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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: Public Hearing on Private Prisons

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Stenographic report of hearing held
in Room 140, Majority Caucus Room,
Main Capitol Building, Harrisburg, PA

Thursday,
March 14, 1991
10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN
Hon. Kevin Blaum, Subcommittee Chairman on Crimes
and Corrections

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Jeffrey E. Piccola Hon. Karen A. Ritter
Hon. Robert D. Reber

Also Present:

David Krantz, Executive Director
Mary Woolley, Republican Counsel
Mary Beth Marschik, Republican Research Counsel
Katherine Manucci, Staff

Reported by:
Ann-Marie P. Sweeney, Reporter

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115 pages
+ 118 pages attached

233 pages

1991-090

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1 CHAIRMAN CALTAGIRONE: I'd like to open
2 the House Judiciary Committee hearing on the private
3 prisons. We are attempting to gather information to
4 decide what should be done dealing with this issue and
5 as is the case, we have attempted to put together a
6 collection of people that are authorities and
7 specialists in this area along with positions that are
8 both pro and con. The weather being what it is, we did
9 have a couple of cancellations and there may be some
10 later on, but we will proceed and start out with
11 Commissioner Lehman.

12 COMMISSIONER LEHMAN: Thank you, Chairman
13 Caltagirone and other committee members. I appreciate
14 the opportunity to be with you here today to talk a
15 little bit about the concept of privatization and its
16 particular form, as I understand it, proposed
17 legislation.

18 Privatization as a concept I think
19 shouldn't be based on the simple notion that the
20 private sector can do things better or that they can do
21 them at less cost. I think that's a generalization
22 that is simply not true. I think we cannot regard the
23 private sector and the public sector as simply
24 interchangeable entities in terms of carrying out
25 functions. I think the tasks and activities that

1 government engages in are often different from those
2 typically carried out by the private sector and
3 certainly different for different reasons.

4 I think the private sector involvement
5 and public sector activities ought to be viewed as a
6 partnership and not an either/or kind of proposition.
7 We ought to look at specific tasks and functions where
8 the private sector has some unique expertise and
9 capacity to provide in a cost-effective manner. I
10 think in a correctional environment my experience is
11 that certainly might involve construction, such as the
12 General Assembly has authorized in Act 71. It
13 certainly may involve maintenance of certain kinds of
14 equipment in facilities that require specialized
15 expertise. It certainly may involve medical services,
16 and it can in fact involve treatment and rehabilitative
17 services, including those that might be provided in a
18 residential program.

19 It has not traditionally been involved in
20 those activities directly related to the exercise of
21 government's coercive authority over its citizens.
22 There is simply no basis, I think, for concluding that
23 the private sector has any unique expertise or capacity
24 to carry out those functions.

25 Where there is a component of coercive

1 authority exercised through physical force and
2 including deadly force or the potential for deadly
3 force, I personally have a problem with the notion that
4 nongovernmental entities would be involved, and that's
5 simply a philosophical position of my own.

6 Where such authority is not a component,
7 then I think the decision on privatization should be
8 left to an assessment of whether privatization of
9 normally public sector activities provides an
10 opportunity to bring an added quality of expertise and
11 service to a particular function. With this
12 background, please let me comment a little bit on the
13 specific features of the legislation that's being
14 discussed, at least as I understand it.

15 The intent, as I read the legislation, is
16 to extend to counties a legal capacity to contract for
17 the incarceration of low-risk offenders. I suppose the
18 desire is to provide more flexibility in the provision
19 of those services at the county level. Beyond my
20 philosophical objection noted earlier, I am concerned
21 that the actual effect of the legislation would be to
22 add an unnecessary correctional capacity at an
23 increased cost to county government.

24 Let's start with the definition of the
25 offender population as low risk. Limiting the

1 population to low risk brings into question I think the
2 need for prison type of housing in the first place. It
3 is my understanding that counties are currently
4 authorized to contract for residential programs
5 providing a variety of services for offenders sentenced
6 to either probation, sentenced to a sentence of partial
7 confinement or as a condition of parole. If the
8 question is one of legal status, I might suggest that
9 rather than creating a private minimum security prison
10 it might be more appropriate to extend to the counties
11 the authority to create pre-release programs for an
12 appropriately classified inmate - residential programs
13 which provide a range of services from work training
14 release to total confinement and residential programs
15 for such services as treatment for substance abuse or
16 sex offender or whatever.

17 I think the key to this seems to be
18 targeting the offender population. As the proposed
19 legislation does, that targeted population is low-risk
20 offenders. Such a definition, by the way, is
21 consistent with the corrections classification of
22 minimum security. Minimum custody as an inmate
23 classification in this respect would mean those
24 offenders whose behavior could be managed in a low
25 security environment and who, from a public safety

1 perspective, do not fall into a high-risk category.

2 The bottom line is that I am not
3 convinced that there is a need for the proposed
4 legislation. And if it were passed, I'm afraid that
5 the cost of licensing, regulating the facilities, along
6 with the bonding and the insurance requirements, would
7 be cost prohibitive.

8 With regard to the licensing and
9 regulating of these facilities, I think it's
10 interesting to note that the effects of the legislation
11 would be to impose a standard on the private sector
12 prison more stringent than currently exists in the
13 county prisons. Although the Department of Corrections
14 currently inspects county prisons, and we've developed
15 standards to do so, those standards in the process have
16 been developed from a historical perspective, that is
17 recognizing mindful of the wide range of practices, the
18 wide range of resources, the physical plants that the
19 counties have, and the fact that the department has
20 little authority to enforce those standards.

21 In essence, the legislation would result
22 in a promulgation of more stringent standards with a
23 legislative mandate to strictly enforce them resulting
24 in a double standard, and probably at an increased cost
25 to the counties.

1 Given that scenario, it would seem to me
2 that the proposed policy area is one that needs more
3 study before in fact passing legislation, and thank you
4 for allowing me to appear, and I certainly would
5 respond to any questions you have.

6 CHAIRMAN CALTAGIRONE: Thank you,
7 Commissioner.

8 Questions from members?
9 Chairman Piccola.

10 REPRESENTATIVE PICCOLA: Thank you, Mr.
11 Chairman.

12 BY REPRESENTATIVE PICCOLA: (Of Comm. Lehman)

13 Q. Commissioner, on page 2 you indicate you
14 have a philosophical problem with private entities
15 exercising coercive authority. What about private
16 nonprofit entities that operate secured juvenile
17 facilities that we presently have operating in the
18 State? Are you philosophically opposed to that?

19 A. That's my personal point of view, and
20 certainly this is a somewhat controversial subject and
21 I recognize that, and practice is made different. I
22 think when you talk about government involving itself
23 in a course of authority to the extent that deadly
24 force, in particular, is potential, then I do have a
25 problem.

1 Q. Well, we have those facilities. We have
2 some facilities I think in Allegheny County and in York
3 County for adult female offenders. I presume the
4 potential for deadly force being used to maintain
5 control or custody is maybe minimal, but it's, I would
6 imagine, it's there, is it not?

7 A. No, at least the programs I'm familiar
8 with in terms of residential programs that are
9 providing, you know, 24-hour supervision. There is
10 not, in fact, as I understand it, an obligation on
11 those private sector people to in fact physically
12 restrain or in fact exercise physical or deadly force
13 on those residents. I mean, they will call for
14 assistance in terms of law enforcement, and I think
15 that's appropriate.

16 Q. In your residential programs that you
17 have presently for State inmates, is the authority to
18 use deadly force present in those programs?

19 A. The capacity is not there. In fact,
20 those staff are not armed. They certainly have an
21 obligation to attempt to restrain, reasonably so, the
22 offender and to call for law enforcement assistance.

23 Q. Okay. So if we, if the kind of private
24 facilities that we're contemplating under this
25 legislation were of those type where there weren't

1 armed custodians, would that remedy the problem in
2 terms of your deadly force fears?

3 A. Yes. In fact, my testimony, to clarify
4 it, we do in fact contract for those services. We have
5 both State-operated and contracted, and it's my
6 understanding the county has the capacity at the
7 present time to do the same.

8 I think the significant difference, if you
9 were in fact to deal with this, is that you are
10 imposing -- I guess what I'm saying is they already
11 have the capacity to do the kind of thing that you're
12 just saying. What you are now imposing is in fact a
13 process of licensing and regulating those kinds of
14 facilities. And frankly, I'm not against the
15 standardization or the professionalism, but I am
16 concerned about the cost that counties would incur as a
17 result of that.

18 Q. Well, I don't disagree with that, but the
19 people who fight this kind of thing, and I think you're
20 right, I think we have private prisons in essence right
21 now, but the people that fight this thing claim that
22 these private facilities, because they are in it for
23 profit, or even nonprofits who are in it for making
24 money to pay their staff, are going to cut corners and
25 do things that government doesn't do, and I think

1 that's why we put in the regulatory kinds of things.

2 A. I understand.

3 Q. I would agree with you. I think -- I've
4 heard virtually no criticism of the private juvenile
5 facilities to which we commit juveniles in this State.
6 I've heard almost nothing in terms of complaints. In
7 fact, I've heard a lot of praise about them, and yet I
8 do hear a lot of criticism of our public correctional
9 institutions over the years.

10 A. I understand that, and I think the
11 distinction I would make is the distinction between a
12 residential program particularly that brings some
13 expertise and treatment, which I think is critical, and
14 the distinction between a prison environment where
15 really the issue is the public safety issue and the
16 containment and isolation. I'm drawing the distinction
17 between those two.

18 Q. Wouldn't there also be a role, I've
19 visited a couple of your institutions where you have,
20 you know, hospital, basically hospital facilities where
21 you have inmates who have created conditions that
22 require you to take whole sections of your facility and
23 put it aside. Assuming that you could establish there
24 was a cost-effective way of proceeding, could you not
25 make a strong argument that you could farm those kind

1 of people out or put them out into private facilities,
2 free up that space in the public institutions?

3 A. In fact, in a modified level what happens
4 right now is that if you have an inmate that requires
5 specialized medical services or inpatient services,
6 that inmate in fact will be going to an outside
7 hospital, but the custody supervision would be provided
8 by the State during that process, so that if you're an
9 inmate in a hospital, then you're going to have a
10 correctional officer that's there with you. Now, I
11 have absolutely no problem with the notion that you
12 take -- in fact, I have talked to entities about it,
13 you take a hospital wing, you contract for medical
14 services in relation to inpatient services and acute
15 care services for that population, but the State would
16 then provide the custodial supervision in relation to
17 that activity.

18 REPRESENTATIVE PICCOLA: That's all, Mr.
19 Chairman.

20 CHAIRMAN CALTAGIRONE: Thank you,
21 Commissioner.

22 COMMISSIONER LEHMAN: Thank you.

23 CHAIRMAN CALTAGIRONE: We'll next hear
24 from Stover Clark, Director of the Pennsylvania
25 Association of County Commissioners.

1 MR. CLARK: Good morning., To clear, I'm
2 not the Director. I'd love to be, but I'm the Jail
3 Overcrowding Project Director. Doug Hill didn't know
4 he was demoted.

5 Good morning. I am Stover Clark, the
6 Jail Overcrowding Project Director for the State
7 Association of County Commissioners. Our association
8 is a nonprofit, nonpartisan organization representing
9 all of the Commonwealth's 67 counties.

10 I'm pleased to have this opportunity to
11 present the association's comments on the proposed
12 legislation regulating private prisons. On behalf of
13 the association membership, I want to take this
14 opportunity to thank Chairman Caltagirone and Minority
15 Chair Piccola for the continuing leadership in the
16 areas of prison and jail crowding and their vision for
17 reform in the Pennsylvania criminal justice system.
18 Personally, it is truly an exciting time to be working
19 on criminal justice issues in Pennsylvania.

20 Prison and jail overcrowding is a complex
21 issue. Many factors contribute to the overcrowding -
22 mandatory sentencing requirements, the public's demand
23 for stiffer penalties. For as many contributors for
24 overcrowding there are also many possible solutions,
25 including the \$200 million bond issue for county jail

1 construction, the newly enacted Intermediate Punishment
2 Act, and the proposed sentencing reform legislation.

3 In 1986, we presented testimony to the
4 Pennsylvania Joint State Governments' Task Force on
5 Private Prisons. Since that time, the association's
6 position has not substantially changed. The State
7 Association of County Commissioners views this proposed
8 legislation not as the ultimate solution but rather as
9 another tool for dealing with the jail overcrowding
10 crisis.

11 In essence, we are in agreement with the
12 language in the legislation that states the private
13 sector can best serve the correctional system by
14 operating minimum security private prisons for the
15 incarceration of low-risk offenders sentenced to
16 incarceration in county prisons. Presently, there are
17 a number of counties throughout the Commonwealth who
18 have contracted for the types of correctional services
19 outlined in this legislation. These contract
20 situations, primarily with not-for-profit
21 organizations, have satisfactorily provided offender
22 treatment and additional capacity needs for county
23 governments. I believe that with the passage of this
24 legislation it would enable even more counties to
25 participate and utilize the private sector for

1 providing these kinds of services.

2 In our 1986 testimony, we called for the
3 inclusion of comprehensive State regulations and
4 guidelines governing private prisons. Specifically, we
5 asked that the following issues be addressed by
6 regulation - licensing, regulation, prisoner rights,
7 prison liability, and out-of-State offender issues.
8 Our feeling is that the legislation before us today
9 encompasses most of our concerns. The only concern we
10 have with the proposed legislation before us is that
11 the licensing and regulating requirements may not be
12 flexible enough to enable county participation. We
13 urge you to strike a balance between the needed
14 regulatory oversight and unnecessary and cumbersome
15 regulatory requirements.

16 May I suggest that, and the Commissioner
17 of Corrections made reference to Act 71. The
18 regulations that were developed for Act 71 were done by
19 a committee process that included the Department of
20 Corrections, the State Association of County
21 Commissioners, the Commission on Crime and Delinquency,
22 and if a model such as that were developed for these
23 regulations, we could insure that it wouldn't be costly
24 or burdensome for the counties.

25 We would be pleased to furnish any

1 additional information you may require and to assist
2 the committee in the further development of this
3 legislation.

4 Again, thank you for giving us this
5 opportunity. We again thank you for considering this
6 legislation, which represents for counties one more
7 tool for dealing with the county jail overcrowding
8 crisis.

9 I would be pleased to answer any
10 questions.

11 CHAIRMAN CALTAGIRONE: Thank you, Stover.
12 Jeff.

13 REPRESENTATIVE PICCOLA: Thank you, Mr.
14 Chairman.

15 BY REPRESENTATIVE PICCOLA: (Of Mr. Clark)

16 Q. Stover, you were here when the
17 Commissioner testified, and he indicated in his
18 testimony he thought it would be more appropriate to
19 extend to the counties authority to create pre-release
20 programs. Given the courts, the county judge's
21 authority to basically parole at any time, would you
22 agree with me that that kind of authority to create,
23 quote, "pre-release," unquote, programs already exists
24 with the counties, that you can do that and in fact
25 perhaps have done it in some cases?

