

**COMMENTS
SUBMITTED TO THE
COMMERCIAL ACTIVITIES PANEL
REGARDING THE TRANSFER OF ACTIVITIES
PERFORMED BY GOVERNMENT EMPLOYEES TO
FEDERAL CONTRACTORS**

May 7, 2001

by

Corrections U.S.A.

**Public Safety Employees Association of Alaska
Arkansas Law Enforcement Union, IUPA local 880
California Correctional Peace Officers Association
Lake County Correctional Officers Association, CA
Association of Orange County Deputy Sheriffs, CA
AFGE Local 1301, CO
Delaware Correctional Officers Association
Florida Police Benevolent Association
AFGE Local 4051, KY
Essex County Correctional Officers Association, MA
Association of County Employees, MA
Minnesota Alliance of Professional Correctional Officers
Nevada Corrections Association
New Jersey State Police Benevolent Association
New Jersey State PBA Law Enforcement Officers Local 105
Attica State Prison Sector, New York State Correctional Officers PBA
Nassau County Sheriff Officers Association, NY
Suffolk County Correctional Officers Association, NY
Association of Oregon Corrections Employees
Oregon Corrections Officers Association
Multnomah County Correctional Officers Association, OR
Pennsylvania State Correctional Officers Association
AFGE Local 148, Pennsylvania
Rhode Island Brotherhood of Correctional Officers
Wyoming Association of Correctional Employees**

Section 832 of the National Defense Authorization Act for fiscal year 2001 requires the Comptroller General of the General Accounting Office to study the transfer of commercial activities currently performed by government employees to federal contractors. The members of Corrections U.S.A. (CUSA) appreciate the opportunity to provide input to the panel on the critical issue of prison privatization.

Corrections is a matter of justice. It is about the government keeping murderers, rapists, child molesters and others who are sentenced for committing crimes against the law abiding public off our streets. At the federal level of government, The Federal Bureau of Prisons (BOP), U.S. Department of Justice, has been designated by statute with performing this task. The mission of the BOP is the “protection of society by confining offenders in a safe, humane and appropriately secure facility that provides work and other self-improvement opportunities to assist offenders in

becoming law abiding citizens.”¹ This vital government function is being contracted out to private prison companies beholden to their stockholders.

Currently, the U.S. Department of Justice contracts with the private sector to house federal inmates. In the process, public safety is severely jeopardized, the government has not realized a cost savings, and state’s have had no input on the importation of inmates within their borders. Meanwhile, beds owned and operated by local and state governments remain empty.

The first part of these comments will examine the history of privatization of corrections at the federal level. The second part will address the impact of prison privatization on public safety, followed by financial considerations. Part three covers the availability of bed space at the state and local level.

Members of CUSA believe these comments will demonstrate to the panel that it should include the following recommendations in its report to Congress:

- The DOJ should not contract with the private sector to house federal inmates;
- The DOJ needs adequate bed space to house its inmate population;
- and

¹Federal Bureau of Prisons, “Solicitation, Offer, and Award,” Solicitation Number PCC-

- The DOJ should contract with the public sector to house federal inmates when additional bed space is needed.

HISTORY OF PRISON PRIVATIZATION AT THE FEDERAL LEVEL

Privately owned prisons in the United States are not a new phenomenon; they can be traced to the 1840's. This history, however, suggests that such efforts were ripe with abuse and exploitation.² In recent times, the federal government began the first experiment in the privatization of adult corrections when the Immigration and Naturalization Service (INS) contracted with Behavioral Systems Southwest in 1979 to hold undocumented immigrants. By 1986, one-fourth of INS detention facilities were privately owned.³

Both the U.S. Marshals Service and the Bureau of Prisons also began contracting with the private sector. According to the Bureau of Justice Statistics, by 1995 the Department of Justice had several contracts with private companies to house and supervise such inmates:⁴

001, November 27, 1996, p. 4.

²For an overview of the literature on the history of prison and jail privatization, see Zupan, Linda L., "The State of Knowledge on the Privatization of Prison and Jail Operations," The Debate Over Prison Privatization, Sacramento, California: The California Correctional Peace Officers Association, 1997, Attachment 15, appendix A.

