

more comparable facilities operated by public agencies. See, e.g., Urban Institute 1989; Logan 1992; Bowery 1994; Tennessee Select Oversight Committee on Corrections 1995; Bowery 1996.

16 Readers would be prudent to consider this statement carefully. A huge body of systematic research, which has accumulated over a period of more than a century, is far more critical of the quality of services provided by public correctional agencies than it is of the cost associated with those services: it is not that those in corrections have been subjected to harsh criticism because of how much they have spent but because one sees so little being achieved via whatever expenditures the public has tolerated. Much the same is true of research in a host of other areas within which public agencies have been the primary or exclusive service providers (e.g., public schools). Especially in the United States, however, the outcome of debates about correctional privatization too often has been determined by little more or less than whether contracting-out would yield significant cost savings. I cannot identify a single contract award in the United States that was made because a public agency was willing to tolerate some increase in service-delivery costs in return for improvements in the quality of the services, though I can identify many contract awards by decision-makers who were at least intelligent enough to avoid selecting firms that were otherwise qualified but submitted the lowest cost proposals. This is exceedingly troublesome: it is never prudent for decision-makers to become so preoccupied with cost-savings per se that they are blinded to the effectiveness of the services they purchase. There simply is no equivalence between cheap and cost-effective. Any private management firm that panders to those in government who deem cheapest to be best will learn in the long term that they have served neither the public interest nor the interest of their shareholders.

17 This generally reflects the manner in which government accounts for its expenditures rather than intentional distortions by public agencies. In correctional institutions, for example, operating costs per prisoner per day are commonly computed by dividing the funds budgeted to a facility by the average daily population of that facility and then dividing the result by 365 to produce a cost per prisoner per day. This approach fails to take into account the significant costs associated with the operation of the administrative offices of those agencies and various other costs (e.g., land acquisition costs, construction costs, major maintenance costs, etc.). It also ignores altogether the fact that correctional agencies generally benefit from the expenditures of other public agencies for a broad array of services (e.g., procurement, insurance, data processing, legal services,

the operation of employee retirement systems, etc.). Thus, when one examines per-prisoner, per-day costs of the type that are reported by most correctional agencies, one sees only the tip of the fiscal iceberg and one lacks a meaningful ability to determine what proportion of total costs to taxpayers remains unknown. See, e.g., McDonald 1989.

18 This does not mean that estimates of the cost of privately managed facilities are exemplars of accounting sophistication. The tendency is to assume that those costs can be established precisely by simply examining the amounts that have been paid to independent contractors during the time periods under consideration. This assumption is invalid. There are always costs associated with privately managed facilities that are not reflected by payments to the independent contractors (e.g., public-agency administrative costs associated with procurement, contract development, and contract compliance monitoring). Although such costs are surely substantially less than the hidden costs that escape counting in virtually all estimates of public agency costs, they are real and should be taken into account carefully.

19 Common illustrations of this would be in such areas as insurance requirements and requirements for accreditation (e.g., the American Correctional Association and the National Commission on Correctional Health Care).

20 It should be noted that this problem can be caused by a host of factors other than the higher performance-standards statutes and/or contracts imposed on private management firms. In New Mexico, for example, the only state prison that houses sentenced female offenders is operated by the Corrections Corporation of America. Consequently, there is at least no in-state public prison for women with which one could directly compare the cost or quality of the services the Corrections Corporation of America is providing.

21 Illustrations of this are provided by a Texas statute that precludes contract awards absent an assurance of operating cost savings of at least 10 percent and a Florida statute that precludes contract awards absent an assurance of at least a 7 percent cost savings.

22 It does not necessarily follow that the retirement package private firms make available to their employees will yield a less advantageous set of actual retirement benefits. For example, the appeal of qualified employee stock ownership plans (ESOPs) within the private corrections industry is growing. To be sure, the number of dollars flowing toward an ESOP in a given year is almost certain to be smaller than the number of dollars flowing toward a government retirement trust fund for an equivalent employee during the same year. However, the success of the firms that elect ESOP-based retirement

programs for their employees might well yield such an appreciation on the value of the shares held for those employees that the financial value of the private employees' retirement package could be greater than the financial value of defined benefit retirement plans public employees have come to expect.

