

**It's O.K., Supervision Enthusiasts:**

**You Can Come Home Now! .....** *Harold B. Wooten*

**A Challenge Answered: Perception of the Problem**

U.S. Department of Justice  
National Institute of Justice

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**Private Enterprise in Ins  
A Call for Caution ...**

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**Impact of a Job Training  
CETA-Qualified Probation**

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## This Issue in Brief

***It's O.K. Supervision Enthusiasts: You Can Come Home Now!***—Author Harold B. Wooten asserts that probation systems have lost interest in supervision of offenders; instead, trendy practices which are best described as elaborate monitoring mechanisms have taken the day. But, the author contends, before we rally the supervision loyalists, we should first admit that changing self-defeating behavior of offenders has never been significantly reinforced as a value in probation. The author cites historical reasons for this failure, identifies current barriers to effective supervision of offenders, and offers recommendations to various participants in the process to address effective supervision of offenders.

***A Challenge Answered: Changes in the Perception of the Probation Task.***—Author Richard Gray responds to the point of view expressed in this issue's article by Harold B. Wooten. Do probation officers actually help probationers or are they primarily paper pushers or law enforcers? According to the author, past experience and current job orientation have caused a change in probation officers' perspective of their job. The author discusses the sociology of knowledge in addressing shifts in task-related perspectives.

***Private Enterprise and Institutional Corrections: A Call for Caution.***—The current crisis of overcrowding in American prisons and jails, coupled with reduced resources available for corrections, has led to the development of innovative responses to the problems of institutional corrections. One such innovation which has been proposed and is receiving increasing support is the idea of "privatizing" institutional corrections. Authors Lawrence F. Travis III, Edward J. Latessa, Jr., and Gennaro F. Vito examine the movement to contract with private firms for the construction and operation of prisons and jails. Focusing on legal, cost, and accountability issues in such contracting, the authors conclude with a call for caution in the movement to employ private companies for the provision of this governmental service.

***Impact of a Job Training Program on CETA-Qualified Offenders.***—In this article, author Dennis B. Anderson reports on research—conducted in an industrial

midwestern city during 1984—of a job training program for CETA-qualified probationers. Controlling for self-selection and risk factors, the study compared these pro-

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# Private Enterprise and Institutional Corrections: A Call for Caution\*

BY LAWRENCE F. TRAVIS III, Ph.D., EDWARD J. LATESSA, Jr., Ph.D., and GENNARO F. VITO, Ph.D.\*\*

THERE IS little doubt that the operation of institutional correctional services represents a significant component of governmental activity. In fiscal 1979, the Bureau of Justice Statistics (1983:288) reported that state and local government spent over 4.3 billion dollars on correctional institutions. Like police, fire, and other safety services, correctional institutions must be maintained 24 hours each day, every day of the year.

In recent years, the demand for prison and jail space has increased tremendously and the cost of operating institutional services has skyrocketed. This is particularly true in light of recent legal decisions concerning the constitutionality of overcrowded and antiquated penal institutions. In spite of the difficulties, these facilities must be provided. The dilemma faced by the public administrator is that jails and prisons have no control over the size of their populations, the demand for their services, or the standards of operation to which they will be held by the courts. Unlike other governmental services such as courts, police, or public health, it is not practical (occasionally not possible) to *de facto* ration jail or prison services. One cannot simply let offenders wait in line for an opening. The demand must be met.

Added to the problems created by the growing demand for institutional services is the lack of public confidence in the quality of services provided. The general perception is that prisons and jails are not successful solutions to the problem of crime. Rehabilitative, industrial, and educational programs in institutions have lost credibility. In short, there is an increasing belief that government is not capable of meeting the challenges of contemporary institutional corrections. This belief has led some to seek alternative solutions. One such solution seems to be turning to the private sector for new ideas and, possibly, for untapped expertise.

This approach has come to be known as "privatization." The "privatization" of corrections is a controversial issue attracting both strong opposition and strong

support. Perhaps nowhere has this conflict been more apparent than when the American Correctional Association (A.C.A.) debated a policy statement on the subject. While this policy statement, generally supportive of further privatization, was approved by the A.C.A. Delegate Assembly, it provoked intense debate (Controversial A.C.A. Policy, 1985:1-3).