³Press, Aric, "The Good, the Bad, and the Ugly: Private Prisons in the 1980s," The Debate Over Prison Privatization, Attachment 1, pp. 25-26.

⁴U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Bureau of Justice Statistics Sourcebook of Criminal Justice Statistics -- 1995, Albany, New York: The Hindelang Criminal Justice Research Center, The University of Albany, 1996, pp. 97-100.

<u>Agency</u>	<u>Private Company</u>	<u>Facility</u>
BOP, INS	CCA	Eloy Detention Center
Marshals	CCA	Central AZ Detention Center
INS	Wackenhut	Aurora/INS Processing Center
Marshals	CCA	Bay Correctional Facility
Marshals	CCA	Bay County Jail Annex
Marshals	CCA	Leavenworth Detention Center
Marshals	CCA	Torrence County Detention
BOP	CCA	Torrence County Detention
Marshals	CCA	Santa Fe Detention Center
Marshals	Cornell Corrections	Central Falls Detention Center
Marshals	CCA	W. Tennessee Detention
BOP, INS	Mid-Tex Detention	City of Spring Correctional Center
BOP,INS	CCA	Eden Detention Center
Marshals	Cap. Cor. Resources	Limestone County Detention
INS	CCA	Houston Processing Center
INS, BOP	CCA	Laredo Processing Center
Marshals	Wackenhut	C. Texas Parole Violator Center

(Hereinafter referred to as the Sourcebook).

It is important to keep in mind that these contracts with the private sector were to house low risk, special populations that were generally incarcerated for only a brief period of time.⁵

The movement to privatize a mainstream adult prison gained momentum in 1988 when the President's Commission on Privatization recommended that BOP contract for private sector operation of a medium or maximum security prison. The Commission recommended allowing a private company to operate a facility in order to provide a basis of comparison with a similar facility operated by BOP. BOP submitted a budget request to use private contractors to build and operate a minimum security facility but that request was denied by the Senate Committee on Appropriations.⁶

Privatization of federal prisons reemerged as an issue in 1995. The Department has taken the position that it has the statutory authority to contract with the private sector to house BOP inmates.⁷ The President's

⁵Up to 1997, privatization at the federal level did not include a mainstream adult correctional population.

⁶"Recent Concerns and Challenges for the Future", Written statement of Norman J. Rabkin, Director, Administration of Justice Issues, General Government Division, General Accounting Office before the Subcommittee on Crime, Committee on the Judiciary, House of Representatives, June 8, 1995, p. 6.

⁷The Department is presumably basing its power to contract with the private sector on 18 U.S.C.

budget request for fiscal year 1996 proposed privatizing the management and operations of the pretrial Metro Detention Center in Brooklyn, New York; and minimum and low security federal prisons in Forrest City, Arkansas; Taft, California; and Yazoo City, Mississippi. Congress rejected part of this proposal: The Justice Department Appropriation bill for fiscal year 1996 specifically provided that "no funds appropriated in the Act shall be used to privatize any federal prison facilities located in Forrest City, Arkansas and Yazoo City, Mississippi."⁸

The Administration was planning to privatize the management and operations of most future federal facilities under construction.⁹ The President's 1997 budget request projected the activation of two private facilities during 1997. According to the Director of BOP, the decision to proceed with privatization was made:

to alleviate the tension between the inevitable growth in the Federal inmate population and prison system while responding to Administration and Congressional initiatives to streamline government operations. . . . This approach reduces the number of full time equivalency positions needed by the Bureau to

3261 (b) which states: "The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted. . . ." It is unclear whether Congress intended the "otherwise" to apply to state facilities only or if it was meant to include private institutions.

⁸Public Law 104-134.

