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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

The possible utility, scope and structure of a special study on the issue of privatization of prisons

Outline prepared by Mrs. Claire Palley pursuant to
Sub-Commission decision 1992/107

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Introduction

1. The issue of the privatization of prisons was brought to the attention of the Sub-Commission's Working Group on Detention for the first time during its 1988 session when it was raised by Mr. Alfonso Martinez. See E/CN.4/Sub.2/1988/28, paras. 10, 47, 48 and 50. The enlightening debate which followed his opening remarks at the Working Group's 1989 session led the Working Group to recommend that Mr. Alfonso Martinez be requested to prepare a document "... containing proposals on the best way to approach the study on the pri-vatization of prisons". See E/CN.4/Sub.2/1989/29, paras. 32-39 for a summary of the debate and para. 40 for the

III. THE UTILITY OF A SPECIAL STUDY

38. It will be obvious that prison privatization is a proliferating phenomenon and that it is essential to understand why this is occurring so that informed decisions can be made whether to adopt or reject it in whole or in part. For this reason, the contentions of its supporters and opponents will be explained.

39. The core reason for such a study is that punishment, in particular imprisonment, means that the whole of the con-cerned individual's life-conduct is regulated in ways which, were they not authorized, would violate nearly every aspect of human rights. This is well-described in the United States judgement of Morales v. Schmidt, 340 F. Supplement 544, 550 (W.D. Wisc. 1972), rev'd, 489 F.2d 1335, 1344 (7th Cir. 1973):

"The most striking aspect of prison, in terms of Fourteenth Amendment litigation, is that prison is a complex of physical arrangements and of measures, all wholly government, or wholly performed by agents of government, which determine the total existence of certain human beings (except perhaps in the realm of the spirit, and inevitably there as well) from sundown to sundown, sleeping, waking, speaking, silent, working, playing, viewing, eating, voiding, reading, alone, with others. It is not so, with members of the general adult population. State governments have not undertaken to require members of the general adult population to rise at a certain hour, retire at a certain hour, eat at certain hours, live for periods with no companionship whatever, wear certain clothing, or to submit to oral or anal searches after visiting hours, nor have State governments undertaken to prohibit members of the general adult population from speaking to one another, wearing beards, embracing their spouses, or corresponding with their lovers." There must be additional concerns about legality and policy when supervision of detained or imprisoned human beings is carried out, not by agents of government, but by employees of private businesses who have contracted to undertake regulation of prisoners' daily lives. The roles of such employers and their motives are not ident-ical with those of the State: they may in part be acting altruistically and, like State servants, for recompense, but they are also acting on a commercially profitable basis, else they will rapidly cease to offer their services.

40. Wider theoretical issues of major significance are also involved. Questions need investigation as to the sources of State power to act coercively (and indeed to impose limitations on human rights) and whether there are any restrictions on how States may act in relation to powers with which they have been endowed by the people. The further question arises whether States are responsible in international law for exceeding those restrictions, if any.

41. If "prison privatization" is permissible, whether in part or to the fullest possible extent, it is necessary to examine whether additional safeguards by way of guidelines and standards need to be devised to govern privatized prison operations.

42. Finally, the point must be made that if the State can lawfully privatize prisons, subject to appropriate safeguards, this establishes a significant principle, which will be a precedent and justification for privatization in similar spheres where the State has the duty of maintaining order, administering justice and applying the law and in relation to which it may limit individual human rights. Such possible future spheres are the duties of the police, which would be justified as an extension of the principle of special forces of constabulary for nationalized industries or major utilities (railway, airport and harbour police, etc.). Development of the notion of the police

as providing a "service" to "customers" (the public) has already been discussed by Government Ministers in some States in parallel with prison privatization; and examination of competitive performances between existing local forces is already being required. The Rt. Hon. Kenneth Clarke, Secretary of State for Home Affairs, Address at 10th Anniversary Conference of the Audit Commission, 5 March 1993, at p. 10. The motivation is not merely money-saving, but performance to the public satisfaction. On 5 March 1993 the Secretary of State still regarded "the police service" as being "a natural monopoly": ibid., p. 13. Future developments were hinted at by an editorial in The Times, 2 September 1992, which regarded policing as a "service", with the public being "customers" of the police and then needing to decide "how much policing they are willing to pay for, specifying what quality of service they would regard as value for money". The Adam Smith Institute in a recent report, An Arresting Idea (reported in "Private security firms urged to take over from 'bureaucratic' police", Security Management Today, August/September 1991 p. 4) argued for privatization of police training, registration of aliens and other police functions. The free-market think-tank's justification was several experiments in the United States, where small towns favoured private firms instead of a police force to maintain law and order. In June 1993 the Government was considering privatizing certain subordinate police functions such as escorting heavy loads on highways. If there is no limit on State powers of delegation, security companies could tender to operate police forces. Similar arguments apply to extending rights of prosecution of criminal offences. The ultimate safeguard to protect the rights of individuals against criminal third parties when the State fails to do this is the right to bring a private prosecution, which the State can, however, stop by a public nolle prosequi. That precedent could be invoked as justification for extension, something already occurring with corporations prosecuting for copyright and other crimes, debts, etc. D.N. Wecht. "Breaking the Code of Deference: Judicial Review of Private persons", (1987) Yale Law Journal, vol. 96, 815 at 817. If private prosecutions are to become more frequent, there ought then to be rules separating the functions of investigation, accusation and aspects of adjudication. In relation to privatizing the conduct of civil proceedings there should be no objection to Alternative Debt Resolution, because this is voluntary, can be seen as an extension of arbitration and does not establish the law and norms for the whole of society, because decisions are not precedents. If, however, jurisdiction of private courts were to be compulsory, with individuals being subject to them, a policy which has been advocated, See Colin Jacque, "Privatizing the Court System", The Lawyer, 4 February 1992, P. 19, where the author argues for privatization of "the whole court system save of course for the employment of judges ... The entirety of the structure, including the buildings and staff of the whole court system would be placed in the hands of a Government affiliated corporation ... Court fees would be reviewed, as a considerable expenditure would be involved in the improving of services which presently fail to provide for the needs of the public and lawyers alike ... It would be appropriate to increase such charges to equate with the size and complexity of the problem in dispute ... The aim is to make the entire system self-supporting. This would obviate the necessity of a Treasury financed system of civil justice." The author recognizes that there are requirements of "open and equal justice to all" and that it must somehow be ensured "that small litigants are 'not priced out' by inordinate fees". this civil justice privatization would be analogous to prison privatization. Once there are no limits on the nature of the functions which can be privatiz

A. Examination of the arguments supporting prison privatization and counter-arguments

43. The following arguments, many of which overlap, are underlain by moral principles commonly subscribed to by both supporters and opponents of prison privatization, who differ in their application of the principles and practical assessments reached. One ideological difference is sometimes present, namely, belief in desirability in principle of reducing the scope and size of government. When examining these arguments it should be remembered that the purpose of listing them is to understand why prison privatization is spreading and to be alerted to any factors likely adversely to affect the human rights of prisoners. The purpose is not to evaluate the most effective way of running prisons, or to decide which mode results in higher standards of general welfare for inmates. That is a prudential question, not overriding the primacy of human rights.

44. The supporting arguments and counter-contentions are:

(a) The participation of the private sector is necessary to effect reform. State prisons had become "humanitarian nightmares", J.T. Gentry, "The Panopticon Revisited: The Problem of Monitoring Private Prisons", (1986) Yale Law Journal, vol. 96, 353, p. 354. The reformer and founder of utilitarianism, Jeremy Bentham, in his 1791 Panopticon, proposed to build and run for a fee a specially designed prison, in which prisoners would always fear they were under observation and thus would refrain from misconduct. Revival of the concept of privatizing prison management was also motivated by reform. It was proposed virtually simultaneously by two influential United States sources: a publication by the Rand Corporation and research published by the National Institute of Corrections. See P. Greenwood, Private Enterprise Prisons? Why not? The Job would be Done Better and at Low Cost, Santa Monica, California: Rand, 1981; and S.S. Steinberg, J.M. Keating and J.J. Dahl, Potential for Contracted Management in Local Correctional Facilities, Center for Human Services for the National Institute of Corrections, Washington, D.C., March 1981. with overcrowding, lack of sanitation, ventilation and heating, unbearable noise, inmate viol-ence, absence of rehabilitation programmes, abuses by guards, harsh disciplinary measures, limited association with other prisoners and overly long periods of prisoners being locked in cells. Prison riots occurred regularly. In the United States court orders speedily to reduce overcrowd-ing, combined with public unwillingness to pay more taxes to finance improved prisons, spurred reformers to legis-lative reform, attempted control by the courts and finally to the alternative of private sector involvement. Broadly similar motives impelled reform through privatiz-ation in France, Australia and the United Kingdom.

(b) Private sector involvement will remove obstacles to reform arising from trade union power. Reform attempts were hindered by some prison professionals, who resisted change. At least one riot (that at Gloucester Prison) was deliberately provoked by officers intent on forestalling reform: Her Majesty's Inspector of Prisons, Report on an Inquiry into Disturbances in Prison Service Establishments in England between 19 April/19 May 1986, H.M.S.O., London, 1987. More prisoner hours out of cells meant more officers on duty. There was a sub-culture of tacit belief that prison arrangements were for prison officers' convenience and restrictive practices were rampant. Many officers were unrelievedly cynical about the rehabilita-tion of prisoners. In consequence, Governments became concerned about the extent of prison officers' trade union power over prison operating conditions. This feature was common to the United States, Australia and the United Kingdom. See Harding, op. cit., note 20 above, pp. 2 and 7. Politicians seldom

publicly voice such criticisms, but in the Home Secretary's Speech to the Prison Reform Trust, 24 March 1993, at pp. 11-12 he said:

"Public sector prisons must take advantage of the lessons learned from competing against - and working alongside - private sector providers ... There must be a constant drive at every establishment to use the resources available, including staff, as flexibly, imaginatively and efficiently as possible. The objective always must be to find ways of achieving more, in terms of performance, with the same or fewer resources. Improvements in productivity have been the way to improve performance in every service and in every industry throughout history - without greater productivity society today would still be living in Victorian conditions and there are some who claim that parts of the Prison Service are."

