# PRISON LEGAL NEWS

**Dedicated to Protecting Human Rights**



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June 28, 2010

**SENT VIA FAX ONLY**

Senate President Colleen Hanabusa
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

**RE: Veto of HB 415**

Dear Senator Hanabusa:

I am the associate editor of Prison Legal News, a non-profit publication that reports on criminal justice issues, and I am contacting you in reference to HB 415, which was recently vetoed by Governor Lingle. HB 415 would, among other provisions, require that the State Auditor conduct an audit of Hawaii's contract to house over 2,000 prisoners in mainland facilities operated by Corrections Corporation of America (CCA).

I ask that you vote to override the governor's veto, to ensure that an audit is conducted into the state's $60 million annual contract with CCA to house Hawaii inmates on the mainland.

As you are likely aware, last year the State of Hawaii withdrew its female inmates from CCA's Otter Creek Correctional Facility in Kentucky following a sex scandal in which at least six CCA employees were charged with sexual abuse or rape, including the prison's chaplain. I was quoted in the *New York Times* concerning that egregious situation; a copy of the article is enclosed.

You are also likely aware that two Hawaii inmates recently were murdered at the CCA-operated Saguaro Correctional Center in Eloy, Arizona – Clifford Medina was strangled to death on June 8, while Bronson Nunuha was stabbed to death on February 18, 2010. Two homicides within a four-month period is unusual in any prison system and is indicative of major problems.

Most importantly, an audit of the State's contract with CCA is necessary because CCA can not be relied upon to assess itself. Although CCA conducts its own internal audits, according to a March 13, 2008 *TIME* magazine article based on the reports of a corporate CCA whistleblower, the company produces two types of internal audit reports: A general audit report is provided to contracting government agencies, while an audit with specific comments and notations by the

CCA auditors is retained for in-house use only. A copy of the *TIME* article is enclosed. In fact, the company's then-General Counsel Gus Puryear admitted, in response to questions by the U.S. Senate Judiciary Committee, that CCA "did not make customers aware of these documents," and specifically said CCA does not share "the separate commentary made by auditors." An excerpt from Mr. Puryear's written responses is attached; the full document is too large to fax but can be accessed at the following web link or I can email you a copy upon request:

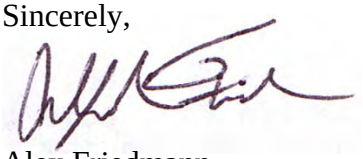
www.privateci.org/private_pics/Puryear%20Sen%20Feinstein%202.pdf

Based on the sex abuse scandal at CCA's Otter Creek facility, in which a number of Hawaii inmates were sexually abused, as well as the recent murders of two Hawaii prisoners at CCA's Saguaro facility, and CCA's admission that it does not share all of its internal audit documents with its customers, I ask that you vote to override Governor Lingle's veto of HB 415. An audit of the State's $60 million contract with CCA is necessary to ensure that Hawaii taxpayers are getting the value they are paying for when housing inmates in mainland private prisons.

For full disclosure purposes, I also serve as president of the Private Corrections Institute, which opposes prison privatization, and am a former prisoner who served six years at a CCA-operated facility in the 1990s. Since my release in 1999 I have extensively researched private prisons, and have testified before legislative committees in two states and the U.S. House Subcommittee on Crime, Terrorism and Homeland Security in regard to that topic.

Thank you for your time and attention;

Sincerely,



Alex Friedmann,
Associate Editor, PLN

cc: Senate members

August 26, 2009

**Hawaii to Remove Inmates Over Abuse Charges**

*New York Times*
By IAN URBINA

Hawaii prison officials said Tuesday that all of the state's 168 female inmates at a privately run Kentucky prison will be removed by the end of September because of charges of sexual abuse by guards. Forty inmates were returned to Hawaii on Aug. 17.

This month, officials from the Hawaii Department of Public Safety traveled to Kentucky to investigate accusations that inmates at the prison, the Otter Creek Correctional Center in Wheelwright, including seven from Hawaii, had been sexually assaulted by the prison staff.

Otter Creek is run by the Corrections Corporation of America and is one of a spate of private, for-profit prisons, mainly in the South, that have been the focus of investigations over issues like abusive conditions and wrongful deaths. Because Eastern Kentucky is one of the poorest rural regions in the country, the prison was welcomed by local residents desperate for jobs.

Hawaii sent inmates to Kentucky to save money. Housing an inmate at the Women's Community Correctional Center in Kailua, Hawaii, costs $86 a day, compared with $58.46 a day at the Kentucky prison, not including air travel.

