

**Responses of Gustavus Adolphus Puryear IV  
Nominee to the U.S. District Court for Middle District of Tennessee  
To Additional Written Questions of Senator Diane Feinstein**

1. **Classification of Zero-Tolerance Events.** Ronald T. Jones, a former employee of Corrections Corporation of America, has alleged that you oversaw a system in which reports of disturbances and major violent incidents at CCA prisons were downplayed. According to press reports, it was not unusual for Mr. Jones to be instructed not to count major incidents as “zero-tolerance events,” even though the incidents met CCA’s internal criteria for being counted in that category.

**Please respond to Mr. Jones’s allegations.**

Response: The allegations are false. I appreciate this opportunity to respond to them. Incident reports are made by facility employees to appropriate governmental personnel as provided by contract or regulation, and are designed to complement the observations of the governmental agency’s own on-site monitors. The Quality Assurance Department (in which Mr. Jones once worked) is not involved in the reporting of incidents at a CCA facility to governmental customers.

CCA’s governmental customers usually have an on-site contract monitor to whom incident reports can be made, though, in a major incident, there may be elaborate incident reporting mechanisms that can include notification to very senior governmental officials (e.g., a state corrections commissioner) and to local law enforcement authorities. These procedures vary by facility, customer and event, and thus the reporting of incidents is decentralized.

After the incident is appropriately reported, the CCA Quality Assurance Department collects all CCA incident data and classifies it for the sole purpose of improving the quality of CCA’s operations. At the request of CCA’s Operations Department, five types of incidents are internally designated as “Zero Tolerance” events: unnatural deaths (homicides or suicides), sexual assaults, hostage-takings, escapes, and disruptive events. The designation of such data is used for internal purposes only. It is neither designed for nor provided to anyone outside of CCA.

With this background in mind, I have never sought to “downplay” violent incidents within CCA, nor is there any reason for me to do so. The compensation of CCA’s executive officers, including my own, is not affected in any way by “Zero Tolerance” events, as is made clear in CCA’s annual proxy statement, which is publicly available. My interest has always been to ensure that our internal incident reports are accurate. As a lawyer, my primary ethical duty to CCA is to its Board of Directors, which receives the

Zero Tolerance data collected and classified by the Quality Assurance Department. To fulfill that duty, I have sought assurances from Mike Quinlan, the Senior Vice President who supervises the Quality Assurance Department, that Quality Assurance was getting all incident data from facilities.

For that reason, I am the internal sponsor of the Company's significant new investment in a technology system to automate incident reporting. This system should not only reduce delays in the notification of incidents to the Quality Assurance Department, but also should improve the accuracy and reliability of the data received.

Most important, I strongly believe in hiring the right person and trusting that person to perform his or her function. Mike Quinlan is one of the most experienced corrections professionals in the country. He has spent 37 years in corrections, with 22 years at the Federal Bureau of Prisons. He served as Director of the Federal Bureau of Prisons for five years, and, while serving as Director, oversaw the creation of the Program Review Division – the Bureau's own quality audit process. He has been a colleague of mine at CCA since my first day with the Company, having previously served as CCA's Chief Operating Officer. The American Correctional Association recently bestowed upon him its highest honor, the E.R. Cass Award. I trust his judgment in corrections matters, and I have confidence in his honesty. Because of his vast expertise and experience in this area, Mr. Quinlan is responsible for defining "Zero Tolerance" events and applying those definitions to specific incidents.

I have also supported at least two changes that I recall Mr. Quinlan making to the definitions of "Zero Tolerance" events. Specifically, Mr. Quinlan changed the definitions of "disruptive event" and "sexual assault." These changes broadened those definitions and thereby increased the potential number of such events to be reported. These changes are discussed in more detail later.

Finally, to clarify the false nature of Mr. Jones's allegations, I attach a letter from Mr. Quinlan to Representative Mike Turner of the Tennessee House of Representatives. See Exhibit A. This very detailed letter and its attachments address the same concerns that you have raised in these questions, and I believe it sheds important light on the press accounts underlying them.

**Did you ever discuss, create, develop, implement, or approve a policy to classify or to reclassify incidents at CCA prisons, either in general or in response to specific incidents?**

Response: Yes. On at least two occasions that I recall Mr. Quinlan informed me that he was expanding the definition of two types of "Zero Tolerance" events. I have never discussed, created, developed, implemented, or approved a policy that would have had the effect of contracting the number of incidents

reported as “Zero Tolerance” events, either in general or in response to specific incidents.

