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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

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Pages 404-457

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21 MR. SCHWARZ: Let's get started here. Is
22 Dan Ellis still here, the former dean? Okay. Sitting
23 in the back of the room, the former dean of the law
24 school here and a graduate of a great New York law
25 firm. And the person who built this building.

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1 So the next panel may also spark some
2 controversy as the last one did. It's going to
3 consider the pros and cons of public and private
4 prison facilities. And I'm going to introduce Richard
5 Seiter, Frank Smith, and Sharon Dolovich.

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

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

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

21 And Professor Sharon Dolovich is spending
22 this year as a fellow at the Radcliff Institute For
23 Advanced Study in Cambridge, the tiny vestige of what
24 was once a huge institution which has now been
25 swallowed by Harvard, on leave from the UCLA School of

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1 Law. She's the author of a forthcoming article,
2 "State Punishment and Private Prisons."

3 So we should have a good, lively
4 discussion, and thank you for coming, and we'll start
5 with you, Mr. Seiter.

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

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

23 For too long only we in corrections talked
24 to each other about our policies and approaches. We
25 who worked in corrections were the invisible public

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1 servant, asked to do a dangerous and difficult job,
2 but really expected to keep the issues below the radar
3 screen. It is critically important in my mind that
4 those outside of corrections and outside government in
5 the corporate, religious, not-for-profit, academic,
6 and media world to together discuss our nation's
7 correctional policies. I hope that the work of this
8 commission spurs those discussions.

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

21 First, there's not a competition between
22 the private and the public sector, and as a
23 correctional administrator I see more similarities
24 than differences in our operations. We view each
25 other as partners, finding ways to meet the challenges

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1 facing correctional agencies charged with holding
2 criminal offenders. This partnership may assist by
3 adding capacity, finding cost efficiencies, or
4 handling special groups of offenders.

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

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

22 At the Correctional Corporation of America,
23 54 of the 60 operating facilities are accredited.
24 This year, twenty accreditations or reaccreditations
25 occurred with an average score of 99.1.

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1 Fourth, private prisons are committed to
2 and offer extensive inmate programs. For example,
3 during the month of August 2005 CCA's educational
4 programs had an average daily enrollment of over
5 18,000 students. Between January and August 2005,
6 more than 1,580 inmates earned GEDs or high school
7 equivalency diplomas, and more than 4,600 completed
8 vocational training certificates.

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

19 Finally, we have 29 faith-based residential
20 unit programs in 26 facilities with over 2,600 inmates
21 participating daily. Again, these are full-time
22 assignments and inmates participate six to eight hours
23 per day for six to eight months. There have been over
24 5,600 inmates that have graduated from these programs
25 since their inception in 2004.

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1 And finally, the profit motive does not
2 undermine prison safety. There's nothing we value
3 more than creating a safe and secure environment for
4 staff and inmates.

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

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

22 MR. BRIGHT: Mr. Smith.

23 MR. SMITH: Hi. I'm Frank Smith with
24 Private Corrections Institute, which sounds pretty
25 fancy, but it's a name we stole from Charlie Thomas

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1 actually.

2 MR. SCHWARZ: And how did you set it up
3 with that name when your function is to question the
4 appropriateness of private --

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

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

22 In fact, I live on about 1,200 bucks a
23 month. I do this almost all out of my pocket. I was
24 very fortunate to be able to come here today. I
25 appreciate the commission inviting me and putting me

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1 up in such a nice place. I'm usually under a bridge
2 or on a couch somewhere.

3 But anyhow, let me tell you what I do.
4 I've been involved in the provision of services in
5 prisons and federal services, substance abuse
6 treatment services, research for many, many years, in
7 fact going back to 1971. In the course of doing that,
8 about nine years ago I got intensely interested in
9 private prisons.

10 I had actually got some interest -- I was
11 working in the State of Alaska at the time. I got
12 some interest in the issue because in 1991 the State
13 of Alaska wanted to ship hundreds of prisoners to
14 Texas, and I brought up a study that was done back in
15 1972 actually by my ex-boss's brother from the
16 California Department of Corrections. It was
17 in-house, and it was Norm Miller, Norman Miller -- and
18 I'm sorry, Don Miller and Norman Holt.

19 And they discovered that in a remote
20 prison -- it was Susanville. I'm sorry, it was Sonora
21 Correctional Center, that recidivism was measured by
22 -- against a number of visits in the last year of
23 incarceration where they look at people who got one,
24 two, three, or zero visits. They found out that
25 people who got visits from three or more people, not

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1 the number of visits, but the number of visitors,
2 recidivism was one-sixth the rate of people that got
3 no visits.

