Gus Puryear
10 Burton Hills Boulevard
Nashville, TN 37215

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

March 5, 2008

Dear Senator Feinstein:

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

1. **The Estelle Richardson Matter**

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

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

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

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

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

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

a. Investigatory Efforts

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

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

b. Cause of Death and CPR

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

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

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

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

(Emphasis added.)

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

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

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

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

2. **Recusal Issue**

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

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

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

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

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

3. **Objectivity in Prisoner Cases**

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

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

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

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

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

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

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

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

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

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

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

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

4. **Protecting Privileged Information**

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

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

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

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

5. **Experience**

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

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

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

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

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

Sincerely,



Gus Puryear

Responses of Gustavus Adolphus Puryear IV
Nominee to the U.S. District Court for Middle District of Tennessee
To the Written Questions of Chairman Patrick Leahy

1. **In July 2004, while you served as Executive Vice President and General Counsel of Corrections Corporation of America, Estelle Richardson, a female inmate at the company's Metro Detention Facility in Nashville, Tennessee, was beaten to death. She was in a solitary confinement cell when she was found unresponsive; an autopsy revealed a skull fracture, four broken ribs and liver damage. Tennessee's Chief Medical Examiner, Dr. Bruce Levy, ruled her death a homicide, saying her injuries were consistent with blunt force trauma and could not have been self-inflicted.**

When asked about Ms. Richardson's death at your confirmation hearing, you testified "[T]here were a range of alternative explanations [for Ms. Richardson's death], many of which would not have involved a beating death that could have explained what happened." You testified that Ms. Richardson's rib fractures and the liver injury, in particular, could also have been consistent with CPR being performed, which you said "does commonly happen."

In a February 21, 2008, letter, Dr. Levy, who performed the autopsy on Ms. Richardson disputes your testimony that the cause of death could not be determined, citing his ruling that the case of Ms. Richardson's death was "Blunt force injuries of the head: and the manner of death was "Homicide." Both rulings are reflected in Ms. Richardson's autopsy report and death certificate.

In his letter, Dr. Levy's letter describes your testimony regarding CPR as a possible cause of the injuries as "misleading at best" and writes, "While CPR has been reported to cause minor injuries in some patients, both the location and severity of Ms. Richardson's injuries were not consistent with attempted resuscitation. Mr. Puryear's claim makes even less sense when taken in context with the more serious fatal head injuries, which line up with the rib fractures perfectly. There is no doubt in my mind that both the fatal head injuries and the rib fractures/liver damage were inflicted on Ms. Richardson while in custody and not the result of CPR." In addition, none of the publicly available pleadings in the civil lawsuit settled by CCA reference CPR as a possible cause of Ms. Richardson's injuries.

I am attaching Dr. Levy's letter and the autopsy and investigation reports he sent to the Committee. How do you explain the inconsistency between your testimony and Dr. Levy's autopsy report and ruling?

Response: The inconsistency between the autopsy report and my testimony arises from the inconsistency of the autopsy with the medical evidence developed by both the Richardson family and CCA over a two year period. Below, I will detail the process through which CCA and the Richardson family's investigations arrived at a conclusion at odds with the medical examiner.

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

At my direction, CCA fully cooperated with all law enforcement authorities. Throughout the process, the four corrections officers who were under suspicion in connection with Ms. Richardson's death were placed on administrative leave and were not in the facility.

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

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

> [T]he circumstances and cause of Ms. Richardson's tragic death were complex and debated. Dr. Levy, the Tennessee medical examiner, attributed the cause of death to a recent traumatic brain injury (skull fracture). That opinion was contested vigorously by the defense and our own experts attributed the death to a seizure and concluded that the skull fracture was not caused by the four

guards who had been indicted. ... There were also issues on whether CPR may have caused the liver and rib injuries.

(Emphasis added.)

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

It is unlikely that anyone will ever know the definitive cause of Ms. Richardson's rib and liver injuries. It is known, however, that CCA cooperated fully with all law enforcement investigations into the death, and that CCA cooperated fully with the Richardson family in the civil litigation. It is known that the Richardson family voluntarily dismissed its civil actions against the four corrections officers who were under indictment. It is known that the Richardson family and CCA settled the dispute over the exact causes of the death and CCA's liability, if any, in connection with those possible causes. It is known that the District Attorney General met with both CCA's and the family's medical experts. Last, it is known that the District Attorney General, who had access to Dr. Levy's opinions and all of the police investigatory materials relating to this matter, then dismissed the charges against the four corrections officers.

Unfortunately, the medical findings by both the family's and CCA's experts do not permit a definitive conclusion as to how Ms. Richardson died. In my testimony to the Committee, I relied in good faith on these opinions. My opinion that there is substantial uncertainty regarding the cause of Ms. Richardson's death was also shared by the lead lawyer for the Richardson family as expressed in his letter to the Committee. In sum, the inconsistency between my testimony and the autopsy is merely derivative of an inconsistency between the autopsy and the conclusions of the other medical experts retained by CCA and the Richardson family.

2. **Ms. Richardson's death occurred in 2004 while she was an inmate under your company's care, yet in your testimony nearly 4 years later you raise a wide variety of possible explanations, all inconsistent with the Medical Examiner's autopsy and report. You testified: "There is a possibility—well,**

there are any number of possible explanations, including fights with other inmates, a fight with unknown correctional officers, self-inflicted wounds, medication issues. She had a history of seizures. I do not know what happened, Senator."

A. What investigation did you or CCA undertake upon learning of Ms. Richardson's death? Did your investigation determine or rule out any cause of death? Why or why not?

Response: First, CCA fully cooperated with law enforcement investigations into her death, and CCA believed that these investigations would determine the cause of her death, and who, if anyone, was responsible for it. Based on the initial reports surrounding Ms. Richardson's death, CCA believed that this investigation would conclude rapidly; however, state and federal investigations continued for more than two years.

In addition, CCA's outside lawyers investigated the possible causes of death through examination of records, interviews of cooperative witnesses, depositions taken during the civil case, and consultations with medical experts; this process also involved more than two years' work.

CCA's medical expert consulted directly with one of the Richardson family experts, Dr. Nichols (the former Chief Medical Examiner of the Commonwealth of Kentucky) to help determine a cause of death in a cooperative manner. Their shared conclusions are discussed above, in response to Question 1. In sum, the only "cause of death" that could be ruled out by CCA and the Richardson family was the one that was being used to prosecute the four corrections officers, namely that Ms. Richardson allegedly died from a head injury that could have occurred within 24 hours of her death. The experts consulted by the Richardson family and CCA agreed that the head injury was at least three days old, and there were still substantial issues surrounding what role, if any, that injury played in her death.

