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Large Jail Network Bulletin

Winter 1993

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LARGE JAIL NETWORK

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Are "Doing Well" and "Doing Good" Contradictory Goals of Privatization?

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More than a decade has passed since the first secure facility management contracts were awarded to private firms. These contracts and others that soon followed caused highly visible cracks to form in the foundation of a governmental monopoly whose right to exist had previously not been seriously challenged. Although these awards did not provoke opposition by the American Correctional Association (ACA)¹, the reaction from many other organizations—including the American Bar Association (ABA), the American Federation of Federal, State, and Municipal Employees (AFSCME), the American Jail Association (AJA), and the National Sheriffs' Association (NSA)—can fairly be described as hostile.²

A significant proportion of this hostile response is an effort by these organizations to protect the vested interests of their members. Beyond efforts to protect self-interests, however, is the persistent and not unreasonable fear that private corporations will be so motivated by the need to become and remain profitable that they will not provide

correctional services of suitable caliber. In his influential anti-privatization monograph entitled *The Legal Dimensions of Private Incarceration*, for example, Ira P. Robbins argued that "private-prison corporations will be drawn to cost-cutting measures that will have adverse effects on the prison system. . . . In short, privatization is not a panacea; the private sector is more interested in doing *well* than in doing *good*."³

The goal of this essay is to determine if the fear that private firms will sacrifice "doing good" for the sake of "doing well" has a foundation in fact. Two key questions will be examined:

- Does the evidence support the premise of privatization proponents that contracting yields significant cost savings?
- Does the evidence support the fear of privatization opponents that any cost savings will be matched by decreased quality in correctional services?

Evidence of Cost Savings to Contracting Agencies

By far the weakest challenge to correctional privatization comes from those who contend that contracting is unlikely to yield signif-

icant cost benefits. The reasons this challenge lacks credibility are at least two-fold:

- First, the very fact that a contract exists strongly suggests that the contracting governmental entity was confident that cost savings would be achieved. During a decade of personal experience with contracting, I have yet to encounter a unit of government that was willing to contract without having first been assured of cost savings. Indeed, it is not uncommon to see tangible evidence of cost savings being cast as a statutory precondition for contract awards.⁴
- Second, it is universally acknowledged that fringe benefits—especially retirement benefits—in the private sector are less generous than those available to public employees. Thus, a reasonable person ought to be surprised only if he or she encountered a contracting initiative that failed to yield at least some cost savings.

The real question is how great the cost savings of contracting are likely to be rather than whether there will be any savings. Unfortunately, sound evidence of the magnitude of cost savings is not abundant. This is surprising, given that efforts to

reduce operating costs have been a driving force behind privatization. As recently as 1987, an in-depth report by the Council of State Governments and the Urban Institute

The results of cost savings analysis vary broadly from contract to contract.

observed that "we have not found available reliable cost information at any of the levels of government studied here."⁵ Since then, however, a good deal of evidence has been published.⁶

Reflecting both the sophistication of the cost comparison methodologies used and various other factors, the results of cost savings analyses vary quite broadly from contract to contract. Two key studies based on conservative approaches warrant special emphasis here.

The first study was conducted by Charles H. Logan and Bill W. McGriff and published in 1989 by the National Institute of Justice.⁸ Logan and McGriff compared the actual contract cost paid to the Corrections Corporation of America (CCA) for operating the 350-bed Hamilton County Penal Farm located near Chattanooga, Tennessee, between 1985 and 1988 with estimates of what Hamilton County would have paid had it continued to operate the facility itself. The estimates were based on actual 1983-84 expenditures, plus annual employee salary increases

equal to those actually received by Hamilton County employees and non-salary increases equal to inflation, as measured by the Consumer Price Index. The total estimated cost for continued public management of the facility for the three-year period was \$9,909,717;

the total actually paid to CCA during the three-year period was \$9,404,801. Thus, Logan and McGriff concluded that the total cost savings realized by contracting was \$504,917, or an average annual operating cost savings of 5.37 percent. Significantly, this cost savings was possible despite the fact that public operating costs estimated for the three-year period averaged only \$26.08 per inmate-day, a cost well below the reported average of roughly comparable facilities elsewhere in Tennessee.

The second study was published by the Texas Sunset Advisory Commission in 1991 and was designed to determine whether contracts awarded to CCA and to the Wackenhut Corrections Corporation (WCC) by the Texas Department of Criminal Justice (TDCJ) in 1988 had achieved the 10 percent cost savings required by Texas law.⁹ The contracts called for each firm to design, construct, and manage two 500-bed minimum security prisons. The cost savings analysis methodology called for the Sunset Advisory Commission, on the basis of data supplied by the TDCJ, to determine

what the cost to Texas would have been in 1990 had the four prisons been operated by the TDCJ and to compare that estimate with the actual payments made to CCA and WCC. The results reveal an average estimated per diem cost (including debt service) for public operation of the facilities at \$42.92 and an actual payment to CCA and WCC of \$36.76. The resulting estimated savings of \$6.16 per prisoner per day, or \$4,496,800 per year for all four facilities, yields an estimated cost savings of 14.35 percent.¹⁰

Today no informed critics of privatization deny that contracting will yield significant savings. Instead, they advance the "you get what you pay for" argument and contend that discounted prices will necessarily yield substandard services. If this claim were valid, then clearly contracting for correctional services would be "penny wise but pound foolish." The available evidence thus deserves serious consideration.

