Entrepreneurial Corrections: Incarceration As A Business Opportunity

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The two billion-dollar private prison industry was launched in the mid-1980s after a decade of "get tough" sentencing reforms had swelled prison overcrowding to crisis proportions in the U.S. The extraordinary rise in incarceration created opportunities for privatization. As soon as a few fledgling private prison companies were able to get a foothold in the burgeoning prison system, they began to spend millions to promote its growth. Claims that the private sector could deliver better prison services at a cheaper price sounded good to a public that was cynical about government and eager to buy quick-fix solutions. For many politicians, privatization was good politics, offering an opportunity to look tough on crime and fiscally conservative at the same time.

Private financing offered prison construction on the installment plan – avoiding bond measures that might require approval by voters, and making end runs around public debt limits. Private construction could cut the red tape entailed in the public procurement process and speed the time to completion. These arguments for privatization were bolstered with generous campaign contributions and political emoluments delivered by squadrons of well-heeled lobbyists.

From 1991 to 1998 the annual growth in private adult prison beds averaged 36 percent per year. The number of private prison beds in the U.S. as of 2001 was reported to be in the neighborhood of 119,000 but not all of these are in use.[1] The U.S. Bureau of Justice Statistics (BJS) reports that in December 2000 there were 87,369 state and federal prisoners in private prison beds. About 6200 of the 37,000 detainees held by the U.S. Marshals Service (USMS) were housed in private facilities, as were about 3,000 of the approximately 20,000 immigrants detained by the Immigration and Naturalization Service (INS). BJS data show that at the end of June, 1999, there were 13,814 inmates in 47 privately operated jails, but that number includes some portion of the INS and USMS detainees along with local prisoners.

Early Development: The Private Prison Boom

The economic downturn in the late 1970s provided an opportunity for ideologues at conservative think tanks such as the Heritage Foundation in Washington, D.C. and the

[1] Thomas, Charles. "Private Adult Correctional Facility Census." Gainsville, FL: Private Corrections Project http://web.crim.ufl.edu/pcp/ September 4, 2001.

Reason Foundation in California to push for privatization of government services. A handful of small facilities for juveniles began operation on a private, for-profit basis in the late 1970s. But incarceration of adults in private prisons was not attempted until after the Reagan administration's broad privatization initiative was launched.

When Ronald Reagan was elected President in 1980 proponents of prison privatization gained the leverage necessary to bring their ideas to fruition. The Reagan administration quickly identified 11,000 governmental activities that could be privatized. Administration officials encouraged both the US Marshals Service and the INS to contract for privately-operated detention beds. Behavioral Systems won a contract to house INS detainees in 1983. The Corrections Corporation of America (CCA) commenced operation of its first contract facility in 1984, opening a 350-bed INS detention center in Houston, Texas.

The first contract to operate a state prison for adult prisoners was won in 1985 by U.S. Corrections Corporation. The firm opened a minimum-security 200-bed facility in St. Mary, Kentucky. By 1988 some 28 states were said to allow private operation of non-secure or minimum security correctional facilities -- from halfway houses and juvenile group homes, to detention centers for undocumented immigrants and prisons.

Hailed by Wall Street brokerage houses like Donaldson, Lufkin and Jenrette as an exciting new industrial prospect, enthusiasm for prison privatization in financial circles was spurred by the already booming business of prison expansion – the private construction firms that were raking in hundreds of millions – and fueled by the investment bankers who were underwriting prison bond sales and the investors who were making a fortune in tax-free bond yields.

From the beginning, private prisons were sold as a prison reform panacea. The antiquated U.S. prison system was plagued from coast to coast with overcrowding and sub-standard conditions. The start-up companies were barely inaugurated when their executives were making flamboyant claims and igniting a glowing response from the national media. The *Wall Street Journal* enthused about how private prisons could take the toughest "high risk" prisoners off the hands of beleaguered public prison managers. They envisioned the industry specializing in handling high-cost populations like prisoners suffering with AIDS.

Ted Nissen, the founder of Behavioral Systems claimed that innovative programming would allow maximum-security prisoners to be housed in less expensive medium-security facilities. The former San Quentin guard and self-styled prison reformer invited contracts that would require dramatic reductions in recidivism. Before he secured a single correctional contract, Wackenhut Correction's CEO, George Zoley, pledged that his company would *never* tolerate inordinate turnover, improper treatment of prisoners, or bad food.[2]

[2] Fixler, Philip E. "Behind Bars We Find an Enterprise Zone." *The Wall Street Journal.* November 29, 1984.

