

Prison Privatization: Recent Developments in the United States

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In the United States, the concept of prison privatization was first proposed early in the 1980s. By the middle of that decade a number of firms were established, eager to take over prison and jail facilities and to build new prisons to tap into the needs of states that were struggling with rapidly expanding prison populations and deteriorating conditions in their existing facilities.

In 1997 the private prison industry was estimated to yield revenues of around \$1 billion, with about 64,000 adults confined in approximately 140 privately operated secure facilities in the U.S. By 1998 the estimate of prisoners confined in private facilities had swelled to 85,000.

In the last few years in the U.S., there has been a heightened level of awareness and concern about issues related to privatized corrections. The performance record of private prisons in the U.S. since the mid 1980s can be described as “patchy at best.” Recently a number of troubling developments in facilities operated by the two largest and most experienced corporations have damaged the credibility of privatized correctional services as a concept. These developments add further weight to ongoing concerns about the legitimacy of the private prison industry.

The private prison industry caught the national media spotlight almost two years ago when six prisoners from Washington, D.C., (five of them murderers) escaped from a Corrections Corporation of America prison in Youngstown, Ohio. It came to light that two prisoners had been murdered and at least 20 more were stabbed during the first year of operations at that facility.

In late 1998, the U.S. Department of Justice issued a major report criticizing many operational shortcomings that contributed to the disaster at the Youngstown facility. Concerns included staffing deficiencies, poor security procedures, and problems with the mis-classification of prisoners. Litigation stemming from these problems resulted in a landmark settlement involving both monetary damages and a total restructuring of the prison’s policies and practices in regard to staffing, classification, medical care, and monitoring of prison conditions.

Since then, news reports of incidents in private prisons involving violence, physical and sexual abuse of prisoners, riots, escapes and homicides have triggered a fierce debate about their effectiveness. Private prison executives claim that they offer better-quality correctional services at a lower price. It is clear, however, that privatization offers no special protection against the most serious kinds of operational difficulties, and that CCA is not the only company with a poor track record in this regard.

In 1994 Wackenhut Corrections Corporation was awarded a contract by the state of Texas to build and operate a juvenile justice facility in Coke County for delinquent girls. In a rush to receive its first inmates, Wackenhut opened the Coke County Juvenile Justice Center in Bronte before it was fully staffed. No educational programs were in place, and most employees had no background experience in dealing with the types of troubled young girls the state placed at the facility.

A class action lawsuit filed in Dallas alleged that girls held at Coke County were “degraded, humiliated, assaulted, harassed, and emotionally abused,” and that the facility was deficient in medical care, counseling, and vocational training. Two Wackenhut employees pled guilty to criminal charges of sexual assault, and Wackenhut decided to settle the lawsuit. One of the girls who had been raped committed suicide the day the settlement was announced. The Texas Youth Commission responded by removing the female inmates, but modified the contract to house delinquent boys, and increased the number of beds in the facility.

More recently Texas state officials terminated a contract with Wackenhut in Austin. They had already levied \$625,000 in fines against the company for chronic staff shortages before reports of alleged criminal activity -- sexual misconduct and abuse of prisoners, assaults, drug smuggling, and alleged cover ups – led to contract termination. A dozen former Wackenhut employees have been indicted on criminal sex charges.

In New Mexico, two prisons Wackenhut operates have repeatedly erupted in violence and disturbances; the death toll in these prisons reached five in less than one year. Wackenhut activated the Lea County Correctional Facility at Hobbs in May of 1998. Before the end of the summer there were reports of widespread violence at the facility.

In August a lieutenant at Hobbs allegedly beat and kicked an inmate who was restrained with handcuffs and leg irons. The associate warden for security was removed from his position, two lieutenants resigned, and three guards were reprimanded. A monitor’s report indicated that the beating had been ordered by the associate warden, who then attempted to cover-up the incident. Shortly after the report was filed the monitor was hired by Wackenhut to work as a deputy warden at a facility they were planning to open at Santa Rosa.

In December a prisoner, Jose Montoya, was stabbed to death in the prison barbershop at Hobbs. Eleven days later guards allegedly kicked another prisoner while he was in restraints, causing head injuries. Two guards were fired, two supervisors resigned, and two were disciplined for attempting to cover up the incident.

In January 1999 Robert Ortega was found dead from stab wounds in his cell. This was the twelfth stabbing of a prisoner since the facility opened.

In April hundreds of prisoners were involved in a two-hour melee at Hobbs that required assistance of more than 100 law enforcement and prison officers from around the state to lock the facility down. Thirteen guards and one prisoner were injured. Fifteen guards resigned their jobs after this event. A member of a Wackenhut emergency response team flown in from Texas was arrested and charged with beating shackled prisoners at the Hobbs facility days after riot had been quelled. Two other members of the team were administratively disciplined.