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

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

25 Anyhow, I started working in Colorado.

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1 People asked me around the country, Kentucky, South
2 Carolina, California. In Colorado I got intensely
3 involved in a couple of prisons -- prospective
4 prisons. Lamar and Pueblo, and in the course of doing
5 a radio show I got in touch with a couple of
6 whistle-blowers who called me up. I gave out a bogus
7 E-mail address that they would get me -- remember and
8 could get me with, and I developed this vast network,
9 it's become a vast network of whistle-blowers, no
10 money at all, from every major corporation, from
11 CiviGenics and MTC, the smaller ones, two, three, four
12 percent, up to CCA and Wackerly.

13 They include an ex-executive vice
14 president, ex-vice presidents, wardens, directors of
15 training, line workers, nurses, unit managers,
16 everybody. They were telling me horrible things about
17 the accreditation process, about pay scales, about
18 turnover, about treatment of workers, about
19 atmospheres of sexual harassment, about all sorts of
20 things that were very scary to me, and I started
21 doing -- I have been doing this for a lot of years in
22 different venues -- Freedom of Information Act
23 requests to open records at the request of the states.

24 Got an enormous amount of material. In
25 Alaska I found one company which will remain nameless

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1 was trying to wire -- clearly wiring a 985 million
2 dollar bid. I sought -- the monitors, particularly in
3 Colorado, completely ignored their duties because of
4 their symbiotic relationship, the Colorado DOC and the
5 privates, because it's tapered. They couldn't build
6 new prisons, so they depended desperately on these
7 prisons, and overlooked things that were just
8 unbelievable.

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

22 So here I am in the situation where nobody
23 cares, and finally the joint explodes and they burn
24 down a couple of pods. That's the situation that I
25 have seen. That's the situation I've seen

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1 consistently around the country. I've visited CCA
2 prisons inside and on the outside. Went by Crowley
3 while it was still smoking. And I'd like to talk
4 about -- I hope you ask me questions too about ACA
5 accreditation and how it affects all this. Thank you
6 very much.

7 MR. SCHWARZ: Okay. Professor Dolovich.

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

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

21 Now, I've been thinking about private
22 prisons in this light for some time, and the main
23 point I want to make to you today, one which it's
24 turned out Mr. Seiter and I agree on, is that the way
25 the debate has generally been framed, as a choice or

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1 even a competition between public and private is the
2 wrong way to think about the issue. Now -- and it is
3 the main way that when you look in the debate, look in
4 the literature, the main way to debate is framed.

5 I have two reasons for suggesting that we
6 think about it differently. The first is that framing
7 the issue in this way, a situation between public and
8 private, actually obscures the fact that in terms of
9 day-to-day structure and functioning, private prisons
10 operate pretty much like public prisons. Now, I have
11 to be careful here as I learned last night at dinner,
12 I'm not saying that public prisons and private prisons
13 are the same, but where there are differences, they
14 are differences of degree and not kind.

15 That is, private prisons take many of the
16 problems and pathologies of the public system and they
17 take it to their logical extreme. You find the same
18 phenomena only in more extreme forms in the private
19 sector, so that's the first reason.

20 The second reason I think we need to think
21 about the debate differently is that framing the issue
22 in comparative terms actually leads us to lose sight
23 of the bigger picture. With the comparative approach,
24 we spend a lot of time debating whether private
25 prisons are as good as public prisons. In fact,

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1 Mr. Seiter's written testimony, he addresses this
2 issue trying to suggest to us that at the very least
3 private prisons are as good as public prisons. Now,
4 with all due respect, if this were an acceptable
5 standard, if what we were shooting for here was simply
6 to reproduce what we already have, we wouldn't be here
7 today and you folks wouldn't have the hard job you
8 have of trying to figure out how to fix a broken
9 system. It's not the standard I think we should be
10 shooting for.

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

22 So what I think we should be doing is
23 looking at private prisons themselves to try to
24 understand the dangers that are posed by this penal
25 form, and I believe there are dangers posed by this

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1 penal form, and once we do so, we will see that a
2 number of practices that are problematic in the
3 private sector are also problematic in the public
4 sector.

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

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

20 Now, the problem is with all due respect
21 now to Mr. Seiter, none of the oversight mechanisms
22 that he mentioned, including the ACA monitoring or
23 competition and the threat of replacement -- I would
24 also add the courts, which is another one that that's
25 often raised as providing some accountability, none of

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1 these mechanisms are actually effective as meaningful
2 checks to the private sector, and I would argue the
3 same is true of those mechanisms as they operate in
4 the public sector. So that's the first point.

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

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

23 The same is also true in the subcontracting
24 out of discrete prison services like medical care,
25 psychiatric care, food service, transportation, inmate

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1 classification, and the list goes on. The danger is
2 present in each of these cases whether or not the
3 managerial structure of the prison itself is private
4 or public.

