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## Private Prisons: Myths, Realities & Educational Opportunities for Inmates

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## PRIVATE PRISONS: MYTHS, REALITIES & EDUCATIONAL OPPORTUNITIES FOR INMATES

RICHARD P. SEITER\*

### INTRODUCTION

Readers of this article will perhaps think it is one-sided in favor of prison privatization. That is not my intent, however. I recently retired from Corrections Corporation of America (CCA), the nation's largest private prison company. I enjoyed my work there, but I was often confounded by the arguments both for and against the use of private prisons. I fully understand that there are those who in principle favor private prisons and who in principle are against private prisons. Let me begin with my own background. I worked for over thirty years in corrections administration—in four federal prisons (warden of two), as director of corrections in Ohio, as the first director of the National Institute of Corrections, National Academy of Corrections, and as head of a \$400 million in annual sales prison industry program.<sup>1</sup> I thought I had done all I wanted and could do, and I retired to a full-time tenure-track teaching position at Saint Louis University. I enjoyed teaching, researching, and writing. I wrote two books and several articles,<sup>2</sup> applied for grants, and was tenured and promoted to full professor. Life was really good. But, I did miss the action of correctional administration.

Throughout my career, I had not been a fan of prison privatization; even as far back as 1984, when I was the director of corrections in Ohio, I first heard of an attempt to privatize prison operations. I had little contact with privatization over the years, however, and in my writings was very objective about the pros and cons and did not have a fact-based position. In 2003, CCA asked me to

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1. RICHARD P. SEITER, CORRECTIONS: AN INTRODUCTION, at xxiii (Frank Mortimer, Jr. et al. eds., 2005).

2. *See generally id.*; RICHARD P. SEITER, CORRECTIONAL ADMINISTRATION: INTEGRATING THEORY AND PRACTICE (2011).

join an advisory committee made up of correctional professionals outside the private prison sector and to give them guidance on “how they were doing” in quality operations of correctional facilities. I agreed, dug in and learned a lot, and began to see a bigger picture of privatization. At the end of 2004, the company asked me to come to work for them as chief correctional officer. In this position, I oversaw the operations of all their facilities (sixty-five prisons, detention facilities, and jails) which housed 70,000 inmates, supervised 17,000 staff, and was responsible for over \$1 billion in operating expenses annually.<sup>3</sup>

I accepted the job because I thought I could add value; I could bring an emphasis on proactive correctional management that I believed in, and I could have a positive impact on the lives of thousands of staff and inmates. “Proactive corrections” is sound security, active evidence-based programming, quality delivery of services, such as health care and food service, and positive communicating between professional staff and inmates to create an environment of concern, responsiveness, and professionalism that reduces negative incidents.

In this article, I address some of the issues and controversies surrounding private corrections. There will be many people who disagree in principle about the following and might even suggest data that is inconsistent with what I present. And many people believe that there is no room for profit making when it comes to imprisoning offenders. My goal is that we engage in a discussion of issues I hear often and what I believe are the myths and facts surrounding private operations of prisons.

Additionally, this article notes the importance of inmate programs, particularly education in prison, to promote safe, humane, and secure environments. Personally and professionally, I was disappointed when Congress eliminated the eligibility for prison inmates to participate in Pell Grants. When I was director of corrections in Ohio, we had almost four thousand inmates participating as full-time students in college programs.<sup>4</sup> It was an amazing success and opportunity for offenders to increase their education, prepare for work and life after prison, and aid in the orderly operation of our prisons. Below, I present how CCA emphasizes education and programming to help accomplish their goals and provide state and federal partners a valuable result.

#### CORRECTIONAL PRIVATIZATION

Let me first lay the groundwork for what private prison operators do. While there has been a flurry of discussion and debate about privatization of

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3. *CCA at a Glance: America's Leader in Partnership Corrections*, CORR. CORP. OF AM., [http://cca.com/Media/Default/documents/CCA-Resource-Center/CCA\\_At-a-Glance.pdf](http://cca.com/Media/Default/documents/CCA-Resource-Center/CCA_At-a-Glance.pdf) (last visited May 22, 2014).

