

**CORRECTIONS CORPORATION OF AMERICA:  
A CRITICAL LOOK AT ITS FIRST TWENTY YEARS**

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## EXECUTIVE SUMMARY

In 2003 Corrections Corporation of America (CCA) is celebrating the twentieth anniversary of its founding. In announcing a series of celebratory activities earlier this year, CCA's Chief Executive John Ferguson declared: "CCA has helped reshape the landscape of American corrections over the past two decades."

Normally, corporate anniversaries are of little interest to anyone outside the company, but this is a special case. CCA is the leading participant in, and in many ways the embodiment of, one of the most controversial industries ever created—the incarceration of people for profit. While the company is looking back through rose-colored glasses, there is a need for a critical analysis of what CCA has brought to the world of corrections. That is the purpose of this report.

Even by its own standards, CCA has not been a success. Rather than taking the industry by storm, it still manages only about three percent of prison and jail beds in the United States, and its global aspirations had to be abandoned.

Only a few years ago, CCA was being widely vilified for poor management practices at a number of its facilities that were associated with abuse, violence and escapes. At the same time, the company went through an ill-advised corporate restructuring which, along with huge losses and crushing debt, nearly forced it into bankruptcy. In 2000 the chief executive of CCA, who had been one of the firm's founders, was unceremoniously forced out of office. The management shakeup was accompanied by a \$120 million settlement of lawsuits brought by angry shareholders.

During the past four years, the new leadership of CCA has worked hard to persuade investors, governments and the public that the company has fundamentally changed. Management would have us believe that CCA is now free from the scandals and deficiencies that characterized its performance during the late 1990s.

Our main conclusion is that this is not the case. Thanks in part to a concerted public relations strategy by the company and its trade organization, the Association of Private Correctional & Treatment Organizations, CCA is no longer receiving a great deal of negative national media attention, but that does not mean the underlying problems have disappeared. Our review of court records, government reports and local news accounts shows that over the past several years, CCA has been buffeted by numerous lawsuits and scandals involving allegations of:

- failure to provide adequate medical care to prisoners;
  - failure to control violence in its prisons;
  - substandard conditions that have resulted in prisoner protests and uprisings;
  - criminal activity on the part of some CCA employees, including the sale of illegal drugs to prisoners; and
- ⊃ escapes, which in the case of at least two facilities include inadvertent releases of prisoners who were supposed to remain in custody.

CCA's problems have not been limited to the United States. The company's aim to become a global provider of correctional services ended with its comparatively meager joint venture operations in the United Kingdom and Australia being sold off. Prior to the sell-off, CCA's foreign affiliates faced controversies over conditions in their facilities.

In Britain, CCA was instrumental in persuading the government to privatize prisons, but CCA's joint venture company, UK Detention Services Ltd. (UKDS), failed to become a major player in the UK market. While under CCA's joint ownership, UKDS became the first British private prison company to be fined for contract failure. It was also the first whose staff was found by a coroner's court to have unlawfully killed a prisoner.

CCA's joint venture in Australia also had its share of scandals. After four years of persistent problems, Corrections Corporation of Australia's contract for the Metropolitan Women's Correctional Centre in Victoria was terminated. Management and ownership of the prison were taken over by the government.

In addition to examining conditions in its prisons, this report looks at several other key areas in which CCA has left a dubious legacy during its first two decades.

*Financial instability.* CCA came close to insolvency in the late 1990s after it embarked on a risky process of building expensive speculative prisons, i.e. ones for which it did not have an operating contract lined up ahead of time. The company borrowed a huge sum—ultimately about \$1 billion—to support speculative construction while simultaneously engaging in a series of dubious financial restructurings. We show that CCA is still feeling the effects of those misguided policies today and is weighed down by

debt. It also continues to face weak demand for new private prisons at the state and local level. In our view, these problems are given insufficient attention by the stock analysts who follow CCA. Many of these analysts work for firms (such as Lehman Brothers) that have investment banking and lending relationships with CCA.

*Self-defeating labor practices.* From the beginning, CCA has sought to depress its labor costs by keeping wages low and by denying its employees traditional (defined-benefit) pension plans. There have been reports of understaffing and high rates of turnover at some of its facilities. For example, annual turnover rates at several CCA facilities in Tennessee have been more than 60 percent. We argue that underinvestment in its employees has left CCA with a workforce that is more inclined to commit operational errors and to mistreat prisoners.

*Attempts to influence public policy.* Being in a business in which government is the only customer, CCA has not hesitated to cultivate close ties with public officials and legislators around the country. In its home state of Tennessee, CCA has enjoyed cozy relationships with powerful public figures, up to and including governors. In fact, CCA founder Tom Beasley was a partner with one governor and several leading legislators in a restaurant chain. CCA's chief lobbyist in the state was married to the speaker of the House. The company's current chief executive formerly served as commissioner of finance in the state.

CCA has also used campaign contributions to build new relationships with legislators. The company spends hundreds of thousands of dollars during each state election cycle to try to gain access and build support for its projects. At the federal level, CCA has given more than \$100,000 in soft money to the Republican Party since 1997 as well as political action committee contributions to individual members of key Congressional committees. It also doesn't hurt that J. Michael Quinlan, the former head of the Federal Bureau of Prisons, has been an executive of CCA for the past decade.

Perhaps most controversial is CCA's involvement in a group called the American Legislative Exchange Council. ALEC is a powerful force in the promotion of the conservative policy agenda, including tougher sentencing rules, among state legislators. CCA has been a corporate member of ALEC and a member of its Criminal Justice Task Force, which helps write model bills. Through its support of ALEC, CCA is helping to create greater demand for its services as a result of changes in state policies that keep more people behind bars for longer periods.

*Use of questionable research.* For years CCA and other prison companies have sought to give their business a veneer of academic respectability by publicizing a small body of research that purports to prove the superiority of private corrections over the public sector. Yet a close look at this literature indicates that much of it is produced by researchers who are either funded by the industry or are ideologically predisposed in favor of privatization. By contrast, research by independent investigators has failed to find clear evidence that private prison management is superior in terms of quality, recidivism rates or cost.

Overall, CCA's record during the first two decades years of its existence is far from impressive. Rather than fulfilling the original promise of raising standards in corrections, CCA has built a reputation marred by numerous instances of scandal, mismanagement, alleged mistreatment of prisoners and its own employees, attempted manipulation of public policy and a proliferation of questionable research. Its record is a clear example of how the pursuit of profit stands in the way of carrying out a core public function such as corrections. CCA has succeeded in staying in business for two decades, but it has not succeeded in demonstrating that prison privatization makes sense.

## **INTRODUCTION**

Corrections Corporation of America (CCA) is celebrating its twentieth anniversary during 2003. The largest private prison operator in the United States is proud of its achievements. "CCA has helped reshape the landscape of American corrections over the last two decades," said John D. Ferguson, the company's chief executive, earlier this year.<sup>[1]</sup>

Normally, corporate anniversaries are of little interest to anyone outside the company. CCA, however, is a special case. Private prison management is one of the most controversial industries to have emerged in recent times, and CCA has been the most controversial company in that industry. Despite its claims, CCA has not contributed significantly to reshaping the correctional landscape—and most of the impact it has had is nothing to boast about.

Criticism of prison privatization takes many forms. Some argue that it is immoral, others that it is unconstitutional or that corrections is a core government role that should not be privatized. This report only looks at the evidence on whether CCA has lived up to its own fundamental mission—providing high-quality, low-cost correctional services to governments while meeting the financial expectations of its investors.

For a company that set out to improve upon what the public sector can offer, it has had to spend an inordinate amount of time

defending its own performance. During the past decade, a large portion of the newspaper and magazine articles written about CCA have focused on issues of abuse, violence, mismanagement, litigation or financial distress. Conditions in CCA's U.S. prisons are not unique: prisoners and staff also suffered from operational problems at CCA's now divested foreign joint venture operations. Because the history of conditions in CCA's British and Australian joint venture operations are not well known in the United States, we have given them special attention in this report.

Another notion we seek to dispel is that CCA's problems are a thing of the past. By shaking up its top management a few years ago and spending \$120 million to settle lawsuits brought by disgruntled investors, the company has tried to give itself a fresh start. We did detect some improvements in CCA's financial condition, but this is in comparison to a period in the late 1990s when the company went through a series of disastrous restructurings and nearly went bankrupt. Moreover, CCA remains heavily in debt and fundamentally dependent on a surge in privatization that may never materialize.

The biggest gap between hype and reality concerns conditions in CCA's prisons. We found evidence suggesting that many of the poor operating practices that characterized various CCA prisons in the late 1990s may still be present for at least some of the company's facilities. CCA continues to be the subject of enough local scandals and court cases to keep its lawyers and public relations people quite busy. These specialists have been successful in keeping the negative national spotlight off CCA during the past few years, but that doesn't mean the company has cleaned up its act. This report sheds light on the underreported aspects of the company's recent record to suggest that the new CCA is very much like the old one.

### **CCA and the Prison Industry At a Glance**

Before delving into the details of the company's record, it is worth considering some basic facts about CCA, which collected \$962 million in revenue in 2002. As of June 30, 2003 (the latest data available as of this writing), the company operated 59 facilities in 20 states and the District of Columbia. These facilities, with combined capacity of 58,732 beds, include detention centers, jails and juvenile facilities as well as prisons. CCA gets about a third of its revenues from the federal government and the rest from state and local agencies. Among the states, its biggest customers are Wisconsin, Georgia, Texas, Tennessee, Florida and Oklahoma. CCA also owns Transcor America, a nationwide provider of prisoner transportation services. CCA no longer has any significant operations outside the United States.<sup>[2]</sup>

CCA claims to be the sixth largest prison system in the United States, behind Texas, California, the Federal Bureau of Prisons, New York and Florida. According to data from the U.S. Bureau of Justice Statistics, there were 93,771 prisoners in privately managed federal and state facilities at the end of 2002, representing 6.5 percent of the total incarcerated population excluding local jails.<sup>[3]</sup> CCA's website claims there are a total of 185 privatized facilities in existence (154 in the U.S., 31 internationally) with a total prisoner housing capacity of 143,771.

According to CCA, its share of the total number of U.S. prison beds under private management in mid-2003 was 49.4%, followed by Wackenhut Corrections Corporation (21.0%), Management & Training Corporation (9.2%), Cornell Companies (8.0%) and Correctional Services Corporation (6.3 %).<sup>[4]</sup>

CCA is the industry leader but, after 20 years of touting their superiority, private prison companies have captured only about five percent of the total U.S. prison "market" (once local facilities are taken into account). In an October 2003 presentation CCA's Chief Financial Officer, Irving E. Lingo Jr., admitted that corrections privatization has "barely scratched the surface." Yet he said that CCA believes it has opportunities to expand in Florida, Texas, Arizona, Colorado and Kansas.<sup>[5]</sup>

The same holds for countries outside the United States. For years CCA had global aspirations but, as we document, these came to naught. CCA only managed to establish footholds in the United Kingdom and Australia. Some other U.S. operators such as Wackenhut Corrections continue to operate abroad, but they and European competitors such as Group 4 and Sodexo Alliance together manage a very small portion of the world's total prison beds.

### **A Disproportional Problem**

The private prison business represents a problem disproportionately larger than its current size. The existence of an industry based on incarceration for profit creates a commercial incentive in favor of government policies that keep more people behind bars for longer periods of time. CCA has been active in trying to influence correctional policy in the United States. As described in Chapter 3, it has done this through its ties with public officials and legislators, its extensive campaign contributions and its involvement in a group called the American Legislative Exchange Council that promotes a conservative criminal justice agenda to state legislators around the country.

In spreading the gospel of privatization, CCA and its competitors have used a small body of professional literature that purports to

prove the superiority of for-profit corrections. What they fail to mention is that much of this literature has been written by analysts who are either being funded by the industry or have an ideological predisposition in favor of privatization.

A case in point is Charles Thomas, who in the 1990s put himself forward as an independent guru on private prisons but who later had to resign his academic post after facing conflict-of-interest charges stemming from his receipt of \$3 million in consulting fees from a company linked to CCA. <sup>[6]</sup> Before his fall, Thomas boldly asserted that “the debate is over” with regard to privatization, and the privatizers had won. <sup>[7]</sup>

Apparently, that message was not conveyed to the many people in the United States who have continued to campaign against CCA and prison privatization. It is beyond the scope of this report to chronicle this campaign, but it is worth noting that CCA acknowledges such opposition when discussing financial risk factors in its 2003 10-K filing with the Securities and Exchange Commission:

Public resistance to privatization of correctional and detention facilities could result in our inability to obtain new contracts or the loss of existing contracts:

The operation of correctional and detention facilities by private entities has not achieved complete acceptance by either governments or the public. The movement toward privatization of correctional and detention facilities has also encountered resistance from certain groups, such as labor unions and others that believe that correctional and detention facilities should only be operated by governmental agencies.

Moreover, negative publicity about an escape, riot or other disturbance or perceived poor conditions at a privately managed facility may result in publicity adverse to the private corrections industry and us in general. Any of these occurrences or continued trends may make it more difficult for us to renew or maintain existing contracts or to obtain new contracts, which could have a material adverse effect on our business. <sup>[8]</sup>

What is amazing is that CCA has managed to survive amid the endless stream of “negative publicity” and “perceived poor conditions” that have been associated with the company. While CCA celebrates the past 20 years and looks forward to many more, we believe that the time has come to put an end to the misguided experiment of prison privatization.

## **Chapter 1: A NEW CCA? RECENT SCANDALS AND CONTROVERSIES**

In August 1999, Corrections Corporation of America was brought in by officials in Tulsa, Oklahoma, to operate their spanking new jail, the David L. Moss Criminal Justice Center. A month later, an employee at the facility mistakenly allowed a prisoner to post bond after incorrectly recording the nature of her offense. “This is not something we’re excited about having had happened,” CCA’s assistant warden told a reporter. <sup>[9]</sup>

Yet this would turn out to be the first in a series of snafus through which at least a dozen prisoners were accidentally released from custody at the jail. Some of the people set free had been accused or even convicted of violent crimes. These included an 18-year-old who had been convicted of first-degree murder, who was mistakenly released in July 2000, and an accused rapist, who was erroneously released in April 2003. <sup>[10]</sup>

Some of the mistaken releases were the result of administrative errors, but CCA employees at the Tulsa jail have also been fooled by prisoners who impersonated others scheduled for release. <sup>[11]</sup> In one case, a CCA employee mistakenly opened a secure door and allowed a prisoner to walk right out the front door of the jail. <sup>[12]</sup>

CCA officials have tended to put the blame for these incidents on low-level employees, some of whom have been disciplined or fired. Yet one of those fired workers told a reporter: “I was never trained how to read court documents...No one every gave me any formal training on how to do anything down there.” <sup>[13]</sup>

In March 2002 the Tulsa County Criminal Justice Authority penalized CCA \$5,625 in connection with the erroneous releases of three prisoners the month before. The three were absent from jail for a total of nine days. One of them was recaptured after being found with a knife in a stolen car. CCA Warden Don Stewart responded to the Authority’s action by saying: “We do take responsibility.” <sup>[14]</sup>

Another case of accidental release occurred recently at CCA's Silverdale Workhouse in Tennessee. The prisoner who was mistakenly let go was serving time on a drug charge and had just been indicted on separate charges involving the rape of a child. As of mid-November 2003, there had been no reports of the prisoner's recapture.<sup>[15]</sup>

Questions about training and competence at CCA facilities have also been raised in a number of civil lawsuits against the company:

- In May 2003 Conrado Mestas and Rafaela Ochoa Mestas of El Paso filed a wrongful death suit against CCA in connection with the death of their son in May 2001 during his incarceration at the Eden Detention Center in Texas. They charged that their son, also named Conrado, died after being subjected to mental abuse by CCA employees who also withheld a special diet he needed for medical reasons.<sup>[16]</sup>
- In April 2003 the family of a prisoner from Hawaii who died of a heart attack at the Florence Correctional Center in Arizona in 2001 filed suit against CCA and the Hawaii Department of Public Safety. The plaintiffs charged that Iulai Amani died as a result of being forced by a prison gang to swallow crystal methamphetamine in a balloon to transport the drug within the facility.<sup>[17]</sup> This suit came shortly after the filing of a separate action against CCA by Victoriano Ortiz, a prisoner at Florence who claimed he was badly beaten by the same gang, which was allegedly given extraordinary privileges by the warden and guards.<sup>[18]</sup>
- In March 2003 Tamara L. Schlitters filed a federal lawsuit against CCA and various company employees, charging that her 26-year-old son Jeffrey A. Buller died while in custody at Kit Carson Correctional Center in Colorado because prison officials refused to fill a prescription for him at a time when Buller had only ten days left to serve. Buller was said to suffer from hereditary angioedema, which causes swelling episodes in parts of the body, including the airways of the throat. Buller had trouble breathing and died on May 1, 2001, a day before he was supposed to be released.<sup>[19]</sup>
- In January 2003 Frances Hughes sued CCA in connection with the beating death of her 18-year-old son, Chad Littles, by other prisoners at the Bay County (Florida) Jail Annex in October 2002. The suit charged that CCA had insufficient monitoring equipment, that there were not enough guards and that the guards were not properly trained.<sup>[20]</sup> CCA denied responsibility for the incident.<sup>[21]</sup>

Allegations of incompetence, poor training, mistreatment, medical neglect and inadequate supervision are nothing new for the country's largest for-profit prison operator. As the next chapter will recount, CCA was at the center of a series of controversies from the late 1980s to the late 1990s about the way it ran its facilities—as well as the way it handled its finances.

Yet all that was supposed to have changed in 2000, when the company was restructured and its top executive was ousted. After he took over as chief executive of CCA that summer, John Ferguson arranged for the portraits of the company's founders – including Doctor Crants, Ferguson's predecessor as CEO—to be removed from the corporate headquarters.<sup>[22]</sup> The action was a small but highly symbolic part of the effort by Ferguson and the rest of the new leadership team at CCA to remake the company and put the scandals and controversies of the past behind them. Getahn Ward of Nashville's *Tennessean* newspaper, who has followed CCA closely, wrote at the time that Ferguson's mission was one of "restoring investor confidence and credibility at the nation's largest prisons company."<sup>[23]</sup>

Has this happened? It is true that there have been no major scandals in the past three years to rival, for example, the uproar over conditions at Youngstown, Ohio in 1998. Yet an examination of the company's record since the ouster of Crants and the hiring of Ferguson reveals problems of a significant nature in at least one quarter of CCA's U.S. facilities. These include escapes, mistaken releases, outbreaks of violence and allegations of poor medical care. While none of these incidents has become a national cause celebre, the frequency of these situations suggests that CCA has not completely changed its stripes.

### Litigation Caseload

One measure of the extent to which CCA may be continuing to engage in questionable operating practices is the volume of lawsuits brought against the company. There is no central information source on state court cases, but there is one at the federal level.<sup>[24]</sup> This database shows that CCA has been involved in hundreds of suits filed in the past two years, many of them brought by prisoners alleging civil rights violations. CCA, like other private and public prison managers, would undoubtedly argue that many of these cases are frivolous suits filed by jailhouse lawyers. Some could be frivolous, but others, such as those cited above, clearly allege serious problems at CCA's facilities. CCA mentions in its 10-K filing with the Securities and Exchange Commission that it is subject to such litigation, but it insists that none of the suits will have a material effect on the finances of the company.



It was not practical to review all of these hundreds of cases, so we took another approach. We searched media archives for newspaper articles about lawsuits against CCA, both federal and state, relating to events during the past three years. When it was available, we also consulted the online court docket for those cases. We also looked for news articles about general instances of mismanagement, especially escapes and violence, since August 2000. The following pages summarize the cases we found (beyond those mentioned above), organized by the various types of problems that continue to appear at prisons run by CCA.