Peter Greenwood, an analyst with the Rand corporation, has stated this position bluntly (1981:1-2):

The government is not going to give us better prisons, better programs or better personnel. It has tried, but it can't . . . . So it is time to get government out of the prison business.

Who could take over? The same people who run other large institutions, such as hospitals and colleges. The same people who have developed techniques for serving thousands of meals and for housing travelers. The same people who run most of the job-training programs in this country: private enterprise.

At first glance, Greenwood's position appears to offer an innovative, effective solution to the problem of providing institutional correctional services. All a state, county, or municipality would have to do is solicit bids for willing entrepreneurs, select the most attractive offer, and "contract" for services. The governmental agency would then have the luxury of delegating an irksome problem to the "private sector."

To be sure, there is ample evidence that certain government services can be provided in a more effective and efficient fashion by private companies. A survey conducted by the Camps (1984) revealed that some 52 agencies (both adult and juvenile) reported some 3,215 contracts with the private sector. The majority of these contracts involved services for juveniles with private vendors providing services ranging from physicians to counseling, for a total cost of approximately \$200 million. It makes some financial and practical sense that institutions should contract with the private sector for certain goods and services. Greenwood's proposal, however, calls for something vastly different. Namely, that the public sector should turn over the complete operations of correctional facilities to the private sector. This innovative approach to the operation of prisons and jails requires further and careful analysis. Such consideration reveals that the proposed solution is not really innovative, may not solve problems, and may, in fact, cause far greater difficulties than those it is designed to resolve. At this point, we must specify that what we consider to be most troubling about the recent trend toward privatization in corrections is not the

\*This article is based on a paper presented at the Third Annual Organizational Policy and Development Conference, University of Louisville, May 25, 1985.

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contracting with the private sector for certain goods and services but with the idea that private enterprise should run correctional facilities in their entirety.

### *The Tradition Of Private Sector Involvement*

Anthony Trivisono (1984) has recently written about the rising interest in private sector provision of correctional services:

Today's big topic of concern (and major interest to the media) is the emergence of the private sector. . . . It intrigues reporters and even correctional personnel who are not scholars of history. However, public services run by private, not-for-profit (or even for-profit) corporations are not a new phenomenon.

Indeed, early jails were operated by private individuals who ran detention facilities for profit. One of the reasons that publicly run jails and prisons were created was to provide abuse-free incarceration which was responsive to public policy. The "managers" of early detention facilities charged their inmates for food and clothing, provided substandard service, and were all too often open to bribery and graft. As a response to these unacceptable characteristics of privately run facilities, government created state-run institutions.

Similarly, the history of prison industries reveals that the current (now changing back to private enterprise) system of state-run prison industries was initially created to alleviate the abuses of the lease and contract inmate labor systems of the early prisons. As Auerbach (1982:25) notes, "For many years, prison labor was exploited by private industry." Indeed, one of the most disappointing developments in the early years of the penitentiary was the inability of the institutions to be self-supporting. While companies contracting for prison labor earned profits, the prisons themselves consistently operated at a loss.

Private sector involvement in American corrections has a long history. As one of its leading practitioners, T. Don Hutto of the Corrections Corporation of America, has noted (1984), privatization is really a composite of approaches with the basic foundation that goods and/or services will be provided through contractual arrangements rather than through the hiring of governmental personnel. The provision of goods or services alone (i.e., medical or psychiatric services) is not new. What is new about the recent privatization movement is that it proposes to establish contract facilities, built and run by private sector corporations on a contractual basis with the government on a for-profit basis. Practices such as halfway houses, probation, and parole were initiated by nongovernmental agencies and individuals on a not-for-profit basis. Over time, these programs were incorporated into government-run correctional agencies for a variety of reasons. Those reasons, that social defense is a

legitimate concern of government, that the rights of individual offenders must be protected, and that the government is ultimately accountable for crime control, among others, are no less important today. When we consider privatizing institutional corrections today, the danger is that we may ignore the lessons of history.

It would seem more appropriate that we investigate the promise of private sector delivery of correctional services in specific realms of institutional corrections in addition to the totality of prison and jail administration. The best policy may lie somewhere between the extremes of publicly versus privately administered institutions.