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

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

21 MR. SCHWARZ: You know, what I'd like to
22 start with is you -- you framed the issue differently
23 than your two colleagues, and therefore I think it
24 would be useful if Mr. Seiter and then Mr. Smith just
25 reacted to how Professor Dolovich framed the issue.

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1 And then we're going to have other questions about
2 true comparisons between the public and the private.
3 So whichever one of you wants to go first. Go ahead.

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

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

23 There is extensive monitoring of that and
24 there are even liquidated damages for failure to
25 comply. So in many ways there are many more specified

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1 and distinct standards and expectations that must be
2 met in the day-to-day operations than even I faced
3 when I was in the public sector.

4 MR. SCHWARZ: Mr. Smith.

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

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

22 There are people in the public sector like
23 that have graduated up like Professor Seiter has.
24 Marine brig commanders, ex-BOP wardens, people like
25 that that have integrity and they have knowledge and

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1 they have an understanding and they did their damndest
2 to make the prison work despite the fact that they
3 might have to stand there with people stepping all
4 over, and if I had a picture I'd hand it out, seven
5 dollars and 61 cents at home.

6 It's almost impossible to run a place like
7 that, but these guys prevailed and they were able to
8 do it. I don't know any women or I would have
9 included that. Not a lot of guys, but they prevailed
10 and they were all kashered. They were thrown out
11 because they simply didn't agree with management's
12 cost cutting issues that compromised health, safety --
13 the safety of not only the staff that we talked a lot
14 about today, but the safety of the inmates, and the
15 public safety.

16 Mr. Seiter has talked about monitoring, and
17 I've already spoken to it. I don't think monitoring
18 has any functional -- I have stacks of monitoring
19 reports and I think, in Brush, Colorado where there
20 was this flagrant sexual abuse of woman after woman
21 after woman from Hawaii and Wyoming, Colorado, there
22 was no action taken. There was no action taken at
23 all, and the news of this was concealed from a
24 legislator who's working on a bill to effect the
25 import of out-of-state prisoners, which has caused

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1 enormous problems in so many states, and you know,
2 it's just -- it staggers the imagination.

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

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

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

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

25 And the second question for you and then we

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1 can ask comparative questions on the other side, but
2 the second question for you is isn't it a fair point
3 to make that the private prison industry has an
4 incentive to persuade legislatures to increase the
5 number of people who go to prison and the length of
6 time people who go to prison stay in prison?

7 And we certainly, through all our three
8 hearings have gotten a lot of evidence that there's a
9 phenomenon of over-incarceration in this country that
10 is bad for the environment in prisons. So those are
11 two comparative questions to -- sort of addressed to
12 you, and then others or I can address questions on the
13 other side.

14 MR. SEITER: Mr. Schwarz, I think both are
15 very fair questions, challenging questions, but fair
16 questions, so let me try to address both of them.

17 First of all, on pay, there certainly is
18 the perception that private sector pay is less than
19 public sector pay, and in some cases that's true, but
20 let me say that in some cases it is not. At one of
21 our facilities correctional officers start at 52,000
22 dollars, higher than any public sector facility in --
23 within a hundred miles. In some of our contracts we
24 are required to pay prevailing wages even by the
25 Department of Labor, and with whatever formulas they

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1 come up, that is what the wages are paid.

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

11 It's -- some of the discussions this
12 morning on culture are critical, but there's so many
13 things that go on in a prison day-to-day that a line
14 staff member who has very little time on the job and
15 little training or mentoring can make a mistake in
16 terms of a minor incident into a major incident.

17 You don't want vacancies in terms of
18 correctional officers because there's a certain number
19 of posts that just have to be staffed. You cannot
20 operate a prison day-to-day without staffing. So if
21 you don't have trained, experienced correctional
22 officers to do the job, you're going to pay somebody
23 overtime, time and a half. So it makes much more
24 sense, again, with the profit motive to pay somebody
25 100 percent rather than 150 percent. And that's not

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1 just good corrections. Go back to the monitoring and
2 contract and the accountability requirements. Most of
3 our contracts require that all mandatory posts be
4 filled every eight-hour shift.

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

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

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

25 MR. SMITH: Lots. You first.

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

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

16 A couple things, just one on monitoring and
17 one on what Mr. Seiter just said. The research I've
18 done, if you look at the numbers actually I think Alex
19 Busansky circulated to you a draft of an article I'm
20 going to be publishing. If you actually break down
21 the numbers of the research that was done by an
22 independent public policy institute that was
23 commissioned by Congress to look into the profession
24 of private prisons, if you look at their numbers on
25 monitoring, it's actually surprisingly limited. I

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1 can't tell you what all the contracts said in those
2 cases, but if you -- if you break down how many
3 monitors spent how much time in the monitored
4 facilities, it seems to me the numbers are woefully
5 inadequate.