4. SEITER, *supra* note 1, at 427.

prisons over the past two decades, the concept of private correctional services is not new. Halfway houses have historically been private, usually not-for-profit operations, and community correctional agencies now regularly contract with private companies for electronic monitoring, day reporting centers, drug testing, and other program services. Many agencies contract with private companies to provide food services, medical and mental health care, educational programming, and substance abuse counseling. By 2002, 144 state and federal prisons contracted for food services and 447 for medical care for inmates.<sup>5</sup> Another 229 prisons had private contractors providing mental health services, and 190 prisons contracted for substance abuse services.<sup>6</sup>

The first private prison opened 1984, and by the end of 2011, there were 130,941 state, District of Columbia, and federal inmates (8.2 percent of all inmates) in private prisons across the United States.<sup>7</sup> Much of the increased use of privately operated prisons came about during the late 1980s and 1990s as states struggled to deal with an increasing problem of prison overcrowding. Private industry allowed governments to respond to rising capacity needs for often desperately needed bed and program space expansion.

Whether the growth in the past will continue and its effect on private prison populations is an interesting question. At midyear 2002, the population of the nation's prisons and jails for the first time reached 2 million.<sup>8</sup> As of December 31, 2011, there were 1,598,780 offenders incarcerated in state and federal prisons,<sup>9</sup> and as of June 30, 2011, there were 735,601 offenders held in the nation's jails.<sup>10</sup> While both prison and jail numbers have continued to grow over the past decade, there has been a declining percentage of growth in the number of people incarcerated in state prisons, federal prisons, and local jails.

During the 1990s, the inmate population grew an average of 8.7 percent per year. From 2000 to 2009, the prison population increased by only 1.6 percent. And then from 2009 to 2010, the prison population decreased by 0.1 percent,

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5. CAMILLE GRAHAM CAMP, CRIM. JUST. INST., THE CORRECTIONS YEARBOOK: ADULT CORRECTIONS 2002, at 100–01 (2003).

6. *Id.* at 103–04.

7. E. ANN CARSON & WILLIAM J. SABOL, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., PRISONERS IN 2011, at 32 (2012), available at <http://www.bjs.gov/content/pub/pdf/p11.pdf>.

8. PAIGE M. HARRISON & JENNIFER C. KARBERG, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., BULLETIN: PRISON AND JAIL INMATES AT MIDYEAR 2002, at 1 (2003), available at <http://www.bjs.gov/content/pub/pdf/pjim02.pdf>.

9. CARSON & SABOL, *supra* note 7, at 3.

10. TODD D. MINTON, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., JAIL INMATES AT MIDYEAR 2011: STATISTICAL TABLES, at 1 (2012), available at <http://www.bjs.gov/content/pub/pdf/jim11st.pdf>.

the first decline since 1972. And from 2010 to 2011, the prison population decreased another 0.9 percent.<sup>11</sup>

It is interesting to consider how the change in the prison population has been impacting and will impact private prisons. From 2000 to 2011, the number of inmates held in privately operated prisons increased 45 percent from 90,542<sup>12</sup> to 130,941.<sup>13</sup> What seems to be occurring is that much of the new growth in prison inmates is going into private prisons, most likely because the private companies provide the funding to add capacity without government agencies having to sell bonds and budget all the capital construction money up front. In a 2001 review of the status of private prisons, the Bureau of Justice Assistance projected that “[t]he number of privatized prisons is likely to increase, but not at the pace exhibited during the past decade.”<sup>14</sup> There is considerable evidence, however, that prison privatization is now in decline, which is a result of shrinking incarceration rates, overbuilding of prison beds, legislation antagonistic to the private prison industry, and a number of well-publicized, serious incidents.<sup>15</sup> The economic downturn over the past few years has resulted in reduced tax receipts by states and the federal government. In January 2009, states reported over \$48 billion shortfalls in revenue to fund their 2009 budgets.<sup>16</sup> And even though things are getting better, for fiscal year 2013 the gap is projected to still hit \$49 billion.<sup>17</sup> It will be interesting to see how state and federal budget crises will impact privatization as governments try to reduce the cost of corrections.

With tightening budgets, it is now a much more complicated decision as to whether to increase taxes, reduce the correctional population, or eliminate some services or supervision to meet budget shortfalls. Corrections is the fifth largest federal budget category,<sup>18</sup> and elected officials are struggling between continuing that spending in lieu of demands for education, infrastructure, and

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11. Rick Seiter, *Prison Population Declines*, MY CRIM. JUST. CMTY. (May 8, 2013), <http://www.mycriminaljusticecommunity.com/training-tips-guidance/general-interest/prison-population-declines/>.

12. HEATHER C. WEST & WILLIAM J. SABOL, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., *PRISON INMATES AT MIDYEAR 2008: STATISTICAL TABLES tbl.11* (2009), available at <http://www.bjs.gov/content/pub/pdf/pim08st.pdf>.

