HEARING THREE

COMMISSION ON SAFETY AND ABUSE

IN AMERICA'S PRISONS

DATE: November 2, 2005
TIME: 8:30 a.m. to 3:22 p.m.
PLACE: Washington University School of Law
        Anheuser-Busch Hall, Room 310
        St. Louis, Missouri 63130

Public vs. Private
Pages 404-457
MR. SCHWARZ: Let's get started here. Is Dan Ellis still here, the former dean? Okay. Sitting in the back of the room, the former dean of the law school here and a graduate of a great New York law firm. And the person who built this building.
So the next panel may also spark some controversy as the last one did. It's going to consider the pros and cons of public and private prison facilities. And I'm going to introduce Richard Seiter, Frank Smith, and Sharon Dolovich.

Private prisons and jails have become more numerous and there are a number of disagreements and discussions about whether that's a good thing or bad thing, which I think our panel will elicit.

Richard Seiter is currently Executive Vice President and Chief Corrections Officer at the Corrections Corporation of America, and has worked in the corrections field for three decades. He's presently on sabbatical from one of this city's universities, St. Louis University.

Frank Smith is a field organizer with the Private Corrections Institute, which name does not exactly indicate to one what it does because it's described as an anti-private prison group, the Private Corrections Institute.

And Professor Sharon Dolovich is spending this year as a fellow at the Radcliff Institute For Advanced Study in Cambridge, the tiny vestige of what was once a huge institution which has now been swallowed by Harvard, on leave from the UCLA School of
Law. She's the author of a forthcoming article, "State Punishment and Private Prisons."
So we should have a good, lively discussion, and thank you for coming, and we'll start
with you, Mr. Seiter.

MR. SEITER: Thank you, Mr. Schwarz. I want to thank the commission for inviting me here to appear before you today, but more importantly, I want to thank this esteemed group for your willingness to tackle what I consider as one of our nations most important domestic policy issues.

As you well know, there are over 2.2 million people incarcerated in our nation's prisons and jails, and we spend approximately sixty billion dollars a year housing them. As a taxpayer, I want our public correctional policy to be one that is as effective and efficient as possible. As a correctional professional, I want continuous debate on what we do and how we do it. In order to keep the public focused on correctional policy, I believe there should be discussion and debate by a wide sector of influential people.

For too long only we in corrections talked to each other about our policies and approaches. We who worked in corrections were the invisible public
servant, asked to do a dangerous and difficult job, but really expected to keep the issues below the radar screen. It is critically important in my mind that those outside of corrections and outside government in the corporate, religious, not-for-profit, academic, and media world to together discuss our nation's correctional policies. I hope that the work of this commission spurs those discussions.

I've been invited to discuss the role of the private sector and specifically how the profit motive impacts safety and security. I think I have a unique opportunity to look at correctional policy from many perspectives. I've been a federal prison warden in two institutions and assistant director of the Federal Bureau of Prisons, director of a state correctional system in Ohio, and academic teacher, writer, and researcher, and now as a chief of operations for a private prison company. I welcome this opportunity and wish to make just a brief few points.

First, there's not a competition between the private and the public sector, and as a correctional administrator I see more similarities than differences in our operations. We view each other as partners, finding ways to meet the challenges
facing correctional agencies charged with holding
criminal offenders. This partnership may assist by
adding capacity, finding cost efficiencies, or
handling special groups of offenders.

Second, private prisons are accountable to
their public sector partners and government oversight
agencies. Private correctional providers must meet
requirements of very rigorous RFPs that are
competitively bid, that are monitored for performance,
and they may face liquidated damages for failure to
perform. They must constantly meet the expectations
or their contracts will not be reviewed.

Third, the profit motive does not undermine
quality performance. The benefit of the private
sector is that it provides a chance to start anew in
what we do and to look for ways to be more efficient
in how to meet and deliver quality correctional
services. Many private correctional companies are
committed to operating within the standards of the
accreditation process of the American Correctional
Association as discussed by the last panel.

At the Correctional Corporation of America,
54 of the 60 operating facilities are accredited.
This year, twenty accreditations or reaccreditations
occurred with an average score of 99.1.
Fourth, private prisons are committed to and offer extensive inmate programs. For example, during the month of August 2005 CCA's educational programs had an average daily enrollment of over 18,000 students. Between January and August 2005, more than 1,580 inmates earned GEDs or high school equivalency diplomas, and more than 4,600 completed vocational training certificates.

In addition to our educational core programs we offer prisoner reentry, parenting, and family and life skills programs. As well, we currently have 2,500 inmates at CCA facilities nationwide who are participating in residential and addiction treatment and behavioral programs, and another 2,500 who are participating in drug abuse outpatient counseling. These programs typically last nine to twelve months and are operational at 22 CCA facilities.

Finally, we have 29 faith-based residential unit programs in 26 facilities with over 2,600 inmates participating daily. Again, these are full-time assignments and inmates participate six to eight hours per day for six to eight months. There have been over 5,600 inmates that have graduated from these programs since their inception in 2004.
And finally, the profit motive does not undermine prison safety. There's nothing we value more than creating a safe and secure environment for staff and inmates.

On a personal note, I would not have taken the job with CCA if I did not believe I would ever have to choose between profitability and good quality corrections. Even if opponents of prison privatization argue that private companies are motivated by profit, they would have to admit that the disturbances, murders and suicides or escapes are very costly in terms of dollars spent or lost business. And therefore, it's only rational to believe and understand that if the primary motivation of the private sector is to increase profits, they would still do everything possible to provide a safe environment and prevent such costly incidents.

I want to thank you again for the opportunity to appear before you and participate in this distinguished panel. I look forward to an engaging discussion.

MR. BRIGHT: Mr. Smith.

MR. SMITH: Hi. I'm Frank Smith with Private Corrections Institute, which sounds pretty fancy, but it's a name we stole from Charlie Thomas
MR. SCHWARZ: And how did you set it up with that name when your function is to question the appropriateness of private --

MR. SMITH: I didn't do that. Ken Kopczynski did that, and I think he did that to just kind of goad the private sector because Charlie had started the process of taking the name and dropped it because he got into a lot of trouble, I guess. And so Ken just figured, well, we'll use it. There we are. I hope that didn't come out of my time. Can we start over? Really. Start the clock. Okay. All right.

So anyhow, we're an all-volunteer organization. We have a board of directors of about eight people from around the country that have been activists, advocates, corrections professionals, all volunteers. Our executive director is Ken Kopczynski who does this out of his home, volunteer basis. And I'm -- you know, they say a title is more worth than money. I don't get any money, but I'm the volunteer field organizer.

In fact, I live on about 1,200 bucks a month. I do this almost all out of my pocket. I was very fortunate to be able to come here today. I appreciate the commission inviting me and putting me
up in such a nice place. I'm usually under a bridge
or on a couch somewhere.

But anyhow, let me tell you what I do.

I've been involved in the provision of services in
prisons and federal services, substance abuse
treatment services, research for many, many years, in
fact going back to 1971. In the course of doing that,
about nine years ago I got intensely interested in
private prisons.

I had actually got some interest -- I was
working in the State of Alaska at the time. I got
some interest in the issue because in 1991 the State
of Alaska wanted to ship hundreds of prisoners to
Texas, and I brought up a study that was done back in
1972 actually by my ex-boss's brother from the
California Department of Corrections. It was
in-house, and it was Norm Miller, Norman Miller -- and
I'm sorry, Don Miller and Norman Holt.

And they discovered that in a remote
prison -- it was Susanville. I'm sorry, it was Sonora
Correctional Center, that recidivism was measured by
-- against a number of visits in the last year of
incarceration where they look at people who got one,
two, three, or zero visits. They found out that
people who got visits from three or more people, not
the number of visits, but the number of visitors,
recidivism was one-sixth the rate of people that got
no visits.

