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Testimony Regarding Correctional Privatization

by

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before the

Subcommittee on Crime

of the

House Committee on the Judiciary

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Good morning, Mr. Chairman. My name is Charles W. Thomas, and I very much appreciate this opportunity to testify before the Subcommittee on Crime of the House Committee on the Judiciary.

By way of a brief personal introduction, I am a Professor of Criminology in the Center for Studies in Criminology and Law at the University of Florida. I also am the Director of the Private Corrections Project at the University of Florida; a consultant to the Florida Correctional Privatization Commission, which has contracted for the private design, financing, construction, and management of six state prisons since it was established in 1993; a member of the Corrections and Sentencing Committee of the American Bar Association; and a member of the American Correctional Association. Additionally, I have testified before and/or served as a consultant to numerous county commissions, state legislative committees, state correctional agencies, and federal agencies. My work in those various capacities was related to such objectives as the drafting of legislation to authorize the full-scale management of correctional facilities by the private sector, the preparation of competitive procurement documents, the drafting of correctional facility management contracts, and the evaluation of the performance of private corrections management firms.

You invited me to testify this morning in my capacity as the Director of the Private Corrections Project at the University of Florida. In accepting this invitation I appear as neither an opponent nor a proponent of correctional privatization, and I have no personal economic interest that would be advanced or undermined by any decisions Congress might make regarding this issue. This neutrality, however, does not mean that I have no predispositions. My position is simple. I am persuaded that it is the obligation of government to provide for the delivery of the best possible public services at the lowest possible cost and to do so with the public or private identity of the service provider being defined as fundamentally irrelevant absent compelling constitutional reasons that government alone must provide the service under consideration.¹

¹It is my judgment that obvious and relevant illustrations of such compelling reasons exist with regard to such inherently governmental functions as the enactment of criminal law, the adjudication of guilt or innocence in criminal cases, the imposition of criminal sanctions, final decisions regarding material changes in the conditions of confinement that have implications for

As will be established by my testimony, there is clear and convincing evidence emerging from within and beyond the boundaries of the United States that applying this simple standard has regularly and routinely supported decisions to privatize. This body of evidence, however, provides no support for any hypothesis that contracting out is necessarily or inherently a better policy than preserving traditional methods of delivering correctional services. Instead, rather like the comparison shopping prudent individual consumers of goods and services accept as a necessary element of their economic behavior, government serves the public interest when its choices between alternative providers of essential services are based on balanced considerations of the cost and quality of services the selected providers will be obliged to deliver rather than their public or private status.

In any event, my purpose will be to provide you with a concise overview of the most timely and objective information that is available regarding the rapidly growing role of the private sector in the design, financing, construction, and management of secure adult correctional facilities. My opinion is that this review will raise your confidence that past and present privatization initiatives of the Federal Bureau of Prisons, and also related efforts of the Immigration and Naturalization Service and the U.S. Marshals Service, reflect the sound professional judgment I have come to expect from these federal agencies and can be depended upon to serve the public interest. Indeed, my hope is that your collective confidence will raise to such a point that you will recommend moving beyond the ambitious plan that has been announced by President Clinton and Director Hawks and, in your individual legislative capacities, that you will capitalize on the opportunities you have to encourage state- and local-level privatization initiatives via appropriate amendments to such pending legislation as H.R. 667, the Violent Criminal Incarceration Act of 1995.

the liberty interests of prisoners, and final decisions regarding release from confinement. However, it is my further judgment that it is settled law that a private entity, subject to appropriate checks and balances, can be empowered to manage and operate correctional facilities of any kind.

It is convenient to organize my presentation by focusing on three topics: (1) the history of the full-scale privatization of secure adult correctional facilities, (2) evidence regarding the degree to which the anticipated benefits of contracting out are being realized; and (3) my recommendations regarding how those working at the federal level can both maximize the benefits of contracting and avoid some of the problems that have been encountered in the past.

I. An Overview of the History of Correctional Privatization

Critics of privatization contend that there is nothing new or novel in the involvement of private persons or corporations in our correctional systems. So long as the point is being made at quite an abstract level, the critics are correct. More than one period of penological history has found government permitting and sometimes encouraging private jailers to exploit and abuse prisoners.² As recently as the 1920s, for example, both Alabama and Florida were involved in convict lease arrangements with private firms that yielded significant financial benefits to both the firms and the coffers of the jurisdictions.³ Often, however, the critics imply or assert that there is little to prevent the abuses of the past from rematerializing in the present. Any such implication or assertion must be evaluated in terms of the fundamental changes that have transformed relevant portions of the correctional landscape since the 1920s. At least two of these changes deserve emphasis.

The more purely legal side of the equation is easily summarized. Prior to, during, and even for some decades after policies that authorized such things as convict leasing systems, the courts routinely refused to inject themselves into the operation of correctional facilities. The "hands-off doctrine" announced in the 1891 decision of the Virginia Supreme Court in *Ruffin v.*

²See, e.g., Thorsten Sellin, *Slavery and the Penal System*, New York: Elsevier, 1976; William Cohen, *Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis*, 42 *The Journal of Southern History* (1976); Alex Lichtenstein, *Good Roads and Chain Gangs in the Progressive South: 'The Negro Convict is a Slave,'* 59 *The Journal of Southern History* (1993).

³See, e.g., Sean McConville, *Aid from Industry? Private Corrections and Prison Crowding*, pp. 221-242 in Stephen D. Gottfredson and Sean McConville (Editors), *America's Correctional Crisis: Prison Populations and Public Policy*. New York: Greenwood Press, 1987.

Commonwealth, 21 Grat. 790 (Va. 1891), a decision that reflected legal perceptions of the role of prisoners during the first half of the twentieth century, was quite matter-of-fact:

[A prisoner] has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accord him. He is, for the time being, the slave of the State.

The hands-off doctrine did not survive the judicial activism of the 1960s. In particular, a set of decisions announced by the United States Supreme Court in such landmark cases as *Monroe v. Pape*, 365 U.S. 167 (1961), and *Monell v. Department of Social Services*, 436 U.S. 658 (1978), transformed 42 U.S.C. § 1983 from a largely dormant provision of federal civil rights law into the dominant force it is today. Most easily understood as the civil enforcement mechanism for the Due Process Clause of the Fourteenth Amendment, § 1983 provides a cause of action for any person, including any prisoner, who confronts a deprivation of a constitutional right as a consequence of "state action."⁴ Under the more recent holding of the Supreme Court in *West v. Atkins*, 487 U.S. 42 (1988), private persons providing constitutionally-mandated services under contract for local and state correctional agencies are subject to suit under § 1983. Further, prisoner plaintiffs who satisfy the "prevailing party test" forged by the Supreme Court in such cases as *Hensley v. Eckerhart*, 461 U.S. 424 (1983) can recover reasonable attorney fees under 42 U.S.C. § 1988. Further still, elsewhere I have noted in some detail that it is settled law that the array of equitable and legal remedies now available to prisoners housed in private correctional facilities is broader than is the set of remedies made available to their counterparts in public facilities.⁵

⁴Members of the Subcommittee will immediately understand that 42 U.S.C. § 1983 is generally unavailable to plaintiffs who allege that federal officials proximately caused a constitutional deprivation, but they will also appreciate the degree to which the remedy crafted by the Court in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), is functionally equivalent in most regards when "federal action" rather than "state action" is at issue. See also, *Davis v. Passman*, 442 U.S. 228 (1979); and *Carlson v. Green*, 446 U.S. 14 (1980).