### *Examples of Private Involvement*

Proposals for the private operation of institutional correctional programs have come forward in a number of states and are receiving the attention of public administrators. Most of the privately run institutions in operation today serve either juveniles or illegal aliens. The RCA company runs the state training school in Weaversville, Pennsylvania, and the Eckert Foundation operates the Okeechobee School for Boys in Florida. Under a contract with the Immigration and Naturalization Service, Southwest Behavioral Systems (a for-profit halfway house company) presently operates facilities to hold illegal aliens in San Diego, Pasadena, and Denver (Krajick, 1984).

At the present time, there are no privately run institutional facilities for adult felons, but the commonwealth of Kentucky is considering proposals for a privately run, 200-bed, minimum-security prison. One company in Ohio has proposed the development of a model facility for the custody and treatment of those convicted of DWI and minor offenses (ACJS Today, 1984:14). If successful, the model program could then be adopted in other states and counties. The corporation would enter the business of corrections. Of course, the criterion of success is unspecified. As with public corrections, it is difficult to adequately define just what constitutes a successful correctional facility. The private corporation may emphasize profitability while public administrators may stress high security and low recidivism. In either case, the goals may be met, and the public may still be dissatisfied.

The Federal Government and many states currently contract for institutional correctional services (the Camps, 1984). Typically inmates on work-release, temporary furlough, or from areas where no Federal prison is located are housed in local jails or state penal facilities for a per diem fee. In these cases, publicly run prisons and jails act as vendors and provide institutional services to other units of government for a fee under contract. There is no reason to believe that similar arrangements could not be made with private companies.

One area where such arrangements are common is in the operation of halfway house programs. Most halfway houses are privately operated and provide—under contract to governmental agencies—residential, custodial, and treatment services to convicted offenders. Latessa and Allen (1982) reported that such facilities numbered nearly 800 nationwide with the capacity of providing services to 30,000 to 40,000 persons each year. The overwhelming majority of these houses were privately operated, most often by not-for-profit organizations.

It is, however, important to note that while these houses may be considered to be privately operated, they serve an almost exclusively public clientele. That is, they exist on the premise that halfway house services will be required by correctional and mental health agencies of government, and funding for the houses is largely comprised of per diem payments by government agencies.

Specific components of institutional programs have also been secured by prison and jail administrators on a contract basis. In the survey conducted by the Camps (1984:6), a majority of the 52 agencies contracted for private services in the areas of: physicians (76 percent), health (71 percent), mental health (67 percent), community treatment centers (59 percent), construction (57 percent), and educational services (55 percent). Typically, these services are provided by companies (or other governmental agencies) on a fee per client basis.

McCarthy (1982) reviewed health care services provided in penal institutions by private corporations. He reported that many facilities contract for health services and that the trend toward contracting for services appeared to be growing. Health care companies would charge penal institutions a fee for each inmate. These companies would then be required to provide medical staff, supplies, and drugs as part of the contracted services. Space for medical operations could be provided by the institution or leased from the institution by the contractor.

A quick review of almost any of the professional magazines for correctional administrators will reveal the offer of contract services for educational programs, computerized information systems, food services, management consultation, and other services in addition to the traditional advertisements for security hardware such as locks, gates, and the like.

Traditionally, certain services for inmates have been secured through contracts with private or nonpublic providers. One of these has been religious services where prisons and jails contract to secure the services of chaplains. Another common area is the provision of mental health services.

Psychiatric and psychological counseling and training programs are often acquired through agreements with governmental health services. In these cases the public

health service provides psychological treatment for inmates on a reimbursement basis for the penal facility or as part of its general public health care load. Some penal facilities contract with private firms to provide counseling services or pay a retainer to a private psychologist or psychiatrist to visit the facility and serve inmates. In this fashion, the inmates are able to obtain specialized treatment without the penal administrator being required to hire specialized staff on a permanent basis.

### *The Promise of Private Involvement*

There are a number of reasons given for supporting the use of the private sector in the provision of institutional correctional services. Principal among these is the argument of cost-effectiveness. It is argued that the private sector will contain costs and thus, for the same dollar amount, either provide more service or at least better service. Governmental agencies, it is suggested, cannot achieve the same level of cost-efficient operation as can private, especially for-profit, companies.