When Alaska contemplated sending all these
people off to a private pen in Texas, I said wait a
minute here, and I passed out about 50,000 studies.
In 1996 a couple of communities -- and I was still
working for the state as a child protection
investigator, case manager. A couple communities,
Delta Junction and Anchorage, asked if I would assist
with fighting siting in their towns.

Anchorage is a big city. And I did and
they -- Anchorage, which was done by Wackenhut, GEO
Group these days, went down in about a year. And
Delta Junction, the prospects of taking over Fort
Greely and getting a forty million dollar conversion
bond to make it a prison in the local town finally
failed in 19 -- about 1990. And then they tried to
site about six other towns. This is Cornell that
bought out a local operator called Opus [phonetic].
And I got involved in fighting every single one of
those sitings, and actually, we won them all. Good
news this morning, the town of Lamar, Colorado against
Cornell.

Anyhow, I started working in Colorado.
People asked me around the country, Kentucky, South Carolina, California. In Colorado I got intensely involved in a couple of prisons -- prospective prisons. Lamar and Pueblo, and in the course of doing a radio show I got in touch with a couple of whistle-blowers who called me up. I gave out a bogus E-mail address that they would get me -- remember and could get me with, and I developed this vast network, it's become a vast network of whistle-blowers, no money at all, from every major corporation, from CiviGenics and MTC, the smaller ones, two, three, four percent, up to CCA and Wackerly. They include an ex-executive vice president, ex-vice presidents, wardens, directors of training, line workers, nurses, unit managers, everybody. They were telling me horrible things about the accreditation process, about pay scales, about turnover, about treatment of workers, about atmospheres of sexual harassment, about all sorts of things that were very scary to me, and I started doing -- I have been doing this for a lot of years in different venues -- Freedom of Information Act requests to open records at the request of the states. Got an enormous amount of material. In Alaska I found one company which will remain nameless
was trying to wire -- clearly wiring a 985 million dollar bid. I sought -- the monitors, particularly in Colorado, completely ignored their duties because of their symbiotic relationship, the Colorado DOC and the privates, because it's tapered. They couldn't build new prisons, so they depended desperately on these prisons, and overlooked things that were just unbelievable.

Things that in the CCA Crowley, for instance, I could have predicted -- I could have predicted the riot that happened there last July 20th. Not the day of course, but who was going to be involved, what was going to be used for weapons, what was going to precipitate it, the long and short-term precipitants. I mean, it was very clear to me the monitors didn't want to hear it, the staff was terrified of some things that were happening, and I knew about it and the monitors didn't seem to care. My whistle-blowers talked to them, and they ignored it. I even made overtures to them and they ignored it.

So here I am in the situation where nobody cares, and finally the joint explodes and they burn down a couple of pods. That's the situation that I have seen. That's the situation I've seen
consistently around the country. I've visited CCA
prisons inside and on the outside. Went by Crowley
while it was still smoking. And I'd like to talk
about -- I hope you ask me questions too about ACA

accrreditation and how it affects all this. Thank you
very much.

MR. SCHWARZ: Okay. Professor Dolovich.

MS. DOLOVICH: First I'd like to thank the
commission for giving me the opportunity to speak with
you today. I realize I'm the last speaker on the last
panel after a very full two days of testimony, so I
will do my best to keep you engaged, as I know we all
will up here.

As Mr. Schwarz said, I'm professor of law
at UCLA School of Law and I teach criminal law, legal
ethics in a class called Prison Law and Policy. My
main research interest is in the normative foundations
of American criminal justice policy, or what I think
of as how we justify what we do to convicted criminal
offenders in the name of punishment.

Now, I've been thinking about private
prisons in this light for some time, and the main
point I want to make to you today, one which it's
turned out Mr. Seiter and I agree on, is that the way
the debate has generally been framed, as a choice or
even a competition between public and private is the wrong way to think about the issue. Now -- and it is the main way that when you look in the debate, look in the literature, the main way to debate is framed. I have two reasons for suggesting that we think about it differently. The first is that framing the issue in this way, a situation between public and private, actually obscures the fact that in terms of day-to-day structure and functioning, private prisons operate pretty much like public prisons. Now, I have to be careful here as I learned last night at dinner, I'm not saying that public prisons and private prisons are the same, but where there are differences, they are differences of degree and not kind. That is, private prisons take many of the problems and pathologies of the public system and they take it to their logical extreme. You find the same phenomena only in more extreme forms in the private sector, so that's the first reason. The second reason I think we need to think about the debate differently is that framing the issue in comparative terms actually leads us to lose sight of the bigger picture. With the comparative approach, we spend a lot of time debating whether private prisons are as good as public prisons. In fact,
Mr. Seiter's written testimony, he addresses this issue trying to suggest to us that at the very least private prisons are as good as public prisons. Now, with all due respect, if this were an acceptable standard, if what we were shooting for here was simply to reproduce what we already have, we wouldn't be here today and you folks wouldn't have the hard job you have of trying to figure out how to fix a broken system. It's not the standard I think we should be shooting for.

So the real question isn't I think whether the management structure of the prisons should be public or private. I think the real question is why all our prisons, public and private alike, fall so short of satisfying our obligations to those who we incarcerate. This doesn't mean that it's not refocusing on or thinking about private prisons, not at all. The point is there's actually a lot to learn from private prisons about what's going wrong with our penal system in general. That is if we approach the issue in the right way.

So what I think we should be doing is looking at private prisons themselves to try to understand the dangers that are posed by this penal form, and I believe there are dangers posed by this
penal form, and once we do so, we will see that a
number of practices that are problematic in the
private sector are also problematic in the public
sector.

So I'm just going to mention, there are
three lessons that I think we learn when we focus on
private prisons in this way. I'm just going to
address them very briefly, and I welcome any questions
you have on any of them.

First, we find that there's a danger to
health, safety, and the well-being of prisoners
whenever corrections officials are accorded extensive
discretion and power over prisoners absent effective
accountability mechanisms to check any possible
abuses. Now, many COs will use their discretion
responsibly, but unfortunately that is not true of
everyone. So we need effective oversight and
accountability mechanisms to protect prisoners from
the abusive discretion where it occurs.

Now, the problem is with all due respect
now to Mr. Seiter, none of the oversight mechanisms
that he mentioned, including the ACA monitoring or
competition and the threat of replacement -- I would
also add the courts, which is another one that that's
often raised as providing some accountability, none of
these mechanisms are actually effective as meaningful
checks to the private sector, and I would argue the
same is true of those mechanisms as they operate in
the public sector. So that's the first point.

The second point is -- that we learn is
that there's a danger to prisoners' health, safety,
and well-being whenever states contract out to
for-profit entities for the provision of the essential
prison services when the state is in it to save money
on the cost of corrections. The incentives to cut
corners in these cases are just too powerful,
especially absent effective accountability mechanisms,
and if the states are in it just to -- the states are
in this to save money, they not going to want to spend
what it takes to make these mechanisms effective.

And I don't just say this sort of off the
top of my head. If you look at the experiences of the
last decade, you will see that that's actually true
certainly in the private sector and I think in the
public sector too. And the important thing to note
here is I'm not just talking about whole private
prison contracts.

The same is also true in the subcontracting
out of discrete prison services like medical care,
psychiatric care, food service, transportation, inmate
classification, and the list goes on. The danger is present in each of these cases whether or not the managerial structure of the prison itself is private or public.

Now, finally and perhaps most controversially, since I've run out of time, I'll give you two sentences on this. We create serious problems for our prison system and not to mention the legitimacy of our criminal justice system itself when we allow sentencing policy to shape your advocacy by interest groups that have a financial interest in increased incarceration or longer prison sentences.

When we do this we create political conditions for policies that are increasingly tough on crime, regardless of whether it actually serves the public interest to put more people away for longer. And the result, of course, is the overcrowding and mass incarceration that we currently have. So I'll stop there, and I'm happy to take any questions that you may have.