## Escapes

The fundamental job of prison administration is to keep the prisoners locked up. CCA's ability to carry out this function has come into question as a result of the numerous mistaken releases at the Tulsa Jail described earlier. The company has also experienced escapes at the Tulsa facility and elsewhere. Here are some examples from the past few years:

- A prisoner who had escaped from the Hernando County (Florida) Jail in July 2001 was captured a few weeks later when a former cellmate spotted him in a supermarket and notified state police. John Devane had escaped from the jail after removing his identification bracelet and replacing it with a low-security one that he fished out of the trash during his cleaning duties. This enabled him to join a work detail that was emptying trash outside the jail and then to flee. [\[25\]](#)
- In June 2001 two guards at the Winn Correctional Center in Louisiana were disciplined following an investigation of an incident in which two prisoners being driven to a hospital for medical appointments escaped from custody and remained at large for two days before being recaptured. [\[26\]](#)
- In August 2000 two prisoners at the Bartlett State Jail in Texas used a stolen pair of wire cutters to cut through a perimeter fence at the minimum-security facility and escape. At the time they were awaiting transfer to a more secure facility. [\[27\]](#)

CCA's problem with holding onto prisoners is not limited to the facilities it manages. Escapes have also occurred during prisoner transfers carried out by the company's Transcor subsidiary. For example:

- In September 2001 a prisoner being transported by Transcor in West Virginia overpowered two guards after faking an illness and getting them to remove his handcuffs. He drove off in the transport van and then took off on foot, armed with a Transcor shotgun. [\[28\]](#)
- In July 2001 Transcor officials acknowledged that one of their employees was responsible for the escape of a teenager who fled custody at a Milwaukee airport after being returned from California. The teen, who was not handcuffed at the time of the escape, subsequently fled to Texas, where he allegedly stabbed a police officer after a high-speed car chase. [\[29\]](#)

## Failure To Provide Proper Medical Care

CCA and other private prison operators have been criticized for scrimping on medical care in order to reduce their operating costs. [\[30\]](#) In addition to the Schlitters case mentioned above, CCA was investigated for medical negligence in the death of Justin Sturgis, a 20-year-old who apparently swallowed several Ecstasy pills before being arrested and locked up in February 2001 at CCA's Bay County Jail in Florida. A grand jury concluded that deficiencies by CCA employees, including a nurse, contributed to the death of Sturgis. The grand jury found no criminal liability on CCA's part, but its presentment stated that "correctional personnel failed to demonstrate adequate health training in responding to the level of distress evidenced by Justin Sturgis." The presentment did not address the allegations of other prisoners that guards mocked the moaning Sturgis for two hours before calling an ambulance. [\[31\]](#)

Even when medical care is provided by CCA, it may not be properly supervised. For instance, in May 2002 a female prisoner at the Tulsa Jail was hospitalized for a drug overdose after she hoarded psychotropic medications. The incident allegedly occurred as a result of improper supervision by CCA medical employees at the jail. [\[32\]](#) In December 2001 the Tulsa County Criminal Justice Authority had notified CCA that it was in violation of its contract for failing to administer certain drugs in liquid form to prisoners. This action was taken after another prisoner apparently attempted suicide by taking an overdose of hoarded psychotropic drugs. [\[33\]](#)

In another suicide case, a civil rights and wrongful death suit was filed against CCA in May 2002 on behalf of Calvin Lamy, a Native American prisoner who took his own life at the Tarrant County Detention Facility in New Mexico in August 2001. The suit



alleged that prison officials had been warned by Lamy's psychologist that he posed a suicide risk but did not take appropriate precautions.<sup>[34]</sup>

### Guard Involvement In Selling Illegal Drugs

While CCA's medical care is alleged to have been inadequate at times, some of its guards have been accused of providing drugs—of the illegal variety. For example:

- In September 2001 a former guard at the Tulsa Jail pleaded guilty to one count of attempting to smuggle methamphetamine to a prisoner. The charge came as the result of a federal sting operation.<sup>[35]</sup> A year later, CCA terminated a new employee at the jail after she was arrested for possession of a controlled substance (cocaine). The employee had been working at the jail for about two months after completing a CCA training course.<sup>[36]</sup>
- As a result of an FBI sting operation, four guards at CCA's Correctional Treatment Facility in the District of Columbia were indicted in November 2002 on charges that they smuggled drugs, pagers and cash to prisoners in exchange for bribes. The facility, originally used for prisoners with substance-abuse problems, was being used to house the overflow from the D.C. Jail.<sup>[37]</sup>
- The warden and security chief at the Silverdale Workhouse in Tennessee were fired in November 2002 following the escape of two prisoners and allegations of illegal drug use at the facility. The alleged drug use came to light as the result of a newspaper exposé, which prompted a request from Hamilton County Executive Claude Ramsey for a list of drug incidents at Silverdale for the previous two years. CCA officials who went to the facility to investigate the two escapes learned that the warden was unable to produce records of drug seizures. Silverdale was the site of a large-scale 1996 investigation of drug trafficking that led to nine convictions, including four guards.<sup>[38]</sup>

### Failure To Control Prisoner Violence

There is no denying that prisons, especially at the higher security levels, can be violent places. Yet prison administrators have at least a moral responsibility to provide a reasonable level of safety for prisoners. As for the question of legal responsibility, the U.S. Supreme Court ruled in 1994 that the Eighth Amendment prohibition against cruel and inhuman punishment requires prison officials to take reasonable measures to guarantee the safety of prisoners. Yet the Court found that officials incur legal liability only when the danger is "sufficiently serious" and officials show "deliberate indifference" to a prisoner's health or safety.<sup>[39]</sup>

Allegations of failures by CCA to ensure prisoner safety were at the center of the uproar over conditions at its Youngstown, Ohio facility in the late 1990s. Such problems have persisted even after the change in top management at the company. For example:

- In December 2002 CCA settled a lawsuit brought by Brandon McKnight, who was critically injured as the result of a beating in 2001 by a fellow prisoner at the Tulsa Jail. McKnight had accused CCA of negligence for placing him in the same cell as a prisoner who had previously been found guilty of assaulting him. CCA did not admit wrongdoing in the case and did not disclose the terms of the settlement.<sup>[40]</sup>
- In January 2002 a prisoner serving two life sentences for murder convictions admitted to stabbing a counselor to death at the Hardeman County Correctional Facility in Tennessee. CCA said that the counselor, Delbert Steed, was the first employee to be killed on the job in the history of the company.<sup>[41]</sup>
- In August 2002 two former prisoners at the Cimarron Correctional Facility in Oklahoma were charged with assaulting female guards in two separate incidents during the previous winter. Both prisoners were transferred to the publicly-run Oklahoma State Penitentiary after the incidents.<sup>[42]</sup> That same month, prisoners at Cimarron were charged with severely beating another prisoner the previous September.<sup>[43]</sup>

### Prison Protests And Uprisings

CCA's reputation was seriously marred during the 1990s by protests, which sometimes took the form of riots, by prisoners at a

number of its facilities. In at least some of these cases, the protests were explicitly aimed at conditions in the prisons. This phenomenon, like many of CCA's other problems, has continued during the new management regime. Here are some examples:

- ⊖ In September 2000 three guards at the Florence Correctional Center in Arizona were injured, one seriously enough to require hospitalization, in a disturbance involving about 20 prisoners who smashed property and briefly held one of the guards hostage. [\[44\]](#)
- ⊖ In December 2000 CCA announced that the warden and chief of security of the Tarrant County Detention Facility in New Mexico had been fired after an uprising the month before by prisoners from the District of Columbia. Eight guards were injured during the incident. [\[45\]](#)
- ⊖ In April 2001 some three-quarters of the 800 prisoners at the Cibola County Correctional Center in New Mexico took part in a non-violent protest in which they refused to return to their cells. The protest ended when guards fired tear gas into the recreation yard, where the prisoners had gathered. A prison official said the protest was prompted by the quality of food being served and by the price and availability of items at the prison commissary. [\[46\]](#)
- ⊖ In July 2001 hundreds of prisoners at the Otter Creek Correctional Facility in Kentucky staged a nine-hour riot. A new warden appointed after the incident said that his ousted predecessor had failed to change procedures when medium-security prisoners were introduced into what had been a minimum-security facility. [\[47\]](#)
- ⊖ An April 2003 disturbance at the North Fork Correctional Institution in Oklahoma, which housed more than 1,000 prisoners from Wisconsin, resulted in minor injuries to a guard and more than \$12,000 in damages to the prison kitchen. [\[48\]](#)

While none of the problems of the past few years have received substantial media attention at the national level, they do suggest that the new CCA proclaimed in 2000 often looks a lot like the old, scandal-ridden CCA.

## **Chapter 2: A FAILED EXPERIMENT: OPERATING HISTORY THROUGH MID-2000**

Corrections Corporation of America was created during the early years of the presidency of Ronald Reagan, a time in the United States when entrepreneurs were riding high and privatization was regarded as a panacea for a supposedly inefficient and incompetent public sector. [\[49\]](#) The company was founded in 1983 by Thomas Beasley, former chair of the Tennessee Republican Party, with backing from venture capitalist Jack Massey, who had previously helped build Kentucky Fried Chicken (the fast-food chain now known as KFC) and Hospital Corporation of America (HCA), a pioneer in the controversial business of privatizing healthcare facilities.

HCA, in fact, was Beasley's model. He told a reporter at the time: "CCA will be to jails and prisons that are owned and managed by local, state, and federal governments what Hospital Corporation of America has become to medical facilities nationwide." [\[50\]](#) This statement was, of course, made well before HCA was accused of defrauding the federal government and had to pay \$1.7 billion to settle the charges. [\[51\]](#)

Although Beasley and other CCA executives would repeatedly depict the company's creation as a 1980s free-market innovation, the idea of incarceration for profit actually had a much longer—and sordid—history.

### **The Origins Of Private Prisons**

In England, jails operated by private parties originated in the Middle Ages. [\[52\]](#) The profit came mainly from the fees charged to the prisoners for the costs of food, lodging and other services. Prisoners were even made to pay each time their irons were put on or taken off. In short, prisoners were totally at the mercy of extortion practiced by jailers. Prisoners of means were able to purchase decent—and sometimes quite comfortable—conditions, while poorer prisoners faced a miserable existence.

Colonial America avoided prisons in favor of fines and public punishment (such as whipping and stocks). There were jails for pretrial detention, and these were usually operated by private parties. These jailers, who sold meals and privileges to detainees, were notorious for corruption and cruelty.

The 19th Century saw the emergence of penitentiaries, in which prisoners were locked up not simply to await trial; in most cases, incarceration itself became the punishment for criminal activity. These institutions were usually established by governments, but private interests got deeply involved, mainly through the exploitation of prison labor. Prisons soon turned into an important source of inexpensive and easily controllable labor for the Industrial Revolution.

By the mid-1800s the leasing of prisoners by private interests was the norm throughout the country. After the Civil War, the prison leasing system greatly expanded, particularly in the South, where prison labor provided a source of cheap labor in the wake of Emancipation. In the South during this period it became known as the "convict lease system." The degree of control exercised by contractors over prison labor made the leasing system disturbingly similar to slavery. In some cases the conditions faced by leased prisoners—who in the South were overwhelmingly Black—were even worse than those experienced by some slaves. Because contractors were guaranteed a certain number of prison laborers, they could work a prisoner to death and be assured of a replacement at no additional cost. Moreover, the contracts entered into by prison officials and entrepreneurs were often marked by cronyism and corruption.

Instances of scandals, corruption and abuse of prisoners could be found throughout the country. Consequently, the convict lease system became a prime target of Progressive Era reforms. During the first half of the 20th Century, one state after another was forced to abandon the leasing system and replaced it with arrangements under which any work performed by prisoners was done for the government. This ranged from agricultural work on farms that grew food for the prisons to road maintenance and the proverbial license-plate manufacturing. These practices did not necessarily make life for prisoners any more humane (road chain gangs became notorious for their brutality), but they did eliminate significant private sector involvement in the corrections system.

### **An Inauspicious Start**

This unsavory history was conveniently ignored by Beasley—and his co-founders T. Don Hutto and Doctor Crants—who presented private prisons as an exciting new entrepreneurial concept. The federal government jumped on the bandwagon, offering CCA a contract in 1983 despite the company's lack of a track record in corrections. Hutto had credentials as a corrections professional, but these credentials were not exactly impeccable. In 1978 the U.S. Supreme Court affirmed a federal district court ruling that that Arkansas prison system, then being run by Hutto, constituted "cruel and unusual punishment." The decision by the Supreme Court speaks of rape, torture and 10-hour workdays for prisoners. The latter prompted the Court to state that "the administrators of Arkansas' prison system evidently tried to operate their prisons at a profit."<sup>[53]</sup>

CCA's federal contract was awarded by the Immigration and Naturalization Service, which was turning to the private sector for help in the growing task of detaining undocumented immigrants. The agency called on CCA to build and then manage a detention center in Houston, which opened in 1984.

CCA's initial performance, however, was something less than spectacular. When it fell behind in building the new facility, the company leased a seedy motel that was a favorite spot for streetwalkers to ply their trade. Twelve-foot high cyclone fences topped with barbed wire were erected around its perimeter, iron bars were put on the windows, and soon the motel was filled with young men. Security was hardly tight: a number of detainees escaped by pushing out the motel's air conditioners, climbing through the holes and scaling the fence.<sup>[54]</sup>

Beasley also got a boost from a source closer to home when CCA was awarded contracts to manage Tall Trees, a non-secure juvenile facility in Memphis, and the much larger Silverdale detention facility in Chattanooga. The following year (1985), CCA got two more federal contracts—for an INS processing center and a Bureau of Prisons pre-release center—and a local one to operate the Bay County Jail in Florida. It also received a contract to build and manage the Shelby Training Center, a secure-treatment facility for juvenile offenders that was sited adjacent to Tall Trees.

By this time, CCA was already the subject of controversy. Cost overruns at Silverdale were a national news story as well as a local one.<sup>[55]</sup> In 1985 the company made an audacious proposal to take over the entire state prison system in Tennessee, which was facing a federal court mandate to relieve overcrowding. In exchange for a 99-year lease on existing facilities and an annual operating contract of about \$250 million, CCA offered to spend \$150 million of its own money to build two new 500-bed prisons and to throw in an additional \$100 million payment to the state, half in cash and half in IOUs.<sup>[56]</sup> The state legislature, faced with strong opposition from public employee groups and others, declined to act on the offer.

Despite the setback in Tennessee, CCA moved ahead with its privatization crusade. The pressure on states to address overcrowding made the prospects for private prisons promising enough to encourage others to enter the field. These included established firms such as security services leader Wackenhut Corporation, well-funded start-ups such as Pricor Inc. and a slew of less substantial operations. The first state contract was awarded to U.S. Corrections Corporation in 1986 to operate a prison at an abandoned college campus in Marion, Kentucky (U.S. Corrections was acquired by CCA in 1998). In 1987 CCA got its first state-

level contracts – for the construction and management of a regional juvenile facility in east Tennessee and two minimum-security, pre-release facilities in Texas.

### Operating Problems Mount

CCA's stock started trading publicly in 1986 and the company made a profit for the first time in 1989. It also made some of its first moves abroad during this period, winning its first Australian contract in 1989 and its first contract in Britain in 1992. (See Chapters 6-8 for more on CCA's track record outside the United States.)

Yet the late 1980s and early 1990s were a difficult time for CCA. In addition to slow growth in new contract awards, CCA began to experience the kind of operating problems previously associated only with certain public prisons. For example:

- ⊖ In January 1988, CCA was hit with its first major lawsuit. The company was accused of failing to provide adequate medical care to Rosalyn Bradford, a prisoner at the Silverdale facility in Tennessee, and that this failure resulted in Bradford's death. Ten months later, CCA agreed to pay \$100,000 to settle the case.<sup>[57]</sup>
- ⊖ In 1989 and early 1990, there was a series of escapes from CCA's new \$8 million jail in Hernando County, Florida. A state investigator found that "a combination of improper cell security checks by staff, defective cell doors and ineffective security grating behind the light fixture of Cell A-6" was responsible for the escape of four prisoners in January 1990. A guard who was fired as a result of the incident alleged that the jail administrator had ordered him to falsify state-mandated logs to cover up the fact that the facility was not complying with a requirement that prisoners who are known escape risks be checked every 15 minutes.<sup>[58]</sup> Later in 1990, a prisoner at the Hernando jail escaped by removing a stainless steel plate in a shower stall.<sup>[59]</sup>
- ⊖ In December 1990 guards had to use tear gas to quell a riot that erupted at CCA's West Tennessee Detention Facility less than a year after the prison opened. The cause was reported to be anger on the part of prisoners who were transferred to the facility from out of state just before the Christmas holiday.<sup>[60]</sup>
- ⊖ In May 1992, there were press reports that the FBI and federal prosecutors were investigating whether CCA had offered bribes or other illegal enticements to public officials for contracts. The probe was said to focus on CCA's contracts in Tennessee. The investigation did not result in an indictment.<sup>[61]</sup>

CCA avoided being indicted in Tennessee, but it continued to have problems at its facilities in that state. Soon after the South Central Correctional Center in Clifton opened there were reports of beatings of prisoners, lax security, and the presence of alcohol and weapons.<sup>[62]</sup> CCA's ability to claim superior efficiency over publicly-run facilities in Tennessee was weakened in late 1992 when the company lost its contract to run the state's Mountain View Youth Development Center. The contract CCA signed with state officials was based on the assumption that the company would need only 99 employees to run the 144-bed facility. As it turned out, CCA needed some 160 people to do the job, about the same number as at a state-run institution.<sup>[63]</sup>

However, the company's problems were not limited to Tennessee. For example, in 1993 two men escaped from CCA's immigrant detention facility in Houston<sup>[64]</sup> and the company was hit with a federal civil rights lawsuit filed on behalf of three Puerto Rican prisoners who were shot during a disturbance at CCA's Torrance County Detention Facility in New Mexico.<sup>[65]</sup> That same year, the District of Columbia decided to remove its prisoners from CCA's West Tennessee Detention Facility for fiscal reasons, prompting the company to announce that its earnings for the year would be depressed.<sup>[66]</sup>

### "Prisoners And Trash Are Big Business"

The second half of the 1990s was a turning point for CCA. It was during this period that the company began to achieve critical mass. CCA began the decade with annual revenues of just over \$50 million. By 1997 revenues had increased nearly tenfold to \$462 million, and its profits were more than \$50 million. During the same period, the number of prison beds CCA had under management jumped from about 5,000 to more than 38,000, giving it a U.S. market share of more than 50 percent.<sup>[67]</sup> That growth was accomplished by the capture of a series of contracts ranging from 200-bed minimum-security facilities to a 2,000-bed state jail in Texas. In early 1995 CCA branched into the prisoner transportation business with the purchase of Transcor America.

CCA, of course, wanted an even larger share of the prison market. It did this in part by acquiring smaller rivals such as Concept Inc. and Corrections Partners Inc., both in 1995. It also made another attempt to take over the entire prison system of Tennessee,

but again it was rebuffed. Nonetheless, CCA benefited from favorable conditions throughout the United States. By 1995 the country's total prison population—local, state and federal—had reached more than 1.5 million, which was three times the number in 1980. The incarceration rate—the number of prisoners per 100,000 U.S. residents—jumped in that 15-year period from 221 to 601.<sup>[68]</sup> Governments at all levels were having difficulty figuring out how to house this ballooning population. While many jurisdictions continued to seek public-sector solutions, others succumbed to the bold claims being made by the private prison industry and its political allies.