CCA enjoyed strong financial backing from top Wall Street investment houses from the start. In 1985 the fledgling corporation held just a handful of small contracts – none for prison operations – when the company's founders made an audacious bid to take over and run the entire Tennessee state prison system. Top executives made an offer of $100 million in cash and notes in exchange for a 99-year lease of the prison facilities. When CCA's President Tom Beasley sat down with Governor Lamar Alexander and the state's legislative leadership to present "the best corrections plan ever written," he brought along a Merrill Lynch official to explain how the money – along with another $150 million for capital improvements -- would be financed with help from Merrill Lynch Capital Markets and Prudential-Bache.[3]

Beasley promised that CCA management would provide improvements across the board. Prisons would be built faster and cheaper. Prison management would cost less. Prison guards would earn higher pay. Prisoners would get better living conditions and improved program services, and all who were "able-bodied" would work or study 40 hours a week. With the private financing CCA would bring to the table, legislators could avoid voting a tax increase. Within five years, CCA would be realizing a comfortable profit margin and Tennessee's prisons would be the best in the nation.[4]

CCA's bid to take over the entire state prison system won support from the Governor (whose wife had been a stockholder at the firm's start-up) but the scheme sparked immediate criticism in other quarters. Michael Cody, the Tennessee Attorney General, expressed misgivings about delegating such a wide span of state authority to a private contractor, pointing out that the state would lack leverage in bargaining with the company because it would lose the capacity to take the system back under public management if privatization failed to work as promised. Most legislators were not prepared to turn over the state's annual prison operating budget of $170 million to a private company without a substantial track record. CCA had to wait another six years before they finally secured a contract to run a single state prison in Tennessee.

But privatization of prisons caught on fast elsewhere. A 1988 'guide to privatization' issued by the Heritage Foundation claimed that private management had already produced evidence of "frequent" cost savings. Hailing the advent of joint venture agreements between local firms and corporate giants, the author of the Heritage 'Backgrounder' expected that the involvement of huge corporations would play a significant role to advance prison privatization. Bechtel, the multinational construction firm, was reported to be constructing a medium-security prison in Colorado with

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[3] Montgomery, Jim. "Correctional Corp. Seeks Lease to Run Tennessee's Prisons – Firm Would Pay $100 Million For 99-Year Term in Plan For Pioneer "Privatization." *The Wall Street Journal.* September 13, 1985.

[4] Weston, Alan. "Would You Stay In One of This Man's Prisons?" *Advantage Magazine.* February 1986.

financing by South Korea's Daewoo International Corporation and bond underwriting by Shearson Lehman Brothers.[5]

The industry's founders promised to introduce the latest developments in business administration and technology in order to revolutionize the management of prisons. But from the very beginning, the key management positions in private prisons were filled with public corrections veterans who more or less followed the familiar public model for prison operations. Some of these left their public prison systems under fire. David Myers resigned his post as warden of a Texas prison in 1985 to take up employment with CCA after he was accused by federal court monitors in the landmark Texas prison case, *Ruiz v. Estelle*, of urging guards to beat up inmates who had been involved in a prison disturbance. Myers rose through the management ranks at CCA to serve as President of CCA.[6]

Myers is not the only example of a private prison executive whose exit from the public sector came after serious accusations about prison management issues. Lane McCotter, Director of Business Development for the Management Training Corporation, resigned as Corrections Director in Utah amid controversy after the death of a mentally-ill prisoner who had been strapped for 16 hours in a prison restraint chair. McCotter was already under fire for his handling of problems with medical and mental health care when it came to light that the psychiatrist who authorized the use of restraints had been hired after he was put "on probation" by state licensing authorities for a variety of fraudulent and questionable practices.[7]

From the beginning, prisoners placed in private correctional facilities voiced complaints that private management did *not* provide improved services. According to prisoners at Eclectic Communications' minimum-security facility at La Honda, CA -- one of the first for-profit facilities for youthful offenders – educational and vocational training programs there were skimpy, and Eclectic's guards were inexperienced and unprepared to handle volatile situations.[8]

But prisoners' voices were not heeded in state legislatures or on Wall Street. Through the next decade the industry prospered. CCA in particular became the darling of growth investors. The value of its shares soared from $50 million when it went public in 1986 to more than $3.5 billion at its peak in 1997. CCA was ranked among the top five performing companies on the NYSE from 1995 through 1997, when CCA stock traded at a high of $45 per share.

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[5] Joel, Dana. "A Guide to Prison Privatization." *Heritage Foundation Backgrounder.* Washington, DC: The Heritage Foundation. 1988.

[6] Klimko, Frank. "TDC warden resigns to go with private firm." *Houston Chronicle.* September 14, 1985.

[7] Maffly, Brian and Judy Fahys. ""Prison Boss Quits 'Pressure Cooker'; McCotter Resigns Job As Prison Boss." *Salt Lake Tribune.* May 10, 1997.

[8] Workman, Bill. "Pros and Cons of Life at Hidden Valley Ranch." *San Francisco Chronicle.* April 13, 1985.