I agree with the view that David Randolph Smith, the lead lawyer for the Richardson family, expressed in his February 25, 2008 letter to this Committee: "In a nutshell our extensive investigation and expert analysis ... indicated that the circumstances and cause of Ms. Richardson's tragic death were complex and debated." After extensive law enforcement investigations, investigations by the Richardson family's lawyers and CCA's lawyers, and protracted and cooperative discovery efforts by the Richardson family and CCA, the exact cause of Ms. Richardson's head injury and the precise role that injury played in her death are not known.

B. When did you first learn that Ms. Richardson had died? What steps did you take to determine what happened?

Response: As I testified at my hearing, the time and place of my learning of her death is seared into my memory. It was the morning of July 5, 2004, at around 9:00 a.m. I was told that detectives from the police department had been on the scene for some time. CCA cooperated fully and allowed these detectives access to any information, so that they might determine what happened. Additional steps relating to the criminal investigations and our efforts to understand what happened are detailed in response to Questions 1 and 2A.

C. What steps did you or CCA take to ensure that what happened to Ms. Richardson would not happen to other inmates?

Response: As soon as police investigators disclosed to CCA personnel on July 5, 2004 that they believed that four corrections officers involved in a cell extraction the day before Ms. Richardson's death may have been responsible for that death, CCA immediately placed the officers on administrative leave and kept them out of the facility. CCA then cooperated fully with the investigations by various law enforcement agencies and the plaintiffs' efforts in civil discovery.

As neither CCA nor the Richardson family knows with any certainty exactly what happened to Ms. Richardson, it would be difficult to know what steps could be taken to prevent it from recurring; however, CCA did implement certain remedial measures as result of what was learned from the circumstances surrounding the death.

Examples of actions that I understand the facility properly emphasized in the wake of the Richardson death included: following CCA policy concerning special needs medical assessments, both as to timing and documentation; additional in-service training regarding use of force policy (especially as it related to approval of uses of force, reporting of such uses, and the requirement that photographs be taken of an inmate following such a use of force); additional in-service training concerning video camera procedures; a written directive to medical staff requiring signed documentation by an inmate when she refuses medical treatment; and a written directive that inmates must be seen by the facility physician on the date of a scheduled appointment.

More broadly, as a result of this incident and certain other, unrelated incidents, within two months CCA's Chief Executive Officer decided that additional resources should be committed to the Company's Quality Assurance Department (which had approximately three employees at the time). He transferred the department to the Office of General Counsel to

give it independence from the Operations Department, which supervises facility operations. Under my leadership, the Quality Assurance department was completely reorganized. I placed a former Director of the Federal Bureau of Prisons in charge of the department and instructed him to design a new audit program. The department hired two five-person teams to conduct annual audits of each facility's operations. In addition, an analysis group staffed by employees with backgrounds in statistics was created within the department to review data collected from facilities and attempt to recognize trends that could point to management issues or other concerns within a facility.

Also within two months CCA's then-Chief Operating Officer resigned. That individual did not have a background in corrections. A new position, Chief Corrections Officer, was created and was filled by Richard P. Seiter. Dr. Seiter was serving as an Associate Professor in the Department of Sociology and Criminal Justice at St. Louis University. Dr. Seiter has had a distinguished career in corrections: he served in a variety of positions with the Federal Bureau of Prisons, including Warden and Assistant Director; he served from 1983-1988 as Director of the Ohio Department of Rehabilitation and Correction; and he has authored two textbooks on corrections management. Dr. Seiter has since reorganized the operations departments at CCA, implemented unit management and direct supervision within the Company's facilities, and sought to standardize procedures throughout CCA. Virtually every policy and procedure at CCA has since been re-written, and new training programs are in place.

3. **Please describe the steps taken by CCA personnel when Ms. Richardson was found unresponsive in a solitary cell, including whether and how quickly she received medical treatment on site and from whom? How soon after being found was she transported to Southern Hills Medical Center? How quickly did CCA call the local police and what law enforcement investigation of the circumstances surrounding the fatality occurred?**

Response: While I was not at the scene when these events occurred, and thus have no first-hand knowledge of these events, I can give you my understanding based upon the facility's documentation regarding this matter. It is my understanding that breakfast was served in Pod 1 of the Segregation Unit (where Ms. Richardson was housed) around 4:35 a.m. on July 5, 2004. Ms. Richardson came to her cell door and received her breakfast tray. When the corrections officers came back to her cell a while later to pick up her breakfast tray, Ms. Richardson was laying on her bed and did not respond when officers called her name. The officers entered her cell, checked her pulse, and immediately called a medical emergency (at 5:32 a.m.). Medical personnel and other corrections officers from the facility arrived immediately thereafter. 911 was called and the facility's medical personnel and corrections officers administered CPR and placed an Automated External Defibrillator on Ms. Richardson after checking Ms.

Richardson for a pulse and breathing. Paramedics arrived at approximately 5:43 a.m. and Ms. Richardson was thereafter transported to the hospital. Police officers arrived at the facility a short time thereafter and began their investigation; they were at the facility before I learned of the event at around 9:00 a.m.

While I was not privy to the investigation conducted by law enforcement, I do know that the state investigation of Ms. Richardson's death began on the morning of July 5, 2004, and the investigation continued by state and federal investigators for more than two years. Over that period, numerous CCA employees were interviewed by investigators and gave grand jury testimony, thousands of documents were produced by CCA to investigators, and CCA cooperated fully in the investigation.

4. **You testified that if confirmed you would recuse yourself from cases involving CCA during the period in which you divested your interest in the company and for an extended period thereafter.**

   A. **Would your recusal include cases involving CCA's executives, subsidiaries and employees?**

      Response: Yes.

      In all cases, I would abide by the then-current statutes and Code of Conduct for United States Judges to ensure the absence of actual or apparent partiality and to ensure that the litigants receive due process of law. With respect to any action involving a CCA executive or employee not arising out of or related to their official activities for CCA (e.g., a personal bankruptcy appeal by a CCA employee), I would assess the facts of such a case with reference to relevant statutes and the Code of Conduct for United States Judges and make my decision accordingly. Applying these criteria, and given my personal relationship with current CCA executives, I would almost certainly recuse myself from any case involving a CCA executive in his or her entirely personal capacity for the foreseeable future due to the possible appearance of bias. After the passage of time and natural turnover in executive positions at CCA, this concern would likely dissipate.

