

Private Corrections Institute, Inc.

February 3, 2006

Commission on Safety and Abuse in America's Prisons
601 Thirteenth St, N.W., Suite 1150 South
Washington, D.C. 20005

Dear Commissioners:

I appreciate this opportunity to contribute my experience regarding oversight as it applies to public vs. for-profit private corrections. I thoroughly believe oversight of either public or private facilities is very important to the humane treatment of prisoners but also for the protection of officers working in those facilities. This being said, I must express to you my belief there is little if any oversight of for-profit correctional facilities.

First, a little of my background: I am a legislative and political affairs assistant for the Florida Police Benevolent Association (FPBA), the largest law enforcement collective bargaining agent in Florida and volunteer as the executive director with the independent Private Corrections Institute (PCI), a non-profit educational corporation, organized to educate the public on the perils of corrections for profit.

I was in attendance at the Florida House Corrections Committee in January 1997. The executive director for the Correctional Privatization Commission (CPC), the state agency that oversees the for-profit private prison industry in Florida, was doing a "dog and pony show" to justify the CPC's existence before the committee. The following discussion caught my attention and started me down a path that would lead to the largest civil penalty ever levied by the Florida Commission on Ethics at that time, the discrediting of the academic "guru" and Wall Street darling of prison privatization, and the resignation of the executive director of the state agency that oversees the private prisons:

Mark Hodges (CPC Executive Director): "...Also in the audience today, we have Dr. Charles Thomas. There may be some questions come up that we would ask him to, to answer, because he's not only studied Florida, but the United States and the World, and can answer this from a national perspective..."

Representative Allen Trovillion (Chair): "Dr. Thomas is a professor at the University of Florida and has been working now on this for some time."

At the end of the meeting I asked a lobbyist for the Florida Department of Corrections about Dr. Thomas. She said he was the director of the Private Corrections Project at the University of Florida doing research on prison privatization and he consulted for the CPC.

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The Private Corrections Project was formed in 1989 but dates back to 1982 when Thomas and an associate received a grant from the state to conduct a cost-benefit analysis of a privately managed residential program for juvenile offenders.

The red flags went up. I wondered: "Who funds Dr. Thomas' Project?"

So I called Dr. Thomas at the University and asked him "Where do you get the money for your project?" He told me "Unrestricted grants and donations." After pausing as I waited for the rest of the information, I asked "From who?" Thomas told me they prefer to remain anonymous and that I'd have to call the University of Florida Research Foundation (UFRF) because they were the ones who got the money. He told me he wasn't going to give me "the bullet that I was going to shoot him with." UFRF also refused to answer my question about Thomas' funding. This lack of openness piqued my interest.

I discovered Thomas was hiding that he had substantial conflicts of interest in the industry, including ownership of stock in private corrections corporations, at the same time he was evaluating the private corrections industry for Florida and other governmental agencies throughout the United States.

My investigation of Dr. Thomas led to his resignation from the CPC and the University of Florida Private Corrections Project, his paying a \$20,000 fine, the largest civil penalty in the history of the Florida Ethics Commission's history, and undermining the objectivity of Thomas' work.

While investigating Dr. Thomas, I also scrutinized Mark Hodges, the executive director for the CPC, which had oversight of the state's five private prisons (private jails in Florida have no outside oversight). My investigation into Mr. Hodges resulted in his resignation from the CPC, a \$10,000 fine, and his admitting to breaking the law. Hodges was running a criminal justice consulting business from his state office and was partnering with Dr. Thomas.

The complete story of my experience uncovering Thomas and Hodges is detailed in my book, *Private Capitol Punishment* (<http://www.authorhouse.com/BookStore/ItemDetail~bookid~22009.aspx>).

My actions here in Florida led to my leadership position in the fight against for-profit private corrections and the formation of the all-volunteer Private Corrections Institute (PCI).

PCI maintains the premier website on the private corrections industry (www.PrivateCI.org), cataloging their daily peccadilloes and outright abuse and corruption. Our daily list serve provides 5 to 10 news stories per day on average (a summary of these stories can be found at: www.PrivateCI.org/news.html). A quick review of these stories shows a chilling pattern of cutting corners, lack of oversight and commitment to safety, and abuse of prisoners, staff and the public trust.

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Anyone seriously interested in the issue of correctional privatization should review our vendor "Rap Sheets" (www.PrivateCI.org/rap.html). Here you will find page after page of damning news stories organized by institution to greet the viewer.

The Commission on Safety and Abuse in America's Prisons is currently focusing on oversight of correctional institutions. Beside the experiences described above and the information provided on our webpage, each Commissioner and staff member could benefit from reviewing two recent governmental reports directly related to oversight (or more accurately, the lack of oversight) of the for-profit private corrections industry.

The first came after a riot at a CCA prison in Colorado where the inmates nearly burned down the facility: "Report of the State Auditor, Private Prisons Department of Corrections," April 2005 ([www.leg.state.co.us/OSA/coauditor1.nsf/All/FC4A43C259BADC498725701B00755584/\\$FILE/1676%20Private%20Prisons%20Perf%20April%202005.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/FC4A43C259BADC498725701B00755584/$FILE/1676%20Private%20Prisons%20Perf%20April%202005.pdf)).