1 A. Absolutely. A number of counties have
2 done it and are in the process of doing it.

3 The way I read the legislation is that
4 it's all-encompassing. I mean, it does allow the
5 counties to do incarceration services, pre-release, it
6 encompasses all those issues. Again, what the
7 Commissioner said was that counties can do it now and
8 we can, but I think that more counties would utilize it
9 if this kind of authorizing legislation were available.

10 Q. That was one of my questions. Do you
11 think counties would engage in some of this activity if
12 we did pass some sort of authorizing legislation?

13 A. Absolutely.

14 Q. Are you aware of any counties that have
15 engaged in the obtaining of private security services
16 for either their facilities or some facilities where
17 their inmates have been placed?

18 A. Not off the top of my head, no. No, I
19 can't think of any. There might be. I just don't
20 know.

21 Q. If you think of it, if you could survey
22 some of your members and see if they're aware of
23 anywhere they may have engaged in private security
24 contracts?

25 A. I'm aware of one county that contracts

1 for the warden.

2 Q. Uh-huh.

3 A. That's Centre County, but again, let me
4 find out and get back to you.

5 Q. Okay. Thank you.

6 REPRESENTATIVE PICCOLA: Thank you.
7 That's all I have, Mr. Chairman.

8 CHAIRMAN CALTAGIRONE: No other
9 questions?

10 (No response.)

11 CHAIRMAN CALTAGIRONE: Thank you, Stover.
12 We appreciate your testimony.

13 MR. CLARK: Thank you.

14 CHAIRMAN CALTAGIRONE: Susan Frietsche,
15 the American Civil Liberties Union.

16 And at this time, if the members don't
17 mind, I'd like to turn this over to Chairman Piccola.
18 I will be back. I have to make a call and I'll be back
19 shortly.

20 (Whereupon, Representative Piccola
21 assumed the Chair.)

22 MS. FRIETSCHER: Good morning.

23 ACTING CHAIRMAN PICCOLA: Morning.

24 MS. FRIETSCHER: My name is Sue Frietsche,
25 and I'm Deputy Director of the Pennsylvania ACLU, and

1 rather than read my very long testimony, I think I'll
2 be considerate and try to summarize it briefly and then
3 try to answer whatever questions you might have.

4 As most of you know, I think, the
5 Pennsylvania ACLU is a non-partisan organization of
6 roughly 12,000 members, and our sole mission is the
7 protection of the rights and freedoms guaranteed by the
8 Constitution and Bill of Rights, including the right of
9 conflict of law and the right to be free from cruel and
10 unusual punishment, and that's why we get involved in
11 so much prison advocacy.

12 Probably more than any organization in
13 the country, the ACLU has been very harshly critical of
14 our existing prisons and our existing prisons system.
15 If we thought private prisons could contribute very
16 meaningfully towards alleviating these unconstitutional
17 conditions, we'd be their biggest supporters. But our
18 experience has not been very good with private prisons,
19 and I guess I'm here today to give you the downside of
20 private prisons and why we think Pennsylvania should
21 move very, very slowly in this direction if we're going
22 to move in that direction at all. We reject the idea
23 of turning the State's responsibility to punish the
24 guilty over to private corporations.

25 We first became involved in looking at

1 private prisons in the mid-'80's. Our legal director,
2 Stefan Presser, at that time worked for our Texas
3 affiliate and litigated the nation's first Federal
4 private prison case called Medina vs. O'Neill. In that
5 case, a small private prison in Texas, called Danner,
6 Incorporated, locked up 16 stowaways in a small room
7 that was meant to hold 6, and because the private
8 prison guards had received no training in the use of
9 firearms, they accidentally shot and killed one of the
10 stowaways and wounded others. We sued the private
11 prison out of existence, but what the Medina tragedy
12 illustrated were some of the very worst problems that
13 could be associated with private prisons. And I'd just
14 like to summarize them quickly for you now. My
15 testimony goes into it in a little more detail.

16 Private companies, of course, have a
17 responsibility to fulfill the terms of their contract
18 and to obey the laws and regulations that apply to
19 them, but they also have a duty to keep their
20 businesses afloat, and the pressure to make money
21 particularly in for-profit operations is going to
22 inevitably conflict to some extent at least with the
23 public's interest in maintaining safe and secure and
24 humane and uncrowded prisons. We all know that running
25 a prison is very expensive, and in some ways the better

1 you run one the more expense it is. If faced with very
2 heavy financial losses, private operators might be
3 forced to try to cut corners and to try to save money
4 in order to keep their operation afloat. The State
5 will lose some direct control over these cost-cutting
6 decisions, but the State will not lose their
7 responsibility for those prisoners. I think it's
8 pretty well settled now, even more so than the last
9 time we were before this committee, that the State
10 would retain liability if any prisoners got hurt or if
11 the surrounding community were endangered, even if they
12 had contracted away the management of that prison to a
13 private corporation.

14 Secondly, unfortunately, the goal of a
15 for-profit private prison operator would be to make
16 money by keeping the prison full, and that leads to our
17 second major concern about private prisons, and that is
18 that we think it's simply improper for any sort of
19 private operator's monetary interests to have anything
20 to do with how much time a prisoner might serve. The
21 goal of keeping the prison full and keeping revenues
22 coming in could, under some circumstances, conflict
23 with the public's interest in keeping the prison
24 population as low as possible, alleviating prison
25 overcrowding, and releasing prisoners whose minimum

1 sentences have been served if those prisoners are ready
2 to return to the community. The more we delegate to
3 private corporations the decisionmaking authority about
4 whether this particular prisoner is ready to be
5 released or not, the greater our concern becomes that
6 that decision is going to be colored by the bottom
7 line.

8 Now, you can try to minimize these risks
9 by drawing up a very tight statutory or regulatory
10 scheme that has a lot of safeguards put in place, and I
11 think if there are going to be private prisons, that in
12 fact is what should happen. But there's two problems
13 with enacting demanding safeguards, and the first is
14 that the more safeguards you build in, the more
15 expensive it's going to be inevitably to run that
16 private prison. The more expensive it is, the less
17 chance there will be that you'll get any actual benefit
18 out of privatizing. The benefits of privatizing should
19 be to reduce costs and increase flexibility. If in
20 fact you don't get that out of contracting out, you
21 have to ask the question, is it really worth it to do
22 that in the first place? The greater the cost, the
23 worse the risk that you will run into cost overruns or
24 even that the private prison could run into bankruptcy,
25 and then all the problems that both the Legislative

1 Budget and Finance Committee in 1985 and the Joint
2 State Government Commission in 1987 identified around
3 the bankruptcy issue would come into play, namely what
4 does the State do when faced with a private prison that
5 is bankrupt? Does it go in and bail it out? Does it
6 find another facility to put those prisoners in fast?
7 Those problems arise.

8 Second, even if you have a very tight
9 regulatory scheme in place and a very good contract
10 that guarantees high level of services and prisoners'
11 rights, simply having a contract doesn't always
12 guarantee compliance, and as I said before, if the
13 private prison does not comply and if they do end up
14 violating a prisoner's rights or endangering the safety
15 of the community, State officials responsible for that
16 delegation would retain liability.

17 Now, how likely is it that any of these
18 horror stories would actually ever happen? We don't
19 know. We really don't know. But what we can do is
20 look at Pennsylvania's prior history with the few
21 private prisons that we've had here, and it hasn't been
22 very good. I'll just recount very briefly two examples
23 that occurred right before the Pennsylvania legislature
24 enacted the Private Prison Moratorium and Study Act of
25 1986 in response to these problems.

1 In 1985, a corporation called Buckingham
2 Security came before this legislature asking for a
3 private prison licensing bill in order to open a
4 700-bed maximum security facility in Beaver County. We
5 found out later that the land on which this prison was
6 to be built contained a parcel which was, in fact, a
7 toxic waste dump. Fortunately, that prison was not
8 built. Fortunately for the community, the workers, and
9 the prisoners that prison was not built.

10 The second example is the only other true
11 private prison that was in operation at that time was
12 the 268 Center, and that was a facility, a private
13 facility in Armstrong County that mostly incarcerated
14 people convicted of driving under the influence from
15 Allegheny County. At one point in March of '86, the
16 county contracted with a Washington, D.C. jail to take
17 in 55, I think they were misdemeanors from a
18 Washington, D.C. jail, and then Governor Thornburgh was
19 so alarmed at the inability of the 268 Center to
20 provide any kind of security or safety for the
21 surrounding community that he sought and obtained a
22 Commonwealth Court order sending those prisoners back
23 where they came from. As the Philadelphia Inquirer
24 noted in an editorial right after that incident, when
25 the chips were down, the only private prison in

1 Pennsylvania essentially said to the State, we don't
2 think it's any of the public's business how we run our
3 lock-up.

4 So that's Pennsylvania's brief and not
5 very good experience with private prisons. So we would
6 just hope that you would proceed very, very cautiously
7 here. We don't think that they are the solution that
8 you're looking for.

9 I would like to commend the committee,
10 again, for working so continuously and so hard on
11 trying to find creative solutions to prison
12 overcrowding, and I think that overcrowding really is
13 the basis for the problems in our prison system, and we
14 have a system now that as of the end of February was
15 built for 14,326 inmates and that currently houses
16 22,531, and with an overcrowding problem like that,
17 it's very, very difficult to provide any sort of humane
18 or rehabilitative environment for anybody.

19 It's clear that that's the problem that
20 faces the corrections system and that faces this
21 committee. What I'd urge you to do is not to turn to
22 private prisons as the solution to that. We don't
23 think that privatizing, turning over to private
24 operators responsibility for the punishment of our
25 prisoners, is going to reduce overcrowding. In fact,

1 if anything, it might even worsen the situation if any
2 of those economic factors pressuring longer sentences
3 do in fact come into play.

4 Thanks very much.

5 ACTING CHAIRMAN PJCCOLA: Thank you,
6 Susan, for those kind words at the end.

7 I certainly have the greatest respect for
8 the ACLU's right to present your views on this subject,
9 or any subject for that matter, but I don't think your
10 testimony was particularly accurate with respect to
11 Pennsylvania's history in this field. You cite
12 Buckingham security, and Buckingham Security never
13 turned a spadeful of dirt, so far as I'm aware, in
14 terms of creating a private correctional facility, so I
15 don't know how you could say that's a good or bad blot
16 on our record since they never even got underway.

17 268, I must take exception to what you
18 said as being a negative so far as I'm aware, maybe you
19 have other information. When they were contracting
20 with Allegheny County, there was never any complaint
21 that I was aware of as to the service that they
22 provided to Allegheny County, nor the manner in which
23 they conducted themselves or the treatment that they
24 gave to the people that had been committed there. In
25 fact, I visited 268 after they had been shut down just

1 to look at the physical plant, and in terms of humane
2 treatment, I really don't think the ACLU or anyone else
3 would have had any complaint about what was being
4 provided there.

5 The issue of the delivery of the inmates
6 from Washington, D.C., of course is another matter,
7 although I think the record -- I don't think the record
8 shows that there was ever any mismanagement or
9 mistreatment. In fact, as I recall, those inmates that
10 were transferred were rather disheartened that the
11 Governor, or whoever took the court action, that the
12 Governor shipped them back to Washington, D.C. I think
13 they rather would have been in Armstrong County than in
14 Washington, D.C. So I don't cite the 268 example as a
15 negative blot on our history, nor do I cite the
16 Buckingham Security situation as any -- that was simply
17 a proposal.

18 BY ACTING CHAIRMAN PICCOLA: (Of Ms. Frietsche)

19 Q. On the other hand, I think we do have a
20 history in this State of private facilities, and I'd
21 like to ask you whether you or whether the ACLU has
22 ever taken any action against any of the private
23 juvenile facilities to which we commit juveniles in
24 this State? If there have ever been any complaints or
25 if you have ever sued the Commonwealth for having

1 granted the authority to commit juveniles to private
2 facilities?

3 A. Not that I know of. Now, in other States
4 we have sued private juvenile facilities that have
5 encountered some of the same types of problems that we
6 anticipate should Pennsylvania privatize adult
7 correctional facilities. My board, however, I should
8 tell you, has not explicitly taken any position in any
9 way on private juvenile facilities. The subject simply
10 has never come up. I would expect that they would have
11 some of the same concerns about privatizing
12 responsibility over people committed to the State's
13 care for punishment, although, you know, I don't want
14 to tell you that that's our position, because juvenile
15 facilities are in some ways somewhat different from
16 adult prisons. They are more rehabilitative, at least
17 in theory if not in practice, and there may be other
18 considerations there. So as Commissioner Lehman did
19 too, I think I would like to distinguish between
20 residential or rehabilitative programs and adult
21 prisons in which there's a secure prison environment
22 and you have private prison guards with deadly force.

23 Q. Okay, now we're making some progress. I
24 think we see some modification in your position perhaps
25 if you're agreeing with the Commissioner because our

1 bill is focused not on maximum security. In fact,
2 we're not even focussed on any State facilities. We're
3 focusing on county minimum risk kinds of facilities,
4 and I don't know if you've had a chance to read our new
5 bill. It's not been introduced yet, but that's the
6 focus of it.

7 A. Yes, I did.

8 Q. Are you familiar at all with the female
9 offenders programs in York and Allegheny County?

10 A. Somewhat, though not enough to comment on
11 them. But let me just say that in looking over the
12 proposed legislation, it seems to me that what it
13 envisions is adult private prisons. Maximum capacity
14 would be set at 250 inmates, is that right? The
15 private prison guards would have full police powers,
16 they would have powers to use deadly force, isn't that
17 right? It would be a secure environment. It seems to
18 be a somewhat different scheme than a residential
19 program where the State retains supervisory
20 responsibility or again for a private juvenile
21 facility.

22 Q. The security, of course, is to be
23 consistent with the minimum risk types of people that
24 we would limit their facilities take. In terms of that
25 issue, I don't think you're talking about the same

1 things that you're talking about in the typical county
2 prison. Maybe I should change the name of this bill to
3 private correctional facilities rather than private
4 prisons. That seems to be--

5 A. No.

6 ACTING CHAIRMAN PICCOLA: That's all the
7 question I have, Mr. Chairman. Thank you.

8 (Whereupon, Chairman Caltagirone resumed
9 the Chair.)

