Private Prison Problems

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Dramatic increases in incarceration rates (Donziger, 1996: 37; Austin *et al.*, 2001; Austin and Irwin, 2001; Ross and Richards, 2002, 2003) continue to send record numbers of Americans to prison. However, Selke (1993: xiii) suggests that the United States is approaching unsustainable levels of incarceration that are "beginning to outstrip our ability to pay". At the same time, as the result of deteriorating prison conditions and overcrowding 40 states were placed under federal court supervision (Lemov, 1993: 45). These prison systems were searching for a solution when the private corporations offered to "finance, construct, own, and operate prisons and jails" (Logan, 1990: 10; see also Logan and McGriff, 1989).

The private prison industry promotes itself as a means of solving the problems of overcrowding and escalating prison costs. Corporations claim overcrowding in state-owned prison systems may be reduced by transferring prisoners to privately operated facilities. Further, these companies assert they can build and operate prisons for less, saving government millions of dollars.

The private prison industry promotes its service as a means of saving the local, state and federal government money (Logan, 1990: 78; Thomas, 1994: 12-13; Brister, 1996: 319). However, recent studies, such as the *96-97 DC Annual Report* (Florida Department of Corrections, 1997) and the General Accounting Office's examination of five major state studies (U.S. GAO, 1996: 7) put the claim of cost reduction in serious question.

Coupled with the need to reduce overcrowding and costs, the private prison industry must meet the needs associated with operations. These include establishing staffing and the conditions of confinement. Private corporations claim they reduce the costs of operation by lowering expenditures on personnel and the day-to-day operation of facilities. This article discusses problems such as overcrowding, escalating costs, and the needs of operations as they relate to the claims of the private prison industry.

Modern Private Prison Corporations

The Corrections Corporation of America (CCA) was founded in 1983. CCA was financed by Massey Burch, a Tennessee venture capital company and the financial support for Kentucky Fried Chicken and Hospital Corporation of America (Press, 1990: 28: see also Corrections Corporation of America, http://www.prnewswire). The corporation was formed for the specific purpose of providing profit from punishment.

Chairman of the newly formed corporation was Thomas Beasley, the former Republican Tennessee state chairman (Press, 1990: 8). In addition, CCA's first major group of investors included such politically influential persons as former Governor Lamar Alexander's wife and Ned Mc Wherter, who at that time was the Democratic speaker of the House and the subsequent Governor of Tennessee (Press, 1990: 28).

In 1984, CCA offered to "privatize" the entire Tennessee prison system. The Tennessee legislature turned down the initial offer. However, CCA was then awarded a contract limited to operating the Hamilton County, Tennessee, Silverdale facility (Press, 1990: 28). From this first Silverdale contract, CCA has grown into the largest operator of private prisons in America.

In 1998, CCA purchased Kentucky based U.S. Corrections Corporation's (USCC). Like CCA, there appears to be some political influence in the creation of USCC. Prior to being awarded a $3.2 million contract to construct and operate the Marion Adjustment Center in St. Mary's, Kentucky, USCC had contributed $27,500 to the campaign of Governor Brereton Jones (Buck, 1994: 356). By 1995, USCC operated four private facilities in Kentucky.

Like CCA, another early entrant into the prisons for profit business was Esmor Corrections Corporation (Esmor). Esmor is important in establishing early qualifications for private prisons that were all but non-existent. It would have been difficult to find an enterprise with a worse history of contract non-compliance. Sullivan and Purdy in a *New York Times* article, "A Prison Empire: How it Grew," reported on the early history of the Esmor Corrections Corporation:

> In the 1980's, James Slattery and Morris Horn ran one of the most notorious welfare hotels in New York City, the filthy, crime-ridden and profitable Brooklyn Arms in Fort Greene. After the city closed the hotel in 1989, Mr. Slattery and Mr. Horn, with no experience in the prisons business bid to open a Federal halfway house (Sullivan and Purdy, 1995: 1).

Slattery and Horn operated welfare hotels and federal halfway houses in New York City. They later expanded Esmor operations to include U.S. Immigration and Naturalization Service (INS) detention facilities.

Esmor's operation of federal halfway houses was of the same low quality as that of their welfare hotels. Sullivan and Purdy (1995: 1) reported the federal government largely overlooked the company's record of problems detailed in inspection reports of its New York City halfway houses. These included low-paid and untrained employees, poor building conditions, rats, leaky plumbing, exposed electrical wires and other fire hazards.

