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PRIVATE PRISONS IN TEXAS, 1987-2000: THE LEGAL, ECONOMIC, AND POLITICAL INFLUENCES ON POLICY IMPLEMENTATION

by

C. Elaine Cummins

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of Doctor of Philosophy

in

Public Administration

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PRIVATE PRISONS IN TEXAS, 1987-2000: THE LEGAL, ECONOMIC, AND POLITICAL INFLUENCES ON POLICY IMPLEMENTATION

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ABSTRACT

The purpose of this study is to determine why private prisons flourished in Texas and why the outcome varied so much from the policy makers' intent. In 1987, the 70th Texas Legislature approved S.B. 251, which allowed the Texas Department of Corrections to contract with vendors for the financing, construction, operation, maintenance and management of a small number of adult secure correctional facilities. However, today, Texas is home to more private prisons than any other state. Based on implementation theory, which seeks to determine why public policy often does not result in the intended outcome, this case study focuses on the many players and their interactions within the legal, economic, and political context. Like most cases of unintended outcome, this situation is complex. Nevertheless, the analysis reveals lessons which can benefit future policy design so that outcome will more nearly resemble intent.

Over the course of the last fifteen years, the New Public Management paradigm has come to dominate public administration thought in the United States on a national, state, and municipal level. This paradigm, which emphasizes market-based rather than constitution-based principles and values, has important consequences for the delivery of public services, particularly those that affect the everyday lives of citizens. The privatization of Texas prisons, which began in 1987, provides one example of this trend. Initially proposed as a modest program in limited legislation,

private prisons in Texas have grown far beyond their intended scale to become the world's largest private corrections system.

This study analyzes the formulation, adoption, and design of policies that led to the vast expansion of the scope of private prisons in Texas. The research reveals that serious legal problems enabled economics and politics to become driving forces in the privatization of corrections in the state of Texas. Further, there were mixed motives on the parts of the many key players involved in the implementation process. These mixed motives, coupled with the overwhelming legal, economic, and political pressures led to an outcome quite different from the policy makers intentions. The conclusions of this analysis describe how the implications of these realizations impact policy outcome.

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As every doctoral student knows, a dissertation is the product of many people who influenced, encouraged, constructively criticized, listened, debated, and otherwise engaged the author. My list of people to thank may be longer than most, but to accomplish this in-depth research required the help of many people. I am very grateful to each person who aided and abetted my project. The complete list of people I encountered along the way is in Appendix I. Each person named there contributed to my understanding of the many issues involved in this study.

I became interested in private prison policy through two classes in my doctoral work. My interest in court intervention because of unconstitutional prison conditions developed during a course in administrative law, taught by the chair of my dissertation committee, David H. Rosenbloom. Professor Rosenbloom is an accomplished scholar; it has been my profound privilege to study with him. He has been unfailingly supportive and interested in my project and spent many hours helping me refine and shape it from the earliest days of my doctoral experience. He is a singular person and will always have my deepest gratitude for his guidance and support throughout my years at American University. In a later class taught by Al Hyde, I wrote a paper dealing with the budgetary impact of federal court intervention on a state agency. That paper led me toward the *Ruiz* case which then directed me to the issue of the growth of private prisons in Texas. Professor Hyde gave me many good suggestions during that class, and I appreciate his help in those early days.

The other members of my dissertation committee, Robert Johnson, and Robert Fosen, also have been extremely helpful, even before agreeing to serve on my committee. Professor

Johnson spent many classroom hours helping me understand what prisons are like, what kinds of policies are needed for habilitation to occur, and how far short most of our institutions fall. Professor Fosen has many years of experience in research and management of prisons. It has been a privilege to work with him, and learn from him. Professors Johnson and Fosen also are accomplished scholars and I am deeply grateful to them both for all their help.

Another professor who has been extremely helpful to me is David Billeaux. Dr. Billeaux was my first public administration professor; he faced the challenge of teaching someone who had not been in school for many years. He fostered in me an acute interest in the discipline, and taught me many skills that I have used throughout my academic career. It has been a real privilege to know and study with him, and I am most appreciative of all his help, encouragement, and interest through the years.

There are others in academia whose assistance I appreciate. Two lines in David Shichor's **Punishment for Profit** sparked my interest in Texas' implementation of private prison policy which carried me through many months of research and writing. Philip Ethridge and James Marquart, cited in Shichor's book, wrote an article about the early implementation process that was the starting point for my research. I have often returned to re-read their article. Both were kind enough to meet with, encourage, and offer guidance to me. Ann Chih Lin read my proposal and offered many suggestions and much guidance. Sam Souryal also met with me several times and gave me much to think about in terms of the ethics of private prisons. I am deeply appreciative to these scholars for their encouragement and inspiration.

I have been privileged to meet a number of outstanding co-researchers as I pursued my project. Each of them openly shared their work and views. I felt honored to be part of such an

esteemed group. In addition to sharing her ideas, Jamie Fellner shared her files, office, and her home so that I could attend a conference. David Schultz also fostered my project in many ways. He asked insightful questions, kept me current on many issues and literature, and shared his profound thinking, questions, and ideas regarding our shared interest. He also shared his home and family with me for a conference. I am most appreciative to Jamie and David for their personal and professional generosity.

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helped and encouraged every aspect of my research and writing. He is a true scholar; no one does more to cultivate knowledge. I can never thank Tom enough for his inestimable help, interest in, and encouragement toward completing my dissertation.