The Industry Matures: Troubles Multiply

In July 1998 disaster struck the company. When six prisoners escaped from the Northeast Ohio Correctional Center, CCA suddenly found itself in the glare of a national media spotlight. This 14-month-old prison had been a complete failure from the day it opened for business. CCA managers had hired an almost completely inexperienced staff, and then they knowingly imported hundreds of the most unmanageable prisoners from the District of Columbia's Lorton prison complex. The prison was soon awash with crudely-made weapons. Twenty prisoners were stabbed and two of them died.[9]

CCA is not the only private prison company that has been plagued with management disasters and abuse of inmates. Wackenhut prisons in New Mexico have repeatedly erupted in violence and disturbances. The death toll of five in less than a year culminated in the murder of a guard during a riot in August 1999 in the Guadalupe County Correctional Facility. Most people think that kind of violence is the norm in America's prisons but in reality prisoner homicides are rare events. In 1998 the US prison system held 1.3 million prisoners, yet there were just 59 inmate-on-inmate homicides, a rate of one murder for every 22,000 prisoners. The prisoner homicide rate in Wackenhut's New Mexico prisons from December 1998 to August 1999 was one for every 400 prisoners – not counting the death of Ralph Garcia, the Wackenhut guard.[10]

Physical abuse of youngsters by Wackenhut guards at the Jena Juvenile Justice Facility in Louisiana led to a shut-down of the institution in April 2000. A juvenile court judge in New Orleans held that the youths confined in the facility had been treated no better than animals.[11]

After these vivid lessons, one might expect that the leading companies in the private prison industry would have gotten the message that their operational practices needed a fine tuning, but consider the chain of events over the next 15 months in CCA's private prisons.

In August two prisoners escaped from a CCA prison in Bartlett, Texas. State investigators found serious security deficiencies. Doors had been left unlocked. No one was watching the closed-circuit TV surveillance monitors. When the prisoners cut their

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[9] Office of the Corrections Trustee for the District of Columbia. "Report to the Attorney General: Inspection and Review of the Northeast Ohio Correctional Center." Washington D.C. 1998.

[10] Oswald, Mark. "Capitol Chronicle: Murder rate in prisons far too high." *Santa Fe New Mexican,* September 4, 1999.

[11] Butterfield, Fox. "Privately Run Juvenile Prison in Louisiana Is Attacked for Abuse of 6 Inmates." *The New York Times,* March 16, 2000.

way through the prison's perimeter fence, a security alarm sounded, but staff in the prison's control center turned it off and did nothing.[12]

On September 12th a riot erupted in CCA's Florence Correctional Center in Arizona, a "spec" prison that holds prisoners under contracts with both the state of Hawaii and the INS. Hawaii's security experts speculated that rival prison gangs were vying for power in the facility.[13]

In October two guards at a CCA prison in Walsenburg, Colorado pleaded guilty in Federal Court to repeatedly beating a prisoner who was handcuffed, shackled, and unable to resist.[14]

In November the Bartlett facility erupted in a disturbance that left five prisoners injured.[15] Two days later five guards were stabbed and three others were injured when prisoners at a CCA prison in Estancia, New Mexico took them hostage.[16]

Then on December 14th a jury in Columbia, South Carolina delivered a verdict that CCA guards had abused the youths confined in their juvenile prison with use of force so malicious, evil, callous or reckless, and so "repugnant to the conscience of mankind" that they determined that CCA had to pay a $3 million punitive damage award.[17]

CCA's prison operations were relatively quiet for the next few months, but in April a series of disturbing events unfolded at CCA's Florence Correctional Center. First, an Hawaiian prisoner 's jaw was broken in a fight on April 6th. Then on April 11th, a riot erupted in the prison yard. 23 prisoners were involved, of whom three were hospitalized. A prison guard received a serious injury requiring six stitches.[18]

Two prisoners turned up dead at the prison during the month. It was reported that one suffered a heart attack on April 16th after swallowing several packets of drugs in an

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[12] Polanco, Monica. "Bartlett jail faulted in escape study: Criminal Justice report cites 16 problems, human error." *The Austin American-Statesman,* October 18, 2000.

[13] Memo from Patrick Kawai to HCF Warden Nolan Espinosa. "Summary of identified Security Threat Group (STG) at Florence Correctional Facility (FCC)." Hawaii Department of Public Safety, April 16-20, 2001.

[14] Associated Press Newswires. "Ex-prison supervisors told they will be jailed for beating inmate." October 27, 2000.

[15] Associated Press. "Five inmates injured in jail melee." *The Houston Chronicle,* November 9, 2000.

[16] Associated Press. "Torrance County prison gets new warden in wake of riot." *The Albuquerque Tribune,* December 2, 2000.

[17] William P., v. Corrections Corporation of America. Civil Action Number 3:98-290-17 Jury Verdict, December 14, 2000.