13. CARSON & SABOL, *supra* note 7, at 32.

14. JAMES AUSTIN & GARRY COVENTRY, BUREAU OF JUST. ASSISTANCE, U.S. DEP'T OF JUSTICE, *EMERGING ISSUES ON PRIVATIZED PRISONS* xi (2001).

15. Richard Culp, *The Rise and Stall of Prison Privatization*, 16 CRIM. JUST. POL'Y REV. 412, 435 (2005).

16. PHIL OLIFF ET AL., CTR. ON BUDGET AND POL'Y PRIORITIES, *STATES CONTINUE TO FEEL RECESSION'S IMPACT* 11, <http://www.cbpp.org/files/2-8-08sfp.pdf> (last updated June 27, 2012).

17. *Id.* at 1.

18. JENNIFER WARREN, PEW CTR. FOR THE STATES, *ONE IN 100: BEHIND BARS IN AMERICA* 2008, at 15 (2008).

health care.<sup>19</sup> As states look for ways to reduce costs, they may attempt to reduce the number of inmates through community diversion programs; they may overcrowd their own prisons; or they may turn to privatization when it saves them money. In a 2009 survey of thirty state correctional agencies, privately contracted prisons were found to be 28 percent lower in cost than their public sector counterparts.<sup>20</sup>

#### PARTNERSHIP BETWEEN PRIVATE AND PUBLIC CORRECTIONS

Although many people try to “pit” the public against the private sector, experience has shown a different story. Rather than strict divides, federal, state, and county governments that use privatization think of it as a partnership, one by which the private sector provides specific services that are needed by public corrections agencies. These needs differ in every jurisdiction, and there are many things that the public and private partners share. Correctional administrators in both public and private systems have several common goals, including: safety of the community, staff, and inmates; the training and development of staff to professionally manage the inmate population; and the provision of quality corrections in a cost efficient manner. As well, the public and private sectors have a shared concern for improving the profession. Both the public and private sectors are proud of the services they deliver and are committed to meeting the expectations of the taxpayer and public officials responsible for overseeing their work.

CCA’s business model is to provide bed capacity when states need it by building, owning, and operating correctional facilities that can be provided to government customers.<sup>21</sup> Thinking of this type of model, the following are the range of services that the private sector (at least a company with the scope and resources of CCA) provides to public correctional systems:

1. Speed/bringing beds on line quicker: According to Austin and Coventry, “governments take five to six years to build a facility, whereas some private companies claim they can do it in two to three years (or less).”<sup>22</sup>
2. Access to capital: Part of the problem with building new government projects is the need for capital. The state may fund a project in the single year operating budget, but more likely they have a capital budget for which they may seek financing, such as through selling government bonds. The private sector can provide funding that is calculated into the

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19. *Id.*

20. Leonard Gilroy, *Embrace Competition to Lower Costs, Improve Performance in Prisons*, CNBC (Oct. 12, 2011), <http://www.cnbc.com/id/44874043>.

21. AUSTIN & COVENTRY, *supra* note 14, at 15.

22. *Id.*

per diem costs to the government customer so they do not have to extend their own lines of credit.

3. Flexibility: Many would argue that the state should seek non-prison alternatives to managing their offender populations, and I would agree with that. But the bottom line is, they may truly need or believe that more prison beds are necessary at that time. Contracting with the private sector allows them the flexibility to change their minds, to create community corrections options, or to establish other ways to divert offenders from prison without committing millions of dollars to bricks and mortar. Few government-private sector contracts have long-term guarantees, so they can cancel the contract when they no longer need it.

In my own government experience, the process to build a new facility begins with the department of correction's recognition of the need for new capacity (often after it is already needed), time to convince the legislature of the need to fund it, and extensive periods of time to contract for architects, to design and bid the project, to budget and allocate funds over a multi-year period, and to construct the facility. An example of the opposite approach is that after CCA received a contract with California in October 2007 to build a new 3,000-bed facility, they were ready to take the first inmates into that facility in August 2008—less than one year after a contract was signed.

#### MYTH VERSUS REALITY OF PRIVATE CORRECTIONS

There are several popular cultural myths that persist regarding the private operation of prisons. The most common include:

- Private prisons are not accountable to the public.
- The profit motive of private corrections encourages cutting corners that can reduce quality.
- Private prison companies lobby for longer sentences.
- Private corrections facilities do not offer adequate inmate programming and are not as effective as public prisons.
- The profit motive of the private sector undermines safety in facilities.