Hawaii investigators found that at least five corrections officials at the prison, including a chaplain, had been charged with having sex with inmates in the last three years, and four were convicted. Three rape cases involving guards and Hawaii inmates were recently turned over to law enforcement authorities. The Kentucky State Police said another sexual assault case would go to a grand jury soon.

Kentucky is one of only a handful of states where it is a misdemeanor rather than a felony for a prison guard to have sex with an inmate, according to the National Institute of Corrections, a policy arm of the Justice Department. A bill to increase the penalties for such sexual misconduct failed to pass in the Kentucky legislature this year.

The private prison industry has generated extensive controversy, with critics arguing that incarceration should not be contracted to for-profit companies. Several reports have found contract violations at private prisons, safety and security concerns, questionable cost savings and higher rates of inmate recidivism. "Privately operated prisons appear to have systemic problems in maintaining secure facilities," a 2001 study by the Federal Bureau of Prisons concluded.

Those views are shared by Alex Friedmann, associate editor of Prison Legal News, a nonprofit group based in Seattle that has a monthly magazine and does litigation on behalf of inmates' rights.

"Private prisons such as Otter Creek raise serious concerns about transparency and public accountability, and there have been incidents of sexual misconduct at that facility for many years," Mr. Friedmann said.

But proponents say privately run prisons provide needed beds at lower cost. About 8 percent of state and federal inmates are held in such prisons, according to the Justice Department.

“We are reviewing every allegation, regardless of the disposition,” said Lisa Lamb, a spokeswoman for the Kentucky Department of Corrections, which she said was investigating 23 accusations of sexual assault at Otter Creek going back to 2006.

The move by Hawaii authorities is just the latest problem for Kentucky prison officials.

On Saturday, a riot at another Kentucky prison, the Northpoint Training Center at Burgin, forced officials to move about 700 prisoners out of the facility, which is 30 miles south of Lexington.

State investigators said Tuesday that they were questioning prisoners and staff members and reviewing security cameras at the Burgin prison to see whether racial tensions may have led to the riot that injured 16 people and left the lockup in ruins. A lockdown after a fight between white and Hispanic inmates had been eased to allow inmates access to the prison yard on Friday, the day before the riot. Prisoners started fires in trash cans that spread. Several buildings were badly damaged.

While the riot was an unusual event — the last one at a Kentucky state prison was in 1983 — reports of sexual abuse at Otter Creek are not new. “The number of reported sexual assaults at Otter Creek in 2007 was four times higher than at the state-run Kentucky Correctional Institution for Women,” Mr. Friedmann said.

In July, Gov. Linda Lingle of Hawaii, a Republican, said that bringing prisoners home would cost hundreds of millions of dollars that the state did not have, but that she was willing to do so because of the security concerns.

Prison overcrowding led to federal oversight in Hawaii from 1985 to 1999. The state now houses one-third of its prison population in mainland facilities.

The pay at the Otter Creek prison is low, even by local standards. A federal prison in Kentucky pays workers with no experience at least $18 an hour, nearby state-run prisons pay $11.22 and Otter Creek pays $8.25. Mr. Friedmann said lower wages at private prisons lead to higher employee turnover and less experienced staff.

Tommy Johnson, deputy director of the Hawaii Department of Public Safety, said he found that 81 percent of the Otter Creek workers were men and 19 percent were women, the reverse of what he said the ratio should be for a women’s prison. Mr. Johnson asked the company to hire more women, and it began a bonus program in June to do so.

*TIME* Magazine

Thursday, Mar. 13, 2008

# Scrutiny for a Bush Judicial Nominee

By Adam Zagorin/Washington

As the top lawyer for America's biggest private prison company, Corrections Corporation of America (CCA), Gus Puryear IV is known to sport well-pressed preppy pink shirts, and his brownish mop of hair stands out among most of President Bush's graying nominees to the federal bench. A favorite of G.O.P. hard-liners, Puryear, 39, prepped Dick Cheney for the vice presidential debates — both in 2000 and 2004 — and served as a senior aide to two former Senators and onetime presidential hopefuls, Bill Frist and Fred Thompson.

Political connections, though, may not be enough to get Puryear a lifetime post as a federal district judge in Tennessee. Puryear recently confronted tough questions about his conduct, experience and potential conflicts of interest from Democrats on the Senate Judiciary Committee, which must approve him before a full Senate vote. Now, a former CCA manager tells TIME that Puryear oversaw a reporting system in which accounts of major, sometimes violent prison disturbances and other significant events were often masked or minimized in accounts provided to government agencies with oversight over prison contracts. Ronald T. Jones, the former CCA manager, alleges that the company even began keeping two sets of books — one for internal use that described prison deficiencies in telling detail, and a second set that Jones describes as "doctored" for public consumption, to limit bad publicity, litigation or fines that could derail CCA's multimillion-dollar contracts with federal, state or local agencies.

