



REPORT ON THE NOMINATION OF GUSTAVUS ADOLPHUS PURYEAR IV TO THE DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

On June 13, 2007, President Bush nominated Gustavus A. Puryear IV to the United States District Court for the Middle District of Tennessee. Mr. Puryear has spent the majority of his legal career as General Counsel for Corrections Corporation of America (CCA), the nation's largest private prison operator. Mr. Puryear was rated qualified by the American Bar Association's Standing Committee on the Federal Judiciary.

BRIEF BIOGRAPHY OF GUSTAVUS PURYEAR

Mr. Puryear was born in Atlanta, Georgia, on May 19, 1968. He graduated with a B.A. from Emory University in 1990 and received his J.D. from the University of North Carolina School of Law in 1993. After graduation, Mr. Puryear clerked for Fifth Circuit Judge Rhesa Hawkins Barksdale and then spent three years as an associate at the law firm of Farris, Warfield & Kanaday in Nashville, Tennessee. In 1997, Mr. Puryear left private practice to become counsel to the Senate Committee on Governmental Affairs, where he worked on the Senate's special investigation of campaign fundraising in the 1996 presidential election. From 1998 to 2000, Mr. Puryear served as Legislative Director for Senator Bill Frist (R-TN). He took a brief hiatus from that job to spend three months advising Vice President Cheney in his preparation for a debate during the 2000 presidential election, a task Mr. Puryear repeated in 2004.¹

In January 2001, Mr. Puryear became Executive Vice President, General Counsel & Secretary at Corrections Corporation of America, a position he continues to hold. CCA is the founder of the private prison industry and the fifth largest corrections system in the nation, behind only the federal system and three state systems.² The company has approximately 72,500 beds in 65 facilities in 19 states and the District of Columbia.³ CCA is headquartered in Nashville and employs almost 17,000 people nationwide.⁴ Since its creation in 1983, the company has faced widespread allegations of poor management practices and inadequate personnel training, often connected to prisoner abuse, neglect, physical and sexual assault, and escapes.⁵ According to Mr. Puryear's

¹ In the last six years, Mr. Puryear has personally donated \$18,000 to Republican candidates. He was recently described by his local newspaper, the *Nashville Post*, as a "Republican heavyweight." Ken Whitehouse, *CCA VP Nominated to be U.S. District Judge*, NASHVILLE POST, June 13, 2007.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Mafruzah Kahn, Philip Mattera, and Stephen Nathan, *Corrections Corporation of America: A Critical Look at its First Twenty Years*, Dec. 2003, available at

Senate Judiciary Committee questionnaire, the number of lawsuits and claims against CCA “typically stands between 700 and 1100 at any given time.”⁶ Although many of these lawsuits are not personally handled by Mr. Puryear, he supervises the activities of the entire legal department and becomes “substantially involved” in significant cases that “are material—or present a risk of becoming material—to the Company’s operations.”⁷ According to his questionnaire, Mr. Puryear has “ultimate responsibility for all of the Company’s legal affairs,” including “internal investigations related to allegations of material wrongdoing by employees” and “advising on the law pertaining to civil rights and corrections.”⁸

PROFESSIONAL INTEGRITY

Mr. Puryear’s record, which remains largely shielded from public view, has been partially illuminated by Senate scrutiny, revealing allegations of ethical improprieties and professional misconduct. Mr. Puryear’s responses to these serious allegations have raised more questions than they have answered, evincing a startling pattern of misstatements and questionable conduct that leave no doubt that he is unsuitable for appointment to the federal bench.