In June a third Hobbs prisoner, Richard Garcia, was stabbed to death in his cell. Two inmates had tricked a guard into opening Garcia's cell door to gain access to murder him in what was described as a gang-related hit. That same month an audit report cited the prison for numerous deficiencies. Wackenhut was not providing a sufficient number of work and education programs; work assignments were for the most part "on paper only." Prisoners were not being classified in a timely manner, and were not scheduled for parole hearings as required by state standards.

By August it was clear that the same types of problems experienced at Hobbs were shared at the facility Wackenhut had opened in Santa Rosa. A prisoner, Orlando Gabaldon, was beaten to death at that prison by inmates wielding a laundry bag filled with rocks they had smuggled from the prison yard past a security check-point. Gabaldon's death brought the total number of homicides at Wackenhut's facilities to four in less than nine months.¹

Less than two weeks later an inmate was stabbed during an altercation in the Santa Rosa prison's gym. As Wackenhut's guards struggled to effect a lock-down, one of them, Ralph Garcia, was stabbed to death. While prisoners rampaged through five housing units at the prison, Garcia was trying to convince prisoners in one unit to return to their cells. State officials charged that Wackenhut misled them while the riot was in progress, assuring NMDC staff by telephone that conditions in the prison that night were uneventful. State police sent to check on media reports of the disturbance were held at the gate for a half-hour before being allowed to enter the facility and discover that a full-blown riot was occurring.

An independent board of corrections experts called in to investigate the murder of the guard issued a scathing report detailing many failings in Wackenhut's prisons. These alarming defects include poor design and construction; an inexperienced correctional staff; a failure to deal effectively with inmate misconduct; and a lack of adequate monitoring by state authorities.

Wackenhut's staffing plan at Santa Rosa was very thin, frequently permitting only intermittent patrolling of the housing units by guards who were assigned supervision of multiple housing units. Critical security posts often went uncovered and basic safety procedures were sloppily performed or ignored altogether. On the night that the guard was murdered there were only 18 staff on duty to handle 418 inmates.

The report also made it clear that New Mexico's public officials must share the blame with Wackenhut. The state's custody classification system was deemed "dysfunctional." It did not take account of information about prisoners' gang affiliations. Prison housing assignments were often made without information needed to separate inmate enemies. Prisoners with serious mental health problems had been transferred to the Wackenhut prisons by NMCD staff who should have known that the facilities were not properly staffed to provide the treatment the prisoners would require.

Decisions to privatize prisons in New Mexico were driven by politics. Governor Gary Johnson had boasted that he would completely privatize the prison system, making extravagant claims of the cost savings this would win for taxpayers. He had run campaign ads calling for prisoners to serve “every stinking minute” of their sentences – and then attempted to implement this harsh penal policy through directives to strip the state’s newest prisons of even minimal comforts. No electrical outlets were installed in the cells to allow operation of televisions or radios.

Mired in litigation over conditions in another facility it built to house juveniles, Wackenhut is now withdrawing from a contract to operate the facility after Louisiana state officials assumed control of the institution. Youths were treated no better than animals at the Jena Juvenile Justice Facility according to a New Orleans juvenile court judge. The problems cited by Judge Mark Doherty of Orleans Parish Juvenile Court when he released six boys from Jena were foreseen by federal officials even before the Wackenhut facility began operating.

The physical plant at Jena was constructed with numerous hazards and was not designed to meet the needs of the young offenders to be housed there. Most youths at Jena would be housed in crowded 48-bed dormitories that exceed the population limitation standards for juvenile facilities, which require living units of no more than 25 juveniles each. The facility was built with no indoor recreation area or gym, and without adequate space for educational activities. Counseling offices had to be converted to classrooms, affording little room for therapy groups or private counseling sessions.

The opening of Wackenhut’s Jena facility was delayed for months by a federal judge who requested that the U.S. Department of Justice evaluate the proposed operating plan. The shortcomings identified in this review included an unacceptably low staffing plan, inadequate psychiatric and counseling resources, and a behavior restraint policy that inappropriately included use of Mace.

Within a month of admission of the first group of juveniles in December 1998, a disturbance at Jena was quelled with tear gas deployed by an eight-member tactical squad from Wackenhut’s adult prison in Allen Parish and deputies from the local Sheriffs Department. Justice Department officials warned then that Wackenhut was already failing to meet agreed-upon staffing requirements; that staff were physically abusing youth, denying them access to showers, to recreation, to telephones; and overusing administrative segregation and isolation.