10 CHAIRMAN CALTAGIRONE: Thank you.

11 Are there any other questions?

12 Representative Reber.

13 REPRESENTATIVE REBER: Thank you, Mr.
14 Chairman.

15 Excuse my voice. I'm battling the flu
16 that I contacted I think from about 2,000 inmates as I
17 traveled the State over the past 2 1/2 weeks with the
18 Chairman. And I think, I'll be quite honest with you,
19 I was thoroughly impressed with many of the things that
20 we observed. Having been in and out of prisons during
21 some of my earlier years when I was doing defense
22 work--

23 REPRESENTATIVE PICCOLA: Better clarify
24 that.

25 REPRESENTATIVE REBER: Doing defense

1 work, and I thought I had a pretty good feel for it,
2 but I knew that with the evolutions that have taken
3 place with what this General Assembly, to my opposition
4 on many occasions, has been doing over the years that
5 there was a new breed, if you will, and a new
6 environment within both the county and State
7 correctional institutions, and that's why I went on the
8 traveling road show of the Chairman over the past
9 couple of weeks and did not miss a single particular
10 facility that we were scheduled to see.

11 And whereas during the debates with the
12 Beaver County scenario and the Armstrong County
13 situations, I had some concerns at that time to some
14 extent as you just expressed. I think my thinking on
15 this has changed significantly since that time, and I
16 am much, much more supportive of the concept where we
17 are dealing with totally certifiable low-risk
18 individuals. And the reason why I say that, and I
19 think the Chairman can bear this out because I think he
20 was probably, of the members I see here today, you
21 know, the only member that was present with myself at a
22 couple of facilities where the work release programs
23 that are going on and the contact that is going on with
24 the coming and the going of the programs that exist in
25 many of the facilities I think is supportive of the

1 concepts in this type of legislation.

2 And I think where we are talking about
3 people that are low risk, very, very much so
4 identifiable of being individuals that are going to
5 have a one-time contact but a justifiable contact with
6 the system, that this type of concept has to be
7 seriously looked at because to put many of the people
8 into the situations where they are with some of the
9 other types of inmates that they come into contact with
10 is totally, in my mind, a basis for doing away with
11 mandatory sentencing in many areas for just that reason
12 alone.

13 And knowing the kind of concerns that the
14 ACLU has, I would submit to you to take back to your
15 board that really the inhumanities that are going to
16 exist or the concerns for safety of prisoners is
17 exacerbated by allowing low-risk, first-time offender
18 types, that by the sentences imposed necessitates some
19 form of incarceration, if you will, where it is a
20 confined situation, absolutely cannot be put in the
21 county and State facilities on many occasions to serve
22 the kind of sentences that have to be.

23 And I think this concept has to be
24 seriously looked at, I think the cost factor has to be
25 seriously looked at because while other members were

1 discussing things with some of the past witnesses as
2 well as yourself, I have had an opportunity to look at
3 some of the cost analyses and these cost analysis on
4 the private sector doing this kind of work are
5 significantly cheaper than the per diems that we were
6 presented by the various correctional facilities that
7 we were at recently.

8 I just think that the public safety
9 concern is a red herring because the mass amount of
10 people that are going to be subjected to this proposed
11 legislative concept are already subjected to freedom,
12 if you will, in coming and going under current work
13 release programs and things of that nature. I think
14 that the kind of individuals that are serving the kind
15 of sentences in many instances under some of our reform
16 sentencing procedures, mandatory sentencing and things
17 of that nature, are not the kind of people that are
18 going to be committing these kind of offenses. And I
19 just would hope that maybe you could re-evaluate your
20 thinking to a thinking like myself, because I think it
21 would be fair to say that I've been one of the few more
22 supportive people of the position over the years of the
23 ACLU and the concepts that they intend to look to and
24 protect. And I just think that you have to look at
25 where we have gone very rapidly since the '85-'86

1 experiences that you reference in your testimony and
2 where we're at today.

3 And Mr. Chairman, I guess that's not
4 necessarily in the way of a question to you, it's a
5 statement that was generated by your testimony, and I
6 think that the activities of this committee most
7 recently have really brought, at least in my mind, a
8 real serious look as to this concept of being a way of
9 getting us out of some of the problems that we're
10 involved with. And I think speaking to many Common
11 Pleas judges, they are just grasping out to us to do
12 something to provide them with various forms of
13 alternatives, and I can't see this as being an
14 anti-concept that we ought to be looking at, and if
15 there's any way that my comments have structured any
16 new thought processes with you or could be structured,
17 I'd appreciate if you would take a look at it,
18 re-evaluate it, see if I'm off base on some of my
19 analysis, see if that is not the true tenor of the
20 times as we're seeing it in the county prison
21 populations that we're now experiencing.

22 MS. FRIETSCHER: Well, I'd like to thank
23 you for also for your prior support and just reinforce
24 what you said about mandatory sentences. I think that
25 we would not be in the situation we're in today had the

1 legislature not passed so many and so stringent--

2 REPRESENTATIVE REBER: I understand, but
3 you, like I, are voices crying in the wilderness, and
4 we can't go on crying and not adapt and move along to
5 do what is sane and practical and rational and
6 pragmatic for the activities of my brethren in the
7 legislature. Even if they were incorrect, we still
8 have to live with their incorrect concepts in many
9 instances and move forward, and the tenor of the times,
10 the kind of people that sit up there anymore, they just
11 don't want to hear it, so we better adapt to live and
12 move on and try and blend the situations that will
13 allow us to continue to operate, and that's my concern.

14 And, you know, you can only articulate a
15 position and advocate it and debate it, but when the
16 numbers are there, when the numbers are there, some day
17 you have to sit down and begin to count and realize
18 that you're not really doing justice by just being anti
19 and then not looking to what is the realities of the
20 real world as it's continuing to function, and that's,
21 I guess, to a great extent why I have really taken a
22 hard look at this and feel that it's something that we
23 ought to really roll up our sleeves, try and get the
24 regulatory aspects of it as defining as possible, try
25 to get the due process and equal protections concerns

1 that those people who are going to matriculate through
2 this particular type of system should have and
3 recognize that our society has now put certain mandates
4 that now mandate a serious consideration of these
5 concepts. So your input would be of great assistance
6 because I think the times are upon us.

7 Mr. Chairman, thank you.

8 CHAIRMAN CALTAGIRONE: Thank you.

9 REPRESENTATIVE PICCOLA: She wanted to
10 respond.

11 REPRESENTATIVE REBER: Yeah, I
12 filibustered, obviously.

13 MS. FRIETSCHER: If I could, I would like
14 to make three very quick comments.

15 One is that I would just encourage you to
16 look at some of your ideas for alternatives to
17 incarceration in a full-scale prison and ask why the
18 private sector is the only sector that can provide
19 those services and why the public sector cannot.

20 REPRESENTATIVE REBER: It's not a true
21 private sector though, is it? In my mind, I envision
22 when this is all done that it will be a private sector
23 highly regulated by the professional correctional
24 concepts of State government as we know it. So I don't
25 think -- it's a partnership. That's what it really is.

1 It's a correctional partnership between the private
2 sector and the public sector, and I think that's what
3 we have to emphasize, and I know Chairman Piccola is
4 very concerned about that regulatory scheme, and I
5 remember his debate back a number of years ago that
6 we're not talking about a carte blanche private sector.
7 There was high regulation, high review, high concerns
8 as to what is done and policing and licensing of that,
9 and I think we have to have that. Those are the kind
10 of concerns that I think a laundry list should be
11 developed by you to be considered as far as what would
12 be done.

13 MS. FRIETSCHE: My two other comments,
14 just very quickly.

15 One is that I do think the bill is
16 substantially broader than covering just residential or
17 rehabilitative programs. I think it would permit what
18 everyone in here would think of as a private prison and
19 I don't think that the regulatory aspects of it are
20 anywhere near tight enough to satisfy anybody's
21 concerns about public safety or humane treatment of
22 inmates.

23 My final comment is just about the cost
24 record of private prisons, which I think is not -- I'm
25 happy to hear that you found some private entities that

1 can provide services at a competitive rate. I'm not
2 sure that that's the industry record as a whole. The
3 General Accounting Office, just at the end of February,
4 released a report on private prisons and found that a
5 question remains whether they are competitive at all,
6 even in matters of cost. And several States that have
7 contracted out some of their prisons to private
8 operators have found that public prisons are in fact
9 cheaper to run than private prisons. So the cost
10 question still is not resolved.

11 REPRESENTATIVE REBER: One other thing.
12 I think it's important though for the record, I know
13 the Chairman was present on some of these discussions,
14 we had people that are in a warden capacity or in an
15 assistant warden capacity with us on some of our --
16 obviously on all of our travels and tours, and many of
17 the things that we discussed were when we walked into a
18 particular room where there were inmates that were very
19 much involved in a work release program but yet were
20 spending a significant period of time over a length of
21 time, I should say, are still at that facility on the
22 sentence. Some of the things I discussed with them,
23 how would these people function in another type of
24 setting? Has your experience been that there are
25 troublemakers? Would there be safety problems to the

1 outside if it was another supervisory type of
2 individual other than your people, your staff and your
3 facility handling it? And their response was almost
4 unanimous that these could be handled by trained,
5 supervised, regulated, private, semi-private
6 supervisory people.

7 So the people that have worked with the
8 kind of people we're talking about that are going to be
9 the inmates in these type of facilities have said that
10 these people could function in other settings, in their
11 experience. Obviously, it's done with appropriate
12 counseling at the outset and what have you and
13 classifications by the people that these individual
14 inmates could fit into this setting. But I was very,
15 very comfortable with the kind of reports that we got
16 that there are groups out there that could be
17 functioning in these kind of settings and would relieve
18 the overcrowding situations and the double bunkings and
19 this type of situation where you really should have, in
20 my mind, a solitary type confinement for the more
21 higher risk individual and for the kind of individuals
22 that, in my opinion, should not be double bunked or
23 associated with other people that have to be in there
24 and have to be, in essence, isolated.

25 So I think there's a lot of scenarios and

1 if you go out and you talk to the people and see how
2 it's working and find out how it could be functioning
3 and run these hypotheticals by the people that have
4 access to it, their comments are very positive, and
5 that's another reason why I'm very much interested in
6 seeing how far we can take this.

7 CHAIRMAN CALTAGIRONE: Very good.

8 Any other questions?

9 MS. WOOLLEY: I just have one.

10 CHAIRMAN CALTAGIRONE: Mary.

11 MS. WOOLLEY: Sue, just to focus on our
12 juvenile facilities for one moment, in researching this
13 issue for the past several years, we've talked
14 extensively with our juvenile court judges in
15 Pennsylvania and found that really their preference in
16 sentencing a juvenile delinquent in Pennsylvania, their
17 preference is to the private sector, and our private
18 sector facilities in Pennsylvania detain some very
19 serious delinquent children, those charged with if they
20 would be adults in the adult system charged with
21 felonies, serious violent felonies, but they're doing
22 time, so to speak, in private facilities.
23 Representative Piccola's legislation wouldn't have
24 anything to do with someone charged with that type of a
25 crime, and we would hope that a person charged with a

1 violent felony and convicted would be doing a longer
2 period of time probably in a State sentence versus a
3 county sentence. We're focusing on low-risk minimum
4 security offenders, and you have to focus on that
5 security classification. And Jeff's right, the concept
6 of prison is troublesome. We're not necessarily
7 talking about barbed wire fences and armed guards.
8 We're talking about a much less secure facility which
9 is appropriate for that classification of offender.

10 CHAIRMAN CALTAGIRONE: Okay.

11 MS. FRIETSCHER: Thank you.

12 CHAIRMAN CALTAGIRONE: Thank you.

13 Bob Polenick, the Executive Director of
14 Special Treatment Services.

15 MR. POLENICK: Good morning. Thank you
16 for providing me with the opportunity to address this
17 important issue.

18 Although I have no particular experience
19 in adult corrections, I have worked with delinquent
20 youth the past 21 years in several capacities, both in
21 the public and private sectors. For 15 years, I was
22 employed in direct service, supervisory, and management
23 positions at the Youth Development Center at New
24 Castle, a Public Welfare operated facility. In 1985, I
25 left State employment to establish Specialized

1 Treatment Services, a nonprofit corporation providing
2 services to emotionally disturbed delinquent youth. I
3 am presently functioning as Executive Director for this
4 24 bed long-term rehabilitation program with facilities
5 in Mercer and Venango Counties in Pennsylvania. I am
6 also presently a member of the Juvenile Advisory
7 Committee of the Pennsylvania Commission on Crime and
8 Delinquency, and in the past have served on several
9 statewide committees regulating the treatment of
10 delinquent youth.

11 As indicated, I have no direct experience
12 in adult corrections. I have, however, lived through,
13 have some understanding of and appreciation for the
14 process of adjusting from providing public to private
15 service in the correctional field. Hopefully, I will
16 be able to provide you with some insight into the
17 benefits of permitting the private sector to become
18 involved in the Commonwealth's correction system, as
19 well as some potential problems that may be incurred by
20 doing so.

21 Nationally, Pennsylvania is viewed as
22 being progressive in providing services to delinquent
23 youth. We have a wide range of public and private
24 agencies throughout the Commonwealth providing, for the
25 most part, reasonable care, custody and treatment of

1 juvenile offenders. At present, the private sector is
2 providing the large majority of residential services to
3 offenders which is, in my opinion, the primary reason
4 Pennsylvania's juvenile justice system is viewed in a
5 positive manner throughout the country.

6 Of course, the emergence of the private
7 sector in Pennsylvania's juvenile justice system did
8 not occur overnight and was not without its critics and
9 problems. The development of the private sector has
10 occurred over the past 15-plus years and is still
11 growing and changing to meet the needs of the young
12 people we serve.

13 An obvious question to ask is can we look
14 at the successful privatization of services for
15 youthful offenders within the Commonwealth, relate it
16 to the criminal justice system and assume that private
17 prisons will work? There would, of course, be many
18 valid arguments on both sides of this issue, however,
19 it would, in my opinion, be an oversimplification and a
20 serious mistake to make this or any other assumptions.
21 Rather, a close examination of real and/or potential
22 problems must be made before authorization of the
23 privatization of our criminal justice system is made
24 through legislation. The fact that this hearing is
25 being held indicates to me that you are in the process

1 of doing so.

2 Initial problems that you may, and I
3 suspect will, experience as you consider this action
4 include the following: Department of Correction
5 employees, county employees, and union officials may
6 view the privatization of prisons as taking their jobs.
7 They may envision the private sector as wanting to take
8 over and leave them and their families out in the cold.
9 State and county employees, perhaps rightfully so, have
10 not been the most competent individuals in regard to
11 their employment. Our present budget crunch will not
12 make them feel any easier. I understand this and you
13 must understand it. In the late 1970's, when I was
14 working in a State run facility for delinquents, the
15 private sector was beginning to emerge as what I view
16 as a serious competitor. I had these exact same
17 feelings, and it was not a pleasant experience.