Inaccurate and Misleading Statements to the Senate

Mr. Puryear’s responses to questions regarding a wrongful death at CCA’s Nashville facility have prompted concern among senators and the public alike. In July 2004, 34-year-old Estelle Richardson was found beaten and unconscious in her solitary cell at CCA’s South Metro Nashville Detention facility. She was transported to Southern Hills Medical Center and pronounced dead. The Davidson County Medical Examiner, Dr. Bruce Levy, listed Ms. Richardson’s cause of death as “a skull fracture caused by blunt-force trauma to the head.”⁹ The autopsy showed a cracked skull, four broken ribs, and a lacerated liver, and Dr. Levy ruled that the injuries could not have been accidental or self-induced.¹⁰ He labeled Ms. Richardson’s death a homicide, and the subsequent criminal investigation revealed that Ms. Richardson had been involved in “an incident” with four CCA guards the day before her body was discovered.¹¹ Ms. Richardson, who was incarcerated for a probation violation stemming from a nonviolent drug charge, had reportedly refused to clean her cell. The guards forcibly extracted Ms. Richardson from her cell, but they contended the force they used was not excessive and she “appeared fine after the incident.”¹² The four CCA guards were indicted on charges of reckless homicide and aggravated assault, but the charges were eventually dropped due to

http://www.soros.org/initiatives/justice/articles_publications/publications/cca_20_years_20031201 (last visited Apr. 2, 2008).

⁶ Gustavus Adolphus Puryear VI, *United States Senate Judiciary Committee Questionnaire for Judicial Nominees*.

⁷ *Id.*

⁸ *Id.*

⁹ John Spragens, *A Prison Murder*, NASHVILLE SCENE, July 15, 2004.

¹⁰ Matt Pulle, *A Jailhouse Mystery*, NASHVILLE SCENE, March 27, 2008.

¹¹ Christian Bottorff, *Year Later, No Answers in Prisoner’s Death*, THE TENNESSEAN, June 16, 2005.

¹² *Id.*

inability to pinpoint the exact time of Ms. Richardson's injuries.¹³ Her family filed a wrongful death suit against CCA, which they settled in 2006 for an undisclosed amount. The settlement included a confidentiality agreement. A family member who was not a party to the case, and thus not bound by the confidentiality agreement, alleged in a letter to the Senate Judiciary Committee that Ms. Richardson had been subjected to repeated and brutal beatings at the hands of CCA guards during her imprisonment.¹⁴

Mr. Puryear listed the criminal and civil cases surrounding Ms. Richardson's death among his examples of "significant litigation-related matters in which [he had] become substantially involved" at CCA.¹⁵ When asked about the case at his confirmation hearing, Mr. Puryear made dismissive comments about Ms. Richardson's tragic death, relying on the confidentiality agreement to avoid discussing details. Mr. Puryear insisted, contrary to the autopsy report, that "There are [sic] a range of possible explanations for what happened to Ms. Richardson...many of which would not have involved a beating death."¹⁶ He posited that Ms. Richardson's rib fractures had been caused by the administration of CPR, saying, "That does commonly happen."¹⁷ He cited a laundry list of other possible explanations for Ms. Richardson's death, none of which were supported by the medical examiner's report, including "fights with other inmates, a fight with unknown correctional officers, self-inflicted wounds, medication issues" and a seizure.¹⁸

In a letter to the Senate Judiciary Committee shortly after Mr. Puryear's confirmation hearing, Mr. Levy, the medical examiner who performed the autopsy and was the only expert to actually view Ms. Richardson's body, refuted Mr. Puryear's self-serving claims.

I was frankly stunned by Mr. Puryear's testimony to the committee regarding [Ms. Richardson's] death. It is my understanding that he told the committee that the cause of her death could not be determined. That is completely incorrect. After I completed my investigation and autopsy I ruled the cause of death of Estelle Richardson as "Blunt force injuries of the head," and ruled the manner of her death as "Homicide." Her autopsy report and death certificate both reflect these opinions, which have remained unchanged since her death in 2004.¹⁹

In addition to the myriad of questions raised by Mr. Puryear's evasive and disingenuous answers, new information has arisen about a possible cover-up of wrongdoing by CCA employees in Ms. Richardson's death. Rob McGuire, the assistant district attorney who prosecuted the four CCA guards, has revealed that when investigators asked for "video

¹³ Matt Pulle, *A Jailhouse Mystery*, NASHVILLE SCENE, March 27, 2008.

¹⁴ Letter from Diane Buie to Senator Patrick Leahy, Senate Judiciary Committee Chair (March 7, 2008) (available at <http://www.againstpuryear.org/buieletter.pdf>) (last visited Apr. 2, 2008).