6 Just to give you an example of the 91
7 prisons and jails that were involved in the study,
8 less than half had a daily monitor, meaning that only
9 I guess -- let me think. Maybe it was fifty percent,
10 46 of 91 had a daily monitor. There was one person in
11 the facility for 37 hours a week. And that was the
12 most monitoring that any facility had. If you then go
13 up to some of the prisons I've seen, for example, in
14 California, which have many thousands of inmates, if
15 you're actually looking for meaningful oversight of a
16 contract, that just doesn't seem to be -- to me to be
17 sufficient.

18 On the point Mr. Seiter made about whether
19 or not he has seen people at CCA promoting policies
20 increasing with respect to increased incarceration,
21 there are connections that we could make. Again, I
22 talk about them in my paper. CCA is a member of an
23 organization called ALEC, the American Legislative
24 Exchange Council. And ALEC has got members that are
25 both from the private sector and from public

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1 legislatures. They claim I think about 25 percent of
2 legislators across the country, state and federal, as
3 part of their membership, and the way ALEC works is
4 that it drafts model legislations to be taken back to
5 legislators, and then the legislators take back to
6 their legislatures to try to pass.

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

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

22 The point I'm trying to make is we have
23 this phenomenon in our criminal justice policy process
24 which allows organizations and entities that have a
25 financial interest in increased incarceration to

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1 influence sentencing policy. And I'm merely trying to
2 suggest that to the extent that this is the case --
3 and I think it's true if you look at the operation of
4 a CCPOA in California and even if you look at
5 communities --

6 I was saying this last night at dinner. If
7 you look at some communities that are looking to the
8 building of prisons in their communities to increase
9 employment and funding in their communities, it's very
10 hard to separate out the extent to which support for
11 increased crime legislation comes from a firm belief
12 that this is good for the public interest and a belief
13 that if you increase incarceration, you'll have more
14 funding for your community. And again, I know this is
15 a very -- it sounds like a conspiracy theory. I'm
16 just trying to raise the point that it could be
17 problematic in terms of the legitimacy of our prisons.

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

20 MR. SMITH: Yeah. I'll try. It's
21 difficult for me. CCPOA, Lance Corcoran was here.
22 There's another CCPOA representative here today. And
23 I really was upset to miss Lance because I like to
24 give him a hard time because of the policies that
25 Professor Dolovich just mentioned. The reason being

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1 is that they are most like the private sector when it
2 comes to advocating for tough on crime and three
3 strikes and all that. They're terrible about it.
4 They've been very professional in many ways.

5 But that -- I think it's bad public policy
6 and I think like the private sector indulges in this
7 sort of thing, it's bad because state budgeting is a
8 zero sum game, and as they look for more and more
9 correctional collars, they start by the services which
10 will have a reaction.

11 Eventually it will backfire in corrections.
12 It's not helpful. They even opposed a needle exchange
13 program, and they're worried about the health of their
14 officers. So they're going to have more prisoners
15 coming in with hepatitis C or HIV or whatever because
16 I thought it was a very boneheaded for them to do
17 that, to get Gray Davis to veto a law, and they did
18 it.

19 However, if you look at some of the
20 handouts I gave you, the escapes handouts. Professor
21 Seiter talked about safety, and the numbers that
22 you're looking at there, like thirty times as many
23 from private facilities. I first became drawn to this
24 when, I don't know, about nine or eleven prisoners ran
25 off from a CCA van in Minneapolis. One was a

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1 murderer. He wound up getting caught at a bus station
2 in Chicago after taking a family hostage. I called
3 Freddie up and said how is this happening? She said
4 there's no controls over it. She's right.

5 You've raised over-incarceration. I
6 appreciate that. GEO Group is very involved in that.
7 I think they chaired the Criminal Justice Committee.
8 Mr. Schwarz, you suggest they have -- because they
9 make a profit they have to pay less. They don't have
10 to pay less. They choose to pay less. All these
11 things are done by choice.

12 They pay -- in the handout I gave you --
13 7.61 an hour in Kentucky, and they compensate
14 Mr. Seiter extraordinarily generously. I think he
15 gets -- he can correct me if I'm wrong -- 270,000
16 dollars a year, and he got a stock award of about
17 two-thirds of a million dollars this year. That's
18 coming out of the -- that's not a living wage when
19 you're paying \$7.61.

20 What you have is turnover. You have people
21 working two jobs. They're exhausted when they come to
22 work. They lose that alertness you need to be -- a
23 correctional officer, a guard. You've got to be on
24 the ball on that stuff, and you can't get it when
25 people have to work two jobs.