[18] Dayton, Kevin. "Arizona prison in 'turmoil.'" *The Honolulu Advertizer,* July 1, 2001.

effort to conceal them. A second prisoner died on April 25th, also reportedly of a heart attack. In addition to the riot and the deaths, prison records show that six prisoners had been assaulted during the month, some of whom had been severely beaten.[19]

When prison auditors flew in from Hawaii to scrutinize the prison they found "a prison in turmoil," with an atmosphere so hostile that most areas of the prison were deemed too dangerous to be inspected. They determined that a prison gang had taken control and was running the prison. Gang members were said to be attacking other prisoners and staff, dealing drugs, and having sex with women housed at the prison under a contract with the INS. Some staff were said to be "working" for the prison gang. One guard admitted providing drugs for prisoners in exchange for protection.[20]

Meanwhile, on the evening of April 23, 2001 prison guards at CCA's Cibola County Correctional Center in New Mexico tear-gassed almost 700 prisoners who had staged a day-long non-violent protest of conditions at the facility.[21]

On April 24th the addiction treatment manager at CCA's Tulsa County Jail resigned, charging that she had been asked by the warden to make a "sales pitch" to local judges about sentencing offenders to a treatment program in the jail that had virtually been closed down in order to cut operating expenses.[22] Three prisoners were mistakenly released from this same facility in May.[23]

At the end of May ten guards at CCA's District of Columbia Treatment Facility were indicted on federal bribery charges. It is alleged that they had accepted money from an undercover FBI agent in exchange for smuggling two-way pagers and cash into the facility.[24]

In June, back at the Tulsa Jail, a CCA guard resigned his post after 10 valium tablets were reportedly found hidden in his sock during an employee shake-down.[25]

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[19] Daranciang, Nelson. "Arizona private prison names new boss after deaths." *Honolulu Star Bulletin,* May 12, 2001.

[20] Memo from Cheryl Zembik to Ted Sakai. "Briefing Report – Florence Correctional Facility, 4/16 – 4/20 Monitoring Trip." Hawaii Department of Public Safety. April 30, 2001; Martinez, John. Monitoring Report, April 16-20, 2001 Hawaii Department of Public Safetty; Memo from Patrick Kawai to HCF Warden Nolan Espinosa. "Summary of identified Security Threat Group (STG) at Florence Correctional Facility (FCC)." Hawaii Department of Public Safety, April 16-20, 2001.

[21] Miles, David. "Prison in Lockdown After Protest." *The Albuquerque Journal,* April 25, 2001.

[22] Hylton, Susan. "Jail warden ignores rehab, ex-staffer says." *Tulsa World,* May 4, 2001.

[23] Meano, Clifford. "Jail error lets out another prisoner." *Tulsa World,* May 30, 2001.

[24] Miller, Bill. "10 D.C. Guards Charged in Smuggling Sting." *The Washington Post,* June 1, 2001.

[25] Hylton, Susan. "Jail staff member resigns amid drug allegations." *Tulsa World,* June 13, 2001.

On the 5th of July 400 prisoners imported from Indiana to a CCA prison in Wheelwright, Kentucky touched off their own kind of fireworks in the prison recreation area. Before they were through, they spread the disturbance to four housing units, lighting fires and tossing TVs and commodes through the windows.[26] While the cause of the uprising had not yet been fully explained, two weeks later CCA fired the warden and his top assistant, citing "policy violations."[27]

Industry executives will tell you that the prison management disasters catalogued here are just isolated events, confined to a handful of "underperforming" facilities. But evidence is mounting that a number of key structural deficiencies – high staff turnover; defective classification and security procedures; inadequate program services – are found in many private prisons. While the nation's public prisons are far from problem-free, there is a growing body of evidence indicating that the private prison industry is fraught with a higher level of serious operational deficiencies than the public prison system.

A research project directed by this writer compared the quality of correctional services in a private prison run by CCA with public prisons in Minnesota. There were much higher levels of operational problems in the CCA prison: program deficiencies, unreliable classification methods, and high rates of staff turnover resulting in inadequate levels of experienced, well-trained personnel.[28] These types of operational deficiencies link directly to higher rates of problems with prison security and safety. The most troubled private facilities have shown an extremely high incidence of problems such as these.

The disparity in staff turnover rates found in Minnesota are mirrored in national data indicating that correctional officer turnover is 41 percent for the private prison industry, compared with 15 percent for public prisons.[29] Since wages and benefit costs are substantially lower in the private sector and the labor market is tight, this problem is both predictable and preventable -- but the profit motive seems to bar effective action.

A private prison industry survey by James Austin, a researcher at George Washington University, compared major incidents in medium and minimum private facilities with national data from similar public facilities. There were 49 percent more assaults on staff and 65 percent more inmate-on-inmate assaults in private facilities.[30] A

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[26] Tagami, Ty. "Riot rocks private prison in Floyd." *Lexington Herald Leader,* July 7, 2001.

[27] Associated Press. "Top two prison officials fired in wake of uprising." July 18, 2001.