##### 1. Reality: Private Prisons Are Accountable

Private prisons almost always have extremely detailed requirements enumerated in their contracts by which accountability is easily measured and monitored. A study in the *Harvard Law Review*, "A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons," concluded that "there are many reasons to believe that private prisons are more accountable than public

prisons—both because of heightened legal and market accountability for private forms and because accountability in the public sector is so limited.<sup>23</sup> In my experience as a public correctional executive, I never had the oversight, expectations, or measurable outcomes we have with our CCA customers.

A government Request For Proposal (RFP) lists expected outcomes and may include liquidated damages for failure to maintain expected staffing levels, inmate involvement in program activities, and other requirements. Public customers usually assign full-time contract monitors to constantly measure performance against the contract requirements.<sup>24</sup> They are also responsible for upholding the various standards required by building, health, and fire inspectors.<sup>25</sup> In a review of accountability for private prisons, Abt Associates reviewed ninety-one contracts and found that all had monitors assigned, 52 percent of which conducted daily monitoring, 23 percent mandated monthly visits, and the remainder did quarterly visits or some other form of monitoring.<sup>26</sup>

Contracts also provide the government customer the ability to cancel contracts with private companies if standards are not met. In CCA, we believe we can never get new business unless we perform well under our current business. Quality operations are a primary focus of everything I do. I am proud of the fact that CCA is committed to ACA accreditation.<sup>27</sup> Nearly 90 percent of our sixty-five operating facilities have met the ACA's exacting accreditation standards with an average score of 99.3 percent.<sup>28</sup>

## 2. Reality: Private Companies Do Not Cut Corners and Reduce Quality

The notion that private companies cut corners to maximize profits has not been supported by research. Many studies have found that quality is not sacrificed for profit.<sup>29</sup> Segal and Moore analyzed twenty-eight studies of the

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23. Alexander Volokh, *A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons*, 115 HARV. L. REV. 1868, 1891 (2002).

24. DOUGLAS McDONALD ET AL., PRIVATE PRISONS IN THE UNITED STATES: AN ASSESSMENT OF CURRENT PRACTICE 50 (1998).

25. *Id.* at 49.

26. *Id.* at 50.

27. *2008 ACA Round-Up: A Year of Excellence in Accreditation*, CORR. CORP. OF AM. (Jan. 9, 2009), <http://www.cca.com/insidecca/2008-aca-round-up-a-year-of-excellence-in-accreditation#.U3-Qu61dVTE>.

28. *Id.*

29. FLA. LEG. OFFICE OF PROGRAM POL'Y ANALYSIS AND GOV'T ACCOUNTABILITY, NO. 99-39, PRIVATE PRISON REVIEW: SOUTH BAY CORRECTIONAL FACILITY PROVIDES SAVINGS AND SUCCESS; ROOM FOR IMPROVEMENT 9-10 (2000); William G. Archambeault & Donald Deis, Jr., *Cost Effectiveness Comparison of Private vs. Public Prisons in Louisiana: A Comprehensive Analysis of Allen, Avoyelles, and Winn Correctional Centers*, 4 J. OKLA. CRIM. JUST. RES. CONSORTIUM, (1998); AUSTIN & COVENTRY, *supra* note 14, at 17; Richard F. Culp, *Privatization of Juvenile Correctional Facilities in the U.S.: A Comparison of Conditions of*

cost and quality associated with privatized facilities and found that “there is clear and significant evidence that private facilities provide at least the level of service that government-run facilities do.”<sup>30</sup> The authors go on to say that “[p]rivate correctional facilities have fared well against government-run facilities in almost all measures of quality.”<sup>31</sup>

Research on private prisons has shown that quality care, custody, and control are not necessarily sacrificed for cost-savings.<sup>32</sup> In a review of cost, quality, and accountability of private prisons, a *Harvard Law Review* study concluded that “none of the more rigorous [private prison] studies finds quality at private prisons lower than quality at public prisons on average.”<sup>33</sup> Segal and Moore’s quasi meta-analysis of twenty-eight comparative studies of cost and quality in public and privately managed correctional facilities corroborated the finding that private prisons do not result in reduced quality.<sup>34</sup>

It might be argued that privatization can positively affect the quality of public prisons as well. Segal and Moore posited that privatization of corrections improves quality and cost management of public corrections systems.<sup>35</sup> The authors suggest that this effect may be attributed to “a fear of being privatized themselves, [or] from pride in showing they can compete, or from being held to a comparison by higher authorities.”<sup>36</sup> Matthew Mitchell found “[o]ther factors being equal, those states with a strong commitment to privatization in prison services spend significantly less per-prisoner per year than states without privatization.”<sup>37</sup> Blumstein and Cohen also found that the existence of privatization promotes improved cost management in public