A thorough review of Wackenhut operations at Jena by Department of Justice experts in January of this year charged that facility operations were chaotic and dangerous. The experts reported that the youth confined at Jena were not issued adequate clothing or linens; education and substance abuse programs were deficient; the medical and mental health services were inadequate; and the youth were subjected to physical and verbal abuse by staff.

The difficulties at Jena were attributed primarily to staffing deficiencies: a lack of stable leadership, high turnover, excessive overtime, and inadequate training. These

faults are common in private corrections, with staff turnover running almost three times higher, on average, than at public correctional facilities.

Litigation alleging dangerous operational practices and physical abuse of prisoners is on the increase. In a far-reaching legal strategy one seasoned civil rights attorney is bringing lawsuits on behalf of prisoners held in CCA facilities in three states. He is alleging that the largest private prison firm in the world is using “a violent, abusive, disciplinary/fear system” of excessive force against prisoners as an intentional, conspiratorial effort to maintain prison order without providing a sufficient number of adequately trained, experienced staff. In short, he is alleging that terror tactics are being used to control staffing costs and maximize profits.

The proponents of prison privatization have argued that market pressures will inevitably produce both greater cost efficiencies *and* quality improvements in correctional services. Their explanations about how the market works to effect these outcomes range from the general thesis that inefficient providers of low quality, costly services will be driven out of the marketplace by competition, to specific arguments about how privatization dislocates the public sector union power which many believe stands as the chief barrier to better public service delivery at a lower cost. But there is little in the existing body of academic research comparing the costs and/or quality of privatized corrections that addresses whether, or to what extent, or in what ways these arguments are valid.

In a recent assessment of the national experience with privatization, a team of researchers led by Douglas McDonald at Abt Associates has concluded on the topic of cost savings that, “The few existing studies and other available data do not provide strong evidence of any general pattern.” Research recently completed by this author comparing private and public facilities in Minnesota was specifically designed to explore the impact of cost savings and profit taking on the quality of prison services and programs. The findings present strong evidence that the widely publicized disasters in Ohio, Texas, New Mexico, and Louisiana are emblematic of a pattern of basic structural problems: staffing deficiencies, insufficient program services, faulty prisoner classification and security systems.

While performance problems of such severe magnitude are not yet common in the private prison industry, violent incidents are not isolated to a few facilities. A recent survey of private prisons by James Austin compared the rates of major incidents in private and public prisons of comparable security levels and found that private prisons had fifty percent more inmate-on-staff assaults and two-thirds more inmate-on-inmate assaults. These ominous signs are fueling a mounting perception that in pursuit of profits, private prison managers are heedless of the essential requirements necessary for delivery of safe and humane correctional services.

Over time the industry will either have to address these issues by increasing costs, or further intensification of these difficulties will result. This is clearly illustrated by the claims now made by CCA that the problems at the Youngstown prison have been addressed and the facility is operating as a model for the industry. But the attorney who

represents the Youngstown prisoners estimates that the post-litigation remedies now in place come with a high price tag, and that operational costs are probably running considerably above pre-settlement levels. Similarly, recent news accounts from New Mexico indicate that the cost of upgrading the Wackenhut prisons to provide safe and secure operations there will be substantial.

Since these problems are structural, operational crises and the litigation that results will continue until the industry comes to terms (or is forced to come to terms) with the need to remedy them. Political and legal battles over performance failures will continue to raise the ante, and as this process takes hold, costs will spiral, and the primary argument for privatization will be even further undermined.

The difficulties detailed above, coupled with steps taken by CCA to restructure its operation to better absorb the shock of these setbacks, have also greatly shaken the confidence of Wall Street stock analysts and institutional investors in the long-term viability of what once was seen as a tremendously high-growth investment opportunity. This is a crucial point, since the industry needs to raise capital for its existing operations, to finance expansion, and to be seen as a viable financial alternative to public financing.

While CCA was “taken private” last year as part of a corporate restructuring deal, publicly-traded stock of the Prison Realty Trust (the Real Estate Investment Trust that uses CCA as its prison “operating company”) has nose-dived since the company was hit with litigation over the scandalous mismanagement of its Youngstown prison. In December 1997 the stock was trading at \$45 per share. Twenty-nine months later its value has dropped below \$3 and the company is struggling to avoid bankruptcy. The financial picture at Wackenhut shows that company is not immune to similar economic repercussions when mismanagement spirals into deadly episodes. Wackenhut stock fell by 28 percent after the death of the prison guard in August 1999 and has continued a steady decline since that event.