⁵See, e.g., Charles W. Thomas, *Prisoners' Rights and Correctional Privatization: A Legal and Ethical Analysis*, 10 Business and Professional Ethics Journal (1991).

The effect of these and related changes in correctional law has been to dramatically alter the position in which prisoners find themselves. No longer cast in the powerless role of slaves of the State, they can and do aggressively litigate their claims of having been treated unreasonably. This is true without regard to whether they are housed in publicly or privately managed correctional facilities.

On the structural side of the equation, facility contracts---whether by statute, contractual provisions, or a combination of the two---prohibit private corrections management firms from deriving financial benefits either by charging prisoners a fee for the services they receive or by exploiting the labor of prisoners for their own benefit. In and of itself, this change in the relationships contracts establish between government, private management firms, and prisoners reduces the probability of many of the abuses that characterized private involvement in corrections previously.

In short, the context within which private corrections firms operate today is fundamentally dissimilar to that of previous periods of history. Thus, it is not mere coincidence that recent history yields no evidence of a disregard for the rights of prisoners housed in privately-managed facilities that is even remotely similar to what was witnessed previously.

Regarding the modern era, by which I mean the early 1980s and thereafter, the obstacles proponents of correctional privatization had to overcome were formidable. The sins of the past had certainly not been forgotten. No legislation in the nation expressly authorized any unit of government to contract with a private entity for the full-scale management of a secure adult correctional facility. There was no tangible evidence that the private sector had delivered on any promise of lower correctional costs without a corresponding decrease in the caliber of correctional services. Significant organizations---including but not necessarily limited to the American Bar Association, the American Civil Liberties Union, the American Federation of State, County, and Municipal Employees, the American Jail Association, and the National Sheriffs Association---were quick to oppose and sometimes to be stridently critical of early privatization initiatives.

The effect of such obstacles to contracting was that the emergence of a private corrections industry involved a step-by-step process rather than a swiftly adopted innovation. The process began in the early 1980s with modest contract awards by the Immigration and Naturalization Service and the U.S. Marshals Service to such pioneering firms as Behavioral Systems Southwest and Eclectic Communications, Inc.⁶ Practically speaking, however, the privatization alternative did not attract serious attention until several key developments materialized during the mid-1980s. Specifically, the first county-level awards of management contracts came in 1984, when Hamilton County (Chattanooga), Tennessee, and in 1985, when Bay County, Florida, awarded contracts to the Corrections Corporation of America. The first state-level contract award came in 1985, when Kentucky contracted with the U.S. Corrections Corporation. The first sizable federal award came in 1984, when the Immigration and Naturalization Service contracted with the Corrections Corporation of America for the Houston Processing Center. The first contract awards on the international scene are of even more recent vintage, the first coming in 1989 from the State of Queensland, Australia to the Corrections Corporation of Australia and the first non-Australian award coming in 1991 from the United Kingdom to Group 4 Prison and Court Services, Ltd.

The importance of these contract awards to the subsequent development of correctional privatization would be difficult to over-estimate---and the fact that all six contracts are still in force today with the same management firms is not inconsequential. Each provided a real world opportunity to test the hypothesis that contracting could yield meaningful benefits to government. Each also provided an invaluable model that subsequent units of government could examine and improve upon in such critical areas as the formulation of sound contracts and effective means of contract monitoring. That these early contracting decisions contributed to a rapid increase both in the willingness of legislative bodies to authorize contracting and in the willingness of government agencies to contract is confirmed by the materials presented in

⁶Behavioral Systems Southwest no longer operates secure adult correctional facilities. Eclectic Communications, Inc. now operates as a wholly-owned subsidiary of Cornell Cox, Inc.

Appendix A, Figure 1,⁷ which graphically depicts growth in the rated prisoner capacities of private correctional facilities, and Appendix A, Table 1, which summarizes the results of a national survey of legal authority to contract for the private management of secure correctional facilities.⁸

Put somewhat differently, the role of the private sector in the management of secure adult correctional facilities is strikingly different today than it was in the early 1980s. At that time no American jurisdiction enjoyed the expressed legal authority to contract and no such management contracts had been awarded. Today, as is illustrated by Appendix A, Table 1, 32 states, Puerto Rico, and the District of Columbia have the statutory authority to contract at the local and/or state levels and that each of the three federal agencies that have prisoner custody responsibilities has comparable legal authority to contract.⁹ Further, as is summarized by Appendix A, Table 2, at the end of 1994 there were 19 private firms which had received contracts to operate secure adult facilities, the number of contract awards now in place, including facilities now under construction, provided for 88 facilities with a rated capacity of 49,154 prisoners.¹⁰ Sixty-seven facilities with an aggregate rated capacity of 30,821 and an actual prisoner population of 28,678

⁷The statistical information relied upon to create this graphic was derived from two sources: Corrections Corporation of America, *Crime and Punishment: 1993 Annual Report*, Nashville, Tennessee: Corrections Corporation of America (1994), at p. 11; and Editions 1-8 of Charles W. Thomas, *Private Adult Correctional Facility Census*, Gainesville, Florida: Private Corrections Project, University of Florida.

⁸The process relied upon to gather data regarding legal authority to contract involved a computerized screening of all applicable statutes and attorney general opinions and telephone contacts with representatives of departments of correction and/or attorney general offices.

⁹The "and/or" language is important. Although logic might suggest that the legal acceptability of contracting by one level of government within a jurisdiction implies that other levels of government enjoy the legal authority to contract, this is not the case.