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*Confinement in Private and Government Operated Programs*, 11 SECURITY J. 289, 290 (1998); Kevin Knight & Matthew L. Hiller, *Community-Based Substance Abuse Treatment: A 1-Year Outcome Evaluation of the Dallas County Judicial Treatment Center*, 61 FED. PROBATION 61, 61 (June 1997); Kevin Knight et al., *Evaluating Corrections-Based Treatment for the Drug-Abusing Criminal Offender*, J. OF PSYCHOACTIVE DRUGS 299 (1999); Lonni Lanza-Kaduce et al., *A Comparative Recidivism Analysis of Releasees from Private and Public Prisons*, 45 CRIME AND DELINQ. 28, 29 (1999); Charles H. Logan, *Well Kept: Comparing Quality of Confinement in a Public and a Private Prisons*, 83 J. CRIM. L. & CRIMINOLOGY 577, 591 (1992); ADRIAN T. MOORE, POLICY STUDY NO. 240: PRIVATE PRISONS: QUALITY CORRECTIONS AT A LOWER COST 28–29 (1998); CHARLES L. RYAN, ARIZ. DEP’T OF CORR., FY 2010 OPERATING COST REPORT: COST IDENTIFICATION AND COMPARISON OF STATE AND PRIVATE CONTRACT BEDS 2–3 (2011).

30. GEOFFREY F. SEGAL & ADRIAN T. MOORE, WEIGHING THE WATCHMEN: EVALUATING THE COSTS AND BENEFITS OF OUTSOURCING CORRECTIONAL SERVICES: PART II: REVIEWING THE LITERATURE ON COST AND QUALITY COMPARISONS 9 (2002).

31. *Id.*

32. *Id.* at 14; Volokh, *supra* note 23, at 1876.

33. Volokh, *supra* note 23, at 1876.

34. SEGAL & MOORE, *supra* note 30, at 14.

35. *Id.*

36. *Id.* at 2.

37. MATTHEW MITCHELL, THE PROS OF PRIVATELY-HOUSED CONS: NEW EVIDENCE ON THE COST SAVINGS OF PRIVATE PRISONS 16 (2003).

facilities.<sup>38</sup> In their study of public and private prisons, the authors concluded that the “existence of prisoners under private management in a jurisdiction seems to have had a restraining effect on the growth of expenditures on public prisons.”<sup>39</sup> Thus, the introduction of competition through the private sector raises the standard to which both systems and the professionals therein employed model and measure performance.

There has also been controversy as to whether private prisons are more or less expensive than public prisons. In purely monetary terms, the average cost of private-sector contracts of \$54.75 per inmate per day compares very favorably to the 2008 average daily cost per inmate in a public prison of \$79.00, and an estimated 2010 daily cost of \$85.39.<sup>40</sup> However, it is difficult to make an “apples-to-apples” comparison, as the public costs include all security levels and operation of expensive prison hospitals but do not include the cost of construction. Several recent studies have found that private prisons house offenders at less cost than their public counterparts. One such study initially funded by private prisons determined that between 1999 and 2004 “states that have some of their prisoners in privately-owned or -operated prisons experience lower growth in the cost of housing their public prisoners.”<sup>41</sup> A *Harvard Law Review* article concluded, “what imperfect empirical evidence there is suggests that private prisons cost less than public prisons and that their quality is no worse.”<sup>42</sup> A literature review by the Reason Foundation identified seventeen studies that measure quality of operations by government and private prisons, and fifteen of those conclude “the quality at the private facilities is as good or better than at government-run facilities.”<sup>43</sup>

Yet a review by the Arizona Department of Corrections found that medium security private beds cost \$53.02 per day compared to state operated medium security beds at \$48.42.<sup>44</sup> Segal and Moore reviewed the costs of outsourcing correctional services and concluded that [p]olicymakers should be wary of over-reliance on cost-comparison data in making privatization decisions, and

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38. JAMES F. BLUMSTEIN & MARK A. COHEN, THE INTERRELATIONSHIP BETWEEN PUBLIC AND PRIVATE PRISONS 1 (2003) (manuscript funded by the Corrections Corporation of America and the Association for Private Correctional and Treatment Organization).

