

TESTIMONY OF
MICHAEL FOX
ASSISTANT TO THE EXECUTIVE DIRECTOR
AFSCME COUNCIL 13

HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIME AND CORRECTIONS

APRIL 24, 1996

GOOD AFTERNOON MY NAME IS MICHAEL FOX I AM AN ASSISTANT TO THE EXECUTIVE DIRECTOR OF AFSCME COUNCIL 13, EDWARD J KELLER.

I AM HERE TODAY IN OPPOSITION TO HOUSE BILL 246 AND TO PRISON PRIVATIZATION IN GENERAL.

AFSCME REPRESENTS MORE THAN 1 THOUSAND EMPLOYEES IN 19 DIFFERENT COUNTY JAILS AND MORE THAN 7 THOUSAND EMPLOYEES IN STATE PRISONS AND COMMUNITY CORRECTIONS CENTERS.

AFSCME OPPOSES HOUSE BILL 246 FOR ONE REASON WHICH IS CLEARLY STATED IN THE BILL AND, THAT IS "THE INCARCERATION OF PRISONERS IS PRIMARILY A GOVERNMENT FUNCTION." WE BELIEVE IF CITIZENS ARE GOING TO BE DEPRIVED OF THEIR FREEDOM THAT IS GOVERNMENTS ROLE AND RESPONSIBILITY. THE INCARCERATION OF OUR CITIZENS SHOULD NOT BECOME A PROFIT MAKING ENTERPRISE.

IN 1985 THE AMERICAN BAR ASSOCIATION'S SECTION ON CRIMINAL JUSTICE ISSUED A REPORT TO THE HOUSE OF DELEGATES IN WHICH THEY EXPRESSED CONCERN OVER SEVERAL CONSTITUTIONAL ISSUES ARISING OUT OF THE QUESTION OF PRIVATIZING PRISONS. THE TWO GENERAL QUESTIONS THEY ADDRESSED WERE: 1) WHETHER THE ACTS OF A PRIVATE ENTITY OPERATING A CORRECTIONAL INSTITUTION CONSTITUTE "STATE ACTION" WITH REGARD TO THE ISSUE OF LIABILITY, AND 2) WHETHER, IN ANY EVENT, DELEGATION OF THE

CORRECTIONS FUNCTION TO A PRIVATE ENTITY IS IN ITSELF CONSTITUTIONAL.

AFTER DETAILED DISCUSSION ON THESE QUESTIONS THE ABA ADOPTED A RESOLUTION WHICH OPPOSED PRISON PRIVATIZATION UNTIL THESE VERY IMPORTANT AND COMPLEX ISSUES ARE RESOLVED. WE WOULD SUGGEST THAT UNTIL THESE ISSUES ARE RESOLVED THE PUBLIC POLICY OF THE COMMONWEALTH SHOULD BE TO WITHHOLD ITS ENDORSMENT OF PRIVATIZATION.

HOUSE BILL 246 SUGGESTS THAT THE PRIVATE SECTOR HAS DEMONSTRATED ABILITY TO PROVIDE GOVERNMENT SERVICES IN AN EFFICIENT AND INNOVATIVE MANNER THUS SUGGESTING THE PRIVATE SECTOR CAN DO THE JOB OF RUNNING A PRISON BETTER THAN THE GOVERNMENT. I WOULD SUGGEST THAT IS FLAWED THINKING.

STUDIES IN STATES THAT NOW HAVE PRIVATE PRISONS HAVE DEMONSTRATED THAT PRIVATE PRISONS DO NOT SAVE SIGNIFICANT DOLLARS OR OPERATE MORE EFFICIENTLY. MORE SPECIFICALLY THE STATE OF WASHINGTON IN JANUARY 1996 ISSUED A PRIVATIZATION FEASIBILITY STUDY WHICH EXAMINED PRIVATE PRISONS IN TENNESSEE AND LOUISIANA AND COMPARED THEM TO PUBLICLY RUN INSTITUTIONS IN THOSE STATES. WHAT THEY FOUND WAS THAT THE PRIVATE PRISONS IN SOME INSTANCES COST MORE THAN THE PUBLIC PRISON AND IN SOME INSTANCES COST LESS. IN THOSE CASES WHERE THE COST WAS LESS THE AMOUNT WAS RATHER INSIGNIFICANT, 1%. THEY ALSO FOUND

THAT THE PRISONS WERE NOT RUN ANYMORE EFFICIENTLY THAN THE PUBLIC RUN INSTITUTIONS. BASED ON THIS STUDY THE STATE OF WASHINGTON RECOMMENDED AGAINST PRIVATIZATION.