   B. **Will you also recuse yourself from any cases involving the private prison industry, even if they do not directly involve CCA?**

      Response: I would not create an automatic recusal rule for such cases, but instead I would resolve any potential conflict of interest by complying with relevant statutes and the Code of Conduct for United States Judges. In the case presented in the question (which is exceedingly unlikely given that there are no other private prison operators conducting business in the Middle District of Tennessee), I do not believe that a typical case

involving other private prison operators would pose any actual conflict of interest, assuming I did not hold any direct financial interest in the operator. But one can envision hypothetical cases where appearance concerns might counsel in favor of recusal (e.g., a case that required interpreting a state statute that controls prison privatization generally). In the absence of concrete parties, facts and claims, I thus believe it would not be wise for me to opine definitively on this question.

C. Will you recuse yourself from lawsuits brought by prisoners, even if they do not directly involve CCA?

Response: I would not create an automatic recusal rule for lawsuits brought by a prisoner, but instead would look to the facts and circumstances of an individual case and apply the appropriate statutes and canons of the Code of Conduct for United States Judges to determine whether any recusal was necessary. I think it unlikely that recusal would be necessary, but would not want to opine on any individual case without knowing the particular parties, facts, and claims pleaded in that matter.

One way to think of this would be to consider the case of a public defender who is appointed as a district judge; a judge with such a background would likely consider the issue of recusal on a case-by case basis, rather than a blanket recusal from all criminal cases.

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

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

must be carefully nurtured in environments that are not always conducive to it.

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

In short, I think my experiences will make me particularly sensitive to issues raised in inmate lawsuits. And, there are other, objective actions that I believe demonstrate my personal commitment to the humane treatment of inmates:

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

I close with a statement I made on the record, long prior to this nomination, when commenting on my visits to corrections facilities operated by CCA:

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

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

Responses of Gustavus Adolphus Puryear IV
Nominee to the U.S. District Court for the Middle District of Tennessee
To the Written Questions of Senator Russ Feingold

1. With respect to your litigation experience, please expand on the information provided in your questionnaire by providing the following information for both federal and state cases:

a. The number of cases where you personally drafted a motion for summary judgment or a response to such a motion.

Response: As the question relates to my litigation experience when I was counsel of record in private practice (1994-97), I cannot recall all such instances. I do specifically recall at least four such cases. I also recall drafting two post-judgment motions and memoranda of law, which were essentially identical to motions for summary judgment. As general counsel of a corporation over the past seven years, I have reviewed and edited numerous motions for summary judgment.

b. **The number of cases where you personally presented an oral argument to the court in connection with dispositive or discovery motions.**

Response: Again, I cannot recall all such instances. I personally argued at least two dispositive motions as a lawyer in private practice. As to discovery motions, the state courts within Davidson County held "motion day" on virtually every Friday. I would estimate that I was in state court at least every third or fourth Friday during private practice on a discovery or discovery-related motion, which I would have argued. I cannot recall a total number of such arguments. I also recall personally presenting oral arguments on discovery-related motions in state courts in at least four counties elsewhere in Tennessee. I recall personally presenting discovery motions to at least two U.S. Magistrate Judges in federal court. In addition, I have reviewed numerous such motions over the past seven years as general counsel to a corporation.

c. The number of cases in which you personally participated in voir dire and jury selection.

Response: Two.

d. The number of cases in which you personally made an opening argument, examined or cross-examined witnesses, or presented a closing argument.

Response: Excluding cases in General Sessions court, I presented an opening argument in one case, examined or cross-examined witnesses in two cases, and presented a closing argument in one case.

e. **The number of cases in which you personally drafted an appellate brief.**

Response: I recall four, and I have reviewed and edited numerous briefs since becoming general counsel of a corporation more than seven years ago.

f. The number of cases in which you personally presented an oral argument to an appellate court.

Response: One.

Feel free to provide any further explanation you think would be useful to the Committee in connection with this question.

Response: The American Bar Association's Standing Committee on the Federal Judiciary unanimously found me "Qualified" for this appointment.

While engaged in the private practice of law, I have tried two jury cases, one in federal court as first chair and one in state court as second chair. (I have excluded from this calculation trials handled in General Sessions Court, as such trials are bench trials regarding smaller amounts.) In addition, I have handled the appellate argument of a commercial litigation matter. I have been in numerous motion hearings, including evidentiary hearings in federal court, such as hearings in support of temporary restraining orders.

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

2. At your hearing, you testified that you planned to divest yourself over time of stock in Corrections Corporation of America ("CCA"), your current employer. You also stated that you would continue to recuse yourself from cases involving CCA for "an extended period of time" after the divestiture is complete.

a. Please explain more fully what you understand your ethical responsibility to be in connection with cases filed by CCA in your court. At what point do you

believe it will be appropriate to begin hearing such cases, and how would you go about deciding that that point has arrived?

Response: I reiterate that, though I will completely divest my remaining financial interest in CCA, I will recuse myself from all cases involving CCA for an "extended period of time" after my divestment. That recusal would also cover officers and employees of CCA being sued for their actions as officers and employees.

Upon further consideration, I have concluded that there are no circumstances under which I would hear a CCA case prior to five years from my divestment, leaving open the possibility that it may be a substantially longer period of time. To me, some of the critical issues with respect to my recusal from CCA cases would include the following factors: the length of time since complete divestment from CCA; whether senior management of CCA is comprised of people with whom I worked; whether any such matter could still relate to facts and circumstances that may have been known to me while at CCA; and whether sufficient time has passed that the bar and public have ceased to perceive me as a zealous advocate for CCA.

Facts outside of my control could have an impact on my assessment of these issues. Two hypothetical situations may help illuminate this thought: What if CCA were acquired by a private equity firm and current executive management were completely replaced, and the corporate headquarters relocated, but two prisons remained in the Middle District of Tennessee? What if a new management team at CCA divested its prison operations and decided to provide information technology consulting services to public prison systems? I am hesitant to commit to any defined period of time beyond five years, as these factors beyond my control could shape my analysis of the recusal issue. I would, of course, consult with the Administrative Office of the Courts and the then-current statutes and Code of Conduct for United States Judges to ensure that there would be no rules violation or actual or apparent partiality. This, combined with disclosure to the parties, should ensure a fair and impartial judicial proceeding conducted in accordance with due process of law.

b. Does your promise to recuse yourself extend to cases involving CCA's executives or employees but not the corporate entity?

Response: Yes.

There is the possibility that there could be actions involving a CCA executive or employee not arising out of or related to their official activities for CCA (e.g., a personal bankruptcy appeal by a CCA employee). In such purely personal cases, I would assess the facts of such a case with reference to relevant statutes and the Code of Conduct for United States Judges, and make my decision accordingly. Applying these criteria, and given my personal relationship with current CCA executives, I would almost certainly recuse myself from any case involving a CCA executive in his or her personal capacity for the foreseeable future due to the possible appearance of partiality. After the passage

of time and natural turnover in executive positions at CCA, these concerns would likely dissipate.