¹⁵ Gustavus Adolphus Puryear VI, *United States Senate Judiciary Committee Questionnaire for Judicial Nominees*.

¹⁶ *Senate Judiciary Committee Hearing on Judicial Nominations*, 110th Congress, Feb. 12, 2008.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Letter from Bruce P. Levy, Chief Medical Examiner, State of Tennessee, to Senator Patrick Leahy, Senate Judiciary Committee Chair (Feb. 21, 2008) (available at <http://www.againstpuryear.org/Levyletter.pdf>) (last visited Apr. 2, 2008).

footage of Ms. Richardson’s cell extraction by the CCA guards the day before her death,” they were told such footage did not exist because the facility’s cameras were not working that day.²⁰ When investigators inquired further and were shown the video camera in question, they turned it on and observed it to be working properly. The prosecutor stated that this suspicious missing video was one of the reasons the guards were implicated in Ms. Richardson’s death, “as it was indicative of a cover-up of improper behavior.”²¹ Contrary to Mr. Puryear’s declaration that the guards had been “exonerated,” the charges were dropped when the prosecutor concluded he could not prove them beyond a reasonable doubt, possibly due to attempts by other CCA employees to cover up the guards’ misconduct.²²

Abuse of Attorney-Client Privilege to Avoid Public Scrutiny

Information revealed after Mr. Puryear’s hearing has raised further questions about his suitability for the federal bench. In a letter to the Senate Judiciary Committee, a former CCA employee has implicated Mr. Puryear in a scheme to whitewash CCA records by “trying to hide potentially damaging (to CCA) audit findings from governments who contracted with CCA.”²³ Ronald T. Jones, a former senior manager of corporate quality assurance who worked under Mr. Puryear for two and a half years, alleged that after a series of public relations debacles, Mr. Puryear moved the Quality Assurance Department into the Legal Department in order to better control outgoing information and use the attorney-client privilege to shield negative incidents from the public eye.²⁴ Mr. Jones admitted, “I would prepare one report with all of the audit findings and auditor comments in it for ‘internal purposes only’ and a separate more generic report that contained only general information about audit results as a whole.”²⁵ Before any reports were released to the government or the public, Mr. Puryear had to personally review them, said Mr. Jones, removing “highly sensitive” information that was potentially damaging to CCA.²⁶ Mr. Jones said he was forced to add disclaimers at the bottom of the detailed reports designating them as containing “internal privileged information.”²⁷ He recalled being “told by senior quality assurance department staff that Mr. Puryear wanted the language inserted into the detailed report to prevent that information from being accessible under Sunshine laws.”²⁸ Mr. Jones noted, “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.”²⁹

²⁰ Letter from Alex Friedmann, Vice President, Private Corrections Institute, to Senator Patrick Leahy, Senate Judiciary Committee Chair (Mar. 20, 2008) (*available at* <http://www.againstpuryear.org/estellevideo.pdf>) (last visited Apr. 2, 2008).

²¹ *Id.*

²² Matt Pulle, *A Jailhouse Mystery*, NASHVILLE SCENE, March 27, 2008.

²³ Letter from Ronald T. Jones to Senator Patrick Leahy, Senate Judiciary Committee Chair (Feb. 24, 2008) (on file with Alliance for Justice).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Adam Zagorin, *Scrutiny for a Bush Judicial Nominee*, TIME MAGAZINE, March 13, 2008, *available at* <http://www.time.com/time/nation/article/0,8599,1722065,00.html> (last visited Apr. 2, 2008).

Mr. Jones's revelations had been foreshadowed at Mr. Puryear's confirmation hearing by questions about Mr. Puryear's attempts to hide damaging information from the government and the public after a 2004 incident. A hostage-taking in a CCA facility in Florida ended with a twelve-hour standoff that landed a nurse and two prisoners in the hospital.³⁰ According to press reports, CCA was uncooperative with county officials in their investigation of the incident, who criticized CCA "for operating in secret and failing to consult with local administrators on the outcome of a controversial after-action report."³¹ Mr. Puryear was quoted as saying "the after-action report never will become a public record" because the investigation was performed by a private law firm "brought in to protect the company from liability."³²

Subjects for Further Investigation

Given the allegations of whitewashing by CCA's legal department at Mr. Puryear's behest and his less-than candid hearing responses, the committee should conduct a full investigation of significant legal controversies handled by Mr. Puryear at CCA before processing his nomination further. Since much of Mr. Puryear's work at the company has been veiled in secrecy, it is difficult to ascertain from publicly available documents the extent of his involvement in any specific case. However, there are at least two areas in which serious questions have been raised about the conduct of CCA's legal department under Mr. Puryear's leadership, and they give an indication of the investigation required.