[28] Greene, Judith A. "Comparing Private and Public Prison Services and Programs in Minnesota: Findings from Prisoner Interviews." *Current Issues in Criminal Justice,* Vol. II, No. 2, November 1999.

[29] Camp, Camille Graham and George M. Camp. *The Corrections Yearbook, 1999.* Middletown, CT: The Criminal Justice Institute.

[30] Austin, James and Garry Coventry. "Are We Better Off?: Comparing Private and Public Prisons In The United States." *Current Issues in Criminal Justice,* Vol. II, No. 2, November 1999.

comparison of serious incidents in public and private prisons in Oklahoma found a far more shocking disparity. Oklahoma Department of Corrections data indicate that there were 190 percent more serious incidents in private prisons in that state.[31]

Reports of escapes from secure private facilities indicate that the public safety record is also poor. There were at least 37 escapes of adult prisoners from secure private prison facilities in 1999 (not counting escapes of private prisoners and detainees from juvenile facilities, transportation vans, or escorted hospital visits). The escape record of New York's state prisons – a large system of 70 facilities that hold approximately 70,000 prisoners – has been much lower. Since 1995 there have been only eight escapes from secure facilities – a rate of less than two per year.

These examples clearly show that the private prison system as a whole is falling behind the public prison system in maintaining the basic human rights of prisoners to a safe and humane correctional environment, as well as in protecting the safety of the prison staff and the public.

By 2000 the private prison industry was in bad financial shape – over-leveraged and under-capitalized – due to dissatisfaction with poor industry performance on Wall Street and a growing reluctance on the part of state governments to contract for the services they offered. Between them, CCA and Wackenhut commanded 75 percent of the industry's market share. The track record of problems amassed by these two industry leaders had thrown the industry into a downward financial spiral.

It should come as no surprise that the financial viability of this industry is affected by operational disasters. From 1994 until 1999 Wackenhut's profits grew at an annual rate of 58 percent, but the impact of Wackenhut's problems in New Mexico and Louisiana severely constricted corporate earnings. And Wackenhut's stock price slid 28 percent in just two days after the guard was murdered in August 1999.

CCA was hardest hit. Mismanagement in its prisons and poor business judgment at its headquarters produced a financial melt-down. Having built new prisons "on speculation" that contracts to fill them would follow, the company found itself with a huge occupancy short-fall. With more than 9,000 prison beds standing empty, CCA stock lost 93 percent of its value during 2000. The day after the South Carolina jury hit the company with a huge punitive damage award, CCA stock hit an all-time low of 19 cents a share. At the end of the year the company reported a fourth-quarter loss of more than a third of a billion dollars.

As operational problems sent the industry leaders into a financial slump, new contracts to house state prisoners were hard to come by. Pressure mounted against privatization from human rights advocates, public prison correctional officers, prison activists, and student leaders. The media spotlight was relentless, and public officials in many states responded by increasing their scrutiny of the private prison industry,

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[31] Cunningham, Dennis. Presentation at the World Research Group conference, "Privatizing Correctional Facilities." September 25, 2000 in San Antonio, Texas.

intensifying contract compliance monitoring, "fining" vendors when services were found to be deficient, and ending contracts when problems spiraled out of control.

Colorado corrections officials stopped sending prisoners to CCA's prison in Burlington, Colorado, after security and staffing problems involving alleged guard/inmate sex scandals and lawsuits drew an intense media spotlight.[32] Texas state officials levied $625,000 in fines against Wackenhut for chronic staff shortages before reports of alleged criminal activity at the Travis County State Jail led to termination in 1999 of a contract with the operating company, and indictments of a dozen guards for alleged sexual abuse of prisoners.[33]

In North Carolina the Department of Corrections fined CCA more than $1 million for chronic failure by the company to meet contract requirements before the management contracts at two CCA prisons were terminated in the fall of 2000.[34] Two prisons Wackenhut had operated since 1998 in Arkansas were taken over for state operation in June 2001. After the company was criticized for unsanitary conditions and prisoner idleness, Wackenhut decided not to seek renewed contracts for the two prisons, citing a tight local labor market and high medical costs.[35]

Given the recent record of serious problems it is not surprising that demand for new private prisons at the state level had all but disappeared by 2000. Yet while most state correctional managers were taking a hard look at the private prison industry, the federal government began to fill the breach with an unprecedented level of new contract solicitations for private prison beds.

The Federal Bureau of Prisons faced unprecedented growth in its inmate population at the end of the 1990s. Between 1995 and 1999 the incarceration rate in the U.S. grew by 16 percent for the US as a whole, but by 31 percent for the federal prison system. The FBOP population grew by 7.5 percent in 2000, while the aggregate state prison population increase was only 1.3 percent.

As the industry's troubles escalated, Congress required the FBOP to contract for more private beds, insisting on private prisons for at least half the prisoners at the District of Columbia's prison complex at Lorton, Virginia, which was scheduled to shut down.