Not only did Esmor have problems with the federal contracting authority, its dismal record of maintaining halfway house facilities alarmed the city administration and neighbors. William Banks, who was identified in a *New York Times* article as a "political operative," handled local problems. In 1993, Esmor paid him $222,000 in compensation for his services. Banks' compensation exceeded the salary and compensation of James Slattery ($197,633), Esmor's president and chief executive officer (Sullivan and Purdy, 1995:1). The difference in compensation between the corporation's "political operative" and chief executive officer suggests that political influence was more highly valued than management skill at Esmor.

As Esmor looked to expand into the private prisons market, Richard Staley, the former acting director of the INS central office in Washington, was hired as senior vice-president. Lilly and Knepper (1993: 158) referred to this as a revolving door practice, which is one of the identifiable characteristics of a "corrections-commercial complex." The "heads of private prison firms are often former government officials or corrections administrators who have left public service for private interest" (Lilly and Knepper, 1993: 158). Hiring Stanley appears to have enhanced Esmor's ability to acquire INS contracts.

State Concerns with Overcrowding Lead to Privatizing

Starting with these early contracts, private prisons have grown to be a multi-million dollar business in America. This growth is related to the need of state and federal agencies to reduce overcrowding in their facilities (Durham, 1989: 118; Logan, 1990: 9-10) while also delivering the same or similar levels of service at a reduced cost (Logan, 1990: 76; Knepper, 1995: 56).

Texas and Florida were among the most overcrowded prison systems and are now the largest contractors with private prisons (Hunzeker, 1991: 24; Thomas, 1996: 29). Today, Texas has 39 private prison facilities, representing 41 percent of the adult secure private facilities in America (Thomas, 1996: 30). These 39 facilities have a rated capacity of 23,008 prisoners (Thomas, 1996: 29). Florida is second to Texas as a market for private corrections with 11 facilities representing 9 percent of America's private facilities (Thomas, 1996: 30). Florida's convict population in private facilities is approximately 10 percent of the total private convict U.S. population (Thomas, 1996: 29). In other words, Texas's involvement in private corrections is four times greater than that of Florida in the number of facilities and prisoners (Thomas, 1995: 29-30).

In 1985, Florida began experimenting with private management contracts when CCA assumed the operation of the Bay County Jail. Prior to CCA's take over, Bay County was devoting 65 percent of its budget to the jail and was still in violation of state regulations regarding correctional facilities (Logan, 1990: 29). The contract with CCA appeared to offer a solution to these problems.

Florida facilitated the privatizing of prison and jail facilities by the enactment of Chapter 957 of the Florida Statutes in 1993, which provided for the creation of the Florida Correctional Privatization Commission (Thomas, 1994: 12). Then in 1994, Florida signed contracts for the operation of three new state facilities with CCA and Wackenhut Corrections Corporation (WCC), the second largest provider of private prisons (Thomas, 1995: vi).

Reducing Costs?

While one objective of privatization is to reduce overcrowding, a second and even more significant purpose is to reduce the costs of operation. Corporations claim to reduce cost through "economies of scale" (Logan, 1990: 84). The premise of economies of scale is that each incremental unit added to existing units does not increase total cost significantly. In other words, prisons have a very high fixed cost, defined as costs independent of the number of prisoners. If a facility's design capacity is capable of incarcerating 1000 convicts, the costs associated with confining 1100 convicts are not terribly different. This is especially true if the state pays the private company a fixed amount for each prisoner, and the private prison spends little per additional prisoner on services (e.g., food, uniforms, medical) and programs (e.g., educational, vocational, recreational).

Private companies suggest they can save the public money by using cell space more efficiently. In practice this means using them to beyond capacity by double celling, laying mattresses in corridors, and converting common areas into makeshift dormitories. This means a prison can overcrowd to produce more profit for private companies.

Exporting Prisoners For Private Profit

Contracting across jurisdictions has led to men and women sentenced in one state serving their time in another. Many states now export prisoners to private prisons in states thousands of miles away. This practice has become routine. For example, Missouri and Oklahoma ship prisoners to several facilities in Texas (Thomas, 1996: 3, 12). Hawaii sends prisoners to the Dickens County Correctional Facility in Spur, Texas, operated by the Bobby Ross Group (Thomas, 1996: 2). Virginia sends prisoners to the Newton County Correctional Facility in Newton County, Texas, also operated by the Bobby Ross Group (Thomas, 1996: 2). Alaska and Oregon send prisoners to the Central Arizona Detention Center in Florence, Arizona, operated by CCA (Thomas, 1996: 4).