¹⁰The American jurisdictions within which secure private facility contracts are either in place or are under construction are Alabama, Arizona, California, Colorado, Florida, Kansas, Kentucky, Louisiana, Mississippi, New Mexico, New Jersey, New York, Oklahoma, Puerto Rico, Rhode Island, Tennessee, Texas, Utah and Washington. Significantly, however, the fact that private facilities are in operation or are under construction in these jurisdictions does not mean that local or state agencies have contracted for the housing of prisoners. The facilities in New Jersey, New York, Rhode Island, and Washington, for example, do not house local or state prisoners on behalf of these jurisdictions. Further, other jurisdictions are contracting for the housing of their prisoners in out-of-state rather than within-jurisdiction private facilities (e.g., Alaska, North Carolina, and Virginia).

are already in operation.¹¹ Finally, when the correctional privatization movement emerged during the early 1980s it was widely believed that any role of the private sector in the management of secure adult correctional facilities would be limited to small facilities housing prisoners with low security classifications. Today it is common to see contract awards for facilities with rated capacities of between 1,000-2,000 prisoners and for prisoners who have security classifications at or above the medium security level.¹²

This historical evidence makes it abundantly clear that the appeal of contracting for the management of secure facilities continues to gain momentum and that the appeal has reached beyond the boundaries of the United States. The evidence strongly implies but does not prove that a prudent policy maker can have confidence in the ability of the private sector to forge productive partnerships with government with the shared goal of meeting the many challenges that now face the nation's correctional system. Thus, it is important to shift the focus of my testimony from general historical trends to a consideration of whether the weight of the best available research evidence establishes contracting out as a meaningful alternative to traditional strategies for delivering correctional services.

II. Research Evidence Regarding Full-Scale Correctional Privatization

I would be foolish were I to attempt to review each and every dimension of the rapidly growing volume of research evidence on correctional privatization. Fortunately, some of what we know is so matter-of-fact that little or no discussion is required. Relevant illustrations of this would certainly include but not necessarily be limited to the following:

¹¹The first half of 1995 already has witnessed significant contracting activity on both the national and international scenes. For example, new projects underway in the United States include two in Texas with an aggregate capacity of 2,500 beds and three in Florida with an aggregate capacity of 1,050 beds.

¹²It is worth noting that the first private facility designed exclusively for maximum security-classified prisoners was designed and constructed by the Corrections Corporation of America, began receiving prisoners in June of 1992, received full accreditation by the American Correctional Association in August of 1993, and, as has been the case from the beginning, is dedicated to meeting the needs of the U.S. Marshals Service.

- that contracting out can reduce the time required to construct new facilities to between 12-18 months;
- that contracting out can reduce total costs for new facility construction (i.e., site acquisition, facility design, site preparation, and purchase of necessary furnishings, fixtures, and equipment) by 15-25 percent;
- that contracting out can yield facility designs which are significantly more efficient than those often selected by public agencies (i.e., designs that allow the delivery of a full range of services in a professional manner with as small a number of employees as is reasonably possible);
- that contracting out allows government to decrease the total number of public employees or at least to decrease the rate of growth in the number of public employees;
- that contracting out allows government to decrease quite substantially the legal liability exposure which is associated with the operation of correctional facilities;
- that contracting out allows government decision makers to increase, to decrease, or to modify the array of services provided within correctional facilities more swiftly and more flexibly than is possible when services are provided by public employees; and
- that contracting out, largely because it involves a set of contractually-based terms and conditions, increases the ability of government agencies to be accountable for programs and expenditures.

By and large, at least, the debate over correctional privatization has not focused on these potential advantages of contracting out. Instead, the two areas that have stimulated the greatest interest flow from two claims that privatization proponents have advanced since the early 1980s. One claim is that the private sector can provide government with significant operating cost savings throughout the terms of contracts. The other claim is that the private sector can provide

government with corrections services the scope and quality of which are equal to if not better than those provided by government agencies.

Privatization opponents have attacked both claims. If, the opponents argue, the private sector does devise means of providing government with operating cost savings, then it necessarily follows that the economies will be realized at the expense of the caliber of programs and services prisoners receive, the qualifications of the employees who provide those programs and services, or both. Because statutory and/or contract requirements so routinely oblige private firms to employ persons who meet or exceed all applicable experience, certification, and training requirements their public sector counterparts must meet, the position of the critics is generally reduced to the simpler contention that any reduction in operating costs will cause a reduction in the quality of the services private firms provide. Thus, these potentially interrelated concerns deserve careful attention.

Does Contracting Out Yield Meaningful Cost Savings?

By far the weakest challenge to correctional privatization comes from those who contend that contracting is unlikely to yield significant cost benefits. The initial reasons why the challenge lacks credibility are at least three-fold. First, the very fact that a contract exists strongly suggests 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 single 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.¹³ Second, regardless of whether one considers private corrections management firms or substantially any other type of private entity, it is generally acknowledged that private sector fringe benefits---most particularly retirement benefits---are less generous than those made available to public employees.¹⁴ Third, the private

¹³An 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.

¹⁴It does not necessarily follow that the retirement package private firms make available to their employees will yield a less advantageous set of actual retirement benefits. For example, the appeal of qualified employee stock ownership plans (ESOPs) within the private corrections

sector is not obliged to comply with a broad array of costly bureaucratic requirements government has imposed upon itself in such areas as employee selection-promotion-termination and the procurement of goods and services. Consequently, 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.¹⁵

In short, the real question is how great the cost savings of contracting are likely to be rather than whether there will be any cost savings. Unfortunately and, when one recognizes that efforts to reduce costs have been a driving force behind privatization efforts, surprisingly, sound evidence regarding the magnitude of cost savings is not abundant. As recently as 1987, for example, a report prepared by The Council of State Governments and The Urban Institute observed that "we have not found available reliable cost information at any of the levels of government studied here."¹⁶ Since then, however, a good deal of evidence has been published.¹⁷

industry is growing. To be sure, the number of dollars flowing toward an ESOP in a given year is almost certain to be smaller than the number of dollars flowing toward a government retirement trust fund for an equivalent employee during the same year. However, the success of the firms that elect ESOP-based retirement programs for their employees might well yield such an appreciation on the value of the shares held for those employees that the financial value of the private employees' retirement package could be greater than the financial value of defined benefit retirement plan public employees have come to expect.

¹⁵It is worth noting that evaluations of the precise magnitude of cost savings is exceedingly difficult to determine. The core problem is that substantially all governmental accounting systems are incapable of capturing total expenditures. One major reason for this is that service delivery agencies operating within government depend in varying degrees on services provided by other agencies for an array of services (e.g., accounting services, data processing services, some or all legal services, management of retirement systems, and so on). The cost of these so-called off-budget services are real. However, one very seldom sees them being reflected in correctional agency estimates of construction or operating costs.

¹⁶Judith Hackett, Harry Hatry, Robert B. Levinson, Joan Allen, Keon Chi, and Edward D. Feigenbaum, *Issues in Contracting for the Private Operation of Prisons and Jails*. Washington, D.C.: The Council of State Governments and The Urban Institute, 1987, at p. 124.