18 Your constituents are clamoring for more
19 prison beds. They are sick and tired of rising crime
20 rates, plea bargaining, and early releases due to
21 prison overcrowding. When you tell them that private
22 prisons may be the answer, will they be fearful that
23 the private industry cannot handle this? I suspect
24 that they will. They may also suggest that a building
25 is renovated or built for this purpose in your

1 community and not theirs.

2 How do you, or more realistically
3 Department of Corrections personnel or county
4 officials, determine what private entities are given
5 contracts to provide services? They will, of course,
6 be expected to meet the licensing requirements mandated
7 by your proposed legislation. However, it is important
8 that they are willing and able to relate in a positive
9 manner to their counterparts in the public sector. A
10 coalition of public and private providers would indeed
11 be the ideal and is, in my opinion, obtainable.

12 These potential problems and others that
13 you will undoubtedly encounter are in no way
14 insurmountable. Comprehensive planning with open and
15 honest communication between all parties involved and
16 affected by the privatization of our prison system will
17 go a long way towards solving problems that arise. The
18 possibility of obtaining suitable State buildings that
19 are not in use for the purpose of establishing private
20 programs should be explored. It may also be advisable
21 to designate grant moneys for the purpose of assisting
22 in program start-up costs.

23 As legislators, you can and you will
24 direct the future of corrections within the
25 Commonwealth. I would urge you to view this problem of

1 needed prison beds as an opportunity to improve the
2 services offered to adult offenders, which would result
3 in increased security for our communities.

4 I can, without reservation, recommend
5 that you pass the proposed act authorizing
6 privatization of our prison system. As I previously
7 indicated, this will not be an easy task, but once
8 completed will pay significant dividends in the future.

9 Again, thank you for this opportunity,
10 and I'd be very happy to answer any questions you may
11 have.

12 CHAIRMAN CALTAGIRONE: Thank you.

13 Questions?

14 (No response.)

15 CHAIRMAN CALTAGIRONE: Thank you, Bob.

16 We appreciate your testimony.

17 MR. POLENICK: Okay, thank you.

18 CHAIRMAN CALTAGIRONE: We will next turn
19 to Sam Ferenola.

20 (No response.)

21 CHAIRMAN CALTAGIRONE: He's not here.

22 John Rowley.

23 (No response.)

24 CHAIRMAN CALTAGIRONE: Not here.

25 Charles Logan, Federal Bureau of Prisons.

1 DR. LOGAN: Thank you, Mr. Chairman.

2 I should say first that on the list of
3 witnesses it should probably should not say Federal
4 Bureau of Prisons but say that I am a criminologist at
5 the University of Connecticut. I am on leave doing
6 research as a visiting fellow at the Federal Bureau of
7 Prisons in their research department, but I am not here
8 representing the Federal Bureau of Prisons. As a
9 matter of fact, I'm not here representing anybody. I
10 am here only as an independent scholar who has done a
11 great deal of research for the last five years on the
12 question of privatization of corrections. This year I
13 published a book with Oxford University Press called,
14 "Private Prisons: Cons and Pros," in which I review
15 all the arguments on both sides, cross the full range
16 of issues, and it's in that capacity that I would like
17 to speak today.

18 I've been studying the private prison
19 industry intensively ever since it emerged in modern
20 form in the mid-1980's, and I have become increasingly
21 impressed by what I have learned. A growing body of
22 literature is demonstrating that private prisons are
23 administratively and legally feasible, constitutionally
24 and philosophically defensible, qualitatively equal or
25 superior to government run facilities, and economically

1 efficient.

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

17 In my book I systematically examined
18 every single argument presented by these and other
19 critics of private prisons. In no case did I discover
20 nor have I encountered to this day any argument against
21 private prisons that does not apply also with at least
22 equal force and validity to prisons run by government
23 employees. Private prisons do face challenges of
24 authority, legitimacy, procedural justice,
25 accountability, liability, cost, security, safety, and

1 corruptibility, but only because they are prisons, not
2 because they are private.

3 What's new about private prisons is not
4 the issues that they raise but the possibilities they
5 present for new solutions to old problems. To
6 illustrate these potential contributions, here, in the
7 briefest possible form, are 10 arguments in favor of
8 contracting for the operation of prisons and jails.

9 First, contracting makes true costs
10 highly visible, allowing them to be analyzed, compared,
11 and minimized. Government doesn't know how much it
12 costs to run its prisons.

13 Second, contracting enables prisons to be
14 financed, sited, and constructed more quickly and
15 cheaply than government prisons. Also, private prisons
16 are more apt to design for efficient operation. This
17 is one of the points conceded even by most critics of
18 private prisons.

19 Third, contracting reduces the tendency
20 of a budget-driven agency, like the Department of
21 Corrections, to continuously spend and grow.

22 Fourth, contracting allows greater
23 flexibility, which for most innovation,
24 experimentation, and other changes in programs
25 including expansion, contraction, and termination, if

1 need be.

2 Fifth, contracting avoids some
3 restrictions that interfere with efficient personnel
4 management in government agencies.

5 Sixth, contracting may decrease the risks
6 for which government remains liable through higher
7 quality performance and through indemnification and
8 insurance, features of virtually every private prison
9 contract in existence.

10 Seventh, contracting increases
11 accountability because market mechanisms of control are
12 added to those of the political process.

13 Eighth, contracting promotes the
14 development and use of objective performance measures.

15 Ninth, contracting by creating an
16 alternative encourages comparative evaluations. This
17 raises standards for the government as well as for the
18 private contractors.

19 And tenth, contracting in conjunction
20 with government monitoring adds a new layer of
21 independent review to correctional decisions and
22 actions, thus improving due process, a point that I
23 think that the ACLU should take special note of and
24 should make them more favorable toward the idea of
25 private prisons.

1 In my written testimony I go into the
2 details of a very thorough cost study done for the
3 Department of Justice which documented savings of 5
4 percent to 15 percent from privatization of a county
5 prison in Tennessee, and a study by the Texas State
6 Auditor showing savings of 10 to 15 percent from two
7 State prisons run by private corporations in Texas.
8 I'll skip the details of those studies but I would be
9 glad to talk about them if you want with questions,
10 save time for questions at the end.

11 Let me just conclude by saying that all
12 the financial advantages of contracting can be
13 significant and have been demonstrated by every single
14 systematic, competent, and thorough study of costs and
15 cost comparisons that compare apples to apples. They
16 are not, in my view, the most important function of
17 privatization. I think the greatest value of private
18 prisons is that they provide a comparative yardstick
19 against which to measure performance. How do we know
20 if the government is doing all that is possible to run
21 prisons that are safe, secure, humane, efficient and
22 just? The best possible test is to see whether private
23 enterprise can do it any better. We will never know,
24 however, if we do not at least give it a fair trial.

25 I do have some remarks. One of the

1 advantages of not being first is that I have a chance
2 to say a couple things about some things that other
3 people said. One thing that I feel obliged to respond
4 to is the claim by the ACLU, which they have repeated
5 many, many times and which is utterly false, about the
6 toxic dump story. This is an attempt really to smear
7 the reputation of a company that was one of the early
8 leaders in the area of private prisons, a company that
9 no longer is in the business, but Buckingham Security,
10 Ltd., did not offer to buy a toxic waste dump for a
11 dollar and convert it to its own profits. What they
12 volunteered to do was to take a site in which a company
13 that had manufactured nuts and bolts and used chemical
14 solvents in the process had 60 acres of land, on a
15 small part of the back of which there was a shallow
16 monitored pit holding those solvents. The company
17 offered to clean up that pit, totally remove it safely
18 at an estimated cost of \$350,000 of its own money, and
19 build a private prison on the front 5 of those 60
20 acres, well away from where this pit that was to be
21 removed was going to be. It's not a responsible story,
22 and I wish the ACLU would stop spreading it.

23 I would like also to say something about
24 the philosophical issues, because this is one of the
25 subjects that I devote a chapter of my book to. The

1 philosophical considerations behind private management
2 of prisons are fully consistent with the western,
3 democratic, liberal tradition from John Locke onward on
4 which our system of government is founded, and that is
5 that we operate under a rule of law, and the authority
6 to run prisons, including the authority to use force,
7 and if necessary deadly force, is not a government
8 authority. It's a legal authority, and it is conveyed
9 to government by rules of law that would apply equally
10 to private agents, and contract is one method of
11 conveying authority, a very good method of conveying
12 authority, because it spells out exactly what authority
13 is being conveyed. Employment is another method, and
14 employment is not a superior method of conveying
15 authority than is contracting. So I think the
16 philosophical issues are kind of a red herring.

17 If you have any questions, I would be
18 glad to answer them.

19 CHAIRMAN CALTAGIRONE: Thank you.

20 Jeff.

21 REPRESENTATIVE PICCOLA: I would just
22 thank you for your excellent testimony. I would only
23 ask if I can use some of it in some of my speeches down
24 the road on this subject because I think it's
25 excellent.

1 Thank you.

2 CHAIRMAN CALTAGIRONE: Mary Woolley.

3 BY MS. WOOLLEY: (Of Dr. Logan)

4 Q. Professor Logan, could you give us an
5 idea of the development of private correctional
6 facilities throughout the country and whether you've
7 seen private industry moving into medium and maximum
8 security institutions, or have they focused on minimum
9 security? Could you give us an idea of the types of
10 facilities they are involved in?

11 A. Yes. In about a dozen States today there
12 are about 50 adult secure facilities being operated by
13 the private sector. These include all levels of
14 security, especially in jails where you have minimum
15 through maximum security, including capital murders and
16 rapists and others who go on to State prison. At the
17 State and county level outside of jails they have been
18 mostly minimum security, but there are a number of
19 medium security, including large 500-bed medium
20 security prisons being opened, two in Louisiana and two
21 minimum securities in Texas. Altogether, there are
22 about 15,000 inmates under private contract, which is
23 larger than the State systems. One company, in fact,
24 has more prisoners under its custody than about 14 of
25 the States in the United States. That's about 1 1/2

1 percent of the total incarcerated in the country today.

2 And they have -- one of the comments I
3 have about the bill is I see no reason to restrict it.
4 I can understand for political reasons why you might
5 want at first, especially, but I see no philosophical,
6 no legal, no constitutional, and no operational, based
7 on the research to date, reason to restrict it to
8 minimum custody. Some of the best private prisons are
9 being run as a medium, and in jails maximum security
10 levels.

11 Q. Have you seen population caps in those?
12 When you say some of the best prisons are medium, could
13 you give us a sense of the size?

14 A. 500 is the largest, although there is a
15 contract out now for a 1,000-bed Federal facility joint
16 with the INS and the Bureau of Prisons. Apart from
17 that, 500 is the largest that has occurred.

18 Q. And in those 12 States that you
19 mentioned, are you aware if they first developed
20 statutes authorizing the operation of private
21 facilities and structured them with the same type of
22 regulations which our legislation contains?

23 A. Yes, they have. Not in every case. Some
24 of the early prisons operated under general
25 constitutional provisions and without specific enabling

1 legislation and without a problem and without any
2 successful challenge, legal challenge, in spite of the
3 best efforts of some organizations to do so. But there
4 are a fair number of States that have or are
5 considering legislation. I would recommend the State
6 of Louisiana as a State with a model private
7 corrections code. It incorporates elements from
8 American Correctional Association standards, elements
9 from successful contracts in other States, and
10 elements, even elements recommended by the American Bar
11 Association, which took a position tentatively opposing
12 and now cautiously accepting the idea.

13 Q. And finally, are you aware of any
14 litigation brought in any of the States in terms of 50
15 adult facilities alleging unconstitutional conditions?

16 A. No. There are -- yes and no. No direct
17 challenge to the constitutionality of the idea of a
18 private prison, but yes, all prisons, and private
19 prisons will be no exception, face litigation on
20 constitutional questions. Section 1983, civil rights
21 statutes, and so on. Prisons are enormously
22 litigative. Tens of thousands of cases every year.
23 There have not been more per inmate cases in private
24 prisons, but the legal protections available to
25 prisoners suing a private prison and the government

1 under which it operates are no less and in some cases
2 greater than. In spite of this, however, I think the
3 liability risks of an agency of government that
4 contracts the act -- their liability is inescapable,
5 but their actual risks are lower because the prisons
6 are run according to ACA standards, they are run well,
7 and they are indemnified against the county or whatever
8 government is indemnified by financial risks.

9 Q. I know I said finally, but I have one
10 more. Are you aware of any governmental agency
11 contracting with a private provider canceling its
12 contract as a result of unsatisfactory services or
13 treatment of inmates?

14 A. In Pennsylvania, Butler County decided
15 not to renew its three-year contract with Buckingham
16 Services. There was no complaint about the services.
17 In fact, the Buckingham Service came into the county
18 with a pretty bad prison, a prison almost out of
19 control, brought it under control and elevated the
20 quality of the services. There were some charges that
21 the cost was getting too high, but the real issue in
22 Butler County was that the American Federation of
23 State, County and Municipal Employees objected and the
24 State, as well as local, chapter organized a campaign
25 to vote two new commissioners into the county on a

1 "take back the prison" platform and the new commission
2 decided not to renew the contract.

3 That is an interesting case study for
4 counties to look at though because here is a prison, a
5 company that had its prison, its contract nonrenewed
6 one year before it expired, and the county was renegeing
7 on some commitments, financial commitments by the
8 company to build a new work release center for \$600,000
9 of their own money. The company was forced into
10 bankruptcy. In spite of that fact, they finished their
11 final year without any problems. The threat, the
12 specter of bankruptcy, is really a kind of a bogeyman.
13 What happens in bankruptcies, as lawyers, even lawyers
14 for the ACLU, know is you present a plan to a judge of
15 how you are going to reorganize or what you're going to
16 do, how you're going to take care of your creditors and
17 your responsibilities, and it is not going to leave a
18 government suddenly without correctional capacity or
19 correctional services.

20 MS. WOOLLEY: Thank you.

21 CHAIRMAN CALTAGIRONE: Thank you.

22 Bob.

23 BY REPRESENTATIVE REBER: (Of Dr. Logan)

24 Q. Just a few more questions, Dr. Logan.

25 Have you ever been retained for

1 professional services or consulting services, however
2 you want to characterize it, for any private prison
3 entrepreneurs?

4 A. No, never. I have not received any money
5 from the private sector. I have been very fortunate in
6 that I have had grants from the Federal government to
7 do my research. My universities support my research.
8 I receive money from State legislatures to come testify
9 before committee hearings and so on, but I have not
10 received any money or gratuities from private
11 industries.