THE STATE OF WASHINGTON IS NOT ALONE. THE STATE OF DELAWARE STUDIED THE POSSIBILITY OF PRIVATIZING A NEW 600 BED INSTITUTION. DELAWARE'S FINDINGS WERE THE SAME AS WASHINGTON AND SO WAS THE FINAL CONCLUSION, I.E., NOT TO PRIVATIZE.

HERE IN PENNSYLVANIA THE ISSUE OF PRIVATE PRISONS WAS REVIEWED BY THE PENNSYLVANIA COMMISSION ON CORRECTIONS PLANNING. (PCCP) THE CONCLUSION OF THE PCCP IS BEST STATED USING THEIR OWN WORDS "THE COMMISSION ACKNOWLEDGES THAT THERE ARE SIGNIFICANT OPPORTUNITIES FOR THE EFFICIENT AND EFFECTIVE DELIVERY OF A VARIETY OF SERVICES THROUGH THE PRIVATE SECTOR. HOWEVER, WE BELIEVE THAT THE BASIC ACTIVITIES INVOLVED IN THE OPERATION OF A PRISON OR A JAIL, WHICH INVOLVES THE DEPRIVATION OF THE LIBERTY OF ANOTHER CITIZEN, ARE ESSENTIAL GOVERNMENTAL FUNCTIONS AND SHOULD NOT BE "CONTRACTED OUT" TO PRIVATE ENTERPRISE."

ASIDE FROM OUR FUNDAMENTAL OPPOSITION TO THE CONCEPT OF PRIVATE PRISONS SOME SPECIFIC PROVISIONS OF THE BILL ARE TROUBLESOME.

SECTION 305 ESTABLISHES A MAXIMUM POPULATION FOR PRIVATE PRISONS.

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WITH THE INCREASING RATE OF INCARCERATION THE QUESTION ARISES ; WHAT DO YOU DO WITH THE OVERFLOW?

SECTION 307(b) PROVIDES IN THE EVENT OF A STRIKE THE DEPARTMENT OF CORRECTIONS WOULD TAKE OVER THE OPERATION OF THE JAIL. CURRENTLY THE PENNSYLVANIA DEPARTMENT OF CORRECTIONS IS STRUGGLING TO ADEQUATELY STAFF THEIR OWN INSTITUTIONS, WHERE WOULD THE STAFF COME FROM TO RUN THIS COUNTY JAIL AND WOULD THE PRIVATE VENDOR BE RESPONSIBLE TO PAY THE COST OF THE STAFF AT THEIR FACILITY AND THE OVERTIME COST TO THE DEPARTMENT TO FILL IN FOR THE MISSING STAFF.

WHAT IS THE COUNTY'S RESPONSIBILITY ? IT WOULD APPEAR THAT ONCE A DECISION IS MADE TO PRIVATIZE THE COUNTY HAS NO FURTHER RESPONSIBILITY.

SECTION 308(b) PROVIDES THAT IN AN EMERGENCY THE DEPARTMENT HAS THE AUTHORITY TO TAKE CONTROL OF THE PRIVATE FACILITY. THE FIRST QUESTION ONE WOULD ASK; IS WHY ISN'T THE PRIVATE VENDOR REQUIRED TO BE QUALIFIED TO HANDLE THEIR OWN EMERGENCIES? IN ADDITION THE SAME QUESTIONS I RAISED EARLIER WITH REGARD TO COSTS APPLY HERE AS WELL.

FINALLY THE AMERICAN BAR ASSOCIATION SAID "WE SHOULD FURTHER BE WARAY THAT PRIVATE CORRECTIONS CORPORATIONS MAY INITIATE ADVERTISING CAMPAIGNS TO MAKE THE PUBLIC EVEN MORE FEARFUL OF

CRIME THAN IT ALREADY IS, IN ORDER TO FILL THE PRISONS AND JAILS.”

MR. CHAIRMAN THE INCARCERATION OF OUR CITIZENS AND THE OPERATION OF OUR JAILS AND PRISONS SHOULD REMAIN WITH THE GOVERNMENT AND WE SHOULD NOT ALLOW PROFIT INTO THE CRIMINAL JUSTICE PROCESS SO THAT CRIME DOESN'T PAY FOR ANYONE.

THANK YOU FOR THE OPPORTUNITY TO PRESENT OUR VIEWS TO YOU AND NOW I WILL BE HAPPY TO ANSWER ANY OF YOUR QUESTIONS.