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1 And when they have 52 percent turnover a
2 year, they go through a training, that's right, much
3 less than the public, substantially less than the
4 public sector, but the training to make 52 percent a
5 year, it's like everybody is in the first grade, and
6 the sergeants are the ones that last until the second
7 grade. And we have what do you call it, mandatory
8 promotions, whatever you call it, in educational
9 systems. You know, it's absolutely -- there's no
10 professionalism in that system and professionalism,
11 the little that exist, is not rewarded.

12 MR. SCHWARZ: Gary Maynard.

13 MR. MAYNARD: Yes. Thank you.

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

20 MS. DOLOVICH: I guess what I'm struck by,
21 and as I sit here I know you have a hard job in terms
22 of what you can recommend and what is viable and
23 possible, but what I'm struck by in looking at private
24 prisons and the way that the phenomena in the private
25 sector and also present in the public sector is it

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1 does seem to come down to money in a lot of cases. So
2 I'm troubled as much, like I said, by subcontracting
3 for healthcare in order to save the states money on
4 the costs of healthcare as I am just the contracting
5 of the whole prison.

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

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

22 So just to reiterate, I'm not sure the
23 right approach is to look for middle ground as much as
24 it is to think about the role that financing plays in
25 the construction of the prisons, and the way that

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1 inadequate funding can undermine safe -- safety in the
2 prisons. I'm not sure if that's -- if that answers
3 your question.

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

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

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

21 So it seems to me that we want both strict
22 requirements and frequent inspections and oversight,
23 right? We want both of those things, and that's
24 monitoring. I think that the way the courts have
25 constructed standards for liability for prisoners'

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1 Constitutional rights are too strained and
2 restrictive.

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

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

22 MR. SCHWARZ: Commissioner Schlanger and
23 then --

24 MR. NOLAN: Nolan.

25 MR. SCHWARZ: Commissioner Schlanger first.

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1 MS. SCHLANGER: So this is I think really a
2 question for Mr. Seiter. So we've been hearing about
3 the risks of privatization, the risk especially of the
4 cost shaving and almost antiprofessionalism if I'm
5 characterizing what Mr. Smith is saying. So I guess I
6 have two questions really.

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

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

20 MR. SEITER: I think the benefits are many,
21 and it's kind of the crux of the partnership issue
22 that I talked about in my opening comments and I
23 talked about in my written testimony, that it depends
24 on what challenges are being faced by the public
25 sector. That they cannot meet either today,

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1 immediately, or perhaps -- in some cases that's
2 capacity. Their system is expanding for whatever
3 reason and for whatever cause, and they either do not
4 have the dollars to expand, or they can't do it fast
5 enough. So the private sector can come in and no
6 question can build capacity quicker than the public
7 sector and can expand using capital, using loans,
8 whatever that the public sector may not be able to
9 create in a very short time frame. That can be long
10 term or in some cases it's temporary.

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

18 Second is, as I said in my written
19 testimony, there have been challenges in budgets by
20 the public sector. And if you look at any of the
21 numbers, the number of inmates in programs has not
22 kept up with the growth in the number of inmates in
23 the institutions. So there are fewer percentage-wise
24 overall participating in programs. Quite frankly,
25 this is not something that states or government

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1 agencies then will accept.

2 When they put out an RFP, they can very
3 clearly say we expect this percent of inmates to be in
4 education, we expect you to provide substance abuse
5 programs, we expect you whatever. So even if they're
6 not getting that as a line item in terms of we need
7 growth in these kind of programs, they can include it
8 in an RFP they put out for competitive bid.

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

19 So I think, one, it can deal with
20 overcrowding in a timely fashion that I think this
21 commission and all the witnesses that have testified
22 is a serious threat to safety. It can enhance both
23 the number and quality of inmate programming that is
24 in my opinion extremely important to the safety and
25 secure -- safe and secure operation of any prisons,

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1 and it can provide any kind of special services that
2 are necessary that a state just can't provide on their
3 own.

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

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

21 I don't know what those would be beyond
22 those that we've been using, and they are not
23 satisfactory for any of us to say this is an
24 acceptable measure that we all agree on. This
25 shows this facility is an excellent facility that's

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1 providing the kind of environment that we want to put
2 incarcerated offenders into that helps better prepare
3 them to return as law-abiding citizens.

4 MR. NOLAN: A couple of thoughts and ask
5 you to -- all of you to respond to them. First of
6 all, cost shaving occurs all the time in government
7 facilities. The lack of programs, eighty to 85
8 percent of inmates need drug treatment, less than
9 twenty percent leave with any treatment, which Dr. Joe
10 Callafano [phonetic] has said is a fraud on the public
11 to lock somebody up with an addiction for five, ten,
12 fifteen years and do nothing about it and release them
13 on the public is a fraud.