At the federal level the Clinton Administration created an opening for private firms to begin operating Federal Bureau of Prison facilities, while at the local level, many officials saw the overcrowding problem as an opportunity to create jobs in economically depressed areas. A county commissioner in New Mexico put it this way to a newspaper reporter: "It's terrible to say, but prisoners and trash are big business."<sup>[69]</sup>

Prisons, however, like trash dumps, can sometimes cause a big stink, and this is exactly what started to happen in the mid-1990s as major instances of violence erupted at a series of for-profit correctional facilities. Some of the worst cases involved CCA's competitors, but the events undermined the reputation of the entire industry. For example:

- ⊖ In October 1994 some 250 prisoners rioted at the Eloy Detention Center in Arizona run by Concept Inc. The prisoners, many of them undocumented immigrants being held by the INS and the federal Bureau of Prisons, set fires and damaged property. Riot police put down the revolt, but a similar incident occurred several weeks later. Five prison employees were injured in clashes with prisoners, some of who had managed to acquire steel pipes.<sup>[70]</sup> Employees later told a reporter that the riot was sparked by shortages of food, soap, toilet paper and other essentials. They also said that the poorly paid and inexperienced staff was not equipped to handle the volatile situation.<sup>[71]</sup>
- ⊖ In June 1995 there was an uprising by prisoners at an immigration detention center operated by Esmor Correctional Services in Elizabeth, New Jersey. Most of the guards, described by one local official as "unarmed and undertrained," fled once the disturbances began. Police in riot gear reclaimed control of the facility, which previously had been the subject of press reports about inhumane treatment and substandard conditions.<sup>[72]</sup> In the wake of the uprising, the INS issued a scathing report on mismanagement at the Esmor facility. The INS found that poorly trained and abusive guards terrorized the immigrant prisoners, while supervisors did little to monitor the situation.<sup>[73]</sup> Esmor, which was removed as the contractor for the Elizabeth facility (later taken over by CCA), changed its name to Correctional Services Corporation and is still active in the field.
- ⊖ In August 1997, a national controversy developed when a videotape showing abuses by guards at the Brazoria County (Texas) Detention Center was made public in the course of a lawsuit brought by one of the prisoners at the facility, run by Capital Correctional Resources Inc. The video, originally shot as footage for a training film, showed guards kicking prisoners, coaxing guard dogs to attack them, and shocking at least one prisoner with a stun gun.<sup>[74]</sup> The abuses depicted on the tape especially disturbed officials in Missouri, given that prisoners from that state were being housed at the Brazoria facility. In the wake of the revelation, Missouri removed its prisoners.<sup>[75]</sup>

CCA's facilities were not immune from incidents of violence and lax security. In October 1995 more than 100 prisoners from North Carolina went on a rampage at the company's West Tennessee Detention Facility, causing considerable damage.<sup>[76]</sup> In August 1996 two convicted sex offenders from Oregon broke out of a CCA facility near Houston and traveled nearly 200 miles before they were caught. State officials, who had not been informed by CCA that out-of-state prisoners had been imported, realized they had no authority to prosecute the convicts for the escape. The reason: there was no law against escaping from a private correctional facility (a situation that was later changed in Texas and elsewhere).<sup>[77]</sup>

Also in August 1996, there was an uprising by about 400 federal prisoners at the Eden Detention Center in Texas, which CCA had taken over the year before from a small-time prison operator.<sup>[78]</sup> Two months later, six prisoners—three of them convicted murderers—broke out of CCA's Central Arizona Detention Center.<sup>[79]</sup> In February 1997, South Carolina announced it would not renew its \$14 million-a-year contract with CCA to run a juvenile detention facility that had been plagued with security lapses (resulting in several escapes) and allegations of beatings by guards.<sup>[80]</sup> (In 2000 a federal jury awarded \$3 million in damages to a teenager who said he was hog-tied, maced and thrown against a wall while being held at the facility.<sup>[81]</sup>) A riot at CCA's Davis Correctional Facility in Oklahoma in May 1997 resulted in injuries to two guards.<sup>[82]</sup> The following November four guards were injured in a fight with prisoners at the CCA-run South Central Correctional Center in Tennessee.<sup>[83]</sup>



## The Youngstown Debacle

The negative publicity in these incidents was minor compared to the national controversy generated in the late 1990s by a series of incidents at the prison in Youngstown, Ohio that CCA had built (with free land and large tax abatements from the city) to house prisoners from the District of Columbia. The facility was plagued with stabbings and disturbances almost from the moment it opened in May 1997. State and local authorities began to complain that they were not being adequately informed about the problems, and a state legislator told a reporter in July 1997: “There is no doubt in my mind that we have a bomb ticking in Youngstown.”<sup>[84]</sup>

In August 1997 prisoner rights attorney Alphonse Gerhardstein filed a class-action lawsuit on behalf of the prisoners, charging that the facility was unsafe. The following February, by which time there had been 19 stabbings at the prison (some of them fatal), a federal judge ordered the District of Columbia to stop sending prisoners to the facility after he found that prisoners with different security classifications were being improperly combined in what was supposed to be a medium-security lock-up. Using graphic language, U.S. District Judge Sam Bell stated that “the failure to classify prisoner populations, mixing of predators and their prey, if you will, may well amount to a deliberate indifference to the conditions of the prisoners.”<sup>[85]</sup>

The uproar over the management of the prison reached a new height in July 1998, when six prisoners, included four convicted murderers, cut through a gate and escaped from the prison in broad daylight. Ohio Gov. George Voinovich and other officials expressed public concern over conditions at the prison and began to talk of closing the facility, though the state attorney general warned that there were legal obstacles to doing so.<sup>[86]</sup>

In October 1998 a state prison oversight committee released a report that blamed the District of Columbia for misclassifying many of the prisoners sent to Youngstown, but it also lambasted CCA, saying that the escape of the six prisoners represented “the ultimate failure in the primary mission and public promise of any prison.”<sup>[87]</sup> The mayor of Youngstown, who had helped lure CCA to the city, said “It’s been a nightmare. [CCA’s] credibility is zero.”<sup>[88]</sup>

In March 1999, the company agreed to pay \$1.6 million to prisoners and \$756,000 in legal fees to settle the class action lawsuit brought on behalf of the prisoners. The settlement also provided for the assignment of a full-time independent monitor to the prison and an annual review of prisoner security classifications.<sup>[89]</sup> After the District of Columbia declined to renew its contract, CCA shut down the prison in July 2001, leaving the employees without a job and the town with an empty facility.

## “Dropping Like A Rock”

The Youngstown episode was a low point in CCA’s history—and that of the industry as a whole. The political fallout from the troubles in Ohio affected the company’s reputation and prospects in other states, especially Tennessee, where CCA was still trying to take over the entire correctional system. In September 1998 *The Tennessean* newspaper wrote that “the concept of prison privatization, the hottest political commodity on [Nashville’s] Capitol Hill just a year ago, is now dropping like a rock.”<sup>[90]</sup> That same month, a besieged CCA put out a press release denouncing its critics and insisting that “the safety risk posed is no greater at privately managed prisons than at publicly run prisons.”<sup>[91]</sup>

Even if that statement was true (which some studies had disputed; see Chapter 9), it represented an enormous concession on the part of the pioneering private prison company. The whole prison industry had been created and promoted on the premise that the private sector could do a much better job than government in running prisons, in terms of cost and safety. Now here was CCA desperately arguing that private operators were no worse than the public sector.

The legitimacy of private prisons was also weakened by a controversy involving their leading academic supporter. For much of the 1990s, Charles Thomas, a professor at the University of Florida and founder of the Private Corrections Project, was frequently quoted in the media as an authoritative voice on prison privatization. His status as an independent observer came into question in 1997, when Thomas was named to the board of the CCA Prison Realty Trust, the real estate investment trust set up by CCA to serve as the owner of its facilities for tax reasons (see Chapter 4 for more details).<sup>[92]</sup> The Florida Police Benevolent Association, which had already been questioning Thomas’s role as a consultant to the Florida Correctional Privatization Commission because his university research was being financed in part by the industry, stepped up its challenge with complaints to the Florida Commission on Ethics. Thomas ended up retiring from his university post, and in 1999 he was fined \$20,000 by the ethics commission after it was revealed that he received a \$3 million fee for acting as an advisor on the re-merging of CCA and the Realty Trust.<sup>[93]</sup> The entire episode cast a shadow on Thomas’s work, especially research that purported to demonstrate the superiority of private correctional management.

CCA's progress was also hindered by serious problems at several other facilities. In August 1998 there were two serious disturbances at the company's Torrance County Detention Center in New Mexico. In the first instance, five guards were injured, and in the second, five prisoners were stabbed and a guard was injured. Some of the prisoners involved had previously been at the Youngstown prison.<sup>[94]</sup> In October 1998 four prisoners escaped from the South Central Correctional Facility in Tennessee. A supervisor at the prison was fired in connection with the incident. Warden Kevin Myers justified the action by saying, "I wouldn't say he facilitated the escape, but he may have done something that allowed the escape to occur."<sup>[95]</sup>

CCA insisted that all these problems did not diminish the demand for its services. "We're simply drowning in business," Chief Executive Doctor Crants told the Associated Press in October 1998. "We can't get it off the drawing board as fast as it's coming in to us."<sup>[96]</sup> Yet the company felt compelled to run a series of image advertisements on television and in periodicals that depicted the company as: "Quietly going about the business of public safety."

"Quiet" was not the best word to describe the continuing string of escapes at CCA facilities such as the West Tennessee Correctional Facility and the Bent County Correctional Facility in Colorado—and certainly not the violence that erupted during the summer of 1999 at the Diamondback Correctional Facility in Oklahoma and again at the Torrance County Detention Center in New Mexico.<sup>[97]</sup> The latter took place around the same time as another riot at a private prison in New Mexico—Wackenhut Corrections' Guadalupe County Correctional Facility—where a guard was fatally stabbed during an uprising involving as many as 200 prisoners.<sup>[98]</sup>

Following the incident in Torrance County, a group of guards at the facility filed suit against CCA, charging that prison officials knew of a planned uprising but did nothing to prepare. The suit also charged that the prison was chronically understaffed and that guards were not adequately trained. One of the guards filing the lawsuit had been beaten by prisoners with a baseball bat, crushing both his hands, fracturing his skull in six places and leaving him in a coma for six days.<sup>[99]</sup> Most of the claims were dismissed by a judge who found that they were precluded by workers compensation rules.<sup>[100]</sup>

CCA also got in trouble for poor performance on the part of its Transcor America prisoner transportation subsidiary. In March 1999 the American Civil Liberties Union of Colorado sued the company on behalf of a woman who said she was sexually assaulted by a Transcor guard while she was being transported from Texas to Colorado the year before.<sup>[101]</sup> (The case was resolved in April 2002 when Transcor reportedly agreed to pay a substantial out-of-court settlement; the exact amount was not disclosed.<sup>[102]</sup>) In October 1999, a Transcor driver in Texas sexually assaulted a female prisoner he was transporting. (The driver was later sentenced to ten years in prison.<sup>[103]</sup>) That same month Transcor was publicly criticized by North Dakota Gov. Ed Schafer after the escape from custody of a notorious child molester from his state while he was being transported through New Mexico.<sup>[104]</sup> Transcor guards reportedly were sleeping on the job during the escape and did not realize the prisoner was missing from their bus for nine hours.<sup>[105]</sup>

### **"Private Prisons Don't Work"**

Problems such as these, along with economic considerations, helped to persuade some jurisdictions that had experimented with private management to conclude it was not worth the trouble. In June 2000 North Carolina terminated its two prison management contracts, both with CCA, saying it would be "in the best interest of the state" to return them to public management.<sup>[106]</sup> State Rep. Paul McCrary told a reporter: "I really felt like it was a failure," adding that private prison firms "are in business to make money, and they're going to take some shortcuts when they can."<sup>[107]</sup>

In August 2000 state officials in Utah abandoned a plan for that state's first fully-privatized prison after concluding that it would be cheaper to rent space in county lockups.<sup>[108]</sup> At about the same time, corrections officials in Georgia decided they didn't need a 1,500-bed prison that CCA was building "on spec" (i.e., without a prior operating contract in hand) in Stewart County, prompting the company to halt construction.<sup>[109]</sup>

Things for the industry got so bad that in September 2000, *Business Week* published an article headlined " 'Private Prisons Don't Work': For-profit facilities face a barrage of criticism – and overbuilding has cut into profits and hurt stock prices."<sup>[110]</sup> The article, which noted that the CCA real estate investment trust had 12,000 unfilled prison beds, concluded by suggesting that "the industry's heyday may already be history."



By this time, history was also the way to describe the top manager of CCA. On July 31, 2000 Doctor Crants, the chief executive of the company and its affiliated real estate investment trust, was terminated by the boards of the two firms. A few days later, CCA's board replaced Crants with John Ferguson, a banker who had served as Tennessee's commissioner of finance and administration. Ferguson ushered through a merger of CCA and its real estate investment trust, calling it "the first step in streamlining our corporate structure...The reconsolidation allows our management team to improve operations, enhance customer service and reduce costs."<sup>[111]</sup>

The restructuring and the change in leadership at CCA can be attributed both to the company's operating problems and its financial difficulties (which are described in Chapter 4). Above all, the moves were part of a desperate effort to stabilize the company. They were accompanied by the election of a new board of directors, the settlement of shareholder lawsuits and other measures meant to restore confidence in the company. These changes brought a reprieve for CCA, but they did not resolve the company's underlying operational and financial problems.

### **Chapter 3: "HONEST GRAFT"— HOW TO SEEK CONTRACTS AND TRY TO SHAPE PUBLIC POLICY THE CCA WAY**

A hundred years ago, George Washington Plunkitt, the turn-of-the-century Tammany Hall boss, coined the phrase "honest graft" to refer to the use of one's contacts and influence for personal gain.<sup>[112]</sup> Honest graft is alive and well ten decades after Plunkitt in the private prison industry, especially on the part of CCA.

For an industry whose only customer is the public sector, it is no surprise that private prison operators need to cultivate relationships with government officials. Yet CCA has taken this to great lengths. Most controversial has been the involvement of CCA in the American Legislative Exchange Council, a conservative group that promotes changes in state laws by drafting model bills and networking with legislators.

CCA has also attempted to use its direct relationships with executive branch officials and legislators, especially in its home state of Tennessee, to improve its chances of winning contracts. The company has nurtured these relationships through its generous campaign contributions and its practice of hiring former government officials.

CCA's efforts to make friends and influence important people are also evident at the federal level. The company has depended heavily on federal contracts since its founding, and it was the feds who were largely responsible for helping CCA survive its brush with bankruptcy several years back. The emphasis on homeland security in the wake of 9/11 has created new opportunities for CCA and the rest of the prison industry.

For 20 years CCA has invested large amounts of time and money in the public sector, and it expects to receive a continuing payoff.

#### **Friends Of CCA**

CCA recognized from the beginning the importance of having ties to the public sector. Its founding fathers Tom Beasley and Doctor Crants had no experience in corrections. That is apparently why they chose as a co-founder T. Don Hutto, who had served as the commissioner of corrections in Arkansas from 1971 to 1976 and had held the same position in Virginia from 1976 to 1981. As noted in Chapter 2, Hutto's record in Arkansas was controversial enough to be criticized by the U.S. Supreme Court, but there was no doubt that he was well connected in the world of prisons.

At the federal level, CCA's most important recruit from the public sector has been J. Michael Quinlan, who served as director of the Federal Bureau of Prisons from 1987 to 1992. Quinlan has held various positions at CCA since 1993, including that of president and chief operating officer. He is currently senior vice president. In 2002, CCA's current chief executive, John Ferguson, described Quinlan as "a major reason why we have garnered the credibility that we have amongst our valued clients."<sup>[113]</sup>

John Ferguson, the company's current chief executive, was the Commissioner of Finance for the state of Tennessee from 1996 to 2000. Ferguson was one of the members of a Transition Advisory Council appointed by Gov. Don Sundquist in 1998 to make recommendations on policy matters when the state was considering privatizing up to 70 percent of its prison system.<sup>[114]</sup>

Ferguson is just one of a series of state officials in Tennessee who have left the public sector in recent years to join CCA. Among

the others are:

- ▷ Brian Ferrell, an aide to Gov. Sundquist, who became CCA's vice president for government relations; [\[115\]](#)
- ▷ John Tighe, Sundquist's top health care advisor, who became CCA's vice president of health services; [\[116\]](#)
- ▷ Natasha Metcalf, commissioner of human services, who became CCA's vice president for local government customer relations; [\[117\]](#) and
- ▷ Tony Grande, commissioner of economic and community development, who became CCA's vice president of state customer relations. [\[118\]](#)

The revolving door is not restricted to Tennessee. For example, Joseph R. Johnson Jr., who joined the board of CCA in 1996, had important political connections from his time as secretary of health in New Mexico, national campaign manager and political advisor to Virginia Gov. Douglas Wilder, executive director of Jesse Jackson's Rainbow Coalition and political strategist to District of Columbia Council member John Ray.

When a 1998 federal report linked violence at CCA's Youngstown facility, which housed prisoners from the District, to mistakes by the company and the city, Johnson publicly disputed many of the findings, including the charge that CCA cut corners in critical areas, leading to the serious security issues. [\[119\]](#) The year before, Johnson had been paid a fee of \$382,000 for consulting services related to CCA's contracts with Washington, D.C. for the housing of prisoners at Youngstown and at the D.C. Community Treatment Facility. In addition, in 1997, CCA paid \$911,000 to National Corrections and Rehabilitation Corporation—a company co-owned by Johnson—for rehabilitation services rendered at the Dallas County State Jail facility. [\[120\]](#)

## Money Go Round

CCA's ties to the public sector are not limited to the hiring of former public officials. The following sections provide some examples of how the company apparently tries to use campaign contributions, personal relationships and other means to gain an edge in seeking contracts.

Tennessee. CCA used its connections in its home state to help it obtain some of its earliest contracts to manage city and county facilities, and later it tried to use those relationships in an audacious attempt to take over the prison system of the entire state. The latter goal, which was attempted on two different occasions, was ultimately unsuccessful, but this was not for a lack of trying. In fact, CCA's failure may have been the result of having too much political "juice," resulting in a backlash against the company as well as the politicians who were pushing prison privatization.

The story began in 1983 when Tom Beasley, fresh from a stint as chairman of the Tennessee Republican Party during Lamar Alexander's first term as governor, co-founded CCA. Beasley and Alexander went back a long way. As an undergraduate at Vanderbilt University, Beasley used to rent an apartment above Alexander's garage. Alexander's wife Honey invested \$5,000 in CCA in 1984. This investment didn't look good when CCA made its first move to take over the state's prison system in 1985. But instead of simply selling her shares, possibly at a loss, Honey Alexander took advantage of some assistance from friends of her husband and CCA. The venture capital firm run by Jack Massey, a long-time political backer of Gov. Alexander who had also helped CCA get started, arranged for Honey Alexander to exchange her CCA stock (which was not yet publicly traded) for shares of South Life Corporation, a privately held Tennessee insurance company. She ended up with a profit of \$133,000 when she sold the insurance stock. [\[121\]](#)

Other than Honey Alexander, CCA's early investors included House Speaker Ned McWherter and State Insurance Commissioner John Neff. McWherter later became governor (1987-1995) and was a Prison Realty Trust board member from 1999 to 2000. McWherter, like Honey Alexander, sold his CCA stock in 1985 to quell conflict-of-interest perceptions. [\[122\]](#)

Although CCA lost its takeover bid, it continued to do its best to influence public policy in Tennessee. The company contributed generously to the gubernatorial campaigns of Don Sundquist, who was first elected in 1995 and served until 2003. The Republican candidate knew CCA and its key founder very well. Sundquist and Beasley were business partners in Red, Hot & Blue, a barbeque franchise. [\[123\]](#)

In 1997, after CCA launched its second attempt to take over the state prison system, House Finance Committee Chairman Matt

Kisber revealed that he and a small group of state officials had met in secret with CCA to discuss the privatization plans. Kisber insisted that even though CCA had been involved in the discussions, that didn't necessarily mean that the company had an inside track. <sup>[124]</sup> It certainly looked that way. In fact, it was CCA that had gotten Kisber and Senate Speaker John Wilder to introduce the privatization measure. The company's chief lobbyist was Betty Anderson, the wife of House Speaker Jimmy Naifeh. <sup>[125]</sup>

According to investigative reports on the company's early years, CCA was even more aggressive in seeking county contracts in Tennessee. A 1988 article in the publication *In These Times* quoted CCA's director of investor relations as saying that so many of the local officials the company negotiated with were "small-minded people, rednecks" that "you have to get in and go down to their level." The article reported that in 1984, "just before the Hamilton County Commission was to vote on CCA's proposal to establish the Silverdale work farm, the company gave contracts directly to three of nine sitting commissioners." <sup>[126]</sup>

Ohio. This is another case in which CCA worked with relatives of public officials to advance its interests. In 1995 CCA negotiated a sweet deal in which the depressed city of Youngstown provided 100 acres of land for \$1 along with other subsidies to assist the company in its construction of a 2,000-bed facility that would house prisoners from the District of Columbia.

Years later it was revealed that CCA had negotiated the tax abatement part of the subsidy package with the help of V Companies, a consulting firm run by Paul Voinovich, the brother of Ohio Gov. George Voinovich. CCA paid V Companies \$3.5 million for its services.

What made this fact more controversial was that in 1996 Gov. Voinovich vetoed a provision in the state's budget bill that would have enabled the Youngstown school system to challenge the tax abatements because of their impact on revenues for education. <sup>[127]</sup> Apparently, private prison subsidies were deemed more important than funding for schools.

Georgia. In this case there was an appearance that CCA used its contacts to try to influence what was supposed to be an arm's-length bid evaluation process. In 1997 CCA was one of four companies competing for a \$655 million contract to build and run two private prisons in Georgia. According to a report in the *Atlanta Journal and Constitution*, during the bidding process Jim Hammock, a lobbyist for CCA, spoke 48 times with Corrections Commissioner Wayne Garner—in apparent violation of state rules. Garner said he and Hammock did not have substantive discussions about the bidding process or CCA. <sup>[128]</sup>

Garner said that CCA got the contract for the two facilities because it had the lowest price. Yet, according to the same newspaper article, the state had requested bids for several different numbers of prison beds. CCA's bid scored well for a prison of 401-500 beds, but the state ended up going for 1,000 beds, a configuration for which CCA's bid had been the highest.