12 MS. WOOLLEY: Just to clarify, we didn't
13 pay you.

14 REPRESENTATIVE REBER: Thank you.

15 CHAIRMAN CALTAGIRONE: Thank you. Thank
16 you very much.

17 Warden, if you would like to come forward
18 and state who you are for the record.

19 MR. ROWLEY: I apologize for my lateness.
20 I-80 is not advisable right now.

21 My name is John Rowley. I'm the current
22 warden of the Lawrence County Prison.

23 Before I make any statements, I do want
24 to clarify that I am not here representing Lawrence
25 County Corrections. I'm here as a private individual

1 requested to be here by the House because of my
2 exposure to privatization.

3 Just to give you a brief background on
4 what that was, I was employed at Butler County that was
5 just referred to as an employee when there was a
6 decision to attempt to contract out the services, both
7 the security services and the management of the
8 institution. During that period, the initial period of
9 time, I was a corrections officer, a counselor, and
10 later after the private operator took over and the CO's
11 jobs were retained, through litigation, I began to work
12 for the Board of Commissioners as a corrections
13 coordinator overseeing the operations contractually.
14 After that, I helped transition, as assistant warden,
15 the prison from private operation back to public
16 operation. Perhaps I've had a unique opportunity to
17 view privatization, and that's why I've been requested
18 to come here.

19 Also, during this period of time there
20 was an attempt to operate a facility I believe called
21 268, just east of Butler.

22 I have been a party to many conversations
23 and long discussions on the merits of privatization as
24 far as corrections go, and I will not attempt to argue
25 the legal issues. That's not my expertise. I will

1 simply discuss the economic issues that I have
2 witnessed and some of the conducts that I have
3 witnessed from a private operation.

4 I would like to point out that in Butler
5 County economically it did cost more to operate the
6 institution, and when we transitioned it back, there
7 was a substantial savings to the county. My biggest
8 concern is I think people get lost in the discussion
9 and forget that the private operator very simply works
10 on a profit variable, and when he or she is deciding
11 any issue in operating with the institution, they must
12 place that into their equation. That is not so for a
13 public operator, even though we do, and I speak from
14 experience, have responsibility of controlling the tax
15 dollars.

16 To give some brief examples of what I'm
17 talking about, I have witnessed simple things such as
18 \$100 worth of washcloths not being purchased because,
19 well, they were described as unnecessary. I also saw
20 many changes in the quality of food services to the
21 inmates. There was a drug and alcohol program that was
22 in effect when the private operator took over and that
23 program was discontinued, and I was personally told
24 that there would be little benefit to keeping the
25 program going if it would interfere with the

1 possibility of opening up or developing their own
2 programs that they could cost effectively or feel they
3 could cost effectively operate and provide as a private
4 service, and later that was contracted out, and some
5 litigation went on with that.

6 I think I could sit here and go through
7 an awful lot of examples of cost control, and obviously
8 they are not surprising. You have to make a profit.
9 And I guess the question I have to the committee is,
10 what can they do for us that we can't do for ourselves?
11 I'm certainly not here to tell you that private
12 industry shouldn't be permitted to operate. That's
13 what this society thrives off of. Certainly not going
14 to argue, as I said, to legally whether they should
15 operate, to have contracted out a government function
16 like that. I just don't understand the need for it, to
17 be quite frank with you. If we're having a problem in
18 our correctional facilities, there's something that we
19 can deal with and should deal with.

20 One of my biggest concerns, other than
21 the economic issues, and perhaps it is an economic
22 issue, is that I have learned through the experience of
23 Butler County that when you contract out services, a
24 contract is just that. You are at the interpretation
25 of that contract by attorneys and judges. You are held

1 to it. If, as a county commissioner or a prison board
2 member, you decide that you have a problem with part of
3 a contract and it raises an economic issue, you've got
4 your hands filled. There was a reference made here to
5 a contract that was done on a drug and alcohol program
6 at the minimum security facility of Butler that was
7 developed. I believe that litigation is still going on
8 from 1987 or '88. These are the concerns that I have.

9 There's a lot of liability concerns. I
10 have seen a hesitancy of private operators to get
11 involved in the physical confrontation that sometimes
12 is required in a correctional facility in subduing an
13 inmate. My assumption, and I believe it's a correct
14 assumption, is that that hesitancy is there due to the
15 concern of Workers' Comp cases and/or liability in
16 civil suits. So there is a tendency to rely on those
17 people that are not employed by you, whether they be
18 correctional officers that might not be part of the
19 contract or whether they be local police departments.

20 As I said, I have discussed this over and
21 over in many occasions and come back to just simply
22 those two points, and that is the question of what is
23 it that they do for us that we can't do, and as a
24 warden myself, I have not been able to find out what
25 that is. And the second thing is I'm extremely

1 concerned about contracting out these services because
2 of the fact that you cannot put into a contract
3 everything. And there are the many other issues of
4 strikes, who will cover if a strike looks as though
5 it's going to go on for a long period of time, and the
6 State, I've read your proposed copy of the act here,
7 the State has said that they will intercede. Will the
8 private operator at that time pull out? They are there
9 to make a buck, and if they're going to lose that
10 money, on the long run bankruptcy is a reality, and we
11 speak from experience on these types of things.

12 CHAIRMAN CALTAGIRONE: Okay.

13 Mary.

14 BY MS. WOOLLEY: (Of Mr. Rowley)

15 Q. Are you aware that the County
16 Commissioners Association--

17 A. Pardon me?

18 Q. Are you aware that the County
19 Commissioners Association, their Prison Coordinator,
20 Stover Clark, testified today in support of the
21 legislation?

22 A. No, I work for Butler County Board.

23 Q. No, I'm just curious. I recognize that
24 you're a warden of a county prison, but what we're
25 hearing from the County Commissioners Association is

1 that this is an option that our counties need to deal
2 with the overcrowding crisis.

3 A. I think it's an option. I think it's an
4 option they better think through. Once you -- and this
5 is typical of the short-sightedness of many
6 politicians. They will perhaps contract out those
7 services to get out from under the immediate problems
8 and liabilities. Once you walk away from your
9 institution, first of all, if you lease your
10 institution, there is a tendency or there is a concern
11 whether or not the maintenance will be kept up on that
12 institution, and should you contract to a private
13 operator who owns one, then you're going to have a
14 problem with letting your own institution deteriorate
15 or to remodel it into something else, and if they want
16 to spend the extra money and take the risk of reduced
17 services for the same and if not more moneys, then,
18 yes, it is an option. They are getting -- most of
19 their personnel are people with public experience as
20 wardens and corrections officers. So there's no
21 question that they have the capabilities to provide the
22 service. It's the motivation for profit that's going
23 to taint that.

24 Q. This bill would not authorize what
25 happened in Butler County, because what happened in

1 Butler County with the private security services for
2 the running of your county jail, and this bill would
3 authorize that operation, it would authorize private
4 security services but for minimum security, low-risk
5 offender population. So we don't envision, under this
6 bill, authorizing the complete private operation of a
7 county prison because you've got a range of security
8 classifications at a county prison.

9 A. I understand that. You will permit
10 minimum security institutions totally controlled by
11 private operators?

12 Q. Right. Correct.

13 A. Same scenario applies. It's just a
14 different classification of prisoners.

15 MS. WOOLLEY: Thank you.

16 CHAIRMAN CALTAGIRONE: Thank you very
17 much.

18 MR. ROWLEY: One final thing, and I think
19 the cost thing you simply have to point to the juvenile
20 field where, and I'm thinking of the YDC in the New
21 Castle area where the per diem rate is three times what
22 it is for us at our correctional facilities.

23 CHAIRMAN CALTAGIRONE: Thank you.

24 Okay. Richard, I guess you're next.

25 And let me just say for the record that

1 due to the weather, heavy snow that we're receiving,
2 there may be some other cancellations. Anybody that
3 hasn't shown or will not be able to show today I have
4 indicated to the Executive Director to let them know
5 that they can submit testimony. As a matter of fact,
6 Gerald Wilson had called from Wilson Corrections
7 Consultants. He was snowed in in the western part of
8 the State. He indicated he will send his testimony and
9 I said that I would forward it to the members, and of
10 course we can record it as such. Thank you.

11 Mr. De La HOUSSAYE: Mr. Chairman, thank
12 you for inviting me here today. My name is Richard De
13 La Houssaye, and I am Director of Business Development
14 for Corrections Corporation of America. We are the
15 oldest and largest private corrections firm in the
16 United States. We were incorporated in 1983, and we're
17 currently headquartered in Nashville, Tennessee.

18 I believe I will hold my comments, if I
19 may, on some of the previous speakers' points until
20 later on when I do touch on the legislation, but I have
21 prepared for you a presentation with a slide show to
22 show you actually where private prisons are today from
23 the experience of our company, and rather than
24 discussing with you philosophical arguments or some
25 issues that may be hearsay, I'll give you actual

1 evidence of where the private sector is, what's been
2 done, and possibly through the slide presentation we
3 can discuss some of the operational parameters that
4 these contracts usually revolve around. If I might
5 start my slide presentation.

6 (Whereupon, a slide presentation was
7 given to the committee, the text of which follows. See
8 the submitted material of Corrections Corporation of
9 America in the Appendix for the charts shown during the
10 presentation.)

11 MR. De La HOUSSAYE: In 1988, the
12 accounting firm of Touche Ross did a survey of major
13 and minor cities in the United States to find out what
14 their experiences had been with the private sector, how
15 much they were relying on the private sector for the
16 provision of services which heretofore had been
17 primarily in the government sector. As you can see,
18 there is an extensive, quite extensive utilization of
19 privatization for all types of services, contracting
20 out for accounting, medical, garbage collection, as
21 well as privatization facilities. I'm sure that you've
22 had those experiences. Privatizing convention centers.
23 Several States and localities have privatized
24 correctional facilities, and you're familiar with the
25 sale of assets similar to what the British government

1 has done with Jaguar and other types of production
2 firms.

3 They were also asked to delineate the
4 dollar value of services that had been privatized. I'd
5 like to just run through this section briefly, since I
6 think you're all pretty well aware.

7 One of the significant responses that I
8 feel showed itself in the survey is the cost savings
9 attributable to contracting of services, and again,
10 this is the full range of services from accounting,
11 garbage delivery, and so on. A full 40 percent of the
12 respondents felt that they had achieved some type of a
13 cost saving of between 10 and 20 percent.

14 When the question isolated itself on cost
15 savings of privatizing facilities, a full 21 percent
16 said that they had realized a cost saving of in excess
17 of 40 percent.

18 To give you an idea of where
19 privatization is today in the arena of adult secure
20 facilities, Dr. Logan had referenced previously that at
21 this point in time there are probably 50 adult secure
22 facilities. This is year end 1990. The latest
23 information we have available that there should be 60
24 private adult secure facilities operating by the end of
25 1991.

1 The number of beds in the private sector,
2 private secure beds, run 15,000. Again, this is adult.
3 In the juvenile area, I'm sure you're all aware that in
4 excess of 50 percent of the juvenile offenders are
5 taken care of with the private sector. We anticipate
6 by the end of 1991 that 20,000 inmates will be housed
7 in private sector facilities.

8 Some of the alternatives that you've
9 looked at earlier, some that have been addressed by
10 speakers both in favor and against, what do you do to
11 take care of your overcrowding problems? You've all
12 heard of the early release programs, transferring
13 prisoners to local jails, alternative types of
14 sentencing. What I'd like to discuss with you today is
15 what types of alternatives the private sector can
16 offer, particularly in the area of adult corrections.

17 What we do as a company, Corrections
18 Corporation of American is a full-service corrections
19 firm. We offer the design, construction, financing,
20 lease purchase, and operation of correctional
21 facilities. And it's significant from the point of
22 cost savings because as a contractor in the
23 marketplace, our primary aim is to secure for you a
24 price that is competitive with those that will be
25 competing against us for the bid and to secure a cost

1 saving for you in the long run. The usual process that
2 you see in your Department of Corrections or county
3 facilities is the warden or the facility administrator
4 will request that the governing authority give him
5 money to build a facility. That will be turned over to
6 the facilities and planning section, who will turn it
7 over to an architect, who will turn it over to a
8 construction manager, who ultimately turns it back over
9 to the warden, and he's left with a facility to manage
10 that he had absolutely no input into into the design,
11 into the program requirements for the facility.

12 On the other hand, what we do is work
13 with government in partnership to design a type of
14 facility that will be the most cost efficient to
15 operate. Every time you have a post that requires
16 24-hour staffing, you're talking about 5 people on a
17 7-day basis. If you consider an average salary of
18 \$20,000 to \$25,000 for a correctional officer, every
19 time by your design that you can eliminate one post,
20 you're going to save \$100,000, \$150,000, \$200,000, with
21 benefits. That's what we do from the front end. We
22 also try to design our facilities utilizing motion
23 detectors and so on so that you don't need towers in
24 certain instances where they're not required, towers
25 that you have to staff 24 hours a day, but in fact with

1 certain facilities you may desire and you may put them
2 in there.

3 We also provide cost-effective operations
4 in the staffing of the facilities. Because we've had
5 input from day one, we know exactly how many staff are
6 needed for the posts we've designed. We've designed
7 our treatment and other programs around the facility so
8 that we don't have unnecessary staff, staff running all
9 over themselves, but at the same time we stay within
10 the standards that we comply with. We try to eliminate
11 overtime, we try to consider our people as a resource.
12 We have weight rooms, work-out rooms at all of our
13 facilities for the corrections officers. It's a high
14 stress job. We try to look at them as a valuable asset
15 to the company. We work with them to instill loyalty
16 in the company. We have employee stock ownership
17 programs where the employees themselves are owners of
18 the company. We find that it provides a significant
19 amount of motivation, much more so than you have the
20 ability to engender in the public sector. We also rely
21 on nationwide purchasing contracts for our facilities
22 to keep the costs down.

23 To give you an idea, if you can look at
24 it upsidedown, because it's a very important slide, but
25 we looked through the American Correctional Association

1 directory of different State corrections systems and
2 looked at the average per diem cost for offenders.
3 Those States with larger populations, 52,000 and more,
4 had an average per diem expenditure of slightly over
5 \$54 a day. Twenty-eight States with an average
6 population of around 12,000, again, had an average per
7 diem of \$54 a day. Smaller States were significantly
8 higher, and our average contractual reimbursement is in
9 the range of \$35 a day.

10 To give you an example of the types of
11 cost savings that in fact the private sector does
12 produce, these are specific examples of contracts that
13 we have entered into. Sante Fe, New Mexico we are
14 running the county jail. The government's cost before
15 we contracted with them was \$75 a day. Our actual
16 contractual costs right now is \$44.90.