39. *Id.*

40. See CHRISTIAN HENRICHSON & RUTH DELANEY, VERA: INST. OF JUST., THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS 9–10 (2012) available at <http://www.vera.org/pubs/special/price-prisons-what-incarceration-costs-taxpayers>.

41. James F. Blumstein et al., *Do Government Agencies Respond to Market Pressure? Evidence from Private Prisons*, 15 VA. J. SOC. POL’Y & L. 446, 466 (2007).

42. Volokh, *supra* note 23, at 1891.

43. SEGAL & MOORE, *supra* note 30, at 2.

44. RYAN, *supra* note 29, at 3.

be certain that cost analysts do not take it upon themselves to make policy assumptions in determining cost figures.<sup>45</sup>

### 3. Reality: Private Prisons Do Not Lobby to Increase the Number of Prisoners

Another often heard argument is that private prisons lobby for longer sentences and do what they can to try to increase the number of prisoners to increase their business opportunities. As CCA Vice President, I testified before the U.S. Sentencing Commission that some sentences could, and should, be reduced. Second, the largest increases in prison numbers have come about as the result of laws and regulations that were completely outside the influence of private prison companies.

- The War on Drugs (often credited with sparking prison population increases) started before the first private prisons were established by the CCA in 1984.<sup>46</sup>
- Parole boards have reduced their percentages of releases, and judges and parole boards have increased their revocation rates.<sup>47</sup> This is a result of a general “tough on crime” public attitude and not anything to do with private prison operators.
- There are lots of examples of states or federal agencies that had large increases in inmates without lobbying influence. As an example, no private prison company even focused on California because of the strength of the correctional officer union. No state was more crowded than California nor increased their population by greater numbers. It was not until California was in crisis and an emergency declared that California sought private providers to offer beds.<sup>48</sup>

### 4. Reality: Private Prisons Offer Effective Inmate Programming That Can Improve the Likelihood of Success by Offenders in the Community

It is sometimes assumed that private prisons do not offer effective inmate programming. Some even suggest that private entities do not wish to rehabilitate inmates, reduce the number of inmates, and therefore undercut profits. This could not be further from the truth. I would suggest that privatization increases the overall scope and frequency of inmate programming. Due to budget shortfalls, rehabilitation programs in many public corrections facilities have been cut or remained static in the face of growing

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45. SEGAL & MOORE, *supra* note 30, at 15.

46. LEONARD C. GILROY ET AL., PUBLIC-PRIVATE PARTNERSHIP FOR CORRECTIONS IN CALIFORNIA: BRIDGING THE GAP BETWEEN CRISIS & REFORM 5 (2011).

47. *Id.* at 10–12.

48. *Id.* at 2.

needs for programming and intervention. In fact, “during fiscal year 2009, correctional budgets were cut almost \$700 million,” and a regular target was the elimination of programs.<sup>49</sup>

In 2010, the state of California decided to reduce their prison program budgets by \$250 million and lay off 700 staff that deliver education and substance abuse classes.<sup>50</sup> The cuts will result in 17,000 inmates who enroll in academic and vocational programs and 3,500 who are in substance abuse programs being idled.<sup>51</sup> Critics have noted that with California's 70 percent recidivism rate (the highest in the nation),<sup>52</sup> it is unwise to reduce programs that make a difference in whether offenders reoffend after release.<sup>53</sup> Other states (e.g., Florida, Ohio, Georgia, and Texas) have also planned to reduce programs to make up budget shortages.<sup>54</sup>

However, most private prison companies have not cut back on programming services, believing inmate programs are important and can be provided at a reasonable price to their public customers. For example, the secretary of corrections in California recently told me he was building reintegration centers, as their overcrowded conditions had taken all program space for beds, and they were not providing any significant programming. CCA's California contracts require us to keep productively occupied through work or programs 100 percent of the inmates we house for 32.5 hours per week.

To me, the crux of a safe and secure prison is positive programming, and perhaps most important is education. I have witnessed the change of many offenders through participation in education programs, and as they progress and reach goals, they recognize they can be successful in an educational environment, and they strive to reach even higher levels of education. A colleague I used to teach with at Saint Louis University, who had served twelve years in California and Oregon prisons, told me that taking college courses in prison is what finally showed him learning was “another high” that could take the place of his use of drugs. He decided to get a degree when released, received a PhD, and began a career in academia.

CCA focuses on the provision of evidenced-based programming for as many inmates as possible. As an example of CCA's programming emphasis, in

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49. MGMT. & TRAINING CORP. INST., *PRIVATIZATION IN CORRECTIONS: INCREASED PERFORMANCE & ACCOUNTABILITY IS LEADING TO EXPANSION 1* (2009).