## Smart ALEC?

CCA has not been satisfied simply with trying to influence public officials in its efforts to win contracts. It has also worked to bring about changes in state laws that would likely increase the demand for its services. It has pursued this objective by working with a 30-year old conservative organization called the American Legislative Exchange Council. <sup>[129]</sup> ALEC, which remained relatively unknown until the past decade, has worked to influence state legislators to pass laws which in the criminal justice area include tougher sentencing rules. By 2002 a third of the nation's state lawmakers were members of ALEC. Members gather at ALEC meetings to swap ideas and form model legislation, which legislators then take back to their states and try to enact.

CCA has long been one of the private sector members that pay \$5,000 to \$50,000 a year to help shape ALEC's agenda. In addition to its general membership, CCA has paid \$2,000 a year for a seat on ALEC's Criminal Justice Task Force, which has at times been chaired by CCA executives. <sup>[130]</sup>

At the 2002 trade show sponsored by the American Correctional Association in Philadelphia, CCA Vice President Louise Green told National Public Radio (NPR) that belonging to ALEC gives the company a chance to educate state lawmakers. At the show, NPR reported, Wisconsin State Representative Scott Walker proudly declared that he was part of a group of lawmakers that had helped pass the state's "truth in sentencing" legislation, which was similar to a model bill prepared by ALEC. NPR noted that "the Wisconsin Department of Corrections says the truth in sentencing law will add to the state's prison population in the years to come. That's money in the bank for Corrections Corporation of America."

A former head of Wisconsin's prison system, Walter Dickey, told NPR that it was shocking that lawmakers would write sentencing policy with help from ALEC. But James Ball, Vice President of Customer Relations for CCA, told NPR that the company did not

advocate for longer sentences. He also claimed that ALEC is merely a research organization, not a promoter of public policy.

A different impression was given by Harold Brubaker, a member of ALEC and a state legislator in North Carolina, when he was interviewed on a BBC Radio program on private prisons in April 2003. The interviewer asked whether "there may be some vested interest in companies like Wackenhut and CCA pushing for harder, tougher legislation." Brubaker responded: "Absolutely. Yes, I can visualize the point."<sup>[131]</sup>

ALEC's apparent influence has been on display in the Texas legislature. Rep. Ray Allen, chair of the House Corrections Committee, is an active member of ALEC, serving as Public Sector Chair of the organization's Criminal Justice Task Force.<sup>[132]</sup> In 2003 Allen introduced legislation that would have paved the way for much more privatization of the Texas prison system, a significant portion of which is already operated by CCA and its competitors.<sup>[133]</sup> The legislation (which ended up being folded into another bill) did not pass, but state officials in Texas gave a boost to CCA in November 2003 by awarding the company contracts to operate six additional prisons.<sup>[134]</sup>

## State Campaign Contributions

"We literally spent millions of dollars educating our legislators on the advantages of private prison operators," CCA's chief executive Doctor Crants told *Business Week* in 1990.<sup>[135]</sup> By all accounts, that educational process has continued, with both Republicans and Democrats being tutored. During the 1990s it undoubtedly played a key role in the rapid expansion of state prison spending.

Providing a detailed account of the company's use of campaign contributions to influence state policy is hampered by the fact that relatively complete data became available only in the late 1990s. During the past five years, according to the Institute on Money in State Politics, CCA and its executives have contributed a total of about \$1 million in state races.<sup>[136]</sup>

In the 1998 elections, the private prison industry contributed more than \$546,000 to state-level candidates in 25 states. CCA (along with its employees) was the top contributor, giving a total of \$353,106 or nearly two-thirds of the industry's total. CCA also spread its largesse most widely—195 candidates in 16 states—but the company concentrated its efforts in California, Tennessee, Iowa, Idaho, Colorado and Texas. Winning candidates and incumbents from both parties were the primary recipients of CCA's contributions; \$315,106 or 89.2 percent of CCA's contributions went to lawmakers who would most likely be involved with legislation related to prison privatization.

According to the Institute's data on the 2000 election cycle, private prison companies and their employees contributed a total of \$1,125,598 to 830 candidates in 14 Southern states. Ninety percent of the legislative contributions went to incumbents and winning candidates. The total included contributions from the companies, their executives and by lobbying firms hired by the private prison companies. CCA, which made more than 600 contributions (including those of its employees) for a total of more than \$443,300, was the top giver in the industry. Wackenhut was a distant second at \$237,750. CCA also gave 23 contributions totaling more than \$36,580 to state political party committees.

It appears that CCA has tried to use its deep pockets to wield influence in a number of states, with varying degrees of success, as the following shows:

### North Carolina

Due to serious problems over a period of time involving escapes, lawsuits and substandard services at its private prisons, North Carolina moved away from private correctional services during the late 1990s. The state ended its management contract with CCA and took over operations at the two CCA facilities in the fall of 2000 after the company failed to correct its recurring management problems. The Associated Press story on the switch back to public management described it as "the end of a two-year experiment that some call a flop."<sup>[137]</sup>

Despite the industry's track record, CCA and other private prison companies lobbied successfully for the expansion of the state's corrections system. Senate Bill 25, which was signed by Gov. Michael Easley in May 2001, authorized the lease-purchase of three new prisons (for up to 1,000-beds each), for which the state borrowed \$218.4 million through an entity called the North Carolina Infrastructure Finance Corporation. According to the Institute on Money in State Politics, supporters of the lease-purchase arrangement contributed more than \$226,519 to candidates in North Carolina during the 2000 election cycle. CCA was the second-highest contributor, after Cornell, at \$46,253.

### Georgia

In Georgia a bill was introduced in 2001 that would have allowed existing private prisons to stay in operation, but it would have banned future private facilities without the permission of state and local authorities. The measure would also have banned the importation of sex offenders and other violent criminals, and required private facilities to pay the costs associated with the capture of escapees. Representatives approved the measure overwhelmingly in 2001, but the bill died in the Senate corrections committee. Sen. Carol Jackson, vice-chairwoman of the committee, and Sen. Greg K. Hecht, chairman of the committee, both received contributions from private prison companies. The industry as a whole gave a total of \$56,650 in contributions during the legislative battle. CCA, whose lobbyists contributed \$25,950, was a close second after Cornell.

### *Mississippi*

In 2001 the Mississippi legislature overrode a veto by Gov. Ronnie Musgrove in order to preserve a plan under which \$6 million in payments was to be spent for empty prison beds at two private prisons, including CCA's Delta Correctional Facility.<sup>[138]</sup> The groundwork to keep state funding for private prisons had been laid during the 1999 elections, during which the industry had made more than \$41,000 in campaign contributions—a significant amount in a state with fewer than 2.8 million residents. CCA's lobbying firm Buddy Medlin and Associates gave a total of \$18,385, or more than 44 percent of the total given by the industry.

### *Florida*

Governor Jeb Bush's budget plan, which included a \$114 million increase in the corrections budget at the expense of education, took center stage during the 2001 legislative session. Also at stake was the future of the state's controversial Correctional Privatization Commission. Senate Bill 832 and House Bill 727 addressed concerns over ethics charges related to the Commission; both measures would have abolished the commission and reassigned its duties to the Department of Corrections. Intense industry pressure, including more than \$158,000 in campaign contributions, enabled the commission to survive. CCA and its officials gave a total of \$14,100.

### *Oklahoma*

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In Oklahoma the private prison industry built six prisons in the state during the 1990s.<sup>[139]</sup> State records show that officers of private prison companies and industry lobbyists gave at least \$29,000 to Gov. Frank Keating's two campaigns and to the campaigns of influential lawmakers. Pat McCoy, a prominent Oklahoma City developer who had done \$4 million of business with CCA, gave Keating's campaign \$5,000 in 1997. The CCA contributions became an issue in 1998, when Keating asked the state Board of Corrections to reconsider its decision to cancel CCA's contract to run the North Fork Correctional Facility in a dispute over payment rates. The Board voted to terminate anyway, with one board member complaining to a reporter that CCA officials "talk out of both sides of their mouth in a way that is unusual in Oklahoma."<sup>[140]</sup> The Board and CCA later reached a settlement that allowed the company to maintain its contract.

## **The Significance of Federal Contracts for CCA**

CCA got its first contract from the federal government and has continued to depend on its friends in Washington, DC. In 2002 the three federal agencies with correctional and detention responsibilities—the Federal Bureau of Prisons (BOP), the United States Marshals Service (USMS) and the Immigration and Naturalization Service (now a branch of the Department of Homeland Security and known as Immigration and Customs Enforcement, or ICE)—accounted for about 32 percent of CCA's total revenues.

The point in CCA's history when federal business was most crucial was in the late 1990s, when many state governments were cutting back their prison spending. At this time the BOP, which had long resisted privatization, was forced to move in this direction, partly as a result of pressure from Republicans in Congress (and to some extent also from the Clinton Administration) and partly because the bureau simply could not expand its own capacity fast enough to house a prison population that was mushrooming because of harsher sentencing rules and the "war on drugs."

Another factor was the explosion of the so-called "criminal alien" population in the wake of the 1996 Immigration Reform Act. The federal government's campaign to lock up non-citizens for a wide range of crimes, including relatively minor ones such as attempting to re-enter the country without proper documents, generated a huge new demand for prison beds. The BOP addressed the problem by calling on private contractors to help meet its "criminal alien requirements," or CAR. As a result of the CAR-I solicitation process, CCA got two contracts in 2000 that allowed it to fill its long-empty speculatively built prison in California City, California, and its Cibola County Correctional Center in New Mexico. Together, these deals are estimated to be worth \$760 million to CCA over ten years. In 2002 CCA was rewarded again with a \$103 million CAR contract to fill its struggling McRae Correctional Facility in Georgia. Analyst Judith Greene has referred to these CAR contracts as a "virtual bailout" for CCA.<sup>[141]</sup>



CCA and the rest of the prison industry are hoping for another bonanza from federal spending linked to homeland security. As CCA noted in its most recent 10-K filing:

We believe that recently proposed initiatives by the federal government in connection with homeland security should cause the demand for prison beds, including privately managed beds, to increase. The proposed funding [for homeland security] is intended to support the agencies' efforts to prevent illegal entry into the United States and target persons that are a threat to homeland security. We believe that these efforts will likely result in more incarceration and detention, particularly of illegal immigrants, and increased supervision of persons on probation and parole.<sup>[142]</sup>

The fruits of this can already be seen in the October 2003 announcement by CCA that it had signed a new contract with ICE at its Houston Processing Center. The company also announced its intention to more than double the capacity of the facility to 905 beds.<sup>[143]</sup>

CCA's federal prospects have no doubt been aided by the continuing presence of former BOP director J. Michael Quinlan as well as the company's political contributions. Since 1997 the company has given \$101,800 in soft money contributions (i.e. those not designated for a specific candidate) to the national Republican Party, and its political action committee has given \$24,500 in contributions to Congressional candidates during the past two election cycles. Among the recipients have been Sen. Saxby Chambliss of Georgia, chair of the Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship, along with two other members of that panel—Larry Craig of Idaho and John Cornyn of Texas. Craig and Cornyn are also members of the Subcommittee on Crime, Corrections and Victims' Rights. On the House side, CCA's PAC gave to three members of the Committee on the Judiciary—Marsha Blackburn of Tennessee, Tom Feeney of Florida and Lamar Smith of Texas. Blackburn and Smith are members of the Subcommittee on Immigration, Border Security and Claims.<sup>[144]</sup>

#### **APCTO: Lobbying for Privatization**

"Adverse media reporting is a bigger issue with the banks than you might think. It underscores the need for getting a global privatization voice out there." So said Lisa Cohen of Summit Bancorp, speaking at the World Research Group/Reason Public Policy Institute prison privatization conference in 2000.<sup>[145]</sup>

That voice is the Association of Private Correctional and Treatment Organizations (APCTO). CCA and other private prison companies formed APCTO in 2001 to combat the industry's negative image, restore investor confidence and lobby for new business. According to CCA's director of government affairs, Jeremy Wiley, "APCTO will work diligently to educate key elected officials about our membership and the whole spectrum of vital public services we provide...APCTO will lay the foundation to become a defining force in the policy debates taking place in Congress, state legislatures and local governments."<sup>[146]</sup> APCTO's website lists CCA's John D. Ferguson as first vice president and the company's vice president of marketing and communications, Louise Green, as co-chair of the public relations committee.<sup>[147]</sup>

The organization's 2002 federal legislative agenda included: creating a privatization caucus in the U.S. Congress; supporting cost cutting measures in all departments; developing relationships with appropriate federal agencies and Congress; and increasing opportunities for private correctional and treatment organizations in the budget process.<sup>[148]</sup>

At its Industry Day at Capitol Hill on April 3, 2003 APCTO launched the Congressional Caucus on Public-Private Partnerships, co-chaired by Reps. Chris Cannon of Utah and Charlie Stenholm of Texas. The caucus aims to promote "greater use of private sector providers in the corrections and treatment field." APCTO participated in "nearly 50 meetings with individual congressional members and staff to discuss APCTO's legislative agenda."<sup>[149]</sup>

As part of its strategy to "get the good word out to those who set public policy for our industry, to our current and potential governmental customers, and to the general public," APCTO is summarizing "the best of the research literature on privatization" to be used "to get the objective truth of our industry to decision makers and the media. A subsequent project will establish a clearing house on the APCTO website to keep the membership and general public apprised of the latest privatization research."<sup>[150]</sup> But as we discuss in Chapter 9, that research will almost certainly conclude that privatization is superior.

More APCTO-sponsored pro-privatization research is to come. APCTO is "attempting to identify several colleges or universities that have strong criminal justice programs that APCTO can approach about the prospects of conducting further research into public-private partnerships in the corrections and related fields." Meanwhile the lobbying also continues apace. APCTO "will be conducting outreach to state and national think tanks and editorial boards from key state newspapers, and will be creating an

<sup>[151]</sup>

opinion editorial campaign.”——

Prison companies such as CCA have always claimed that they deserve to take over the management of prisons because they could do a better job. If this is true, it begs the question why CCA has had to go to such lengths to expand its business.

#### **Chapter 4: A WILD RIDE: CCA'S FINANCIAL PERFORMANCE**

For investors, the past two decades of CCA's history have been a wild ride, characterized at times by astounding rates of growth and at other times by disastrous financial results and shocking operational scandals. Within a short period of time, the company went from being ignored to being lionized to being condemned. As one Wall Street analyst put it: "After operating roughly ten years in relative obscurity, CCA became a darling of the investment community in the mid-1990s before crashing and burning in a spectacular fall from grace in 1999."<sup>[152]</sup>

That fall involved the destruction of hundreds of millions of dollars in shareholders' equity as investors lost faith in a dubious decision by management to create a real estate investment trust. The company narrowly escaped a bankruptcy, thanks only to the willingness of its creditors to restructure about \$1 billion in debt. Chief executive officer and co-founder Doctor Crants was unceremoniously expelled, and some \$120 million was spent to settle lawsuits brought by angry investors. Critics who had long pointed to the company's operating deficiencies could now point to financial disarray as well. The profiteers, it seemed, were not very effective at making a profit.

Over the past three years, CCA has sought to escape its unsavory reputation and to present itself as essentially a new company. In some respects it has been successful, but serious questions remain. But before assessing the company's future, let's review its financial past.

#### **The 15-Minute Deal**

CCA apparently had no difficulty raising funds for its start-up in 1983. CCA founder Tom Beasley, the story goes, went to see venture capitalist Jack Massey and quickly got the green light. "We made the deal and shook hands in 15 minutes," Beasley told *Forbes* magazine in 1985.<sup>[153]</sup>

Despite the failure of its audacious attempt to take over the entire prison system of Tennessee, CCA had other big plans and needed money to finance them. In August 1986 it filed a registration statement for a proposed initial public offering of two million shares of stock. The company had already attracted the attention of some well-known financial players. Its underwriting syndicate was to be managed by Donaldson, Lufkin & Jenrette, Prudential-Bache Securities and the Scandinavian investment bank Enskilda Securities. Yet the launch was not so impressive. The initial selling price turned out to be \$9 a share, well below the \$14-16 company executives had hoped for.<sup>[154]</sup> In other words, the company was able to raise only about \$18 million rather than \$28-\$32 million.

CCA's revenues grew handsomely in the late 1980s, increasing at a rate of about 50 percent a year. "We are recession-proof," crowed Beasley in early 1991.<sup>[155]</sup> Yet the company's profit performance did not keep pace. CCA had its first profitable quarter in 1988, but the profit was meager. CCA posted a profit of \$1.6 million for the full year in 1989, but the profit plummeted the following year and disappeared in 1991. These results kept the company's stock price in the cellar, as low as \$3 a share in 1987. In the early 1990s it briefly reached \$10 but mostly sold between \$5 and \$8.

The market began to look more favorably on CCA in 1994, following the completion of two profitable years and the attainment of annual revenues in excess of \$100 million. In December 1994 CCA graduated from Nasdaq to the more prestigious New York Stock Exchange, after which the stock soared. It reached a level of about \$50 a share, prompting the company to announce a 2-for-1 split in October 1995 (a move designed to keep the price of a single share price affordable). That month the *Business Week* stock advice column quoted an investment manager as saying: "It's the stock to own for at least the next 10 years if you're looking for a company that's dominant in an erupting market."<sup>[156]</sup>

By 1996 CCA was riding high. It issued 2.85 million new shares in an offering underwritten by regional investment banks J.C. Bradford and Stephens Inc., both of which had been strong proponents of the industry. In June 1996 CCA chief executive Doctor Crants, noting CCA's "unprecedented success in recent months," announced another 2-for-1 stock split, reflecting the continuing strength of the stock.<sup>[157]</sup>



## REITs and Restructuring: CCA Overreaches [\[158\]](#)

CCA sought a way to extract even more investment capital from the stock market to pay for its ambitious expansion plans. The solution it hit on was the real estate investment trust. REITs are publicly-traded entities that own and manage real estate but do not pay corporate income taxes. However, these tax avoidance entities must distribute 95 percent of their operating income as dividends to shareholders. These characteristics are intended to boost the price of REIT shares and thereby help raise even more capital.

In July 1997, CCA Prison Realty Trust, a REIT registered in Maryland, made an initial public offering of 21.3 million shares, priced at \$21, raising more than \$400 million. Most of the proceeds of the offering were used to purchase nine facilities from CCA, which leased them back and continued operating them under government contracts. This process improved the look of CCA's finances but amounted to the kind of off-balance-sheet transactions that would later become notorious in connection with the fall of Enron. Back in 1998 an investment banker told the financial magazine *Investment Dealers' Digest* that REITs such as Prison Realty were "an off-balance-sheet financing vehicle if you want to pursue more acquisitions." [\[159\]](#) The fact that Prison Realty owned only properties connected to CCA made it a captive REIT.

The use of off-balance-sheet financing was also at the center of numerous deals in which construction of CCA's prisons was financed through the issuance of tax-exempt lease-revenue bonds (or certificates of participation). These financing vehicles involve the creation of a non-profit entity that issues the bonds and acts as the titular owner of the facility. The bonds are backed by lease payments made by the correctional agency, which also pays CCA an operating fee. More than a dozen CCA facilities were built using this arrangement, which amounts to a form of taxpayer-subsidized low-cost financing for what is essentially a private facility. This financing is only one of the ways in which CCA (and other private prison operators) have received state and local economic development subsidies. It has also received tax abatements (in Youngstown, Ohio, for example), infrastructure assistance and other incentives. [\[160\]](#)

While Wall Street generally approved of the REIT deal, some observers expressed conflict-of-interest concerns over the fact that Doctor Crants, chairman and chief executive of the CCA operating company, was also to serve as chairman of Prison Realty, and his son D. Robert Crants III was to be president of the trust. [\[161\]](#) There also were some raised eyebrows over the price the REIT was paying to CCA for the nine prisons—more than \$300 million for facilities that had cost only \$170 million to build, a premium of some 80 percent. The newsletter *On Wall Street* pointed out that, in light of how difficult it was to sell prisons, the premium "seems very pricey." [\[162\]](#)

Nine months after CCA Prison Realty Trust was formed, it and CCA announced a plan under which the REIT would acquire the management company (CCA). Operating as a subsidiary of the REIT, CCA would be controlled by insiders and freed from the direct pressure of showing quarterly earnings growth, while CCA Prison Realty Trust would enjoy REIT tax benefits as the owner of the entire CCA portfolio of prisons. Many CCA stockholders were less enthusiastic about the deal, arguing that the amount they were going to be paid for their shares was below the recent market price. [\[163\]](#) Several major pension funds, including the California Public Employees Retirement System and the New York State Common Retirement Fund, came out against the deal. [\[164\]](#) In the end, however, the merger was approved, and the surviving public company took the name of Prison Realty Corporation (later changed to Prison Realty Trust Inc.).

