

**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.