3. The Estelle Richardson case discussed at your hearing has engendered a great deal of controversy. You testified at your hearing that Ms. Richardson's rib and liver injuries may have been caused by the administration of CPR and you characterized the four corrections officers involved in the case as "innocent." You also testified that possible explanations for Ms. Richardson's injuries include "fights with other inmates, a fight with unknown correction officers, self-inflicted wounds, medication issues."

a. Please explain in detail your role and involvement in CCA's handling of this matter, including its investigation of the initial incident, its involvement in the criminal investigation, and its defense of the civil action brought by Ms. Richardson's family.

The death of Estelle Richardson while incarcerated at the Metropolitan Davidson County Detention Facility in Nashville was a profoundly distressing event to me both personally and professionally. As I recalled at the hearing, the place and time I learned of her death are seared into my memory. The circumstances surrounding the initial report of her death were truly disturbing: a female inmate in solitary confinement dies of apparent head injuries mere hours after she had to be extracted from her cell by four corrections officers (a cell extraction is categorized as a "use of force" incident in corrections). Her death led to both federal and local criminal investigations of CCA and its employees, as well as civil litigation.

As general counsel to CCA, my responsibility was to represent CCA. At all times, acting in consultation with executive management at CCA and its board of directors, I provided general supervision of CCA's approach to the handling of the criminal investigations related to Ms. Richardson's tragic death, as well as civil litigation brought on behalf of Ms. Richardson's family. At my direction, CCA fully cooperated with all law enforcement authorities. CCA believed that these investigations would determine the cause of her death. CCA's outside lawyers (under my direction and supervision) also investigated the possible causes of death through examination of records, interviews of cooperative witnesses, depositions taken during the civil case, and consultations with medical experts; this process involved more than two years' work. In fact, CCA's and the Richardson family's lawyers cooperated during the discovery process of the civil litigation, as all parties were seeking to understand the truth about what happened.

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

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

b. News reports suggest that Ms. Richardson had been isolated from other inmates prior to her death. What evidence is there that her injuries resulted from fights with other inmates?

Response: With respect to my statement regarding "fights with other inmates," it is important to remember that there were disputes concerning the timing of Ms. Richardson's primary skull injury, and that there were other, older brain injuries. As noted in the letter from Dr. McCormick to Dr. Levy, dated April 18, 2006 (attached to the letter from James F. Sanders to the Committee dated February 26, 2008) Dr. McCormick believed the brain contusions resulting from the primary skull injury could not have occurred within 72 hours of her death "with a more probable date of 2 to 3 times that interval." The conclusion that these brain contusions occurred at least three days prior to death was shared by the Richardson family's experts.

Furthermore, my recollection of what I learned about the medical experts' opinions is that they believed Ms. Richardson had some other, older head injuries that likely occurred weeks before her death. For at least those injuries, there would be a range of possible third parties who could be responsible (inmates or officers) as Ms. Richardson was placed in solitary confinement on June 17, or about 18 days prior to her death. Ms. Richardson had a history of altercations with other inmates, which is part of the reason she was placed into solitary confinement.

Of course, it also seems clear to CCA's and the Richardson family's experts that the brain injuries or injury by themselves did not cause her death (otherwise, she would have died closely after such an injury or injuries was sustained, not days later). My recollection of the expert opinions, however, is that one possible explanation for Ms. Richardson's death is that the cumulative effect of the brain injuries – both the older, less severe injuries and the more recent, primary injury – when combined with her medical history of seizures, may have contributed to a significant, fatal seizure on the morning of July 5, 2004. It would have been more accurate for me to have testified that "previous fights with other inmates may have played a role in her death." I did state that some contact with an unknown corrections officer could have been a possible explanation, too.

c. What steps did CCA take to determine who among its employees may have been responsible for Ms. Richardson's death?

Response: CCA fully cooperated with various law enforcement investigations into her death, and CCA believed that these investigations would determine the cause of her death and who, if anyone, was responsible. CCA's outside lawyers also investigated the possible causes of death through examination of records, interviews of cooperative witnesses, depositions taken during the civil case, and consultations with medical experts; this process involved more than two years' work.

d. Are the four officers who were initially charged in the case still employed by CCA? Was any disciplinary action taken against them in connection with this case?

Response: CCA immediately placed the four corrections officers on administrative leave upon learning on July 5, 2004 that they were under suspicion for homicide. Although the criminal charges against them were later dismissed, they did not return to work for CCA.

e. What evidence is there that Ms. Richardson's injuries were self-inflicted?

Response: Concerning the possibility that Ms. Richardson's death could have involved a self-inflicted injury, based on what Dr. McCormick related to me (and others), the primary skull fracture was a deceleration injury. Dr. Levy has publicly affirmed this view, too (telling the press that Ms. Richardson's head was likely slammed into a hard object, such as a wall). Put differently, the "blunt force trauma" to the head was the result of a head in motion striking an object, not an object in motion striking the head. My understanding of the medical experts' opinions is that this raises the possibility that Ms. Richardson could have unintentionally struck her own head against an object or concrete floor (as in the case of a seizure or fall). That was at least one theory that our expert expressed to me, and I was attempting to offer the Committee, on behalf of my current client, the full range of possible explanations for her death.

In that regard, it is instructive to look to what the Richardson family's lawyer has told the Committee about the range of possible causes in his letter dated February 25, 2008:

> In a nutshell our extensive investigation and expert analysis (including a neurosurgery expert from Stanford University Medical School, Dr. Tse, and the former Chief Medical Examiner of the State of Kentucky, Dr. Nichols) indicated that the circumstances and causes of Ms. Richardson's tragic death were complex and debated. Dr. Levy, the Tennessee medical examiner, attributed the death to a recent traumatic brain injury (skull fracture). That opinion was contested vigorously by the defense and our own experts attributed the death to a seizure and concluded that the skull fracture was not caused by the four guards who had been indicted. From the standpoint of the plaintiff there was still a very strong case on death being caused from lack of timely medical treatment and a real fact issue on when the skull fracture occurred.

(Emphasis added.) As you can see, the potential causes of death were sufficiently "complex and debated" that several non-homicidal explanations – many of which may still have posed the risk of civil liability for CCA – were presented, including a seizure and lack of timely medical treatment.

f. Did CCA provide all reports and investigations of this matter carried out by its employees or by persons it retained to state authorities? If not, why not?

Response: As part of CCA's cooperation with state and federal authorities, CCA produced more than 33,000 pages of documents. CCA did not waive its attorney-client and work product privileges, and thus did not produce those documents involving attorney-client communications or attorney work product.

4. The Committee has received a letter from Bruce P. Levy, M.D., the Chief Medical Examiner of the State of Tennessee. The letter is attached. Dr. Levy takes strong issue with your testimony concerning the Richardson case. Please respond in detail to Dr. Levy's allegations.