50. Joan Petersilia, *A Retrospective View of Corrections Reform in the Schwarzenegger Administration*, 22 *FED. SENT'G REP.* 148, 150 (2010).

51. Marisa Lagos, *Cuts in Programs to Help Inmates Questioned*, SFGATE (Feb. 16, 2010), <http://www.sfgate.com/education/article/Cuts-in-programs-to-help-inmates-questioned-3199585.php>.

52. *Id.*

53. *Id.*

54. Author's conversations with the staff of individual institutions.

2007, CCA had an average daily enrollment of more than 30,000 inmates in academic education and vocational programs.<sup>55</sup> Academic education offerings include ABE/GED, Mexican education programs, and life skills.<sup>56</sup> CCA awarded over 3,000 GEDs during the year.<sup>57</sup> Vocational offerings include certified instruction in specialty trades such as masonry, carpentry, plumbing, computers, painting, horticulture, and more.<sup>58</sup> Also in 2007, 14,449 CCA inmates were enrolled in faith-based programs,<sup>59</sup> and approximately 3,300 CCA inmates enrolled in addictions treatment and other cognitive behavior programs.<sup>60</sup> These addictions treatment and cognitive behavior programs are structured according to an evidence-based model that provides a state-of-the-art and proven program delivery.<sup>61</sup> These programs typically last nine to twelve months and are operational at twenty-two of CCA's facilities; many of these are affiliated with the National Association of Alcohol and Drug Abuse Counselors (NAADAC).<sup>62</sup> CCA has over 5,500 inmates complete and graduate from these programs each year. Active and positive programs improve prison management and create a safer environment for staff and inmates. Active programs improve the morale of inmates and enhance communications between staff and inmates. This reduces facility tensions, enhances intelligence gathering, and improves inmate accountability.

While some research has suggested that rehabilitative programming in privately operated facilities produces a lower rate of recidivism than their public counterparts,<sup>63</sup> overall, the studies examining post-release outcomes between public and private prison inmates have shown mixed results. Results from a Florida study comparing recidivism of releasees from private and public prisons found that recidivism of releasees from the private prisons was lower than for those released from public prisons and, of those who reoffend, the crimes were less serious for the private prison releasees.<sup>64</sup> An evaluation of the privately managed Dallas County Judicial Treatment Center found that graduates of the treatment center showed a rate of recidivism that was 50 percent lower than that of individuals in public facilities.<sup>65</sup> However, when the

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55. Correspondence with the Inmate Programs Division of CCA, Nashville, TN.

56. *Inmate Programs: The Right Path*, CORR. CORP. OF AM., [http://cca.com/Media/Default/documents/CCA-Resource-Center/Inmate\\_Program\\_Broch.pdf](http://cca.com/Media/Default/documents/CCA-Resource-Center/Inmate_Program_Broch.pdf) (last visited May 22, 2014).

57. Correspondence with the Inmate Programs Division of CCA, Nashville, TN.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. WILLIAM BALES ET AL., *RECIDIVISM: AN ANALYSIS OF PUBLIC AND PRIVATE STATE PRISON RELATIONSHIP IN FLORIDA 2* (2003).

64. Lanza-Kaduce et al., *supra* note 29, at 36, 38.

65. Knight & Hiller, *supra* note 29, at 62; Knight et al., *supra* note 29, at 302.

Government Accounting Office (GAO) conducted a comprehensive review of five outcome studies of private prisons completed since 1991 in Texas, New Mexico, California, Tennessee, and Louisiana, analysts did not believe that three of these studies were sufficiently designed to validate results, but found outcomes from the remaining two indicated minimal or no differences between the public and private prison operations.<sup>66</sup> Other studies have also failed to find any significant differences between the outcomes of offenders released from public versus private prisons.<sup>67</sup> In a national survey to compare private and public prison operations that analyzed the types of inmates, inmate misconduct, and general characteristics of prisons and their staff, Camp and Gaes concluded that private prisons had higher escape rates, more positive results from drug tests, and did not enhance staff or community safety.<sup>68</sup>

Overall, there has been no clear evidence that private prisons or public prisons are more cost effective. A recent publication of a meta-analysis of twelve studies is a good example, as the researchers concluded that private managed prisons provide no clear benefit or detriment over public prisons.<sup>69</sup> This review, interestingly, is used by those against privatization to note that they are not any more cost effective than public prisons and by proponents of privatization who point out that they operate as well as public prisons and there are no quality or cost reasons not to contract with the private sector.<sup>70</sup>