Indicators of Quality in Corrections Contracting

Perhaps quality, like beauty, is to be determined only in the mind of the beholder, but significant evidence now exists regarding the quality of contract services. This evidence uniformly supports a conclusion that efforts to achieve cost savings by contracting do not undermine the goal of providing high-caliber correctional services. Here I will point to four types of evidence.

1. Contract renewal. The first indicator is as broad—and perhaps as crude—as it is pragmatic. It evaluates quality by measuring the willingness of contracting units of government to renew existing contracts. The hypothesis is that contracts would be terminated for cause or not renewed if contracting units of government were dissatisfied with either the cost savings being realized or the caliber of the services being provided by contractors.

When correctional contracting is evaluated in this manner, it is obvious that government satisfaction is considerable. My review of contracts awarded for the management of secure adult facilities since the mid-1980s identifies only one instance of a facility closing for reasons related to inadequate contract performance and one instance in which a contract was shifted from one private management firm to another for roughly comparable reasons. Not insignificantly, neither of the management firms involved in these situations is presently involved in the management of adult correctional facilities.

Additionally, my data reveal only one contract that was not renewed because of cost considerations. Put differently, the best available data fail to reveal a single contract awarded to any firm now a part of the private corrections industry that has been terminated or not renewed for reasons related to the caliber of contract performance.

2. Litigation. The second indicator is similarly broad and equally pragmatic. It focuses on the litigation experience of private corrections management firms. A recent and reasonably careful review of the circumstances of all privately managed jails and prisons in the United States fails to reveal a single facility that is operating under a consent decree or court order as a consequence of suits brought by prisoner plaintiffs.¹¹ When one recognizes that major facilities or entire systems in roughly three-quarters of American jurisdictions are now operating under consent decrees or court orders and that similar court intervention is hardly uncommon in local correctional systems, the fact that private facilities remain unblemished by successful prisoner suits is not trivial.

3. Accreditation. The third indicator flows from the remarkable success private management firms have had in achieving full accreditation for their facilities from the Commission on Accreditation of the ACA. To be sure, the correlation between ACA accreditation status and caliber of services provided is imperfect. I am certainly willing to accept the hypotheses that there are facilities that have not sought ACA accreditation within which one finds sound services and that there are ACA-accredited facilities that are far from exemplary on one or more dimensions. At the same time, however, there is something to be said in favor of those correctional facilities that are willing to shoulder the substan-

tial burdens associated with seeking accreditation and to accept the risks associated with independent professional assessments by ACA audit teams.

The fact is that private firms have walked successfully down the accreditation path far more often than have their public sector counterparts. Of the fifty-three private facilities now operating in the United States, twenty-five, or 47.17 percent, are already ACA-accredited, and an additional seven, or 13.21 percent, have applied for accreditation.¹²

4. Quality of confinement. The final indicator comes from the growing body of research literature examining the quality of privately provided correctional services.¹³ Certainly the most sophisticated of these reports is that published recently by Charles H. Logan. Based on data from institutional records and modified versions of the Prison Social Climate Survey developed by the Federal Bureau of Prisons, Logan gathered detailed data on the quality of confinement in three facilities: the New Mexico Women's Correctional Facility, operated by CCA; the Western New Mexico Correctional Facility, which housed New Mexico's female prisoners prior to the opening of the CCA facility in 1989; and the Federal Correctional Institution in Alderson, West Virginia.

The study included 333 empirical indicators designed to measure eight aspects of the quality of confine-

ment. Logan's overall conclusion was: "The private prison outperformed the state and federal prisons, often by quite substantial margins, across nearly all dimensions."¹⁴

In sum, the best available evidence provides no support for the hypothesis that the cost saving strategies of private management firms undermine the caliber of services provided in the facilities for which they are responsible.

Concluding Comments

Private corrections management firms have to date been awarded approximately seventy-five contracts for facilities in the United States, Great Britain, and Australia whose total prisoner capacity is well above 30,000. The available evidence consistently reveals both that private management yields significant cost benefits to contracting units of government and that those benefits are not being achieved at the expense of either the caliber of the correctional services prisoners receive or the public safety interest.

Notwithstanding this sound record of performance, many working in the public sector choose to think of their private sector colleagues as "privateers" who are committed to any and all means of maximizing profits at the expense of the public interest in general and the interest of prisoners in particular.