MR. SCHWARZ: You know, what I'd like to start with is you -- you framed the issue differently than your two colleagues, and therefore I think it would be useful if Mr. Seiter and then Mr. Smith just reacted to how Professor Dolovich framed the issue.
And then we're going to have other questions about true comparisons between the public and the private. So whichever one of you wants to go first. Go ahead.

MR. SEITER: Well, I guess I have a couple reactions. One, as much as it's important to discuss these issues, I'm not a believer that the system is broken, and if you frame it with that's the beginning, that the system is broken, the system can be improved, the system can improve in many ways, but I guess after three decades of work in it I've seen a lot of improvements and a number of dedicated public servants who do a tremendous job with little recognition and little remuneration. I don't believe the system is broken.

Second, I guess I can't disagree that -- and I do agree that it really isn't an issue of public and private. I made that point. And I strongly think that's the case, that the operations are very similar. But I would disagree that there are not appropriate monitoring systems to avoid any abuse and discretion. In the private sector there are very sensitive contracts that are required to be met.

There is extensive monitoring of that and there are even liquidated damages for failure to comply. So in many ways there are many more specified
and distinct standards and expectations that must be
met in the day-to-day operations than even I faced
when I was in the public sector.

MR. SCHWARZ: Mr. Smith.

MR. SMITH: Yeah, thank you. You know, I -- on the contrary to my two colleagues here, I believe the private system's inherently flawed. Everything pursues the profit motive. Everything. I've never seen a single case -- and I've been looking at these folks intensively full-time, even though I was a volunteer for the last six or seven years. I have never seen a case where professionalism took precedence over profits. Not one single case.

And I've seen instance after instance through companies throughout the entire industry from one prison to the another. Occasionally, I see a really good warden like former secretary -- Kansas Secretary McManus talked about, where somebody is so professional, like started out with somebody in Minnesota. Went out there and met people and talked with them and made his presence known.

There are people in the public sector like that have graduated up like Professor Seiter has. Marine brig commanders, ex-BOP wardens, people like that that have integrity and they have knowledge and
they have an understanding and they did their damndest

to make the prison work despite the fact that they

might have to stand there with people stepping all

over, and if I had a picture I'd hand it out, seven
dollars and 61 cents at home.

It's almost impossible to run a place like

that, but these guys prevailed and they were able to
do it. I don't know any women or I would have
included that. Not a lot of guys, but they prevailed
and they were all kasherred. They were thrown out
because they simply didn't agree with management's
cost cutting issues that compromised health, safety --
the safety of not only the staff that we talked a lot
about today, but the safety of the inmates, and the
public safety.

Mr. Seiter has talked about monitoring, and

I've already spoken to it. I don't think monitoring
has any functional -- I have stacks of monitoring
reports and I think, in Brush, Colorado where there
was this flagrant sexual abuse of woman after woman
after woman from Hawaii and Wyoming, Colorado, there
was no action taken. There was no action taken at
all, and the news of this was concealed from a
legislator who's working on a bill to effect the
import of out-of-state prisoners, which has caused
enormous problems in so many states, and you know,
it's just -- it staggers the imagination.

Problems that arise there, the warden just
plead guilty last week to covering up the offense at
Brush, and two of his former -- former guards are
awaiting trial on that.

MR. SCHWARZ: I suppose Professor Dolovich
might think, well, you could -- one could cite
examples of that in the regular government prison
system also.

Also, Mr. Seiter, could I ask you two
comparative questions? And then I think my colleagues
are all going to jump in. These both arise out of
testimony we've gotten over the course of this full
hearing and the prior two hearings.

A large part of testimony has said
correction officers in the state-run system are paid
less than they should be and less than they might be
if one were going to attract more people into the
correction profession. So if the private prisons, in
order to make a profit, have to pay less, which at
least is a premise that would seem is logical, isn't
that going to exacerbate questions about who comes in
to work in the prison system?

And the second question for you and then we
can ask comparative questions on the other side, but
the second question for you is isn't it a fair point
to make that the private prison industry has an
incentive to persuade legislatures to increase the
number of people who go to prison and the length of
time people who go to prison stay in prison?
And we certainly, through all our three
hearings have gotten a lot of evidence that there's a
phenomenon of over-incarceration in this country that
is bad for the environment in prisons. So those are
two comparative questions to -- sort of addressed to
you, and then others or I can address questions on the
other side.

MR. SEITER: Mr. Schwarz, I think both are
very fair questions, challenging questions, but fair
questions, so let me try to address both of them.
First of all, on pay, there certainly is
the perception that private sector pay is less than
public sector pay, and in some cases that's true, but
let me say that in some cases it is not. At one of
our facilities correctional officers start at 52,000
dollars, higher than any public sector facility in --
within a hundred miles. In some of our contracts we
are required to pay prevailing wages even by the
Department of Labor, and with whatever formulas they
come up, that is what the wages are paid.

But again, let me try to dispel some myths that the private sector tries to make profits out of paying people less than they should. First of all, most of our contracts are very outcome-based, and we try to manage a quality correctional system. Again, let me kind of link the profit motive in a little different way. There's nothing that undermines the safe and secure operation of a facility more than inexperienced line staff, in my opinion.

It's -- some of the discussions this morning on culture are critical, but there's so many things that go on in a prison day-to-day that a line staff member who has very little time on the job and little training or mentoring can make a mistake in terms of a minor incident into a major incident. You don't want vacancies in terms of correctional officers because there's a certain number of posts that just have to be staffed. You cannot operate a prison day-to-day without staffing. So if you don't have trained, experienced correctional officers to do the job, you're going to pay somebody overtime, time and a half. So it makes much more sense, again, with the profit motive to pay somebody 100 percent rather than 150 percent. And that's not
just good corrections. Go back to the monitoring and
contract and the accountability requirements. Most of
our contracts require that all mandatory posts be
filled every eight-hour shift.

Your second point on the motivation of the
private sector and the profit motive in terms of
impact on criminal sentencing, I'll admit that even in
some of my earlier thoughts and writings I alluded
that that was -- what would seem rational, but I can
say after almost a year in the private sector, I've
not seen that. I've not heard it. Nobody seems to
motivate that.

I would agree that correctional policy on
how many people go to prison, but more importantly how
long they stay, really needs to be looked at. But I
have never seen in my years in state government or
federal government the impetus for those enhanced
sentences coming from the private sector. They always
come from legislators or elected officials that want
to make a reputation on being tough on crime, and I
don't think you can put that at the hands of private
sector.

MR. SCHWARZ: Do either of the other two
have comments on his two answers?

MR. SMITH: Lots. You first.
MS. DOLOVICH: So a few things. I just want to -- Mr. Schwarz suggested that I would state there are also many instances in the public sector. I would want to be clear I would say that, but I don't want to leave you with the impression that I think that private prisons and public prisons function in an identical way. I really mean what I said. It's a question of degree and not kind. So I actually think that Mr. Smith is right to call attention to the many incidents.

From the research that I've done, it seems clear to me that private prisons are less safe still than public prisons. The point I'm just trying to make is that the baseline is too low. So that we need to fix both contexts.

A couple things, just one on monitoring and one on what Mr. Seiter just said. The research I've done, if you look at the numbers actually I think Alex Busansky circulated to you a draft of an article I'm going to be publishing. If you actually break down the numbers of the research that was done by an independent public policy institute that was commissioned by Congress to look into the profession of private prisons, if you look at their numbers on monitoring, it's actually surprisingly limited. I
can't tell you what all the contracts said in those cases, but if you -- if you break down how many monitors spent how much time in the monitored facilities, it seems to me the numbers are woefully inadequate.

Just to give you an example of the 91 prisons and jails that were involved in the study, less than half had a daily monitor, meaning that only I guess -- let me think. Maybe it was fifty percent, 46 of 91 had a daily monitor. There was one person in the facility for 37 hours a week. And that was the most monitoring that any facility had. If you then go up to some of the prisons I've seen, for example, in California, which have many thousands of inmates, if you're actually looking for meaningful oversight of a contract, that just doesn't seem to be -- to me to be sufficient.