Faced with slumping occupancy rates in its facilities, Prison Realty Trust had to take on more debt to survive. In May 1999, it landed a \$1 billion credit agreement (secured by the Trust's real property) from a syndicate of lenders led by Lehman Brothers. In the same period, it was hit with several shareholder class-action lawsuits charging that the REIT was paying an artificially high management fee to its operating subsidiary CCA. [\[165\]](#) The increase in the number of REIT shares generated by the merger increased the amount that had to be paid out in dividends.

All of this raised doubts about the wisdom of the restructuring, given that an arrangement that was supposed to free up capital had generated a financial squeeze instead. Securities analyst James Macdonald of First Analysis Corporation concluded in November 1999 that "the financial structure is unsustainably flawed. Ultimately, it needs to be demolished." [\[166\]](#) Even more serious was the fact that in Prison Realty's 10-K filing for 1999, the company's auditor, Arthur Andersen LLP, warned that the company's financial difficulties "raise substantial doubt about [its] ability to continue as a going concern." Andersen noted that the same concern had been raised by the auditors for CCA, which was privately held at the time. [\[167\]](#)

As Prison Realty Trust's share price fell to record lows, Doctor Crants was ousted as chairman in late December 1999, though he remained chief executive and a member of the board. This occurred as Prison Realty, struggling to meet its dividend obligations, announced that it had agreed to a restructuring program led by an affiliate of Fortress Investment Group LLC and affiliates of The

Blackstone Group. These parties, along with an affiliate of Bank of America, agreed to pump \$350 million into Prison Realty, which would cease to be a REIT, and help to expand its credit line.

In February 2000, Pacific Life Insurance Company, a large holder of Prison Realty shares, proposed a competing restructuring plan, which Prison Realty tentatively accepted. While the terms were being ironed out, Prison Realty fell into default under the terms of its \$1 billion credit agreement and had to get a waiver from its lenders. In June 2000, talks between Prison Realty and Pacific Life broke down and the prison company decided to restructure on its own. It devised a plan under which it would merge again with CCA and cease to be a real estate investment trust. Within a few weeks, Crants was deposed as chief executive of Prison Realty and CCA, and he was forced off the board.

In August 2000, Prison Realty agreed to a \$120 million settlement of the various shareholder lawsuits pending against the company, paving the way for approval of the new merger plan the following month.<sup>[168]</sup> Thus was the new Corrections Corporation of America created. In November 2000, the lenders involved in the \$1 billion credit agreement that CCA inherited from Prison Realty agreed to a series of amendments that helped the company avoid default. Despite this boost, CCA reported that in 2000 it had lost an astonishing \$730 million, reflecting a huge write-down of asset values. To shore up its share price, which had fallen below \$1, raising the danger of being delisted from the New York Stock Exchange (and thus losing its access to capital), CCA implemented a 1-for-10 reverse stock split in May 2001—an unusual and desperate move to prop up the stock price.

Lehman Brothers and the company's other lenders came through again, allowing CCA to restructure and extend its credit agreement, with the stipulation that the company raise \$100 million in new capital (which it did by selling assets such as two prisons in North Carolina and one in Nevada). This allowed the company to proceed with the settlement of the shareholder lawsuits and prompted the major credit rating services to upgrade their outlook on CCA. A stock analyst at Lehman Brothers lauded all this as a "remarkable turnaround."<sup>[169]</sup> The Internal Revenue Service did not join in the praise. It pursued charges against CCA in connection with questionable tax deductions taken in 1997 by the former Prison Realty Trust. In late 2002 CCA agreed to pay the IRS \$52 million to settle the charges.<sup>[170]</sup>

### **The New Investment Thesis**

Over the past couple of years, CCA has managed to persuade Wall Street analysts that it has changed and that it is poised to prosper. This has apparently not been very difficult, since nearly all of the few analysts who follow the company work for firms—above all, Lehman Brothers—that also have investment banking relationships with CCA, which now have to be disclosed in each analyst report.

It is interesting that the analysts, following management's lead, no longer talk in terms of CCA's providing better or more cost-effective services than the public sector. The new investment thesis is simply that prison overcrowding persists and that government agencies will have no choice but to use the services of firms such as CCA. As a July 2002 report by an analyst at Jefferies & Company, which has co-managed debt offerings for CCA, put it:

Although the growth rate in incarcerations has slowed in recent years, the absolute number of inmates continues to swell...Unfortunately, facilities at both the state and federal level are overextended, making placement of new prisoners much more difficult. With state budgets lacking sufficient resources to fund the development of new prisons and jails and the federal government ramping up drastic homeland security efforts, something needs to be done. While lighter or alternative sentencing can alleviate short-term budget constraints, it does not address the outstanding overcrowding issue. Instead, increased utilization of private prison capacity and services appears to be a logical choice.<sup>[171]</sup>

This analysis has some significant holes. For example, it assumes that the private sector will be the source of significant new prison capacity. CCA tried to play that role in the late 1990s by building prisons on spec, with disastrous results. The newly humbled and streamlined CCA is probably not inclined to use a lot of its own money to finance new prisons, given that it is still weighed down by debt. In the short term, CCA does have unfilled beds that it will be happy to provide, but that will hardly solve all of the public sector's overcrowding problem. In early 2003 CCA increased its overall capacity, not by building a new facility, but instead by spending \$47 million to buy the 1,200-bed Crowley County Correctional Facility in Colorado that had been run by Dominion Correctional Services. Yet a couple of months later, CCA lost 1,500 beds when the Virginia Department of Corrections terminated its contract to run the Lawrenceville Correctional Center.<sup>[172]</sup> In September 2003 CCA did take a step to increase its capacity by announcing plans to complete construction of the 1,524-bed Stewart County Detention Center in Georgia, which had been suspended in 2000.<sup>[173]</sup>

CCA's ability to invest in new facilities is hampered by the heavy debt load that the company continues to carry. At the end of 2002, CCA's debt was \$956 million, compared to only \$125 million at Wackenhut Corrections. The repayment schedule for

CCA's debt soars to about \$229 million 2007, \$250 million in 2009 and \$450 million in 2011. [\[174\]](#)

CCA's annual interest burden (\$87 million in 2002) has helped keep the company's net income in the red. The net loss in 2002 was about \$29 million. That's why management and friendly analysts prefer to speak in terms of EBITDA (earnings before interest, taxes, depreciation and amortization), which makes the results more palatable but does not conform with strict accounting rules. Using EBITDA, CCA's earnings last year were a more respectable \$189 million. Yet this controversial way of looking at financial results does not change the fact that the company is struggling in ways that could have a detrimental impact on operations.

The company has managed to increase its occupancy rate to about 91 percent, thanks to factors such as the federal contract for the McRae facility in Georgia and the more recent emergency contract from Alabama to house about 1,400 prisoners at a CCA facility in Mississippi. Lehman Brothers estimates that for every additional 1,000 beds CCA fills it enjoys an increase of about \$5.5 million in EBITDA. [\[175\]](#) "Take or pay" deals, such as the one at McRae, in which the company receives remuneration as if 95 percent of the facility were occupied, are especially attractive to CCA.

Analysts have seized on these deals to issue rosy forecasts for the company. An October 2003 report by Jefferies & Company said CCA "is on track to meet its stated expansion goals." [\[176\]](#) Recent quarterly conference calls have tended to be love fests, with the few analysts participating going out of their way to praise management for a job well done. On the August 6, 2003 call, Susan Jansen of Lehman Brothers prefaced her question by saying "congratulations on another fine quarter."

This positive outlook has helped to boost the stock price, which rose to about \$27.50 in mid-November, up from about \$18 at the beginning of the year. Also helping is the fact that CCA has begun to generate "real" net income (\$18.2 million in the third quarter of 2003) once again. Its "operating margin per compensated man-day" (the profit on its average prisoner per diem of about \$51) has recently increased to around 25 percent.

There is some wariness, however. The market pushed down CCA's stock price for a while in early August 2003, apparently out of concern over the new and relatively expensive debt taken on by the company. It may also be significant that CCA's largest institutional shareholder—FMR Corporation (parent of the Fidelity mutual funds)—has reduced its holdings by 527,000 shares, or about 17 percent, since the beginning of 2003. [\[177\]](#)

Overall, it cannot be denied that CCA is in better financial condition than it was a few years ago, but that's not saying much, considering how bad things were. This is a company that is still weighed down (in debt) by the mistakes of the past and still asks investors to sustain a questionable belief in a huge pot of gold in the future.

## Chapter 5: LOCKING DOWN LABOR COSTS

The rise of modern prison privatization was based in significant part on the notion that government was doing a poor job of incarceration. "The work done in the public sector in the last 30 years has been a dismal failure," asserted Ted Nissen, president of now-defunct prison operator Behavioral Systems Southwest, in 1985. [\[178\]](#) As part of their sales pitch, companies such as CCA made the bold (and perhaps contradictory) claim that they could operate prisons in a way that was both superior in quality and lower in cost.

On the cost side of the equation, CCA and the other operators had to confront the fact that prisons are a very labor intensive business. In its Securities and Exchange Commission filings after going public in 1986, CCA said that labor accounted for about two-thirds of its operating expenses. More recent filings do not specify an amount but say that labor is "the most significant component of fixed operating expenses." [\[179\]](#) Obviously, any cost advantage would have to involve this major portion of expenses. In a 2001 report for the Bureau of Justice Assistance, James Austin and Garry Coventry put it this way:

This point of containing labor costs is the crux of the privatization movement. Prisons are extremely labor intensive, with approximately 65 to 70 percent of the costs of operating a prison going to staff salaries, fringe benefits, and overtime. Controlling these costs is more difficult to achieve with unionized government workers. Private firms typically use nonunion labor, allowing for the lowest benefit packages. Overall, private firms claim that they can save 10 to 20 percent in prison operations due largely to efficient handling of labor costs. [\[180\]](#)

For CCA, "efficient handling of labor costs" meant—and still means—keeping strict controls on both wages and benefits, and this, in turn, required a policy of union avoidance. "Efficient labor is precluded in public facilities in several states by unionized labor," wrote Doctor Crants in 1991 while he was serving as CCA's president, "Union contracts tend to increase wage costs and promote

unjustified job security.”<sup>[181]</sup>

It was to CCA’s advantage that the states that were initially most receptive to prison and jail privatization—including Tennessee, Florida and Texas—were also ones in which unions were weak, partly as a result of “right to work” laws that discouraged unionization. CCA remained totally non-union from its founding until early 1993. In March 1993 CCA signed its first collective bargaining agreement—with an independent (non-AFL-CIO) union representing 73 guards at the Silverdale facility in Tennessee. The agreement was terminated a year later when the union was decertified.<sup>[182]</sup> In 1993 unions lost representation bids at two other Tennessee facilities: the South Central Correctional Center in Clifton and the West Tennessee Detention Facility in Mason.<sup>[183]</sup>

In January 1996 CCA signed an agreement with an independent union representing 38 non-security employees at the Shelby Training Center in Memphis, and the following year it recognized existing union representation arrangements when it took over the Correctional Treatment Facility in Washington, DC. Around the same time, it recognized a union representing about 60 guards at Shelby.<sup>[184]</sup> The next case of union recognition came in the late 1990s at the ill-fated Northeast Ohio Correctional Center in Youngstown, where CCA reached agreements with the Teamsters (representing non-security personnel) and an independent guards union.<sup>[185]</sup>

These organizing efforts did not have much of an impact on CCA. At the end of 2001, by which time the Youngstown prison was closed, only 515 of the company’s 15,156 employees were represented by unions, and the union presence was limited to four facilities.<sup>[186]</sup> In 2002 there was some new organizing by the Security, Police and Fire Professionals of America that brought the number of union-represented CCA employees up to 1,100. This was equal to about 8.2 percent of CCA’s total workforce.<sup>[187]</sup>

CCA at times has professed neutrality on unions. For example, in 2001 a company spokesman said, “we don’t take a stance as far as they’re good or they’re bad.”<sup>[188]</sup> That same year, however, organizers for an independent union charged that they were videotaped by management while distributing literature outside the CCA-run Tulsa Jail and that employees were made to attend meetings at which the warden warned them against supporting the union.<sup>[189]</sup>

What complicates an assessment of CCA’s labor record is the fact that many large unions shied away from organizing the company’s workforce and instead supported a campaign, led by public-sector unions, that opposed the very existence of an industry dedicated to incarceration for profit. Yet whatever was the main cause, CCA has remained largely non-union. This, along with the company’s preoccupation with depressing labor costs, has helped create substandard working conditions in CCA’s facilities.

**Benefits and wages.** The absence of unions during its early years enabled CCA to take what was perhaps its most significant step in controlling labor costs: denying its employees the kind of retirement benefits that unionized public-sector correctional employees ordinarily enjoyed. CCA offered employees shares of stock (which initially had questionable value) rather than pension benefits. A 1995 comparison of similar public and private correctional centers in Tennessee found that the CCA-run prison had employee benefit costs 23 percent lower than at the government-run facility. The study also found that higher-level administrative staff at the CCA facilities received much more lucrative benefit packages than the typical employee.<sup>[190]</sup>

In 1997 an official at the Monroe County Sheriff’s Office in Florida calculated that a CCA employee who retired at age 50 with 25 years of service would, over the rest of his or her life, receive only about 14 percent of the pension benefits that a correctional officer employed by the Sheriff’s Office would receive.<sup>[191]</sup>

These days CCA still does not offer a defined-benefit retirement plan to employees, but it does enable workers with a year or more of tenure to participate in a 401(k) plan. The company, however, will match employee contributions only up to five percent of pay. In addition, it takes five years for employees to be fully vested in any company contributions.<sup>[192]</sup> This means that the company benefits financially from high turnover of its staff. Public-sector correctional officers, by contrast, typically have defined-benefit pension benefits for which a worker is eligible at age 50 after 20 years of service or at any age with 25 years of service.

CCA has tended to be secretive about its salary levels, but occasionally details have become public. In 1995 a newspaper reported that positions at a proposed CCA facility in Wythe County, Virginia would have starting salaries as low as \$13,840.<sup>[193]</sup> A 1999 article in *Corrections Professional* pointed out that guards at CCA’s Diamondback Correctional Facility in Oklahoma were earning only \$8.25 an hour, which it noted was barely above the federal poverty line for a family of four.<sup>[194]</sup> Guards at Youngstown were paid a more generous \$11.84 an hour, but this was below the \$12.49 received by correctional officers at Ohio  
<sup>[195]</sup>



state prisons.— In February 2003 a state official in Colorado said that CCA was paying its employees in the state an average of \$8,000 a year less the salaries of public-sector correctional officers.<sup>[196]</sup> In August 2003 the union at the D.C. Correctional Treatment Center held a press conference to complain about inadequate pay and forced overtime.<sup>[197]</sup>

The problem of low salaries is common throughout the private prison industry. According to the *Corrections Yearbook*, the average starting salary of guards in private adult prisons in 2000 was only \$17,628, and the average maximum salary was a mere \$22,082. It should be noted that these averages were calculated without information from facilities run by CCA, which declined to provide data to the *Corrections Yearbook*. CCA's non-cooperation was one of the reasons the Yearbook's editors finally decided to stop publishing salary data on private facilities.<sup>[198]</sup>

By comparison, data published in the U.S. Labor Department's *Occupational Outlook Handbook* show that in 2000 federal correctional officers had a median salary of \$37,430. At the state level the median was \$31,860, and at the local government level it was \$29,240.<sup>[199]</sup>

**Executive compensation.** Like most corporations, CCA's quest for cutting labor costs disappears when it comes to the firm's top executives. In 2002, Chief Executive John Ferguson was paid a salary of \$400,000 and a bonus of \$458,846. Senior Vice President J. Michael Quinlan had a salary of \$281,323 and a bonus of \$131,562; Executive Vice President Irving Lingo Jr. had a salary of \$299,116 and a bonus of \$199,312; Executive Vice President G.A. Puryear IV had a salary of \$168,617 and a bonus of \$122,282; and Operations Vice President Jimmy Turner had a salary of \$186,576 and a bonus of \$50,252. Each of the five men, the highest paid officers of the company, also received stock options.<sup>[200]</sup> It should be noted that the compensation received by each of the five men was greater than the salary of the director of the Federal Bureau of Prisons, who is in charge of a system with more than 100 facilities and about 160,000 prisoners—far larger than CCA's.

**Wage & hour compliance.** It has been alleged that some of CCA's facilities have violated the overtime pay and minimum wage rights of its employees. In 2001, lawyers in Mississippi brought three suits against the company in federal court for violations of the Fair Labor Standards Act. The suits charged that guards were required to attend meetings off the clock and were barred from clocking out on days during which they worked more than eight hours.<sup>[201]</sup> CCA settled the cases out of court. According to an online database of wage and hour violations, CCA's Winn Correctional Center in Louisiana paid \$5,430 in 2000 to settle charges that it had violated minimum wage rules in connection with 33 employees.<sup>[202]</sup> At its San Diego Correctional Facility, CCA paid \$4,846 in 2000 for failing to pay the prevailing wage rate to 48 employees under the federal Service Contract Act.<sup>[203]</sup>

**Inadequate staffing levels.** The need to work people overtime (and then shave off paid hours to reduce the additional labor costs) can be seen as a reflection of inadequate staffing levels. For example, a 1999 audit by the Georgia Department of Corrections of two CCA facilities in the state found insufficient staffing at both prisons. As a result, auditors said, critical security posts were sometimes not staffed for entire eight-hour shifts, and prisoners had easy access to tools that could be fashioned into weapons.<sup>[204]</sup> In his 1998 article on CCA in *The Nation*, Eric Bates quoted a guard as saying "We're always short...They do staff fewer positions—that's one way they save money."<sup>[205]</sup> A September 2003 audit of prisons by the state comptroller of Tennessee cited numerous instances in which CCA had failed to live up to its contractual obligations on staffing at the South Central Correctional Facility and the Hardeman County Correctional Facility.<sup>[206]</sup>

**Lack of experience.** Given the pay and benefit levels offered by private prisons operators, it is no surprise that many of the people who apply for jobs and end up being hired do not have extensive corrections experience. This was made abundantly clear in the report that the District of Columbia Corrections Trustee issued in 1998 on the CCA-run prison in Youngstown. The report, which cited inexperienced staff as a major contributor to the problems at the facility, found that more than half of the senior correctional officers at Youngstown had no prior correctional experience of any kind (or only minimal experience as security guards) before being hired. The same was true of two of the nine assistant shift supervisors (lieutenants). Four of the six shift supervisors (captains) had less than five years of experience in the field. Taking into account the many inexperienced hires among entry-level personnel, the report found that overall, 80 percent of the security staff at the prison were new to the field of corrections.<sup>[207]</sup>

Inexperienced staff was also cited by Hawaii state auditors in their 2001 study of violent outbreaks among prisoners (including ones from Hawaii) at CCA's Florence Correctional Facility in Arizona.<sup>[208]</sup>

CCA may be willing to hire inexperienced men, but in one case it was accused of refusing to hire women. In 2002 CCA's North Fork Correctional Facility in Oklahoma agreed to pay \$152,000 in back wages to 96 women who claimed they were denied employment because of their sex, according to charges brought by the U.S. Department of Labor.<sup>[209]</sup>

In some cases, the people hired by CCA have the wrong kind of criminal justice experience. For example, during a 2002 review of the company's Gadsden Correctional Facility, the Florida Department of Law Enforcement found that CCA had failed to follow registration procedures for dozens of guards and that five of these individuals had arrest records that should have been reported.<sup>[210]</sup> In May 2001 a Tulsa newspaper found that 20 of the 348 employees hired by CCA to work at the city's jail had arrest records. Most were for traffic offenses, but there were also cases of burglary, pointing a deadly weapon, assault and battery, shoplifting and fraud. CCA told the newspaper that it did not hire convicted felons, but it took a "case-by-case approach" with regard to applicants who had been convicted of misdemeanors.<sup>[211]</sup>

**Turnover.** What goes along with inexperience and low pay is high turnover. A 1999 report by the Tennessee Department of Correction found that turnover at CCA's South Central Correctional Center the year before had been 104.8 percent, while that at CCA's Hardeman County Correctional Center was 81.7 percent. At publicly run prisons in the state the overall turnover rate was 34 percent, and no facility had a rate above 52 percent.<sup>[212]</sup>

In July 2001 a newspaper reporter did an analysis of work records at the CCA-run Tulsa Jail and found that 72 percent of the people hired when the company began operating the facility in August 1999 were no longer there.<sup>[213]</sup> A similar analysis, published in January 2003, found annual turnover rates of more than 60 percent for CCA facilities in Tennessee.<sup>[214]</sup> By contrast, the average turnover rate among state correctional officers is about 16 percent.<sup>[215]</sup>

**Insufficient training.** Another part of the mix is inadequate training of personnel. In a 1998 report on Youngstown, the D.C. Corrections Trustee found that CCA did not require pre-service firearms training for guards and that its overall in-service training requirements were loosely enforced. For example, guards were given credit toward the 40-hour annual requirement simply for attending staff meetings.<sup>[216]</sup> Youngstown guards told a newspaper reporter that CCA did not provide firearms training because of the cost—about \$3,000 per worker—of state certification in that area, yet the company allowed untrained guards to carry guns.<sup>[217]</sup> At the Hernando County Jail in Florida, 44 percent of the guards did not have state certification in 1999.<sup>[218]</sup>

### **"A Recipe for Disaster"**

Taken together, these labor practices spell trouble not only for private prison employees, but also indirectly for prisoners and for the public at large. As Joshua Miller of the public employee union AFSCME put it in his survey of private prison working conditions:

Private corrections is structurally flawed. The profit motive drastically changes the mission of corrections from public safety and rehabilitation to making a quick buck. Chronic employee turnover and understaffing, a high rate of violence, and extreme cost-cutting make the private prison model a recipe for disaster.<sup>[219]</sup>

As the largest and most influential of the prison companies, CCA has its name writ large on that recipe. It is difficult to avoid the conclusion that the numerous operating problems CCA has experienced are at least partly a result of the company's drive to reduce labor costs. Understaffing, high turnover, and substandard wages and benefits all lead to the creation of a labor force that may be ill equipped to do what is a stressful and often dangerous job.