The State Auditor found:

- **The Department is not adequately overseeing the medical clinics operated by private prisons.**
- **Inmates with serious mental illnesses are not being seen by mental health staff at the private prisons within required time frames.**
- **The private prisons are not consistently following the Department's master menu as required by contracts.**
- **The Department lacks a process to identify those out-of-state inmates who are no longer eligible to be incarcerated in Colorado's private prisons.**
- **The Department placed state inmates classified above medium into Colorado's private prisons, which is in direct violation of statute.**
- **Statutes are silent on the placement of high-custody inmates in private prisons outside of Colorado.**
- **The Department does not adequately oversee the staffing levels maintained by the private prisons where Colorado inmates are housed.**
- **Private prisons have hired some applicants with questionable backgrounds.**

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- **Visitors to private prisons are not screened as frequently as visitors to state-run prisons.**

The second report is from Florida and was partly in response to my concerns and complaints about the Correctional Privatization Commission: "Contract Management of Private Correctional Facilities" June 30, 2005 (www.privateci.org/private_pics/Final%20Report.pdf).

Issues relating to oversight include:

- **The CPC failed to enforce contract provisions relating to the reporting of vacancies in staff positions.**
- **The CPC did not require the vendors to report vacancies during the major portion of the time the contracts were in effect and when vendors did report vacancies, the CPC did not reduce vendors' monthly per diem payments in accordance with contract provisions. This resulted in vendors at the five facilities receiving payments of about \$4.5 million to which they were not entitled.**
- **The CPC allowed vendors to waive required staffing patterns for non-correctional positions and did not reduce vendors' monthly per diem payments. As a result, the State overpaid vendors about \$290,000 for vacant positions during the period from July 1, 2001 through December 31, 2004.**
- **The vendor at the South Bay Correctional Facility received questionable payments of about \$3.4 million during the period of January 1, 1999 through December 31, 2004, for salary additives referred to as Competitive Area Differential (CAD) payments. The \$3.4 million in questionable payments included \$1.86 million in overpayment errors, which, when discovered, the CPC made no effort to recover. Moreover, although State Competitive Area Differential rates were reduced during the contract period, the CPC arbitrarily increased the vendor's contracted per diem rates to cover the difference between the higher differential pay and the reduced differential pay. As a result, the vendor received an additional \$1.54 million in per diem payments in lieu of direct CAD payments and contract per diem rates were artificially inflated.**
- **The State was charged a "burden" or overhead on the Competitive Area Differential payments the South Bay vendor received during the contract period. These burden payments amounted to about \$1.57 million. We could find no justification or authorization for a vendor to receive such payments. Moreover, our review showed that not only were burden payments not authorized but were**

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greatly overstated by the vendor.

- **In a November 2001 special session, the Legislature zero budgeted CPC salaries and expense funds. Subsequently, the CPC authorized a per diem increase to the vendors who in turn remitted the per diem increase back to the CPC's Grants and Donations Trust Fund. These funds were then used to pay CPC staff salaries and expenses. This action caused per diem rates to be artificially inflated. Also, because the Department was unaware of this transaction it could have resulted in loss of salary dollars for current Department employees when new contracts were negotiated. We could not determine whether legislative leaders knew of and condoned the actions by the CPC. This was brought to the attention of Department management during the review.**
- **Gadsden Correctional Facility receives an additional per diem rate of \$2.30 per inmate (up to 768 inmates) or about \$645,000 per year for routine and major maintenance and repair of the facility under the terms of its contract. However, records show that Gadsden Correctional Facility expends an average of only \$170,000 annually for facility maintenance and repair. As a result, the State paid about \$2.85 million more for maintenance and repair than the vendor expended for calendar years 1999 through 2004.**
- **The Inmate Welfare Trust Fund is used to supplement the cost of contractually required programs and services. This understates actual per diem rates and should be considered when evaluating compliance with statutory cost savings requirements. During Fiscal Year (FY) 2003-04, vendors expended about \$988,000 from the Trust Fund for contractually required programs and services.**

From everything I have experienced and researched over that last 9 years for-profit private correctional oversight is minimal to non-existent. Vendors will tell you that public correctional facilities are just as bad and have little oversight also. I don't see any evidence for this. They will also tell you that most of their facilities are ACA accredited. The trouble is that the ACA accreditation is nothing more than a paper audit.

According to Abt Associates ("Government's Management of Private Prisons," September 15, 2003):

Achieving ACA accreditation is not an outcomes-based performance goal. Rather, ACA standards primarily prescribe procedures. The great majority of ACA standards are written in this form: "The facility shall have written policies and procedures on" The standards emphasize the important benefits of procedural regularity and effective administrative control that flow from written procedures, and careful documentation of practices and events. But, for the most

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part, the standards prescribe neither the goals that ought to be achieved nor the indicators that would let officials know if they are making progress toward those goals over time.