¹⁷See, e.g., Charles H. Logan and Bill W. McGriff, *Comparing Costs of Public and Private Prisons: A Case Study*, 216 NIJ Reports (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*, 7 *Journal of Contemporary Criminal Justice* (1991); General Accounting Office, *Private Prisons: Report to the Chairman, Subcommittee on Regulation, Business Opportunities and Energy, Committee on Small Business, United States House of Representatives* (1991); Texas Sunset Advisory Commission, *Recommendations to the Governor of Texas and Members of the 72nd Legislature* (1991); Douglas C. McDonald, *The Costs of Operating Public and Private Correctional Facilities*, pp.

Reflecting both the sophistication of the cost comparison methodologies relied upon and various other factors,¹⁸ the results of the cost savings analyses vary quite broadly from study to study. Four illustrations based on conservative approaches warrant special emphasis here.

The first study was conducted by Charles H. Logan and Bill W. McGriff and published by the National Institute of Justice.¹⁹ Logan and McGriff compared the actual contract cost paid to the Corrections Corporation of America 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 costs for continued public management of the facility for the three-year period was \$9,909,717 and the total actually paid to the Corrections Corporation of America 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 prisoner per day, a per diem cost which was itself well below the reported average per diem cost of roughly comparable facilities elsewhere in Tennessee.²⁰ Further, the

86-106 in Douglas C. McDonald (Editor), *Private Prisons and the Public Interest*, New York: Rutgers University Press, 1990.

¹⁸An 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 will be the cost savings realized by contracting. For example, Crants, *id.* at p. 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 and thus yielding an estimated operating cost savings of 40.7 percent.

¹⁹Charles H. Logan and Bill W. McGriff, *Comparing Costs of Public and Private Prisons: A Case Study*, 216 *NIJ Reports* (1989).

²⁰This point warrants special emphasis and some additional interpretation. First, some correctional systems in the United States are reporting operating costs that are well below national and applicable regional averages. The degree to which a private firm can yield large operating cost economies in such areas is consequentially lower than one might expect to see flowing from contracts awarded by agencies with comparatively high operating costs. Second, it

authors emphasized that the conservative methodology they relied upon almost certainly resulted in their underestimating the true cost savings to Hamilton County.²¹

The second study deserving special attention was published by the Texas Sunset Advisory Commission in 1991 and was designed to determine whether contracts awarded to the Corrections Corporation of America and to the Wackenhut Corrections Corporation by the Texas Department of Criminal Justice in 1988 had achieved the 10 percent cost savings required by applicable Texas law.²² The contracts required each firm to design, construct, and manage two 500-bed minimum security prisons. The cost methodology called for the Sunset Advisory Commission 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 cost for public operation of the facilities of \$42.92 and an actual payment to CCA and WCC of \$36.76. The resulting 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.²³

must be understood that there is nothing magical about contracting out for facility operations which automatically gives rise to major economies. Indeed, there is evidence that there are some well-managed correctional systems within which careful comparisons of public and private operating costs result in findings of rather modest savings being realized by privatization initiatives. See, for example, Tennessee Select Oversight Committee on Corrections, *Comparative Evaluation of Privately-Managed Corrections Corporation of America Prison (South Central Correctional Center) and State-Managed Prototypical Prisons (Northeast Correctional Center, Northwest Correctional Center)*. Nashville, Tennessee: Tennessee Select Oversight Committee on Corrections (February, 1995).

²¹See, for a further explanation of this point, Charles H. Logan, *Proprietary Prisons*, pp. 45-62 in Lynne Goodstein and Doris Layton MacKenzie (Editors), *The American Prison: Issues in Research and Policy*. New York: Plenum Press, 1989.

²²Texas Sunset Advisory Commission, *Recommendations to the Governor of Texas and Members of the 72nd Legislature* (1991). It is worth noting that there is evidence which suggests that the cost advantage of the private facilities in Texas is persisting. A recent report released by the Texas Criminal Justice Policy Council as is required by applicable Texas statutes estimates the average cost per prisoner per day in Texas to have been \$44.40 during FY 1994 versus an estimated private facility cost per prisoner per day of \$35.25. Texas Criminal Justice Policy Council, *Texas Correctional Cost Per Day, 1993-94*. Austin, Texas: Texas Criminal Justice Policy Council (February, 1995).

²³In 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.

Third, Allan Brown, an economics professor at Griffith University in Brisbane, Australia, has provided a recent and well-documented examination of whether the American experience is generalizable beyond the United States.²⁴ The relevant portion of his research focuses on a two-year cost comparison of a public and a private correctional facility in Queensland. The Borallon facility is operated by the Corrections Corporation of Australia; the Lotus Glen facility is operated by the government correctional agency. Both facilities were recently constructed, are similar in their design, and are similar in the size and security classification of their prisoners. Importantly, Brown's cost data included various overhead costs that often escape attention when only facility expenditure data are available. Although Brown noted that "Borallon [the private facility] provides the highest programme content of any correctional centre in Queensland and employs a much greater number of staff on programmes than does Lotus Glenn [the public facility]," the gross annual cost per prisoner for 1991-92 at Borallon was \$39,240 versus \$54,560 for Lotus Glenn and the gross annual cost per prisoner for 1992-93 at Borallon was \$44,200 versus \$49,880 at Lotus Glenn.²⁵

The final and certainly one of the more thorough illustrations comes from Florida. During its special legislative session in 1993, the Florida Legislature enacted what is now Chapter 957 of the Florida Statutes. The new law provided for the creation of the Florida Correctional Privatization Commission and imposed an obligation on the Commission to release a request for proposals providing for the private design, financing, construction, and management of two 750-bed medium security prisons.²⁶ To assure the desired cost savings, Chapter 957

²⁴Allan Brown, *Economic (and Some Non-Economic) Aspects of Prison Privatisation in Queensland*, paper presented at the 1994 Conference of Economists, Surfers Paradise, Australia, 1994.

²⁵Annual costs are expressed in Australian dollars. A portion of the difference in cost for each facility between the first and second years is caused by a difference in the means of allocating central office overhead costs. However, even if one focuses exclusively on facility costs and ignores the troublesome task of estimating off-budget costs, the cost comparison still favors the private facility.

²⁶It should be noted that the author has served as a consultant to the Florida Correctional Privatization Commission since 1993. The information provided in the text was derived from his reviews of Commission files and interviews with the Executive Director of the Commission. All of the information, however, is a matter of public record pursuant to applicable provisions of Florida law.

required the Florida Auditor General to determine the total cost Florida would incur for the design, construction, and operation of comparable state facilities. Significantly, the Auditor General was expressly obliged to incorporate a full array of costs in the establishment of the required benchmark figure. Thus, the Auditor General's report examined construction and operating costs at multiple comparable facilities being operated by the Florida Department of Corrections, indirect costs associated with central management of the Florida Department of Corrections, and additional indirect costs associated with services provided to the Florida Department of Corrections by various other state agencies.²⁷ The statute required that cost proposals submitted by private management firms yield cost savings of no less than 7 percent as a precondition to any contract award.