Clear, et al. (1982:8) have succinctly summarized this argument:

Most significant is the fact that corrections is what has been called a "domesticated" organization—with a fixed product monopoly and no real competition for its service market. This status tends to release correctional officials from the burden of studying productivity, needs for services, and changes in demand. Virtually no one seriously questions the need for corrections, and few seriously question the legitimacy of incarceration for most offenders. Due to "domestication" (characterized by a lack of competition and critical self-assessment) corrections officials often are inadvertently rewarded by taking a budget-administration approach rather than a cost-management stance.

The promise of private involvement in correctional services is the promise of the free market. Several companies in competition with each other for the correctional market and guided by the profit motive should be able to provide better, cheaper correctional services than can the current governmental monopoly. As Greenwood (1981) put it, "...they would be free to innovate, to use the latest techniques as in any profit-motivated service industry."

Hutto (1984) has offered several supposed benefits of correctional privatization, all of which center around one common theme: The private corporation can "cut red tape" and avoid the perils commonly posed by public bureaucracy. This advantage is especially apparent when a new facility is under consideration. Hutto (1984) reported that his corporation was able to cut through the layers of protection established in government and build new facilities in a shorter time with greater access to private capital. Private corporations are able to build without resorting to a public referendum by attracting private investors eager for the tax breaks which lease-purchase or service contracts typically offer (Engineer-

ing News Record, 1984:10). For example, Jefferson County, Colorado financed a new 384-cell jail through a financing arrangement designed by the E.F. Hutton Corporation. E.F. Hutton sold \$30 million in "certificates of participation" to investors who will enjoy between 7 and 9 1/8 percent return on their investment with the same exemption from taxes as municipal bonds (USA Today, 11/30/84). In addition, the construction of a new facility allows the corporation to reduce personnel costs. As architect David A. Wolfberg has noted, "In a life cycle cost analysis of a prison, 70% of the costs are in staffing. We can build prisons for almost nothing by designing them so they need a smaller staff" (Engineering News Record, 1984:11).

Finally, Hutto (1984) noted that contracts with the private sector can be advantageous to government. The contract forces a decision by the government in that it must clearly state in the document what it expects the contractor to do especially with regard to the level and quality of services provided.

### *The Problems of Private Involvement*

Private sector operation of institutional corrections poses significant problems or possibly significant problems for the delivery of a critical public service. These limitations can be roughly classified into three areas: legal issues, cost issues, and accountability.

#### *Legal issues*

Before entering into a contractual agreement with a private firm for the operation of a prison or jail it would be necessary to identify whether or not a private company can be authorized to exercise force (even deadly force) to prevent escapes, to imprison citizens against their will, and to impose penalties on those who violate the regulations and rules of the institution. These are powers which are generally reserved to the government. If private corporations cannot be allowed to exercise these powers, the likelihood of success of these corporations is obviously diminished.

Related issues revolve around liability for the actions of private agents or companies. Will the contracting government agency be liable for the illegal actions of the contractor? If conditions in the contracted penal facility are found to violate constitutional requirements, who will ultimately be responsible for their correction and held liable for damages? Can the contracting governmental agency be rendered immune for not only the actions of the contractor vis a vis the inmates, but for negligence that results in the escape of prisoners or the financial mismanagement of the facility? Would the contracting agency be responsible for "bailing-out" a bankrupt contractor?

Several legal questions, beyond those which could be dealt with through contract provisions would first need to be addressed and answered before contracting for such services could be allowed.

#### *Cost issues*

It is by no means certain that a contract institution would be more cost-effective than its government counterpart. According to the Camp survey (1984), agencies which have contracted for services have found them to be more cost-effective (they reported a net savings of \$8.7 million) and more efficient. Yet, with institutionalization, the manner of payment would have to be carefully considered. For example, a public utilities or "pentagon" model reimbursement where a contractor receives costs plus a profit percentage would not necessarily provide an incentive to contain cost of service. On the other hand, a per client charge may result in cost-overruns or even bankruptcy should the initial estimate prove wrong.

It is possible that private service provision will prove more costly in the long run. Direct control over costs of operation will no longer rest in the hands of the public administrator; rather, costs will be "reported" by the contractor. While the profit motive provides an incentive for efficiency, it does not guarantee that economy can be realized. In addition, the profit motive could serve as an inhibitor to release of inmates and as an incentive to institutionalization. Put simply, why should the private corporation release inmates if their release will cut into the profit margin? This last point leads to a consideration of the next class of issues, accountability.