The industry also provides “comparative studies” allegedly proving that care at correctional facilities managed by private vendors “is as good or better than at government-run facilities.”

Geoffrey F. Segal with the Reason Foundation wrote to the Commission (“Comparing Public and Private Prisons on Quality”) that there were a number of “rigorous, peer-reviewed, serious academic studies” proving the industry’s position. The trouble is that at least two studies on his list (Florida Recidivism, 1998; and , OPPAGA, 2000) were not peer reviewed and two studies (National Institute of Justice – Well Kept, 1991; and, Arizona DOC, 1997) had Dr. Charles Thomas involved in the analysis. In fact, while Dr. Thomas was in the middle of his analysis of MTC’s Marana Facility (Arizona, DOC, 1997) he took an all-expense-paid week long trip to Hawaii to attend the MTC board meeting on MTC’s dime -- so much for serious academic study.

The industry has repeatedly assured the Commission that provision for liquidated damages, when there are contract breaches, protect the public and insure the efficacy of provided services. For instance, on November 2nd, CCA Vice President Rick Seiter testified (transcript, Page 408): “Second, private prisons are accountable to their public sector partners and government oversight agencies. Private correctional providers must meet requirements of very rigorous RFPs that are competitively bid, that are monitored for performance, and they may face liquidated damages for failure to perform. They must constantly meet the expectations or their contracts will not be (renewed).”

Chairman Katzenbach then asked (transcript pp. 451-2): “I want to know a little bit more about the contracts that you make. I want to know what's the length of those contracts, what are the provisions that allow the government to examine? Do they have access to all the documents, all the files? Do they have -- can they visit any time they want to? Can they send anybody they want to wherever they want, that sort of thing? You speak about liquidated damages. I have no idea whether they're large or small. I'm curious about that, and I'm curious as to whether they are to be achieved after litigation...”

Mr. Seiter avoided answering the specific questions put by the chair. In fact, aside from damages assessed in Florida, thanks to issues raised by PCI, and in Oklahoma, possibly the only state that effectively monitors the for-profit prison industry on its own initiative, these provisions for damages remain largely theoretical. We challenge the industry to provide evidence to the contrary, such as consistent damages assessed for deliberate chronic industry understaffing, failure to maintain properly qualified and screened personnel, public costs of responses to escapes, etc., rather than those extremely rare circumstances when damages are actually assessed.

Also, consider that the industry has been writing contracts for over 20 years. They have whole legal departments devoted to contract writing making sure that the vendor’s interests take precedent over

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the public's interest.

In July 2004, in Colorado, after legislative and public outcry following the second massive riot by out of state prisoners at the Crowley County facility, the state finally requested reimbursement for emergency services and materials. The total tab there, however, ran to almost \$700,000, but due to revenue collection limitations presented by the Taxpayer Bill of Rights (TABOR) the state could only collect \$305,000, which CCA quickly paid. In contrast, a riot of similar magnitude at Beattyville, Kentucky, just two months later, resulted in only a \$10,000 fine assessed by that state's Commissioner of Corrections who is a former CCA Vice President. No apparent efforts were made to assess the true costs of the intervention of county and state law enforcement and corrections personnel needed to contain the riot.

With regard to the quality and frequency of monitoring, it appears that states that ship prisoners all over the country to for-profit facilities pay little heed to any regularity, to making surprise visits, to close examination of contract provisions or to maintaining minimal professionalism. Our examination of these reports, for instance in the case of GRW's Brush women's prison in Colorado, revealed that neither Hawai'i nor Wyoming monitors spent more than two days at the prison in the first two months of 2005, when reports of smuggling by staff and of the rampant sexual abuse of inmates from all three states were being vigorously suppressed, and the reports gave no mention of the situation at all. Colorado has impeded our examination of its own reports from Brush and Crowley, thanks to the DOC exemption from the provisions of that state's Open Records Act, and suggested that it would charge us in the neighborhood of \$10,000 to obtain copies of reports that would likely be heavily redacted.

After long neglect and the deaths of two inmates, the state of Hawai'i sent auditors to an Arizona contract CCA facility only to be told that the institution could not guarantee the safety of female members of the audit team within the institution. The male auditors found that the institution was effectively in the control of the inmates.

In conclusion, the for-profit private corrections industry is interested in one and only one cause: profit. They understand that once a community has a private prison or jail, it is almost impossible to return it back to public control. Just take a look at the Bay County Jail and the Hernando County Jail (both in Florida). The companies also understand that oversight is the key to keeping them in line but that governmental agencies lack the personnel and/or the experience to do oversight well (Colorado's and Florida's experiences as outlined above are not isolated incidents). Then there's the question about the morality of incarceration for profit. The Catholic Bishops of the South may have said it best:

“To deprive other persons of their freedom, to restrict them from contact with other human beings, to use force against them up to and including deadly force,

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are the most serious of acts. To delegate such acts to institutions whose success depends on the amount of profit they generate is to invite abuse and abdicate our responsibility to care for our sisters and brothers.”

If the Private Corrections Institute can be of any other assistance to the Commission, please don't hesitate to contact us.

Sincerely,

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