In 1999 the FBOP began to lay the groundwork for a second massive privatization initiative, soliciting private prison beds for so-called "criminal alien" prisoners – non-citizens convicted of federal offenses who face deportation when their prison terms are

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[32] Miniclier, Kit. "Inmate shortage has private prisons scrambling." *Denver Post,* May 24, 2000; Crowder, Carla. "Colorado renews contract with Burlington prison facing continued problems." *Denver Rocky Mountain News,* July 3, 2000.

[33] McNair, James. "Wackenhut prisons mired in abuse scandals." *The Miami Herald,* April 6, 2000.

[34] Robertson, Gary D. "N.C. to take control of private prisons." *The Associated Press,* June 24, 2000.

[35] Associated Press. "Private Company turns two units over to state prison system." June 30, 2001.

completed. Proposals for more than 9,000 "contractor-owned, contractor-operated" beds were requested in less than two years.

CCA was selected in June 2000 for two new FBOP contracts – one for 2,304 beds at their long-empty "spec" prison at California City, and the second for 1,012 beds at their Cibola facility in Milan, New Mexico. These contracts were worth $760 million over the next ten years. While a service contract is not a loan, these two contracts provided a virtual "bail-out" of an extremely troubled company that was teetering on the brink of bankruptcy.

By 2001 private prison executives were claiming that the federal contracting windfall might grow to provide as many as 20,000 beds. If true, the federal government would shower this failing industry with billions of dollars in service contracts. But while the federal government was offering a life-line for companies that were struggling to survive, the state-level market for private prison beds remained stalled. And while CCA scoured the country for prisoners to fill more than 9,000 empty prison beds, company managers found themselves facing vigorous competition from an unexpected quarter.

Cross-Fertilization: Entrepreneurial Corrections

Proponents of privatization have long argued that competition between public and private sector corrections would breathe new innovative vigor into the public sector. Spurred by market discipline, inspired by private-sector innovation, public managers with their sights focused on performance measures would strive for increased efficiency and enhanced performance. "Cross-fertilization" would result in improvements across the entire correctional system. Yet a review of the current state of correctional practice reveals scant evidence of innovation in private corrections. And too often the impact of competition on public correctional costs has looked less like increased efficiency and more like a race to the bottom line.

Nevertheless, the competitive spirit has spawned at least one unexpected and ironic result in the realm of public corrections. The decline of the state-level market for new *private* prison contracts has been marked by the emergence of *public* competition. Over the decade of the 1990s the private prison industry created a highly-profitable national "interstate commerce" in prisoners by offering private beds in states that allowed them to build prisons "on speculation" to house prisoners shipped from other states' overcrowded prisons. By the end of the decade between 10,000 and 15,000 prisoners were being held in prison beds in jurisdictions other than the one where they were convicted and sentenced.

In 1998 a bold new entrepreneur entered this market. Public prison managers in the state of Virginia found themselves with an excess stock of prison beds. Following the lead of the private prison industry, they opened them for business. This unprecedented development can be traced back to the national drive for "get tough" sentencing reforms that consumed the U.S. in the mid 1990s.

In 1994 the tough-on-crime movement hit Virginia with a vengeance. Governor George Allen had been swept into office on a campaign promise to lock up a rising tide of "violent, career offenders." During his first year in office the rate of parole release in Virginia dropped to just six percent, down from 40 percent under Governor Douglas Wilder. Allen's Commission on Parole Abolition and Sentencing Reform held a series of town meetings across the state, taking emotion-charged testimony from victims of violent crime. He quickly moved a legislative package that abolished parole release and introduced "truth in sentencing" guidelines that he promised would at least double the length of prison terms for violent offenders.

Allen estimated that abolition of parole would require a massive prison building program. On the eve of the 1995 legislative session he said his reforms would require building 8,100 prison beds. He proposed a $408.6 million mix of general obligation and lease-revenue bonds to finance the needed construction. Democrats countered that the Governor's forecast wildly inflated the necessary number of prison beds.

Legislative critics notwithstanding, Virginia's correctional officials built six new prisons between 1995 and 2000, adding a total of 8,000 additional cells. While most crime occurs in Virginia's populous eastern cities, rural counties in the western region bear the state's highest rates of unemployment. Local officials in these areas lobbied hard for a prison. Some facilities were sited near rural towns so tiny that prisoners outnumber the local citizen population.

Four of the six prisons were designed to hold a maximum security prisoner population. In 1995 ground was broken for two "super-maximum" prisons in southwest Virginia's Wise County -- the Red Onion and Wallens Ridge state prisons. Wallens Ridge was built in an area of the state where the Westmoreland Coal Company ceased operations that had supported 750 jobs. The Wallens Ridge facility was financed by lease-revenue bonds issued by the Big Stone Gap Housing and Redevelopment Authority. The state is buying the prison facility through a 20-year lease-purchase contract. Land for Red Onion was donated by the Pittston Coal Company. Two more maximum security prisons, Sussex I and Sussex II, were built side-by-side in tiny Waverly, Virginia. The $71 million prison Sussex I prison began receiving prisons in 1998.