Laura Seagirt at the Texas State Library and Abraham Gonzalez at the Nueces County Law Library were very helpful as I repeatedly searched through their collections. Charles Schultz, who curates the Governor Clements papers at Texas A&M University in College Station was incredibly helpful to me. A paradigm of the professional archivist, he very generously gave his time, answering questions and finding documents. He has continued to send me relevant papers and articles since my visit. I very much appreciate his learned assistance and interest in my project.

Robert Pierce guided me towards several sources of documentation. Perhaps the most interesting and fruitful collection he told me about is the Larry Pope collection. Mr. Pope had a very colorful life; in his first career he was a bank officer. After he lost his job, due to corporate downsizing, he became a bank robber. Early in that career he was captured, convicted and sent to prison where he became a writ-writer, one who was accomplished at helping his fellow prisoners with their appeals. Pope was the lead witness in the *Ruiz* case. During his incarceration, he collected many, many articles and other documents about all aspects of the Texas prison system. Upon his release, he donated his papers to the Center for American History, and spent the last years of his life there, cataloguing his collection. Anyone researching any aspect of the Texas Prison system is sure to find something helpful in his papers.

Others allowed me to go through their working papers and files, in addition to granting me interviews. Bill Barry and Terri Wilson at TDCJ have excellent early and current records;

both were very generous in granting me time to answer questions and prepared documents that were extremely helpful to my research. Carl Reynolds also generously shared documents that greatly contributed to my work. He has great knowledge and keen insight into the issues so I am particularly appreciative of the fact that he always patiently answered my many questions and encouraged my project. Victoria Rich who works with Carl very graciously and efficiently arranged for several of my site visits. I am very grateful to each of these people who are affiliated with the Texas corrections system.

Senator Ray J. Farabee was the first person I asked for an interview. Although I was a completely unknown graduate student, Senator Farabee promptly returned my initial call and encouraged my research efforts for the duration of this project. Highly respected throughout Texas government, he gave very generously of his time and kindly provided office space for me while I examined his extensive papers. His continuing interest in criminal justice issues and his numerous articles on that subject have proved inspirational to me. Perhaps of greatest value, Senator Farabee facilitated my gaining interviews with other knowledgeable people and with my obtaining site visits. I will always be in his debt.

Other current and former elected officials gave generously of their time. L. DeWitt Hale, highly recommended to me as an expert on state government's relationship with local jurisdictions, did not disappoint. He is extremely knowledgeable and I appreciate how generous he was with his time in explaining so much about how the two levels of government work and interact. He also furthered my research by contacting others for me. Senator Carlos Truan and former U.S. Representative Craig Washington were the only two state Senators who voted against the initial legislation. They also very kindly granted me interviews, and provided great insight

into their thinking about the issue. Senator Truan's assistant, Sal Valdez, also helped me gain interviews with other state officials and I appreciate that very much.

Three former governors who had been associated with Texas private prison policy very graciously granted interviews to me. Bill Clements, Ann Richards, and Mark White all have made their papers available. This is an invaluable source of information as the written record is so important. They are to be commended for this. Governor Clements, knowing he would be under close scrutiny as the signer of the legislation, was very generous with his time and among the most candid of all the interviewees. He also made several telephone calls for me, establishing introductions to people who were critical in furthering my research. His help was invaluable; I will always be grateful to him for his time and interest.

Likewise, Governor Richards was quite forthright about her role in the implementation process. She too was very generous with her time. Governor White also met with me, confirming that the vendors had been lobbying to legalize private prisons long before S.B. 251 was enacted. Each of these individuals was helpful and candid. In addition to providing access to their papers, their openness to interviews is invaluable in furthering this kind of study. Former Governors in Texas must go on to support themselves; each of these three is a busy professional. I very much appreciate their taking time from their busy schedules to meet with me, and speak so candidly about their roles in the private prison process.

Two members of the Board of Criminal Justice also gave generously of their time. These people are appointed, and are not paid for their public service. Again, they must take time from their own busy schedules, but did so willingly. Carol Young, Treasurer and Alan Polunsky, long time member and Chair, are a treasure trove of information about my topic and were extremely

helpful. Both very frankly and openly enhanced my understanding about the long term process as well as current status of private prisons. Mr. Polunsky graciously asked his assistant, Susan McHenry, to help me with site visits, schedules of Board and committee upcoming meetings, and setting up interviews with TDCJ employees. Susan is incredibly knowledgeable about the agency; she was able to recommend names and then made appointments with them for me. She is a most efficient, professional person and it was a real pleasure to work with her. I appreciate all her help.

I found the employees of TDCJ to welcome discussion; each was open and forthright about the private prison experience. Jim Lynaugh, Jim Riley and Allan Sapp were extremely candid about issues and I very much appreciate their time. The Executive Director, Wayne Scott, was gracious enough to meet with me, and was also helpful and informative. Simon Beardsley and Wendy Ingram accompanied me on several site visits. Wendy has been a tireless, dogged, and efficient source of information for me. Any data or facts I asked for were always promptly and proficiently provided. I appreciate her responsiveness assistance.

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CHAPTER ONE

INTRODUCTION TO THE STUDY OF PRIVATE PRISONS IN TEXAS

The purpose of this chapter is to establish the research topic and discuss the underlying concepts behind this study. First, an explanation of the New Public Management leads to the rational for researching private corrections policy implementation and why such study is needed. In addition, this chapter presents the basic theoretical framework, methodology, and sources of data used. The legal, economic and political context within the state are included; the conclusion introduces the remaining chapters.

