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HOUSE JUDICIARY JUSTICE

COMMONWEALTH OF PENNSYLVANIA

ON

PRIVATE OPERATION OF CORRECTIONAL FACILITIES

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Mr. Chairman and members of the committee, thank you for having me here to speak today. I have been studying the private prison industry intensively ever since it emerged in modern form in the mid-1980's, and I have become increasingly impressed by what I have learned. A growing body of literature is demonstrating that private prisons are legally and administratively feasible, constitutionally and philosophically defensible, qualitatively equal or superior to government-run institutions, and economically efficient.

Private prisons have a solid base of political support and a broad base of political acceptability. However, they also have some very vocal, sometimes powerful, opponents. Organized opposition comes from public employee labor unions, who oppose all forms of privatization; from the National Sheriffs' Association, who wish to keep control of jails in the hands of sheriffs; from certain members of the American Civil Liberties Union, who want to see less imprisonment and are afraid that more efficient prisons will mean more of them; from academics, who fear business even more than they fear government; and from a certain subcommittee within the American Bar Association, whose objections relate much more to policy than to law.

In a recent book titled Private Prisons: Cons and Pros, I examined systematically every single argument presented by these and other critics of private prisons. In no case did I discover--nor have I encountered to this day--any argument against private prisons that does not apply also, with at least equal force and validity, to prisons run by government employees. Private prisons do face challenges of authority, legitimacy, procedural justice, accountability, liability, cost, security, safety, and corruptibility ... but only because they are prisons, not because they are private.

What's new about private prisons is not the issues that they raise, but the possibilities they present for new solutions to old problems. To illustrate these potential contributions, here, in the briefest possible form, are ten arguments in favor of contracting for the operation of prisons and jails:

1. Contracting makes true costs highly visible, allowing them to be analyzed, compared, and minimized.
2. Contracting enables prisons to be financed, sited, and constructed more quickly and cheaply than government prisons; also, private firms are more apt to design for efficient operation.
3. Contracting reduces the tendency of a budget-driven agency to continuously spend and grow.
4. Contracting allows greater flexibility, which promotes innovation, experimentation, and other changes in programs, including expansion, contraction, and termination.
5. Contracting avoids some restrictions that interfere with efficient personnel management.

6. Contracting may decrease the risks for which government remains liable, through higher quality performance and through indemnification and insurance.
7. Contracting increases accountability because market mechanisms of control are added to those of the political process.
8. Contracting promotes the development and use of objective performance measures.
9. Contracting, by creating an alternative, encourages comparative evaluations; this raises standards for the government as well as for private contractors.
10. Contracting, in conjunction with governmental monitoring, adds a new layer of independent review of correctional decisions and actions, thus improving due process.

These are only a few of the arguments that can be made in support of contractual operation of prisons. Let me take just one of them--the prediction of cost savings--and spend a few minutes documenting it.

A realistic expectation of cost savings as a result of contracting is probably in the range of five percent to fifteen percent. Savings to particular jurisdictions might be greater under certain circumstances, such as when a contractor uses subcontracts to other jurisdictions to fill a facility that would have been under-utilized if run by the government, or if an improved operation saves the government the cost of a large lawsuit. As a general expectation, however, I would use the figure of five to fifteen percent.

That figure comes from a study I did for the National Institute of Justice, based on data provided by the County Auditor of Hamilton County, Tennessee. Since a county auditor is in a unique position to identify and estimate interagency and other indirect costs, the study is unusual in its thoroughness.

In 1984, Corrections Corporation of America assumed management of the Hamilton County Penal Farm, a 350-bed minimum-to-medium security county prison located near Chattanooga. The facility was inherited in a state of deterioration and neglect and required extensive renovation by the contractor. In addition, that region of the country has relatively low correctional costs and the county was already spending less on its prison than other jurisdictions in the same region were spending on their facilities. Since the county was already among the lowest of the low spenders, this facility provides a fairly severe test of a private contractor's ability to lower costs still further while simultaneously renovating the physical plant, expanding capacity, and improving the quality of operations, all of which it did accomplish.

Consistently conservative assumptions were used to estimate all the direct and indirect costs the county would have incurred if it had retained, or if it resumed, operation of the facility itself. The assumptions were conservative in the sense that they were designed to err in the direction of underestimating the costs of county operation. These costs were then

compared to the costs of contractual operation, which included not only the contractor's fee but all the direct and indirect county costs that continued to exist in addition to that fee, including the cost of contract administration and monitoring.

The study concluded that, over the three years examined, the county was cutting its costs of corrections by at least 4 percent to 8 percent per year, and more probably by 5 percent to 15 percent. Because the study was designed to err in a direction that would minimize estimated savings, only these conservative estimates of the size of those savings are possible. However, the conclusion that there were some savings is fairly certain.

That study is not alone in its demonstration of cost savings. A second study has just been completed by the State Auditor's office in Texas, where two private contractors are operating four 500-bed prisons. The Texas study shows that the two private companies run their prisons at somewhere between 10% and 15% less than what it would cost the state to run those exact same prisons. (Whether it is 10% or 15% depends on whether one includes in the calculations the state and local tax benefits that are derived from the private operations.

While the financial advantages of contracting can be significant, they are not, in my view, the most important function of privatization. I think the greatest value of private prisons is that they provide a comparative yardstick against which to measure performance. How do we know if the government is doing all that is possible to run prisons that are safe, secure, humane, efficient, and just? The best possible test is to see whether private enterprise can do any better. We will never know, however, if we do not at least give it a fair trial.