Virginia's prison construction program was further augmented when the Corrections Corporation of America opened the Lawrenceville Correctional Center, a medium security 1500-bed private prison, in 1998. Private construction of the prison was financed through bonds issued by the Brunswick County Industrial Development Corporation.

Despite elimination of parole and other "get tough" measures, Virginia's prison population growth slowed in 1997. With the huge prison expansion program well underway, state budget analysts realized that Virginia would have a surplus of 4,000 prison beds by 2000.[36] Governor Allen suggested that the beds could be used to reduce double-celling in the state's prison system, or to replace some of the state's older prison facilities. He proposed that the St. Brides Correctional Center in Chesapeake be closed down. But local Chesapeake politicians opposed the plan, citing the loss of jobs and local business revenues provided by the prison.

Ron Angelone, Allen's corrections director, had other ideas about how to put the projected prison bed surplus to use. Angelone decided to make as many as 3,290 prison beds available to other states for lease in order to reduce the costs of incarcerating the state's own prisoners. Even before the opening of Red Onion and Sussex II, contracts were under negotiation with Delaware, Vermont, Michigan and the District of Columbia to import prisoners.[37]

In 1999 Sussex II opened and was housing prisoners from Washington, DC. By the end of the year Virginia's prisons were holding more than 3,000 prisoners imported from other states, and had negotiated a contract to import almost 500 prisoners from Connecticut to the troubled Wallens Ridge supermax prison. Legislative analysts began to worry that the system had become dependent on the outside cash flow, but Department of Corrections managers said they were confident they could manage to keep the beds filled.

The construction boom kicked off by Governor Allen in 1995 was completed in 2000. It had produced a surplus of 4,500 beds. By the end of the year the state's prisons held prisoners imported from six states. At the beginning of 2001, about 1,000 state prisoners were backlogged in local jails while 3,419 prisoners from other jurisdictions filled more than 10 percent of the state's prison beds.

Since the state placed prison beds on the national market in 1998, prisoners from Connecticut, Delaware, Hawaii, Iowa, Michigan, New Mexico, Vermont, and Washington, DC have been among those housed in Virginia's surplus prison beds. The revenues for housing prisoners from other jurisdictions in Virginia's public prisons provides the state with $78 million a year. This provides a significant margin of "profit." Sending jurisdictions pay $60 to $64 per prisoner per day to house their prisoners in Virginia, while the average per-diem estimate for housing the state's own prisoners is just $51.14 a day. After retaining $56.7 million for operating expenses, the Department of Corrections sends $21.3 million to the state's general fund. State officials claim the excess revenue helps pay for the cost of building prisons. In January 2001 Director Angelone pushed for permission from the legislature to import another 686 prisoners, arguing that this would generate another $13.9 million for the state's general fund.[38]

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[36] Associated Press. "Allen says prison program is geared to needs." *The Virginian-Pilot.* October 22, 1997.

[37] Associated Press. "Plan to import prisoners will add to crowding, a critic says." *The Virginian-Pilot.* July 7, 1998.

[38] Green, Frank. "Prison system wants more." *Richmond Times-Dispatch.* January 27, 2001.

The spirit of entrepreneurial corrections has taken hold in every part of the state, with more than a third of the state's local and regional jails jumping into the action. The federal government will pay from $40 to $75 per day for housing its detainees, while operational costs for local jail beds average $52.25. Thirty Virginia jails harvested a total of more than $22 million from per diem fees collected from the U.S. Marshals Service and the INS in fiscal year 2000. Fourteen of these jails derived more than ten percent of their operating budgets from this outside income stream. The state gets its cut of this bounty too. Virginia's Federal Overhead Recovery Fund siphoned off almost $3 million that year.[39]

While serving as a pioneer in public prison profitability, Virginia's new economic enterprise also serves to demonstrate that the private sector has no corner on operational problems. While hosting prisoners from other jurisdictions has proven to be lucrative for Virginia's state treasury, staff at some of the high-security prisons that are underwritten by the per diem fees have been charged with responsibility for a series of serious human rights violations. Critics have charged that corrections officers at Virginia's supermax prisons have made excessive and punitive use of electric shock stun devices, fired on prisoners without serious cause, and subjected them to racist remarks and harassment.[40] After a prisoner died at Wallens Ridge following repeated shocks administered with an "Ultron II" device, the ACLU filed a class-action lawsuit charging that use of excessive force was endemic at the prison.[41]

Despite the many claims of prisoner abuse raised against Virginia's Wallens Ridge supermax, other jurisdictions continue to send prisoners to this facility. At the end of May 2001 the Wyoming Department of Corrections transferred 72 ill-behaved prisoners to the facility after the U.S. Department of Justice declared that conditions in the housing unit where they had been confined at the Wyoming State Penitentiary constituted a fire hazard.[42] Two months later the Attorney General of the U.S. Virgin Islands announced a "crack down on malcontents." Prisoners who do not adjust to life in the Virgin Islands prisons would be sent to maximum-security confinement in Virginia.[43] Apparently Virginia's overbuilt prison system has found its "niche" as the convenient solution to management problems that exceed the capacity of other states' correctional managers to solve.