Examples continue with an *ABC News Special Report* by David Phinney, “Have Prison, Will Travel”. In this report Susan Hart, spokesperson for CCA says, “The governmental customer is looking for one single thing and that is how to save money”. The report continues with how one state is looking to save money: “Looking for cheap labor, inexpensive land and obliging local officials to build your next prison? Try Mexico. Arizona is doing just that — considering plans to ship its convicts to a private prison across the border” (Phinney, 1998).

Corporations Documenting Cost Reductions

Private companies claim they can document reduced costs. Thomas asserts that the “most thorough documentation of cost savings comes from Florida” (Thomas, 1994: 12). However, his assertion is not supported by the findings of the Florida Department of Corrections (1997), the “Performance Audit of the Gadsden Correctional Institution, Office of Program Policy Analysis and Governmental Accountability (OPPAGA, 1996), or the “Review of Bay Correctional Facility and Moore Haven Correctional Facility” (OPPAGA, 1998).

Thomas’ assertion is directly contradicted in data from the Florida Department of Corrections (FDC). The FDC reported that the average “per inmate day costs” for private prisons ranged from $48.04 to $49.16, while the average per inmate day costs of all state operated male institutions was $43.14 (see Figure 1). The adjusted per inmate day costs of Bay Correction (private CCA prison) Institution and Moore Haven Correctional Institution (private WCC prison) were compared to the adjusted average per inmate day cost of public facilities.

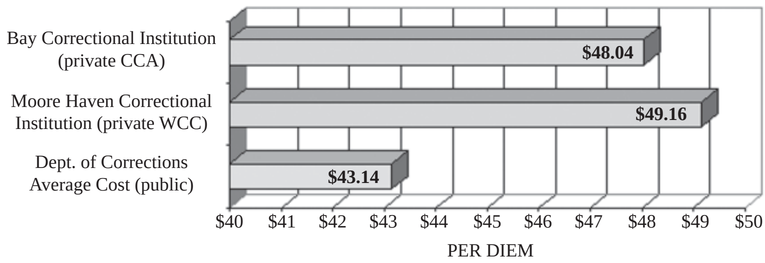

Figure 1. Comparing the cost of public and private male facilities in the state of Florida, fiscal year 1996-1997. (Data from Florida Department of Corrections. *Comparing the Cost of Private Correctional Institutions to State-Operated Institutions Fiscal Year 1996-97.* Exhibit I. Tallahassee, Florida.)

Additionally, the "1996 Gadsden Correctional Institution Report," also fails to support Thomas' assertion. This report found that costs for the private female prison facility were 6 percent higher than for the most comparable state facility, Jefferson Correctional Institution (OPPAGA, 1996: 4). The comparison made in the report between the private facility and the public facility produced a per diem rate of $50.37 for the USCC operated Gadsden Correctional Institution, which was $1.78 per inmate day higher than the $48.59 rate for the state operated Jefferson Correctional Institution (see Figure 2).

The latest comprehensive study out of Florida is by OPPAGA. This study revisited the private facilities, Bay Correctional Institution and Moore Haven Correctional Institution, while introducing Lawtey Correctional Institution as a comparable state-operated facilities (see Figure 3).

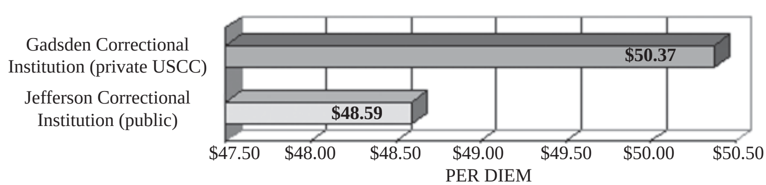

Figure 2. Comparing the cost of public and private female facilities in the state of Florida, fiscal year 1996-1997. (Data from Florida Department of Corrections. *Comparing the Cost of Private Correctional Institutions to State-Operated Institutions Fiscal Year 1996-97*. Exhibit I. Tallahassee, Florida.)