The New Public Management

The New Public Management (NPM) is one of the most recent managerial paradigms for public administration. The NPM calls for agencies to make better use of market like competition in the provision of government services. Proponents say the result of competition is a government that is more responsive to customers and cost-effective. The NPM recommends such methods as reorganizing agencies to more closely resemble private corporations or forcing them to compete with each other and/or non-governmental organizations. Another suggested method to achieve these goals is privatization (Rosenbloom and O'Leary 1997:6).

The major federal NPM track is now known as the National Partnership for Reinventing Government. Originally known as the National Performance Review (NPR), they issued their first published report in September 1993, following the election of Clinton and Gore. The NPR encourages federal agencies to be more market-like. Their earliest efforts included working with Congress to pass legislation directing agencies to reduce the size of their workforce and create

customer service standards. In addition, the NPR confers Hammer Awards which recognize agencies that are particularly innovative in reinvention efforts. Over the years, NPR activities have greatly expanded. With a particular emphasis on automation and encouraging agencies to use meaningful performance measures, the underlying goal is to make government more efficient and less expensive for the taxpayers.

Texas government preceded the federal government in the formal effort to advance NPM principles. The first Texas Performance Review, **Breaking the Mold: New Ways to Govern Texas** was published in July 1991 (Sharp). Later, John Sharp, the state comptroller who initiated the Texas track, served with several members of his staff as consultants to the earliest Gore NPR team. Like the NPR, the Texas Comptroller's Office has no authority to enforce any of their suggestions. However, every two years, most Texas agencies find themselves listed with a variety of specific recommendations noting how they can become more economical and efficient, more market-like, as they govern the state. Among their many other recommendations, the Comptroller's Office has been a big supporter of private prisons in the state.

The first contemporary privatized government services were "hard services," such as garbage collection and building maintenance. However, a growing number of "soft services," such as public welfare and other human services have come to be considered for privatization (Shichor 1995:1-2). The corrections function of government has not been immune from this interest on the part of the private sector. Nationwide, only about two percent of adults incarcerated in secure facilities are in private prisons. In spite of that small percentage, the human service known as corrections has also received a great deal of attention. Supporters of the movement to privatize prisons extol the virtues of the free market as a solution to many issues related to corrections policy. Others, however, are deeply concerned that the profit motive of the market is reaching inside a growing number of total institutions.

The NPM paradigm implies that any government function can be converted to market like competition. However, some urge caution in the case of human service policy. They argue that it is one thing to have your garbage picked up late; quite another to be under the total control of an organization whose primary reason for existence is to make a profit. Constitutional values such as accountability, the rule of law, and individual rights may diminish when NPM values such as cost effectiveness, results orientation, and competition are imposed. The marketplace is not designed to guard constitutional values, an aspect of private prisons that has been recognized within the federal court system.

Federal courts have dealt with the issue of prisoners' constitutional rights in private prisons. Regarding Eighth Amendment rights, the Sixth Circuit Court in *McKnight v. Rees* found that: "The spur in the flank of private correctional corporations is, of course, the profitability of the enterprise," pointing out the problem of the profit motive where corrections policy is concerned (*McKnight v. Rees* 1996). The Supreme Court affirmed their ruling, elaborating that market forces should motivate private corrections firms to hire proper employees *(Richardson v. McKnight* 1997). Of course, the reason for the lawsuit was that a private prison management firm had hired an employee who was not "proper" and had beaten a prisoner. Both courts ruled in favor of the prisoner.

As the popularity of privatization grows, the issues surrounding the concept of private prisons have more and more entered the literature. Because it challenges what has been considered a "core" government function, the concept of private corrections facilities has been a lightening rod for the more general controversy over privatization of government services. Academicians from various disciplines, practitioners, elected officials, private corporations, as well as the general public have a wide range of opinions regarding private prisons. It may be that privatization issues are more salient when viewed within the context of punishing human beings, compared with a service such as building maintenance.

Significance of the Texas Private Prison Experience

The earliest contemporary private secured facilities in the United States were federal Immigration and Naturalization Service detention centers, beginning in 1980. The federal Bureau of Prisons and several states were quick to follow their lead. Although not the first state to contract with for profit vendors, Texas quickly became the state with the largest number of private facilities and prisoners housed in those facilities. In 1997, when this research began, 35 percent of all inmates in United States private prisons were incarcerated in Texas.[1] Today, that percentage has dropped to 25 percent,[2] although the number of private beds in the state has increased by more than 8,000 during those years.

Not all these prisoners are inmates of the state of Texas. More out of state prisoners are imported into Texas than any other state, where they are housed in local facilities. Many federal prisoners are housed in the state. Texas is the site of several interesting permutations. Some private corporations contract with other jurisdictions to bring inmates into Texas; often inmates from several jurisdictions are combined in the same facility. A number of counties have built prisons, contracted with private management firms, and then contracted with other states to imprison their inmates. Some counties manage these "imported" inmates themselves. There have been some disastrous results.

Texas has by far seen the widest proliferation of private prisons in the world. This rapid growth, and the extreme concentration of numbers, is worthy of study. Because of the high proportion of private facilities in Texas, it is an ideal case to analyze regarding privatization of incarceration policy design and implementation. Because of the large number of private facilities and variety of vendors in the state, it is likely there will be more variation to study than in any

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[1]See http://web.crim.ufl.edu/pcp/census/1997/PopState.gif for complete information by year.