A request for proposals was released by the Florida Correctional Privatization Commission in December, 1993. Each interested private firm was allowed to submit a proposal for one or both of the 750-bed facilities. All proposals had to be submitted by early February, 1994. Eight management firms submitted a total of twelve proposals. All twelve proposals contained legally binding commitments of cost savings that met or exceeded the 7 percent requirement. Two firms were selected at the end of the competitive process: the Corrections Corporation of America and the Wackenhut Corrections Corporation. The CCA and WCC costs, including debt service obligations associated with facility construction, were, respectively, \$46.96 and \$47.05. The comparable cost for the Florida Department of Corrections was \$52.40. On average, then, there is credible evidence that these contracting decisions by the State of Florida will yield an average cost savings of \$5.39 per prisoner per day. Assuming a conservative occupancy rate of 90 percent during the first year of operation of these facilities, the anticipated first year cost savings will thus be \$2,655,923. Furthermore, the terms of these three-year contracts were structured in such a way as to guarantee that the initial cost savings would persist for the life of the contract. Thus, if the occupancy rates in both facilities reach and remain

²⁷State of Florida, Office of the Auditor General, *Certification of Correctional Facility Actual Per Diem Costs Pursuant to Section 957.07, Florida Statutes* (November, 1993).

at facility capacities and if the initial assurances prove to be realities, Clayton Mark Hodges, the Executive Director of the Florida Correctional Privatization Commission, believes that these contracts will save Florida taxpayers modestly more than \$9,000,000 during the first three years of facility operations.

In short, today no well-informed critic of privatization contends that contracting will yield no significant savings. Instead, they advance the "you get what you pay for" argument and allege that discounted prices will necessarily yield substandard services. If this claim were proven to be valid, then contracting clearly would fall into the category of decisions that are "penny wise but pound foolish." Thus, the available evidence regarding the quality of services provided by private corrections management firms deserves serious consideration.

Does Contracting Out Result in Decreased Service Quality?

Like beauty, perhaps quality is to be determined only in the mind of the beholder. Still, significant evidence now exists regarding the quality of contract services.²⁸ 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. There are at least four types of evidence.

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

²⁸The shifting focus of the privatization debate urged by privatization critics is troublesome to many. In the early 1980s critics predicted that neither government nor prisoners would tolerate full-scale management of secure facilities by management firms. When history proved them to be wrong, they restated their position and predicted that contracting would yield no meaningful cost savings. When history proved them to be wrong, they again restated their position and predicted that contracting would necessarily yield substandard correctional services. The evidence about to be reviewed in the body of the text proved them to be wrong yet another time. Today one encounters further changes in the critique of privatization involving predictions that a sufficiently long-term assessment of contract performance will yield negative results. Such adjustments are too often put forward in such a way that it is impossible for the predictions to be falsified by empirical evidence. Negative research can always be dismissed with claims that evidence supportive of the critical hypotheses is just beyond the horizon. Clearly, however, if policy analysis is to inform policy making, then policy analysts simply must perform in a more sophisticated manner. Predictions from both privatization opponents and proponents that are framed in such a way that they defy confirmation or disconfirmation are altogether uninformative.

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 independent contractors.

Evaluated in this manner, it appears that the satisfaction of government is considerable. A review of contracts awarded for the management of secure adult facilities since the privatization movement began to gather momentum in the mid-1980s reveals the closing of only one facility in Zavala County, Texas for reasons related to inadequate contract performance and one contract in Sweetwater, Texas being shifted from one private management firm to another for roughly comparable reasons. Not insignificantly, neither of the management firms involved in these situations are presently involved in the management of adult correctional facilities.²⁹ Additionally, the review reveals only one contract in California that was not renewed because of cost considerations, but in that one situation the cost issue was linked to the terms of a property lease with a third party that were beyond the control of both the private firm and the involved

²⁹This fact warrants at least some passing emphasis. Competition for facility management contract awards is nothing if not intense. If government plays its role competently---which is to say if government places balanced emphasis on both the cost and the quality of correctional services and thereby precludes the success of "low-ball" bids being successful---then the competition between the firms that comprise the private corrections industry will do much to undermine the financial viability of underperforming firms that are in or that attempt to enter the industry. Efforts to achieve this judicious balance present government with some of the most challenging problems it ever confronts as a purchaser of either goods or services. First, if obtaining the best possible goods or services at the lowest possible cost is what allows government to become a "smart buyer" and government wishes to achieve that status, then government seeks a status it cannot achieve in the absence of fair competition between alternative suppliers. This invites the inclusion of less than demanding requirements in procurement documents regarding corporate qualifications, credentials, and financial strength and creates the possibility that inexperienced, undercapitalized firms will receive contracts. If, however, this potential problem is avoided, then other problems can easily surface. All other things being equal, the growth achieved by successful competitors tends to allow a progressively smaller number of competitors to achieve such superior positions that true competition between alternative providers becomes less and less possible. The resulting monopoly one company may come to enjoy or the oligarchy a few companies are able to form can thoroughly undermine the movement of government toward smart buyer status. Thus, it seems self-evident that the key to becoming a smart buyer in the field of corrections or elsewhere is in the formulation of sophisticated requests for proposals and equally sophisticated methods for evaluating submissions by competing firms. Contrary views notwithstanding, the hard reality is that there is no language one can inject into contracts or techniques one can incorporate into contract monitoring strategies that can compensate for poorly crafted procurement documents or weak evaluations of submissions.

contracting agency. Thus, 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.

The second indicator is similarly broad and equally pragmatic. It focuses on litigation experience of the 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 against it by prisoner plaintiffs.³⁰ When one recognizes that roughly three-quarters of American jurisdictions now have major facilities or their entire systems operating under consent decrees or court orders and that similar intervention by the courts is hardly uncommon in local correctional systems,³¹ the fact that private facilities remain unblemished by successful prisoner suits is not trivial.

The third indicator is based on independent assessments of compliance with the standards of the Commission on Accreditation for Corrections of the American Correctional Association. To be sure, the correlation between accreditation status and caliber of services provided is imperfect. There are facilities that have not sought accreditation within which one finds sound services; there are accredited facilities which are far from exemplary on one or more dimensions. At the same time, however, there is much to be said in favor of those correctional facilities that are willing to shoulder the substantial burdens associated with seeking accreditation and that are willing to accept the risks associated with independent professional assessments by ACA audit teams. Thus, it is significant that private firms have walked successfully down the accreditation path far, far more often than have their public sector counterparts.