Earlier the Secretary of State wrote in The Independent, 22 December 1992, that if conditions specified in contracted-out prisons were not delivered, he could impose financial penalties on contractors, eating into their profits: "That will be more effective than anything I have available for an employed service". Governments saw privatization as a way of rapidly implementing reform, creating better condi-tions not only by way of new and rehabilitated prisons, but by introducing flexibility and ending bureaucratic delay and obstruction due to rigid attitudes. Those opposing such privatization perceived the moves as a form of "union bashing", of exploiting labour by operating in states in the United States where union power was weak, of adversely affecting public employees' (prison officers') conditions of service by substituting alternative labour at lower wages, with longer working hours and reduced pension and social benefits. C. Becker, "With Whose Hand: Privatization, Public Employment and Democracy", (1988) Yale Law and Policy Review, vol. 6, 88. The United Kingdom Prisons Unions see the Government's policy of prison privatization as "Taking on the Prison Officers' Association": Prison Services Privatisation note 27 above, pp. 5-6 and 21-23.

(c) Improved standards for the operation of prisons would best be introduced by drawing up detailed management contracts, compelling Governments (and their correctional authorities) to confront and clarify what they hope to achieve. Such management methods have been a catalyst, forcing Governments to examine what "output" they were seeking, rather than merely responding passively to the problems of dealing with prisoners despatched to them by courts and police or to some prison catastrophe. The specifications for privatized prisons far exceed any requirements earlier applicable in United Kingdom and Australian prisons. See the model performance specifications for correctional centres in Queensland attached to Macionis, op. cit. note 21 above. See also the detailed operational specifications (since amended and strengthened) attached to Invitation to Tender: Management of H.M. Prison Manchester - Letter of Invitation, 27 October 1992. In the United Kingdom the preparation of such specifications stimulated the devel-opment of even more detailed standards to be applied by April 1994 to all public sector prisons. Opponents' response to this argument about benefits is that it merely shows that it is Governments which set and should set the standards, not the market, and that Governments can do this without complicating matters by a risky involvement of the private sector, which then necessi-tates monitoring of performance and of the proper observ-ance of prisoners' rights. Opponents' comment about tackling trade union obstructionism would be on similar lines, namely, that it is the Government's duty of and defaults in addressing the deficiencies of its employees which are the issue and not privatization. In both cases the answer may be that privatization was

a more feasible reformist option than taking on trade unions and seeking a much larger prison budget across the board. Oppo-nents in the United Kingdom then remark that its priva-tized prison institutions are operated at much higher standards and therefore at far greater cost, the extent of which is not disclosed even to Parliament, on grounds of "commercial confidentiality". Opponents believe that the purpose is to have a two-tier prison system, with it being obvious that much lower standards prevail in the public sector, which will in turn provide a justification for further running down the public sector. Prison Services Privatisation, Prepared for the Prisons Unions Campaign, supra note 27, p. 79.

(d) The most effective way to provide work for prisoners is through private sector involvement. The need for prisoners to perform useful work is founded on belief in work as a manifestation of human dignity and self-esteem. It is also thought that work is rehabilitative. Furthermore, in an admixture of economic and moral think-ing, it is urged that if prisoners fail to work they are unable financially to support either themselves or their families and add to tax payers' burdens, which in turn reflects on the prisoner's dignity by his failures in these respects. In short, combating the demoralizing effect of prisoner idleness, aiding in rehabilitation and pre-release preparatory work and generating revenue for the State were seen as coming together. There is no proof that work is rehabilitative or prevents recidivism, but, as Chief Justice Burger put it in his "Factories with Fences" speech, 16 December 1981; "If only 10 per cent of those who would otherwise return to prison do not, it would be worth the effort." See Haller, op. cit., note 18 above, p. 495. Haller analyses what she calls "the theology of work" in some detail. The benefits, as seen by an official United States study, are examined in Private Sector Involvement in Prison-Based Business, note 25 above, pp. 36 and 78-81. Business, prison wardens and legislators all ranked reduction of prisoner idleness as the main benefit. For a Canadian (Ontario) view and the opinions of the adviser to the Federal Government's Nielsen Task Force that work by prisoners for private industries reduces Canadian Correctional Commission costs for inmates and welfare services, see Ericson, supra note 15, p. 373. Such motives have led to more state-run industries and to work for private companies within the confines of the institution or outside. Private Sector Involvement in Prison-Based Business, pp. 37-73 sets out various models for the private sector, operating either as employer, investor, manager or customer, and the forms of involvement in states in the United States as in 1985. If the alternative is prisoner idleness, it is asserted to be morally compelling to accept private involvement. Such involvement has not been opposed other than by labour unions who fear exploitation of cheap labour. Penal reformers are all concerned to ensure that unfair exploitation does not occur and therefore advocate enforceable health, safety and wage standards whenever persons work, whether for the public or the private sector. Furthermore, although ILO Convention No. 29, with its requirement that prisoners' work for private persons must be voluntary, has not been universally ratified, some states in the United States have similar statutory require-ments. The relatively small experience by 1985 indicated that prisoners obtained better pay from the private sector and were willing to work. Ibid., p. 87. Prisoners in the United States strongly preferred private sector employment projects, not merely because they were better paid than in traditional prison industries, but because of resentment against the State levying room and board charges against inmate wages. They were hostile to working for their "keepers".

(e) The ideological justification for prison privatization is that the size and scope of Government activity should be reduced and that operations should be decentralized. In particular, it is thought

that the civil service has become a rigid traditionalist bureaucracy with consequential inevitable mismanagement and a stream of unenforceable circulars dispatched to prisons. The Gov-ernment of the United Kingdom has in recent years formu-lated and applied a policy of making public services accountable to citizens and of achieving improved quality of services. Referring to the Government's having pro-ceeded "on an heroic scale" with reforms of the public services, the Secretary of State for Home Affairs explained:

"We must maintain the momentum for change. We have already challenged the monoliths which were arrogant twice over. They decided what the needs of the people were; and then they decided how they were to be satisfied." Address at 10th Anniversary of the Audit Commission, 5 March 1993, pp. 17-18.

The opposing view, which the Secretary of State denied had any "ideological justification", is that custody and care of prisoners should be a public sector monopoly. Ibid., pp. 15-16. The ideology has in fact come from free-market anti-state sector research institutions. Just as in the United States, where the Rand Corporation think-tank first proposed prison privatization, the United Kingdom Adam Smith Institute gave the impetus with its publication Omega Justice Policy, A.S.I. Research Ltd, London, 1984. The Adam Smith Institute pursued prison privatization, despite initial Ministerial rejection of the concept, and published P. Young, The Prison Cell, A.S.I. Research (Ltd), London, 1987, painting a rosy view of the American experience and simultaneously criticizing "producer dominance" by the prison unions. Stephen Shaw, "The Short History of Prison Privatisation", (1992) Prison Service Journal, No. 87, pp. 30-32, comments that "it was the personal interest in the idea of private prisons of just two ... back benchers on the Home Affairs Committee ... which placed the issue so firmly on the political agenda". The Fourth Report from the Home Affairs Committee, Contract Provision of Prisons, H.C. Paper 291, 1987, recommended "that the Home Office should, as an experiment enable private sector companies to tender for the construction and management of custodial institutions". Thereafter, management consultants Deloitte Heskins and Sells were commissioned to produce A Report to the Home Office on the Practice of Private Sector Involvement in the Remand System, 1989. They reported favourably. In the international accountancy world cross-links and potential conflicts of interest arise inevitably. The Prisons Unions Campaign notes that Corrections Corporation of America (See note 32 supra) had as its Tenessee-based independent auditors Deloitte and Touche: Prison Services Privatisation, note 27 above, p. 50.

(f) A mixed economy within the prison system of both public and private providers is urged as being more efficient, because of the salutary effect of competition. This has been well explained by the United Kingdom Secretary of State:

"The stimulus of competition will raise standards throughout the prison system. More providers will mean more innovation, better value for money and more bases for sensible comparison between the best and the worst in the system. In short, a better deal for prisoners and a better deal for the public. In the prison service as elsewhere there needs to be a constant, rigorous search for improvements in both quality of service and value for money. That is what competition will stimulate. Prisons are not some unique human activity which should be sheltered from the benefits of competition in a centrally controlled monopoly for any longer. The failings of the British Prison Service are a perfect example of the failings of centrally managed monopoly in any walk of life". Home Secretary's Speech to the Prison Reform Trust, 24 March 1993, pp. 15-16.

Under a mixed system the public sector also makes bids for the management of prisons (whether new or rehabili-tated) by a process known as "market testing", with the bid from either sector which affords best value for money in relation to the specified outputs being accepted. "Market testing" may have been conceived as a form of "gingering-up" the public sector, but, once corporations get into the business of provision of prisons, they will be anxious to compete in this market. Recognizing this, the Government of the United Kingdom envisages

"an increased role for the private sector in managing prisons to provide a source of competition and new ideas". Framework Document, H.M. Prison Service, London, April 1993, P. 2, the Home Secretary.

A further claimed advantage of using private sector ser-vices with the appropriate level of skill will be rationalization of overlapping services, in particular use of the private escort service to release skilled police and prison staff for their professional duties. House of Commons Debates, 5 December 1991, col. 220, Secretary of State. So far as concerns skill, opponents argue that training standards for the private sector are at a lower level than that in the public sector, despite the safeguard that each private sector prison custody officer must be certified by the Secretary of State as not merely a fit and proper person but as trained to an appropriate stan-dard. However, at least one public service prison gov-ernor has approved private sector training methods, vetting procedure and standards in "the best jail I have ever seen". D. Waplington, "Observations on a Visit to the Wolds", (1992) Prison Service Journal, No. 87, p. 33. In contrast, a survey of the same prison after one year of operation was critical of Government refusal to reveal basic staffing information and found that there was a crisis of staffing levels. Prison Reform Trust, Wolds Remand Prison Contracting-Out: A First Year Report, London, April 1993, pp. 26-27. Public sector trade unions opposed to privatization also point to the serious problem of low standards in the private security industry, which forms part of the consortia to operate prisons. See Prison Services Privatisation, supra, note 27 above, pp 28-38 and 92-93, documenting the deficiencies of security firms. In the United States a National Institute of Justice study found serious problems. References to various studies about the low quality of the personnel in private security companies are given in J.E. Field, "Making Prisons Private: An Improper Delegation of a Governmental Power", (1987) Hofstra Law Review, vol. 15, p. 664.