In the U.S., CCA and Wackenhut are the industry leaders. Between them they hold three-quarters of market share. Although the vagaries of the stock market do not provide an exact barometer, recent stock price declines in the eight other publicly-traded private corrections companies suggest that the problems at the two leading companies have had a negative impact right across the industry.

From the start, the private prison industry has been heavily dependent on political connections and campaign contributions to secure the contracts necessary to grow their business. Corporate leaders have filled the ranks of upper management with corrections executives from the public prison systems. They have spared no expense to curry favor with politicians, high-powered government employees, and academics that are strongly wired into government networks.² They employ lobbyists with the best connections their money can buy.³

For some time, many of the industry's failures and dubious practices had been reported on and even fought over. But the recent events outlined above are a watershed

for the industry, bringing it under more intense scrutiny from elements of the national media. Now that the performance record of the industry has come under closer media scrutiny, the nature of these arrangements have begun to call into question the responsibility of government itself for lapses in both performance and accountability. Important issues are now being raised about whose interests are being served.

A backlash against all this is rapidly growing in the U.S. Politicians at various government levels, academics, print and broadcast media, sections of organized labor, penal reformers, lawyers and people in economically deprived communities faced with the prospect of a private prison being located in their areas, have all increased their scrutiny of the private corrections industry.

In the intensity of this growing spotlight, the process for contracting is becoming yet harder, fraught with political pitfalls and legal wrangling. Recent efforts by the Federal Bureau of Prisons to site facilities to house prisoners from Washington DC as the Lorton prison complex is shut down have become mired in difficulties. The complaints of those opposed to this effort have been greatly bolstered by the poor performance record established by CCA with housing DC prisoners at Youngstown. Arguments about cost-effectiveness pale in the face of vivid testimony about riots, escapes, and homicides.

CCA's attempt to obtain a zoning variance for a prospective prison site in southeast Washington DC has failed. Cornell Companies Incorporated's effort to site a prison to house DC prisoners at Philipsburg, Pennsylvania has been brought to a standstill by a threat of litigation by the state's Attorney General. In California, CCA's newly built and staffed 2,300-bed private prison holds less than 300 federal detainees, standing as a nearly empty monument to the powerful opposition of the California Correctional Peace Officers Association.

In Utah the selection of Cornell to build and operate a 500-bed private prison was met with vigorous opposition from the Utah Citizens Education Project and the ACLU. A broad coalition was quickly assembled from the ranks of organized labor and the religious community. Joined with support from the state's sheriffs, the coalition has managed to stall the contracting process for nearly a year. In Santa Fe New Mexico another coalition of community groups, spearheaded by immigrant rights advocates, has blocked Cornell's bid to lease a prison facility the state had shut down. Cornell had hoped to secure a contract with the Federal Bureau of Prisons to house 1,900 criminal aliens.

In the face of these developments, government is beginning to address a serious threat that its own legitimacy, and the legitimacy of the criminal justice system, may suffer due to the foibles of its private prison contractors. Public officials are responding with necessary measures: they are tightening the requirements they write into "requests for proposals" and contracts; they are strengthening their capacity to monitor contract compliance; they are beginning to "fine" companies by holding back payment where services are found to be deficient; and they are terminating contracts – and in a few cases have assumed control and are running facilities where contracting has brought more problems than benefits.⁴ It is still too early to tell exactly how the industry will respond

to these pressures. But it seems unlikely that firm demands from government such as these can be met without hampering private sector opportunities for growth and profit-taking.

¹ Inmate homicides are rare events. In 1997 there were 79 in the entire U.S. while the average daily prison population was 1.2 million. That's a rate of one homicide for every 15,000 inmates. While the inmate homicide rate in New Mexico was far higher that year (one in about 1,650), the recent inmate homicide rate in Wackenhut's NM prisons (four deaths in nine months) is off the charts at one for every 400 inmates – and that's not counting the murder of the guard.

² Charles Thomas resigned his tenured professorship at the University of Florida this year after admitting to violations of Florida State ethics laws. It had come to light that not only was his research supported by contributions from the industry, but he had accepted board membership and a \$3,000,000 fee from CCA's REIT, the Prison Realty Trust.

³ These have included Manny Aragon, President Pro Tem of the New Mexico Senate, who was employed by Wackenhut to lobby on their behalf (only in *other* states, he said) and the wife of Jimmy Naifeh, Speaker of the Tennessee of the House of Representatives.

⁴ Texas has tightened contract specification to the point that CCA has bowed out of some contracts in that state; North Carolina has withheld almost \$1 million in fees from CCA for contract non-compliance.