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

24 My experience in talking in the prisoner
25 fellowships field is -- and this puzzled me when I

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1 first heard it. I've asked and it continues to be
2 that as a whole, not entirely but as a whole, the
3 private prisons are more open to programming of
4 volunteers coming in, they facilitate it more, they
5 accommodate it more, they encourage it more, they seek
6 out those programs, and somebody that I've known for a
7 number of years did some work for a private prison
8 company. I said why is that? That's puzzling to me.
9 Why would they in contrast to government facilities
10 seek this out?

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

18 Now, everybody I know inside a private
19 prison complains about the food. Everybody inside a
20 public prison complains about the food. Everybody
21 I've known in the military complains about the food.
22 Every college student in a dorm complains about the
23 food. So I think institutional food is the problem
24 here. That is a common complaint I hear, but I've
25 seen cost shaving occur in public institutions,

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1 consistently the low staff ratios.

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

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

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

21 What they did there, they're talking about
22 building quickly. Well, they didn't lay a brick for
23 nine years. But what they did do is they bought off
24 enough legislatures to stop the public sector from
25 laying a single brick. Well, they did for seven

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1 years, and they finally were able to build a small
2 prison, but that's what you're buying into when you --

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

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

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

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

20 So what's happened is you had 825 Alaskan
21 prisoners in CCA Florence, Arizona that rioted about a
22 month after I visited the place in 2000 and had been
23 preceded by a riot in 1998. I mean, you have these
24 terrible problems of those 825 people, and I just
25 talked about recidivism. Four got regular visits.

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1 You're talking about programs, that's the worst
2 program imaginable if you're cutting off people from
3 their families, their support systems, their
4 employers, their churches, what --

5 MR. NOLAN: I totally agree.

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

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

18 MR. SMITH: Bad mistake. Terrible mistake.

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

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

25 MR. NOLAN: But by what index is it

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1 magnifying them?

2 MR. SMITH: I can say the numbers. I'd be
3 happy to state numbers. Study after study after
4 study.

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

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

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

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1 site preparation.

2 And they ignore facts like the public
3 sectored workers have 21 percent retirement benefits
4 and the private sector benefits, the GEO Group in this
5 case, have two and a half percent only if it's matched
6 with a five percent contribution by employees, and
7 only ten percent of the employees contributed.
8 That's -- this is an enormous difference.

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

11 MR. SMITH: Absolutely not.

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

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

20 MR. NOLAN: But what are the publics doing?

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

23 MS. DOLOVICH: Can I just jump in here? I
24 think this is part of the -- the part where I see the
25 problem with this kind of debate because I agree with

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1 you on two things that you said. One is there's cost
2 shaving in the public sector, and two is to the
3 extent -- to the extent that the private sector is
4 allowing more volunteers into their prisons, it is
5 likely because they see that this will keep the
6 prisoners occupied and reduce their overall cost. I
7 agree with both those things.

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

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

20 So I guess I'm puzzled by why this becomes
21 a back and forth and not a question of what are the
22 prisons doing that are compromising the possibility
23 for safety and, you know, rehabilitation, and what are
24 they doing that is enhancing those possibilities and
25 how can we reduce the percent.

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1 MR. NOLAN: I totally agree with you. To
2 me it's an artificial debate. The bottom line is
3 public safety, and we need to look at both and hold
4 them both accountable to do all they can to provide
5 drug treatment, to provide other programs and
6 volunteers that enrich their lives and prepare them
7 for reentry and hold them accountable for the bottom
8 line, which is fewer people harming somebody else and
9 going back to prison. And so to me, I'm puzzled by
10 the debate why there's people so angry that there are
11 private or public. I say hold them both accountable.

12 MR. SMITH: I'm for that.

13 MR. SCHWARZ: The chair and then
14 Commissioner Ryan.

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

24 You speak about liquidated damages. I have
25 no idea whether they're large or small. I'm curious

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1 about that, and I'm curious as to whether they are to
2 be achieved after litigation, or is there any other
3 standard by which they're to be -- that kind of
4 question.

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

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

21 However, every contract that we have that
22 I'm aware of that I looked at can be terminated for
23 cause defined by the customer within usually ninety
24 days. So if there is a reason that they feel the
25 government -- the contractor is not performing, they

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1 can end that contract.

2 MR. KATZENBACH: It must be difficult to
3 terminate a prison for cause. I mean, you leave, what
4 am I going to do?

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

11 In terms of the monitoring and
12 examinations, all the contracts require are allow
13 monitors to be -- have total access to the institution
14 24 hours a day, seven days a week with or without
15 notice. They can walk in at any time unannounced and
16 do any kind of examination that they want to do. The
17 contract requirements will often say you must have at
18 least these levels -- this number of staff.