On the point Mr. Seiter made about whether or not he has seen people at CCA promoting policies increasing with respect to increased incarceration, there are connections that we could make. Again, I talk about them in my paper. CCA is a member of an organization called ALEC, the American Legislative Exchange Council. And ALEC has got members that are both from the private sector and from public
legislatures. They claim I think about 25 percent of legislatures across the country, state and federal, as part of their membership, and the way ALEC works is that it drafts model legislations to be taken back to legislators, and then the legislators take back to their legislatures to try to pass.

Now, I don't mean this to sound like a conspiracy theory. I just think it's understanding that ALEC has been behind three strikes and truth in sentencing, both pieces of legislations -- could be the legislations have the effect of increased populations in the prisons. CCA is a member of ALEC, and actually I believe is involved in drafting some of that legislation.

Now, I don't mean to be accusatory here and say that all of the increase in incarceration that we have seen in the last two decades is due to CCA. I don't mean that at all. And I also don't think that if it's true that CCA is involved in any way, I don't think it makes CCA or anyone in the private sector unique.

The point I'm trying to make is we have this phenomenon in our criminal justice policy process which allows organizations and entities that have a financial interest in increased incarceration to
influence sentencing policy. And I'm merely trying to
suggest that to the extent that this is the case --
and I think it's true if you look at the operation of
a CCPOA in California and even if you look at
communities --
I was saying this last night at dinner. If
you look at some communities that are looking to the
building of prisons in their communities to increase
employment and funding in their communities, it's very
hard to separate out the extent to which support for
increased crime legislation comes from a firm belief
that this is good for the public interest and a belief
that if you increase incarceration, you'll have more
funding for your community. And again, I know this is
a very -- it sounds like a conspiracy theory. I'm
just trying to raise the point that it could be
problematic in terms of the legitimacy of our prisons.

MR. SCHWARZ: Mr. Smith, do you have any
brief statements on --

MR. SMITH: Yeah. I'll try. It's
difficult for me. CCPOA, Lance Corcoran was here.
There's another CCPOA representative here today. And
I really was upset to miss Lance because I like to
give him a hard time because of the policies that
Professor Dolovich just mentioned. The reason being
is that they are most like the private sector when it
comes to advocating for tough on crime and three
strikes and all that. They're terrible about it.
They've been very professional in many ways.
But that -- I think it's bad public policy
and I think like the private sector indulges in this
sort of thing, it's bad because state budgeting is a
zero sum game, and as they look for more and more
correctional collars, they start by the services which
will have a reaction.
Eventually it will backfire in corrections.
It's not helpful. They even opposed a needle exchange
program, and they're worried about the health of their
officers. So they're going to have more prisoners
coming in with hepatitis C or HIV or whatever because
I thought it was a very boneheaded for them to do
that, to get Gray Davis to veto a law, and they did
it.
However, if you look at some of the
handouts I gave you, the escapes handouts. Professor
Seiter talked about safety, and the numbers that
you're looking at there, like thirty times as many
from private facilities. I first became drawn to this
when, I don't know, about nine or eleven prisoners ran
off from a CCA van in Minneapolis. One was a
murderer. He wound up getting caught at a bus station in Chicago after taking a family hostage. I called Freddie up and said how is this happening? She said there's no controls over it. She's right. You've raised over-incarceration. I appreciate that. GEO Group is very involved in that. I think they chaired the Criminal Justice Committee. Mr. Schwarz, you suggest they have -- because they make a profit they have to pay less. They don't have to pay less. They choose to pay less. All these things are done by choice. They pay -- in the handout I gave you -- 7.61 an hour in Kentucky, and they compensate Mr. Seiter extraordinarily generously. I think he gets -- he can correct me if I'm wrong -- 270,000 dollars a year, and he got a stock award of about two-thirds of a million dollars this year. That's coming out of the -- that's not a living wage when you're paying $7.61. What you have is turnover. You have people working two jobs. They're exhausted when they come to work. They lose that alertness you need to be -- a correctional officer, a guard. You've got to be on the ball on that stuff, and you can't get it when people have to work two jobs.
And when they have 52 percent turnover a year, they go through a training, that's right, much less than the public, substantially less than the public sector, but the training to make 52 percent a year, it's like everybody is in the first grade, and the sergeants are the ones that last until the second grade. And we have what do you call it, mandatory promotions, whatever you call it, in educational systems. You know, it's absolutely -- there's no professionalism in that system and professionalism, the little that exist, is not rewarded.

MR. SCHWARZ: Gary Maynard.

MR. MAYNARD: Yes. Thank you.

Ms. Dolovich, you're not impressed with either privates or the public, but do you see something in-between, some kind of standard, or what would you propose for each of the -- you think there's a common set of standards that would apply to both that would make them more effective?

MS. DOLOVICH: I guess what I'm struck by, and as I sit here I know you have a hard job in terms of what you can recommend and what is viable and possible, but what I'm struck by in looking at private prisons and the way that the phenomena in the private sector and also present in the public sector is it
does seem to come down to money in a lot of cases. So
I'm troubled as much, like I said, by subcontracting
for healthcare in order to save the states money on
the costs of healthcare as I am just the contracting
of the whole prison.

So I'm not sure that the right approach is
to look for a middle ground between public and
private. I think the right approach is to ask what is
it that we can do to improve the structures that we
have, and when I said that the structure and
functioning of public and private prisons is similar,
what I meant is if you look at the organization of the
prisons, if you look at how prisoners are housed, if
you look at the programming, etc., it looks pretty
much the same.

In fact, the ADT study on private prisons
published by Congress that I mentioned said that the
structure of contracting out suggests that the public
sector is really just trying to get more of what they
have on the cheap and, you know, that's pretty much
what they get.

So just to reiterate, I'm not sure the
right approach is to look for middle ground as much as
it is to think about the role that financing plays in
the construction of the prisons, and the way that
inadequate funding can undermine safe -- safety in the prisons. I'm not sure if that's -- if that answers your question.

MR. MAYNARD: I was wondering more what would make the public or the private better.

MS. DOLOVICH: I see. Well, I actually think a good place to start would be strengthening each of the accountability mechanisms that I mentioned. So I think the monitoring is inadequate in the private sector. The work that I've started to do looking into the oversight of public prisons suggests to me that it's also inadequate.

Either you have a situation like in Tennessee where the statutes seem to require quite strict and frequent inspections, but in practice they don't happen at all. Or you have the situation in California where the new regime is really quite strict and very comprehensive, but given how many prisons there are, the legislation only requires an inspection once every four years.

So it seems to me that we want both strict requirements and frequent inspections and oversight, right? We want both of those things, and that's monitoring. I think that the way the courts have constructed standards for liability for prisoners'
Constitutional rights are too strained and restrictive.

I'm not sure what scope the commission has to recommend more expansive interpretations. Maybe the answer is the creation of a statutory cause of action that would be able to sort of provide an alternative to Constitutional claims, but certainly I think the courts don't function the way they're supposed to.

And I think the conversation that was had earlier by ACA accreditation and the way accreditation could be strengthened is actually really crucial here. If you had an accreditation process that was mandatory and meaningful with more than just requirements of demonstrated policies, but actually demonstrate compliance and, as Mr. Dawe suggested, inspections that were unannounced so that the implication would be that the prisons would be in compliance all the time and not just around the time of the inspection, I think all of those things would go really far to make a difference.

MR. SCHWARZ: Commissioner Schlanger and then --

MR. NOLAN: Nolan.

MR. SCHWARZ: Commissioner Schlanger first.
MS. SCHLANGER: So this is I think really a question for Mr. Seiter. So we've been hearing about the risks of privatization, the risk especially of the cost shaving and almost antiprofessionalism if I'm characterizing what Mr. Smith is saying. So I guess I have two questions really.

One is what's the benefit? I mean, if that's the risk, we don't know if that risk is actually coming to fruition, but what's the benefit that compensates or that balances out that risk?