[2]See http://web.crim.ufl.edu/pcp/census/2000/ for complete information by year.

other single case. And, Texas was one of the earliest states to host a private prison. Because it is such an extreme example, answers to the many questions raised in the literature can be found in Texas.

Research Questions

Our understanding of this policy issue is very limited. We do not know why both public and private proprietary prisons have flourished in Texas. We do not know why Texas became the host to so many facilities. We do not know why such a variety, such combinations and permutations of what are known as private prisons, exist and prosper in Texas. My proposed study will enhance our understanding of privatization of prisons and privatization more generally. The problem to be studied, my research question is: Why did private prisons emerge, and why did they flourish in the state of Texas?

A number of other questions flow from this basic research question. They are listed below, using the legal, economic, and political organization found throughout this paper.

Legal Questions

1. What are the strengths and weaknesses of S.B. 251? How has the original legislation had to be refined over time? Did the bill impede or advance the implementation process?

2. How did federal court intervention in the prison system influence the growth of private prisons?

3. How does privatization impact the legal liability of the jurisdiction? What implications for the state have emerged? Do private prisons have any legal, constitutional ramifications for prisoners or the state? Have private prisons impacted litigation? Does government have more or less control in avoiding lawsuits?

4. What are the ethics related to for profit firms making a profit from the privatization of punishment?

Economic Questions:

1. Do private prisons save money in the long run? What is the actual savings to the taxpayer? What are some of the hidden costs of privatization? What are the problems of doing a cost comparison? Why are they so complicated?

2. If private prisons are more economical, how do they manage to provide the same service for less money? What costs do they cut? How does the profit motive associated with the private sector influence daily decisions made inside prisons?

3. What are some implications of the competitive process specific to corrections? Is there a true market in the industry of private corrections? How do they earn profits? What are some implications of the competitive process specific to corrections?

Political Questions:

1. What was the process that led to such rapid growth, so far beyond the parameters of the legislation?

2. Who were the key players? What were their goals? How did their goals conflict? What were their motives? Their methods?

3. Is there pressure to increase incarceration in order to provide profits? Which social groups benefit? Bear the burdens?

4. What role did the economic, legal, and political climate in Texas play?

These questions are important, not only specifically in Texas, but in a more general sense. The following chapters will include a discussion of each of these legal, economic, and political issues as associated with private corrections policy. Answering these questions will lead to a better understanding of why and how private prison policy so wildly varied from the intent of the state legislature. This understanding can then contribute to the literature in two ways. First, regarding private prisons, a broader understanding of the Texas experience will answer some of these questions more generally because of the variety of private prisons and many related events taking place there. Second, regarding the study of implementation, policy makers can be more informed about some of the reasons unintended consequences occur and then perhaps will be better able to devise legislation more likely to be carried out as intended.

Framework And Methodology

To answer this research question, I selected a case study methodology and used implementation theory which are discussed in this section of the chapter. This section of the chapter discusses both these ideas and includes an explanation of the sources of data used in the research. In addition to developing these ideas and explaining why this theoretical framework and case study methodology are appropriate, the work of implementation theorists relevant to this study is discussed.

Implementation Theory

The overarching implementation issue is why some policy interventions succeed and others fail. Although private corrections supporters might see the Texas experience as an overwhelming success, the fact is that the intended policy failed. The outcome was dramatically different from what policy makers intended, and led to a great drain on state resources. As will be seen in a later chapter, even death resulted from this implementation process that veered so far from the intended outcome.

The preeminent public administration implementation study, authored by Pressmn and Wildavsky, lays out the major theoretical framework for this look at Texas' private prison policy. Their premise is that in order to evaluate whether a policy has been well or poorly implemented, "it is necessary to evaluate the difference between the intended outcome and the actual consequences" (1984:xv). Their formula underlies the scheme of this dissertation. The strategy of this research is to first establish the motives, the intentions of the key players. Then, the actual outcome of the policy is delineated. Finally, the difference between intention and outcome is evaluated. Using this model, this sort of analysis, will contribute answers to the questions regarding success or failure of policy implementation.

Graham Allison's Bureaucratic Politics paradigm posits that policy outcome varies from intent because leaders who share power bargain along "regularized channels." Decisions do not result from the defeat of one group over another; rather they result from different groups pulling in different directions. This pulling leads to outcomes that are frequently quite distinct from the original intentions (1969:707). Often, the final results are not what any one group wanted. Edwards concurs with Allison, stating that the more actors involved with a particular policy, the less the probability of successful implementation (1980:43).

Richard Elmore proposes a similar explanation. His "Conflict and Bargaining" model defines implementation as a complex series of bargaining decisions. Comparable to Allison, Elmore elaborates that the key participants have different motives but bargain and adjust in order to preserve the bargaining relationship in order to keep the issue alive. All key players do this, hoping that somehow in the end, he or she will gain what each wants (1978:187). The Elmore and Allison models are not totally parallel, but these respective pulling and bargaining aspects of their theories are supported in the case of Texas private prison policy.

A final implementation theorist that is particularly relevant to this study is George Edwards. He analyzes a number of policy failures and concludes that six types are particularly prone to not be implemented as intended. The six described by Edwards include policies that are: new, decentralized, controversial, complex, crisis-related, and/or established by the judiciary (1980:150-153). As the following chapters will show, each of these criteria applies to the implementation of private corrections in Texas. The idea of private prisons in contemporary time was indeed new; it was also controversial and complex. Decisions and levels of authority were decentralized. Although the court did not order private prisons specifically, the policy was implemented as part of a response to court orders, resulting from a crisis in the Texas prison system.