⁹National Performance Review and OMB, "Privatization Resource Guide and Status Report Part IV, February 13, 1995, pp. 6-7.

activate institutions which are currently under construction.¹⁰

Philip B. Heymann, who was the Deputy Attorney General when the White House began formulating the privatization policy, describes the policy as misguided:

We have a well functioning prison system, a minimum of scandals, no escapes, few riots. I hear a shift to something that is defensible ideologically. But the justifications for it are satisfying what is sort of an arbitrary political target. Prisons are a very sensitive thing to run. This is the No. 1 place I wouldn't try and play games with for reasons of political accounting.¹¹

Thus, the privatization of federal prisons was part of the effort to fulfill the Administration's goal of reducing the number of federal employees. This was not an endorsement of privatization of federal corrections on the grounds that it was sound public policy. In fact, the Administration reversed its position on prison privatization in June, 1996. In a letter to congressional committee chairmen, explaining the decision to use BOP staff to manage and operate facilities, the Assistant Attorney General for Administration noted that the Department was "unable contractually to reduce the risk of a strike or walk out" of correctional officers employed by a private company.¹²

¹⁰Statement of Kathleen M. Hawk, Director, Federal Bureau of Prisons, before the Subcommittee on Crime, House Committee on the Judiciary, June 8, 1995, pp. 26-27.

¹¹Gerth, Jeff and LaBaton, Stephen, "The Pitfalls of Private Penitentiaries, New York Times, November 25, 1995.

¹²General Accounting Office, "Private and Public Prisons, Studies Comparing Operational Costs and/or Quality of Service," GAO/GGD-96-158, August, 1996, p. 1.

Congress did not readily accept this change in the Administration's policy. The appropriation bill for the Department of Justice for 1997 mandated the Bureau of Prisons to enter into a private contract for the management and operation of two federally owned facilities (one low and one minimum security) at Taft, California. The Bureau of Prisons was mandated to “undertake a 5-year prison demonstration project involving the two Taft facilities. . .to give the administration and Congress an opportunity to monitor safety and operational concerns” previously identified by the Department of Justice.”¹³ This 5 year pilot program represents the Bureau of Prison's first effort at the privatization of a major mainstream correctional institution. The contract to operate Taft was awarded to Wackenhut Corrections Corporation on July 21, 1997.

Prior to the opening of Taft, Congress again moved forward with prison privatization. Public Law 105-33, which was signed by the President on August 5, 1997, provides for the Bureau of Prisons to take custody of any person who has been convicted and sentenced in the District of Columbia. At least 2,000 of these inmates were required to be housed in private contract facilities by December 31, 1999 and at least 50% of the inmate population by September 30, 2003. Public Law 105-33 also mandated that

¹³Public Law 104-208.

the Attorney General “conduct a study of correctional privatization, including a review of relevant research and related legal issues and comparative analysis of the cost effectiveness and feasibility of private sector and federal, state, and local governmental operation of prisons and corrections programs at all security levels. . . .”

Due to a host of safety and security issues resulting from the congressional mandate to house District of Columbia felons in private facilities, the appropriation bill for fiscal year 2001, H.R. 4577, provides that the Director of the BOP has the discretion to decide what is appropriate in terms of housing these felons, after considering federal classification standards and the threat of danger to public safety.

The federal government continues to award contracts to private prison companies to house special populations, specifically “low-security non-citizen inmates with relatively short sentences.” The BOP believes that the “private sector has established an acceptable track record for the confinement of minimum-security and some low-security inmates, but not for the incarceration of medium- or high security inmates.”¹⁴

Thus, the previous Administration first proposed the privatization of new BOP facilities as part of its efforts to streamline government.

¹⁴ Director Kathleen Hawk Sawyer, “A Message to All Bureau of Prisons Employees Regarding Privatization” (www.bop.gov/ccdpg/ccdpriv.html).

Recognizing the serious safety and security implications associated with privatizing, the Administration reversed its decision. Congress then began mandating the BOP to privatize mainstream correctional facilities. The requirement to house D.C. felons in private beds proved to be a disaster and Congress retreated from this position. The BOP continues to contract with the private sector to house low security criminal aliens. These developments have taken place without the benefit of congressional hearings. None of the Committees with jurisdiction over the Bureau of Prisons -- the House and Senate Committees on the Judiciary; the House and Senate Committees on Appropriations; or the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs -- have held hearings on prison privatization. Only the General Accounting Office (GAO) "self initiated" a review to "help frame the continuing deliberations of the Justice Department's privatization plans. . . ." ¹⁵

PUBLIC SAFETY ISSUES

Private prisons are dangerous and threaten public safety. Between 1995 to 2000, there have been at least 200 escapes from private prisons throughout the country.¹⁶ Todd Craig, Chief Spokesman for BOP, has stated

¹⁵"Private and Public Prisons, Studies Comparing Operational Costs and/or Quality of Service," pp. 1-2.