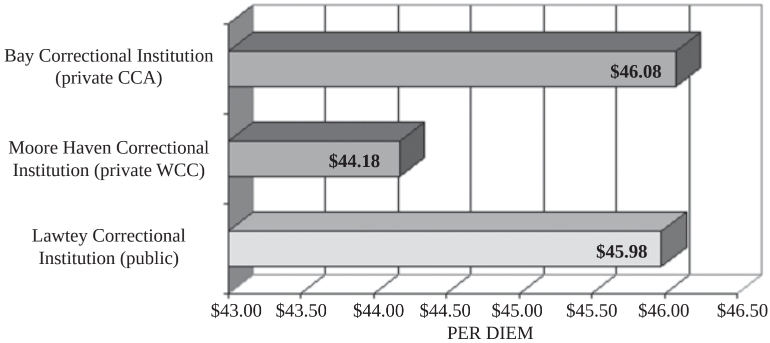

Figure 3. Comparing the cost of two private and one public male prison facilities in the state of Florida, fiscal year 1996-1997. (Data from Office of Program Policy Analysis and Governmental Accountability, April 1998. *Review of Bay Correctional Facility and Moore Haven Correctional Facility. Report No. 97-68.* Exhibit 4. Tallahassee, Florida.)

The report, although narrowing the gap between per diem costs of public and private facilities concluded that the "cost of operating private prisons did not meet the expected level of savings for the 1996-97 fiscal year" (OPPAGA, 1998: 9). Analysis included in the Florida Department of Correction's annual report was even less encouraging and found that the "two minimum/medium custody male units (Bay and Moore Haven Correctional Institutions) cost significantly more to operate (10 percent for Bay and 12 percent for Moore Haven) than the average operating cost of a group of similar state-operated facilities" (Florida Department of Corrections, 1997). In other words, the Florida studies show that public prisons are cheaper to operate than private prisons.

In 1996, the U. S. General Accounting Office (U. S. GAO) completed an examination of five major studies comparing the cost of public and private prisons from Texas (1991), New Mexico (1991), California (1994), Tennessee (1995) and Washington (1996). The report concluded "the studies reported little difference and/or mixed results in comparing private and public facilities" (U. S. GAO, 1996: 7). So, existing research continues to suggest that the cost savings claims made by the private prison industry and their proponents are often unrealized.

Staffing

Adequate staffing levels are essential to the day-to-day operation of prisons. A study conducted by the Office of Program Policy Analysis and Government Accountability of the Gadsden Correction Institution (1996), operated by USCC, reported that over a ten-month period, 424 different individuals held 223 total positions (p. 3). This suggests that the average length of employment for prison personnel was less than five months.

Another study addressing appropriate personnel levels at the Monroe County Jail indicates that extreme differences of opinion exist about adequate staffing between contracting authorities (Monroe County) and contractors (WCC). Florida standards require one correctional officer for every eight prisoners, but WCC was operating the Monroe County Jail with one officer for every thirty prisoners (Hanson, 1996: 10). The contract was canceled approximately 12 months after it started when "Sheriff's deputies led by their SWAT team and backed up by local and state law enforcement officers reasserted control" (Hanson, 1996: 1).

Esmor's operation of the Elizabeth Detention Center in New Jersey provides still another example of inadequate staffing. Sullivan and Purdy reported in the *New York Times* article, "A Prison Empire: How it Grew":

> The jail was so understaffed that guards were forced to work back-to-back eight-hour shifts. The night of the uprising, 9 of 13 guards were working a second consecutive shift, and when the disturbance broke out employees adopted an every-person-for-himself mentality and fled the facility (Sullivan and Purdy, 1995: 2).

The lack of enforcement of contract provisions by the Immigration and Naturalization Service (INS) directly contributed to the detainee riot at the Elizabeth Detention Center. Staffing was a problem at the facility, but the INS is not blameless in this incident. INS maintained a monitoring representative at the facility who simply failed to act.

Comments by Carl Frick, the first warden of the Esmor facility at Elizabeth, provide some insight into the corporate pressure to reduce staffing costs. Frick's assessment of the problems at Elizabeth was that Esmor executives "don't want to run a jail. They want to run a motel as cheaply as possible. Money, money, money. That's all that was important to them" (Sullivan and Purdy, 1995: 2).

Incidents such as the staffing turnover rate at the USCC operated Gadsden Correctional Institution, understaffing at the WCC operated

Monroe County Jail and excessive use of double shift staffing at the Esmor operated Elizabeth Detention Center suggest that private prison operators tend to reduce staffing, sometimes to dangerously low levels, in an effort to increase profits. This practice may lead to dangerous conditions of confinement for both prisoners and prison staff.