And then second, because I assume you're going to say there is a benefit and you're going to go through what it is, what kind of -- I've read some of these studies. They seem to me categorically inconclusive. What kind of performance measurement or evaluation or something could be done to know, to reassure the policy that we are not privatizing this really serious state function and incurring these very serious problems.

MR. SEITER: I think the benefits are many, and it's kind of the crux of the partnership issue that I talked about in my opening comments and I talked about in my written testimony, that it depends on what challenges are being faced by the public sector. That they cannot meet either today,
immediately, or perhaps -- in some cases that's capacity. Their system is expanding for whatever reason and for whatever cause, and they either do not have the dollars to expand, or they can't do it fast enough. So the private sector can come in and no question can build capacity quicker than the public sector and can expand using capital, using loans, whatever that the public sector may not be able to create in a very short time frame. That can be long term or in some cases it's temporary.

We need additional beds for the next six months, for the next year, for the next two years until we add capacity. Instead of having overcrowded conditions in current facilities, it allows states flexibility to deal with overcrowding in a very short time frame and one that allows them to do whatever planning and approaches they want to take.

Second is, as I said in my written testimony, there have been challenges in budgets by the public sector. And if you look at any of the numbers, the number of inmates in programs has not kept up with the growth in the number of inmates in the institutions. So there are fewer percentage-wise overall participating in programs. Quite frankly, this is not something that states or government
agencies then will accept. When they put out an RFP, they can very clearly say we expect this percent of inmates to be in education, we expect you to provide substance abuse programs, we expect you whatever. So even if they're not getting that as a line item in terms of we need growth in these kind of programs, they can include it in an RFP they put out for competitive bid.

There are cases where states are facing how to deal with special offender groups. Special offender groups that need particular kind of handling separate from the rest of the population, and they may have small numbers that make it terribly cost inefficient to do. By contracting with the private sector, who may take three or four populations from different government customers and allow them then to provide that special offender kind of programming and housing at a cost that makes it reasonable to do.

So I think, one, it can deal with overcrowding in a timely fashion that I think this commission and all the witnesses that have testified is a serious threat to safety. It can enhance both the number and quality of inmate programming that is in my opinion extremely important to the safety and secure -- safe and secure operation of any prisons,
and it can provide any kind of special services that
are necessary that a state just can't provide on their
own.

Your second question, I agree. The studies
really are inconclusive and I think anyone, this
commission, anyone in the public sector, anyone in the
private sector would love to have a measure of quality
that could be said, if you do this, we all accept that
you're operating a humane, a constitutional, an
active, a positive prison setting so that we all know
we are meeting what we expect as correctional
professionals and what the public expects from our
correctional facilities.

Unfortunately, probably the best we have
are some of the process-oriented measures that you're
talking about today in ACA accreditation, and some of
the things that were talked about in terms of
leadership and building the right culture. Those are
hard to measure. They're hard to study, they're hard
to look at in terms of outcomes.

I don't know what those would be beyond
those that we've been using, and they are not
satisfactory for any of us to say this is an
acceptable measure that we all agree on. This
shows this facility is an excellent facility that's
MR. NOLAN: A couple of thoughts and ask you to -- all of you to respond to them. First of all, cost shaving occurs all the time in government facilities. The lack of programs, eighty to 85 percent of inmates need drug treatment, less than twenty percent leave with any treatment, which Dr. Joe Callafano [phonetic] has said is a fraud on the public to lock somebody up with an addiction for five, ten, fifteen years and do nothing about it and release them on the public is a fraud.

Secondly, Will Grant said what makes Ford a good car? His answer was Chevrolet. Competition. Having an alternative, and as a former legislator, having an alternative to compare results with bottom lines with. The bottom line of our criminal justice system is that two out of three offenders are rearrested within three years. If we had hospitals that two out of three patients that left were still sick, we'd find new hospitals. We'd find a new way to do it.

My experience in talking in the prisoner fellowships field is -- and this puzzled me when I
first heard it. I've asked and it continues to be that as a whole, not entirely but as a whole, the private prisons are more open to programming of volunteers coming in, they facilitate it more, they accommodate it more, they encourage it more, they seek out those programs, and somebody that I've known for a number of years did some work for a private prison company. I said why is that? That's puzzling to me. Why would they in contrast to government facilities seek this out?

And he said, "Well, it's simple. We have a bottom line and we know that prisoners whose lives are occupied with productive activities are less likely to get abusive with each other, abusive with officers. That means lower workers' comp costs. That means fewer grievances and lawsuits. That means happier lives within."

Now, everybody I know inside a private prison complains about the food. Everybody inside a public prison complains about the food. Everybody I've known in the military complains about the food. Every college student in a dorm complains about the food. So I think institutional food is the problem here. That is a common complaint I hear, but I've seen cost shaving occur in public institutions,
consistently the low staff ratios.

So my question to you is sort of the flip side of what Margo asked. Why would we take something that's as important as public safety and the correcting of that behavior and put it in the hands of a system that runs the post office?

MR. SMITH: That answers your question generally I think, and some of the prior questions more specifically. I'll give you an example. In the State of Alaska, I just talked about it a little bit. All that, tried to build a prison for two years to get a free Army base and get the local town to bond forty million dollars in conversion. They failed.

They continued to pursue this. For nine years they contributed -- they made campaign contributions of 200,000 dollars a year. The public sector employees made, correctional officers, maybe a thousand dollars a year. Not more than two thousand certainly. Tiny contributions exceeded a hundred times by the private sector.

What they did there, they're talking about building quickly. Well, they didn't lay a brick for nine years. But what they did do is they bought off enough legislatures to stop the public sector from laying a single brick. Well, they did for seven
years, and they finally were able to build a small prison, but that's what you're buying into when you --

MR. NOLAN: What prevented them from building the prison for those nine years?

MR. SMITH: They're kept legislators, guys that were bought off.

MR. NOLAN: So the legislature wasn't allowing them to build it?

MR. SMITH: Yes, but the contributions flowed directly from the private prison industries and their associates, contractors and all to the legislatures, to the senate house floor when they said this won't go any further. I don't care what the governor wants, the director of corrections wants, the other house wants, it's not going anywhere because we want our court, the 985 million dollar wired bid that they were looking for that I discovered on a Freedom of Records Act request. That's serious safety problems.

So what's happened is you had 825 Alaskan prisoners in CCA Florence, Arizona that rioted about a month after I visited the place in 2000 and had been preceded by a riot in 1998. I mean, you have these terrible problems of those 825 people, and I just talked about recidivism. Four got regular visits.
You're talking about programs, that's the worst program imaginable if you're cutting off people from their families, their support systems, their employers, their churches, what --

MR. NOLAN: I totally agree.

MR. SMITH: These prisons are typically built in the area where the company -- now, Professor Seiter talked about some places where they have to pay out -- Florence, Arizona is one because they have federal prisoners, Hawaiian and Alaskan prisoners that are high-ticket prisons, but they like to pay that and that's what's causing these problems. They're locating them in the areas typically of the lowest wages where you get this fast food worker with a set of keys and a badge.

MR. NOLAN: But upstate New York, building a prison there isn't the same thing.

MR. SMITH: Bad mistake. Terrible mistake.

MR. NOLAN: Frank, the same system that brings us the post office is putting public prisons there as well as private.

MR. SMITH: But like Professor Dolovich said, this has magnified the public problems exponentially.

MR. NOLAN: But by what index is it
MR. SMITH: I can say the numbers. I'd be happy to state numbers. Study after study after study.

MR. NOLAN: But again, I think we heard those studies are equivocal.

MR. SMITH: No, they're not. Professor Seiter maintains they're equivocal. One of the studies -- well, he calls it a study. The Harvard Law Review "study." It's not a study. It's not a review of the literature. It's a note. It's an unpeer-reviewed journal, it means nothing, it's full of sound and fury. And that's why you say is equivocal.