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

25 How often they visit, we have institutions

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1 where there are four full-time monitors for every
2 facility, and I think any of you who have operated a
3 facility or hospital, if you can imagine four people
4 looking over your shoulders every day or at least five
5 days a week, that could be very extensive monitoring.
6 There is not much that could be done to not fulfill
7 the requirements of the contract with that.

8 Some have probably as statistics said less
9 than a full-time person, and I don't think we have
10 anyplace where it is less than one person cover two
11 facilities, so they are there at least half of the
12 time. But it's hard in a prison setting to say we're
13 going to hide something from someone. And as I think
14 you said earlier, you're not going to -- when talking
15 about accreditation, you're not going to change that
16 facility totally in a few days when it comes to
17 someone coming in to look at.

18 In terms of liquidated damages, again, I
19 think the government customers have gotten very
20 sophisticated in terms of if the private sector is
21 interested in a profit motive, we will take that away
22 from you if you do not perform to the point where it
23 is a level that gets the private sector attention. I
24 can tell you in some of our contracts some of the
25 liquidated damages include if a position is not filled

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1 for an eight-hour shift, you give up pay and a half
2 for that position.

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

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

12 MR. SEITER: Yes.

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

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

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1 how often do they in fact do that?

2 MR. SMITH: I'd like to speak to that,
3 yeah. In his written testimony, Professor Seiter
4 talked about CCA never losing a contract for quality
5 issues. I think CCA has done. Tulsa, they rebid the
6 contract and lost -- the city took it back over, the
7 Tulsa jail. It seemed like they were turning so many
8 people loose that more people were getting loose by
9 accident than by on purpose. They had rapes there.
10 They had all sorts of problems in that contract.

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

20 New Morgan Academy in Pennsylvania, it's a
21 kid's joint. There was signal after signal that there
22 were terrible problems there, and the ACA accredited
23 that place just a couple weeks before they shut it
24 down, before the states shut it down. They had
25 fifteen cases of substantiated physical assault

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1 against these kids and sixteen cases of sexual assault
2 against these kids, and they're still walking through
3 the courts with all these cases, all these plaintiffs,
4 these children that have been abused. Nobody was
5 watching the store in this place. They have lost the
6 contracts. New Morgan Academy's closing up, thank
7 goodness. It will be three years this month.

8 Alexander Academy in Arkansas had all the
9 same problems, and they should have been closed three
10 years ago. So you have these problems without
11 repercussions. There is not that accountability that
12 we all desire in the public or the private sector, but
13 particularly in the private sector when you have these
14 other mechanisms involved.

15 When somebody is getting taken care of,
16 where somebody like in a state where we had
17 representatives from today they were supposed to have
18 monitors at a CCA prison, I was told -- I usually get
19 two sources on my stories that the monitor showed up
20 maybe one day a month and was drunk.

21 I have a bunch of reports from Wyoming to
22 Hawaii that show at the worst time, at the time these
23 women would be horribly exploited, that the monitors
24 probably spent a total of about sixteen hours over two
25 months in this Brush, Colorado prison. It's

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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

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1 there was no privatization, from everything to
2 commissary to food and so forth, and about halfway
3 through it began to see some privatization in the way
4 of medical service I think was the first one I ran
5 across. And at first I was very uncomfortable with
6 that and over time I became more comfortable with
7 that.

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

18 And so can you help me understand how I
19 become comfortable with the private concept of
20 strictly security element of it, and especially given
21 what Mr. Smith says about -- unfortunately, my
22 experience has been a riot in southern California and
23 a private area that I think it was an INS housing
24 where the officers there simply left. They walked out
25 and ran, and I don't know whether that's the truth or

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1 not.

2 MR. SMITH: Was that Eagle Mountain or
3 Baker? They had officers do the same thing at both
4 places.

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

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

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

22 MR. SEITER: That's a good question. I'm
23 not sure I know the answer, but a small number of them
24 probably. In most cases CCA's facilities opened to
25 meet an expanded need, and I'm sure there are some,

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1 probably many of the jails and some of the Florida
2 jails that had a facility and decided to privatize it.
3 In terms of state prisons there's probably, I'm going
4 to say, maybe five or six.

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

14 And I was talking at lunch about the fact
15 that if there was a private entity that came in and
16 took all the best of who I had, those are my people
17 that are in my kitchen service, my lawn service, my
18 maintenance service. They take all of those folks and
19 leave me with the people left over, and if there's a
20 bad guy in that group of some fashion, they will no,
21 I'm sorry, we don't accept him and send him back. I
22 have the same problem in the mental health group.
23 They only want the good mental health people, not the
24 bad mental health people. Is there some truth to
25 that? Do you only take the good guys?

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1 MR. SEITER: That would be desirable. Do
2 you have any good guys? I think historically that was
3 the beginning of the private enterprise in corrections
4 as I recall, and I was like you. I kind of was in
5 that era, and I looked at privatization as why can
6 they -- why do they say they can do this better? Why
7 do they say they can do this less expensively?