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[39] Green, Frank. "Inmates boost VA's revenue." *Richmond Times-Dispatch.* February 25, 2001.

[40] Fellner, Jamie. "Super-Maximum Security Confinement in Virginia." New York: Human Rights Watch. April 1999

[41] Letter from David C. Fathi to John J. Armstrong, Commissioner of Corrections in Connecticut. January 26, 2001.

[42] Hammack, Laurence. "3,376 prisoners statewide not from Virginia." *The Roanoke Times,* May 31, 2001.

[43] Staff report. "2 More Inmates Moved to Virginia Prisons." *St. Croix Source,* July 20, 2001.

Conclusion

The private prison industry has ridden the crest of the unprecedented expansion in the scale of imprisonment in the U.S. Its advent has also marked a fundamental shift in the perceived function of the correctional system. Prior to the decade of the eighties, prisons were seen by most Americans as essential social institutions, but not ones to be welcomed "in my back yard." But then the collapse of rural economies and a lack of jobs paying a living wage set the stage for public officials and private entrepreneurs alike to begin pushing prison construction and operation as a leading rural growth industry – and as a prime financial opportunity for investors in stocks and bonds.

"If we build it, they will come" became the watchword – particularly at CCA -- where prison development on speculation that contracts to house prisoners would follow became a principal route to revenue growth.[44] Construction of "spec" prisons in turn created a vast national market in prison beds (both private *and* public) where prisoners are bartered as commodities to be confined by the lowest bidder. Thousands of prisoners have been shuttled from prison to prison, held for years at great distances from their families and from the communities to which most will eventually return.

The added spur of private prisons as economic development in the context of our "tough-on-crime" political atmosphere has had a corrosive effect on criminal justice policymaking. Through political campaign contributions and deployment of the best lobbyists money can buy, the industry has spared no expense to promote the idea that prison privatization is the easy solution to the problem of overcrowded, dilapidated public prisons. In state after state the availability of private prison beds – especially those built "on spec" – has short-circuited important public policy debates about the appropriate balance between prevention and punishment, rehabilitation and incapacitation.

Many early critics of prison privatization predicted that industry executives would lobby for tougher sentencing laws, directly influencing the decisions about who goes to prison and for how long. Indeed, CCA has wielded influence on these issues though a key leadership role within the American Legislative Exchange Council's criminal justice task force – a powerful body that brings state legislators together with corporate executives to draft and promote a conservative "get tough" crime-control agenda, as well as to promote the privatization of prisons.

Putting the profit motive ahead of the public interest undercuts sound correctional practice. A corporation's fundamental obligation is to increase its stockholders' profits, not to increase public safety, to improve prison conditions, or to rehabilitate prisoners. Low wages produce a less qualified, less experienced correctional workforce. And skimping on food, medical services, and prison programs is not only likely to increase

[44] Wood, Daniel B. "Private Prisons, Public Doubts." *The Christian Science Monitor,* July 21, 1998.

prison management problems in the short run, it undermines the long-term goal of preparing prisoners for release back to the community.

In the summer of 2001, still haunted by high-profile operational debacles, the two major private prison companies were struggling to revamp the image of the industry. CCA and Wackenhut joined forces with other private prison firms and service groups to launch a trade association, the Association of Private Correctional and Treatment Organizations. Attempting to recasting themselves as caregivers -- purveyors of drug treatment and rehabilitation services -- they began trying to shift gears to meet new market realities.

Wackenhut executives stated they were turning their sights toward mental health and substance abuse clinics. The company took on operation of a 350-bed psychiatric hospital in south Florida. And they bid for a chance to construct and operate a 600-bed secure treatment facility for Florida's sex offenders who face civil confinement at the end of their prison sentences. Wackenhut's CEO George Zoley expected that 20 to 30 percent of the company's revenues would be derived from mental health and drug treatment correctional facilities in the future.

The declining crime rate, slower growth in state prison populations, and the budget squeeze brought on by a cooling national economy have combined with negative media coverage of private prison escapes, riots, and bad management to stall the market for new private prison beds – at least at the state level. CCA's speculative construction binge has left the company under tremendous pressure to fill thousands of empty prison beds while reducing its huge debt load. Ironically, stiff competition from Virginia's profit-seeking public prison system is giving the company a hard run for the money.