Conditions of Confinement

The continual pressure to reduce staffing also affects the conditions of confinement regarding decency (Walzer, 1991: 172) and safety (Immigration Center, 1995). The INS Houston detention center is an example of the primacy of cost savings over humane conditions of confinement. According to Brister (1996) the "350-bed illegal alien detention center constructed in Texas in 1984" (p. 319) demonstrates the ability of private prisons to reduce costs.

Brister maintains "private contractors have reduced labor costs by eliminating unnecessary overtime and reducing employee benefits — typically over inflated sick leave and retirement benefits paid to unionized government workers" (Brister, 1996: 319). However, Walzer suggests cost reduction is achieved by substandard housing:

> The institution demonstrated what are possibly the worst conditions we have ever witnessed in terms of inmate care and supervision. The inmates were contained in large dormitories each containing between 50 and 60 beds with no privacy whatsoever, no lockers, no screening around toilets or showers which were open to view by both male and female staff. Inmates dined in these dormitories (Walzer, 1991: 172).

Donna Hunzeker noted that the Texas Sunset Advisory Commission (1991) discovered a special master's report on compliance. Hunzeker (1991: 25) states, "that a special master's report on compliance with court-ordered standards found deficiencies in education and training programs at the privately operated facilities". This contradicts assertions that privately operated facilities "meet all recognized standards and court orders" (Brister, 1996: 319). John Gilbert, who oversees the facilities of the Texas Department of Criminal Justice, also acknowledged the deficiencies and expressed the opinion that "the programs do not measure up to the programs we offer" (Hunzeker, 1991: 25).

The lack of enforcement of contract provisions by the contracting jurisdictions has resulted in some unfortunate incidents. The riot at the Elizabeth Detention Center was just such an incident (Sullivan and Purdy, 1995: 2). Alien detainees had filed numerous complaints, ranging from guards robbing prisoners to denial of basic necessities (Immigration Center, 1995). After the riot, an "Assessment Team found numerous contract deficiencies and made recommendations in nineteen areas specifically addressing the Esmor contract" (Florida Corrections Commission, 1996).

Nevertheless, the subsequent investigation of the operating practices and conditions of confinement that caused the riot at Elizabeth did not result in the termination of Esmor's contract. Instead, the contract was transferred from Esmor to CCA through a process identified as "novation" (Florida Corrections Commission, 1996). Novation is defined as a process where a new party, in this case CCA, is substituted for the original party, Esmor, under the same terms and conditions as those of the original contract. Novation requires the agreement of all parties, which in this case includes CCA, Esmor and INS.

The evidence suggests that private prisons value profits over providing decent and safe living environments for prisoners. As of 2002, private corporations have only managed jails, immigration detention facilities, minimum-security, and a few medium-security prisons. In effect, the companies have "creamed the top" of the prisoner population, building and managing new facilities that house "easy" short-time prisoners. Still, there are few favorable reports on conditions of confinement (Mobley and Geis, 2000; Ross and Richards, 2002, 2003). In fact, private prison managers have lost control of a number of facilities, resulting in injury to prisoners and staff. Just imagine what a bloody mess there would be if the corporate profiteers ever managed to persuade government to let them operate a "mainline" maximum-security penitentiary.

Conclusion

The private prison industry cultivated political connections by placing former key political figures on boards of directors, through stockholders with political connections, making key campaign contributions and by employing individuals as "political operatives". Corporations claim they can save the public money by reducing overcrowding and costs in the public prison systems. Our discussion disputes these claims and suggests that privatization of prisons may lead to higher costs and dangerous conditions of confinement.

References

Austin, J., and M. A. Bruce, L. Carroll, P. L. Mc Call, S. C. Richards. (2001). "The Use of Incarceration in the United States." American Society of Criminology National Policy Committee. *Critical Criminology: An International Journal*, 10, 1: 17-41.

Austin, J., and J. Irwin. (2001). *It's About Time: America's Imprisonment Binge*. Belmont, CA: Wadsworth.

Brister, R. C. (1996). "Changing of the Guard: A Case for Privatization of Texas Prisons." *The Prison Journal, 76:* 310-330.

Buck, P. D. (1994). "Arbeit Macht Frei": Racism and Bound, Concentrated Labor in U.S. Prisons." *Urban Anthropology and Studies of Cultural Systems and World Economic Development*, 23: 331-372.

Corrections Corporation of American. (1998). *Corrections Corporation of America and CCA Prison Realty Trust.* Retrieved March 17, 1999. Available: http://www.prnewswire.