¹⁶ See "Private Prisons: Public Safety Threatened, A Summary of Recent Escapes" prepared by the CCPOA Legislative Department, and attached to the end of this report.

that the **privately run facilities BOP contracts with have a 25 percent greater rate of escape** than similar BOP minimum facilities.

As was previously noted, the congressional mandate to house felons sentenced in the District of Columbia in private prisons proved to be a nightmare. The District of Columbia Department of Corrections signed a contract with Corrections Corporation of America to house 1,700 inmates in Youngstown at the Northeast Ohio Correctional Center and 900 inmates were transferred to that facility in a period of three weeks. By the fall of 1997, incidents at the facility culminated in a series of stabbings and assaults, including several on staff. In early 1998, there were two homicides and by March the U.S. District Court ordered a reclassification of inmates and removal off all maximum security classified inmates from the facility. CCA refused to allow an Ohio Legislative Institution Inspection Team entrance to the facility in May, 1998. By July 25, 1998, six inmates (five murderers) escaped from the CCA facility at Youngstown.

On August 5, 1998, Attorney General Janet Reno appointed the Corrections Trustee for the District of Columbia to perform an in-depth review and inspection of the security procedures, management practices, and work opportunities of the Northeast Ohio Correctional Center. The report

provides a review of security procedures, management practices and work opportunities. The major findings in the report are as follows:

- In a pattern of flawed security attributable to both corporate and institutional management deficiencies, Youngstown failed to accomplish the basic mission of correctional safety. Most notably, there were two homicides, escapes, numerous stabbings, assaults against inmates and staff, and the widespread presence of dangerous weapons among inmates.
- The Department of Corrections agreed to a flawed contract, at an inflated price, with weak requirements on the contractor and minimal provisions of enforcement.
- Youngstown was not adequately prepared to open and was overwhelmed by a precipitous rush to fill it. Even though there were immediate problems, inmates continued to be admitted at an accelerated pace.
- DOC and CCA failed to perform case reviews and select the appropriate population for transfer. Inmate screening and classification systems were only recently developed.
- A destructive pattern of extensive idleness prevails amongst inmates: There are few constructive work or program activities for most prisoners, in violation of the contract.
- The lack of correctional experience and training on the part of staff severely hampers the ability to manage a difficult inmate population.
- In the critical area of staff/inmate relations, a poor level of communication and trust prevailed since the opening of the facility.
- There were a number of allegations of excessive use of force by staff teams.
- There is little indication that the local management received significant guidance in security procedures from corporate management, except in reaction to major problems.
- Until recently, Youngstown has not demonstrated the capability to identify and correct its own problems. CCA is reluctant or unable to perform internal audits or after-action reviews, with accompanying analytical reports following significant incidents of security breakdowns.
- External relations with the Youngstown community as well as law enforcement leaders have been severely damaged.
- In the critical area of law enforcement procedures, Youngstown has shown disorganization and a lack of adequate coordination and cooperation with investigatory and prosecutorial agencies. Joint

interagency emergency assistance plans have not been adequately finalized and implemented not have any joint emergency preparation exercises been planned or conducted.¹⁷

The following examples of incidences at private facilities used to house federal prisoners is simply the tip of the iceberg and demonstrate that there are serious security issues unique to private facilities:

- In March of 1996, the federal jail operated by a private prison company at Miramar Naval Station in California was set on fire by inmates and forced to close down.¹⁸
- In February 1997, four inmates escaped from the Donald Wyatt Detention Center in Rhode Island, used to house federal inmates. The four escapees had a hacksaw smuggled in during visiting hours and over the course of several weeks were able to cut through a chain link fence. They escaped by rolling back the fence, slipping through the hole, and climbing to the roof where they jumped to safety.¹⁹
- In August of 1996 there was a 12 hour inmate uprising at Correction Corporation of America's (CCA's) Eden facility, which houses INS inmates. The incident ended with the surrender of 400 inmates after 14 prisoners and 3 guards were injured. CCA had run this facility for less than one year when the riot broke out.²⁰ One resident of Eden was quoted as follows:

Prisoners have broken free a number of times from the local hospital where they are taken for medical care. One time they got in my yard. . . . I can't help but worry.²¹

¹⁷ Clark, John L., "Report to the Attorney General: Inspection and Review of the Northeast Ohio Correctional Center", District of Columbia: Office of the Corrections Trustee, November 25, 1998, pp. 2-13.

¹⁸ San Diego Union Tribune, August 17, 1997, p. B2.

¹⁹ Kockoff, Jonathan, "Report on Prisoner Escape Finds Security Breakdown", Providence Journal Bulletin, April 20, 1996, p. 7A.

²⁰ "120 Troublemakers Removed as Uprising Ends," Austin American Statesman, August 23, 1996, p. B11.

²¹ Houston Chronicle, September 1, 1996, p. 1.

- At CCA's North Harris County Facility, used to house INS detainees, a Cuban national escaped from the facility on April 30, 1997. The escapee had been paroled after his Texas prison term for aggravated assault of a police officer but was in custody pending an INS deportation hearing.²²
- During 1996, two Oregon sex offenders escaped from the CCA Houston Processing Center in Texas, meant to house INS detainees. The escapees were dressed in civilian shorts and T shirts issued by CCA as part of their "recreational uniform." They beat up a CCA guard driving home from work and stole his car. The state of Texas was unaware that the minimum security facility was housing 240 violent sex offenders from the state of Oregon until after the prisoners escaped. It took several hours before CCA notified local authorities or INS authorities. CCA commented: "It is not our function to capture them." Indeed, this was not the first escape from the facility. Two registered nurses told a reporter that they witnessed several earlier searches for immigrant escapees from the facility. One prior incident involved a group of 19 escapees who stacked their beds up to a sunroof, pried open 3 bars and then kicked out the Plexiglas. INS confirmed that a "handful" of detainees have escaped from this facility over the years.²³
- In August of 1995, the INS canceled its contract with Esmor after an uprising at its detention center in Elizabeth, New Jersey. An investigation had revealed that Esmor, trying to cut costs, had failed to train guards.²⁴

While the aforementioned examples are anecdotal, they underestimate the security problems at private facilities. It is difficult, if not impossible, to obtain information from private correction companies since they are not subject to Freedom of Information (FOIA) laws. In other words, unlike the BOP, private companies maintain total control over what, if any, information

²²Houston Chronicle, May 2, 1997, p. 37.

²³Zuniga, JoAnn, "Inmate Types, Escape Plans Draw Concerns," Houston Chronicle, August 18, 1996, p. A33.

will be provided to the public.

Financial Issues

In addition to jeopardizing public safety, private companies have not provided a cost savings to taxpayers. In September, 1999, the National Institute of Justice announced that Abt Associates would be awarded the contract to conduct a 5-year assessment of the cost and quality of the services provided by Wackenhut at Taft. The BOP has initiated an additional report that compares the contract costs of Wackenhut services with the cost of comparable services provided directly by the BOP. The study finds that the “expected cost to the BOP of the current Wackenhut contract exceeds the expected cost to the BOP of operating a Federal facility comparable to Taft.”²⁵

The 1998 Abt report found that there is no evidence that contracting for prison operations save money. In its report to Congress, GAO stated that "we could not conclude whether privatization saved money."²⁶ The report found that there is a lack of unbiased and objective comparisons of the cost effectiveness of privately run facilities. And, as GAO points out, there are quality of service issues that need to be taken fully into consideration.

²⁴"The Pitfalls of Private Penitentiaries"

²⁵ Nelson, PH.D., Julianne, "Taft Prison Facility: Cost Scenarios", (U.S. Department of Justice: National Institute of Corrections, November, 1999), pp. 1-3.