A number of other researchers have advanced the field of implementation research. Goggin, et al., developed "Communications Theory," an explicit, theoretical, and predictive model which explains why implementation behavior varies across time, policies, and units of government (1990:19). Using this explanation, the authors declare that the process of communication provides the impetus for feedback and possible policy redesign. Basically, leaders at different levels of the process do not share the same policy views and thus do not always communicate clearly. This interaction or communication failure leads to policies not being implemented as policy designers intended.

The authors in this group try to delineate dependent and independent variables so that implementation studies can be standardized. They conclude by urging that researchers shed new light on implementation behavior and develop ways to predict the type of implementation behavior that is likely to occur in the future (1990:171). The Goggin group's model does not seem significantly different from the bargaining among many leaders with different motives, pulling in different directions. It basically contributes another dimension, another way to look at the interactions observed by Allison, Elmore, and Edwards.

O'Toole (1986), one of Goggin's co-authors, earlier reviewed more than 100 implementation studies where he identified more than 300 key variables. The complexity of implementation studies, as illustrated in O'Toole's identification of 300 key variables, permeates attempts to standardize such research. Though O'Toole joined the later group in calling for more scientific implementation studies, none of the authors attempted to account for the striking inability of this type of research to be parsimonious. In this sort of study, attempts to standardize may be counterproductive. The idea of 300 key variables indicates a denseness of information across examples. The existence of so many factors precludes the possibility of a simple conclusive model.

Sabatier (1986) also reviewed the implementation literature. He attempted to synthesize top-down and bottom-up approaches to such research. His model became very abstract and failed to adequately present which factors are the most important in explaining the implementation process. He does not fully discuss how the variables interact. Reviewing the implementation literature leads to the realization that not only are such studies not able to be parsimonious, but that each is quite incomparable from any other. Because the intended policy types, leaders, levels of government and contexts vary so much across instances of implementation, each study is very different in many ways. Implementation studies do not need to rely on some set of abstract, standardized variables. Rather, the body of knowledge gained from many implementation studies can facilitate policy makers to design legislation and rules more likely to result in programs that are consistent with intent.

Williams notes that no "seminal theoretical breakthroughs" in implementation studies seem imminent. He suggests that rather than seeking theory, implementation research should seek to make policy contributions. These are more possible, and in turn, may direct research toward theoretical breakthroughs. He suggests three important considerations for the implementation researcher: 1) using an implementation perspective; 2) using innovative approaches over an extended period of time to carry out inquiry; and 3) using various strategies and tactics for eliciting useful information concerning how organizations behave (1982:14-16). The next section discusses the methodology used for this study, which follows Williams' three criteria.

Methodology

The unit of analysis for this case study is the state of Texas. Texas is appropriate for this research because it contains so many private prisons, so many variations, and was so early a participant in the privatization of adult corrections. A case study approach is recommended as the

preferred strategy when answering a why question, when the investigator has little control over events, and when the researcher focuses on a "contemporary phenomenon within some real-life context" (Yin 1994:1). Thus, case study methodology has been selected to answer why this contemporary event occurred.

Yin's three criteria fit very well: 1) this study is explanatory, seeking to understand why and how the outcome of S.B. 251 varied so distinctly from the intentions of the policy makers; 2) certainly, no one, researcher or other, seems to have control over the circumstances -- the status and types of private prisons in Texas continue to rapidly evolve and unfold; 3) private prisons are contemporary, and certainly take place within a real-life context.

Relying on the Allison, Elmore, and Edwards work, this study will show that the conflicting views and motives of the various key players contributed to this unintended outcome. Some key players did not want private prisons at all; most others did. Among the varying positions on the question, even those on the same side of the issue did not have the same motives; the actual outcome desired by most of the major players varied. For instance, some members of the Legislature, Governor, and others in state government wanted to save the state money. The vendors said they wanted to save the state money, but in fact, they actually wanted to make money for themselves and their stockholders. The result of those varied motives today is a far distance from that envisioned eleven years ago.

I have devised an additional model to organize the context, varying motives of the many key players, and final outcomes of this legislation. While aware of Yin's caution that a strict methodological framework can become a counterproductive straightjacket (1982:66), this study will rely on a legal, economic, and political model to aid understanding of why private prison policy in Texas exceeded the legislative intent. The legal aspect is important because of the innovation of the legislation and the fact that the state of Texas was being besieged by lawsuits. The economic aspect is important because the financial distress throughout the state contributed

to the expansion of this policy. And, the political aspect also played a significant role as events unfolded.

I propose that the difference between intended and actual consequences occurred because the many key players' varying motives, the pulling and bargaining related to the legal, economic and political aspects surrounding the privatization of corrections in Texas, overlapped and conflicted with each other. This complex dynamic, the interplay amongst key players within these three contexts, resulted in consequences that are quite different from the original intentions of policy makers. Thus, the legal, economic, and political framework is useful as a means to view the implementation of Texas' proprietary prisons.

One reason for selecting qualitative methodology is to develop grounded theory. This is not theory in the formal sense of the word, rather it is a theoretical explanation that is based on, and grounded in, data that are systematically gathered and analyzed through the research process (Strauss and Corbin 1998:12). Using systematically gathered data, the researcher can develop an analysis or explanation and then more adequately answer why a particular phenomenon occurred.