In 2006 the definition of “disruptive event” was broadened, while in 2007 the definition of “sexual assault” was broadened to include behaviors not previously covered. The effect of these changes is potentially to increase the number of incidents classified as “Zero Tolerance” events at CCA prisons. I do not recall that Mr. Quinlan’s changes were prompted by specific incidents.

While I approved of the changed definitions, I left the development of such definitions and the application of the definitions to particular incidents squarely within the discretion of Mike Quinlan.

**To your knowledge, was anyone at CCA ever instructed to reclassify an incident as something other than a “zero tolerance” event?**

Response: I believe Mr. Quinlan informed me of two or three incidents over the last three and one-half years that were initially classified as “disruptive events” (i.e., a type of “Zero Tolerance” event) based on original incident reports that he later reclassified as a result of his learning additional information about each incident. It is thus possible that he would have instructed someone within the Quality Assurance Department to reclassify those events; however, I have not.

**Did you ever tell or advise anyone directly or indirectly that an incident should be reclassified?**

Response: No.

**Did you ever discuss, agree with, or approve a suggestion made by someone else that an incident should be reclassified?**

Response: I believe Mike Quinlan informed me of two or three incidents over the last three and one-half years that were initially classified by Quality Assurance as “disruptive events” based on original incident reports that he later reclassified as a result of his learning additional information about each incident. I recall agreeing with Mr. Quinlan’s changes.

2. **Use of Attorney-Client Privilege. Mr. Jones has also alleged that starting in 2005 you ordered him to label detailed audit reports, which included factual data on incidents at prisons, as attorney-client privileged documents. According to Mr. Jones, senior quality assurance staff at CCA told him you wanted this label to be added to prevent the information from being accessible under sunshine laws. The effect of this practice, according to Mr. Jones, was that CCA’s contract partners received only summary audit**

reports – with much less information about serious incidents – starting in 2005.

**Did you ever discuss, create, develop, implement, or approve a policy of extending or adding a privilege label to facility audit documents that previously were not treated as privileged? If yes, please explain why and explain the legal analysis to support a claim of privilege for such documents?**

Response: Before responding to the first question presented, I appreciate the opportunity to clarify certain statements attributed to Mr. Jones. First, I never spoke to Mr. Jones about a substantive issue or the labeling of documents. There were three intermediate supervisors between Mr. Jones and me, and I simply did not have anything more than very casual, incidental conversations with him.

Second, quality assurance auditors do not usually provide information on individual incidents. Thus, audit reports do not usually include “factual data on incidents at prisons.” The actual audit reports contain measurements of a facility’s operational competency. They are not investigations of incidents.

Further, as a point of clarification, the internal labeling of documents is not an assertion or claim of privilege. In fact, I know that CCA has produced documents to parties litigating against CCA that bear “privileged” labels (many of which were designed before I arrived at the Company and are still in use today), as well as to governmental investigators. This production underscores the fact that internal labeling cannot convert otherwise unprivileged documents into privileged ones. Assertions of privilege must be made on a case-by-case basis in response to a legal request for the document. Documents are labeled merely to ensure that a company has every opportunity to assess whether a privilege applies to a particular document before producing it in response to a legal request to produce that document.

Returning to the question you have posed, I did have a discussion with Mike Quinlan and Don Murray (Managing Director, Quality Assurance) about our desire to encourage auditors’ complete candor in sharing observed concerns outside of the audit measurements. As I understood it, these observations might be made while conducting the audit, and they could relate to areas of potential risk to the Company, including threatened or likely litigation. Messrs. Quinlan and Murray were concerned that including such observations in the audit document itself could lead to their disclosure, which would ultimately chill frank communication. In fact, as I recall it, since those observations were written into one of the first few audit reports, such comments had already been released pursuant to an open-records request.

We then discussed the limited number of facilities where such audit documents had to be released to the customer (I believe there were two such facilities). We also discussed that these observations were not a part of the audit measurements themselves. Finally, we discussed the desirability of continuing to receive such suggestions from the auditors in order to improve the quality of CCA's operations.

At that time, I suggested that the Company may have an additional basis for seeking to protect such observations. I believe I mentioned possible attorney-client privilege issues, work product protections, and potential self-evaluative privilege issues (in some jurisdictions). I asked that Mr. Quinlan and Mr. Murray speak with Steve Groom and any members of his staff he wished to involve. Mr. Groom serves as Deputy General Counsel and Vice President, Litigation Management. He is a lawyer with 30 years of experience, some as a trial lawyer and some in the general counsel's offices of large corporations. I was later told that Mr. Groom had met at length with Messrs. Quinlan and Murray. I was informed that, as a result of that meeting, the Quality Assurance Department clarified that any observational concerns separate from the audit measurements were to be included only in documents addressed to the legal department and seeking its advice, and that such documents were to be marked as privileged. In the sense that I suggested the meeting and was comfortable with my understanding of its result, I was involved in the "discussion" or "creation" of such labels.