²⁶"Private and Public Prisons, Studies Comparing Operational Costs and/or Quality of Service

For example, can a private contractor operate at lower costs to taxpayers, while providing the same level of service as the public sector, particularly with respect to security and safety issues?²⁷

In an interview with the New York Times, former White House and Justice Department officials have said that they have no studies "showing that the policy [of privatizing federal facilities] will save money, and in some instances, the Department has found that its use of privately run prisons cost more." According to an official at the U.S. Marshals Service, privately operated jails "cost the Marshals Service 24% more than the public ones in the same region."²⁸

Justice Department officials admit "that their record of using prison companies has been plagued by costly mistakes."²⁹ They elaborated: "The companies have negotiated lucrative contracts in which the businesses involved have been able to recover their financing costs unusually fast and shift huge medical expenses for inmates to the government."³⁰ The U.S. Marshals Service hired CCA to build and operate the Leavenworth Detention Center in Kansas, a maximum security jail that opened in 1992. CCA was paid \$113.70 per day per 198 prisoners. These costs covered the

Issues", p. 7.

²⁷Ibid., p. 13.

²⁸"The Pitfalls of Private Penitentiaries".

²⁹Ibid.

repayment for the company's construction costs to build the institution, allowing the company to recover its capital costs in merely 5 years.³¹ Similarly, the Bureau of Prisons also agreed to a rate that enabled a company to recover its construction costs in 5 1/2 years under its contract to house federal inmates at the Federal Detention Center in Eloy, Arizona.³²

Both the Bureau of Prisons and the U.S. Marshals Service have signed contracts with private companies that have resulted in a cost shift of medical expenses to the government. Contracts have allowed prison companies to pay for the medical costs for the treatment of inmates inside one institution, while the government picked up the costs when prisoners were referred outside. This led to a practice in which private companies referred patients to outside specialists on a routine basis, resulting in a cost shift to the federal government.³³

Thus, there is no evidence to suggest that privatization saves taxpayers money. In fact, the Department of Justice's experiences in this area leads to the opposite conclusion: Privatization has cost the Department more money than it would have to incarcerate these federal prisoners on its own.

³⁰Ibid.

³¹Ibid.

³²Ibid.

³³Ibid.

In sum, the privatization of federal corrections has been misguided from the start. Giving the BOP no choice but to privatize prisons may have the unintended consequence of forcing the Bureau to enter into contracts that are not in the best interests of taxpayers simply to comply with the mandate. The privatization of federal corrections has decreased public safety and has not provided a cost savings to taxpayers.

STATE SOVEREIGNTY ISSUES

States must maintain control over inmate populations within their borders. Currently, the Bureau of Prisons, Marshals Service, and the Immigration and Naturalization Service, all make administrative decisions to contract with private prison companies to house federal inmates. The Agencies put out Requests for Proposals (RFPs), private prison companies respond, and the agencies award contracts. States have absolutely no input into the process. Unless a prison is located on federal land, or the Department of Justice is mandated by federal law to house inmates in a specific private prison, then States must have authority over whether or not private prisons can operate within their borders and house federal inmates. In its Requests for Proposals, the BOP states that a “proposal must clearly demonstrate that the offeror has sufficient state and local authority to operate a private prison to house federal inmates at the proposed site (s).” Specific

state authorization for a private prison to house federal inmates within a state MUST be a requirement mandated under federal law.

Instead of contracting with the private sector to house inmates in states, the DOJ should be required to enter into agreements with state and local governments to house federal inmates. According to the Corrections Yearbook, in 1999 the following states had vacant beds:

Alabama -- 502
Alaska – 114
Connecticut – 640
Florida – 580
Kansas – 69
Maryland – 745
Minnesota – 154
Oklahoma – 408
Oregon – 706
South Carolina – 803
South Dakota – 159
Tennessee – 566
Texas – 22,000
Utah – 250

To conclude, corrections should remain a government function. This panel should recommend to Congress that the DOJ should not contract with the private sector to house federal inmates because it severely jeopardizes public safety and there is no evidence that it saves taxpayers money. The DOJ needs adequate bed space to house its inmate populations and when faced with shortages, should turn to the public sector to make use of vacant bed space.