- 23 See, e.g., Logan and McGriff 1989; The Urban Institute 1989; Sellers 1989; Albright and Harchas 1990; McDonald 1990b; Crants 1991; General Accounting Office 1991; Texas Sunset Advisory Commission 1991; Brown 1994; Tennessee Select Oversight Committee on Corrections 1995; Loux 1996: 5-13; State of Washington Legislative Budget Committee 1996; Her Majesty's Prison Service 1996; Wilson, this volume.
- 24 An often-ignored illustration of the factors that influence cost savings is simply the costs that government was willing to tolerate prior to contracting decisions. All other things being equal, the higher the costs paid by government prior to contracting, the greater will be the cost savings realized by contracting. For example, Crants 1991: 57, reports that Santa Fe County, New Mexico was paying a relatively high US\$75.00 per prisoner per day prior to awarding a management contract to the Corrections Corporation of America in 1986 that provided for a per diem payment of US\$44.50 and thus yielding an estimated operating cost savings of 40.7 percent. Sel-don, if ever, does one see evidence of savings of this magnitude being achieved by jurisdictions whose pre-existing costs were more in line with relevant regional averages.
- 25 See, for a further explanation of this point, Logan 1989.
- 26 Texas Sunset Advisory Commission 1991. It is worth noting that there is evidence that suggests that the cost advantage of the private facilities in Texas is persisting. A recent report released by the Texas Criminal Justice Policy Council as is required by applicable Texas statutes estimates the average cost per prisoner per day in Texas to have been US\$44.40 during fiscal year 1994 versus an estimated private facility cost per prisoner per day of \$35.25 (Texas Criminal Justice Policy Council 1995).
- 27 In large part on the strength of this cost analysis, the Texas Department of Criminal Justice subsequently awarded multiple additional contracts for the private design, construction, and management of state prisons. See, for additional details, Thomas and Bolinger 1996.
- 28 A portion of the difference in cost for each facility between the first and second years is caused by a difference in the means of allocating central office overhead costs. However, even if one focuses exclusively on facility costs and ignores the troublesome task of estimating off-budget costs, the cost comparison still favours the private facility.

- 29 The author has served as a consultant to the Florida Correctional Privatization Commission since 1993 and the information provided in the text was derived from his reviews of Commission files and interviews with the executive director of the Commission. All of the information, however, is a matter of public record pursuant to applicable provisions of Florida law.
- 30 One of the dimensions of the initiative involved contracting out for prisoner transportation services. Although this aspect of privatization is beyond the scope of this analysis, it is worth noting that the task of transporting prisoners to and from court has now been contracted out in 7 of the nation's 8 escort areas, that Prison Service estimates of resulting cost savings are substantial, and that research evidence reveals high levels of satisfaction with contract arrangements on the part of the police, courts, and Prison Service staff. See Wilson, this volume.
- 31 Two of the 4 facilities now in operation are managed by Group 4 Prison and Court Services, Ltd., one is managed by Premier Prison Services, Ltd. (a joint venture company that involves the Wackenhut Corrections Corporation), and one is managed by U.K. Detention Services, Ltd. (a joint venture company that involves the Corrections Corporation of America). One of the two facilities not yet in operation will be managed by Group 4 Prison and Court Services, Ltd.; the other facility not yet in operation will be managed by Securitor.
- 32 It should be noted that not all procurement efforts in the United Kingdom have resulted in private firms receiving contract awards. At least two of these efforts authorized public employee groups to submit competitive proposals. At the close of one of these procurements, which was for the Manchester Prison, the employee proposal was selected. The other, which was for the Buckley Hall Prison, concluded with a contract award to Group 4 Prison and Court Services, Ltd.
- 33 Although the focus of this analysis does not include possible cost savings associated with the design and construction of new correctional facilities, it is worth noting that reported cost savings in that area quite routinely fall in the range of 15 percent to 25 percent.
- 34 This is perhaps too polite a description of their practice. Some privatization critics prefer, in effect, to kill the messenger by rejecting favourable research reports on technical grounds they ignore altogether when commenting on findings with which they concur. Equally often, they try to step away from the evidence by contending that positive evidence from whatever facilities or systems have been the object of research cannot possibly have any applicability to the facilities or systems whose efforts to avoid privatization they are seeking to support. The obviousness of the double standard does

little to establish the intellectual integrity of those who adopt it. Naturally, of course, any efforts by privatization proponents to ignore contracting failures or to emphasize atypically impressive success stories should be ignored.