This correlates with the Goggin group's call for implementation studies to reach new levels. Moving beyond what they define as the first generation, which is a detailed account; deeper than the second generation which develops an analytical framework; the third generation as the authors describe it accomplishes two major goals. First, such research sheds new light on implementation by explaining why behavior varies across time, across policies, and across units of government. Second, this level of study is more scientific because it leads to the ability to predict what type of behavior is likely to occur in the future (1990:171-172).

The Goggin group's work tries to develop a standard methodology to achieve this more scientific level. I would argue that because of the uniqueness and complexity of implementing any given public policy, it is unlikely that any real methodological standardization is possible. To standardize is to lose the richness and texture of the data. However, this implementation study

of Texas private corrections policy does point in the direction the Goggin group desires. The resulting explanation, the grounded theory, which emerges from this research, does contribute to the implementation literature. It may not lead to succinct prediction of outcome. But, this study does explain the behavior variance across time, policies, and governmental units.

This case clearly merits research because the outcome so spectacularly varies from the original intent. The original intentions of the 1987 Texas legislature are clearly stated in Senate Bill 251 (Acts 1987, ch. 18). The bill called for four PreRelease Centers, each with a maximum of 500 beds, to be financed, constructed, and managed by private vendors who would contract with the Texas Department of Corrections. Today, there are forty-three private facilities with a variety of missions; at least one contains 2,000 beds. Nineteen of these are not under the authority of the Texas Department of Criminal Justice.[3] Thus, the actual outcome is quite different from the original intentions of the 70th Legislature.

Elmore notes that before human service policy can be understood, it is vital to study the process by which policies are implemented. According to him, these policies can only be understood within the context of their execution (1978:186-187). As the following chapters will show, many participants with multiple motives have been involved in Texas' private prison implementation process. The legal, economic, and political model serves as an explanatory framework to aid the explanation and analysis of private prisons. The answer to why private prisons emerged and flourished in Texas can be better understood by looking at these three categories. To study the implementation process, I would like to explore whether and how these overlapping and sometimes conflicting forces came to influence the development of private prisons in the state of Texas.

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[3]See http://web.crim.ufl.edu/pcp/census/2000/Chart3.html for complete information.

Sources of Data

Yin recommends six sources of data, and suggests that at least two be used in every project. The six he names are documentation; archival records; interviews (structured and unstructured); direct observations; participant observations; and physical artifacts (1994:79-90). He also stresses the importance of triangulating the data from these various sources, which he defines as using multiple sources. The resulting richness of material, while complicating analysis, sets qualitative studies apart because of the development of "converging lines of inquiry" (1994:90-92). In other words, as multiple sources of data are examined, the subsequent conclusions often are more convincing and accurate. This is because these conclusions are based on more than one source of data.

Each of these six data sources contributed to this research, and I made every effort to triangulate data. At times, interviews are not cited, because the individuals asked to remain anonymous, and I honored those requests. The very earliest phases of research began with open-ended interviews and archival research. Where possible, I first went through an individual's papers, and then asked for interviews. People interviewed ranged from former governors and members of the legislature; to all levels of employees in numerous state and federal agencies. On a few occasions I was afforded the opportunity to speak with prisoners. I also spoke with local officials, vendor representatives, lobbyists, members of the Board of Criminal Justice, and representatives from non profits such as prisoners' rights and victims' rights groups. Appendix I lists the people interviewed; Appendix II notes the archived papers that were researched, including several personal collections. Although not every collection is cited in the text, each of these sets of papers contributed to my understanding of this topic and the many related issues.

Further, as listed in Appendix III, I conducted a number of site visits to various public and private prisons including state and federal facilities. Several times, I was invited to participate in meetings such as substance abuse therapy groups or intake sessions where new

prisoners were being processed into the prison. In addition, I also used documentation from published sources such as newspapers and journal articles. Artifacts such as technology used in prison management and art produced by prisoners also contributed, if not directly to any analyses or conclusions, to my understanding of what the many public and private prisons in Texas are like on a daily basis for those held behind the walls.

The Legal, Economic, and Political Context in Texas, 1987

In 1987, when S.B. 251 legalized the concept of private prisons, the state of Texas was dealing with many difficult issues. These problems included the troubled prison system; additionally, throughout the state, multiple interrelated dilemmas loomed. The prison system was grossly overcrowded and had almost always been underfunded. Texas had been struggling in federal court for many years over the conditions in their prison system. The economy was suffering, even as much of the rest of the United States prospered. Politically, the situation at the state level was quite volatile. These factors led to a context conducive to the rapid growth of private prisons in the state. Each of the three is discussed below.

Legal Context

Around the time that S.B. 251 was proposed, the Texas prison system was in turmoil. A long history of neglect had led to the Texas prison system finding itself under a court order to take immediate action to reduce the serious overcrowding in its dated facilities (*Ruiz v. Estelle* 1980). The overcrowding, neglect, and brutality that had brought the system to the attention of the District Court in the late 1970s had not improved very much since that time. The state had effectively ignored the court orders, other than to appeal to higher courts. The consequences of this ongoing neglect, led to ever worsening conditions in the state prison system.

As the state government's stonewalling continued, following Judge William Wayne Justice's ruling, chaos took over in the prison system. Between January 1984 and September

1985, fifty-two prisoners inside the Texas Department of Corrections were murdered by other prisoners (Press 1986:48). The crisis had expanded beyond the prison system. To try to manage the overcrowded prisons, Texas had implemented an early release program, greatly increasing the number of inmates released on parole. However, this had led to violent crimes being committed outside prison by prisoners who had been released (Fabelo 1992:374-375). In some cases, prisoners convicted of violent offenses were released sooner on mandatory release than if they had been paroled. Some reportedly were choosing what would be a short prison term rather than parole because they would be out from under the law sooner (Press 1986:48).