There has not yet been a sufficient number of “apples-to-apples” comparisons of quality and cost between public and privately operated prisons to draw decisive conclusions. Perhaps the most comprehensive is a review of the Taft, California, private prison which found that inmates and staff were provided a safe living and working environment and the private facility cost less to operate, but it had lower rates of assault, more escapes, higher rates of drug use, and higher rates of inmate grievances.<sup>71</sup>

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66. U.S. GEN. ACCT. OFF., GAO/GGD-96-158, PRIVATE AND PUBLIC PRISONS: STUDIES COMPARING OPERATIONAL COSTS AND/OR QUALITY OF SERVICE 2-3 (1996).

67. AMY CHEUNG, SENT'G PROJECT, PRISON PRIVATIZATION AND THE USE OF INCARCERATION 4 (2004), available at [http://www.sentencingproject.org/doc/publications/inc\\_prisonprivatization.pdf](http://www.sentencingproject.org/doc/publications/inc_prisonprivatization.pdf). See also PHILIP MATTERA & MAFRUZA KHAN, INST. ON TAX'N AND ECON. POL'Y, JAIL BREAKS: ECONOMIC DEVELOPMENT SUBSIDIES GIVEN TO PRIVATE PRISONS 4 (2001).

68. Scott Camp & Gerald Gaes, *Growth and Quality of U.S. Private Prisons: Evidence from a National Survey*, 1 CRIMINOLOGY & PUB. POL'Y 427, 435 (2002).

69. BRAD LUNDAHL ET AL., PRISON PRIVATIZATION: A META-ANALYSIS OF COST EFFECTIVENESS AND QUALITY OF CONFINEMENT INDICATORS 2 (2007).

70. *Id.*; DAVID W. MILLER, THE DRAIN OF PUBLIC PRISON SYSTEMS AND THE ROLE OF PRIVATIZATION: AN ANALYSIS OF STATE CORRECTIONAL SYSTEMS 10, 12-13 (2010).

71. DOUGLAS C. McDONALD & KENNETH CARLSON, CONTRACTING FOR IMPRISONMENT IN THE FEDERAL PRISON SYSTEM: COST AND PERFORMANCE OF THE PRIVATELY OPERATED TAFT CORRECTIONAL INSTITUTION 143 (2005).

### 5. Reality: Private Prisons Are Safe

Perhaps the most important misconception is that the profit motive of private prisons undermines safety. The reality is that private prisons are safe. While some research found that private facilities experience fewer escapes, inmate disturbances, riots, and inmate deaths than some public facilities,<sup>72</sup> other studies have produced findings showing that private prisons had higher escape rates and more positive results from drug tests.<sup>73</sup> Finally, other studies have shown that the safety of private prisons is comparable to that of the public sector.<sup>74</sup> While these results regarding safety of private prisons are mixed, private prisons are concerned with and ardently monitor the safety of the inmates, staff, and citizens in the surrounding community. In terms of safety, the private sector provides a correctional environment and services that strive to be at least equal to the environment and services provided by the public sector.

### CONCLUSION

There are legitimate concerns and differences as to whether private, for-profit companies should own and operate prisons. In the years I worked for the company, the goal of CCA was to have high quality, safe, and secure prisons. Not only is it the crux of what correctional professionals (in public or private facilities) have been trained to do, there is no good business reason to do anything else. Important to achieving this goal is to provide positive inmate programming, to include basic education, GED opportunities, and vocational training programs.

From my experience in the private sector, academia, and public sector at both the state and federal level, I believe that the private corrections industry has established itself as a viable and dependable partner to government. Private industry professionals—many of whom have retired from the federal, state, or local corrections systems and moved into private operations—take professionalism and quality of service extremely seriously. Not only can private operators provide flexibility and cost efficiency to government agencies, they do so without sacrificing quality or safety.

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72. AUSTIN & COVENTRY, *supra* note 14, at 46–47; MOORE, *supra* note 29, at 23–24; URBAN INST., COMPARISON OF PRIVATELY AND PUBLICLY OPERATED CORRECTION FACILITIES IN KENTUCKY AND MASSACHUSETTS ES6–ES7 (1989); Archambeault & Deis, *supra* note 29, at 566.

73. McDONALD & CARLSON, *supra* note 71, at 143; Camp & Gaes, *supra* note 68, at 433–35.

74. RYAN, *supra* note 29, at 3; SEGAL & MOORE, *supra* note 30, at 9–10.