35 This fact warrants at least some passing emphasis. Competition for facility management contract awards is nothing if not intense. If government plays its role competently—that is, if government places balanced emphasis on both the cost and the quality of correctional services and thereby precludes the success of “low-ball” bids—then the competition between the firms that comprise the private corrections industry will do much to undermine the viability of underperforming firms that are in, or that attempt to enter, the industry. Efforts to achieve this judicious balance presents government with some of the most challenging problems it confronts as a purchaser. First, if obtaining the best possible goods or services at the lowest possible cost is what allows government to become a “smart buyer” and government wishes to achieve that status, then government seeks a status it cannot achieve in the absence of fair competition between alternative suppliers. This invites the inclusion of less than demanding requirements in procurement documents regarding corporate qualifications, credentials, and financial strength and creates the possibility that inexperienced, undercapitalized firms will receive contracts. If, however, this potential problem is avoided, then other problems can easily surface. All other things being equal, the growth achieved by successful competitors tends to allow a progressively smaller number of competitors to achieve such superior positions that true competition between alternative providers becomes less and less possible. The resulting monopoly or oligopoly can thoroughly undermine the movement of government toward smart-buyer status. Thus, it seems self-evident that the key to becoming a smart buyer in the field of corrections is in the formulation of sophisticated requests for proposals and equally sophisticated methods for evaluating submissions by competing firms. Contrary views notwithstanding, the hard reality is that there is no language one can inject into contracts, or techniques one can incorporate into contract monitoring strategies that can compensate for poorly crafted procurement documents or weak evaluations of submissions. See, for a more general discussion of these issues, Kettl 1993.

36 This does not mean that no private facilities are operating under court orders or consent decrees that are applicable to the correctional systems of which they are a part. It does mean that I have found no evidence of a private firm having entered into a consent decree or being placed under a court order as a consequence of a finding of unconstitutional jail or prison conditions in a facility for which it was responsible.

37 This statement is perhaps a bit too kind to the private corrections management firms. As was indicated much earlier in this analysis, accreditation by the American Correctional Association and sometimes other accrediting bodies is often required by statute, by contract terms and conditions, or by both. On the other side of the ledger, it is also true that some management firms are operating facilities in jurisdictions whose public corrections agencies are far from enthusiastic about accreditation. Some of those agencies recommend against any effort to obtain accreditation.

38 Levinson 1985; Hackett, Hatry, Levinson, Allen, Chi, and Feigenbaum 1987; Brakel 1988; Sellers 1989; The Urban Institute 1989; McDonald 1990a; Logan 1992; Wynder 1993; Brown 1994; Macionis 1994; Bottomley, James, Clare, and Liebling 1996; Her Majesty's Prison Service 1996; and Wilson, this volume.

39 Tennessee Select Oversight Committee on Corrections 1995. Importantly, all three facilities had very high overall evaluation scores and the difference between the highest and lowest rated facility was only 1.32 points. This indication of sound performance at all three facilities is supported by the accreditation scores each received during the audit conducted by the American Correctional Association. Although there, too, the private facility had the highest score (99.29), both public facilities received very high marks (98.78 and 98.88).

40 The Correctional Privatization Commission was created during a special legislative session in mid-1993. Consisting of a five-member Commission (none of whom receive any compensation for their efforts) and a paid staff of five (two of whom are full-time contract compliance monitors), the Commission has contracted for the design, financing, construction, and operation of four state prisons: a 750-bed, medium-security prison now being operated by the Corrections Corporation of America; a 750-bed, medium-security prison now being operated by the Wackenhut Corrections Corporation; a 350-bed, medium-security prison now under construction that will be operated by the Corrections Corporation of America and is scheduled to receive its first prisoners in early January of 1997 and a 1,318-bed medium-to-close-custody prison that will be operated by the Wackenhut Corrections Corporation and is scheduled to receive its first prisoners in early February of 1997.

41 The best information available to me is that Illinois is the only state in the United States which has enacted legislation that prohibits the privatization of its local jails and state prisons. However, a bill that would have similar consequences is now being considered by New York.