You got crap on one side, Charlie Thomas, the guy who got three million dollars in one crack from CCA. You got Charlie Thomas who got a free trip to Hawaii in the middle of the study that he quotes from the Miranda Institution, from MBT. This instant research on the other side is unfortunately largely bogus, or there's a misreading of legitimate research like the stuff that, you know, they ignore site preparation, and they say it costs much more to build a public than -- you know, when a public institution is built on a huge piece of land with an extensive
site preparation.

And they ignore facts like the public sectored workers have 21 percent retirement benefits and the private sector benefits, the GEO Group in this case, have two and a half percent only if it's matched with a five percent contribution by employees, and only ten percent of the employees contributed.

That's -- this is an enormous difference.

MR. NOLAN: Wouldn't that indicate we could deliver more protection for the public for less money?

MR. SMITH: Absolutely not.

MR. NOLAN: Okay. What am I missing here?

MR. SMITH: Well, they're not delivering protection. Look at those escape numbers I showed you. That's hardly protection. When they get out with hepatitis C or drug-resistant tuberculosis or whatever, you had -- your last panel was on the health risks of this. You've got inmate vectors going into these communities, impoverished communities.

MR. NOLAN: But what are the publics doing?

MR. SMITH: They're doing much better across the board. They're doing better.

MS. DOLOVICH: Can I just jump in here? I think this is part of the -- the part where I see the problem with this kind of debate because I agree with
you on two things that you said. One is there's cost shaving in the public sector, and two is to the extent -- to the extent that the private sector is allowing more volunteers into their prisons, it is likely because they see that this will keep the prisoners occupied and reduce their overall cost. I agree with both those things.

Now, what I don't understand is why the argument then becomes public versus private if the public sector is looking to shave money and it does it by not providing drug treatment, you as the commission and we as citizens can say if you actually want to, A, help the community, and B, save money, you will invest in drug treatment.

You will let volunteer organizations into the prison. You want to provide more programs. You want to make it possible for prisoners to have more visits by not siting prisons in upstate New York when most of your prisoners are from New York City.

So I guess I'm puzzled by why this becomes a back and forth and not a question of what are the prisons doing that are compromising the possibility for safety and, you know, rehabilitation, and what are they doing that is enhancing those possibilities and how can we reduce the percent.
MR. NOLAN: I totally agree with you. To me it's an artificial debate. The bottom line is public safety, and we need to look at both and hold them both accountable to do all they can to provide drug treatment, to provide other programs and volunteers that enrich their lives and prepare them for reentry and hold them accountable for the bottom line, which is fewer people harming somebody else and going back to prison. And so to me, I'm puzzled by the debate why there's people so angry that there are private or publics. I say hold them both accountable.

MR. SMITH: I'm for that.

MR. SCHWARZ: The chair and then

Commissioner Ryan.

MR. KATZENBACH: I just have some questions really out of ignorance, Mr. Seiter. I want to know a little bit more about the contracts that you make. I want to know what's the length of those contracts, what are the provisions that allow the government to examine? Do they have access to all the documents, all the files? Do they have -- can they visit any time they want to? Can they send anybody they want to wherever they want, that sort of thing?

You speak about liquidated damages. I have no idea whether they're large or small. I'm curious
about that, and I'm curious as to whether they are to be achieved after litigation, or is there any other standard by which they're to be -- that kind of question.

MR. SEITER: Some states and some government agencies do this very well. Other ones probably don't do it as well in terms of how well they draft an RFP and how well they then create a contract. However, by now many states, many government agencies have been in this business for over a decade and they are doing very well. Let me just answer your question in general. And I'd be happy to give you any specifics that you'd like to know.

In terms of the length, it varies anywhere from a year renewable to three years or four years max. to ten or twelve years, and oftentimes that will depend on how much risk the private company is taking in terms of commitment and capital. If you ask us to build an eighty million dollar facility for you, it's going to take a longer term contract.

However, every contract that we have that I'm aware of that I looked at can be terminated for cause defined by the customer within usually ninety days. So if there is a reason that they feel the government -- the contractor is not performing, they
MR. KATZENBACH: It must be difficult to terminate a prison for cause. I mean, you leave, what am I going to do?

MR. SEITER: Well, you know, if there is the kind of abusive discretion and kind of incidents that Frank has described, I can assure you customers would say we're not going to continue to pay you money to do that if you're not providing safety for the citizens of this state.

In terms of the monitoring and examinations, all the contracts require are allow monitors to be -- have total access to the institution 24 hours a day, seven days a week with or without notice. They can walk in at any time unannounced and do any kind of examination that they want to do. The contract requirements will often say you must have at least these levels -- this number of staff.

They will require how many staff you have, this percent of inmates, this many inmates must participate in a certain kind of programs, whether it's education, substance abuse, or whatever. Must be ACA accredited within two years, three years, or whatever, and most of our contracts do require that.

How often they visit, we have institutions
where there are four full-time monitors for every facility, and I think any of you who have operated a facility or hospital, if you can imagine four people looking over your shoulders every day or at least five days a week, that could be very extensive monitoring. There is not much that could be done to not fulfill the requirements of the contract with that. Some have probably as statistics said less than a full-time person, and I don't think we have anyplace where it is less than one person cover two facilities, so they are there at least half of the time. But it's hard in a prison setting to say we're going to hide something from someone. And as I think you said earlier, you're not going to -- when talking about accreditation, you're not going to change that facility totally in a few days when it comes to someone coming in to look at.

In terms of liquidated damages, again, I think the government customers have gotten very sophisticated in terms of if the private sector is interested in a profit motive, we will take that away from you if you do not perform to the point where it is a level that gets the private sector attention. I can tell you in some of our contracts some of the liquidated damages include if a position is not filled
for an eight-hour shift, you give up pay and a half
for that position.

So you lose money if you do not fill it,
and if you do not have a number of -- a certain number
of inmates in these kind of educational programs or
whatever, you will pay these kinds of damages. So
ty they are certainly sufficient that they -- for a
profit-making company get their attention, and many of
them do that quite well.

MR. SCHWARZ: We should make the assumption
the contracts are public documents.

MR. SEITER: Yes.

MS. DOLOVICH: Can I just add something? I
just want to say one quick thing. I think --
Mr. Chairman, I think you're asking exactly the right
questions. I would add another question, which is not
just what do the contracts say, but to what extent are
they -- actually are the provisions acted upon by the
state.

So for example, Mr. Seiter says that the
state has the opportunity to go in at any time to
oversee what the prisons are doing. I think the
question to ask is how often is that power exercised?
The states have the opportunity to terminate for cause
in ninety days. I think the question to be asked is
how often do they in fact do that?

MR. SMITH: I'd like to speak to that,

yeah. In his written testimony, Professor Seiter talked about CCA never losing a contract for quality issues. I think CCA has done. Tulsa, they rebid the contract and lost -- the city took it back over, the Tulsa jail. It seemed like they were turning so many people loose that more people were getting loose by accident than by on purpose. They had rapes there. They had all sorts of problems in that contract.

In Youngstown, Ohio it's notorious. Escapes -- at one time there was five or six escaping -- or four or five escapees out of six escapees that went to the fence were murdered. One was picked up in Buffalo, New York. Place was closed down for what, two and a half years. Maybe you have a better memory than I since you have the Ohio experience. Terrified the community. It was shut down for two and a half years.