The inconsistency between my testimony and the autopsy report and ruling arises from the inconsistency of the autopsy with the medical evidence developed by both the Richardson family and CCA over a two year period, and thus requires some explanation of that process.

In the course of preparing for the civil litigation, both CCA's and the Richardson family's medical experts concluded that Ms. Richardson's death did not result from a brain injury within 24 hours of her death, and thus could not have been caused by the four officers who performed the cell extraction the day before her death.

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

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

(Emphasis added.)

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

In any event, it is unlikely that anyone will ever know definitively what caused the rib and liver injuries. What is known, however, is that CCA cooperated fully with all law enforcement investigations into the death, and that CCA cooperated fully with the Richardson family in the civil litigation. It is known is that the Richardson family voluntarily dismissed its civil actions against the four corrections officers who were under indictment. It is known that the Richardson family and CCA settled the dispute over the exact causes of the death and CCA's liability, if any, in connection with those possible causes. It is known that the District Attorney General met with both CCA's and the family's medical experts. Last, it is known that the District Attorney General, who had access to Dr. Levy's opinions and all of the police investigatory materials relating to this matter, then dismissed the charges against the four corrections officers.

Unfortunately, the medical findings by both the family's and CCA's experts do not permit a definitive conclusion as to how Ms. Richardson died. In my testimony to the Committee, I relied in good faith on these opinions. In fact, my opinion that there is substantial uncertainty regarding the cause of Ms. Richardson's death is also shared by the lead lawyer for the Richardson family in his letter to the Committee. In sum, the inconsistency between my testimony and the autopsy is merely derivative of an inconsistency between the autopsy and the conclusions of the other medical experts retained by CCA and the Richardson family.

5. The Committee has also received letters from attorneys James F. Sanders and David Randolph Smith, both of whom were involved in the civil case arising out of Ms. Richardson's death. Did you request that they write to the Committee to support your nomination? Please describe in detail the contacts you have had with these two attorneys since you were nominated for this judicial position.

Response: I did not ask Mr. Smith to write to the Committee in support of my nomination. I received a copy of his letter from the Department of Justice after it was transmitted to the Committee. Since my nomination I have had no contact with Mr.

Smith until after I received a copy of his letter to the Committee, at which point I called to express my appreciation for the sentiments he expressed in it.

Since my nomination, Mr. Sanders and I have had telephone discussions concerning an unrelated legal matter.

After my hearing, I had two or three telephone discussions with Mr. Sanders concerning the inquiries regarding the death of inmate Estelle Richardson that were being made with respect to my nomination. I was seeking confirmation as to my recollection of facts from that matter, which had concluded approximately two years before. We discussed the situation that these inquiries put me in, as one wanting to disclose all available information to the Committee yet not wanting to risk the abrogation of any of CCA's rights. We also discussed the fact that some of my answers provided as a nominee would raise issues regarding CCA's conduct that could implicate CCA's interests. In that context, Mr. Sanders expressed his view that the information apparently being provided to the Committee may not be complete, and he volunteered to write a letter to the Committee and provide any factual information that may be helpful to the Committee in knowing the truth about what was involved in the matter. We agreed that Mr. Sanders should discuss this possible course with corporate counsel for CCA other than me, and that I should not be involved in deciding whether such information would be provided.

I did not review his letter, and I did not know of its contents (directly or indirectly), and I did not provide him with any instructions as to its content or what to disclose. I received a copy of the letter after it was transmitted to the Committee.

6. At the hearing, you pointed to your service on the National Prison Rape Elimination Commission as evidence that you are not hostile to prisoner rights.

a. Please describe in detail your work on the Commission.

Response: The National Prison Rape Elimination Commission is a bipartisan panel created by the National Prison Elimination Act of 2003, 42 U.S.C. § 15601 et seq., the primary sponsors of which were Senators Kennedy and Sessions. The Commission is charged with studying federal, state and local governmental policies and practices relating to sexual violence behind bars. Prisoners get sentenced to prison, not sexual abuse. Sexual abuse is morally and legally wrong, and I agreed to serve on the Commission to help solve this problem. The Majority Leader of the United States Senate appointed me to the Commission in December 2003.

Upon completion of its study, the Commission will report its findings, conclusions, and recommendations to the Congress, the President, and the U.S. Attorney General. These recommendations will include draft standards for the prevention of prison sexual violence that it is hoped will be implemented by the U.S. Bureau of Prisons and become a new national standard for various types of corrections institutions across

the country. These standards will attempt to enhance the prevention, detection, reduction and punishment of prison sexual assault by inmates and by staff.

My involvement as a Commissioner involved work in the original, organizational meetings to establish procedures for the Commission to follow in pursuit of its final report, including findings, conclusions, recommendations, and draft standards. I was involved in various interviews in connection with hiring senior staff for the Commission (some by telephone). Following a major staff transition, the Commission held a two or three day management retreat to attempt to get the Commission's progress back on track.

Commissioners have reviewed various proposals for studies concerning prison sexual violence and the means of eliminating it. We have held eight public hearings and one public meeting for the purpose of learning more about the scope of the problem of sexual violence in prison, the nature of the problem, and the means to reduce it.

We authorized certain expert committees to address specific areas for drafting standards: Classification and Technology; Confidential Reporting and Data Collection; Investigations and Staff Sexual Misconduct; Medical and Mental Health; Training; Juvenile Facilities; and Immigration Detention Facilities. I have helped recruit one well-known corrections expert to serve on an expert committee, and the Commissioners are kept abreast of committee development through regular written communications and conference calls.

We are currently in a stage where we are reviewing "draft" standards that have been prepared by staff based upon the work performed at public hearings and meetings, as well as the expert committees. For example, on Monday, February 25, 2008, the Commission conducted a meeting to review suggested draft standards; the meeting lasted all day and I participated via conference call.

We anticipate that draft standards will be released for public comment in the near future.

b. How many meetings or hearings has the Commission held and how many have you attended?

Response: There have been eight hearings, and I have attended four. Unfortunately, I had schedule conflicts with the remaining four. I was provided with written materials for review from those hearings that I missed. There has also been one public meeting at Notre Dame Law School, which I attended. As discussed earlier, those hearings comprise only a portion of the work done by commissioners. The Commission also has semi-regular non-public conference calls, and we have had a number of executive business meetings.

c. Have you provided the Committee with all public statements you made in connection with your service membership on the Commission? If not, please do so.

Response: All public proceedings of the Commission are available at its website, www.nprec.us. The website also has all public statements made by the Commission. In the light of the length of the hearing transcripts, I am having the Commission deliver the transcripts in electronic form to you. During the hearings, I did ask questions, but I did not understand these questions to be the sort of public statements requested by the Committee.