Disappearing Evidence of Sexual Abuse in Transport

In order to transport prisoners between facilities, CCA owns a subsidiary company, TransCor, which operates a fleet of extradition vans. On his questionnaire, Mr. Puryear said he had become "substantially involved" in defending TransCor against "civil rights claims...alleging sexual assaults on two female detainees."³³ In fact, allegations of physical and sexual assault and neglect by TransCor employees were endemic. According to press accounts:

Two female detainees in Texas say they were sexually assaulted during a five-day odyssey by a driver previously implicated in a New Mexico assault. In Colorado, a mother of four filed a federal lawsuit alleging sexual assaults during a TransCor journey across the West. A busload of Wisconsin inmates sued in federal court alleging the group endured a frigid winter trip to Oklahoma on a TransCor bus awash in human waste.³⁴

³⁰ PANAMA CITY NEWS HERALD, Nov. 14, 2004.

³¹ *Id.*

³² *Id.*

³³ Gustavus Adolphus Puryear VI, *United States Senate Judiciary Committee Questionnaire for Judicial Nominees*.

³⁴ Rob Johnson, *Abuses in Prisoner Transport Alleged*, THE TENNESSEAN, Apr. 1, 2001, at 1A.

One of the female prisoners alleges she was shackled inside a TransCor van for three or four days and “subjected to individual acts of sexual assault” by shotgun-wielding TransCor employees.³⁵ She says she was “forced to perform sexual acts and was penetrated with fists and a gun barrel.”³⁶ She also describes TransCor drivers engaging in “screen tests,” slamming on the brakes and “hurtling her face against the van’s wire mesh security screens.”³⁷ One of her assailants, a TransCor employee, was later convicted of sexual assault in Texas and sentenced to ten years in prison.³⁸

The woman, together with another woman who described a similar assault at the hands of TransCor employees, filed a civil rights lawsuit against the company in federal court.³⁹ They describe how TransCor officials ignored their pleas for help and did little to protect against future sexual assaults. One female prisoner had handed a one-page statement to a company official during a stopover in Nashville describing the sexual assaults to which she was being subjected.⁴⁰ When investigators later came looking for the statement, company officials said they could not find it—until state and local officials arrived with a search warrant.⁴¹ An unidentified TransCor attorney “suddenly produced the long-sought document,” saying it had been “misfiled.” The note implicated the same guard later convicted of the Texas assault.⁴²

Mr. Puryear listed the civil rights case as an example of one he had “personally supervised,” and he was quoted in press reports about the case.⁴³ Noting that TransCor officials insisted they could not discuss the incidents, due to the ongoing lawsuits, Mr. Puryear dismissed the incidents, saying, “But we move about 77,000 people a year. So the fact that there’s a handful of allegations in and of itself—and the allegations themselves may be serious—but viewed in the context of the overall business, we think that it’s a pretty impressive record that TransCor has.”⁴⁴ Mr. Puryear went on to say that sexual assault is a “cause for termination,” and that Transcor “will fire anybody who does something so beyond what they’re supposed to be doing.”⁴⁵ He insisted that Transcor operates “in a quality, cost-effective way for the customers.”⁴⁶ In April 2002, the company settled the civil rights case for five million dollars.⁴⁷ Unidentified lawyers for Transcor have admitted that they learned of at least five other cases of sexual misconduct

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Edwards v. State*, 97 S.W.3d 279 (Tex.App.-Houston, 2003).

³⁹ Rob Johnson, *Abuses in Prisoner Transport Alleged*, THE TENNESSEAN, Apr. 1, 2001, at 1A.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Gustavus Adolphus Puryear VI, *United States Senate Judiciary Committee Questionnaire for Judicial Nominees*.