New Morgan Academy in Pennsylvania, it's a kid's joint. There was signal after signal that there were terrible problems there, and the ACA accredited that place just a couple weeks before they shut it down, before the states shut it down. They had fifteen cases of substantiated physical assault
against these kids and sixteen cases of sexual assault
against these kids, and they're still walking through
the courts with all these cases, all these plaintiffs,
these children that have been abused. Nobody was
watching the store in this place. They have lost the
contracts. New Morgan Academy's closing up, thank
goodness. It will be three years this month.
Alexander Academy in Arkansas had all the
same problems, and they should have been closed three
years ago. So you have these problems without
repercussions. There is not that accountability that
we all desire in the public or the private sector, but
particularly in the private sector when you have these
other mechanisms involved.
When somebody is getting taken care of,
where somebody like in a state where we had
representatives from today they were supposed to have
monitors at a CCA prison, I was told -- I usually get
two sources on my stories that the monitor showed up
maybe one day a month and was drunk.
I have a bunch of reports from Wyoming to
Hawaii that show at the worst time, at the time these
women would be horribly exploited, that the monitors
probably spent a total of about sixteen hours over two
months in this Brush, Colorado prison. It's
1 disgraceful, what we allow to happen. They're out of
2 sight and out of mind. I can't write to GRW, which
3 ran the prison in Brush and say I want to see all your
4 records. I'm going to go there next week.
5               I got money to go to the West Coast, and
6 I'm going to stop on the way to examine all the city's
7 record, and I'm going to go to Cheyenne, Wyoming to
8 look at all their records, including on Crowley, and
9 I'm going to look at Denver's records, the Colorado
10 state records because I can't afford these FOIA's even
11 for two bits a page. It runs to a buck and a quarter
12 they want to charge me at Rush.
13               They're horrible. They weren't monitored.
14 Nobody is taking responsibility for that. The
15 legislature just issued I think an 89-page report on
16 the failures of the monitoring where you have eleven
17 monitors in the unit and they spend virtually no time
18 in the prisons. Virtually none.
19               They were detailed on other tasks that had
20 nothing to do with monitoring, and yet the literature
21 we see say they had two monitors for every 500
22 prisoners. That would have been five at Crowley, for
23 instance, and these guys are scared tenants. Thank
24 you.
25               MR. RYAN: I grew up in the business when
there was no privatization, from everything to
commissary to food and so forth, and about halfway
through it began to see some privatization in the way
of medical service I think was the first one I ran
across. And at first I was very uncomfortable with
that and over time I became more comfortable with
that.

Then went to food service, commissary, I
suppose looking at maintenance, looking at all kinds
of different areas except for the security edge of
corrections, and I've never been comfortable on a
personal level saying that I wanted to exchange the
security level, the government/public side of the
enterprise for private. That I always felt more
comfortable with the officers that I trained under the
public academy through the oath of the office, through
the accountability process, through that.

And so can you help me understand how I
become comfortable with the private concept of
strictly security element of it, and especially given
what Mr. Smith says about -- unfortunately, my
experience has been a riot in southern California and
a private area that I think it was an INS housing
where the officers there simply left. They walked out
and ran, and I don't know whether that's the truth or
MR. SMITH: Was that Eagle Mountain or Baker? They had officers do the same thing at both places.

MR. RYAN: Okay. But, you know, that concept -- and I guess I can't talk very well after having seen what went on at New Orleans recently, but my concept being the concept of the officers had been trained under the public environment, and is there a comfort level in the private environment that I would feel better about that?

MR. SEITER: As I hear your question, it's really personally how you could feel more comfortable about it, and I would say come and tour our CCA prison.

MR. RYAN: Okay. Let me follow up then with kind of -- you said you had sixty private prisons out there. How many of those are ones in which there was a public government agency running it and they simply said, all right, tomorrow CCA is going to run it of the sixty that are out there?

MR. SEITER: That's a good question. I'm not sure I know the answer, but a small number of them probably. In most cases CCA's facilities opened to meet an expanded need, and I'm sure there are some,
probably many of the jails and some of the Florida jails that had a facility and decided to privatize it. In terms of state prisons there's probably, I'm going to say, maybe five or six.

MR. RYAN: Is it to fair to say that what CCA has done has simply added another facility of some sort and taken over that and there's been an expansion of that? And as a follow-up of that, my experience has been that the private security concept tends to take the minimum security inmates, the folks that are the best of the worst that are out there, and so that what's left -- and my concern is what's left at the public jail or prison are the bad guys.

And I was talking at lunch about the fact that if there was a private entity that came in and took all the best of who I had, those are my people that are in my kitchen service, my lawn service, my maintenance service. They take all of those folks and leave me with the people left over, and if there's a bad guy in that group of some fashion, they will no, I'm sorry, we don't accept him and send him back. I have the same problem in the mental health group. They only want the good mental health people, not the bad mental health people. Is there some truth to that? Do you only take the good guys?
MR. SEITER: That would be desirable. Do you have any good guys? I think historically that was the beginning of the private enterprise in corrections as I recall, and I was like you. I kind of was in that era, and I looked at privatization as why can they -- why do they say they can do this better? Why do they say they can do this less expensively? I think I was director of corrections in Ohio when the first private prison opened, and I was very questionable about whether it could be successful, but of our facilities only a handful are minimum security. We operate many full-service jails where, you know, you're getting everybody just the same as your facility. Three counties in Florida we operate the full service, the only facility. So we get everybody that comes into that jail. Most of our institutions are our state institutions, operate for the states, are medium security.

We meet needs of the customers. Some of the customers are now coming to us and say we don't need any more medium security beds. We need close security beds. Can you convert this facility into a close security institution? So basically we don't say what we want and say we want the cream of the crop. Why would a government agency give us something that
they already can do well and do probably very
cost-efficiently? They ask us to do what they are not
able to do for what their needs are.

MR. BRIGHT: But of course if there were
two owners, a private company wouldn't do it for the
money that it was being paid I guess too, right? I
mean, there's got to be a meeting of the minds in
there somewhere.

MR. SEITER: Absolutely. In most cases,
again, it's RFP. It's competitively bid. If someone
came to us and said can you do this and can you do it
for this amount of money and we said no, we cannot not
do it. And one of my main roles is to question can we
do something in a safe and secure manner, and if we
can't, to tell the company we should not do it for
whatever amount of dollars we get.

MR. BRIGHT: Can I just ask you a couple?
Is it really true that in Kentucky you pay seven
dollars and 61 cents an hour to your employees at one
of the facilities there, and if so, what kind of
people do you get for seven dollars and 61 cents, and
if you toured -- if one of the commissioners or all
the commissioners toured that facility, do you have a
lot of turnover? Do you have some problems, or --

MR. SEITER: Well, let me say I'm not sure
what facility in Kentucky you're referencing, but we have some areas where correctional officer pay is extremely low, probably not unusual for what the state pays at the same -- at the same locations, whatever states we contract with.

Our target is to pay market wage, and when we go in for a new contract we have human resource professionals go in, and their challenge is what should the pay be for an correctional officer, for a nurse, for a social worker, for grievance counselor, whatever so that we can get and keep quality staff.

MR. BRIGHT: Market rate for what, for that community?

MR. SEITER: Yes.

MR. BRIGHT: This is an economically depressed community, there are no jobs here, therefore we can pay people the minimum wage, right? That's market wage based on the community, I guess, right?

MR. SEITER: In the location where we are at, yes. And again, it would not serve us in terms of quality or in terms of being cost-efficient to pay too low a rate. There have been instances where recently I have approved and said we're going to pay more at this institution because the turnover rate is too high, the inexperience -- the level of experience is
not enough, and we need to increase the pay. And when
that is the smart decision both for correctional
reasons and of course for business reasons, if you
want to talk about the profit motive, then you pay
what you need to pay to get and keep good quality
staff.

MR. BRIGHT: Of course, there's also the
benefits. You pay as little in benefits as you
possibly can, right? I mean, that's a good business
practice. Not very good for the employee, but it's
good for CCA, right?

MR. SEITER: Let me correct that myth.
I've been with two federal agencies -- two agencies,
and the percent we calculate for benefits is greater
than one and less than the other, but not much less.

MR. SCHWARZ: So Commissioner Dudley has a
question. I've got one more question, and I think
then we're going to be done except for some closing
comments. Rick.

MR. DUDLEY: Actually, my question is
directed towards you, I think. Based on all of this
discussion and in prior lives of my contracting for
services as commissioner in New York and looking at
other systems has always been at issue. I guess it
always seemed to me that you actually do get what you
pay for.

