



# Department of Justice

STATEMENT

OF

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BEFORE NCJRS

THE

CONSTITUTIONAL  
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES  
AND THE ADMINISTRATION OF JUSTICE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

PRISON PRIVATIZATION

ON

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Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you to discuss my views regarding the Federal Bureau of Prisons' relationship with the private sector.

#### INTRODUCTION

As evidenced by this hearing, the second in less than six months on this topic, there is a high degree of interest in the area of privatization of corrections.

The term "privatization" when used in reference to corrections has come to describe three separate and somewhat distinct concepts. One is the use of private venture capital resources in the construction of facilities. This approach generally involves a lease-back arrangement where the public sector leases the facility, either with or without the option to buy, while continuing to operate it with public sector employees.

Secondly, privatization has referred to the use of private companies to provide both "halfway house" types of programs for inmates preparing to return to the community, and ancillary support services inside the confines of government owned and operated facilities. Since 1981, the Bureau has relied solely on the private sector to provide pre-release housing through its Community

Treatment Center program. We presently contract for 330 Community Treatment Centers, housing over 3,000 Federal inmates at a cost of over \$29 million. The average cost at these facilities is a little over \$31 per inmate, per day, versus an average of approximately \$39.50 at Bureau of Prisons institutions. The Bureau also has experience in contracting for selected services in the areas of education, food service, medical and psychology services, as well as some consultant and service contracts in Federal Prison Industries.

The Bureau of Prisons has typically taken advantage of the use of the private sector to provide these services when we believe it is to the Government's advantage to do so. Cost is not the sole criteria used to select which services should be performed by the private sector. Usually, the use of contract services is beneficial in terms of flexibility in controlling a rapidly fluctuating inmate population or in providing specialized expertise necessary to respond to certain needs.

Finally, the term privatization is increasingly being used to refer to the management and operation of entire facilities by private corporations. While this subject is a topic of debate,

there is no major adult medium or maximum security prison currently operating in this fashion. Consequently, all current evidence regarding this topic must be generalized from other programs such as juvenile detention facilities or more limited adult experiences such as local jails and lower security detention facilities.

I would like to focus my remarks today primarily on this final use of the term. I will first describe our very limited experience in contracting for regular facilities for sentenced offenders.

#### THE BUREAU OF PRISONS' EXPERIENCE

The Bureau of Prisons has had two significant experiences which were not pre-release or halfway house type situations. One of these was at LaHonda, California where the Bureau contracted with a private sector firm for the operation of a 60-bed facility used to house Youth Corrections Act offenders who require limited security and supervision. The repeal of the Youth Corrections Act in 1984 is having the effect of reducing and eventually eliminating the YCA program. The LaHonda contract expired in January of this year. The YCA average daily population had by then declined to the point where it could be housed entirely at Bureau facilities. The inmate per capita cost at LaHonda was approximately \$92 per day,

including contract monitoring costs incurred by the Bureau. Comparable cost in the Bureau's three existing YCA facilities was approximately \$55 per inmate during the same time period. Contracting to house these offenders gave us the flexibility to handle our population without acquiring additional permanent space. This allowed us to respond to the YCA population reduction in the most cost-effective way.

The other contracting experience is the utilization of a Houston, Texas private facility under contract by the Immigration and Naturalization Service. We have used this facility for 60-80 sentenced illegal aliens who are then processed by the INS for deportation following completion of their sentences.

In both cases, the contracts have been monitored closely. I personally visited the LaHonda facility, and our South Central Regional Director visited the Houston facility. Experience with these contracts was essentially positive.

It should be noted that these facilities were used to augment and supplement the Bureau's basic resources. In both cases, contract resources were used to house low security inmates with specialized needs.

There are several important issues which remain to be resolved before considering the wide use of contracts as a primary alternative for housing the typical Federal adult inmate population. These include legal, cost, quality, and philosophical issues. While these issues are relevant at all jurisdictional levels, I will attempt to address their significance in the Federal system.

#### LEGAL

There are a number of legal issues with regard to privatization in Federal corrections. One is the question of legal authority to contract for an entire facility. Although I raised some question in this regard when I testified before this subcommittee in March of 1985, our General Counsel advises me that we currently have the necessary authority to contract for the management of an entire facility under 18 USC 4082. This law allows the Attorney General to designate as a place of confinement "any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise...".