17 Grants, New Mexico, we're running the
18 women's prison for the State of New Mexico.
19 Multi-security facility - minimum, medium, and maximum
20 - 225 beds, actual cost to the Department of
21 Corrections before we built and are manning the
22 facility, \$92 a day.

23 Houston, Texas, we're running an
24 Immigration and Naturalization Service center, 250
25 beds. Their cost before we came in, \$34.50 a day.

1 Memphis, Tennessee, we're running for the
2 juvenile court a secure juvenile residential facility,
3 250 beds. The court's actual cost before contracting
4 with us was \$84.50.

5 I really want to apologize. This
6 upside-down map gives you an idea of the States that
7 we're operating in. We currently have 21 facilities
8 under contract. We're operating in New Mexico, Texas,
9 Louisiana, Tennessee, Florida, Kansas, and Queensland,
10 Australia.

11 This is the listing of our contracting
12 agencies. We have extensive contracts with the Federal
13 government. Immigration and Naturalization Service,
14 Bureau of Prisons, and the U.S. Marshals Service. In
15 fact, the U.S. Marshals Service has just awarded us and
16 we have completed construction and are operating two
17 facilities primarily for the U.S. Marshals Service, 256
18 bed multi-security facility outside of Albuquerque, New
19 Mexico; 256 beds outside of Memphis, Tennessee; and
20 we're in the process of constructing and will operate
21 next year when construction is completed a 450-bed
22 maximum security facility for the U.S. Marshals Service
23 in Leavenworth, Kansas.

24 As I referenced earlier, we have 5,400
25 beds currently in operation, 6,700 under contract. The

1 difference between the two is those beds that are under
2 construct at this point in time. We anticipate by year
3 end to have approximately 9,000 beds under contract and
4 should have about 7,000 beds in operation. As Dr.
5 Logan mentioned, at the levels that we are operating at
6 currently, we are bigger than about 14 or 15
7 corrections systems in the United States.

8 This is a breakdown of our inmate
9 population. Commissioner Lehman at least intimated
10 earlier that the private sector should not have a lot
11 of access to higher levels of security because of use
12 of force issues. It's very difficult to argue with
13 someone on philosophical grounds. You can spend all
14 day arguing on that, but I'd like to speak to our
15 experience. Under the 21 contracts that we have now
16 with various jurisdictions, the current breakdown of
17 our housing is in fact 47 percent minimum, 14 percent
18 maximum, 8 percent juvenile, and 31 percent medium.
19 The medium also includes, as Dr. Logan had referenced
20 earlier, he was a little bit low on size. It's a
21 610-bed medium security prison that we run for the
22 State of Louisiana. The contract was awarded in April
23 of last year. Subsequent to that, another contract was
24 awarded with another vendor to manage an identical
25 610-bed medium security facility down the road, and the

1 department is in the process of expanding both of those
2 facilities, ours as well as our competitors', to 1,200
3 beds each. That will give us, the private sector,
4 right at 18 percent of the total bed space in the
5 Louisiana Department of Corrections.

6 In the State of Texas, we are running two
7 500-bed minimum security facilities. One of our
8 competitors also has two 500-bed facilities. That
9 gives us approximately 5 percent of the bed space in
10 Texas.

11 In the State of Kentucky, where we have
12 no contracts currently, another of our competitors is
13 operating approximately 10 percent of the bed space for
14 the Kentucky Department of Corrections.

15 As a company, we feel that CCA has been a
16 pioneer in the area. We secured the first design,
17 build, and managed adult contracts in history with our
18 Houston Processing Center; the first adult county
19 facility under contracting history in Bay County,
20 Florida; the first juvenile turnkey contract in history
21 at the Shelby Training Center in Memphis; the first
22 female multiple security prison in history in Grants,
23 New Mexico, for the Department of Corrections; first
24 international management contract in history in
25 Queensland, Australia, for the Australian government;

1 first male medium security prison in history, Winn
2 Correctional Center, for the Louisiana Department of
3 Corrections; and the first awarded maximum security
4 prison in history with the U.S. Marshals Service for a
5 500-bed facility in Leavenworth.

6 If I could just run through real quickly
7 a couple of slides for you of the facilities which
8 we've actually done, that we designed, we built, and we
9 are currently operating for different jurisdictions. I
10 think it will also give you just a little idea of the
11 types of programming and services that we include so
12 you can get a better flavor of what a private prison is
13 like.

14 This is our Houston Processing Center.
15 We opened in 1984. It was the first designed, build
16 and managed contract awarded to the private sector.
17 It's a 350-bed facility. We house undocumented aliens
18 for INS and parole violators for the Texas Department
19 of Criminal Justice. The services that we provide are
20 dorm style living areas, full security recreation,
21 medical, transportation, food service, counseling, and
22 we provide a pre-release curriculum for offenders. The
23 cost of the facility was \$3.3 million, or approximately
24 \$10,000 a bed. The time of construction was
25 approximately six months. This is a slide of one of

1 our counseling courses. A previous slide you saw some
2 of the security in operation.

3 This is our Bay County Jail Annex in
4 Panama City, Florida. Bay County has two facilities, a
5 main jail that we are also contracting for houses
6 maximum security offenders. It's a 250-bed facility in
7 downtown Panama City. This is the annex that was built
8 by Corrections Corporation of America. Again, we run
9 the full scale of programs - security, laundry,
10 visitation, recreation, transportation, medical, so on,
11 counseling, substance abuse, GED. The facility was
12 built at a cost of \$3.2 million in approximately seven
13 months, cost per bed of \$16,500. Supervised
14 recreation. Picture of the control center at the
15 facility. Small dormitory area.

16 This is our New Mexico Women's
17 Correctional Facility. I mentioned earlier that it was
18 the first multi-security contract awarded to the
19 private sector. It's 225 beds. It's the only facility
20 for the assignment of female offenders to the New
21 Mexico Department of Corrections. It's operated right
22 outside of Grants, New Mexico, about an hour from
23 Albuquerque. Again, we provide the full range of
24 services. We also have to comply with the provisions
25 of the Durand consent decree, which to our knowledge is

1 probably one of the most stringent regulations imposed
2 on the Department of Corrections in the United States.
3 We're in full compliance with the consent decree.

4 The facility was opened in 1989. Last
5 month we received notice of accreditation from the
6 American Correctional Association. I have a news
7 release, a copy of a newspaper article from there, and
8 the gentleman that is the executive director designee
9 of the American Correctional Association called it one
10 of the finest correctional facilities in the country.

11 Small dormitory area. We try to provide
12 a little bit of privacy in between the beds for the
13 females. Typical cell block. Dual level, one bed per
14 secure cell, small living area downstairs. Kitchen
15 area at Grants. We provide, as I had said, dental,
16 medical, full range of services. Food service.

17 This is our Shelby Training Center that I
18 had spoken to you, again, of earlier. It houses in a
19 secure environment juvenile offenders assigned by the
20 juvenile court in Memphis. It's a 250-bed facility. I
21 think we're in the process of expanding it by another
22 20 beds right now.

23 Judge Turner, who is probably one of the
24 foremost juvenile scholars in the country on the bench,
25 had come to us in 1985 and was tired of sending his

1 juveniles from Memphis to Knoxville to Chattanooga and
2 asked what the private sector could do for him. At the
3 time, through the Department of Youth Development in
4 Tennessee, he was paying \$85 a day for the placement of
5 offenders sentenced by his court. We designed and
6 built the facility and are managing it for him for \$65
7 a day. The cost of the facility was \$6.5 million,
8 approximately \$43,000 a bed. The design and
9 construction time was 11 months. Typical classroom.
10 Typical day area outside of dormitory.

11 This is our East Tennessee Juvenile
12 Facility. The State of Tennessee decided that it
13 wanted to test out the private sector and authorized
14 one private and one public juvenile facility, each
15 approximately 150 beds each. The State would design,
16 build and manage one, the private sector would design,
17 build and manage the other, and they would do a full
18 program evaluation after three years. We opened ours
19 in April of last year. The State is fixing to begin
20 intake next month on this facility. We offer a full
21 range of programming at the facility - education,
22 vo-tech, academic - full range of services, medical and
23 so on. Small patrol center.

24 This is our Laredo Processing Center.
25 It's a prime example of the ability of the private

1 sector to fast track. It's 286 beds operated primary
2 for INS. It also houses juveniles for the Bureau of
3 Prisons. INS came to us with a very severe need and we
4 designed and constructed the facility in 145 days. The
5 cost of the facility was \$2.8 million, about \$13,500 a
6 bed. Again, we provide a full range of services for
7 INS.

8 It's really hard to tell from this
9 picture because of the background, it's about the only
10 one we have. This is one of the minimum security
11 facilities in the State of Texas, the Venus Pre-Release
12 Center, 500-bed minimum security facility operated for
13 the Texas Department of Criminal Justice. The
14 legislature required a cost comparison and in fact
15 required that the private sector would be a worthy
16 contract if and only if they could save 10 percent over
17 the cost of a similar facility for the Texas Department
18 of Corrections to do. Last audited evaluations was we
19 had saved 16 percent.

20 Again, this is, particularly in this
21 facility, it is somewhat similar, although not near in
22 scope, to those designs in the legislation that we're
23 talking about, but it's targeted for selected
24 programming for offenders during the last nine months
25 of their term. We provide heavy life skills

1 programming, heavy pre-release programming that
2 includes living skills, how to balance your checkbook,
3 how to apply for job interview, proper grooming, as
4 well as GED courses, other academic courses, vo-tech
5 courses.

6 This is the cell block area of our Winn
7 Correctional Facility in Winnfield, Louisiana. It was
8 the first private sector contract for male minimum
9 security offenders. 610 beds operated for the State of
10 Louisiana. I just finished working with the Department
11 of Corrections there for a report to the legislature on
12 the cost savings, and the department's costs, including
13 all indirect costs, are in the range of \$31 a day for a
14 sister facility built about 50 miles down the road.
15 Our current contract reimbursement is for \$24 a day, as
16 opposed to their \$31.

17 That's the end of the slide presentation.
18 What it doesn't get in to show you is the importance
19 that we put on accreditation at each of our facilities.
20 You've heard several people before say that you need to
21 watch the private sector because they cut corners, you
22 need to regulate them carefully. Every facility that
23 you saw in these slides has been, except for Winn,
24 which will be accredited in August of this year, has
25 been accredited by the American Correctional

1 Association. I think you ought to be proud of your
2 Department of Corrections here. A large number of
3 programs are accredited. It shows the emphasis that
4 has been placed on providing proper constitutional care
5 for inmates. We do the same thing. As a matter of
6 fact, since we are the private sector, since there are
7 always questions about operations, constitutional
8 questions and so on, we try to insist in every contract
9 that we enter into that we be required to have our
10 facilities accredited by ACA to, number one, alleviate
11 you from any types of financial liability, to reduce
12 our insurance costs, and to provide for you a quality
13 corrections operation. Again, a strong emphasis on all
14 of our facilities on accreditation.

15 If I could, I'd like to touch briefly on
16 the bill and some of the remarks that other speakers
17 have made. I think you have the opportunity here, and
18 as a matter of fact, I'm surprised that, always
19 surprised that the ACLU is not in favor of structuring
20 legislation to allow the private sector management and
21 construction of prison facilities. This is the ideal
22 opportunity for you to regulate the care of offenders
23 in the State. You have a blank bill in front of you
24 that would allow you to set standards and guidelines
25 for the provision of care, exactly in line with what

1 the ACLU is talking about - the provision of
2 constitutional care, the provision of security and
3 housing services and conditions that are not
4 overcrowded, the provision of other types of treatment
5 services. The whole piece of legislation is blank
6 before you. I would suggest at this time with your
7 legislation that you look to setting up your standards
8 on the front end instead of turning it over to the
9 Department of Corrections to let them come up with the
10 regulations, instead of turning it over to the county
11 Solicitor to cancel any contract that he doesn't like
12 or disapprove the contracts. You set the standards.
13 You set operational guidelines within ACA. You set
14 medical services in accordance with the National
15 Commission on Correctional Health Care. On and on and
16 on and on, so that the only questions that need to be
17 answered when the counties go to sign a contract are,
18 are you in compliance with the standards that we've
19 established in legislation? If you're in compliance
20 with the standards, then your contract is valid. If
21 you're not in compliance with the standards, then you
22 don't have a contract.

23 BY MS. WOOLLEY: (Of Mr. De La Houssaye)

24 Q. You referenced the Louisiana statute. Is
25 it your understanding of the -- who referenced

1 Louisiana? Professor Logan referenced Louisiana, I'm
2 sorry, but you've got facilities in Louisiana?

3 A. Yes, ma'am.

4 Q. Does that State very specifically set
5 forth those terms in its legislation versus--

6 A. Almost all of them. It's a good piece of
7 legislation, one that we would commend to you very
8 highly. It delineates exactly those concerns,
9 delineates answers to those concerns that several of
10 the speakers have had regarding the use of force,
11 regarding coercive authority, and so on. A typical
12 contract with a responsible provider will say that we
13 have to use the use of force policies that are
14 currently in place in the Department of Corrections.

15 Q. That answers my next question.

16 A. You know, we're not in the business,
17 you'll hear critics say that these people are the --
18 the private sector should not be in the business of
19 taking away someone's personal liberty. We're not.
20 We're here to provide a custodial function, to provide
21 housing for the offender, to provide for a secure
22 environment, to provide for treatment services, medical
23 services, transportation. And we wouldn't touch, if
24 you asked us, any of the issues dealing with
25 calculation of good time or gain time, whatever you

1 call it, calculation of release dates, anything which
2 actually affects the time that an offender is going to
3 be in a facility. Those types of issues were addressed
4 in the Louisiana legislation. There are several other
5 pieces of legislation that have been authorized around
6 the country that I would commend to you very highly and
7 certainly be willing to provide you copies of.

8 Q. Okay. If I could just ask one more
9 question along that line. There's also been a concern
10 about the misconduct process, when an inmate is charged
11 with a misconduct and the type of due process a private
12 provider, the type of discipline a private provider is
13 authorized to impose. Could you address that?

14 A. Sure. Let me explain that process to
15 you. What usually happens in a contract is that we
16 will strongly suggest to you and almost insist that you
17 have a position called a contract monitor in place at
18 the facility to review daily the operations at the
19 facility. Number one, to make sure we are running the
20 facility exactly as you specified in contract, but
21 number two, to take care of the release concerns and
22 other administrative concerns that should still be part
23 of the governing entity's authorization. The contract
24 monitor will calculate the release dates. He will
25 process disciplinary reports relating to good time or

1 gain time, if you will, all of those functions that
2 should be retained by the State or the local governing
3 authority.