## **Chapter 6: CCA's INTERNATIONAL OPERATIONS: AN OVERVIEW**

In its January 27, 2003 press release announcing plans to celebrate the company's twentieth anniversary, CCA conveniently failed to mention a key fact about its history: CCA once had global aspirations. In 1995, one industry analyst claimed that Corrections Corporation of America had identified markets in Canada, Brazil, Mexico and China "which in the long term could represent the majority of [CCA's] earnings."<sup>[220]</sup>

But it was not to be. CCA did influence the implementation of prison privatization in the United Kingdom and Australia where, in the state of Victoria, its joint venture earned the dubious distinction of being the only private prison operator to have had a government buy out its contracts due to failure. CCA failed to win contracts in Canada and New Zealand and apparently decided not to pursue the South African market. CCA ultimately disposed of nearly all of its limited international interests to concentrate on the United States.

## **Global Aspirations**

Unlike its major U.S. competitor, Wackenhut Corrections Corporation (originally a subsidiary of the global security giant Wackenhut Corporation), CCA did not start out with a ready-made international corporate structure to capitalize on. And at the time of CCA's early forays into international markets, the company had only a handful of U.S. contracts and was still unprofitable. Further, there was no independent evidence that the prisons it operated were achieving their stated aims. Yet none of this stopped CCA from marketing itself as a successful operator.

From early on, CCA's strategy was to identify potential markets abroad and form joint ventures with politically well connected and experienced security, construction and finance corporations to lobby governments, promote prison privatization and bid for contracts.

## **Europe**

One of CCA's first foreign forays was in France. In December 1986 CCA signed joint venture agreements with French construction firm Spie Batignolles, contract services giant Lyonnaise des Eaux and Banque Worms. The consortium, known as COGESIP, was to bid for contracts to finance, design, build and operate French penitentiaries.

However, a subsequent change in government policy limited the private sector's role to construction, maintenance and non-custodial operations at 21 new prisons. French firms won the contracts, while CCA was left out in the cold. When CCA entered into a strategic alliance with Sodexho in 1994, the company agreed not to pursue business in France.

CCA also experienced disappointment in Italy and Switzerland. In 1986 the company signed agreements providing for the "joint development of the Italian and Swiss markets."<sup>[221]</sup> Then in 1988 CCA signed an agreement with Iniziative Industriali SpA, part of the SASEA Group.<sup>[222]</sup> But neither the Italian nor Swiss governments adopted a prison privatization policy.

However, CCA made inroads in the United Kingdom. In 1986 the UK parliamentary Home Affairs Committee was examining the state and use of prisons in England and Wales. Privatization was being considered for the first time in the UK and, in October 1986, members of the Committee visited two establishments run by Corrections Corporation of Australia. Although they also visited facilities run by RCA Service Co., it was CCA that impressed to the extent that, in its subsequent report to Parliament, the Committee relied heavily on what CCA had told them about privatization, taking at face value the assertion that this system of provision in the United States was now a "proven concept."<sup>[223]</sup>

In 1987, CCA formed the joint venture company UK Detention Services Ltd. (UKDS) with two long-established British construction companies, Sir Robert McAlpine & Sons Ltd. and John Mowlem & Company. Both companies were regular contributors to the then ruling Conservative Party.

But instead of simply waiting for the British government, CCA set out to speed up the privatization process. In a memorandum signed on January 19, 1988 the joint owners of UKDS agreed to "promote the private design, financing, construction and management by private contractors of prisons and remand facilities in the United Kingdom (including the acquisition of land and/or other property in connection therewith)."<sup>[224]</sup>

UKDS later admitted to having "a leading role in explaining the benefits of private sector management of prisons and the advantages of introducing competition to the Prison Service." For example, Mowlem letterhead was used to lobby Members of Parliament to support enabling legislation for privatizing prisons. A letter to members of the House of Lords dated March 7, 1991 and signed by Nicholas Hopkins (the UKDS director of corporate communications) tried to drum up support, stating:

We have actively promoted the introduction of private sector management of our prisons for four years ... the present UK public sector prison service is rightly under attack. UKDS wants the opportunity to show just how much better the best of the private sector can do the job ... I do hope for your support and I would welcome the opportunity to discuss the matter further if you so wished.

Later, Hopkins said: "It took us two or three years to finally convince government that it was indeed the right course of action" and that with regard to the UK's enabling legislation "UKDS was very much involved in bringing forward the arguments in favour of the case."<sup>[225]</sup>

Despite CCA's involvement in influencing the UK government in the 1980s, UKDS' first British contract was not awarded until



1992. This was to manage Blakenhurst prison at Redditch, in the West Midlands. The 649-bed medium-security prison opened in May 1993 and was the first privately managed prison housing sentenced offenders.

CCA had also acted as a consultant to Mowlem and McAlpine in the building of Wolds prison in North East England.<sup>[226]</sup> Wolds, like Blakenhurst, was part of a program of new prisons earmarked for public operation. But after the government decided to use Wolds to launch privatization it ended up being run by competitor Group 4, which beat off a bid by UKDS.<sup>[227]</sup> It was not until 1998 that UKDS won its second contract from the Prison Service of England and Wales. This was to finance, design build and operate an 800-bed prison in Salford, north west England.

For a brief account the troubles experienced by UKDS, including its involvement in the unlawful death of a prisoner, see Chapter 7.

## Australia

In November 1988 CCA was invited by an Australian construction firm to a promotional event in Sydney, New South Wales.<sup>[228]</sup> In 1989 CCA executive T. Don Hutto and his colleagues traveled through Australia to persuade state governments to privatize prisons. The first to respond was Queensland, which in November 1989 awarded CCA its first contract outside of the U.S. and the first private prison management contract in Australia.

However, one version of events is that it was Wackenhut's partner that persuaded Queensland to privatize. According to Bill Curnow, Executive Manager Infrastructure for Thiess Contractors, which formed an Australian consortium with Wackenhut, "it was Thiess that convinced Jim Kennedy in his report to the Queensland government to put its toe in the privatization waters, and it was Thiess that convinced the New South Wales government to test the water as well."<sup>[229]</sup>

Jim Kennedy was the author of a report that was instrumental in convincing the government of Queensland to privatize prisons. In May 1998 Kennedy had published an interim report on the future of Queensland's correctional system. In that he had decided against privatization. Between then and his final report in August 1998 he changed his mind.

Australian academic Paul Moyle noted that Kennedy offered "no account of why [he] had lost his reservations about the ethics of the state relinquishing its supervision over sentenced offenders and committing them to the control of companies" but there was "a strong impression that Kennedy had changed his mind on the basis of discussions with several companies."<sup>[230]</sup>

In 1989 CCA formed a joint venture company, Corrections Corporation of Australia Pty. Ltd. (CC Australia). The company won the contract to manage Borallon Correctional Centre, a 240-bed medium-security facility for men which opened in January 1990 at Ipswich, near Brisbane.

In April 1994, the government of Victoria awarded CC Australia a three-year contract to provide prisoner security at St. Augustine's Security Ward at the St. Vincent's Hospital and Melbourne Supreme and County Courts; and prisoner transport between prisons and the Melbourne Supreme and County Courts. In announcing the award on April 28, 1994, the Government stated that there would be better protection for the community and cost savings of approximately 20 percent.

But for a month after the contract was awarded, CC Australia staff did not have firearms accreditation and the Government had to temporarily subcontract the work back to the state correctional services division.<sup>[231]</sup>

Noting that the company had also been short listed to run one of Victoria's three new prisons, the opposition corrections spokesperson asked the government minister: "How can we have any confidence that the government is able to get it right with a major prisons contract when it can't get it right with something as simple as this contract...you have to question the security and competence of the company involved."<sup>[232]</sup> This comment was to prove prophetic.

In December 1994, Victoria chose CC Australia's consortium to finance, design, build and operate the 125-bed Metropolitan Women's Correctional Centre (MWCC) near Melbourne.

For CCA's overseas operations, 1995 was a pivotal year. That year CCA acquired Corrections Partners Inc. (CPI), a competitor that also had international aspirations. CPI was bidding for contracts in Australia, Canada, New Zealand and the UK. In Australia, CPI formed a consortium known as CorrPac Pty. Ltd. A CPI advertisement for staff described CorrPac as having "long range economic objectives throughout Australia and the Pacific region"<sup>[233]</sup>

Also in 1995, CC Australia's contract to operate Borallon in Queensland was extended for a further five years: and CC Australia bought out a stake in the company that had been held by Chubb Security and sold it to Sodexho, giving the French company a 53 percent stock holding but only 50 percent voting rights.

By early 1999 CCA still had high hopes for the Australian market. According to Prison Realty Corp's 10-K for the year ending December 31, 1998, "CC Australia provides services similar to CC America in Australia and surrounding countries." The reality was, however, that the company had not yet cracked the market in surrounding countries.

In 1999 a commission of inquiry in Queensland found that existing contracts [CC Australia at Borallon and Wackenhut subsidiary ACM at Arthur Gorrie Correctional Centre] "did not reflect best practice."<sup>[234]</sup>

However, this conclusion did reflect the findings of academic Paul Moyle's research. His comparative study of CCA-run Borallon and the publicly run Lotus Glen prison concluded that:

the impact of private contract management upon the Queensland corrections system during the early 1990s was not revolutionary, or for that matter, particularly innovative. Therefore the hypothesis that the private sector will introduce important improvements relating to implementing better quality programs, providing industrial and trade training, improving staff and prisoner perceptions of interpersonal relations, reducing levels of violence and assault and improving the provision and utilization of amenities, was not proved. Further, Borallon's introduction led to a dual system. Borallon did not comply with QCSC policies and reduced accountability to external stakeholders. Finally, the distinction between the allocation and the administration of punishment was breached.<sup>[235]</sup>

In opposition, the Labor party had pledged to return Victoria's private prisons to the public sector. But following its election win in 1999 the new government continued to be kind to CC Australia. In December 1999 the government announced the award of a 20-year contract to finance, design, build, maintain and operate a A\$140 million county court complex in Melbourne. The successful bidder was The Liberty Group consortium, which included CC Australia.<sup>[236]</sup>

Also in 1999 the company sealed an interest in its third Australian state when, in partnership with construction firm Transfield, CCA was chosen as preferred bidder by the government of Western Australia to build and manage Acacia, a 750-bed medium security prison at Wooroloo South. In January 2000 the company announced that it had signed a five-year contract.<sup>[237]</sup>

Less than two weeks later, CCA announced the signing of a five-year contract with the same government to provide court security and prisoner transportation from July 2000 onwards. Announcing the new contract, Tom Beasley of CC Australia's U.S. parent said: "By the end of 2001, Corrections Corporation of Australia expects to provide transportation and custodial services for all major law enforcement agencies throughout Western Australia" and that "the international arm of Prison Realty Trust continues to garner contracts and expand its services to foreign governments, particularly in Australia. We believe this growth is further evidence that privatization of public services in both the domestic and international arenas will increase."<sup>[238]</sup>

Meanwhile, in Queensland, the commission of inquiry's negative findings about private prison contracts had not stopped the government from continuing with private management. However, the government ended CC Australia's involvement in the state when, in September 2000, it announced that, after 10 years, the company had lost the Borallon contract to Management & Training Corporation of Utah, one of CCA's main U.S. competitors. As we show in Chapter 8, around the same time in Victoria, CC Australia had run into serious trouble at its Metropolitan Women's Correctional Centre.

## The Sodexho Connection

In June 1994, Doctor Crants, then CCA's president and chief executive, announced a new international joint venture with Sodexho, a Paris-based international facilities management company with a growing interest in the private prison market. "Our partnership links two premier service providers with the expertise to make a significant impact on the global corrections market at a time when every criminal justice system is seeking fiscally sound, technically innovative ways to solve their corrections problems," he said.<sup>[239]</sup>

According to the terms of the agreement, the joint venture was to bid for management projects outside of the U.S., U.K., Belgium and Australia, splitting profits 51/49 percent in English-speaking countries, where CCA would take the lead, and 49/51 percent in the rest of the world, where Sodexho would lead.

Sodexho became CCA's principal shareholder and Sodexho director Jean-Pierre Cuny joined the CCA board.<sup>[240]</sup> At the time, Sodexho had operations in 46 countries and through its SIGES subsidiary provided non-custodial services to six French prisons.

In the early 1990s Sodexho had formed a subsidiary in the U.K. called ManCare, but the company failed to win any contracts.

Within a few years Doctor Crants was explaining the Sodexho deal rather differently:

In 1987 Sodexho plunged into the private prison management business in France. They came here thinking they would enter the U.S. market. We made a strategic alliance that we would market together in international marketplaces. Less well known is our agreement that we would not pursue business in France. And they would not pursue business in the US. We did not want to wake up one morning and have a \$6 billion revenue giant bouncing around in the domestic market. And we did not see ourselves as giving up anything in France. I would imagine the French government would never give an American company a contract. [\[241\]](#)

Sodexho became the 50 percent joint owner of CC Australia in the second quarter of 1995. [\[242\]](#) By 1997 Sodexho had also become CCA's 50 percent partner in UK Detention Services Ltd.

By the end of August 2000 Sodexho provided non-custodial services to eight prisons in France, five in Spain, three in Italy, 21 in the Netherlands, one in Belgium as well as having a stake in CCA's joint venture operations in the UK and Australia. But, as described below, the company was also preparing to sell its stake in CCA and acquire the British and Australian joint ventures outright.

### **The End of Global Aspirations**

Despite its early aspirations and the alliance with Sodexho, by 1998 CCA had not gone global and still only had contracts in the U.K. and Australia. Doctor Crants tried to rationalize this failure:

Approximately half of the prison inmates in the world are in the US ... we have incarcerated in US prisons and jails at county, state or federal level approximately 1.8 million people. The sum of all the rest of the countries on the face of the earth is about 1.8 million, counting the People's Republic of China, which says it has one million people locked up. A country like England has 60,000 people incarcerated. So the international market is not very interesting when compared with the domestic market. It's not a priority for us. There are also cultural differences. That's why we're only in Australia and the UK. [\[243\]](#)

Speaking at the 1999 annual meeting of Prison Realty, Crants tried another approach, making it seem as if CCA's international frustrations were due to ideological considerations. He said CCA and Prison Realty were interested primarily in the United States because, while the U.S. is a "free enterprise nation," most other countries in the world are "if not Socialist, at least socialistic ...they tend to be against privatization because they think it interferes with the contract between government and workers." [\[244\]](#)

As part of its restructuring in 2000, CCA sold its 50 percent holdings in UK Detention Services Ltd. and CC Australia to Sodexho, suffering a net loss of \$2 million on the transactions. The following May, Sodexho sold its stake in CCA, with the majority of that stock ending up in the hands of Latonia International Ltd., an affiliate of Luxembourg-registered Rolaco SA. Sodexho director Paul Jeanbart was a co-founder and chief executive of the Rolaco Group and CEO of Rolaco Holdings SA.

According to Sodexho "as part of our divestiture from CCA we purchased CCA's stake in both of those companies because that was the only way we could sever those business relationships." [\[245\]](#)

In April 2001 CCA sold a financial interest in Forest Bank in England but retained a 50 percent stake in Agecroft Prison Management, the company managing the prison. The deal raised some \$65.7 million, which was used to reduce CCA's debt.

In sum, CCA not only failed to take the world by storm but, as the following chapters show, the company also failed to live up to its promises in the U.K. and Australia.

### **Chapter 7: UNDERACHIEVING IN THE U.K.**

We would do what we can to make a prison cheaper, so long as the specification was left entirely to us. What we envisage is quite simply building secure places where there would be just one person watching all the inmates on a TV screen. All the doors would open electronically and all the men would come out and then walk around their yards and then they would go back in again. There would probably be workshops and recreation facilities. [\[246\]](#)

UKDS will certainly stay, offering the highest standards of prison management, innovation and new ideas, value for money for governments and taxpayers and, above all, caring, humane forward-looking regimes for prisoners committed to our care. What our American colleagues might call a win-win solution. [\[247\]](#)

These visionary statements by UK Detention Services Ltd. (UKDS) representatives in the late 1980s and early 1990s, respectively, did not match the reality of CCA's joint venture operations in the United Kingdom.

UKDS became mired in controversy within months of being awarded the contract to manage Blakenhurst prison. In April 1993 the BBC television program *Public Eye* raised questions about the company's suitability as a prison contractor in the UK. [\[248\]](#)

The program dealt with lawsuits involving the Arkansas and Virginia state prison systems, where T. Don Hutto was in charge before joining CCA as a director in 1983, as well as scrutinizing CCA's operational history in the US. The Prison Reform Trust followed this up by sending a critical dossier on CCA to the government. [\[249\]](#)

In response, the government sent F.W.P. Bentley, a non-executive director of the Prison Board, to the United States to investigate the issues raised.

Bentley was in the U.S. between April 30 and May 7, 1993. His report to ministers, which was not made public, noted that: "Assertions made against CCA covered a range of issues including their lobbying methods; policies on staff recruitment, training, remuneration practices and unions; provision of educational, vocational and health care programs; and contract compliance generally. Like many businesses CCA has clearly not been without problems under these headings from time to time, but there is no evidence that, in the United States context, CCA has overstepped the bounds of legality in any of these areas." [\[250\]](#)

Although Bentley gave CCA a clean bill of health and the Blakenhurst contract continued, UKDS did not win another prison contract in the UK until five years later in 1998. Only after CCA sold its 50 percent interest in UKDS to Sodexo in 2000 did UKDS go on to win two more prison contracts. In the meantime, rivals Group 4 and Wackenhut had become the dominant correctional services companies in the UK.