7. There have been reports that a country club to which you belong, the Belle Meade Country Club in Nashville, does not give its female members the same voting rights as men. Is that true? If so, when did you learn of this, and have you taken any steps to seek equal treatment of women by the club?

Response: Belle Meade Country Club has a membership that includes people of different genders, races, national origins, religions, and sexual orientation. The club has several different membership categories, and all members and their families, regardless of membership category, are permitted to use the club's facilities. When I joined the club in 2001, I did so with the belief that it was not restrictive with respect to gender, race, national origin, religion or sexual orientation.

I understand that the only membership category that may vote is the "Resident Member" category. (I am not a Resident Member, so I may not vote, either, nor can I propose new members. I am also not permitted to be involved in the governance of the club.) At present, there are no women who are in this membership category; however, I understand that the bylaws of the club do not restrict eligibility for the "Resident Member" category except by age (18 years and older) and geography (within 100 miles of Nashville). Thus, I do not believe there is a policy to restrict a woman from being proposed as a "Resident Member." I am not aware, nor have I been made aware, that any woman has been proposed or has sought to be proposed as a "Resident Member."

Given my understanding that at least three judges bound by the Code of Conduct for United States Judges are currently members of Belle Meade Country Club, I had assumed and still assume that there are no issues with respect to Canon 2(c) of the Code of Conduct for United States Judges. If confirmed, I will consult immediately with the General Counsel's Office at the Administrative Office of the U.S. Courts, and/or seek a confidential advisory opinion from the Committee on Codes of Conduct, to confirm this understanding regarding Canon 2(c) and the current practices and policies of Belle Meade Country Club. In the event my assumption is mistaken, I will set about taking the actions required pursuant to Canon 2(c), up to and including resignation from the club.

Responses of Gustavus Adolphus Puryear IV
Nominee to the U.S. District Court for the Middle District of Tennessee
To the Written Questions of Senator Edward M. Kennedy

1. During the hearing on your nomination, Senator Feinstein asked you several questions about the death in 2004 of Estelle Richardson, a female inmate in solitary confinement at a facility operated by your client, Corrections Corporation of America. An autopsy showed that Ms. Richardson had a fractured skull, multiple broken ribs, and liver damage. The Chief Medical Examiner for the State of Tennessee ruled her death a homicide caused by "blunt force injuries to the head," and in 2005, four CCA guards were indicted on murder charges in connection with her death. The charges were dropped by prosecutors, apparently because they could not determine the exact time the injuries were inflicted, and CCA settled a civil lawsuit by Richardson's family in 2006.

a. You testified that experts for CCA and Ms. Richardson's family concluded "that [Ms. Richardson's] was not a death that resulted from a beating within anything close to the timeframe that had been assumed by the medical examiner." Do you dispute that Ms. Richardson's death was a homicide?

Response: Despite the intense investigatory efforts of law enforcement authorities, various medical experts, lawyers engaged by CCA, and lawyers engaged by the Richardson family, it was not possible to determine with certainty the medical cause of Ms. Richardson's death. I personally do not know the cause of Ms. Richardson's death. I can only state that her death was a profoundly distressing event to me personally and professionally. Because I do not know whether Ms. Richardson's death was a homicide, I would neither dispute nor concur with the opinion that her death was a homicide, although there is substantial evidence that it was not.

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

I understand that the Committee has received a transcript of the settlement hearing in the federal civil case, which is now publicly available. In that

hearing, the Richardson family's lawyer, David Randolph Smith, disputed the medical evidence underlying the criminal prosecution and noted that Ms. Richardson had a seizure disorder. He also opined that the homicide cases would likely "fall apart," as indeed they did. In a separate letter to the Judiciary Committee dated February 25, 2008, Mr. Smith further stated that:

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

(Emphasis added.)

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

Unfortunately, the medical findings by both the family's and CCA's experts do not permit a definitive conclusion as to how Ms. Richardson died. In my testimony to the Committee, I relied in good faith on these opinions. My opinion that there is substantial uncertainty regarding the cause of Ms. Richardson's death is also shared by the lead lawyer for the Richardson family in his letter to the Committee.

b. You testified that the correctional officers suspected of beating Ms. Richardson to death were "exonerated." It appears that there was never any final legal determination of these officers' guilt or innocence, because there was never a trial at which they could be either acquitted or found guilty. Instead, it appears that prosecutors determined that evidence was insufficient to support a prosecution. What did you mean when you stated that the officers had been exonerated? Do you agree that a prosecutor's decision not to press charges is different from a jury finding of innocence?

Response: When I stated that the officers had been exonerated, I meant that they had been relieved of the criminal charges against them. I was using this term according to its common, colloquial meaning.

I do agree that a prosecutor's decision not to prosecute a previously indicted defendant is different from a jury's verdict of "not guilty."

c. **You also testified that Ms. Richardson's injuries "would be consistent with CPR being performed . . . and the liver injury could also be explained that way. That commonly does happen." The Chief Medical Examiner for the State of Tennessee, who performed the autopsy on Ms. Richardson, informed the Committee that "[t]here is no doubt in my mind that both the fatal head injuries and the rib fractures/liver damage were inflicted on Ms. Richardson and not the result of CPR." Please describe in detail the reasons you believe that injuries to the skull, ribs, and liver like those suffered by Ms. Richardson "commonly" result from CPR? Do you have any evidence suggesting that Ms. Richardson's injuries were inflicted in this manner? If so, please provide to the Committee any evidence you have to support this view.**

Response: I appreciate the opportunity to clarify the record. I do not believe I testified that that the skull injury was caused by CPR, nor do I have any reason to believe that to be true.

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

In addition to Dr. McCormick's cited authorities, the American Heart Association's website with information on CPR notes that "[e]ven properly performed chest compressions can cause ribs to break in adult victims." American Heart Association National Center, "Is it True that I Could Break Someone's Ribs by Doing CPR?" (created Feb. 9, 2006) available at http://my.americanheart.org/jive/entry.jspa!externalID+115&categoryID=10. "Rib fractures are the most common complication associated with CPR and may occur in up to 50 percent of patients." M.D. Ziegenfuss & D.V. Mullany, "Traumatic Liver Injury Complicating Cardiopulmonary Resuscitation. The

Value of a Major Intensive Care Facility: A Report of Two Cases," 6 Critical Care and Resuscitation 102, 104 (2004).

Finally, in a letter to the Committee dated February 25, 2008, David Randolph Smith, the lead lawyer for the Richardson family in the civil litigation, states in his discussion surrounding the "complex and debated" cause of Ms. Richardson's death: "There were also issues on whether CPR may have caused the liver and rib injuries."