4 Q. Okay.

5 CHAIRMAN CALTAGIRONE: Thank you. Thank
6 you very much.

7 MR. KRANTZ: Can I ask a question?

8 MR. De La HOUSSAYE: Yes.

9 MR. KRANTZ: On your employment pay,
10 let's say you came into Pennsylvania and took over
11 Waymart or whatever, would you employ the same
12 employees? In other words, have you ever run into a
13 transition of State employees and how do you compare
14 your pay with what the Commonwealth or the various
15 State employees get?

16 MR. De La HOUSSAYE: Sure. Really, I
17 think you're asking two separate questions, but yes, we
18 have run into transitional types of arrangements where
19 we have gone in and assumed management of existing
20 facilities. It will depend on exactly what you ask us
21 to do. You know, a contract is, like I was saying on
22 the legislation, a contract is blank until you sign it.
23 In Bay County, Florida, we went in and assumed
24 management of the jail facility. The county government
25 asked us to retain all the employees and to keep all of

1 the pay scales as they were. In fact, what we normally
2 do is go in and do a salary survey typical to any other
3 type of industry that's going to locate in an area to
4 see what the prevailing wage was for that type of
5 position. We found in Panama City that the employees
6 were in fact being underpaid compared to typical types
7 of wages for that type of position. We gave all the
8 employees across-the-board pay raises plus bonuses and
9 we retained all the personnel.

10 In the State of Louisiana, we took over
11 the operation of the State facility, but there were no
12 existing employees there. It was a brand new facility.
13 The State asked us to impose the exact same pay scales
14 and wages as at the State-run facility.

15 MR. KRANTZ: But how does your, let's
16 say, in your employment, let's say you do pay the same
17 wages and that, how does the retirement benefits, let's
18 say you have a guy that's 10 years in the State
19 retirement and he has 20 to go to get retired, how do
20 you make that transition there?

21 MR. De La HOUSSAYE: Usually, we will
22 look at if an employee is vested, we will purchase an
23 annuity exactly equal in payout to the accrued benefits
24 that he had under his vesting provisions. Again, if
25 he's not vested, it depends on what we're asked to do

1 in the contract.

2 MR. KRANTZ: Thank you.

3 CHAIRMAN CALTAGIRONE: Thank you again.

4 MR. De La HOUSSAYE: Mr. Chairman, one
5 just last remark.

6 I know the legislation targets minimum
7 security, low-risk offenders. I would urge you, number
8 one, to think about exactly where you want to be. You
9 have this legislation that you can set out every single
10 concern that every group would have problems with.
11 Once you would set up the standards, once you take care
12 of the concerns in legislation, the cost savings that I
13 showed you, the operational efficiencies and their
14 accreditation are the same operations for medium
15 security, minimum security, pre-release, pretrial, any
16 of those facilities. I'd urge you to consider, again,
17 once you have a strong enough piece of legislation,
18 giving the local governing authorities the option to
19 address their own problems in these areas.

20 One more thing that I would urge you, and
21 any time that you would have the desire, would be to
22 visit any of our facilities. If your staff or you want
23 to take a trip to any facilities that we have to see an
24 actual private one in operation, to meet with the local
25 governing authorities and meet with the contract

1 monitors, we would be tickled pink to have you. We
2 would be happy to work with your staff to set it up.

3 Thank you.

4 CHAIRMAN CALTAGIRONE: Thank you, sir.

5 The next testifant will be Rick
6 Bloomingdale.

7 MR. BLOOMINGDALE: Good afternoon. My
8 name is Rick Bloomingdale, the Legislative Director of
9 AFSCME Council 13. We represent over 80,000 workers in
10 State, county, and municipal governments.
11 Approximately 5,000 of those workers are in State and
12 county prisons.

13 We are here once again to register our
14 opposition to the concept of private prisons. In 1985,
15 we raised several questions concerting liability,
16 training, and cost saving. Over the last six years,
17 some States and counties have tried privatizing
18 prisons. We can now look at those examples and draw
19 our own conclusions about what is best for the
20 Pennsylvania taxpayer and the corrections professional.
21 In my testimony, I hope to provide you with some
22 examples and research which show that the
23 profit-seeking companies have no business in the
24 corrections business.

25 These companies are in it for profit and

1 nothing else. In Tennessee, the home State of
2 Corrections Corporation of America, the State
3 legislature passed a private prison regulation bill
4 with some fairly stringent protections for employees,
5 inmates, and liability. No company has yet bid. When
6 asked in an interview for the magazine, Judicature, why
7 CCA didn't bid in Louisiana, Linda Cooper, an attorney
8 for CCA, said the 1986 act simply made it too costly on
9 a per diem basis to make a profit on a 120-bed facility
10 in Carter County.

11 The most recent example of privatization
12 shows that the quest for profit might lead to some
13 cost-cutting measures that are questionable at best.
14 In 1989, Texas contracted with Wackenhut and CCA to run
15 four minimum security prisons. A 1990 audit of these
16 facilities found that the operators had failed to
17 implement promised educational and job training
18 programs, and only one of seven vocational courses
19 required by the contract was operating. Work programs
20 were insufficient to keep inmates occupied for at least
21 seven hours daily, and there was minimal participation
22 in substance abuse programs.

23 The audit further discovered that the
24 companies had left several positions vacant, thus
25 saving an estimated \$280,000 budgeted for salaries.

1 Instead of serving as a model for privately operated
2 prisons, these four, according to the Texas State
3 Prison Board, have failed miserably and were simply
4 warehousing inmates, although it looked like a pretty
5 nice warehouse.

6 Another example recently occurred in
7 Florida. The State legislature passed a private prison
8 regulation bill for State facilities that mandated a
9 cost savings of 10 percent. So far, no bidders have
10 come forward. This would correspond with our
11 experience with contractors of other areas of State
12 service. The contractors always low bid in their first
13 year, but as they become entrenched, the prices always
14 go up, so it would stand to reason that no contractor
15 would want to guarantee a constant 10-percent reduction
16 because they have no intention of actually saving the
17 State money.

18 As to the question, can the States or
19 counties shift liability to the contractor? The
20 Federal courts have ruled on this issue. According to
21 Ira Robbins in a study for the American Bar
22 Association, "The Legal Dimensions of Private
23 Incarceration," any ambiguity on this issue is resolved
24 in West v. Atkins. Although the case was in a medical
25 context, it also applies to the issue of whether

1 governments can relieve themselves of the
2 responsibility of operating prisons and jails. In the
3 above case, the court ruled:

4 "Contracting-out prison medical care does
5 not relieve the State of its constitutional duty to
6 provide adequate medical treatment to those in its
7 custody, and it does not deprive the state's prisoners
8 of the means to vindicate their Eighth Amendment
9 rights. The state bore an affirmative action
10 obligation to provide adequate medical care to West,
11 the State delegated that function to respondent Atkins,
12 and respondent voluntarily assumed that obligation by
13 contract."

14 There is also the continued question of
15 training. The Urban Institute conducted a study in
16 1989 called, "The Comparison of Privately and Publicly
17 Operated Correctional Facilities in Kentucky and
18 Massachusetts." According to investigators who
19 compared the two correctional facilities in Kentucky,
20 "Staff at the state-directed institution were
21 significantly older, better educated, had worked at the
22 facility longer, and had wider experience than was the
23 case for personnel at the privately-managed prison."

24 The investigators asserted that
25 Blackburn's, the State facility, "better educated

1 personnel should also contribute to making the facility
2 function better" and that both their "longer time at
3 the facility" and "wider correctional experience should
4 provide a steadying influence on facility operations."

5 The differences and the characteristics of staff of the
6 two institutions, investigators concluded, "favor
7 better performance from the publicly-managed facility."
8 One example of poor training occurred last year in
9 Monroe County, Florida. Poorly trained private
10 corrections officers strip searched underage girls
11 after an arrest for disorderly conduct and public
12 drunkenness. There was no probable cause that any of
13 the girls were secreting and/or concealing weapons or
14 contraband. In the same county jail, to further
15 illustrate, one prisoner escaped twice in one day. The
16 contractor refused to pay the cost of apprehension.

17 The matter has gone unresolved because
18 neither the contractor, Wackenhut, nor the county is
19 willing to take responsibility. As a result, the case
20 on behalf of the four underage girls will be filed in
21 Federal court this week, and the county has since
22 canceled the contract and is returning the jail to
23 county operation.

24 Finally, these companies say that their
25 reputation rides on doing a credible job. If they

1 don't perform, they say, they won't be hired. But what
2 happened in Texas did not prevent Wackenhut from being
3 hired in Florida. Most county governments do not have
4 the time or staff to totally research one of these
5 companies. For example, how many of you here today on
6 the committee knew of the problems of noncompliance,
7 outright deception, and incompetence by CCA and
8 Wackenhut? CCA has a history of lack of compliance and
9 deception. When they are discovered, they just move to
10 another State. The Texas example is just one of
11 noncompliance. One final example that relates both to
12 accountability and the desire to make a profit over
13 public safety is their facility in Santa Fe. CCA
14 recently filled space in its Santa Fe County, New
15 Mexico, jail by bringing in several prisoners from
16 Oregon. Among the convicts were murderers, rapists,
17 and kidnappers. I believe there were 54 inmates that
18 were transferred. CCA failed to inform either the
19 county commission or the county sheriff of its action,
20 which outraged local citizens. Only after the
21 corporation was threatened with cancellation of its
22 contract were the inmates returned to Oregon. By the
23 way, the county found out about the inmates from the
24 newspaper, not from any information provided by CCA.

25 I could go on with many other examples of

1 mismanagement and outright violation of their
2 contracts. Most of these cost-cutting measures and
3 violations come from the profit motive, not
4 incompetence. One of the costs that these companies do
5 not include in their figures is the cost of policing in
6 the contract. If I were a county official privatizing
7 a prison, I would not want to rely on the press to
8 police any one of these companies, so any cost figures
9 must include watching these companies to make sure that
10 they do not violate the contract and to make sure that
11 they provide the staff, training, and prisoner programs
12 required in the contract.

13 We don't think in the six years since our
14 last hearing the private sector has shown that they can
15 provide better protection to our citizens or to save
16 them money as taxpayers, and I'm sure that today you
17 have heard some examples of where private prisons work,
18 but this is not like privatizing laundry services or
19 trash collection. Here we have the additional concern
20 of public safety. One instance of bad faith, and we
21 have shown many, should be enough to make you realize
22 that privatization is a bad idea. At best, private
23 contractors offer no better than what the State or
24 county already does. At worst, they cost the taxpayers
25 more money and offer them less protection for inmates.

1 If the State legislature wishes to do something about
2 privatization of prisons, you should follow Illinois'
3 example and pass a stronger moratorium.

4 We in Pennsylvania are fortunate. We did
5 not rush into privatization, and now we can benefit
6 from the experience of others. There is nothing in
7 that experience that would warrant our use of private
8 prisons. We at AFSCME continue to strongly oppose
9 private prisons.

10 Thank you, and I'll answer any of your
11 questions.

12 CHAIRMAN CALTAGIRONE: Any questions?

13 REPRESENTATIVE REBER: Mr. Chairman, just
14 one question.

15 BY REPRESENTATIVE REBER: (Of Mr. Bloomingdale)

16 Q. I can't help but listen to your testimony
17 and not have to chuckle of the pros and cons of this
18 sitting in the room here, but you give the one example,
19 the Monroe County scenario, where, quoting on page 2,
20 "poorly trained private corrections officers stripped
21 searched underage girls."

22 A. Um-hum.

23 Q. I'm aware of many instances in the
24 Commonwealth of Pennsylvania where highly trained
25 public corrections officers have stripped searched

1 underage girls.

2 A. That's right, but then you don't have the
3 additional problem, you have accountability, as the
4 State legislature, or that county government does.
5 They can discipline those guards. You don't have the
6 problem with this lawsuit that's going to come up that
7 could cost the county millions of dollars in liability
8 costs.

9 Q. Well, I would submit that there's redress
10 in the courts whether it be by private or public. I'm
11 glad that you pointed out some of the concerns, because
12 I'm not being argumentative or facetious because I
13 think many, if not all, of the things that you pointed
14 out, in my mind, could be appropriately addressed in
15 the regulatory statute that we would put into place to
16 obviate these things from happening.

17 A. Well, I mean, you can do that.

18 Q. We already prohibit inmates from other
19 States, so if in fact the Sante Fe incident took place,
20 at the outset it couldn't happen in the Commonwealth of
21 Pennsylvania.

22 A. But they violated one contract, what's
23 going to stop them from violating another?

24 Q. I understand that, but let me tell you,
25 there are war stories that I can sit here and recant

1 about public correction officers, public correction
2 administrators, contracts with vendors in the public
3 sector that are equally or it could be sensationalized.

4 A. Right.

5 Q. So again, I'm not being critical. I
6 think it has to be pointed out, I think the way you
7 presented it is to call it to our attention and we have
8 to look for it, but I don't know if indiscretions or
9 inappropriate things that take place, isolated
10 incidents. Now, I'd be interested in knowing if these
11 people, you know, are still with these companies, what
12 they did internally in the private sector to discipline
13 or clean up their own house where there was a problem.
14 You know, maybe nothing happened. Maybe something did.

15 A. Well, I would imagine when, -- well, I
16 can't say.

17 Q. And I'll tell you, the thing that I found
18 impressionistic, and from your particular concern I
19 guess if I was sitting in your chair, my major concern
20 would be the protection, job preservation, if you will,
21 as to the extent of how this might impact on fellow
22 constituents of your concern. I think that we could
23 guarantee that kind of integrity in the hiring process
24 and in the benefit process as well. Those are the kind
25 of things that you might consider, if in fact we're

1 going to do something like this, what would be the
2 minimum financial standards that should be set forth
3 and benefit standards and provide us with some of those
4 thoughts so we could--

5 A. Well, the Tennessee law does that. It
6 provides that all furloughed Department of Corrections
7 personnel be hired by the private sector, which is one
8 of the reasons they haven't. One of the big cost
9 savings is in salaries, and as my example in Texas,
10 they saved \$280,000 by not filling certain positions.
11 So if you write a law as stringent as Tennessee's,
12 you're not going to get into a bid, but what's the
13 point? I mean, I just don't think that you want to get
14 into privatizing prisons or regulating them, because
15 it's shown in case after case that these companies
16 violate the contracts and that you have, I mean,
17 there's no direct accountability, you're going to end
18 up with more court cases. And yeah, there are cases
19 where now vendors, you know, there are horror stories
20 about vendors misusing State funds, and that's why
21 we're opposed to privatization totally. We would say
22 that none of that stuff should be contracted out.