(g) Cost has been put forward as an answer to the fiscal problems in the United States where publicly-approved taxes could not be raised to build new prisons. It is also claimed that private sector prisons are cheaper (give better value for money) and allow money to be redirected to rehabilitatory programmes and improved conditions. This is because private construction firms can produce new, better designed prisons more quickly and cheaply and can effectively contain running costs by employing fewer staff, who will not be members of unions with restrictive practices and unnecessarily generous terms of service. Some of the figures produced in Australia show great public savings. Harding, op. cit., note 20 above, p. 7 states that capital costs were halved in New South Wales for the new Junee Prison which cost A$57 million. He also reveals, at p. 1, that running costs for the Queensland Remand and Reception Centre were A$11.5 million per annum as opposed to A$18 million if it were run by the public sector. In the United States there was both optimism about potential savings of 25 per cent on running costs and pessimism that in such a long term business as prisons the outcome would not be profitable. See the countervailing arguments about operational advantages and disadvantages of having private

prisons in W.I. Cikins, "Privatisation of the American Prison System: an Idea whose Time has Come?", (1986) Journal of Law, Ethics and Public Policy, vol. 2, 445 at 456-457. Results in the United States are disputed and failures both as to financial viability and as to standards are raised by opponents. Some examples of financial failure or private prison facilities in the United States are cited in Prison Services Privatisation, op. cit., note 27 above, pp. 69-70. There are major problems if a contractor goes bankrupt and difficulties in taking his staff into the public sector. Restructuring and buy-out may be the answer, subject to safeguards as to the character of the purchaser in a "take-over bid" for the prison. The United Kingdom Prisons Unions Campaign is even more critical of cost cutting, staff firing, lack of adequate training by United States corporations in the business of managing prisons and of alleged corruption: ibid., pp. 74-77 and 91-92.

The current view about cost benefits is well summed up by an American author:

"In practice, the switch to private prisons has proven less costly for some and more costly for others. Examples of cost savings and cost overruns in both public and private prisons make it exceedingly clear that the performance of public prisons has not been invariably bad, and the performance of privately-run prisons has not been invariably good. At best, the public should remain sceptical of claims that private prisons will save taxpayers money. What data there is provides absolutely no basis from which to conclude private prisons will operate any more efficiently or at any lower cost to taxpayers than public prisons". S.F. Stacy, "Capatalist Punishment: The Wisdom and Propriety of Private Prisons", (1991) Nebraska Law Review, vol. 70, 900, at 914. C. Logan, Private Prisons: Cons and Pros, New York, Oxford University Press, 1990, at P. 93, shows that savings at Immigration and Naturalization facilities ranged from 6 per cent to 72 per cent. In county prisons savings ranged from 5 per cent to 52 per cent, depending on space available for contracting out to other jurisdictions and the possibility of eliminating certain employees. Although a supporter of privatization, Professor Logan, at p. 117, declared that: "Private prisons will not necessarily be less expensive than those owned and run directly by the government".

In the United Kingdom there are difficulties in making comparisons, but thus far it appears that the public sector is cheaper than the private sector with its stipu-lated higher standards. See Wolds Remand Prison Contracting-Out, op. cit., note 58 above, p. 15. On the early Wolds' costs at a time when the private prison was not full, it was costing $37,336 per annum per prisoner, whereas the average cost in the Prison Service in 1991/1992 was $22,984. But this is to compare peaches with bananas. The Secretary of State for the Home Department revealed that the weekly cost per prisoner for 1992, the first nine months of the Wolds' Remand Prison's operation, was £626 ($939). In the State Lindholme Prison, a category C training prison, the cost was £336 ($504), but he thought comparison misleading because, when a prison opens and is filling with prisoners, its unit costs are higher: House of Commons Debates, 30 March 1993, c. 115. The Director General of the Prison Service wrote to The Times, 2 June 1993, that Wolds' weekly costs per prisoner were now £350 ($525) and at the new Blakenhurst prison £310 ($465); whereas in the State sector the average was £440 ($660). He pointed out that the last figure included high security prisons. A danger in the longer run is that although initially the market is competitive, an entrenched industry develops, at which stage competition disappears and cost benefits with it. In the United States prison operating firms are accused of initial "low-balling" to accustom the public to private prisons and of intending to

raise prices once this happens: J.M. Cheever, "Cells for Sale, National Law Journal, 19 February 1990, p. 33, col. 2. Similarly, in the United Kingdom the opposing prison officers' unions suggest that firms have adopted "loss leader" bids to win contracts, but accept that this cannot be proven either way because the contract finances are "commercially confidential", with information even being denied to Parliament: Prison Services Privatisation, note 27 above, p. 17. In contrast, the United States National Institute of Justice's research review, Private Sector Involvement in Prison - Based Business, note 25 above, pp. 83-84, concluded that private sector firms became involved in prison-based business (i.e. using prisoner labour) as much because of a desire to do good and to act with corporate responsibility as they did because of practical business needs. The survey, however, concluded that a firm "in the final analysis will be able to maintain its involvement only so long as it can financially justify doing so". This will a fortiori apply to the far larger responsibility of managing an entire prison. Even more serious is the risk that if the State cannot return to a competitive market to rebid the contract, sanctions for misfeasance will not be effective to halt even detected abuses. There will be constraint and reluctance to penalize the firm heavily enough to drive it from busi-ness either at the end of a contract or during its currency, because it will be a logistical nightmare to switch at a time when competitors are unavailable and the State has run down its own prison service. See Gentry, op. cit., supra note 43, pp. 358-359 and Stacy, op. cit., note 63 above, pp. 915-916. The United States official study, The Privatisation of Corrections, op. cit., note 25 above, p. 75, made the same point about the capacity shrinking and the difficulty in reverting to public management.

(h) Private participation in prisons will be an opportunity for creating wealth. An official United States study in 1985 pointed out that:

"Straight leasing provides investors with capital appreciation and non-cash losses with which to offset cash income for tax purposes, including depreciation and investment tax credits. Lease/purchase arrangements allow investors to deduct from their taxes the interest component associated with periodic lease payments. Both straight leasing and lease/purchase offer the investor a steady cash flow and early return of invested capital". The Privatisation of Corrections, supra. note 25, at 50.

Opponents believe profit to be a distorting factor in the treatment of offenders and, while accepting that private sector employees can be as altruistic as those in the public sector, reject the notion of non-charitable corporations continuing to operate prison businesses without regard to profit, especially in the long run. Critics point to an inherent conflict of interest between profitable operation of prisons and improving conditions for prisoners. They assert that the need to maintain profits will cause private prison companies to reduce their staffs and programmes, since staff comprise the largest part (more than 60 per cent) of prison budgets. It is cheaper to reduce staff numbers and to keep inmates within a secure perimeter, as in some United States privatized institutions. Cells have televisions, even computer terminals to occupy inmates, while armed guards use audio and video equipment to observe them. Inmates seldom leave their cells. In the United Kingdom two forms of protection against this are promised. How inmates spend time will be set down in the contract and the controller will be on site to check standards: R. Graef, The Independent, 4 March 1993, p. 4. The Prison Reform Trust, reporting on the Wolds' first year of operation, found that, even fully acknowledging the teething problems of a new gaol, there was good cause for concern and that specified standards, particularly as to staff, were not being met. op. cit. note 58 above, pp. 37-39. In short, they believe that in privatized prisons

commutation of sentence, which, had it been found, would have enabled challenge on grounds of failure of due process. The relevant statute was not mandatory in language and did not explicitly define the obligations of those charged with granting the particular liberty: ibid., p. 465. In such cases there remains the possibility of State disciplinary action against defaulting State employees. Even that deter-rent possibility disappears with private contractors and their employees. Nor could there be liability by way of the tort of misfeasance of public office, since such persons are not public officers. Similarly there is doubt whether they would be amenable to proceedings by way of a public law remedy such as judicial review. An example illustrates the point: if in breach of the Prison Rules for England and Wales private guards placed a prisoner in a strip cell for several days and treated him with a degree of indignity, but he was then returned to his ordinary cell, the prisoner would have no remedy against the State, the contractor or his employees because no pecuniary loss would have been suffered (necessary for a claim in negligence); there would have been no false imprisonment because he was in prison under authority; there would be no action for breach of statutory duty because the Prison Rules do not confer such a right; and, because it is doubtful whether the facts are of such a degree as to consti-tute an assault, such a claim against the contractor's employees may fail; even if there was an assault, neither the State nor the contractor would be liable because the employees would have acted outside the scope of their actual and ostensible authority and will have been forbidden so to act. The example emphasizes the limitations occasioned by the law of vicarious responsibility. The State is not vicariously liable for the tort of misfeasance of public office which arises when an officer knowRacz v. Home Office, 4 December 1992 (Court of Appeal) Judgement, at p. 21. The applicability of vicarious responsibility is sought to be further reduced in privatized prisons in England and Wales where the contract specifications state that:

"The Contractors shall at all times throughout the duration of the Agreement be an independent contractor and nothing in the Contract shall be construed as creating at any time the relationship of employer and employee between the Authority and the Contractor or any of the Contractor's employees. Neither the Contractor nor any of its employees shall at any time hold itself or themselves out to be the employee or employees of the Authority": Documents for the Operating Contract of H.M. Prison Manchester, schedule 5, Conditions of Agreement. F. 24. Furthermore, because the United Kingdom does not have a comprehensive Bill of Civil Rights, there is no remedy for violations of human rights as such. Ability to sue an actual perpetrator with-out assets (private contractors' guards) little avails a victim of a human rights violation. Although in similar circumstances the State is also not liable, as a matter of practical politics it frequently makes payment on an ex gratia basis. In contrast, with privatization this will not occur and there will then have, after exhaustion of domestic remedies, to be applications to the European Commission of Human Rights. Those applications will raise questions about the State's responsibility for the actions of third parties. James, Young and Webster v. United Kingdom (7601/76; 7806/76) Judgement, 14 December 1979, 3 E.H.R.R. 20 and National Union of Belgium Police v. Belgium (4464/70) Judgement 27 May 1974, 1 E.H.R.R. 578 are precedents that the State must take positive measures to protect the individual's freedom against interference by private interests and that, if it fails to do so, it is liable precisely because those who inflict the interference are not: P. Sieghart, The International Law of Human Rights, Oxford: Clarendon Press, 1983, p. 44. This indicates a systemic failure regarding State liability for violation of human rights of prisoners and for which the State should assume liability, because there will

have been illegitimate use of power, functions and the de facto position conferred by the State, with such power, functions or position being used for ends different from those contemplated.