⁴⁴ Rob Johnson, *Abuses in Prisoner Transport Alleged*, THE TENNESSEAN, Apr. 1, 2001, at 1A.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Schoenfeld v. TransCor*, USDC WD TX, Case No. 5:00-cv-00248.

by CCA-employed guards.⁴⁸ At least one of the other women also sued and obtained a “substantial settlement,” this time for an undisclosed amount.⁴⁹

Use of Intimidation and Threats to Obtain Settlements

In 2001, multiple sources in the press reported that the Department of Justice had launched an investigation into CCA when a former prisoner filed a civil rights suit alleging that CCA guards in a Tennessee facility allowed him to be attacked by other prisoners and then refused to give him prompt medical treatment.⁵⁰ After being threatened by a prison gang, Thompson, the former prisoner, said he implored a guard to place him in a “restricted area” for protection.⁵¹ The guard did move Thompson to a secure area but then allegedly let the gang members into the area as well and allowed them to “assault [Thompson] with knives.”⁵² When he returned from hospitalization after the attack, Thompson said guards used punitive solitary confinement to force him to sign a \$25,000 settlement agreement and sign a waiver releasing CCA from liability for the attack.⁵³ Although Mr. Puryear did not specifically list this case on his questionnaire as an example of one he personally supervised, he was the CCA representative quoted in press reports of the investigation, saying, “We vehemently deny the allegations in the complaint and will contest it.”⁵⁴ Initial press accounts reported that the Department of Justice had launched an investigation “into whether the alleged intimidation was a corporate pattern and practice” at CCA.⁵⁵ However, a Justice Department representative later stated that the department had only opened a criminal investigation and forwarded the allegations to the Civil Rights Division for consideration of whether a company-wide investigation was warranted.⁵⁶

JUDICIAL TEMPERMENT AND EXPERIENCE

Mr. Puryear’s public statements and activities call into question his suitability for a lifetime appointment to the federal bench.

Belle Meade Country Club Membership

Mr. Puryear belongs to the exclusive Belle Meade Country Club in Nashville, which he joined in 2001.⁵⁷ According to former members, the club did not have a single African-

⁴⁸ Rob Johnson, *Abuses in Prisoner Transport Alleged*, THE TENNESSEAN, Apr. 1, 2001, at 1A.

⁴⁹ *Jamison v. TransCor*, USDC CO, Case No. 1:99-cv-00390.

⁵⁰ Amber Austin, *U.S. Justice Department Investigates Complaint by Former CCA Inmate*, ASSOCIATED PRESS, May 10, 2001.

⁵¹ Amber Austin, *U.S. Justice Department Investigating Alleged Wrongdoing by CCA*, ASSOCIATED PRESS, May 9, 2001.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Amber Austin, *U.S. Justice Department Investigates Complaint by Former CCA Inmate*, ASSOCIATED PRESS, May 10, 2001.

⁵⁵ *Id.*

⁵⁶ Kirk Loggins, *CCA Not Federal Civil Rights Target*, THE TENNESSEAN, May 9, 2001.

⁵⁷ Gustavus Adolphus Puryear VI, *United States Senate Judiciary Committee Questionnaire for Judicial Nominees*.

American member until 1994, and it has not yet admitted a second.⁵⁸ Women are consigned to be second-class “Lady Members” and are not allowed voting privileges.⁵⁹ The club does not have an official written policy precluding women from becoming full “Resident Members” with voting rights, a fact on which Mr. Puryear relied extensively in his responses to concerned committee members. However, when asked if women could become “Resident Members,” former club president Ed Nelson definitively said “No”—an answer that was echoed by many others.⁶⁰ Mr. Puryear declined to answer questions about the racial composition of the club. He did not dispute the widely reported fact that the club has only one African-American member, who, by virtue of his residence in Atlanta rather than Nashville, is also denied voting privileges.⁶¹

Lack of Experience

Despite his long political and corporate career, Mr. Puryear has very little litigation experience. When asked at his confirmation hearing how many cases he has taken to trial, he named two—only once as lead counsel.⁶² Mr. Puryear has never appeared in a federal court of appeals and is not admitted to practice in the Sixth Circuit.

