIME*, *Harper's Magazine*, *AlterNet*, *Democracy Now!*, *UPI*, *Associated Press*, *politico.com*, *www.usdoj.gov*, *Jackson Sun News*, *www.finance.yahoo.com*