56. In the United States 42 U.S.C.A. $ 1983 permits suits against states acting through their designated officers, or where the State creates a situation where private interests deprive individuals of their constitutional or statutory rights, or where functions traditionally or normally performed by the State are delegated to or performed by private interests. It is clear that "state action" or private action "under color of law" will be present when prison contractors or their employees invade constitutional rights. West v. Atkins 487 U.S. 42 (1988) where the Supreme Court unanimously held that a private doctor's provision of medical services to inmates in terms of a contract with the state constituted "state action" and "action under colour of state law" for purposes of section 1983. See also Medina v. O'Neill 589 F. Supp. 1028 (D. Tex. 1984) where the discharge of a private guard's shotgun killed one and wounded another recaptured stowaway. The guard was employed by a private security agent contracting for incarceration of undocumented workers by the Immigration and Naturalization Service. If the invasion is not of a degree which the court finds to be cruel or unusual punishment or in violation of due process, no remedy will be available. The courts have been deferential to prison operators as to what they find violative and are reluctant to intervene in prison authorities' decisions. They have held that because prison problems are complex, requiring

"expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of Government,"

courts should not interfere except in case of the most egre-gious abuses, and have applied this reasoning to allow puni-tive isolation of inmates, restriction of mail, multi-cell occupancy, prohibition of visits and limited eligibility for rehabilitation programmes. See D.N. Wecht, "Breaking the Code of Deference: Judicial Review of Private Prisons", (1987) Yale Law Journal, vol. 96, 815 at 820, citing Procunier v. Martinez 416 U.S. 396 (1974) pp. 404-405 and numerous other Supreme Court decisions.

57. The prisoner is often both punished and victimized: in addi-tion to his imprisonment, he is at serious risk from his fellow prisoners. In the United States in 1987, 6.5 per cent of federal and state inmates were in protective custody, a form of segre-gated confinement intended to provide enhanced safety for likely targets of inmate violence, but where the conditions are similar to those imposed as punishment for disciplinary infractions. J.E. Robertson, "The Constitution in Protective Custody: An Analysis of the Rights of Protective Custody Inmates", (1987) Cincinnati Law Review, vol. 56, p. 91. Failure to transfer to protective custody may result in serious assaults on prisoners for which they would seldom have a remedy against the State, mere negligence in respect of harm to inmates not giving rise to liability. Davidson v. Cannon 106 S.C. 668 (2986) and Daniels v. Williams 106 S.C. 662 (1986). Such events are likely to be more frequent with private contrac-tors, where profit-seeking and reduced numbers of staff create even greater potential for abuse. The guards will not be liable for harm caused and the assailant will have no means to pay damages, whereas it was being in prison which caused the prisoner to be subjected to violation of his rights.

58. A final point, shifting from public to private administra-tion of prisons affects prisoners' safety. In all prisons a fundamental social rule is absence of complaint by victims of co-prisoner violence, because of the retaliation and contempt following giving information. For this reason

prisoner behaviour requires constant scrutiny and generous staffing. The private sector will have no incentive to provide the latter, so that deficiencies in the municipal law of liabil-ity for maltreatment of prisoners become even more signifi-cant. One way of mitigating this (already adopted for United Kingdom privatized prisons) is to specify in the contract that the contractor must be well insured for public liability (which will protect against claims by members of the public in or out of prison), but this does not deal with the deficiencies of the law of delict/tort which is primarily fault based. It may be that the only safeguard would be absolute liability in respect of safety of persons, combined with compulsory insur-ance, The Interposition of a commercial insurance company, rather than direct payment by the State (which is its own insurer) carries risks. Insurance companies are notorious for disputing and delaying payment of claims and for settling at minimal sums under virtual duress where a plaintiff is without means. which would consequently reduce the cost benefit to tax-payers.

59. The law of State responsibility has been rapidly developing. According to the International Law Commission's Draft Articles on State responsibility (as formulated since 1985) States are injured if the right infringed by the act of another State arises from a multilateral treaty or from a rule of customary international law and it is established that the right has been created or is established for the protection of human rights and fundamental freedoms. Report of the International Law Commission on the work of its forty-fourth session, 4 May-24 July 1992, Official Records of the General Assembly, forty-seventh session, Supplement No. 10, (A/47/10), p. 36. Prohibition of cruel, inhuman or degrading treatment or punishment can now be said to be a norm of customary law, although the content of the norm still gives rise to diffi-culties because of some uncertainty around the penumbra of facts characterized as contravening the prohibition. At all events, State Members of the United Nations must be concerned if the internal law of States, particularly where there is prison privatization, systematically fails to secure human rights recognized in the International Covenant on Civil and Political Rights and by customary law. So long as there is such doubt as to liabil-ity and remedies, it is a strong policy reason for privatiza-tion of prisons to be considered potentially violative of human rights.

60. The fourth policy argument about the necessity for clear public accountability for the operation of the criminal justice system, including prisons, has several aspects. First, there is a need for the people as sovereign to be kept informed and to have the right to seek information (an art. 19 issue) in order to be able to evaluate government performance and to govern responsibly. Second, there is need for the public to see and therefore to ensure that the State's duties of providing conditions of imprisonment in accordance with human rights are being properly performed. Third, in order for there to be confidence in the criminal justice system, that system must be perceived to be functioning, See Gentry, op. cit., note 43 above, p. 358, citing Richmond Newspapers Inc. v. Virginia 448 U.S. 555 (1980) pp. 571-572: "It is important that society's criminal process 'satisfy the appearance of justice' and the appearance of justice can best be provided by allowing people to observe it." so that secret State monitoring will not suffice. Fourth, monitoring is a difficult and costly task, undertaken often without knowledge of the private firms' internal finan-cial data and decisions and one in which officials identified with particular penal policies are reluctant to investigate abuses because of their own association or because of the problem of finding alternatives. Travis, Latessa and Vito, op. cit., note 28 above, p. 15; and Gentry, note 90 above, pp. 359-360. A particular risk is "capture of the regulator" by the regulated entity, either because the industry is more organized than the public at large, or

"because the agency is populated by employees past, present and hopeful of the regulated industry", or because of "old boy loyalties" and ways of playing down difficulties. In the defence context this is known as "the revolving door" between the Pentagon and defence contractors. In the newly-privatized English prisons directors and some of their senior personnel have been recruited from the Prison Service and work closely with their former colleagues, controllers, who are charged with watching them. Fifth, ultimate public control and responsibility must be retained and thence a power by the Government to give directions either through a Minister or through a regulatory agency directly under a Minister. Likewise the courts must retain control. The necessity for powers of control gives rise to difficulties in relation to prison privatization when it takes the form of contracted-out management. Because the relationship is contractual, unless specified exceptions have been written into the contract or are implied by law, the State is limited by the contractual terms. Thus, apart from subsequent con-tractual modification, or overriding statutory powers, the State cannot bind the contractor to new

61. The information aspect is so significant that it is necessary to spell out what it entails. Unless there is public vis-ibility of information about private prison companies, including major shareholders, finances, contract prices, costs, the final contract with standards required, standards observed, staffing, with details as to professional cat-egories and grades, training schemes, conditions of service, contingency arrangements and notice periods, it will be impossible to assess whether concerns by the public and prisoners about prison standards are being met, whether problems have occurred, and what may be brewing. Hitherto there has not been full disclosure of all these aspects: in Queensland, both standards and financial provisions are treated as commer-cially confidential; in England and Wales, financial details, staffing details, profit levels, contingency plans, periods of notice, etc. are all kept "commercially confidential" with the responsible Minister refusing to give such details. The only justification can be that this is the early stage of privatization and that it would be unfair to disclose such information to competitors. If such information is not disclosed after the initial period, there will then be no public accountability to the legislature. See, inter alia, House of Commons Debates, 24/1/92, col. 362; 4/11/92, col. 223; 11/11/92, col. 789; 16/11/92, col. 4; 7/11/92, col. 106; and 20/4/93, col. 1370.

62. Reports by the controllers of contracted-out prisons in England and Wales are made only to H.M. Prison Service (an agency which is part of the Home Office). They contain management information and are regarded as confidential. Nor will reports on service delivery be published. Neither is an annual report by the contractor or the controller envis-aged. Instead, H.M. Prison Service's Annual Report will contain some information about performance in both public and privately operated prisons. House of Commons Debates, 24/1/92, col. 362; 6/7/92, col. 38; and 23/3/93, col. 531. There will also be independent boards of appointed Prison Visitors who may publish reports; the Home Affairs Select Committee in Parliament will receive evidence from the Minister and Home Office civil servants; and there will be inspection (approximately biennially) by the Chief Inspector of Prisons.

63. A particular concern is that although the chief source of public information will be reports by the press and by chari-table foundations, such as the Prison Reform Trust, their publications will be subject to libel suits by private con-tractors. The English law of libel does not confer the same protection to comment on the activities of corporations or persons in the public realm as does American law, where free-dom of speech is in the public interest, provided the comment

is in good faith and not malicious. Nor is there a prohib-ition on prior restraint. Private prison corporations will therefore be able to issue gagging writs. In contrast, were prisons publicly administered, the law of libel would be inapplicable because a public body cannot act as plaintiff in libel litigation. Thus in England and Wales the change from public to private prison administration in effect puts a legal chill on public criticism of private prisons, unless the criticism is within the limits of the strict Common Law of libel. Only in Parliament will it be absolutely safe to criticize the administration of privatized prisons.