CCA owns or operates 65 prisons, housing some 70,000 inmates across the U.S. According to the company's website, it has a greater than 50% share of the booming private prison market. CCA is also a major contributor to Republican candidates and causes, and spends millions of dollars each year lobbying for government contracts. (Puryear enjoys a friendship with Cheney's son-in-law, Philip Perry, who lobbied for CCA in Washington before serving as general counsel for the Department of Homeland Security, which has millions of dollars in contracts with CCA, from 2005 to 2007.) The company has likewise given financial support to tax-exempt policy groups that support tough sentencing laws that help put more people behind bars. Like other prison companies, CCA has faced numerous lawsuits that stem from allegedly inadequate staff levels that can be a cause of high levels of violence in the prisons. Though hundreds of such lawsuits are often pending at any given time, many brought by inmates in its own facilities, CCA under Puryear has mounted an especially vigorous defense against them, refusing to settle all but the most damaging.

Jones knows CCA intimately. Until last summer, the longtime Republican was in charge of "quality assurance" records for CCA prisons across the U.S. He says that in 2005, after CCA found itself embarrassed on several occasions by the public release of internal records to government agencies, Puryear mandated that detailed, raw reports on prison shortcomings carry a blanket assertion of "attorney-client privilege," thus forbidding their release without his written consent. From then on, Jones says, the audits delivered to agencies were filled with increasingly vague performance measures. "If the wrong party found out that a facility's operations scored

low in an audit, then CCA could be subject to litigation, fines or worse," explains Jones. "When Mr. Puryear felt there was highly sensitive or potentially damaging information to CCA, I would then be directed to remove that information from an audit report." Puryear would not comment on the allegations. Jones resigned from CCA last summer to pursue a legal career.

According to Jones, Puryear was most concerned about what CCA described as "zero tolerance" events, or ZT's — including unnatural deaths, major disturbances, escapes and sexual assaults. According to Jones, bonuses and job security at the company were tied to reporting low ZT numbers. Low numbers also pleased CCA's government clients, as well as the company's board, which received a regular tally, and Wall Street analysts concerned about potentially costly lawsuits that CCA might face.

In 2006, for example, Jones says CCA had to lock down a prison in Texas to control rioting by as many as 60 inmates. Despite clear internal guidelines defining the incident as a ZT, Jones says he was ordered not to label it that way. Instead it was logged as, "Altered facility schedule due to inmate action". And this was not unusual, says Jones: "Information was misrepresented in a very disturbing way concerning the company's most important performance indicators, which included escapes, suicides, violent outbreaks and sexual assaults."

Companies often try to show their best face to customers, and safeguard internal records with "attorney-client privilege." But according to Stephen Gillers, a leading expert on legal ethics at New York University, CCA's use of that privilege seems like "a wholesale, possibly overreaching claim," similiar to the blanket assertions of major tobacco companies that tried to keep damaging internal documents from public view. Those assertions of privilege have been rejected by federal judges as an attempt to improperly conceal their internal data on the dangers of smoking from customers, the courts and legal adversaries. CCA could also be in legal trouble if it minimized the tally of serious prison incidents and, by implication, its possible financial liability. As chief legal counsel, Puryear would have also had an obligation to ensure his board had all the information it needed, good or bad, to make decisions. If Puryear's reporting system had the effect of withholding information relevant to official prison oversight, that could bear on his suitability as a federal judge by suggesting his "disdain for the proper operation of an important function of government," notes Gillers.

Contacted by TIME, CCA says that Puryear, "has served the company well and honorably as general counsel and will be an outstanding judge." The company denies allegations that it keeps two sets of books, saying: "A final audit report is made available to our customers. Appropriate information gathered in the audits is separately provided to our legal department." The company adds that "CCA has produced all relevant, non-privileged documents in litigation," that its board is regularly apprised of the most serious prison incidents, and that "all appropriate" information is given to the financial community.

President Bush recently called Puryear and his 27 other judicial nominees facing Senate confirmation "highly qualified." Whether or not the Senate agrees on Puryear, Bush is likely to leave the White House with fewer judges approved than Bill Clinton or Ronald Reagan, both two-term chief executives.

Excerpt:
Responses of CCA general counsel Gustavus Puryear
to written questions of Senator Diane Feinstein.

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