The labeling of these documents was of far less significance to me than making sure we were getting candid information to advise the Company to take steps to protect the health and safety of our employees and the inmates entrusted to our care. I did not perform legal research on the subject, and I did not review the implementation or labeling of document types. In any event, I believed then, and believe now, that flagging such documents for consideration of any applicable privileges before they might be released was prudent, appropriate, and conducive to candor.

To my knowledge, CCA has not claimed a privilege in litigation with respect to these documents.

**Did you ever communicate that you wanted to use the privilege label to shield information from sunshine or freedom-of-information laws?**

Response: I did not communicate that the privilege label would be used to shield information from sunshine or freedom-of-information laws; however, the label was intended to ensure legal review of any such document before it would be given to a third party. This is a common practice among corporations. This confidentiality is particularly important here, because it ensures that CCA gets candid observations from auditors about observed concerns. If an auditor assumed that such documents would appear in the

press, that auditor would be hesitant to convey serious concerns to the company, especially if such concerns might impact an employee's continued employment.

Since the issue of whether such a document might be subject to sunshine or freedom-of-information laws is not controlled by the "label," I would not have communicated that the label would shield document production from such laws.

At all times, I and the others discussing the manner in which these observations would be made were motivated by a desire to encourage frank and candid observations that might prevent tragedies in CCA's facilities. The desire was to improve the safety and security of our facilities, which would be of benefit to both CCA's employees and the inmates entrusted to CCA's care.

**Did CCA ever consider using a different designation, such as "Confidential" or "For Internal Use Only," instead of the attorney-client privilege label?**

Response: I do not recall any discussions of such different designations. From a legal standpoint, of course, the "label" does not define the right to confidentiality in the face of an appropriate discovery or other legal request.

**In addition, who was made aware that the more detailed, newly privileged audit documents existed?**

Response: Our customers received the new audit report with its detailed measurements. As to any separate observational concerns raised by auditors for internal use, many members of the Quality Assurance and Legal departments were aware that confidential documents existed containing those observations, as did senior personnel within the Operations Department.

**Were CCA's contract partners (including federal, state, and/or local corrections authorities) aware?**

Response: **Because the intent was to use such documents for internal purposes only, so that auditors would feel free to make candid observations to help protect the health and safety of CCA's employees and inmates, we did not make customers aware of these documents.** Customers were already receiving, if they wished, the audit report with its detailed measurements, and they were receiving all incident reports required from the facility.

CCA's contract partners receive more data now than ever. The audit measurements in use now (and available to any customer that requests them) are far more detailed and relevant than what was provided to CCA's contract partners before Quality Assurance was moved under my supervision. The

vast majority of these contract partners also conduct their own audits of CCA's facilities and have their own on-site monitors that scrutinize CCA's operations.

**Was anyone else aware?**

Response: CCA did not make anyone else aware to my knowledge. The intent was to use such documents for internal purposes only, so that auditors would feel free to make candid observations that might protect the health and safety of CCA's employees and inmates.

**Has CCA ever shared such documents with a contract partner or with others?**

Response: CCA does share the audit report containing ratings and measurements, but not the separate commentary made by auditors. I am not aware of any request to share such documents.

CCA does share the audit report with any customer that desires to see it, regardless of whether CCA is obligated by contract or regulation to provide it. (I am aware of only two contracts that specifically require CCA to conduct a quality assurance audit of a facility and provide that report to the customer, though the form of the audit and accompanying report are unspecified.) Moreover, as discussed, most contract partners conduct their own audits of CCA facilities in addition to having a full-time on-site monitor.

**Has CCA used a claim of attorney-client privilege to withhold such documents when requested by a contract partner, by a government investigator, by a party in litigation or arbitration, or in a sunshine or freedom-of-information request?**

Response: Neither I nor others within CCA's legal department are aware that CCA has asserted a privilege to withhold such documents.

- 3. Hutto Facility. A report in the *New Yorker* magazine in March 2008 indicated that a guard at CCA's T. Don Hutto immigrant detention center was caught engaging in sexual activity with a prisoner in May 2007. The guard reportedly was not prosecuted.**

**Please explain your response to this incident.**

Response: As you know, I serve as a commissioner of the National Prison Rape Elimination Commission, and an event like this is extremely troubling to me. I have learned, both through my service on that commission and my work at CCA, that sexual activity between corrections officers and those confined to such facilities is regrettably too common. All of us involved in corrections