³⁰This 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.

³¹See, e.g., American Correctional Association, *Directory of Juvenile and Adult Correctional Departments, Institutions, Agencies, and Paroling Authorities*. Laurel, Maryland: American Correctional Association, 1994, at p. xx.

The final indicator comes from the growing body of research literature that has examined the quality of privately provided correctional services.³² Certainly the most sophisticated of these reports is one 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 the New Mexico Women's Correctional Facility being operated by the Corrections Corporation of America, the Western New Mexico Correctional Facility that 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 different aspects of the quality of confinement. His overall conclusion was simply summarized: "The private prison outperformed the state and federal prisons, often by quite substantial margins, across nearly all dimensions."³³

Logan's general conclusion that private corrections management firms are fully capable of providing high caliber correctional services gains significant support from another longitudinal evaluation research project the results of which were published earlier this year by the Tennessee Select Oversight Committee on Corrections. The task before the Select Oversight Committee was to determine whether a contract award made to the Corrections Corporation in 1991 met the following statutory renewal preconditions: "After the first two (2) years of operation, but before renewing the initial contract, the performance of the contractor shall be compared to the performance of the state in operating similar facilities...The contract may be renewed only if the contractor is providing at least the same quality of services as the state at a

³²Robert B. Levinson, *Okeechobee: An Evaluation of Privatization in Corrections*, 65 *Prison Journal* (1985); Judith Hackett, Harry Hatry, Robert B. Levinson, Joan Allen, Keon Chi, and Edward D. Feigenbaum, *Issues in Contracting for the Private Operation of Prisons and Jails*. Washington, D.C.: The Council of State Governments and The Urban Institute, 1987; Samuel J. Brakel, *Prison Management, Private Enterprise Style: The Inmates' Evaluation*, 14 *New England Journal on Criminal and Civil Confinement* (1988); *The Urban Institute, Comparison of Privately and Publicly Operated Correctional Facilities in Kentucky and Massachusetts*, Washington, D.C.: National Institute of Justice (1989); Charles H. Logan, *Well Kept: Comparing Quality of Confinement in Private and Public Prisons*, 83 *Journal of Criminal Law and Criminology* (1992).

³³Logan, *id.*, at p. 601.

lower cost, or if the contractor is providing services superior in quality to those provided by the state at essentially the same cost."³⁴

To satisfy this statutory requirement the Select Oversight Committee selected two state-operated facilities of comparable design and mission and gathered a large volume of data on virtually all aspects of facility operation during the course of the two-year research project. Although the private facility cost per prisoner per day was modestly lower than the comparable cost for the two state facilities (\$35.76 for the state facilities versus \$35.38 for the private facility), the private facility received a higher overall rating than the two public facilities.³⁵ This, in turned, prompted a renewal of the facility management contract.

In summary, the best of the available evidence provides no support for the hypothesis that the cost saving strategies of private management firms undermine the caliber of the services provided in the facilities for which they are responsible. To the contrary, it is common for jurisdictions that have contracted for the private management of correctional facilities to report that the overall caliber of the services provided have improved in their scope and quality.

III. Recommendations for Federal Action

If your reading of the growing research literature on full-scale correctional privatization correlates well with mine, then several relevant conclusions will be clear. Contracting with private corrections firms for the design, financing, construction, and management of all types of secure adult correctional facilities has emerged as a viable alternative to traditional means of

³⁴TENN. CODE ANN. §41-24-105(c) and §41-24-105(d).

³⁵Tennessee Select Oversight Committee on Corrections, *Comparative Evaluation of Privately-Managed Corrections Corporation of America Prison (South Central Correctional Center) and State-Managed Prototypical Prisons (Northeast Correctional Center, Northwest Correctional Center)*. Nashville, Tennessee: Tennessee Select Oversight Committee on Corrections (February, 1995). Importantly, all three facilities had very high overall evaluation scores and the difference between the highest and lowest rated facility was only 1.32 points. This indication of sound performance at all three facilities is supported by the accreditation scores each received during the audit conducted by the American Correctional Association. Although there, too, the private facility had the highest score (99.29), both public facilities received very high marks (98.78 and 98.88).

delivering correctional services. Contracting can yield meaningful benefits by increasing the swiftness with which new correctional capacity can be made available, by decreasing construction costs, by enhancing the flexibility government enjoys when the need arises to add new services or modify the nature of previously provided services, by elevating the accountability of contracting agencies for both their expenditures and their programs, by decreasing legal liability exposure, by decreasing facility operating costs, and by preserving or improving upon the caliber of correctional services government agencies provide.

Naturally, the degree to which a particular government agency realizes these benefits depends on a broad array of factors that are at least somewhat under the control of the agencies (e.g., its awareness of its own costs inclusive of the so-called "off-budget" expenses, the character of regulatory and statutory influences that shape procurement options, the sophistication with which it approaches procurement processes, the sophistication of contracts, the quality of contract compliance monitoring.) It also depends to some measure on factors that are less subject to agency control (e.g., the existence of a sufficient level of competition between experienced providers of services). Fortunately, all three federal agencies that have prisoner custody responsibilities have significant experience in the contracting arena. For example, sixteen of the eighty secure private facilities now in operation or under construction in the United States are primarily or exclusively committed to meeting the needs of one or more federal agencies. Unfortunately, while not always a consequence of factors over which any individual agency had control, not all federal contracting efforts have been exemplars of how one can simultaneously maximize the benefits and minimize the risks of contracting.

Problems Associated with Some Past Federal Contracting Initiatives

Explaining why criticism of some past federal contracting initiatives is deserved would require more time than is available this morning. However, several historical problems seem fairly obvious.

First, it would be fair to say that there previously has been little enthusiasm for fundamental change among the senior echelons of the Department of Justice, and this has been

more apparent in the Bureau of Prisons than in the Immigration and Naturalization Service and the U.S. Marshals Service. The adoption and effective diffusion of innovations is difficult unless unequivocal signals are sent to middle-management by its executives, and I am hopeful that the leadership now being provided by Director Hawks will yield meaningful benefits.

Second, I believe some federal agencies, certainly including the Bureau of Prisons, can fairly be said to have been overly conservative in their definitions of what the private sector is qualified to do. The present plan to focus on contracting only for pre-trial detention facilities and for housing space for prisoners with minimum and low security classifications is at least illustrative of this point.

Third, I often have been critical of the frequency with which federal agencies have engaged in non-competitive procurement when the need for contract housing space materialized. Although there surely are circumstances that support reliance on Intergovernmental Agreements, it remains true that properly structured competitive procurement processes provide a better assurance that contracts will yield the best possible services at the lowest possible cost.

