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Testimony Before
The State House Judiciary Committee
on Private Prisons

By

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Good afternoon. My name is Rick Bloomingdale, Legislative Director for AFSCME Council 13. We represent over 80,000 workers in state, county, and municipal governments. Approximately 5000 of those workers are in state and county prisons.

We are here once again to register our opposition to the concept of private prisons. In 1985 we raised several questions concerning liability, training, and cost saving. Over the last six years some states and counties have tried privatizing prisons. We can now look at those examples and draw our own conclusions about what is best for the Pennsylvania taxpayer and the corrections professional. In my testimony I hope to provide you with some examples and research that will show that the profit-seeking companies have no business in the corrections business.

These companies are in it for profit and nothing else. In Tennessee, the home state of the Corrections Corporation of America, the state legislature passed a private prison regulation bill with some fairly stringent protection for employees, inmates, and liability. No company has bid. When asked in an interview for the magazine Judicature why CCA didn't bid in Tennessee, Linda Cooper, an attorney for CCA said, "The 1986 act simply made it too costly on a per diem basis to make a profit at a small 120-bed facility in Carter County."

The most recent example of privatization shows that the quest for profit might lead to some cost cutting measures that are questionable at best. In 1989 Texas contracted with Wackenhut and CCA to run 4 minimum security prisons. A 1990 audit of these facilities found that the operators had failed to implement promised educational and job-training programs. Only one of seven vocational courses required by the contract was operating. Work programs were insufficient to keep inmates occupied for at least seven hours daily and there was minimal participation in substance abuse programs. The audit further discovered that the companies had left several positions vacant, thus saving an estimated \$280,000 budgeted for salaries. Instead of serving as a model for privately operated prisons, these four, according to the Texas State Prison Board, "have failed miserably" and were simply warehousing inmates (Houston Chronicle, May 16, 1990).

Another example occurred recently in Florida. The state legislature passed a private prison regulation bill for state facilities that mandated a cost saving of 10%. So far no bidders have come forward. This would correspond with our experience with contractors in other areas of state service. The contractors always low bid in their first year but as they become entrenched the prices always go up. So it would stand to reason that no contractor would want to guarantee a constant 10% reduction because they have no intention of actually saving the state money.

As to the question, can the states or counties shift liability to the contractor, the federal courts have ruled on this issue. According to Ira Robbins in his study for the American Bar Association, The Legal Dimensions of Private Incarceration, any ambiguity on this issue was resolved in West v. Atkins. Although the case was in a medical context, it also applies to the issue of whether governments can relieve themselves of the responsibility for operating prisons and jails. In the above case, the court ruled:

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

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

The investigators asserted that Blackburn's (the state facility) "better educated personnel should also contribute to making the facility function better" and that both their "longer time at the facility" and "wider correctional experience should provide a steadying influence on facility operations." The differences in the characteristics of staff of the two institutions, investigators concluded, "favor better performance from the publicly-managed facility." One example occurred last year in Monroe County, Florida. Poorly trained private corrections officers strip searched underage girls after an arrest for disorderly conduct and public drunkenness. There was no probable cause that any of the girls were secreting and/or concealing weapons or contraband. In the same county jail, one prisoner escaped twice in one day. The contractor refused to pay the cost of apprehension.

The matter has gone unresolved because neither the contractor, Wackenhut, nor the county is willing to take responsibility. As a result, the case will be filed in Federal Court this week. The county has since cancelled the contract and is returning the jail to county operation.

Finally, these companies say that their reputation rides on doing a credible job. If they don't perform, they won't be hired. But what happened in Texas did not prevent Wackenhut from being hired in Florida. Most county governments do not have the time or staff to totally research one of these companies. For example, how many of you here today on this committee knew of the problems of non-compliance, outright deception, and incompetence by CCA and Wackenhut?

CCA has a history of lack of compliance and outright deception. When they are discovered, they just move to another state. The Texas example is just one of non-compliance. One final example that relates both to accountability and the desire to make a profit over public safety. CCA recently filled space in its Santa Fe County, New Mexico, Jail by bringing in several prisoners from Oregon. Among the convicts were murderers, rapists, and kidnapers. CCA failed to inform either the County Commission or the County Sheriff of its action, which outraged local citizens. Only after the corporation was threatened with cancellation of its contract were the inmates returned to Oregon. By the way, the county found out about the inmates from the newspaper, not from any information provided by CCA.

I could go on with many other examples of mismanagement and outright violation of their contracts. Most of these cost-cutting measures and violations come from the profit motive, not incompetence. One of the costs that these companies do not include in their figures is the cost of policing the contract. If I were a county official privatizing a prison, I would not want to rely on the press to police any one of these companies. So any cost figures must include watching these companies to make sure that they do not violate the contract, and to make sure that they provide the staff training and prisoner programs required in the contract.

We don't think in the six years since our last hearing the private sector has shown that they can provide better protection to our citizens or to save them money as taxpayers and I'm sure that today you have heard some examples of where private prisons work. But this is not like privatizing laundry services or trash collection. Here we have the additional concern of public safety. One instance of bad faith, and we have shown many, should be enough to make you realize that privatization is a bad idea. At best, private contractors offer no better than what the state or county already does; at worst, they cost the taxpayers more money and offer them less protection from inmates. If the state legislature wishes to do something about privatization of prisons, you should follow Illinois' example and pass a stronger moratorium. We in Pennsylvania are fortunate. We did not rush into privatization and now we can benefit from the experience of others. There is nothing in that experience that would warrant our use of private prisons.

We at AFSCME continue to strongly oppose private prisons. Thank you. I will be glad to answer any questions.