To be sure, it is unlikely that anyone will ever know definitively what caused the rib and liver injuries.

d. You testified that "there are any number of possible explanations" for Ms. Richardson's death, "including fights with other inmates [and] self-inflicted wounds," among other things. Please explain in detail why you believe that Ms. Richardson, who was in solitary confinement, could have been involved in a fight with other prisoners. In addition, please explain in detail why you believe Ms. Richardson might have fractured her own skull and ribs. Please also provide the Committee with any evidence you have to support these contentions.

Response: With respect to my statement regarding "fights with other inmates," it is important to remember that there were disputes concerning the timing of Ms. Richardson's primary skull injury, and that there were older brain injuries. As noted in the letter from Dr. McCormick to Dr. Levy, dated April 18, 2006 (attached to the letter from James F. Sanders to the Committee dated February 26, 2008), Dr. McCormick believed the brain contusions resulting from the primary skull injury could not have occurred within 72 hours of her death "with a more probable date of 2 to 3 times that interval." The conclusion that these brain contusions occurred at least three days prior to death was shared by the Richardson family's experts.

Furthermore, my recollection of what I learned about the medical experts' opinions is that they believed Ms. Richardson had some other, older head injuries that likely occurred weeks before her death. For at least those injuries, there would be a range of possible third parties who could be responsible (inmates or officers) as Ms. Richardson was placed in solitary confinement on June 17, or about 18 days prior to her death. Ms. Richardson had a history of altercations with other inmates, which is part of the reason she was placed into solitary confinement.

Of course, as discussed later, it also seems clear to CCA's and the Richardson family's experts that the brain injuries or injury by themselves did not cause her death (otherwise, she would have died closely after such an injury or injuries was sustained, not days later). My recollection of the expert opinions, however, is that one possible explanation for Ms. Richardson's death is that

the cumulative effect of the brain injuries – both the older, less severe injuries and the more recent, primary injury – when combined with her medical history of seizures, may have contributed to a significant, fatal seizure on the morning of July 5, 2004. So it would have been more accurate for me to have testified that "previous fights with other inmates may have played a role in her death." I did state that some contact with an unknown corrections officer could have been a possible explanation, too.

Concerning the possibility that Ms. Richardson's death could have involved a self-inflicted injury, based on what Dr. McCormick related to me (and others), the primary skull fracture was a deceleration injury. Dr. Levy has publicly affirmed this view, too (telling the press that Ms. Richardson's head was likely slammed into a hard object, such as a wall). Put differently, the "blunt force trauma" to the head was the result of a head in motion striking an object; not an object in motion striking the head. My understanding of the medical experts' opinions is that this raises the possibility that Ms. Richardson could have unintentionally struck her own head against an object or concrete floor (as in the case of a seizure or fall). That was at least one theory that our expert expressed to me, and I was attempting to offer the Committee, on behalf of my current client, the entire range of possible explanations for her death.

In that regard, I believe that it is instructive to look to what the Richardson family's lawyer has told the Committee about the range of possible causes in his letter dated February 25, 2008:

> In a nutshell our extensive investigation and expert analysis (including a neurosurgery expert from Stanford University Medical School, Dr. Tse, and the former Chief Medical Examiner of the State of Kentucky, Dr. Nichols) indicated that the circumstances and causes of Ms. Richardson's tragic death were complex and debated. Dr. Levy, the Tennessee medical examiner, attributed the death to a recent traumatic brain injury (skull fracture). That opinion was contested vigorously by the defense and our own experts attributed the death to a seizure and concluded that the skull fracture was not caused by the four guards who had been indicted. From the standpoint of the plaintiff there was still a very strong case on death being caused from lack of timely medical treatment and a real fact issue on when the skull fracture occurred.

(Emphasis added.) As you can see, the potential causes of death were sufficiently "complex and debated" that several explanations – many of which may still have posed the risk of civil liability for CCA – are still presented, including a seizure and lack of timely medical treatment.

Finally, as should be clear, I do not believe Ms. Richardson fractured her own ribs, and there is no evidence to support that conclusion.

e. Some suggest that your testimony that Ms. Richardson's death might have been caused by CPR reveals that you would not be able to separate yourself from your role as an advocate in cases involving the treatment of inmates in order to impartially weigh evidence as a federal judge. What is your response to this concern?

Response: I appreciate the opportunity to clarify the record. I did not testify that CPR caused Ms. Richardson's death and I do not hold that belief.

Nonetheless, I appreciate the broader context of this question, as it raises a number of important issues. When a judicial nominee is questioned in detail about the facts and circumstances of an event giving rise to litigation for one of his clients years before, that questioning forces the nominee to consider his ethical duties to his current and former client with respect to that matter, and not just his own self-interest. As you know, I am still CCA's lawyer, and owe CCA my duty of professional loyalty. If I appeared to defend CCA with respect to the questions about Ms. Richardson's death, that is because I take my professional obligations seriously.

I think the only legitimate issue that could be raised from this testimony is whether I could be fair in resolving a case in which I acted as the lawyer. The self-evident answer to that question is "no," and that is the very reason why judges recuse themselves from all matters in which they were involved as lawyers. Moreover, to ensure that there is no perception of partiality involving my current and former client, CCA, I reiterate that I will recuse myself from cases involving CCA in the event I am confirmed.

As to the broader suggestion, about whether I could be fair regarding cases involving the treatment of inmates generally, I think it important to know that my exposure to corrections over the past seven years has made me aware that there are, in fact, individuals in corrections who commit grievous crimes against inmates – ranging from physical abuse to sexual exploitation. Indeed, it is my personal belief that some individuals may be attracted to careers in corrections because they seek to control and exploit others, and, no matter how careful a corrections employer is in attempting to screen out such individuals, some may wind up being hired. I also know that some corrections officers become compromised by simple errors in judgment, and that those errors can have terrible consequences.

I have also seen first-hand the good that can come from corrections. I remember encountering an inmate at a facility who tied beautiful flies for fishing. The delicacy and precision of his work caught my eye, even though I had never before fly-fished. We talked about how he became interested in

that hobby; how long it took him to tie various flies; and, ultimately, why he was in prison, when he hoped to get out, and what his dreams were for the future. I have likewise met former inmates who now work for CCA as counselors, who have movingly described their rehabilitation. So I have seen the humanity of those who are, and have been, incarcerated, and I understand that the hope for rehabilitation that must be carefully nurtured in environments that are not always conducive to it.