In spite of this disorder inside and outside their prisons, Texas had only taken cosmetic action toward complying with the federal orders, even after most of Judge Justice's findings were upheld by the Court of Appeals. Because of this refusal, in late 1986, the federal judge had threatened fines as high as $800,500 a day until they met his broad requirements. Shortly after his inauguration, Governor Clements met with Justice and promised the state would take immediate action to meet all mandates if given more time before the fines were assessed against the state. Justice agreed.

Economic Context

In the mid 1980's, Texas' economy was in serious decline, with no sign of recovery. Most of the United States was recovering from the recession of the early 1980's, but Texas was still reeling. The election of the first Republican Governor since the Civil War may have reflected the ever more conservative tendency to save money. The price of oil, the major contributor to the state economy, was dropping. The benchmark had always been $20.00 a barrel, the minimum price that caused concern amongst economists. When the price of oil dropped below this amount, the Texas economy always took a hit. According to one estimate at the time, every time the price per barrel dropped by $1.00, 13,500 Texas would lose their jobs. The state

comptroller predicted shortfalls for 1986-1989 that ranged from $1.3 billion to $6 billion (Evans 1986:1-2).

In fact, the price of oil dropped to below $10.00 a barrel. In addition to this crisis, Mexico, whose economy was closely tied to the state, experienced a dramatic devaluation of their peso, reducing their ability to economically contribute to the state's well being. Although Texas had enjoyed more than four decades of "devil-may-care oil prosperity," the current economic downturn had caught business and political leaders off guard and was the cause of great consternation (Rips 1986:22-23). Perhaps hardest hit were the isolated, rural areas of Texas. Unemployment had raged at over ten percent for years; people had no health insurance. Things were so bad that some grocers timed their sales around the dates that food stamps were received. While other pay increased, per capita salaries in these areas declined (Borders 1986:13-15).

Thus, Texas lawmakers were faced with shrinking revenue at the same time the federal courts were demanding a major overhaul of the prison system. As early as 1985, academics, legislative researchers, and representatives from the private sector were discussing the possibilities of privatization to help resolve the state's financial woes (Jones 1985:39A). By 1986, the Texas Department of Corrections (TDC), had accepted bids from private construction companies to build the first of five 2,225 bed maximum security prisons it needed to comply with court orders ("Builders May Finance Prison 1986:18). TDC had already drafted a Request for Proposal (RFP) for the private management of four 500 bed PreRelease Centers (PRCs). However, some members of the state legislature had questioned the legality of this practice. To help settle the question of whether private prisons were legal in Texas, Senator Ray J. Farabee introduced Senate Bill 251 in 1987.

Political Context

In 1978, William P. Clements was elected as Texas' first Republican governor in more than 100 years. Although defeated by a Democrat, former Attorney General Mark White in 1982, Clements returned to defeat White in 1986. Democrats continued to control the Legislature throughout this time. Thus, the political climate in the state was volatile. These were hotly contested races and the prison system was one of the dominant issues in the campaigns. White, in his capacities as attorney general and governor, has been held responsible for not responding to Judge Justice's orders (Kemerer 1991) (Martin and Ekland-Olson 1987).

The State Legislature had also been slow to act, feeling that Judge Justice's orders were unreasonable and would be overturned. However, by 1987, things had come to a head in Texas' resistance to Judge Justice's *Ruiz* rulings. By the time Clements was elected for his second term, the climate was changing. He and other political leaders in the state had by then realized they needed to act in order to correct the conditions within TDC that were causing havoc internally as well as externally. The exasperated federal judge's threatened fines made it even more urgent that the state act.

Because Governor Clements recognized that the state was going to have to respond to the federal court, he arranged for a meeting with Justice. Although (correctly) reluctant even eleven years later to discuss the specifics of this meeting, Clements clearly was pleased with the results. The Governor established communication with Judge Justice and then began to work on solutions to the problems. "I guess you could say we became partners instead of enemies – we got on the same side of the issue and determined how we could reach a solution. Judge Justice made it very clear that his patience was at an end" (Clements interview 1998). By now, no one closely connected with the state prison problems doubted the judge's seriousness. Most recognized that immediate action was necessary.

State leaders began seeking ways to meet these court orders as quickly and economically as they could, political alliances and differences not withstanding. The (Democratic) attorney general, Jim Mattox, attended Clements' meeting with Justice, and supported the Governor's efforts to resolve the overcrowded prison system (Clements interview 1985). The media and the public were concerned about the fact that the state was releasing prisoners after they spent a very short time in prison; the perception was that they often re-offended. The Legislature was ready to act. For profit vendors had hired lobbyists and were making campaign contributions to politicians. Not for profit vendors were working hard to get contracts. In some cases, cities and counties were clamoring for the facilities to be located in their jurisdictions. There were many actors. Each wanted a different outcome that all identified as private prisons.

Conclusion

Thus the climate was ripe for change. The pressure of the *Ruiz* lawsuit, the declining economy, and the unsteady political circumstances all converged in a way that enabled the proliferation of private prisons. In fact, while the growth of private prisons in the state seems phenomenal, the fact is that the prison system itself experienced exponential growth during the same time span. In 1989, the state placed 1500 men in beds they contracted with the private sector; by 1998, this number grew to over 14,000. In the same time period, the TDCJ total population grew from 39,500 to 149,000.[4] This contextual situation helps explain why the state was willing to experiment by contracting for management of some of their prisons, but it does not explain why the outcome so wildly varied from the original planned intentions. That question is not so easily answered. While the economic, legal, and political context influenced the outcome, there were other factors at play.