64. The fifth major policy argument is that symbolically only the State should have the power to administer justice and to execute it by coercion, because only then will justice have legitimacy in the eyes of those subjected to it. The following is a summary of views expressed by I.P. Robbins, "Privatisation of Corrections: Defining the Issues", (1986) Judicature, vol. 69, p. 331; J.E. Field, "Making Prisons Private: An Improper Delegation of a Governmental Power", (1987) Hofstra Law Review, vol. 15, 649 at pp. 673-674; and Stacy, op. cit., note 63 above, pp. 920-921. Central to this question is where Governments get the power to punish and whether punishment is legitimate if effected by an entity other than Government. The Government, according to modern theories of the State, is permitted to exercise such power because of the concept of the social contract, whereby people contract to form a State, turning over to it their power to create and enforce rules in return for pro-tection by the State. Under that contract members of society agree to accept the laws of the State and to allow it to punish them for violation. John Locke, the major early modern proponent of social contract, first formulated a political doctrine of non-delegation of legislative power, although long before him Henry de Bracton (1250) had enunciated the notion that the king could not delegate the jurisdiction entrusted him, for the crown of the king was to do justice and judgement. See H.P. Ehmke, "'Delegata Potestas non Potest Delegare'. A Maxim of American Constitutional Law", (1961) Cornell Law Quarterly, vol. 47, p. 50. Dr. Ehmke refutes some superficial conclusions, widely cited, about the context of Bracton's reference and the authors' denial that the maxim was a principle of constitutional law, which they put forward in a similarly named article. See P.W. Duff and H.E. Whiteside, (1929) Cornell Law Quarterly, vol. 14, p. 168. Bracton took over terminology from Roman and Canon law to deal with the problem of delegation of jurisdiction.jurisdiction is restricted: see citations of Spanish and French commentators in Duff and Whiteside, op. cit., note 97 above, p. 171. In ancient Rome only those appointed by the Emperor to make decisions were to make them. The maxim delegata potestas non potest delegare (D.1.21.5) was applied to judicial office. It was taken over not only in civil systems like Roman-Dutch Law but into the Common Law, where it has survived as a presumption of statutory interpretation and in the law of trusts, of agency and arbitration. Indeed, writings by political theorists of the middle ages about pacts and contracts between the ruler and the folk (people) were not merely metaphysical speculations, but legitimate conclusions about the recognition of rulers by the community (people) on whose consent a ruler's authority and jurisdic-tion depended. The notion that jurisdiction is a trust was the equivalent of the State practice of the middle ages. Bracton's elaboration that jurisdiction cannot be delegated soon passed into general constitutional thought.

65. Although it is difficult to persuade pragmatic thinkers of the importance of political theory (even when acceptance of a particular theory is universal) it is essential, when looking at privatization of management of prisons, to revert to the theory of social contract. An American

author sums up the issues clearly:

"The power of punishment, therefore, has been placed in the hands of the State through social contract, and once an entity other than the State seeks to punish for an offense, the social contract is violated. To remain legitimate, the power to administer punishment and thereby restrict the liberty of those who violate society's laws must remain solely in the hands of public authorities." Stacy, op. cit., note 63 above, p. 921.

This policy reflects the original, and is possibly still the primary, "raison d'être" of government. This argument was identified (together with the counter-policy of a legitimate role for private enterprise) in the United States Department of Justice Study, The Privatisation of Corrections, op. cit., note 25 above, p. 72. Even if adminis-tering justice or punishment were offered free by a private prison corporation, or for that matter by vigilante "police" or hangmen, privatization remains a policy that is contrary to the social contract by which consent of the people to Government was given. See Dilulio, op. cit., note 18 above, p. 5.

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UK: Firms lose two, but 'market' is safe

Britain's private prison companies have failed to beat off competition from the public sector for contracts to manage Blakenhurst and Manchester prisons.

Prisons and probation minister Paul Boateng announced on 12 January 2001 that, following tendering exercises, the prison service had been awarded preferred bidder status for both contracts.

The gap between the bids in terms of cost and quality once again undermines the arguments that private companies are always cheaper, more efficient and innovative than the public sector.

The in-house bid for Blakenhurst prison in the West Midlands was 13 per cent higher on quality but 12 per cent cheaper than the second best bid from UK Detention Services Ltd (UKDS), the company that has run the prison since 1993.

These differences in quality and cost appear staggering until compared with the result of the competition for Manchester prison in North West England. The prison is already run by the prison service under what is known as a Service Level Agreement (SLA, the public sector equivalent of a contract).

The difference between the in-house bid and the nearest competitor - UKDS again - was 18 per cent on quality and 20 per cent on cost.

Both in-house bids offered to provide more purposeful activity; education, offending behaviour programmes and increased time out of cell for prisoners.

The ten year SLA for Blakenhurst will take effect from 19 August 2001 and Manchester's SLA will start on 16 October 2001.

Also remarkable is that bids for both contracts from another of the short listed companies, Premier Prison Services Ltd (PPS, owned by Wackenhut Corrections Corporation and Serco), failed to meet the independent evaluation panel's qualification criteria.

PPS has six prison contracts in the UK - more than any other company. Last year, Elaine Bailey, the prison service's head of security became managing director of Premier Custodial Group Ltd.

Other unsuccessful firms were Securicor, which bid for both Blakenhurst and Manchester and Group 4 which only bid for Manchester.

Still a safe haven for companies

Despite this setback, the prison companies do not need to worry about how they might recoup the heavy costs of their involvement in such bidding processes.

Minister Paul Boateng attributed the results of the tendering processes more to the private sector than the prison service, saying that "the result shows what the prison service can do when under the pressure of competition."

He also pledged that, if the management at Manchester and Blakenhurst fail to deliver "all that is promised ... they will be contracted out again without an in-house bid being allowed."

Continuing his unveiled threat to the prison service he added that "there can be no more excuses for failing prisons. The private sector has played, and will continue to play, a significant role in the delivery of high quality correctional services. There is no reason for the private sector to doubt ministerial commitment to the public private mix. We are using competition as a means of constantly ratcheting up performance and improving value for money."

The minister, who denied that he had any "ideological predisposition one way or another" also took the opportunity to outline his plans for further market testing of existing publicly run prisons in England and Wales.

Admitting that "the private sector would show interest (in market testing] if there was no in-house bid" he also said: "market testing has proved its worth and I now wish to make the process more rigorous ... and I have agreed with the director general that ... he will provide me with a list of prisons which in terms of quality of regime and costs are failing. The worst of those prisons, at least two this year, will be given six months to plan and agree necessary and significant improvements. If this does not happen I shall direct the director general to move immediately to contract out those prisons without an in-house bid."

Asked which prisons were immediately under threat he replied that he had "none in mind."

But, according to prison service sources, these could include prisons at Birmingham, Exeter and Chelmsford.

Under fire

The Government's market testing strategy was criticised by both the private sector and the trade unions that represent public employees.

The Financial Times, 13 January 2001, reported that, according to Group 4, the Government's policy lacked clarity and there was no guarantee that the private sector would be interested in taking on failing prisons.

Meanwhile, the Prison Officers' Association (POA) and Prison Governors' Association (PGA) argue that market testing leads to anxiety and lower morale amongst staff and diverts resources away from providing regimes for prisoners. The major cause of failing prisons, they say, is under funding.

Sale time: private or semi-private?

While it remains to be seen how market testing for existing publicly run prisons develops, private prison operators received a Christmas bonus when, in December 2000, the director general of the prison service announced plans to close and sell off a number of the 37 English prisons which are no longer fit for

modem use.

Their closure is likely to be matched with a building programme of larger capacity facilities. These will either be privately financed, designed, built and run or semi-private, where all but the custodial services are privatised.

The plan was a response to a recent report by the chief inspector of prisons for England and Wales which condemned conditions for prisoners in older facilities.

Since 1992, the management of four newly built prisons and one refurbished prison have been put out to tender. Of the four that have been run privately, when the current contract for Blakenhurst ends only two will remain under private management. These are: Doncaster, now run by Premier Prison Services Ltd on a 10 year contract (see PPRI #31); and HMP Wolds, which is run by Group 4. The contract for Wolds is due to be re-tendered.

The family of Alton Manning, a black remand prisoner who, according to a coroner's jury, was unlawfully killed by prisoner custody officers at Blakenhurst in 1995, have renewed their call for the officers to be charged in connection with his death. Mr Manning died of asphyxia after being restrained by UKDS staff.

Seven officers were suspended from duty but the Director of Public Prosecutions said there was insufficient evidence to bring any criminal charges against them.

But in May 2000, after a challenge in the High Court by Mr Manning's family, the Lord Chief Justice said that the decision was flawed and should be reconsidered.

New method for comparisons

After years of standing by its figures for the comparative costs of public and privately managed prisons, the prison service has commissioned consultants to devise a new methodology.

The original method used by Coopers & Lybrand (as was) for 1994/95 has also been used since by the prison service. The last comparison, for 1998/99 found that, on average, privately run prisons were 13 per cent cheaper.

Critics have always argued that the methodology was flawed.

Scotland: two to replace five

Five prisons currently run by the Scottish Prison Service could be closed and replaced with two large privately financed, designed, built and run prisons.

The Shadow Justice Minister, Rosanna Cunningham, criticised the proposal, saying: "the falsehood peddled by New Labour that private prisons were cheaper has been blown out of the water by a recent report which highlighted the true cost of the private prison in Kilmarnock was £290m over 25 years rather than

the £130m reported by Labour."

Private money go round

A round up of some of the most recently filed accounts of British companies operating prisons, prisoner escort services, electronic monitoring and immigration detention centres (see PPRI #25). NB: Not all companies are listed here.

Prison and Court Services Ltd is Group 4's holding company for three subsidiaries, Group 4 Prison Services Ltd, Group 4 Court Services Ltd and Rebound ECD Ltd.

The company paid a dividend of £2m to shareholders during the year ended 31 December 1999. Its combined revenues were £81m (£71m in 1998) and pre-tax profit was £8.2m (£9.2m in 1998).

Including administrative staff, the group employed 2,788 employees compared with 2,482 the previous year.

The highest paid director earned £119,000.

The group also participated in joint ventures such as:

Group 4 Carillion (Fazakerley) Ltd (see below), with Carillion Private Finance Ltd for the finance, design, construction and management of Altcourse prison in Liverpool. Its trading subsidiary is Fazakerley Prison Services Ltd.

Education Care and Discipline Ltd , with Carillion Private Finance Ltd. for the finance, design, construction and management of Medway Secure Training Centre in Kent. Its trading company is ECD (Cookham Wood) Ltd.

ECD 3 Ltd with Carillion Private Finance Ltd for the design, construction, management and finance of Rainsbrook Secure Training Centre. The trading subsidiary is ECD (Onley) Ltd.

Group 4 Carillion (Onley) Ltd with Carillion Private Finance Ltd for the finance, design, construction and management of Rye Hill prison. The trading subsidiary is Onley Prison Services Ltd.

Group 4 Prison Services Ltd designs constructs and manages prisons, remand centres and "similar institutions" and provides associated security services. Its dividend contribution to shareholders was £700,000 during the financial year ended 31 December 1999. Revenues for the year were £28.05m (£27.25m in 1998) and pre-tax profit was £1.9m (£3.2m in 1998).

Rebound ECD Ltd is the management contractor for the two secure training centres run by ECD (Cookham Wood) Ltd - Medway - and ECD (Onley) Ltd - Rainsbrook. Revenues for the year ended 31 December 1999 were £6.89m (£4.29m in 1998) and the pre-tax loss was £1.69m compared with a loss of £207,000 in 1998.