Donziger S. R. (11 September 1996). *The Real War on Crime: The Report of the National Criminal Justice*. "A Refugee Escapes from Togo, Body Intact, But Family Torn." *New York Times*, Sept., p. A1.

Durham, A. M. III. (1989). "Origins of Interest in the Privatization of Punishment: The 19th and 20th Century American Experience." *Criminology, 27*: 107-139.

Florida Corrections Commission. (1996). *1996 Annual Report*. Retrieved June 23, 1998. Available: http://www.dos.state.fl.

Florida Department of Corrections. (1997). *1996-97 DC Annual Report: The On-Line Guidebook to Corrections in Florida.* Retrieved June 23, 1998. Available: http://www.dc.state.fl.

Hanson, R. A. (1996). "The Failure of Privatization in the Monroe County Jail: An Exception or the Rule?" Paper presented at the Midwest Criminal Justice Association Meeting. Indianapolis, IN.

Hunzeker, D. (1991). "Private Cells, Public Prisoners." *State Legislatures, 17*: 24-27. Immigration Centre. (22 July1995). *The Kansas City Star,* p. A10.

Knepper, P. (1995). "The Kentucky Penitentiary at Frankfort and the Origins of America's First Convict Lease." *The Filson Club Quarterly,* 69: 41-66.

Lemov, P. (1993). "Jailhouse, Inc." *Governing, 5,* 44-48.

Lilly, J. R., and P. Knepper. (1993). "The Corrections-Commercial Complex." *Crime and Delinquency,* 39: 150-166.

Logan, C. H., and B. W. McGriff. (1989). "Comparing Costs of Public and Private Prisons: A Case Study." (NCJ 119964). Washington, DC: U.S. Department of Justice.

Logan, C. H. (1990). *Private Prisons Cons and Pros.* New York: Oxford University Press.

Mobley, A., and G. Geis. (2000). "The Corrections Corporation of America AKA the Prison Realty Trust." In M. Gilbert and D. Shichor (Eds.), *Privatization in Criminal Justice: Past, Present and Future.* (pp. 202 – 226), Cincinnati, OH: Anderson.

Office of Program Policy Analysis and Government Accountability. (1996). "Performance Audit of the Gadsden Correctional Institution." Tallahassee, FL: Office of Program Policy Analysis and Government Accountability.

Office of Program Policy Analysis and Government Accountability [OPPAGA]. (1998). "Review of Bay Correctional Facility and Moore Haven Correctional Facility." Tallahassee, FL: Office of Program Policy Analysis and Government Accountability.

Phinney, D. (1998). "Have Prison, Will Travel." *ABC News Special Report*. Retrieved June 9, 1998. Available: http://www.abcnews.

Press, A. (1990). "The Good, The Bad, and the Ugly: Private Prisons in the 1980s." In D. C. McDonald (Ed.). *Private Prisons and the Public Interest.* (pp. 19 – 41) London: Rutgers University Press.

Ross, J. I., and S. C. Richards. (2002). *Behind Bars: Surviving Prison*. New York: Alpha.

Ross, J. I., and S. C. Richards. (2003). *Convict Criminology*. Belmont, *CA:* Wadsworth.

Selke, W. L. (1993). *Prisons In Crisis*. Indianapolis, IA: Indiana University Press.

Sullivan, J. and M. Purdy (1995). "A Prison Empire: How it Grew." *New York Times*, July 23, Special Supplement.

Texas Sunset Advisory Commission. (1991). "Contracts for Correctional Facilities and Services (staff report)." Austin, TX: Texas Sunset Advisory Commission.

Thomas, C. W. (1994). *The Transformation of Correctional Privatization: From A Novel Experiment Into A Proven Alternative.* Gainesville, Fl: University of Florida, Center for Studies in Criminology and Law.

Thomas, C. W. (1995). *Private Adult Correctional Facility Census* (8th ed.). Gainesville, Florida: University of Florida, Center for Studies in Criminology and Law, Private Corrections Project.

Thomas, C. W. (1996). *Private Adult Correctional Facility Census* (9th ed.). Gainesville, Fl: University of Florida, Center for Studies in Criminology and Law, Private Corrections Project.

U.S. General Accounting Office (1996). *Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Services.* Washington, DC: U. S. Government Printing Office.

Walzer, M. (1991). "Private Prisons are Unjust." In S. L. Tipp (Ed.), *America's Prisons Opposing Viewpoints*. (pp. 168 – 173) San Diego, CA: Greenhaven.

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