8 I think I was director of corrections in
9 Ohio when the first private prison opened, and I was
10 very questionable about whether it could be
11 successful, but of our facilities only a handful are
12 minimum security. We operate many full-service jails
13 where, you know, you're getting everybody just the
14 same as your facility. Three counties in Florida we
15 operate the full service, the only facility. So we
16 get everybody that comes into that jail. Most of our
17 institutions are our state institutions, operate for
18 the states, are medium security.

19 We meet needs of the customers. Some of
20 the customers are now coming to us and say we don't
21 need any more medium security beds. We need close
22 security beds. Can you convert this facility into a
23 close security institution? So basically we don't say
24 what we want and say we want the cream of the crop.
25 Why would a government agency give us something that

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1 they already can do well and do probably very
2 cost-efficiently? They ask us to do what they are not
3 able to do for what their needs are.

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

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

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

25 MR. SEITER: Well, let me say I'm not sure

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1 what facility in Kentucky you're referencing, but we
2 have some areas where correctional officer pay is
3 extremely low, probably not unusual for what the state
4 pays at the same -- at the same locations, whatever
5 states we contract with.

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

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

14 MR. SEITER: Yes.

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

19 MR. SEITER: In the location where we are
20 at, yes. And again, it would not serve us in terms of
21 quality or in terms of being cost-efficient to pay too
22 low a rate. There have been instances where recently
23 I have approved and said we're going to pay more at
24 this institution because the turnover rate is too
25 high, the inexperience -- the level of experience is

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1 not enough, and we need to increase the pay. And when
2 that is the smart decision both for correctional
3 reasons and of course for business reasons, if you
4 want to talk about the profit motive, then you pay
5 what you need to pay to get and keep good quality
6 staff.

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

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

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

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

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1 pay for.

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

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

21 MS. DOLOVICH: On your first point I quite
22 agree with you. I think one of the lessons I take
23 away from this is you get what you pay for. And also
24 incarceration is expensive. So if the state wants to
25 incarcerate, and what we've seen over the last two

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1 decades, the state, for whatever reasons, seems to
2 want to incarcerate. The state has to pay. And
3 that's why I'm as troubled by the idea of
4 subcontracting out for, for example, healthcare as I
5 am by the idea of contracting out the entire prison
6 when the goal is to save the state money on the cost
7 of corrections.

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

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

25 And it stands to reason that the state --

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

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

19 I think the exercise is as effective when
20 you are an accreditation organization trying to set
21 standards for prisons or when you were a state
22 official trying to contract out to the private sector.
23 To my mind the benefit that you're describing is not
24 exclusive to the privatization process. It may be
25 something we've learned through this experiment of

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1 privatization that would benefit us even if we, you
2 know, step away from privatization and stick with the
3 public.

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

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

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

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1 know in advance.

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

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

20 And I wonder if you would agree that it
21 would be appropriate for people in your industry to be
22 barred from or to agree not to make campaign
23 contributions because the corrections directors of the
24 state are not making campaign contributions. They
25 would like to reduce the prison populations.

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1 And second, whether you would agree that it
2 would be fair -- you said you didn't do any lobbying,
3 and then Professor Dolovich said but you belong to a
4 group that does do lobbying and writes laws. Don't
5 you think it would be appropriate for groups like
6 yours in this special situation to agree, as a
7 condition of bidding, that they are not going to do
8 any lobbying that's going to effect the issue of
9 overincarceration?

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

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

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

23 MR. SCHWARZ: Then you would agree that you
24 shouldn't do it and you wouldn't mind being barred
25 from doing it?

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1 have any comments on that?

2 MR. SMITH: Yeah.

3 MR. SCHWARZ: We have to make it brief.

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

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

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

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1 lower cost at the expense of the patients. It's very
2 important.

3 As far as the ACA is concerned, my biggest
4 problem with them is they take so much money from the
5 private industry. You can take the -- I get
6 Corrections magazine. You can take and shake it, and
7 it's like getting AARP magazine on state of insurance
8 things falling out of the magazine. It's, you know,
9 sponsorships and GEO Group and CSC and Cornell.

10 It's packed with not only advertising, but
11 the conferences are all sponsored by these groups. So
12 the ACA -- PCI thinks that it's wrong to the private
13 industry, and it has to separate itself from that
14 industry if it's going to maintain some integrity.
15 That's just my opinion.

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

22 MS. DOLOVICH: I would just say,
23 Mr. Schwarz, to your comment, I would agree with you
24 this is a really troubling issue. I would just
25 emphasize that I think it is a larger phenomenon. I

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1 think the worry extends beyond just the private
2 sector. The truth is I don't know what to do with
3 that worry, but I think it exists.

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