

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.