It is true, of course, that there is much variability among private corrections firms. Some are more competent and capable than others—just as some public agencies are more competent and capable than others. It is no less true that elected officials at the local, state, and federal levels have made the policy decision that corrections is no longer a governmental monopoly that will be protected from competition.

Thus, the winds of change are blowing across the nation. The commitment to reinventing government—sometimes by contracting out for services government itself once provided—will not diminish. The effect is that those working in the public sector who wish to protect their systems from the threat they perceive from the privatization movement will have to accomplish the protection by providing proof of the efficiency and effectiveness of their own efforts.

Public sector correctional practitioners will enjoy the right to serve the public interest only if they are able to provide the best possible correctional services at the lowest possible cost. If that fact of modern political life gives rise to anxiety among those working in public correctional facilities, the anxiety will not wither away merely through the advancement of empty claims that private sector firms are more interested in doing well than in doing good. The privateers are here. And they plan to stay.

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Notes

1. The core of the policy statement adopted by ACA in early 1985 was that government should "use all appropriate resources, both public and private" and that, regarding private management firms, they were acceptable as long as the providers' programs "meet professional standards, provide necessary public safety, provide services equal to or better than government, and be cost-effective compared to well-managed governmental operations."
2. A combination of subsequent legal developments and the early successes of privatization experiments prompted the ABA to soften its initial negative resolution regarding privatization in a resolution that was adopted in 1989. However, the opposition of AFSCME, AJA, and NSA remains firm.
3. Ira P. Robbins, *The Legal Dimensions of Private Incarceration*. (Washington, D.C.: American Bar Association, 1988), p. 4.
4. An illustration of this is provided by a Texas statute that precludes contract awards absent an assurance of operating cost savings of at least 10 percent.
5. Judith Hackett et al., *Issues in Contracting for the Private Operation of Prisons and Jails*. (Washington, D.C.: The Council of State Governments and The Urban Institute, 1987), p. 124.
6. See, e.g., Charles H. Logan and Bill W. McGriff, "Comparing Costs of Public and Private Prisons: A Case Study," *NIJ Reports* 216 (1989); The Urban Institute,

Comparison of Privately and Publicly Operated Correctional Facilities in Kentucky and Massachusetts (Washington, D.C.: National Institute of Justice, 1989); Sandra E. Albright and Fran Harchas, "Private Prison Management in Louisiana: A Cost Analysis," unpublished manuscript (1990); Doctor R. Crants III, "Private Prison Management: A Study in Economic Efficiency," *Journal of Contemporary Criminal Justice* 7 (1991): 49; *Private Prisons: Report to the Chairman, Subcommittee on Regulation, Business Opportunities and Energy, Committee on Small Business, United States House of Representatives* (Washington, D.C.: U.S. General Accounting Office, 1991); Texas Sunset Advisory Commission, *Recommendations to the Governor of Texas and Members of the 72nd Legislature* (Austin, Texas: The Commission, 1991).

7. An often-ignored illustration of the factors that influence cost savings appears to involve nothing more or less than the per prisoner per day costs government was willing to tolerate prior to contracting decisions. All other things being equal, the higher the costs paid by government prior to contracting, the greater the cost savings realized by contracting. For example, Crants (1991:57) reports that Santa Fe County, New Mexico was paying a relatively high \$75.00 per prisoner per day prior to awarding a management contract to CCA in 1986 that provided for a per diem payment of \$44.50, thus yielding an estimated operating cost savings of 40.7 percent.

8. Logan and McGriff, *supra*, note 6.

9. Texas Sunset Advisory Commission, *supra*, note 6.

10. In large part on the strength of this cost analysis, the TDCJ recently awarded four additional contracts for the private design, construction, and management of 500-bed prisons.

11. This does not mean that no private facilities are operating under court orders or consent decrees that are applicable to the correctional systems of which they are a part. It does mean that I have found no evidence of a private firm having entered into a consent decree or being placed under a court order as a consequence of a finding of unconstitutional jail or prison conditions in a facility for which it was responsible.

12. Charles W. Thomas and Sara L. Martin, *Private Adult Correctional Facility Census*, 5th ed. (Gainesville, Florida: Private Corrections Project, 1993).

13. Robert B. Levinson, "Okeechobee: An Evaluation of Privatization in Corrections," *Prison Journal* 65 (1985): 75; Hackett et al., *supra*, note 5; Samuel J. Brakel, "Prison Management, Private Enterprise Style: The Inmates' Evaluation," *New England Journal on Criminal and Civil Confinement* 14 (1988): 1; The Urban Institute, *supra*, note 6; Charles H. Logan, "Well Kept: Comparing Quality of Confinement in Private and Public Prisons," *Journal of Criminal Law and Criminology* 83 (1992): 577.

14. Logan, *ibid*, p. 601.

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