Group 4 Court Services Ltd provides escort and associated security services. Its dividend contribution in

the financial year ended 31 December 1999 was £1.3m. Revenues were £46.1m (£39.9m in 1998) and pre-tax profit was £5.4m compared with £5.1m in 1998.

Group 4 Carillion (Fazakerley) Ltd had revenues of £19.4m for the year ended 31 December 1999 (£15.9m in 1998) and pre-tax profit of £4.2m compared with £1.6m in 1998. The company paid a dividend of £2.4m during the year. The company is the holding company for Fazakerley Prison Services Ltd (FPSL) which has a 28 year contract for the finance, design, construction and management of HMP Altcourse.

Premier Prison Services Ltd (PPS) is jointly owned by Wackenhut Corrections Corporation and Serco and is part of Premier Custodial Group Ltd. For the year ended 31 December 1999, PPS made a pre-tax profit of £3.43m (£4.12m in 1998) on revenues of £53.68m (£43.4m in 1998).

The company's main activities are the provision of custodial services, the manufacture and leasing of electronic tagging equipment and the provision of electronic monitoring services.

During the year, one director received remuneration of £140,260 plus £9,505 towards a pension scheme. On average, PPS had 2,209 employees compared with 1,688 in 1998.

Lowdham Grange Prison Services Ltd , also part of Premier Custodial Group, is the company set up to finance, design, construct and manage Lowdham Grange prison. Pre-tax profit for the year ended 31 December 1999 was £1.15m on revenues of £11.98m (not comparable with 1998).

Bankers to the company included: Barclays Bank, Credit Lyonnaise, Dai-Ichi Kangyp Bank Ltd, Westdeutsche Landesbank and Bank of Scotland.

Other companies in the Premier group include Premier Custodial Finance Ltd, Premier Custodial Investments Ltd, Premier Monitoring Services Ltd, Premier Geografix Ltd, Medomsley Training Services Ltd, Medomsley Holdings Ltd, Kilmarnock Prison Services Ltd, Kilmarnock Prison Holdings Ltd, Pucklechurch Custodial Services Ltd, Pucklechurch Custodial Holdings Ltd and Marchington Prison Services Ltd.

Wackenhut UK Ltd, which runs immigration detention centres and "a diverse range of security services" made a pre-tax profit of £160,000 in the year ended 31 December 1999 compared with a loss of £604,000 in 1998. Revenues were £13.05m compared with £12.99m in 1998. The company is owned by the Wackenhut Corporation.

UK Detention Services Ltd (UKDS) runs Blakenhurst prison and also "tenders for contracts for the design, construction, management and financing of new prisons and other similar projects."

For the year ended 31 December 1999, pre-tax profit was £751,251 (£330,168 in 1998). Revenues were £11.9m compared with £11.6m in 1998. The average monthly number of employees was ten management, 271 prison officers, 25 administration staff and 12 maintenance staff.

In 1999, UKDS passed on £2.54m of costs to Agecroft Prison Management Ltd relating to the start up of Forest Bank prison, Salford, England.

Securicor Custodial Services Ltd, a subsidiary of Securicor plc, had reduced revenues of £36.38m for the year ended 30 September 1999 compared with £39.71m in 1998. Its pre-tax profit was also cut to £1.21m compared with £2.31m in 1998. Notes on the accounts stated that "following a prolonged period of trial operation of electronic monitoring, a five year contract was awarded to the company and commenced on 28 January 1999. Parc Prison continued its improvement in both service provision and improving profitability."

But the company also noted that "there are concerns over the increasing application of performance penalties outside of the contract terms and conditions. However the directors consider that the accounts for the year reflect the likely levels of penalties for the year under review."

Bridgend Custodial Services Ltd is another Securicor subsidiary whose principal activity is "the design, construction and management of a prison for the provision of a custodial service" at Parc Prison in Bridgend, Wales. For the year ended 30 September 1999 the company had a pre-tax profit of £1.7m (£1.4m in 1998) on revenues of £22.6m (compared with £16.4m in 1998). The revenue figure included finance income of £8m compared with £6.4m in 1998.

Reliance Custodial Services Ltd made a pre-tax profit of £449,079 on revenues of £10.26m for the year ended 30 April 1999 (£137,000 and £9.69m in 1998). During the year the company operated prisoner escort and electronic monitoring contracts.

GSSC of Europe Ltd made a pre-tax loss of £55,709 for the period 6 July 1998 to 30 September 1999. Revenues were £2.98m. The company was involved in supplying electronic monitoring services in the UK. Its ultimate parent company is General Security Services Corporation based in Minneapolis.

<Netherlands>

Commission studies privatisation

A commission comprising officials from the ministries of justice, finance and home affairs has been studying the international prison privatisation experience with a view to introducing private and/or semi-private prisons.

Although a final report is due in the spring, an unpublished report by the department of finance has already concluded that international public-private prison co-operation has been successful.

The government is being assisted in its deliberations by a ministry of justice official from the Netherlands Antilles, which recently contracted with Wackenhut Corrections Corporation (see PPRI #37 and #30).

<Australia>

Victoria buys women's prison

The Government of Victoria has paid A$20.2m to Sodexho SA and taken the ownership and operation of the troubled Metropolitan Women's' Correctional Centre back into the public sector (see PPRI #37 and #35).

This is the first time that a company has given up its contracts for a failing privately financed, designed, built and operated prison.

The move follows the issuing of default notices by the Government and its subsequent takeover of the prison's management in September 2000.

Victoria's minister for corrections, Andre Haermeyer, told Parliament in November 2000 that no compensation had been paid to the company and that the cost was less than the value of the ongoing payments for use of the prison had the contracts continued.

"The settlement is on the basis of a fair price for the prison buildings, infrastructure and chattels and below the valuer general's valuation of almost A$22M," he said.

The Law Institute of Australia is the latest organisation to call for Victoria's two remaining private prisons to be brought back into the public sector.

What's in a name?
Corrections Corporation of Australia has changed its name to Australian Integrated Management Services Corporation Pty Ltd (AIMS).

According to a recruitment advertisement in the Australian, 20 January 2001, the company is "an international icon in the area of correctional rehabilitation and integrated facilities management ... currently aligning their senior management team towards contemporary business practices that will set the foundations for significant business transformation and repositioning as they enter the 21st century."

In Victoria, the company is still has prisoner escort and court security contracts and is also part of the Liberty consortium which has a contract to finance, design, build and operate a new court complex (see PPRI #34). It also has court escort and security contracts in Western Australia where, since July 2000, it has been fined $A80,000 for allowing unlawful releases from custody

Competition benefits not realised
In the first instance, the contractor may submit an offer to the minister for the provision of correctional services for a further term. If this is done, the minister must negotiate with the contractor and, within a certain time, advise the contractor whether the offer is above or below what the minister determines is the benchmark cost for running the prison for a further term. Only if the minister and the contractor cannot agree on a basis for the provision of correctional services by the contractor may the minister then initiate the competitive review process and request tenders. If any new operator is chosen as a result of the tender process, that operator must purchase the existing contractor's equity in the prison.

- Clause 61, Prison Services Agreement for Fulham prison, run by Australasian Correctional Management (ACM, owned by Wackenhut Corrections Corporation).

An independent investigation into the management and operation of Victoria's privately financed, designed, built and operated prisons has found that, although the state had benefited from having new facilities built, the anticipated benefits of competition had not been realised.

The investigation was commissioned by the Government following the coroner's findings into the deaths of five prisoners at Group 4-run Port Phillip Prison (see PPRI #35).

Although an underlying assumption of the investigation was that private prisons "may be expected to be a part of Victoria's corrections system for at least the 20 years of the contracts" the report was completed before the Government took over the failing Metropolitan Women's Correctional Centre (see above).

For all three prisons, issues such as the legal framework, the contracts, contract compliance and monitoring, the management of prisons and prisoners, staffing, health care and the integration of public/private prisons were examined.

The Panel's findings included:

the contractors (as might be expected - Panel's emphasis) have taken care to ensure they will not be commercially disadvantaged if the state wishes to change the arrangements;

the contractual arrangements with the private prison operators provide much less flexibility for government to change arrangements and adopt new initiatives;

the limitations placed on operational flexibility by the contractual arrangements are not eased by the current legislative framework;

where a material default in the operation of a prison is not remedied, the Government can require the contractor to remove the operator but the contractor - not the Government - is responsible for appointing a new operator;

fresh tenders for the operation of the prisons should be called for whenever there is an opportunity to do so;

the performance measures specified in the current contracts are inadequate;

although recommended changes should improve the contractual framework, the Panel concluded that even the best of contracts will neither provide sufficient safeguards against poor operational performance, nor incentives for innovation.

In response to the Panel's 54 recommendations, the minister for corrections announced that he would "work closely with the private prison operators to achieve the best possible system for Victoria."

Report of the Independent Investigation into the Management and Operations of Victoria's Private Prisons, October 2000 (The Kirby Report, published 28 November 2000) is at: www.justice.vic.gov.au

Victoria's contracts with private prison operators can be found on the internet at: www.contracts.vic.gov.au

Abuses alleged at ACM centres

Australia's federal government has launched an independent inquiry into allegations that child abuse was allowed and not reported to the proper authorities by staff at the Woomera immigration detention centre in South Australia.

Refugee, legal and church groups are concerned that the inquiry is being conducted out of public view and has limited powers to call or protect witnesses.

One allegation being investigated is that ACM was under pressure not to report incidents for fear of incurring financial penalties.

Amnesty International and Centacentre, a catholic church welfare agency, also claim to have details of cases at Woomera where children have been handcuffed while in detention and placed in solitary confinement.

Former prime minister Malcolm Fraser has described Woomera as a "hell hole" that should be shut down.

Allegations of physical and verbal abuse and improper medical care of detainees at ACM's Curtin refugee detention centre in Western Australia have also surfaced.

Barrister Laurie Levy told the 7.30 Report on 8 December 2000 that: "I have acted for 27 or 28 detainees at various times and the one thing I have heard consistently is the allegation of brutality perpetrated against the detainees."

A detainee has also alleged that, between November 1999 and February 2000, there was no doctor and just one nurse for 1,200 people at Curtin.

ACM guards at the Maribyrnong detention centre in Melbourne are alleged to have goaded detainee Villami Tanginoa before his death in December 2000.

Mr Tanginoa fell from the top of a basketball ring after an eight hour stand off with ACM staff.

Since the incident, a number of other detainees have come forward with allegations of mistreatment.