So at some level I'm agreeing with you that the discussion is whether, you know, governments are willing to pay either private or public providers for the types of services that they require. It seems to me too that, you know, one of the advantages of public contracting is that at least the state is forced to actually articulate what it is that they think they want and they're willing to pay for in the form of a contract where that's not necessarily so much the case maybe in the public sector where there's funding, but may be less clear articulation of what it is that we think that we actually should be getting for the money that we're paying.

The downside, of course, is who's writing this contract, and do they have any sort of sense of what's really required that we should be demanding in order to provide the kinds of services that we need? I'm wondering if you have any thoughts about that. I want to hear from anybody.

MS. DOLOVICH: On your first point I quite agree with you. I think one of the lessons I take away from this is you get what you pay for. And also incarceration is expensive. So if the state wants to incarcerate, and what we've seen over the last two
decades, the state, for whatever reasons, seems to want to incarcerate. The state has to pay. And that's why I'm as troubled by the idea of subcontracting out for, for example, healthcare as I am by the idea of contracting out the entire prison when the goal is to save the state money on the cost of corrections.

You know, common sense suggests that if you are going to set a contract place at lower than the state is paying because that way the state saves money and then you set up a system where the provider can only profit by spending still less than the contract price, it seems to me it's clear that you are creating an incentive system that is counter to the goals of public safety, safety in prisons, etc.

And I think the same danger exists in the public sector would be a subcontractor, especially healthcare. I hope you take a look at least at the testimony that I gave you. I just have one paragraph describing some of the experiences with correctional medical services, which is just one you probably know, one of a number of for-profit prison health providers, and the track record of the ones that I've looked at is just terrible.

And it stands to reason that the state --
for example, in New York State as you may know they contract out with prison health services, why, because the cost of medical care for the prisoners is soaring. Why, because the number of inmates is soaring. And health care is expensive. But, of course, if the state can't do it, it's likely that prison can't -- outsources can't do it either. So I agree with you on that point.

I think it is a nice point to suggest that there's a value in the state articulating, state officials articulating what it is that is wanted. I think that actually takes us back to a conversation of the earlier panel and some earlier things that we've said. It would be valuable for corrections officials, people who are committed to safe and secure prisons, to craft stand -- you can call it contract, call it standards, call it whatever you will. Requirements that prisons need to satisfy.

I think the exercise is as effective when you are an accreditation organization trying to set standards for prisons or when you were a state official trying to contract out to the private sector. To my mind the benefit that you're describing is not exclusive to the privatization process. It may be something we've learned through this experiment of
privatization that would benefit us even if we, you
know, step away from privatization and stick with the
public.

MR. DUDLEY: For example, when you look at
the health services, you look at those contracts and
you say, well, you know, this is really actually all
they're saying they're trying to buy. You know, and
so that with these other things that are happening,
you know, that are not really in fact covered in the
contract, I mean, it's pretty clear that they've
articulated that that's all they're willing to pay for
it, which creates --

And at least it kind of documents what
we're saying we're willing to do, that one can then be
concerned. I'm not saying that's a good idea. I'm
just saying that seems to be a by-product of this and
gives you a handle to address maybe a larger question,
which is what is our commitment to providing health
services in prisons.

MS. DOLOVICH: Right. Although I will just
draw attention to one danger in the contracting
context, and that is there's a concept in economics
that I've recently learned called incomplete
contracts, right? The idea is there are some things
you can't specify in a contract because you can never
know in advance.

So in the healthcare context you can specify, you know, appropriate treatment in the moment or, you know, appropriate treatment understood at the time of the illness, but that doesn't tell you exactly what protocols should be followed. It doesn't tell you what medications should be prescribed. It doesn't tell you if you -- it leaves a lot of discretion in the hands of the provider, and that creates a danger when the provider has another incentive.

MR. SCHWARZ: I'd like to ask a question that stems from Pat Nolan's observation at the beginning of his dialogue with you that competition is good. I think most people would say in general competition is good. The main worry -- and this is directed to you, Mr. Seiter, but the other two might comment about the potential incentives that the private sector has to exacerbate the overincarceration that everybody thinks is a problem in prisons.

And I wonder if you would agree that it would be appropriate for people in your industry to be barred from or to agree not to make campaign contributions because the corrections directors of the state are not making campaign contributions. They would like to reduce the prison populations.
And second, whether you would agree that it would be fair -- you said you didn't do any lobbying, and then Professor Dolovich said but you belong to a group that does do lobbying and writes laws. Don't you think it would be appropriate for groups like yours in this special situation to agree, as a condition of bidding, that they are not going to do any lobbying that's going to effect the issue of overincarceration?

MR. SEITER: Let me correct what I said. CCA and every private sector industry does lobby, no question about it. But not to -- what I said was I've not known that the company does that to encourage enhancement of any sentencing, and --

MR. SCHWARZ: So you would agree it would be appropriate for your industry to agree that it's not going to lobby at all either directly or indirectly to encourage increased length of sentence or increased number of people being sent to prison?

MR. SEITER: Again, what I would say is that's not in my mind what the public and private sector does.

MR. SCHWARZ: Then you would agree that you shouldn't do it and you wouldn't mind being barred from doing it?
MR. SEITER: I think you -- you know, rationally it would be hard to argue against that, but that's not an area that I am very knowledgeable in, in the sense of CCA and all private sector companies and every company anywhere and government agencies do lobby. When I was a government official I didn't lobby, but I educated. You educate people on why you're doing certain things and what you think is the advantage of what you're doing, and that I think should be separated from the issue of trying to increase the number of people in prisons. You know, let me just answer it this way. The private sector has a very, very small percent of the number of inmates incarcerated. So they don't necessarily need to say increase that number of inmates in terms of having opportunities to do business. There are agencies that come to us all the time with new challenges in terms of increased population pressures or border controls for immigration or drug abuse laws that are expanding the Bureau of Prisons population or anything else, and say we need help in terms of dealing with these population.

MR. SCHWARZ: Do either of the two of you
have any comments on that?

MR. SMITH: Yeah.

MR. SCHWARZ: We have to make it brief.

MR. SMITH: Your question wasn't parsed to get the answer you wanted. When they go to -- when a GEO Group and CCA go to ALEC and craft this model legislation and wine and dine legislators or whatever, they are not lobbying. It is not lobbying. When I go -- I went to the state of Kansas this year.

I found myself on the same side of CCA and GEO Group, which I find very amusing. But when I went there I spent over a hundred dollars on postage, so I had to register as a lobbyist. Is that lobbying? It triggers the Kansas statute. I went to about 114 dollars and had to spent another fifty bucks to register. Yes.

I would like to say a couple very, very quick things if you'd indulge me in answer to Dr. Dudley's questions. I have two things here. I gave you one, I think. I'll give it to Ms. Dolovich about fraudulent records, about bogus records. It's from a wonderful series in Wilmington. This is Sunday's article, but it is about the nonprovision of medical care. There has been lots of cases about this, about -- just like HMOs, the determination to
lower cost at the expense of the patients. It's very important.

As far as the ACA is concerned, my biggest problem with them is they take so much money from the private industry. You can take the -- I get Corrections magazine. You can take and shake it, and it's like getting AARP magazine on state of insurance things falling out of the magazine. It's, you know, sponsorships and GEO Group and CSC and Cornell. It's packed with not only advertising, but the conferences are all sponsored by these groups. So the ACA -- PCI thinks that it's wrong to the private industry, and it has to separate itself from that industry if it's going to maintain some integrity. That's just my opinion.

MR. DUDLEY: I'm not saying I don't think there's been problems with private medical care. That's very clear, but I guess what I'm saying is what it seems equally clear to me is that the services that they are being provided were the services that were being requested and paid for.

MS. DOLOVICH: I would just say, Mr. Schwarz, to your comment, I would agree with you this is a really troubling issue. I would just emphasize that I think it is a larger phenomenon. I
think the worry extends beyond just the private sector. The truth is I don't know what to do with that worry, but I think it exists.

MR. SCHWARZ: Okay. So thank you all very much, you three.