Another major legal issue is an inmate's right to bring suit against the government for violations of conditions of confinement by private concerns. Other issues which may come to the forefront as privatization develops revolve around the law enforcement

functions performed by Bureau of Prisons personnel, such as the use of weapons in emergency situations and the investigation and discipline of inmate misconduct. Finally, there are issues with respect to the case of contractor insolvency or labor actions such as strikes against the contracting corporation.

As an administrator and not a lawyer, I am not prepared to offer any conclusions on these legal issues today. We are working with the Civil Division and the Office of Legal Counsel to analyze these concerns. But because of these issues, we are proceeding cautiously on privatization in corrections.

#### COST AND QUALITY

The issues of the cost and the quality of correctional services are extremely complex. We have doubts about cost comparisons between private and public sector confinement. Several months ago, I remember reading an article which compared per capita costs in a single private sector, lower security facility with the Federal Bureau of Prisons' system-wide average cost. This can be a very misleading comparison. Obviously, maintaining maximum security U.S. Penitentiaries and other specialized facilities such as the Federal Correctional Institution at Butner, North Carolina, the U.S. Medical Center for Federal Prisoners at Springfield, Missouri and the Federal Medical Center at Rochester, Minnesota is



significantly more expensive than maintaining lower security institutions. Since all contracting to date has been done at the lower security levels, comparing existing contracts with average correctional system figures is analogous to comparing apples and oranges. The more appropriate comparison would be to existing lower security institutions. Additionally, regardless of the degree of use of the private sector, there is still need for governmental policy making and contract monitoring functions. These costs are often included only in the public sector cost estimates.

Also, quite understandably, private corporations anxious to develop a reputation may keep their costs low in order to develop expanded relationships with correctional agencies. We have experienced situations in our Community Treatment Center program where private, for-profit correctional corporations have initially underbid traditional non-profit organizations such as the Salvation Army and Volunteers of America, and increased the cost of the service after the competition has withdrawn from the market. Again, caution and the test of time are warranted in the area of cost comparisons.

Quality is also very difficult to measure and compare for correctional services. In a general sense, quality is the effectiveness of security, the provision of programs to inmates,

and the delivery of support services such as food service and buildings and grounds maintenance. Our review indicates that the privatization efforts to date have been generally successful, but that we do not achieve an increase in quality of correctional services through the use of contract facilities. Private sector competency could, however, be assessed through a series of cost comparisons under OMB Circular A-76. We have heard highly suspect claims from potential contractors of guarantees of reductions in recidivism rates. I am not aware of any evidence to support these claims.

Mr. Chairman, if I had to pick a single principle most responsible for quality and cost effectiveness, it is the development of knowledge and professionalism through training and attention to line staff development. The Bureau of Prisons has been able to maintain high levels of professionalism and skill among its employees. In evaluating the possible opportunities for privatization of corrections, we must be careful that the contractor's concern with profit does not limit a commitment to the long term development of line staff. While there is certainly much potential to explore innovative techniques with the free enterprise approach to corrections, we must be wary of overly simplistic claims of improved cost and/or quality of services by some private companies. These claims need to be carefully evaluated.

There are some core policy issues that should be considered along with the pragmatic issues outlined here. Is corrections a suitable activity for privatization? Imprisonment in a Federal institution currently represents the most serious sanction available in response to a violation of Federal law. The responsibility for administering this sanction carries with it duties which often go beyond the issue of cost efficiency. These issues, including the classification and control of inmates, are not encountered in other areas of the government's contracting out for services such as solid waste management or janitorial services.

#### FUTURE DIRECTIONS

While there is no question that the private sector has a place in the future of corrections in this country, I believe that more experience needs to be gained before we can determine the most promising opportunities to experiment with privatization. It is crucial that we move cautiously in this area, particularly with respect to higher security institutions.

To date, we have had generally successful relationships with private correctional providers in those areas where highly specialized services or flexible responses are necessary with

specialized and generally lower security categories of inmates. Examples include our experiences with sentenced aliens and Youth Corrections Act offenders, as well as our more limited contractual relationships for Community Treatment Centers and selected ancillary support services.

We will continue to pursue contracts in these and other kinds of lower security situations according to our judgment as to their effectiveness. We will continue to monitor, carefully and with interest, other jurisdictions' practical, legal, and philosophical experiences as they develop and will continue to monitor the cost between government and private operations.

That concludes my formal statement, Mr. Chairman. I would be pleased to answer any questions you or your colleagues may have.