Fourth, I have even more often been critical of the awkwardness of over-specification I have seen in federal procurement documents. Some agency personnel seem unable to avoid the temptation to go far beyond appropriate descriptions of what services their agencies wish to secure and into the realm of detailed descriptions of how those services are to be provided. A "do it the way we do it" posture significantly undermines opportunities to invite and encourage creativity.

Fifth, some federal contracting decisions strike me as having erred in the direction of being so influenced by costs that they neglected to recognize that contracting for value presupposes a judicious balance between cost and quality considerations. I understand the temptation. Nonetheless, a key to successful contracting is understanding the costs and quality of services federal agencies now provide and contrasting that information with the costs and quality of services private corrections firms propose. No productive long-term purpose will ever be served if cost proposals alone shape contracting decisions.

Sixth, I continue to be perplexed and often frustrated by the snail's pace at which federal procurement processes often move. Earlier, for example, I observed that I am a consultant to the Florida Correctional Privatization Commission. Until the Florida legislature enacted Chapter 957 of the Florida statutes during its special legislative session in the summer of 1993, we had no such agency. However, within approximately six months of the hiring of Clayton Mark Hodges, the Executive Director of the Commission, we had prepared and released a Request for Proposals aimed at contracting for the design, financing, construction, and management of two 750-bed medium security prisons, received and evaluated voluminous submissions from eight vendors, and drafted and executed two lease-purchase agreements, two construction contracts, and two facility management contracts. The first of these facilities is scheduled to receive prisoners in mid-June of this year---less than two years after the original version of the new Florida statute was drafted and with the professional staff of the Correctional Privatization Commission consisting entirely of the Executive Director, a handful of professional consultants, and the efforts of an attorney who had a full-time assignment in an unrelated state agency. By contrast, I observed a smaller procurement effort launched by the Bureau of Prisons for a single 1,000-bed facility require more time than this merely to move from its release of a Request for Proposals to the execution of a final contract---and I then observed Concept, Inc. move from contract to execution to the construction and opening a new facility in only twelve months and do so at a construction cost far, far below that of comparable federal facilities.

Sixth, Congress itself would be prudent to raise questions regarding the degree to which the efficiency and effectiveness of privatization initiatives are being undermined by existing federal statutes and regulations. The present legal context as it has been interpreted by federal agencies erects obstacles to private firms which require access to the capital markets if they are to obtain funds for the construction of new correctional facilities. Illustrations of this include the short-term nature of contracts, differing interpretations regarding the number and duration of contract renewals, the general absence of assurances that contracting agencies will utilize no less than a fixed proportion of the prisoner housing space contract facilities make available, and

uncertainties regarding the circumstances under which periodic increases in operating cost per diems will be possible. These obstacles have the unintended but negative effect of both increasing total project costs and decreasing the number of qualified firms which elect to compete for federal contract awards.

Opportunities for Congressional Action

There are an almost limitless number of opportunities associated with correctional privatization which Congress could pursue with the reasonable assurance that pursuing them would simultaneously protect the public safety interest, allow federal agencies to realize significant construction and operating cost savings, control the growth in the number of federal employees, and assure the delivery of high caliber correctional services. Perhaps the most obvious of these that is of local interest would be the ability of Congress to resolve a major problem confronting the District of Columbia in a cost effective manner by relying on the private sector rather than the Bureau of Prisons to assume responsibility for the Lorton complex.

Although I believe Congress could and should carefully evaluate the very real benefits that would flow from contracting out for necessary renovations, expansion, and management of the Lorton complex, a different opportunity is one to which I would assign even greater potential. The opportunity is presented by H.R. 667 and S. 3, both of which propose amendments to the Violent Crime Control and Law Enforcement Act of 1994. The version of H.R. 667 I recently reviewed provided for grants of more than 10 billion dollars to states or multi-state compacts that meet various eligibility standards associated with applicant sentencing policies for persons convicted of violent crimes. In effect, of course, the language of H.R. 667 offers a meaningful financial incentives to jurisdictions that adopt sentencing policies that correlate with policies Congress perceives to be effective means of protecting the public safety interest.

Given the state of the best available evidence, I believe it would be entirely appropriate for Congress to amend the language of H.R. 667 in such a way as to encourage state-level privatization initiatives of the same ambitious type as those recently announced in the federal jurisdiction by Director Hawks. Eligibility standards, for example, could include suitable proof

that applicant jurisdictions have enabling legislation which authorizes full-scale privatization and/or a commitment on the part of applicant jurisdictions which obliges them to commit at least some portion of any federal grant funds they receive to the private design, financing, construction, and management of new correctional facilities---if, of course, the results of procurement efforts provide evidence that contracting out would yield cost savings without a reduction in the caliber of correctional services.

IV. Conclusions

By way of concluding remarks I will be concise and direct. There was a time not so very long ago when advocates of correctional privatization had little to support their claims that the private sector could manage secure adult correctional facilities efficiently and effectively than beyond the firmness of their convictions. There were no private corrections management firms. There were no privately-managed facilities. There could be no supportive evidence unless and until some government agencies were driven by necessity or by faith to contract.

Those early days of the correctional privatization movement have passed. The cautious experiments we saw then set the stage for the confidence we see today in jurisdictions all across the nation as well as in Australia and the United Kingdom. The confidence does not flow from necessity or from faith. It flows instead from a growing body of hard evidence. The evidence demonstrates that properly sophisticated privatization initiatives can and do yield an array of benefits that include but are not limited to significant construction and operating cost savings as well as the delivery of correctional services whose caliber is at least equal to those provided by government agencies in contracting jurisdictions.

The conclusion a prudent policy maker should draw is as clear as it is unavoidable. To the degree that such a policy maker is motivated to guarantee the delivery of the best possible correctional services at the lowest possible cost, then he or she can and should promote correctional privatization whenever doing so is appropriate. Importantly, the evidence offers

abundant proof that the scope of what deserves to be viewed as appropriate is quite broad. It is no longer true that privatization is a viable alternative only for those whose focus is on relatively small facilities intended to house prisoners with low security classifications. Instead, today there are few or no types of correctional facilities operated by government that do not have equivalent counterparts that are operated by the private sector. Thus, today the true challenge to elected officials and correctional agencies is not to determine whether decisions to privatize correctional facilities are defensible. The challenge is to devise fair and sophisticated procurement strategies that maximize the benefits of contracting and to develop management models that facilitate the diffusion of innovations developed by the private sector into the operation of facilities operated by public agencies.