## Appendix 1

### Table showing growth of privatization industry and estimates of market share for July 10, 1996

Management Firm	Capacity of facilities under contract within United States	Capacity of facilities under contract outside United States
<i>Alternative Programs, Inc.</i>	240	
<i>The Bobby Ross Group</i>	1,832	
<i>Capital Correctional Resources</i>	1,056	
<i>Cornell Corrections, Inc.</i>	1,328	
<i>Corrections Corporation of America</i>	34,157	1,479
<i>Correctional Systems</i>	30	
<i>Dove Development Corporation</i>	1,002	
<i>Esmor Correctional Services, Inc.</i>	1,270	
<i>Fenton Security, Inc.</i>	228	
<i>Group 4 Prison &amp; Court Services, Ltd.</i>		1,395
<i>The GRW Corporation</i>	100	
<i>Management &amp; Training Corporation</i>	3,489	
<i>Mid-Tex Detention, Inc.</i>	1,207	
<i>RECOR</i>	344	
<i>Securitor</i>		800
<i>US Corrections Corporation</i>	4,818	
<i>Wackenhut Corrections Corporation</i>	19,029	2,628
<b>Totals</b>	<b>70,130</b>	<b>6,302</b>

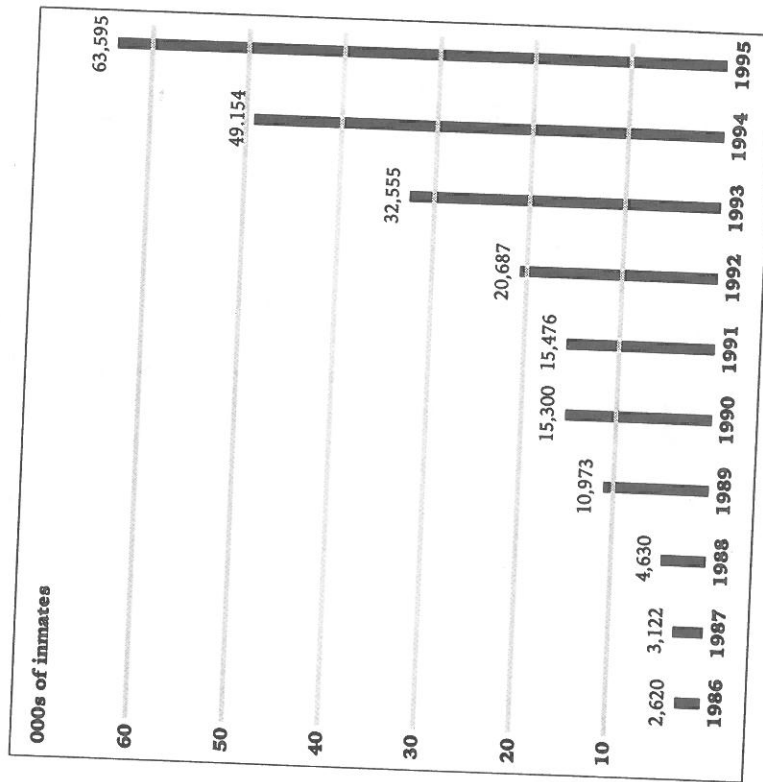
Note: Statistics for capacity include facilities under construction and contracts being negotiated as well as finalized contracts. The decrease in overall capacity for Esmor Correctional Services, Inc. is caused by conversion of facilities earlier classified as adult into juvenile facilities.

### estimates of market share for July 10, 1996

Total capacity of facilities under contract	Overall change in contract capacity since Dec. 31, 1995	Market share based on contracts within United States	Market share based on contracts outside United States	International share
240		0.34%		0.31%
1,832		2.61%		2.40%
1,056		1.51%		1.38%
1,328		1.89%		1.74%
35,636	16.42%	48.71%	23.47%	46.62%
30		0.04%		0.04%
1,002		1.43%		1.31%
1,270	-35.53%	1.81%		1.66%
228		0.33%		0.30%
1,395			22.14%	1.83%
100		0.14%		0.13%
3,489		4.98%		4.56%
1,207		1.72%		1.58%
344		0.49%		0.45%
800			12.69%	1.05%
4,818	3.43%	6.87%		6.30%
21,657	38.32%	27.13%	41.70%	28.33%
76,432	20.19%	100.00%	100.00%	100.00%

## Appendix 2

Graph showing 10-year growth in rated capacity of secure, adult, private correctional facilities. Figures are based upon year-end estimates of capacity and include facilities under construction as well as planned expansions.



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