Shortly after the completion of Bentley's investigation, problems began to emerge at Blakenhurst, beginning with a major gaffe by David Brooke, the former Prison Service governor who had been brought in to direct the facility. In June 1993 a photograph of Brooke unlocking a cell during a visitors' open day appeared in the *Birmingham Post*. Unfortunately for Brooke and the company, his keys were clearly identifiable and therefore posed a security breach. UKDS had to replace 84 locks and keys, reconfigure some 570 levers and replace a further 500 keys. [\[251\]](#)

In August 1993 the director was sent by UKDS to the United States for further training and was formally replaced in October 1993 by the deputy director, who had no previous experience of governing a prison. [\[252\]](#)

In February 1994 UKDS became the first private operator to be penalized by the government when it was fined £41,167 after losing control of Blakenhurst during a disturbance. [\[253\]](#)

Between opening day in mid-1993 and July 1994, one UKDS staff members was dismissed for assaulting a prisoner, another for having a criminal conviction for theft, a third for colluding with prisoners to allow an assault on another prisoner, and a fourth for insubordination. [\[254\]](#) By March 1994 staff turnover was 10%. [\[255\]](#) This included 42 resignations. [\[256\]](#) Pay and conditions might have been an influence. The U.S. practice of private prison management brought a two-tier system of wages and conditions into the U.K. prison system. UKDS paid their custody officers £1,500 per year less than their public sector counterparts, for a 40-hour week and a willingness to work any assigned shift. [\[257\]](#)

In February 1995 the chief inspector of prisons published a report of his team's inspection of Blakenhurst eight months earlier. [\[258\]](#) He found that "the most disappointing feature was the comparative shortage of innovation." He also reported that the prison was failing to deliver contracted services in several areas and the Home Office was not ensuring that the original tender submission and the contract were being adhered to. Better systems needed to be introduced "if the secretary of state is to be satisfied that value for money is being achieved." His 109-page report included over 100 recommendations for improvement. The press release accompanying the report stated that "it was possible to detect a confusion of cultures between the American and traditional British styles of managing prisoners." [\[259\]](#)

Incidents of violence, security breaches and other operational problems occurred at Blakenhurst throughout CCA's joint ownership. The most serious was the death of prisoner Alton Manning, which is described below. Some other examples include:

- ▷ On May 1, 1995 Jeffrey Titmarsh, a UKDS prisoner custody officer, was jailed for 18 months for scheming to have two prisoners beaten up after he suspected they had put drugs in his coffee. [\[260\]](#)
- ▷ On August 7, 1996, 25-year old prisoner John Cowley was found hanging in his cell. His was the fourth death at the prison within ten months. [\[261\]](#)
- ▷ In 1997 the Prison Service invoked special powers to force UKDS to change Blakenhurst's locks following reports that prisoners had obtained a set of keys. UKDS refused to pay and so taxpayers footed the estimated £200,000 cost. [\[262\]](#)
- ▷ In November 1998 the company was fined £25,000 for allowing a prisoner to escape from escort. [\[263\]](#)
- ▷ In 1998/99 the prison "had the highest rate of positive drug tests and the third highest assault rate in the country." [\[264\]](#)

Almost five years after opening, for the year ending March 31, 1998, Blakenhurst failed to meet its performance targets in respect of: assaults as a percentage of the prisoner population, hours of purposeful activity per week, percentage of prison population tested for drugs and percentage of positive drug tests. The number of assaults was more than double either of the prison's comparators. In terms of education, Blakenhurst offered no accredited courses. [\[265\]](#)

However, these shortcomings did not prevent Blakenhurst from being regarded by the chief inspector of prisons as having a "can do" culture. [\[266\]](#)

UKDS also won its second contract in 1998. This was to finance, design, build and operate Forest Bank prison in Salford, north west England. The 800-bed prison opened in January 2000. Inferior wages and conditions were immediately an issue, although there were improvements at both Forest Bank and Blakenhurst after some staff joined the Prison Service Union (PSU), a non-Trades Union Congress-affiliated union that the company had agreed to recognize.

In an interview in 2000, PSU General Secretary Phil Hornsby said there was "an acute shortage" of staff at Blakenhurst and those who remained could not take their four weeks' annual leave. [\[267\]](#) The company compensated for this with Time Off In Lieu (TOIL) but, due to staff shortages, this could not be taken either. The company's failure to provide meal breaks was one of a number of issues that had been raised with the government's Health and Safety Executive.

According to Hornsby, starting salaries for new staff at Blakenhurst had been cut from £13,500 when the prison first opened to just £12,500. Meanwhile, at Forest Bank he reported that employees did not have meal breaks and the prisoner population was about to be increased from 800 to 1,100. Staff shortages meant that one officer was often left alone on a wing with 60 to 70 prisoners. "The company is desperately trying to recruit and is paying staff overtime to keep them there," said Hornsby. After the PSU intervened, the company stopped the practice of requiring staff to arrive for an (unpaid) briefing 15 minutes before their shift was due to start.

By the time CCA sold its operational interest in UKDS to Sodexo in 2000, a tendering process for the renewal of the company's Blakenhurst contract had been long underway. Unlike in 1992, when the company only had to bid against other companies, this time UKDS was also up against a Prison Service in-house bid. On January 12, 2001, a couple of months after the sale to Sodexo, the prisons minister announced that UKDS had lost its contract to that in-house bid. [\[268\]](#)

The company's cut-rate wages had not been enough to keep costs down and guarantee the contract's renewal. The gap between the bids was startling. The Prison Service bid was 13 percent higher on quality yet 12 percent lower on cost than the bid from UKDS.

A third inspection of Blakenhurst by the chief inspector of prisons was carried out some ten days after staff had found out that they had lost the contract. The chief inspector said: "of more immediate concern is the clear evidence that treatment of and conditions for prisoners...had at best stood still since our previous inspection [in 1998], and in some respects have become worse. It was disappointing to find so many previous recommendations still not actioned and so many promising innovations stalled." [\[269\]](#) This deterioration had clearly set in long before CCA's departure.

## THE UNLAWFUL DEATH OF ALTON MANNING



UK Detention Services Ltd. has the dubious distinction of being the first private prison operator in the United Kingdom to cause the unlawful death of a prisoner and the first to cause such a death by the use of restraint. [270]

The victim in that incident was Alton Manning, a black prisoner who was 33 years old at the time of his death on December 8, 1995 at Blakenhurst. [271] The full story of Manning's demise did not come to light until a coroner's inquest that took place more than two years later. On March 24, 1998 the jury in that inquiry returned a unanimous verdict that Manning had been unlawfully killed by UKDS staff.

However, this was not before UKDS had taken the unprecedented step of applying to the High Court to deny the jury the option of returning such a verdict. But the circumstances surrounding Manning's death led the court to reject the company's arguments.

The case of Alton Manning still resonates today, in part because none of those allegedly involved in his death has yet been brought to justice. We present here a summary of the disturbing facts that came to light during the inquest. The events leading to Manning's death commenced when two guards, identified only by their last names Brumby and Reynolds, went into his cell to carry out what was supposed to be a routine random search for drugs. When Manning was taken into another cell for a strip search, he readily cooperated. He balked, however, when he was ordered to squat for an inspection of his genital and anal areas. According to prison policy, such a search was to be performed only when a guard had grounds for suspecting that a prisoner was hiding contraband. Officer Brumby testified at the inquest that he had had such suspicion, but he could not explain why he had not mentioned it in his statement to the police the day after the incident took place. Manning refused to squat and a struggle took place. The officers claimed that Manning became violent and attacked Reynolds. After Brumby called for help, a number of other guards arrived at the cell and became involved in the incident. Manning was thrown to the floor and held prone, face down, with officers putting his arms in locks and restraining his head and legs. Reynolds testified that he put a knee at the base of the spine for two to three seconds. This form of restraint was in direct contravention of Home Office directives on Control and Restraint. Reynolds, unlike other more junior officers, claimed he did not know of this Home Office guidance and could not remember whether he had been trained in it. Manning was removed from the cell while being held face down by several guards. Several prisoners who witnessed the event testified that one of the guards held Manning in a neck lock. The witness said that at one point Manning was placed on the ground and violently kicked in the side by one guard and struck in the head by another. At one point the guards noticed a pool of blood on the floor near Manning, whose body had gone limp. A call was made for urgent medical assistance. When the nurse arrived, she saw officers still restraining Manning's arms. After asking the guards to release him, the nurse examined Manning and found that he had no pulse and was not breathing. Shortly thereafter, Manning was pronounced dead.

An eminent forensic pathologist called in to examine the body established that the cause of death was respiratory impairment/restriction during restraint, leading to asphyxia. There was evidence of airway occlusion due to pressure to the neck and restriction of chest movement while on the ground, with pressure applied to the back of the chest.

According to the post mortem, Manning had suffered bruising to the neck, he had blood spots in the eyes, face and neck, and there was blood leaking from the ear and mouth, which was consistent with the occlusion of the airway. Bruising found on his back was consistent with the application of a knee in that area. Eight separate visible areas of injury to the face, as well abrasions to the arms and legs, were noted. The pathologist also confirmed that no drugs or alcohol were found in Manning's body.

None of the eight guards who were directly involved in the restraint offered any explanation for the visible injuries or the cause of death. All of the officers denied that any pressure was applied to the front of Manning's neck at any stage of the restraint, and while one officer admitted to kneeling on Manning's back while he was face down on the floor, the rest of the officers denied seeing this at all.

Without exception, each officer maintained that they did not see the injuries to Manning's face at any stage, and that the only injury they were aware of was blood from mouth immediately before his death. All of them claimed that Manning struggled violently throughout the restraint, but they were unable to account for the fact that none of them sustained any injury except for two scratches in the case of one officer.

Crucial documents and evidence from the prison relating to the events leading to the death were unavailable to the coroner or the jury. UKDS surveillance cameras that would have recorded an unobstructed view of the last moments of the restraint were said to have recorded nothing because of operational error. Original reports containing the first written accounts of the events by the relevant officers went missing and could not be located by Blakenhurst managers when sought on behalf of Manning's family.

Raju Batt, the lawyer for Manning's family, said: "The catalogue of errors at every level of management is quite shocking. We have seen prison officers giving evidence claiming ignorance of matters of life and death." According to INQUEST, a prisoners' rights organization that supported and arranged legal representation for Manning's family, the evidence and information available to the jury called into question the following:

- ⊖ the honesty and integrity of the UKDS officers and their accountability to the rule of law;
- ⊖ the management at Blakenhurst and the relationship between the private company running the prison and the Home Office, Parliament and the public;
- ⊖ the nature and extent of the force applied in the course of the restraint and the training given to prison officers with regard to restraint techniques, particularly in the context of the well-known dangers of neck holds and restraint asphyxia; and
- ⊖ the nature and quality of the investigations into Manning's death conducted internally by the Home Office and externally by West Mercia Police that exonerated the prison and its officers.

Following the Coroner's court verdict of unlawful killing, seven UKDS officers were suspended on full pay pending an investigation by the government's Crown Prosecution Service (CPS). The seven were subsequently reinstated and, to this day, no prosecution has been forthcoming. The CPS announced in February 1999 and again in 2002 that no charges were to be brought.

## Chapter 8: ANATOMY OF A FAILED PRIVATE PRISON IN AUSTRALIA

A Liberal/National Coalition alliance won the Victoria state election in Australia in October 1992. By 1993 it had embarked on a program to reform the prison system, having identified "a number of serious, long standing problems." These included "operating costs; a declining and inadequate infrastructure; poor productivity levels; and low levels of accountability." [272]

The solution to these problems, the government decided, was privatization. Victoria's Department of Justice established the New Prison Project to implement a plan to shift nearly half of the state's prison population into three new facilities (one for women, two for men) that were to be privately financed, designed, built and managed. In proposing the enabling legislation to parliament, the state's minister for corrections promised that: "The community and prisoners will receive obvious benefits through the provision of new purpose-built facilities which provide additional capacity for prisoner numbers and which will have modern security methods built into their structure. Victorians will also benefit from significant private sector involvement in Victoria's infrastructure and the achievement of cost efficiency and effectiveness through the establishment of a real competition in the delivery of correctional services." [273]

However, an alternative view of the government's project was provided by Amanda George, a community lawyer: "The sell-off of prisons was part of an ideological commitment to characterizing government as a business and our community as an economy rather than a society. The prison sell-off went hand in hand with a law and order climate of mandatory and longer sentences that handed private prison contractors a guarantee of rising prison numbers (and profits). The decimation of services in the community that supports people at risk of incarceration sealed the deal." [274]

The first of the new contracts was for the 125-bed Metropolitan Women's Correctional Centre (MWCC) at Deer Park, outside Melbourne. The successful bidder was Excor Investments Pty. Ltd., a consortium comprising Corrections Corporation of Australia Pty. Ltd., which would operate the facility, John Holland Construction and Engineering Pty. Ltd. and Société Generale Australia as financiers. At the time, Corrections Corporation of Australia (CC Australia) was a subsidiary of Corrections Corporation of America. [275]

One of the main aims of the government's privatization policy was to cut costs, so the state Treasurer set benchmarks derived from the costs incurred at the three publicly run prisons that were due to be replaced. In the case of MWCC this was the Fairlea prison for women. [276] The original benchmark costs that the private sector had to improve upon have never been published, since they were deemed commercially confidential. The same applied to the Auditor General's attempt to publish the difference between the winning bid and the government's benchmark cost.

### Operational problems from the beginning

A promotional brochure for CC Australia proclaimed that "the arrival of the Metropolitan Women's Correctional Centre marks a significant advance in correctional services for women in Victoria, and a model for the rest of Victoria. It will simultaneously provide a better living and working environment, improved security and greater operating efficiency." [277]

In August 1996, amid large anti-privatization protests, the prison received its first prisoners from the state-run women's prison that



it was replacing. The population was to be a classification mix of medium and maximum security. Within a month, there were reports that union representatives had met with prison officials to raise concerns about safety standards, working conditions and the fact that salary levels, at A\$34,000 per year, were substantially less than that of their public sector counterparts, who earned around A\$50,000 plus benefits. [\[278\]](#)

In December 1996 some of the prisoners breached a security perimeter and were beginning a protest over a rumor that a prisoner was being beaten by guards. According to court testimony, most of the guards panicked and locked themselves in a room, leaving the prisoners temporarily in control. A senior office allegedly ignored a request to call in police. [\[279\]](#) By February 1997, the prison's first general manager, Gary Emmerson, had resigned and there were calls in parliament for the government to take over the management of MWCC. [\[280\]](#)

What transpired in that first year was also documented by the Federation of Community Legal Centres (FCLC). [\[281\]](#) The organization reported: a remand and protection prisoner was brutalized and bashed; drugs were allegedly rife; and women were being denied adequate clothing, access to medical treatment and subjected to humiliating strip searches. The FCLC also quoted media reports that drug-related assaults and other incidents were not being reported to the government due to the company's fear of being penalized. The group also noted that in June 1997 Corrections Minister Bill McGrath admitted in evidence to a Public Accounts and Estimates Committee hearing that the prison's staff was inadequately trained to manage the riot in December 1996.

Years two and three were characterized by more incidents, including the death of 23-year-old prisoner Paula Richardson on September 11, 1998. In March 1999, the Community & Public Sector Union alleged that CC Australia was putting lives at risk by using inadequately trained staff. The union alleged that the company was "cutting corners to save costs" and called on the government to investigate claims of security breaches. [\[282\]](#)

In May 1999, Victoria's Auditor-General published the findings of what he described as "a wide ranging but difficult audit dealing with the State's prison system." [\[283\]](#) The report covered the three private and three publicly run prisons. While the report had some positive things to say about MWCC, it also raised doubts about projected cost savings and noted that the prison had exceeded the acceptable limit for self mutilations and attempted suicides by 91 percent and assaults on prisoners and others by 20 percent.

These findings were confirmed in a 2000 report on private prisons commissioned by Victoria's recently elected Labor administration. [\[284\]](#) MWCC's performance on non-financial matters was found to be "mixed". While it was "not possible to obtain information as to staff turnover levels," there had been a large turnover of staff at management level and the prison was "worthy of further investigation."

The report's conclusion about financial performance was that "cost data provided by the department of justice does not provide a clear indication that private prisons are cheaper to run than public prisons." [\[285\]](#)

MWCC was also included in another independent investigation into the management and operation of Victoria's three private prisons. The report was presented to the minister of corrections in October 2000 and published the following month. [\[286\]](#) Known as the Kirby Report, its key findings included:

- ⊘ Prisoners and, in some cases visitors, did not feel safe within the prison...the prison atmosphere did not give the impression that staff were in control.
- ⊘ The impression of the lack of safety...permeated all key areas of prison operations: the lack of confidence of staff in dealing with prisoners, the restrictions on access to programs, frustrations with the visits program, and the inadequacy of the health services. Each of the issues contributed to and was, in turn, reinforced by the lack of effective prisoner management.
- ⊘ Although many of these issues were previously identified in other reports, and indeed led to the issuing of three default notices, there did not appear to be any urgency in bringing about the required changes on the part of the prison operator.
- ⊘ Since its commissioning only four years ago, there have been numerous changes of senior management ... four general managers, a high turnover within the management team, and a high turnover of custodial staff, particularly in the first year of operation. The Panel heard that this instability...had led to constant changes in the regimes governing the women's lives in the prison.
- ⊘ The lack of experience and expertise, and the limitations in relation to staff training and development, resulted in staff who appeared to lack confidence in themselves, in each other, and in management.

- ⊞ Inadequate or inappropriate physical facilities and programs, including drug and alcohol treatment and education.

### **The Government Takes Over**

Even before the Kirby Report was completed and published, the government decided that it had no choice but to act. On October 3, 2000, the government used emergency powers and took control of operations at MWCC. According to a statement by Andre Haermeyer, Minister for Corrections, "The Government has taken over the running of the prison today to ensure its duty of care to the community, prison staff, and prisoners is met. The Government has also approached the contractor with a view to negotiating an early termination of the contract."<sup>[287]</sup>

The minister said that this action followed a September 2000 report by the Correctional Services Commissioner on contract non-compliance at MWCC.<sup>[288]</sup> The commissioner stated that MWCC was a troubled prison during its fourth performance year (August 1999-August 2000) characterized by:

- ⊞ an unacceptably high number of prison incidents;
- ⊞ a disproportionate number of prisoners being classified as Protection Prisoners;
- ⊞ poor performance against its Prison Operations Service Delivery Outcomes;
- ⊞ levels of attempted suicide/self mutilation that were more than double the maximum allowed benchmark;
- ⊞ prisoner assaults on staff that were almost double the maximum allowed benchmark;
- ⊞ prisoner-on-prisoner assaults that were significantly in excess of the maximum allowed benchmark; and
- ⊞ a higher than benchmark illicit drug rate.

According to the Commissioner, the situation "clearly demonstrates an inability by the prison to implement strategies to ensure the welfare and safety of prisoners and staff. She added that:

"establishing the root causes of these troubles is difficult," but she added that the nature of the difficulty appeared to be a collective result of:

- ⊞ inconsistent management practices and poor leadership at the facility since the resignation of the then general manager in July 1999;
- ⊞ lack of operational procedures, guidelines and on the job support and training for staff;
- ⊞ staff shortages and budget constraints: and
- ⊞ poor prison design.

The report stated: "Despite CCA's repeated assurances that its remedial actions would ensure that the service deficiencies would be identified and addressed, OCSC [Office of the Correctional Services Commissioner] has assessed that both CCA and MWCC management fail to appreciate the full range of their contractual obligations."

And that: "Too many of their improvement strategies are implemented by the deployment of resources from existing functions. Rarely are additional resources or new efforts deployed. Often, compromises are made to less pressing functions in order to address more glaring deficiencies."

The report also revealed that on July 18, 2000, a default notice with nine components was issued to the company. The seven-day cure period expired on July 25. Four components were subsequently complied with, but the Commissioner found that "the areas in which MWCC remains non-compliant cover five of the most fundamental aspects of the prison's operations." The failures covered the following categories of service delivery:

- ⊞ provision of sufficient security systems to ensure security and safety of prisoners and staff;
- ⊞ containment and supervision of prisoners at risk;
- ⊞ provision of adequate staffing to ensure close prisoner surveillance and maintenance of security/safety of staff and prisoners and breach of prison management specifications due to lockdowns; and
- ⊞ management of programs and security procedures for illicit drugs.

A further breakdown of the third Default Notice revealed deficiencies such as the following:

- ⊞ failure to comply with suicide prevention procedure;
- ⊞ failure to provide adequate staffing;
- ⊞ failure to ensure prisoners have 12 hours out of their cells each day;

- ⊃ failure to comply with Victorian Prison Drug Strategy;
- ⊃ failure to conduct mandatory weekly drug testing;
- ⊃ failure to comply with strip search procedure;
- ⊃ failure to provide adequate surveillance of visitors;
- ⊃ failure to implement systems to detect and confiscate weapons, drugs and contraband; and
- ⊃ failure to develop a drug detection system.