23 Q. Well, it would seem to me that the
24 \$280,000 scenario or horror story that you recant to
25 us, obviously in my mind if I'm deputy general counsel

1 for whoever or deputy county solicitor for whomever
2 might be entering into these contracts, I would
3 certainly want to make sure that if in fact these
4 particular positions aren't filled, we're not paying
5 for things that aren't filled, there's credits and/or
6 rebates back to the county for us, you know, without
7 that being, you know, taken. If somebody was stupid
8 enough or whatever jurisdiction allowed that to happen,
9 all I say is the private sector had a much better
10 counsel representing them than the local governing body
11 did that allowed that kind of shenanigan to go on.
12 Again, I don't know if that is a black mark on the
13 system, on the concept, and on the necessity for it. I
14 think we have to look at how we can police that so it
15 doesn't happen.

16 A. Well, the State of Texas was the
17 jurisdiction. It was their minimum security prisons,
18 and their legislation requires audits, which they found
19 that this was not happening. And, you know, you have
20 your recourse of canceling the contracts and doing all
21 that stuff and then you're going to end up in court.
22 If you run the prison, you can just fire the warden. I
23 mean, you have immediate redress against the problems.

24 Q. I just like to think that maybe redress
25 can be put into the system. If that's a serious

1 concern and problem as you say, believe me, I think
2 that's something we have to look at if we're going to
3 take this and make sure that that problem doesn't come
4 to the forefront.

5 A. Well, again, I mean you have, you know,
6 in other contracts--

7 Q. It's a snowy day. I didn't drive up here
8 just to sit here and listen. I want to be
9 argumentative.

10 A. Well, that's right. I'll argue with you
11 all day. It doesn't matter to me. I mean, you get the
12 issue of, you know, public safety where you have, if
13 it's a trash contract and the contractor abuses it, you
14 can fire and nobody's hurt, but in public safety and in
15 corrections to go, to have a yearly audit and to find
16 that prison programs are not being implemented, which
17 leads to unrest by inmates, leads to real public safety
18 concerns, which I think, you know, have to be
19 paramount.

20 Q. We don't have to go any further than
21 looking at the outgrowth of what happened at Camp Hill
22 and within the administration and within the people
23 that were so-called policing what went on and the
24 hirings and firings that came as a result of that
25 fall-out to know that there's problems. I don't think

1 that is symptomatic to the extent that you, you know,
2 throw the baby out with the bad bath water, which, you
3 know, is to some extent what I've been hearing. And I
4 don't necessarily disagree with the concerns you're
5 expressing, but I don't know that those concerns can't
6 be driven away and that we could function with this
7 type of system for a select purpose in which we have a
8 need at the present time, at least in my mind.

9 REPRESENTATIVE REBER: Thank you, Mr.
10 Chairman.

11 CHAIRMAN CALTAGIRONE: Thank you. We
12 appreciate your testimony.

13 Dana C. Joel, I guess you're next.

14 MS. JOEL: My testimony is gone for
15 copying, so I don't have it my hand right now, but I
16 imagine it should be back in a few minutes.

17 CHAIRMAN CALTAGIRONE: Okay. We'll take
18 a short break.

19 (Whereupon, Representative Piccola
20 assumed the Chair.)

21 ACTING CHAIRMAN PICCOLA: Ms. Joel.

22 MS. JOEL: I'm representing the
23 Commonwealth Foundation. I'm speaking on behalf--

24 ACTING CHAIRMAN PICCOLA: I don't think
25 I'm going to disagree, if I know what their position

1 is.

2 MS. JOEL: Good. Good.

3 ACTING CHAIRMAN PICCOLA: You're
4 preaching to the choir.

5 MS. JOEL: Thank you for the opportunity
6 to speak before the House Judiciary Committee today.
7 My name is Dana Joel, and I am State Research Projects
8 Analyst with Citizens for a Sound Economy Foundation in
9 Washington, D.C. We are a nonprofit, nonpartisan
10 educational institution with an active membership of
11 250,000 members. I am pleased to be here on behalf of
12 Don Eberly, the President of the Commonwealth
13 Foundation, and his staff to speak on the subject of
14 prison privatization. In addition to my testimony, I
15 would like to include for the record an article in the
16 Legal Times in January 1990 entitled, "Punishment and
17 the Profit Motive." That will be included. I don't
18 have it at this time.

19 Pennsylvania's prisons and jails, like
20 many corrections facilities across the nation, are
21 filled way beyond capacity. State and local spending
22 for corrections outpaces all other budget items, yet
23 prisons are not being built fast enough to keep up with
24 the population explosion. And the opportunity to build
25 and upgrade prisons is now more limited than ever as

1 State and county governments face fiscal pressures to
2 rein in their budgets. Meanwhile, the quality of
3 facilities continues to deteriorate.

4 Prison privatization, contracting out to
5 the private sector to manage or own facilities, is a
6 promising solution for dealing with the prison crisis.
7 Because private operators are less constrained than the
8 government by bureaucratic red tape and costly
9 regulations, they are able to deliver services at a
10 lower cost. And opening up corrections to the free
11 market system insures a higher quality of service, as
12 vendors compete for contracts.

13 The privatization of prisons and jails is
14 not new. The theory is supported by a track record
15 dating back more than a decade, which was spurred by
16 the private sector's inability to tackle the crisis
17 alone. Since the early 1980's, many jurisdictions
18 ranging from the county level to the Federal level have
19 turned to the private firms to design, finance, build
20 and operate correction facilities. As many as 39
21 States contract out for the operation alone, as does
22 the Federal Bureau of Prisons, U.S. Marshals Service,
23 and Immigration Naturalization Service.

24 Prison privatization is not limited to
25 non-secure prisons and jails. As of the summer of

1 1990, 17 jurisdictions contracted out the operation of
2 more than 65 adult secure facilities holding more than
3 14,000 beds. And an additional 4,000 beds have been
4 approved for use in the near future. As a reporter for
5 the New York Times astutely observed in 1989,
6 governments are turning to these private groups because
7 they cannot handle the problem themselves.

8 Cost savings. As spending for
9 corrections increasingly consumes larger pieces of the
10 budget pie, one of the most appealing aspects of prison
11 privatization is the potential cost savings. Based on
12 a survey conducted by Touche Ross and Company, now
13 Deloitte and Touche, in 1987, the majority of
14 government officials listed cost savings as the number
15 one reason for contracting out corrections to the
16 private sector. The private sector achieves cost
17 savings, for example, through innovative measures not
18 as easily adopted at the government level.

19 Prison privatization's critics argue that
20 it is not possible to be innovative and to cut costs in
21 corrections. They contend that the function, that of
22 sheltering and feeding prisoners, is the same whether
23 provided by a government agency or a private firm.

24 A number of private entrepreneurs
25 employing the innovative cost-saving approaches proves

1 that such claims are wrong. Many firms keep costs down
2 by shopping around for better prices, purchasing
3 supplies in bulk, and paying in cash rather than
4 credit. Others use innovative architectural designs
5 and technology. Corrections Corporation of America,
6 based in Tennessee, for example, has installed in most
7 of its 16 facilities video cameras in the corridors and
8 motion detectors along the fences to sound an alarm in
9 the event of escape. By upgrading surveillance, CCA
10 eliminates unnecessary manpower. While these options
11 are certainly open to the public sector, the government
12 is more constrained by restrictions and red tape which
13 inhibits speedy and creative responses to correctional
14 needs.

15 Critics warn that private operators will
16 try to save pennies both by reducing key personnel and
17 by cutting back on employees' wages, yet the evidence
18 does not support this. By no means atypical, CCA
19 increased the number of employees from 58 to 72 after
20 it won the contract to run the Silverdale Detention
21 Facility in Hamilton County, Tennessee. Among most
22 private vendors, private workers' salaries remained
23 competitive with government workers. Some even have a
24 stock ownership plan allowing employees the option of
25 buying into the corporation. Operators do keep costs

1 down by eliminating unnecessary overtime and reducing
2 inflated benefits typically found in the public sector.

3 The actual amount of reported cost
4 savings can vary. In 1986, U.S. Corrections
5 Corporation, located in Kentucky, reportedly saved the
6 State \$400,000 for the year by managing the Marion
7 Adjustment Center in St. Mary, Kentucky. While the
8 cost to the State to run the prison had been estimated
9 at \$40 per inmate a day, USCC charged the State a per
10 diem fee of \$25. And CCA charged Bay County \$29.81 to
11 run the Bay County Jail, compared to the county's
12 calculated cost of \$38. The annual cost savings,
13 \$700,000.

14 The most recent cost study was conducted
15 for the National Institute of Justice, the research arm
16 of the U.S. Department of Justice. The authors
17 compared the cost of CCA's Silverdale facility with a
18 cost that would have been incurred had the county
19 continued to run the prisons. Using conservative
20 county cost estimates, the researchers concluded that
21 CCA saved the government between 4 and 15 percent over
22 a three-year period.

23 Quality. Despite the substandard
24 conditions of most of this nation's prisons, critics
25 are concerned quality will deteriorate even further

1 under private management as contractors attempt to keep
2 costs down. However, this will not be the case as long
3 as legislation can be enacted that insures that the
4 operator is accountable. As is the case with almost
5 all privately run prisons and jails, the operators can
6 be watched very closely by the agency to assure that
7 standards are being met. This could include the
8 requirement for periodic reporting, immediate
9 notification in cases of inmate escapes, injuries and
10 death, and on-site inspections by the agency. My
11 understanding is that these items are included in the
12 draft legislation.

13 There are numerous documented examples of
14 private operators who substantially improve the
15 facility's condition. The Silverdale Prison, for
16 instance, is monitored by its former warden. He
17 reports that CCA made improvements in five areas - the
18 physical facility, the system of classifying prisoners,
19 the staff's treatment of prisoners, the disciplinary
20 system, and medical care.

21 CCA also upgraded Florida's Bay County
22 Jail. When the government ran the prison, there had
23 been several lawsuits pending against the county for
24 crowded conditions, fire safety violations, and
25 inadequate medical treatment. Seven months after CCA

1 signed the contract, the lawsuits were dropped as a
2 result of notable improvements, including a new 174-bed
3 work camp and a rehabilitation program at no extra
4 charge to the taxpayer.

5 A study conducted by the Urban Institute
6 in 1989 compares quality between the private Marion
7 Adjustment Center and the public Blackburn Correctional
8 Complex, both located in Kentucky. Based on surveys
9 and interviews with prison staff and inmates, as well
10 as personal visits and review of agency records, the
11 authors evaluated the prison's physical conditions,
12 escape rates, security and control, prisoners' physical
13 and mental health, and rehabilitation methods as
14 measured by recidivism rates. The study concludes that
15 by and large both staff and inmates gave better ratings
16 to the services and programs at the privately operated
17 facilities. Escape rates were lower, there were fewer
18 disturbances by inmates, and in general staff and
19 offenders felt more comfortable at the privately
20 operated facilities.

21 No one will dispute the advantages of
22 competition. Opening the market to competition assures
23 that all vendors will provide the best quality of
24 service at the lowest possible cost. The U.S.
25 Corrections Corporation won the contract to own and

1 operate the minimum secure Marion Adjustment Center buy
2 outperforming the original winner of the contract.
3 Kentucky rewarded USCC with the contract after the
4 original bidder failed to secure the location of the
5 facility under the terms of the contract.

6 Other concerns, a, quote, "entrenched"
7 interest group. Critics argue that with the continuing
8 trend of prison privatization, a future corrections
9 industry of politically entrenched private operators
10 will lobby to influence government policy. They fear
11 that the private sector's penetration in the
12 corrections industry potentially would develop into a
13 strong lobby group pushing for longer sentences to
14 incarcerate more individuals. Critics fail to explain
15 how private providers would gain more political power
16 than do private providers of other government services.
17 Private firms that handle solid waste disposal and
18 landfills do not lobby against recycling, or as City
19 University of New York professor and author E.S. Savas
20 notes, operators of day care centers do not lobby
21 against birth control and abortion.

22 Were private vendors able to mobilize to
23 politically influence the length of prison sentences,
24 it would only be because they had the support of the
25 general public, which has advocated harsher sentences

1 for over a decade. But this is not likely. Prison
2 privatization can create additional source of services
3 with additional and improved capacity.

4 Critics' premise assumes that private
5 operators will be desperate for inmates to fill their
6 cells - a difficult situation to imagine. The day when
7 there is a shortage of prisoners is, unfortunately, far
8 off. But should the rising prison population taper
9 off, the private operator, more so than the government,
10 has enormous flexibility to adjust to population
11 changes. Facing a decline in the number of inmates,
12 the firm, for example, could save money by cutting back
13 on staff and eliminating certain services which are not
14 necessary with fewer prisoners, such as elaborate
15 recreational programs provided as a crowd control
16 against inmate violence.

17 Despite some of these objections to the
18 privatization of prisons by a small but loud minority,
19 private operation of correction facilities has been
20 gaining acceptance and support among the broad range of
21 groups, including State legislatures; Federal, State
22 and county correctional agencies; the media; and most
23 significantly, the general public. As long as the
24 prison population continues to spiral upward, the
25 private sector will fill a void in corrections. As

1 more lawmakers look for ways to save money on prisons
2 while improving quality, prison privatization stands
3 out as an excellent approach.

4 ACTING CHAIRMAN PICCOLA: Thank you very
5 much, Dana.

6 MS. JOEL: Thank you.

7 ACTING CHAIRMAN PICCOLA: We appreciate
8 you coming up in this terrible weather and presenting
9 us with your views. I don't have any questions because
10 I agree with everything you said, so.

11 MS. JOEL: Okay.

12 ACTING CHAIRMAN PICCOLA: Thank you.

13 MS. JOEL: I do apologize. There were
14 some changes at the last minute and because we were
15 testifying at a different time than we thought, we
16 thought we would be able to correct the actual, but we
17 will supply you with perfect copies.

18 ACTING CHAIRMAN PICCOLA: Okay. I
19 believe the Commonwealth Foundation did a, I think a
20 White Paper or a study on private prisons a couple of
21 years ago?

22 MS. JOEL: Position paper.

23 ACTING CHAIRMAN PICCOLA: A position
24 paper. I don't know if you wanted to submit that for
25 the record as well. I'm not sure if that has ever been

1 submitted for the record on this subject, so you may
2 want to do that as well.

3 MS. JOEL: Okay, thanks.

4 ACTING CHAIRMAN PICCOLA: I know I have
5 it up in my office, but I don't know if it's on the
6 record either.

7 Okay, thank you.

8 MS. JOEL: Okay, thank you.

9 ACTING CHAIRMAN PICCOLA: No further
10 witnesses? This is a rare opportunity.

11 MS. WOOLLEY: Merit selection. Move the
12 bill.

13 ACTING CHAIRMAN PICCOLA: Meeting stands
14 adjourned. Thank you.

15 (Whereupon, the proceedings were
16 concluded at 1:05 p.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

Ann-Marie P. Sweeney
ANN-MARIE P. SWEENEY

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