Notwithstanding some of the reservations I have expressed about past contracting by federal agencies, you and your colleagues in Congress have just cause to be confident about the future of contracting at the federal level. The Bureau of Prisons, and also the Immigration and Naturalization Service and the U.S. Marshals Service, have attracted some of the most talented and professional people the field of corrections has to offer. Their reputation across the nation and on the international scene is without equal. With your and their leadership, my hope and my belief is that the immediate future will bring model partnerships between the public and private sectors.

Table 1: Research Findings Regarding Legal Authority to Contract for Secure Adult Facilities

Jurisdiction	Source of Local-Level Contracting Authority	Local-Level Contract(s) Awarded?	Source of State-Level Contracting Authority?	State-Level Contract(s) Awarded?
Alabama	Statutory Interpretation	Yes	None Identified	No
Alaska	N/A	N/A	Expressed Statutory	Yes, for out-of-state facilities
Arizona	Expressed Statutory	No	Expressed Statutory	Yes
Arkansas	Expressed Statutory	No	Expressed Statutory	No
California	Expressed Statutory	Yes	Expressed Statutory	Yes
Colorado	Expressed Statutory	No	Expressed Statutory	Yes
Connecticut	N/A	N/A	None Identified	No
Delaware	N/A	N/A	None Identified	No
District of Columbia	Statutory Interpretation	Yes	N/A	N/A
Florida	Expressed Statutory	Yes	Expressed Statutory	Yes
Georgia	Statutory Interpretation	No	None Identified	No
Hawaii	N/A	N/A	None Identified	N/A
Idaho	None Identified	No	None Identified	No
Illinois	Statutory Prohibition	No	Statutory Prohibition	No
Indiana	None Identified	No	None Identified	No
Iowa	Statutory Interpretation	No	Statutory Interpretation	No
Kansas	Statutory Interpretation	Yes	None Identified	No
Kentucky	Expressed Statutory	Yes	Expressed Statutory	Yes
Louisiana	Expressed Statutory	Yes	Expressed Statutory	Yes
Maine	Negative Attorney General Opinion	No	None Identified	No
Maryland	Statutory Interpretation	No	Statutory Interpretation	No
Massachusetts	None Identified	No	None Identified	No
Michigan	None Identified	No	None Identified	No
Minnesota	Expressed Statutory	No	Statutory Interpretation	No
Mississippi	Negative Attorney General Opinion	No	Expressed Statutory	No
Missouri	Negative Attorney General Opinion	No	Negative Attorney General Opinion	No
Montana	Expressed Statutory	No	Expressed Statutory	No
Nebraska	Expressed Statutory	No	Expressed Statutory	No

Table 1: Research Findings Regarding Legal Authority to Contract for Secure Adult Facilities

Jurisdiction	Source of Local-Level Contracting Authority	Local-Level Contract(s) Awarded?	Source of State-Level Contracting Authority?	State-Level Contract(s) Awarded?
Nevada	None Identified	No	Expressed Statutory	No
New Hampshire	None Identified	No	Expressed Statutory	No
New Jersey	None Identified	No	None Identified	No
New Mexico	Expressed Statutory	Yes	Expressed Statutory	Yes
New York	None Identified	No	Statutory Prohibition	No
North Carolina	None Identified	No	None Identified	Yes, for out-of-state facilities
North Dakota	Expressed Statutory	No	Expressed Statutory	No
Ohio	Negative Attorney General Opinion	No	None Identified	No
Oklahoma	Expressed Statutory	No	Expressed Statutory	No
Oregon	None Identified	No	None Identified	No
Pennsylvania	Statutory Interpretation	No	None Identified	No
Puerto Rico	None Identified	No	Statutory Interpretation	Yes
Rhode Island	N/A	N/A	None Identified	No
South Carolina	None Identified	No	Statutory Interpretation	No
South Dakota	Expressed Statutory	No	None Identified	No
Tennessee	Expressed Statutory	Yes	Expressed Statutory	Yes
Texas	Expressed Statutory	Yes	Expressed Statutory	Yes
Utah	Expressed Statutory	No	Expressed Statutory	Yes
Vermont	N/A	N/A	None Identified	No
Virginia	Negative Attorney General Opinion	No	Expressed Statutory	Yes, for out-of-state facilities
Washington	None Identified	No	None Identified	No
West Virginia	Expressed Statutory	No	Expressed Statutory	No
Wisconsin	None Identified	No	None Identified	No
Wyoming	Expressed Statutory	No	Expressed Statutory	No

Table 2: Profile of Private Corrections Industry on 12/31/94

Management Firm	Rated Capacity of All Facilities Under Contract*	# Facilities Under Contract	Rated Capacity of Facilities Now In Operation	Prisoner Populations on 12/31/94	% Occupancy for Facilities in Operation	New Facilities to Open within 12-18 months	Expansion Anticipated Within 12-18 Months
Alternative Programs, Inc.	240	1	240	240	100.00%	0	0
The Bobby Ross Group	872	1	872	751	86.12%	0	0
Capital Correctional Resources	836	1	836	664	79.43%	0	0
Concept, Inc.	4,426	8	2,926	2,825	96.55%	2	1,500
Cornell Cox, Inc.	794	3	794	777	97.86%	0	0
Corrections Corporation of America	14,965	24	10,264	9,579	93.33%	5	4,701
Corrections Partners, Inc.	1,891	3	584	606	103.77%	1	1,307
Corrections Services, Inc.	32	1	32	29	90.63%	0	0
Dove Development Corporation	762	2	762	621	81.50%	0	0
Eden Detention Center	1,006	1	710	700	98.59%	0	296
Esmor Correctional Services, Inc.	1,170	4	1,170	1,236	105.64%	0	0
Group 4 Prison & Court Services, Ltd.	680	2	680	410	60.29%	0	0
The GRW Corporation	100	1	100	100	100.00%	0	0
Management & Training Corporation	2,640	4	900	882	98.00%	2	1,740
Mid-Tex Detention, Inc.	1,297	3	744	704	94.62%	1	553
North American Corrections	489	1	489	439	89.78%	0	0
U.S. Corrections Corporation	2,918	6	1,650	1,625	98.48%	2	1,268
The Villa at Greeley, Inc.	400	1	0	0	N/A	1	400
Wackenhut Corrections Corporation	13,636	21	7,068	6,490	91.82%	7	6,568
TOTALS	49,154	88	30,821	28,678	93.05%	21	18,333
<i>% Changes Since 12/31/93</i>	<i>50.99%</i>	<i>20.55%</i>	<i>24.55%</i>	<i>28.73%</i>	<i>3.64%</i>	<i>61.54%</i>	<i>134.74%</i>

Figure 1: Ten-Year Growth in Bed Capacity of Privately-Managed Secure Adult Correctional Facilities