#### *Accountability issues*

In addition to liability and the necessity of providing institutional correctional services discussed as legal issues above, accountability involves some nonmonetary value questions. The justification for private sector provision of correctional services is typically one of cost-effectiveness. This means that public administrators recognize that correctional programs are not doing an adequate job of managing their resources. The proposed solution is to "give up." To contract for services is to say that we cannot manage our programs, we cannot be made to be accountable for our decisions. A major stumbling block to endorsing private sector takeovers of correctional facilities is that it requires an admission of incompetence.

It should be possible to introduce appropriate private business practices into the public sector. Cost effectiveness, efficiency, and personnel management skill are what public administration is all about. It is a mistake to automatically equate public management with incompetence and to assume that private management is



synonymous with efficiency and accountability. It is possible to merge the best of both worlds, so that correctional administrators in the public sector can make use of more "business-like" methods. For example, when Arizona sought to professionalize its inmate industries program and run the industries on a for-profit, business-like level, a corporate model agency was established within the corrections bureaucracy with no adverse and some positive results, namely the establishment of efficient production methods within the prison (Lescault, 1984). It is unlikely that a correctional administrator would be familiar with modern business practices and could thus benefit from some "outside help" in this area.

If correctional administrators and governmental officials are willing to admit that they cannot manage the operation of government agencies, the question of accountability still remains. While they will no longer be accountable for the day-to-day operations of penal facilities, public administrators will still be ultimately accountable for the delivery of services. The management of the facility will be replaced by the need to manage and oversee the contract. This will most likely be a frustrating task since most agencies do not do a particularly good job of collecting monitoring information. The facility's management information system will belong to the contractor, and the public administrator will be forced to rely on data provided by contractor in evaluating compliance with the provisions of the contract. Further, the public administrator will probably have no idea as to the size of the profit margin, nor input into reinvestment, purchasing, and similar decisions. In short, while responsible for the operation of the facility in an ultimate sense, the public administrator will not have the authority to affect the way in which the facility is operated.

The common response to this issue is that the government must clearly specify its requirements in the contract with the private sector agency. One potential problem may be that the contract may become its own source of "red tape" and facility may fall victim to the sort of administrative briar patch which it was supposedly able to avoid. Thus, one of the key advantages of the privately run facility would be lost.

There are some operational concerns as well. It is predictable that the private agency will find that the public is no more receptive to the construction of private facilities in their neighborhoods than they are supportive of public institutions. It is very unlikely that the private sector will enjoy a competitive advantage over public prisons when it comes to selecting a site for construction. Also, if a contract is established, who will determine the manner in which persons will be sent to the new facility, the private agency officials or the government? Wardens would no doubt be envious if their private counterparts

could refuse to accept a certain type of client when they enjoy no such luxury themselves.

### Conclusion

This article provided a beginning look at the issues involved in contracting with private sector sources for the provision of penal institutional services. As an idea which is attracting growing support, it is important that the issues surrounding the reliance on private concerns for public goods be considered. We have suggested that ultimate responsibility for the provision of correctional services will always rest with the government.

Further, we have identified areas of uncertainty in the contracting process and possible pitfalls. It is our recommendation that those considering a contract for services first carefully investigate their current operations. If adequate savings can be obtained through more prudent management, if economies of scale are not likely to be achieved through contracting with a large service provider, or if similar tangible improvements in operations will not accrue to the contract option, contracts should be avoided. Only where a private vendor can provide services more effectively and efficiently than is possible by government should contracts be sought. Some services may benefit from contracting, for example, food service or health care. Others may not be possible, for example, security or discipline.

Rather than viewing private sector involvement as a dichotomous choice, it behooves administrators to consider service contracts a variable strategy—good for some services at some times and not appropriate for others at other times. The principal advantage to contracting with private sector firms is that it allows the administrator to "get out of" the prison/jail business. We submit that it is not possible for government to ever abandon the critical task of social defense. Thus, the major advantage of contract jails and prisons is at best illusory.

Finally, given that public jails and prisons were developed as a response to the inadequacies of private institutions, there is a danger that returning to past practices will lead to more problems than it will resolve. Rather than return to the solutions of the past, we would urge that we look to solutions for the future.

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