All immigration detention centres in Australia are run by Australasian Correctional Management (ACM, see PPRI #37, #36, #32, #30, #29 and #14).

The Australian and The Age have internet archives of articles and reports dealing with the situation at Woomera:

www.theaustralian.com/au/extras/woomera/index.htmI

www.theage.com/au/issues/immigration/index.html

ACM's performance at Junee

Seven years after Australasian Correctional Management (ACM) started to run the Junee Correctional Centre in New South Wales, the NSW contract monitor found that the company still had problems ensuring that prisoners were usefully employed and programmes and welfare services adequately provided (see PPRI #35).

According to the monitor, the high levels of prisoner unemployment had been reported on consistently in previous years and "the 1999/2000 performance review found that, while the overall level of inmate employment still falls below the national performance indicator of 65 per cent ... ACM has taken recent initiatives to address this concern."

The 1998/99 review concluded that ACM's screening process for prisoners participating in Men's Issues and Survivors of Sexual Abuse groups was ineffective. This deficiency had resulted in child sex offenders participating in these groups. This issue "continued to be of concern to the Department during the current review period."

Regarding core welfare services, the 1998/99 review concluded that ACM needed to identify programme intervention outcomes and to record the level of service delivery to allow for evaluation and review The monitor noted that for 1999/2000 "there continues to be a difference" of opinion with ACM on the delivery of these services."

In 19998/99, alcohol and other drug programmes lacked the continuity of services delivered in state facilities and " ... again the AOD programme conducted by ACM staff was identified as deficient ..."

There were also concerns about the maintenance of case files. "It was identified that the number of officers being placed on detached duty with ACM's [immigration] detention centres had an impact on the delivery of case management within the centre."

Prisoners who, after urinalysis, had tested positive for drugs were still not being charged. Urinalysis had "traditionally posed problems and resulted in negative comments in several annual performance reviews."

The contract monitor's overall assessment for 1999/2000 was that "ACM continues to satisfactorily meet its contractual obligations under the management agreement."

NSW Department of Corrective Services, Annual Report 1999-2000, Appendix 26 - Junee Correctional Centre 1999/2000 Performance Review.

Canberra: calls for public prison

A Prison Community Panel would prefer the Australian Capital Territory (ACT) Government to operate the proposed new prison in Canberra (see PPRI #35, #30 and #25).

The panel believes that the government would best ensure that the vision of the prison would be successfully implemented.

But if the government proceeds with a private owner/operator model, the panel also recommends that the owner and operator should not be the same entity.

Consultants are advising the government on options for cost, design, construction and operation.

Currently, sentenced ACT prisoners are held in prisons in New South Wales.

A Legislative Assembly committee has called on the government to note "the consistent message from all recognised experts" that it should build a publicly run prison. The Standing Committee on Justice and Community Safety says the government should not privatise.

MTC's international aspirations

Management and Training Corporation (MTC) took over the management of Borallon Correctional Centre at Ipswich, Queensland on 1 January 2001 after a three month transition period (see PPRI #37 and #36).

The five year, A$83m contract is the Utah based company's first outside of the US.

Scott Marquardt, MTC's president and chief executive, told the Courier Mail 9 January 2001 that MTC hopes to run other private jails in Australia, Britain, Canada and eventually South America.

Mr Marquardt also expressed the view that society was over reliant on jail to deal with drug problems and that at-risk young Australians, like their US counterparts, would benefit from boot camps.

MTC runs 24 of these facilities - known as Job Corps Centres - as well as 13 prisons in the US.

<New Zealand>

ACM's first escape

Australasian Correctional Management (ACM) has allowed its first escape from the Auckland Remand Centre which it has run since June 2000 (see PPRI #34 and #32).

A prisoner placed a dummy in his bed, changed his clothes and left through the main entrance of the prison during visiting hours on 3 December 2000.

Under the terms of its contract, ACM can be penalised NZ$50,000 for each escape.

Staff have already left ACM's employ over working conditions. One former prison officer has written to the minister for corrections claiming that both training and staffing levels are inadequate. The officer alleged that, during visiting hours, one staff member is left responsible for 40 prisoners and up to 100 visitors.

<United States>

Feds boost domestic industry

With George W Bush as president and John Ashcroft as attorney general, the private prison industry in the US has secured a dream team to oversee federal prison affairs at a crucial time.

New contracts from state authorities are few and far between and potential new domestic markets such as local jails are yet to come on stream (see PPRI #37).

In the meantime, federal agencies already appear to be throwing a lifeline to a troubled industry which, over the last few years, has been wracked by scandals, contract failures, lawsuits, plummeting stock prices and financial problems, not to mention studies undermining the claims for the benefits of privatisation (see PPRI #37 and back issues).

Although WCC has suffered domestically, its fortunes have been sustained by international expansion.

But federal contracts are more crucial for CCA, which has given up its international operations and, with a billion dollar debt, is in a more precarious position than its main domestic rivals.

Support for Bush & Co

Although the full extent of the industry's support for the Republican election cause is yet to be revealed, according to the [Florida] St Petersburg Times, 17 January 2001, Wackenhut Corrections Corporation (WCC) contributed $20,000 towards the cost of Bush's inauguration.

The website of the Center for Responsive Politics (www.opensecrets.org) also shows that corrections companies such as WCC, CCA and Cornell Companies Inc. and/or their directors and family members had been donating money to the election fund and/or Republican causes generally.

President Bush's recent appointments of 'compassionate conservatives' - prominent figures of the religious right - as White House staff will also have a bearing on criminal justice policy.

Not least because Chuck Colson, well known internationally as a key adviser to Richard Nixon during the Watergate affair, subsequently for his jail term and most recently for running faith based prison wings in the US, is an advocate of faith based private prisons.

Perhaps less well known abroad is Mr Ashcroft's record.

Just a few of his activities have included: supporting some of the most extreme 'drug war' legislation; trying to amend the constitution to give police draconian search powers; supporting mandatory minimum sentencing; and failing to deal seriously with racial disparity within the criminal justice system.

Once in office, Mr Ashcroft will doubtless ensure that the so-called wars already being waged on drug users and immigrants are stepped up.

This is important for the corrections industry as these policies will impact directly on federal agencies which, in turn, will ratchet up both their already fast growing prison populations and their reliance on the private sector.

Federal agencies have been good to the industry. Back in the early 1980s the Immigration and

Naturalisation Service (INS) helped to kick start the industry by awarding (CCA) and Wackenhut Corrections Corporation (as was) their first contracts.

Most recently, WCC opened a new facility for federal prisoners in Texas on 15 January 2001, just days before George W Bush's inauguration. On 22 January, the Federal Bureau of Prisons (FBOP) revealed that WCC, CCA and Cornell Companies Inc. had been short listed for new prison contracts, going some way towards meeting the Bureau's stated need for 6,000 beds to hold 'criminal aliens'- non-US citizens convicted of federal offences and who, ultimately, could face deportation.

Prior to the presidential election, however, it was estimated that the agency could require a further 20,000 such beds. All would be in private facilities.

In between times, the industry has kept an open door to former FBOP prison wardens seeking second careers in the private sector.

Meanwhile, former FBOP directors such as Michael J. Quinlan and Norman Carlson have done even better, becoming highly paid executives with CCA and WCC respectively.

The INS already has around 14 per cent of its prison population in private facilities and is due to award three contracts for a total of 2,000 beds.

As well as contracts for the INS Wackenhut, CCA and Cornell Companies Inc. have benefited from FBOP largesse to the tune of over $2bn for just six contracts. Up until recently, CCA was the major beneficiary.

But as the recent campaign against WCC's prison for federal prisoners in Winton, North Carolina (see PPRI #32) and the current campaigns (see below) show, there is growing resistance to the federal project of boosting the private sector.

The indications are that this opposition will escalate to match whatever the new administration devises

Federal bailout sparks protests

Hundreds of protesters from neighbourhood, law enforcement, labour, justice, religious, student and immigrant rights groups, are campaigning to oppose plans by the Federal Bureau of Prisons (EBOP) to use for-profit private prisons in the Southeastern US to house thousands of low security, male, non US citizen 'criminal aliens'.

At the end of January 2001 actions took place in Kendall, Florida; McRae, Georgia; Jackson, Mississippi; and Hertford, North Carolina.

The protests were organized by the Public Safety and Justice Campaign (PSJC, see PPRI #34) which sees the FBOP plans as a bailout for a failed industry.

"For-profit private prisons are an experiment that failed. We demand to know why the federal government is rewarding this failure," said Si Kahn, PSJC campaign director.

"The incarceration of human beings is a fundamental responsibility of government. The profit motive leads to public endangerment and corruption," he continued.

"We find it reprehensible that, at the same time the federal government has catalogued abuse and corruption by the for-profit private prison industry, it is going to give out billions of dollars in contracts to that same industry. This has got to stop," said Kahn.

PSJC's website is at: www.stopprivateprisons.org

Black legislators take a stand

In December 2000, the 24th annual legislative conference of the national black caucus of state legislators passed the following resolution sponsored by Senator Gwen Moore, WS:

WHEREAS, State and local governments, confronted with prison overcrowding and fiscal constraints, and the promise of jobs and tax revenues in impoverished rural communities, have been experimenting with prison privatisation; and

WHEREAS, The existence of private prisons provides perverse incentives to grow the inmate population by focusing criminal justice policy on passing punitive laws, warehousing inmates, and building prisons for economic gain; and

WHEREAS, Many states do not have any laws governing the operation of private prisons, and many contracting jurisdictions do not have a system of oversight to ensure proper accountability, appropriate treatment of inmates and protection of public safety; and

WHEREAS, Private firms generate profits by cutting back on inmate services, programmes that lessen recidivism and inmate health care. The impact of privatisation has been especially devastating on inmates requiring health care services and specialized treatment because inmates tend to have greater health care needs than the general public; and

WHEREAS, Private firms encourage the exportation of inmates to private facilities in other states to optimize their profit potential. This business practice moves inmates far away from their families and support networks. For instance, inmates from Washington, D.C. are currently housed at private prisons in Ohio and New Mexico; and

WHEREAS, Private firms generate profits by under staffing facilities, paying employees inferior wages and benefits, providing inadequate staff training, and not paying corporate or property taxes. This endangers inmates, workers and the community. In addition, it erodes local economies and increases the liability for the contracting jurisdictions; and

WHEREAS, Despite all of the ways that private management firms cut corners, there is no conclusive evidence that prison privatisation saves tax dollars. However, there are numerous 'horror' stories at private prisons in places like Youngstown, Ohio; Travis County, Texas; Jena, Louisiana; and Santa Rosa and Hobbs, New Mexico; and WHEREAS, The stock prices for the three biggest companies, which manage

over 80 per cent of all adult private prison beds, have plummeted, and each of the companies has experienced severe financial difficulties. This has put added pressure on the private firms to cut corners and jeopardize inmate treatment and public safety. Furthermore, the financial viability of these firms is uncertain and presents significant risks to jurisdictions that contract with them; and

WHEREAS, There is widespread opposition to private prisons. A recent poll, conducted by the renowned research firm of Lake Snell Perry & Associates, found that 51 per cent of people likely to vote in the 2000 election oppose private prisons while only 28 per cent support them. Groups across the political spectrum - from churches to inmates' rights advocates, unions and law enforcement organizations - are on record opposing private prisons.