## The end

On October 3, 2000 CC Australia's managing director, Terry Lawson, said that the company had been trying to comply with changes requested by the government and was seeking legal advice on the situation. In a statement, he said: "CCA has been the victim of a concerted campaign by the Victorian Minister for Corrections who has gone on record as saying that he does not believe in private prisons. There is no reason for the government to claim 'step in' rights. There is no emergency and the prison is operating efficiently and peacefully."<sup>[289]</sup>

Despite these assertions, the government started negotiations with Excor principals Corrections Corporation of America and Sodexo on October 6, 2000. By mutual agreement, the contract was terminated effective October 30, 2000.

The transfer of ownership was announced in State Parliament on November 2, 2000 when corrections minister Andre Haermeyer said that the government had paid A\$20.2 million to Sodexo, taking the ownership and operation of the prison into the public sector. He said that no compensation had been paid to the company, and the cost was less than the value of the ongoing payments for use of the prison had the contracts continued: "The settlement is on the basis of a fair price for the prison buildings, infrastructure and chattels and below the valuer general's valuation of almost A\$22 million."<sup>[290]</sup>

As this account shows, CCA's joint venture affiliate, CC Australia, failed to meet its stated aims for MWCC as well as its contractual obligations. The operational problems and policy flaws at MWCC only began to be addressed following the election of a new government in 1999.

## Chapter 9: SUPERIORITY UNPROVEN – RESEARCH ON U.S. PRIVATE PRISONS

In a bid to stem the tide of negative reports about private prisons and to attract investors to the industry, in September 2000 corrections industry stock analyst James Macdonald of First Analysis Corporation called for the private prison industry to pay for "really neutral research," although he admitted: "it's hard to pay and still be neutral."<sup>[291]</sup>

Macdonald's call for industry-paid neutral research is an oxymoron. For almost 20 years CCA and the private prison industry as a whole have relied upon methodologically doubtful and/or biased research produced by stock analysts and free market-oriented think tanks to support their claims that privatization is superior to public management. On the other hand, independent research in the U.S. has challenged the industry's claims but this goes largely ignored by CCA, the wider industry and its promoters.

As far back as 1987 the Adam Smith Institute (ASI) published *The Prison Cell, The Start of A Better Approach to Prison Management*.<sup>[292]</sup> The report featured some of CCA's early contracts in Texas, Tennessee and Florida. Despite the fact that CCA and the industry had been in existence for less than three years, ASI stated unequivocally: "the record of private prisons in America has, so far, been impressive." The report was used as a marketing tool to promote private prisons in the UK, and ASI called its publication "the first comprehensive review of private prison experience to be published in the United Kingdom. Whereas most comment to date has been theoretical speculation about what might result from prison privatization, such a review of the evidence can provide some hard conclusions based on the facts of what actually has happened."<sup>[293]</sup> Not only was that report anecdotal but ASI's role as a promoter of privatization hardly made it an independent arbiter.

Ever since, there has been a steady stream of studies on the costs, benefits and general legitimacy of prison privatization. The industry, of course, only promotes the studies proving that private provision is superior while remaining silent on the fact that most of that research has been carried out by individuals or organizations who have links to the industry or an ideological bias towards privatization. The most egregious case is that of Charles Thomas, discussed in Chapter 2.

More recently, industry proponents have celebrated a May 2002 article in the *Harvard Law Review* that reaches pro-privatization conclusions. For example, on the question of cost and quality comparisons, the author argued that "what imperfect empirical

evidence there is suggests that private prisons cost less than public prisons and that their quality is no worse...In short despite all their possible faults, private prisons are a promising avenue for the future development of the prison system.”<sup>[294]</sup>

Steven Logan, chief executive of the industry’s trade association, APCTO, said that “we view the HLR article as a meaningful report for this industry,” recommending it to state and government officials as a sound external study on the benefits of the public-private partnership in corrections. Logan also played up the article’s validity by referring to the HLR as an “internationally respected source for sound legal and policy analysis.”<sup>[295]</sup>

Conveniently, neither Logan nor the HLR mentioned that the author of the article, Alexander Volokh was, in addition to being a graduate student at Harvard, affiliated with the Reason Public Policy Institute (RPPI).<sup>[296]</sup> For years RPPI, a division of the libertarian Reason Foundation, has been one of the leading cheerleaders for privatization generally and prisons in particular. Volokh’s qualifications for writing about prison privatization were listed on the RPPI website: “Mr. Volokh’s expertise includes hazardous waste policy, environmental economics, regulation, risk assessment, solid waste management, and the tort system.”

This relationship was not lost on attorney Michele Deitch in her review of the article in the *Correctional Law Reporter*. Deitch reviewed the whole issue of HLR but had the “strongest reservations” about the private prisons section, which, she argued “reads like a lobbying piece for the private prison industry and which was explicitly influenced by the Reason Foundation, a free market think tank that advocates privatization in this area. Little law is actually covered in the discussion ...which cites extensively from industry-supported studies to argue that private prisons are in fact more cost effective and accountable than public institutions.”<sup>[297]</sup>

Deitch goes on to say:

There is no evidence that the author approached corrections officials for their points of view, nor did the author discuss issues such as the frequent practice of reducing costs by deliberately under staffing private facilities. Moreover, the author...misses a key policy point when reviewing case studies: because private operators can pick and choose the ‘cream of the crop’ inmates, who are necessarily less expensive to house, they effectively drive up the prices of the comparison group of public institutions, which are left with higher-security and more medically needy inmate population.

The most recent study being trumpeted by the private prison industry does not hide the fact that it was funded by CCA and APCTO. James F. Blumstein and Mark A. Cohen of Vanderbilt University conclude that “during the period 1999-2001, the existence of prisoners under private management in a jurisdiction seems to have had a restraining effect on the growth of expenditures on public prisons.”<sup>[298]</sup>

The study ignores the findings of the GAO and Abt Associates about costs (see below) to claim: “Numerous previous studies have shown that private prisons can be built more cost effectively and operated at lower costs (between 5-20%) than public facilities.

This is the first study to measure the impact of private prisons on public corrections budgets.”<sup>[299]</sup> Unsurprisingly, the authors draw heavily on material produced by RPPI and the *Harvard Law Review* article mentioned earlier.

RPPI’s latest contribution to the literature was published in 2002. Without naming specific corporations or providing any critique of methodology of the research they quoted from, the authors concluded that “private prisons are delivering significant cost savings and equal or higher levels of quality when compared to government-run correctional facilities.”<sup>[300]</sup> A key indicator in their argument was that 44 percent of privately managed prisons (67 of 150) were accredited by the American Correctional Association (ACA) compared with just 10 percent of government facilities. However, once again, the RPPI’s findings and recommendations cannot be separated out from the organization’s agenda to promote privatization. The authors reject entirely the prospect that public rather than private provision is either feasible or desirable.

More research in the same vein will be forthcoming. In addition to material from RPPI, other think tanks and APCTO, CCA revealed that it is forming its own separate research division.<sup>[301]</sup>

### **The Difference Independence Makes**

A very different picture emerges when for-profit prisons are analyzed by researchers without industry ties or an ideological commitment to privatization.

Perhaps the first major independent analysis of what had gone on in the U.S. private prison industry was the 1996 study by the<sup>[302]</sup>

federal government's General Accounting Office (GAO). — The report, which analyzed previous research on costs and quality of service, was a far cry from the Adam Smith Institute's assertions of ten years earlier. The GAO's findings included:

- no conclusions about cost savings or quality of service could be drawn, since four studies assessing operational costs indicated little difference or mixed results;
- two studies that addressed quality of life reported equivocal findings or no differences between private and public facilities; and
- the studies provided little information which could be applied to different correctional settings, since states may differ widely in terms of correctional philosophy, economic factors, and prisoner population characteristics.

Underlining the difficulties of accurately assessing quality of service, the GAO remarked that although ACA set accreditation standards for prisons, the actual quality of service of a facility with such accreditation could vary widely, since the ACA only required compliance with minimum standards.

As part of the exercise, the GAO submitted its own findings for independent scrutiny. The Bureau of Prisons commented that the report was "accurate, well done and useful." Dr. Edith Elisabeth Flynn of the College of Criminal Justice at Boston's Northeastern University also reviewed the report and said the conclusion that the five studies offer little generalizable guidance for other jurisdictions was "right on point." She also emphasized the need to focus privatization research on crime prevention and various philosophical questions underpinning the privatization debate. [\[303\]](#)

In its September 9, 1996 issue, the financial publication *Barron's* referred to the GAO report as "noteworthy because it contravenes the conventional wisdom...that companies like Corrections Corporation of America automatically manage prisons more efficiently and economically." *Barron's* contacted a CCA spokesperson, who "scoffed" at the GAO report and referred the newspaper to a refutation by Charles Thomas of the Private Corrections Project at the University of Florida. *Barron's* said it found Thomas' refutation "tendentious but not necessarily devastating to the GAO's argument" and concluded that the controversy over private prisons was not yet over.

### **The Abt Associates Report for Congress**

In 1997 Congress ordered the Attorney General to conduct a study of correctional privatization. The National Institute of Corrections commissioned Abt Associates to carry out the study, which was published in October 1998. [\[304\]](#)

In a letter to the House Committee on Appropriations, the Acting Assistant Attorney General described the report as a "careful and thorough review of prior research" and "consistent with a Government Accounting Office report published in 1996." He also noted: "The Abt study is selective in scope to maximize the use of time allotted...the report also provides a valuable framework for the additional research needed on the comparative cost and quality of private versus public prison operations."

The Abt study found that the proclaimed benefits of privatization were unproven. Some of the main conclusions included:

- Some proponents [of privatization] argue that evidence exists of substantial savings as a result of privatization. Indeed, one asserts that a typical American jurisdiction can obtain economies in the range of 10-20 per cent. Our analysis of the existing data does not support such an optimistic view.
- Few studies have been conducted to compare the relative performance of privately and publicly operated prisons. Most are affected by a variety of methodological problems... given these shortcomings and the paucity of systematic comparisons, one cannot conclude whether the performance of privately managed prisons is different from or similar to public operated ones.
- With respect to public safety and prisoner programs, the available data do not support definite conclusions.
- The available surveys of either privately or publicly operated facilities do not provide the information needed to compare the quality of such programs or the extent of prisoners' engagement with them.

In arriving at their conclusions about costs, the authors stated: "Perhaps the main finding...is that only a very small percentage of those facilities operated by private firms have been evaluated systematically...it is difficult to have much confidence in conclusions about relative costs...when we have systematic cost comparisons of such a small subset." Similar limitations were found with regard to quality. "Only a few of the more than a hundred privately operated facilities in existence have been studied, and these studies do not offer compelling evidence of superiority." [\[305\]](#)



The authors stated that: “For the most part, those who have evaluated private corrections in comparison to public corrections have concluded that the private...performed as well or better than the public institutions. However, in our assessment...we find that most of these studies are fundamentally flawed, and we generally agree with the 1996 GAO Report that there is little information that is widely applicable to various correctional settings.”

In their summary, the researchers also stated: “It appears to us...the private sector’s approach to corrections has been to build upon correctional practices that already exist in well-run public prisons. The private sector does not appear to argue that they run prisons in a dramatically different way based on different philosophies of managing inmates. However, there has been little attention given to documenting the private sector approach to innovation or to the impact of competition from the private sector on the practices of the public sector.”

The authors also stated; “While most correctional administrators agree that U.S. prisons should meet American Correctional Association (ACA) accreditation standards at a minimum, there is probably much less agreement as to how far above the bar set by the ACA standards those prisons should operate to perform effectively.”

In their review of previous research, the authors also gave short shrift to Adrian Moore of the Reason Foundation: “Moore... argues that market pressures and the competition for contracts result in better direct services to inmates. This is typical of the argument-without-proof that is often found in this literature. Anecdote is combined with glittering generalities to produce a conclusion having little or no foundation. Rather than critically evaluating each study on its own merits, Moore’s review of the prison quality literature merely cites those conclusions reached by the individual authors.”

### **Minnesota**

A comparative study by Judith Greene and others of CCA’s medium-security Prairie Correctional Facility in Appleton, Minnesota with three similar facilities run by the Minnesota Department of Corrections revealed significant differences in service delivery and program operations. [\[306\]](#)

The report paid special attention to the quality and availability of medical care as well as the quality and degree of prisoner participation in education and treatment programs. It found that levels of medical care were comparable in the public and private facilities, but education programs were more extensive and more effective in the public prisons.

The author concluded: “These research findings add significant evidence to a growing perception that a pattern of deficiencies in the way private prisons are being managed in the U.S. are proving them to be unsuitable for handling prisoners above the lowest levels of security classification.” [\[307\]](#)

### **Austin & Coventry**

In a 2001 report for the U.S. Department of Justice’s Bureau of Justice Assistance, James Austin and Garry Coventry continued with the theme of unsubstantiated claims for the private sector’s superiority. Regarding previous studies, they concluded that “there are no data to support the contention that privately operated facilities offer costs savings...similarly no definitive research evidence would lead to the conclusion that inmate services and the quality of confinement are significantly improved in privately operated facilities.” [\[308\]](#)

### **Perrone and Pratt**

In this recent article, the authors reiterate the Abt findings. “Overall, the comparison of the quality of confinement between public and private prisons is inconclusive.” [\[309\]](#) Further, they state: “as with the literature addressing the comparisons of the quality ...the existing cost comparisons offer little in the way of conclusions about whether turning over the responsibility of managing prisons to the private sphere will result in any substantial and/or consistent cost savings.” [\[310\]](#) They argue that to advance the debate “certain changes in the way scholars go about studying these issues would be helpful.” [\[311\]](#)

### **Abt again**

This latest piece of research recently completed by Abt Associates for the National Institute of Justice once again does not support the claims of CCA and the rest of the private prison industry. [\[312\]](#)

Abt researchers focused on evidence relating to Texas, Florida and Oklahoma, which they note are the states with the longest and most extensive experience with private prison operation. As for Texas, Abt received data from state officials suggesting that

private firms were providing correctional services at a cost about 9-10 percent lower than it would cost the government to provide. Abt, however, did not feel it received an adequate explanation of how those numbers were derived. Its report said, "Lacking more information about how these costs were estimated, it is not possible to evaluate them."<sup>[313]</sup>

They also note that "contracting for management services alone doesn't seem to have relieved overcrowding any faster than would have happened if the state built and then operated the facilities." Texas privatized to alleviate overcrowding in the state system, improve conditions in confinement and avoid having to pay stiff fines levied by the federal courts. The answer to the question of whether contracting achieved conditions of confinement any faster than was achieved in the state-operated facilities was "probably not."

As for the question of whether Florida's private prisons resulted in lower recidivism rates, Abt said that "absent a stronger methodology...the study [commissioned by Florida] does not provide indisputable evidence that privately operated prisons are doing any better or any worse than the public prisons." Noting that there has been no formal assessment of whether private firms have introduced innovation into the state's prison system, Abt stated: "The legislature may have assumed that any innovation of significance would result in more effective prisons (i.e., lower recidivism) and less costly ones. The existing studies of comparative costs and of comparative recidivism rates do not support any strong influences about the state's obtaining more innovative imprisonment from the private sector."<sup>[314]</sup>

Finally, in Oklahoma, Abt found that the primary motivation behind the state's decision to privatize was to avoid the cost of building its own new prison. Oklahoma's strategy was to rely solely on the private sector for additional beds to relieve overcrowding in the state system. By absorbing increasing numbers of prisoners through contracting out rather than building new prisons, the state had more flexibility when those numbers decreased and long-term debt servicing for new infrastructure has been avoided. Abt's view on whether the state had been able to avoid locking itself into political obligations to support the private prison industry "for now...seems to be yes."

From the industry's point of view, the best that can be said about the results of independent research is that many questions remain unanswered. Companies like CCA apparently have little confidence that future research will yield results favorable to privatization, so they are planning to pay for analyses that they can be sure will have the desired results.

### **What's Wrong with the ACA?**

For years CCA has promoted its adherence to American Correctional Association (ACA) standards as a sign of its quality. According to the company "all CCA facilities operate in accordance with ACA standards... approximately 85%...are ACA accredited."<sup>[315]</sup> The ACA website lists 53 of CCA's facilities as being accredited.<sup>[316]</sup>

Although ACA standards are widely accepted by both private and public prisons, these standards have come under criticism from a number of quarters. According to Elizabeth Alexander, director of the American Civil Liberties Union's National Prison Project: "Absent complete restructuring the ACA is as much a barrier to meaningful reform of prison conditions as it is an ally."<sup>[317]</sup>

In their most recently published study, the Abt researchers reiterated their earlier concerns about the ACA: "Achieving ACA accreditation is not an outcome-based performance goal. Rather, ACA standards primarily prescribe procedures." They also refer to research involving juvenile facilities that found no difference in rates of suicidal behavior, escapes and attempted escapes, and injuries to staff and juveniles between those facilities that conformed to key ACA standards to those that did not.<sup>[318]</sup>

ACA's impartiality has also come into question. David Shichor of the University of California has noted: "the major professional organization dealing with corrections, the ACA, is heavily influenced by the private correctional industry." He goes on to argue: "the ties between private industry and the ACA may have something to do with the accreditation process in corrections as corrections standards were written by ACA personnel. The fact that the ACA president from 1984-1986, T. Don Hutto, was a co-founder of CCA reinforces the impression that a powerful and influential criminal justice-industrial complex, having strong interlocking directors, is developing. This kind of interrelationship may lead to co-optation"<sup>[319]</sup>

It is worth noting that CCA's Youngstown facility received ACA accreditation right after a controversy over violence and escapes at the prison.<sup>[320]</sup> More recently, ACA's Hernando County Jail in Florida also received ACA accreditation in 2000 despite failing to meet the ACA's own standards in six areas. Of these, five had been mentioned in the jail's audit three years earlier.<sup>[321]</sup>

Among the benefits of accreditation listed by ACA on its website are improved staff morale and professionalism, a safer environment for staff and offenders, and defense against lawsuits. "Accredited agencies have a stronger defense against

litigation through documentation and the demonstration of a 'good faith' effort to improve conditions of confinement."<sup>[322]</sup>

But as mentioned in Chapters 1 and 2, CCA's facilities, many of them with ACA accreditation, have experienced numerous incidents of violence, mistreatment of prisoners and other problems that hardly add up to a safe environment. Moreover, the problems of low pay, inadequate benefits, insufficient training and high turnover described in Chapter 5 don't seem to contribute to a high level of morale and professionalism for employees. It remains to be seen whether ACA accreditation serves as an adequate defense to the numerous lawsuits the company currently faces.

CCA and the industry's use of ACA accreditation as a barometer of quality is questionable. Even more so is relying solely on the conclusions reached by pro-privatization ideologues. After 20 years, the claimed overall superiority of private prison operations over the public sector remains unproven.

## CONCLUSION

Writing in CCA's 2002 Annual Report, CEO John D. Ferguson says: "As we enter 2003, CCA celebrates its 20<sup>th</sup> anniversary year – a momentous achievement for a company that began as an unproven idea, and grew into an industry."<sup>[323]</sup> It is ironic that by the end of 2003 another top executive, Chief Financial Officer Irving E. Lingo Jr., admitted that corrections privatization has "barely scratched the surface."<sup>[324]</sup>

There is no question that a private prison industry has developed, even if it comprises only about five percent of the total U.S. prison and jail population. In promoting its agenda of prison privatization, CCA and its competitors have consistently engaged in a few core strategies:

- ▷ using a small body of questionable research written by analysts and academics who are either funded by the industry or have an ideological predisposition in favor of privatization;
- ▷ making significant campaign contributions at the state and federal level to lawmakers and politicians; and
- ▷ using the support of organizations like the American Legislative Exchange Council and the Association of Private Correctional and Treatment Organizations.

As this report shows, in spite of these efforts, CCA has not been a success even by its own standards. CCA continues to be plagued by many of the same kinds of operational deficiencies, scandals and mismanagement that characterized its performance during its early years. It is no surprise that the company acknowledges that, "The operation of correctional and detention facilities by private entities has not achieved complete acceptance by either governments or the public."<sup>[325]</sup>

CCA's record is a clear example of how the pursuit of profit stands in the way of carrying out a core public function such as corrections. It is time for the public to know that independent investigators have failed to find clear evidence that private prison management is superior in terms of quality, recidivism rates or cost. CCA has succeeded in staying in business for two decades, but it has not succeeded in demonstrating that prison privatization is socially, economically or ethically acceptable.

## ENDNOTES

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