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

In short, I think my experiences will make me particularly sensitive to issues raised in inmate lawsuits. And, there are other, objective actions that I believe demonstrate my personal commitment to the humane treatment of inmates:

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

I close with a statement I made on the record, long prior to this nomination, when commenting on my visits to corrections facilities operated by CCA:

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

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

2. You have acknowledged that, if confirmed, you would be required to recuse yourself from cases involving your client CCA, in which you hold stock. You

disputed, however, that this recusal would create a case management problem for the court, and stated that you believe about 181 cases involving CCA have been filed in the Middle District of Tennessee since 2000.

a. **Does your estimate also include cases involving CCA operations or facilities that have been filed against CCA's CEO or former CEO, the Prison Realty Trust, and CCA wardens? If not, please explain in detail why not.**

Response: My estimate did not include the cases filed against CCA's CEO, former CEO, and Prison Realty Trust. CCA's former CEO was no longer a related party by the midpoint of 2000. Likewise, Prison Realty Trust (which did not conduct corrections activities, but instead was a holder of real estate) was merged into CCA in 2000 and ceased to be a separate entity. The cases naming the former CEO and Prison Realty Trust would have largely been federal securities cases that would not be recurring. Finally, many cases naming wardens were included, to the extent that they also named CCA – which they often do (unless the case is a habeas corpus case).

b. **Attached is a list of cases that appear to involve CCA or CCA officials, which have been filed since 2000. Do you agree that this list accurately reflects the cases against CCA that have been filed since 2000? If not, please explain in detail what information you believe is inaccurate. If there are additional cases that should be included on this list but are not, please identify those them.**

Response: I do agree that the list accurately reflects cases filed against CCA, Prison Realty Trust, CCA's former CEO, CCA's current CEO and various CCA wardens.

What cannot be determined from this PACER list, due to common codes used for civil rights cases and habeas corpus petitions, is whether the cases naming wardens are actually civil rights cases against CCA or are habeas corpus petitions where the real party in interest is a governmental entity, not CCA. Although the custom in a habeas case is to name the warden of the facility holding the person, that does not make CCA (or the warden) the real party in interest. Most such cases would be handled by the Tennessee Attorney General's office with respect to Tennessee inmates. Only by checking the individual pleadings in each case naming a warden would it become clear whether such was the case.

Assuming that every case presented on the attached PACER list did, in fact, involve CCA (even though this almost certainly overstates the frequency of cases), there were 273 cases filed against CCA during the more than eight-year period from January 1, 2000 to February 12, 2008.

Of these cases, PACER also shows that 105 were dismissed on the very same day they were filed (apparently by a magistrate judge pursuant to the Prison Litigation Reform Act), and thus did not require a district judge's efforts. Accordingly, over more than eight years, 168 cases actually required assignment to a district judge for responsive pleadings - an average of just under 21 cases per year.

This compares to about 15,000 cases filed since 2000 in the Middle District. I do not believe that my recusal from CCA cases would impose a substantial burden on the other district judges in the Middle District of Tennessee.

3. You stated at your hearing that you would recuse yourself from cases involving any company that you have served as a fiduciary, including the community bank in Nashville for which you serve as a member of the Board of Directors, and "any nonprofits" with which you have a fiduciary relationship. Please identify the specific institutions to which you referred in your answer.

Response: I serve as a director of Nashville Bank & Trust Company. The non-profit institutions to which I referred are: American Red Cross, Nashville Chapter; Antiques & Garden Show of Nashville; Boy Scouts of America, Middle Tennessee Council; Cheekwood Botanical Gardens & Museum of Fine Art; Exchange Club of Nashville; and First Presbyterian Church, Nashville.

4. You've stated that you're a member of Nashville's Belle Meade Country Club, a private club that did not admit African American members until 1994. In addition, the club reportedly grants voting privileges to male members, but not female members.

a. Is it true that the Belle Meade Country Club does not permit female club members to vote? If not, please explain why, and state whether you have ever sought to change this policy. If you do not know the reasons for this policy, please obtain a response from the club and provide that answer to the committee.

Response: Belle Meade Country Club has a membership that includes people of different genders, races, religions, national origins, and sexual orientation. The club has several different membership categories, and all members and their families, regardless of category, are permitted to utilize the club's facilities. When I joined the club in 2001, I did so with the belief that it was not restrictive with respect to gender, race, national origin, religion, or sexual orientation.

I understand that the only category that may vote is the "Resident Member" category. (I am not a Resident Member, so I may not vote, either, nor may I propose new members. I am also not permitted to be

involved in the governance of the club.) At present, there are no women who are in this membership category; however, I understand that the bylaws of the club do not restrict eligibility for the "Resident Member" category except by age (18 years and older) and geography (within 100 miles of Nashville). Thus, I do not believe there is a policy to restrict a woman from being proposed as a "Resident Member." I am not aware, nor have I been made aware, that any woman has been proposed or has sought to be proposed as a "Resident Member."

Given my understanding that at least three judges bound by the Code of Conduct for United States Judges are currently members of Belle Meade Country Club, I had assumed and still assume that there are no issues with respect to Canon 2(c) of the Code of Conduct for United States Judges. If confirmed, I will consult immediately with the General Counsel's Office at the Administrative Office of the U.S. Courts, and/or seek a confidential advisory opinion from the Committee on Codes of Conduct, to confirm this understanding regarding Canon 2(c) and the current practices of Belle Meade Country Club. In the event my assumption and understanding should be mistaken, I will set about taking the actions required pursuant to Canon 2(c), up to and including resignation from the club.

b. Please inform the Committee of the racial diversity of the Belle Meade Country Club, in terms of the number of minority members in comparison to the total number of members. If you do not know, please inquire with the Club and provide the Committee with a response.

Response: I am advised that the club does not track its members based on race, nor does it respond to such requests. I am personally aware that there are minority members, but I do not myself know the number. Should the club respond to my inquiry, I will forward any such response.

c. Why were no African Americans admitted as members of the Club until 1994? Has the club ever had a policy against admitting African American members? If you do not know, please inquire with the Club and provide the Committee with a response.

Response: I understand that there were no African Americans admitted prior to 1994; however, I was not an Associate Member until 2001, and thus cannot opine on this question based on my personal knowledge. I will forward any response I may receive from the Club.

d. It is essential for federal judges to be, and to be perceived as, impartial decisionmakers who will treat all parties fairly. What can you say to assure the public that, if you are confirmed, your affiliation

with the Belle Meade Country Club will not prevent you from doing so?

Response: I strongly agree that federal judges must be impartial and be perceived as impartial. I would hope that my membership in a club that has among its members people of different genders, races, faiths, national origins, and sexual orientation would not cause people to question my impartiality. Nevertheless, as I committed to do earlier, if confirmed I will seek to make sure that my understanding of the application of Canon 2(c) to the membership policies of the club is correct, and, if not, will take such actions as are required by the canon, up to and including resignation from the club.