THEREFORE BE IT RESOLVED, THAT THE 24TH ANNUAL LEGISLATIVE CONFERENCE OF THE NATIONAL BLACK CAUCUS OF STATE LEGISLATORS, ASSEMBLED IN CHARLOTTE, NORTH CAROLINA, NOVEMBER 27 - DECEMBER 2, 2000, strongly opposes the privatisation of prisons. The case against prison privatisation is clear. The profit motive leads to increased recidivism, and it does not improve prison operation or save taxpayer money. Prison privatization only benefits corporations and their shareholders. The promises to communities of jobs and tax revenues never materialize. Cost-cutting and high employee turnover lead to dangerous conditions inside and outside the prison walls. The operation of prisons is a fundamental government responsibility; and

BE IT FURTHER RESOLVED, THAT NBCSL and its members fight to pass legislation that will prohibit private prisons and/or limit the expansion of the industry.

BE IT FINALLY RESOLVED, THAT NBCSL will also work with other organisations and interested parties to stop prison privatisation.

Resistance in Georgia

More than 30 civil rights, criminal justice, faith and labour organisations, including the Georgia Association of Black Elected Officials and the Southern Christian Leadership Conference, have signed a resolution opposing the importation of prisoners into Georgia and the use of private prisons.

The initiative was in response to a plan by Corrections Corporation of America to fill two prisons being built speculatively (i.e., without contracts to fill the beds) in the state with prisoners from out of state.

Contact: Ann Colloton. Tel: ++ 1 404 688 1202

CCA's policy of excessive force

In a landmark ruling a federal grand jury has found that Corrections Corporation of America (C CA) had a corporate policy of using excessive force to control teenagers at a juvenile detention facility that it ran in Columbia, South Carolina.

On 15 December 2000, former inmate William Pacetti, now 18, was awarded more than $3 million in punitive damages and $125,000 in actual damages for his pain and suffering after CCA guards hog-tied (two hands tied to an ankle behind the back), maced and threw him against a wall three years ago (see

PPRI #8).

The jurors had been asked to award punitive damages of $140m, or 10 per cent of the company's net worth in order to send a message to all companies that run prisons for profit.

The incidents occurred when Pacetti, then 14, was in the facility between July 1996 and January 1997.

"It's a case where a corporation had a policy of using abuse, not a case involving the actions of individual officers," said Gaston Fairey, the Columbia lawyer representing William Pacetti and several other former inmates of the facility.

In 1996, the South Carolina Department of Juvenile Justice signed a three year, $14m per year contract with CCA to run the prison and other programmes for young offenders.

When the contract was awarded, CCA announced that it was "an opportunity ... to showcase its knowledge, ability and responsiveness in this specialised arena while helping the state meet its court-ordered requirements."

But after one year. the state decided not to renew the contract following a series of escapes and other operational problems including inadequate training of staff and the excessive use of force.

Although CCA might yet appeal the decision, the verdict could lead to similar findings for 21 other former inmates who have filed lawsuits alleging assault and improper punishment by the company Gaston Fairey will see if the Pacetti case is appealed and how an appeal court rules on it before he presents the other cases.

Gaston Fairey is with the law firm Fairey, Parise & Mills, 1722 Main Street, Suite 300, PO Box 8443, Columbia, South Carolina 29202, USA.

Where the money goes

"We literally spent millions of dollars educating our legislators on the advantages of private prison operators." - Doctor C. Crants, former Chief Executive, Corrections Corporation of America.

"We are not in the public policy making business." - Susan Hart, former Vice President for Communications, Corrections Corporation of America.

Private prison corporations with vested financial interests in increasing US imprisonment rates have deeply insinuated themselves into the political process, according to a new report documenting the industry's political campaign contributions and involvement in the influential American Legislative Exchange Council (ALEC).

The report's authors note that, over the last 20 years, the backdrop to this increasing influence includes:

the ascendancy of conservative politics, which favours privatisation;

the increasingly common practice of exploiting public fears about crime in order to gain or maintain political power;

the concerted effort of corporate-backed think tanks to develop and disseminate pro-privatisation legislative models;

the dependency of elected officials on big-money contributors for their ongoing political careers; and

the opportunity for profits to be made from criminal justice systems

The report quotes from Abt Associates' Private Prisons in the United States (see PPRI #25).

"[Most] contracting for imprisonment services was not taken at the initiative of the correctional agency, but was instead mandated by either the legislature or the chief executive of the jurisdiction, typically the governor."

This, say the authors, explains why influencing elected officials at the state level has become a key business strategy for private prison corporations.

American Legislative Exchange Council

Recent federal and state legislation has criminalised more and more behaviour, incarcerated offenders for longer sentences and dismantled most rehabilitative and transition services for prisoners.

Much of the legislation implemented at the state level was crafted by just one organisation in partnership with private prison interests.

The American Legislative Exchange Council (ALEC) is a Washington DC-based public policy organisation whose main function is to develop model legislation that advances conservative principles.

In 1995-96, ALEC's model legislation resulted in 1,647 bills, including 365 that became law (a 22 per cent success rate). By 1999, the introduction of ALEC-based bills had increased by 34 per cent with 322 of 2,208 ALEC bills enacted.

In 1995, ALEC 's Model Legislation Scorecard claimed that: "The busiest Task Force was Criminal Justice, which had 199 bills introduced."

Its recent success includes:

enactments of Truth in Sentencing legislation (where offenders serve at least 85 per cent of their sentence) in 24 states;

habitual offender three strikes legislation (life imprisonment for a third violent felony) in 11 states;

four enactments of legislation for private correctional facilities in four states; and

one piece of legislation requiring prisoners to work for private companies in one state.

A key component of ALEC policy is that governments should "use prison privatisation, electronic home detention, boot camps and similar methods..."

There are over 6,000 state legislators in the US. Approximately 2,500 of them are ALEC members. According to the report, "scores" of them hold key state leadership positions.

Also, prominent among ALEC's financial backers are Corrections Corporation of America (C CA), Wackenhut Corrections Corporation (WCC) and Sodexho Marriott Services (see PPRI #37 and #34).

CCA's contribution to ALEC's 1999 States and Nation Policy Summit gave it President's List status. Wackenhut Corrections Corporation and Sodexho Marriott Services also sponsored the conference.

Two cases from Pennsylvania and Arizona show how ALEC was able to peddle influence.

In February 1995, Pennsylvania Governor Tom Ridge, an ALEC member, called a special session of the legislature to address crime in the state. Twenty pieces of legislation - all based on ALEC's programme - were introduced. Overall, in the nine month session, 30 crime bills were approved and the governor released more than $87m in state funding for new prison construction. Governor Ridge was a featured speaker at ALEC's 26th Annual meeting in Nashville in August 1999.

In Arizona's 1999 legislative session, Senate president Brenda Burns - ALEC's 1999 national chairwoman - sponsored two bills aimed at privatising the state's prison system. Although both bills passed the House, they failed to make it through the Senate before adjournment.

Money talks

As well as providing a partial list of lobbyists working for CCA and WCC in Alabama, Washington DC, Florida, New Mexico, Tennessee, Idaho and Texas, the report also found that private prison corporations make direct financial contributions to many legislators.

"Several prominent ALEC members who have received campaign contributions ... have supported private prisons or tough on crime legislation."

In 1998, private prison corporations made 645 contributions totalling over $540,000 to 361 candidates in 25 states (out of a total of 43 states surveyed for the report). "While this figure appears small relative to federal elections, the total represents a significant and growing effort by a handful of corporations to ensure access to policy makers at the state level at crucial moments. In states where campaign budgets

still average $5,000 for state representatives and $20,000 for state senators, contributions of $250, $500 and $1,000 are meaningful," say the authors.

CCA gave $335,106 to 195 candidates in 16 states, particularly California, Tennessee, Iowa, Idaho, Colorado and Texas.

Cornell gave $110,575 to 84 candidates in California, Alaska, Florida and Iowa. Republicans received 56.8 per cent of the contributions.

Correctional Services Corporation (CSC) gave $34,378.

WCC gave $33,325.

US Corrections gave $4,300.

Of the total contributions, 47 per cent went to Republican candidates and 53 per cent went to Democrats. Fifty three per cent ($297,000) went to incumbents; 34 per cent ($182,199) went to candidates who won; 11 per cent ($59,825) went to candidates who lost in the general election; and six per cent went to candidates who lost in the primary stage.

The report also noted "the overlap between politics and business goes well beyond local and state level contracts to the heart of Wall Street."

Richard Gilder is a founding partner in New York investment house Gilder, Gagnon, Howe and Co which has a 6.4 per cent stake in CCA. Mr Gilder is described as "a major funder of conservative candidates; he donated more than $360,000 during Newt Gingrich's Republican Revolution. J Patrick Rooney of Golden Rule Financial is a major underwriter of ALEC and gave Gingrich $231,000. Gilder is also a founder and director of the Club for Growth, which raises funds for conservative GOP candidates, and promotes a conservative policy agenda including privatisation. Club for Growth board colleagues include Stephen Moore, a Heritage Foundation [right wing think tank] Fellow who was the research director of President Reagan's Commission on Privatisation."

Going west

The report found "a particular push by private prison corporations into the western region, with over 70 per cent of the total contributions going to candidates in western states (excluding Texas). California, the most populous state and a hotbed of tough-on-crime activity, received the highest level of investment."

The report describes how the leading corporations are southern based and built their early markets in the south. But they have since targeted California, Arizona and New Mexico for expansion and "have succeeded in moving into Idaho and Montana ... and major forays into Utah and Alaska."

A profile of California also notes that the California Correctional Peace Officers' Association, while anti-