Public Statements

Mr. Puryear’s public comments indicate hostility towards civil rights lawsuits in general and to those brought by prisoners in particular. In a 2004 interview with *Corporate Legal Times*, Mr. Puryear cavalierly dismissed the legitimacy of these claims. He stated that, “Litigation is an outlet for inmates.... It’s something they can do in their spare time.”⁶³ Mr. Puryear’s comments ignore the fact that such cases are the only means through which people detained by the government can protect their constitutional rights and ensure safe and humane living conditions and raise serious questions about his ability to remain objective when hearing similar cases if he is confirmed as a federal judge.

Conflict of Interest

CCA’s corporate headquarters are located within the Middle District of Tennessee to which Mr. Puryear is nominated, and CCA regularly appears as a party before the court. Over 400 cases naming CCA or CCA employees have been filed in the Middle District of Tennessee, with about 260 cases filed since 2000.⁶⁴ At his confirmation hearing, Mr.

⁵⁸ Matt Pulle, *A White Man’s Dance*, NASHVILLE SCENE, Mar. 13, 2008, available at http://www.nashvillescene.com/Stories/News/2008/03/13/A_White_Man_s_Dance/ (last visited Apr. 2, 2008).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Senate Judiciary Committee Hearing on Judicial Nominations*, 110th Congress, Feb. 12, 2008.

⁶³ Robert Vosper, *The Young Gun*, CORPORATE LEGAL TIMES, July 2004.

⁶⁴ In a letter to the Senate Judiciary Committee Chairman Patrick Leahy dated Oct. 30, 2007, Alliance for Justice erroneously stated that 400 cases naming CCA or CCA employees had been filed in the Middle District of Tennessee since 2000. In fact, 400 cases have been filed against CCA or its employees in the district, but only 260 of those cases were filed after 2000. See Stephanie Mencimer, *Meet Bush’s Prison Nominee*, MOTHERJONES, Feb. 20, 2008, available at <http://www.motherjones.com/cgi->

Puryear promised to recuse himself from cases involving CCA “for the duration of time that [he owns] an interest” in the company, and for “an extended period of time” even after he is divested.⁶⁵ However, Mr. Puryear’s financial ties to a company for which prisoners are a source of profit and his public statements trivializing prisoner’s claims indicate a far broader bias, not limited to cases directly involving CCA.

Mr. Puryear has amassed, and continues to supplement, his personal fortune by improving profits at the company, whose earnings depend directly on increasing the flow of incarcerated persons and extending the length of their sentences. Although he has already divested himself of some CCA stock, Mr. Puryear has admitted that he cannot completely divest himself at this time, because a portion of his shares in the company are restricted or bound up in resale agreements. This substantial interest creates at least a strong appearance of impropriety, if not an actual and devastating bias,⁶⁶ that ought to preclude Mr. Puryear from presiding over criminal cases, a substantial portion of the docket of any federal district judge. Given that he has spent almost a decade working to increase profits at CCA, often using questionable tactics and dubious judgment, he should not be entrusted with the responsibility to mete out justice in hundreds of criminal cases, when every prisoner he sentences to confinement directly increases the earnings of his former employer and the value of his significant CCA stock holdings.⁶⁷

CONCLUSION

Mr. Puryear’s record does not qualify him for a lifetime appointment as a district judge. He has expressed hostility to an entire class of litigants. His statements during the confirmation process have been incomplete, insincere, and misleading. He has spent the bulk of his legal career attempting to whitewash the public appearance of a corporation riddled with scandal, often at the expense of the public interest, ethics, and perhaps the law. His record shows no commitment to equal justice under the law. The Senate should reject this nomination.

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(last visited Apr. 2, 2008).

⁶⁵ *Senate Judiciary Committee Hearing on Judicial Nominations*, 110th Congress, Feb. 12, 2008.

⁶⁶ See Canon 3C of the Code of Conduct for United States Judges.

⁶⁷ See generally *Berger v. United States*, 255 U.S. 22 (1921).