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[4]These data obtained from various reports provided by Wendy Ingram, TDCJ, Executive Services.

To answer the question why the outcome was so different from intent, other factors relevant to implementation theory must be considered. Such information as who the interested parties were and what their motivations were must be accounted for. How much influence and how each key actor obtained it is important. The process, the bargaining and pulling must be calculated By thoroughly examining the process of private corrections policy implementation in Texas, we can learn more about what may happen when other jurisdictions decide to privatize corrections. Upon reaching a greater understanding of the Texas private prison process, it will be possible to generalize to the larger context of the New Public Management paradigm by asking what the that state's experiences can tell us generally about the privatization of public service. The concern about privatizing human services will also be explored. Some are concerned at the idea of an "invisible hand" inside a total institution.

The literature pertaining to privatization of corrections is generally theoretical; not much empirical study exists. Scholars have been asking the same questions for many years. Except for a few cost comparison studies, each of which critics roundly criticize (with good cause for that criticism), most scholars raise questions concerning the economic, legal, and political aspects. There are suppositions and anecdotes, but little deliberate, methodical empirical work exists. We do not currently have an understanding, model, or framework to study this issue. This study of Texas' long time, varied experiences with such extreme unforeseen events will contribute empirical evidence that will help answer those questions. This research provides a defined, focused, penetrating analysis, based on empirical data. As it answers why private corrections policy in Texas expanded so far beyond the policy makers intentions, it also can provide answers to the more general questions.

Chapter Outlines

This chapter has introduced the reason for this study, including why prison privatization is a worthwhile topic, and why Texas' experience is important. The research question, and other questions are discussed; their significance is explained. The theoretical framework and methodology are discussed, along with the sources of data. Finally, the legal, economic, and political context of the state at the time S.B. 251 was enacted are described.

Chapter Two begins the first stage of Pressman and Wildavsky's model by explaining the intended outcome that was desired by the policy makers. The motives of the various key players who were present at the Senate hearing where the legislation was introduced are included. Their backgrounds and purposes are described. The major sources of data are tapes of the Senate and House committee hearings as well as personal interviews. Most people who spoke at the hearing were interviewed during 1998-1999 to further confirm their feelings about the issue. Newspaper articles and other ublished reports were also relied on for information.

Chapter Three takes the model through the next step by beginning a description of the actual outcome. This chapter describes the many varying types of private prisons that have emerged in Texas since 1987. The major sources of data are published accounts from various sources. In many cases, information was obtained from the internet. Also, the TDCJ Executive Services division promptly and efficiently provided many reports and much information in response to specific questions. Each source is carefully cited.

Chapter Four explains another outcome dimension of S.B. 251. Because the growth was so fast, and so decentralized, it required a great deal of government response. The courts, the bureaucracy, and the executive branch all had to become involved in trying to regulate a situation that at times seemed out of control. The major sources of data in this chapter are published reports, newspaper articles, and interviews.

Chapter Five concludes the study and the model by attempting to explain why the outcome varied so wildly from the intent. By examining the legal, economic, and political outcomes, an analysis of why this happened is detailed. The dynamics between the many players, pulling and bargaining to keep the issue alive, within the legal, economic, and political contexts are described. The data in this chapter are drawn from many various sources. These data and ensuing analyses enable better understanding of why the actual outcome in Texas was so different from the legislative intent. Further, the questions, the anecdotal evidence regarding private prisons in the literature can better be answered and substantiated.

While the Goggin group's call for specific predictions about outcome in any future scenario may not be possible, this study reveals two important criteria for policy makers to be aware of. First, the key players must be clear about their own and others' motives. They must realize that while bargaining may take place in the early stages, ultimately, separate, self-interested goals are what the players have in mind. Second, if the legal, economic, and political contexts are not stable, it is likely that the outcome will not be what is intended by the policy. If they are not stable, policy makers must somehow account for this, and build in safeguards to protect the integrity of the policy they are attempting to implement. The findings of this study point toward the third generation of implementation research because it can enable key actors to design policy that is more likely to be implemented as intended. By meeting the actual intentions, the policy then has a better chance of accomplishing the desired outcome.

CHAPTER TWO

MOTIVES OF KEY PARTICIPANTS: "THIS ISN'T WHAT I WANTED TO HAPPEN!"

Relying on the Allison, Elmore, and Edwards models which emphasize the importance of key players' motives, the purpose of this chapter is to determine the motives of the key participants involved in the implementation of private corrections policy in Texas. Although S. B. 251 strictly constrained the number (maximum of four), size (maximum of 500 beds), and mission (PreRelease Centers), twelve years later, the outcome is quite different. Today in Texas, most early supporters of the enabling legislation, using various wording, indicate that becoming the home of more than one-third of all private prisons in the United States is not what they intended. These unintended consequences far outpace the original intent of S.B. 251. This chapter introduces the key players and explores what their legal, economic, and political motives were. This chapter shows that in Texas, there were complex bargained decisions among different groups and individuals who had various motives. This contributed to the unintended outcome.

Background

Described as "mired in contradiction" (Phillips, 1987:A1,A2), the Texas prison system faced a number of complex problems in 1987. The state was struggling to comply with court orders resulting from the *Ruiz v. Estelle* (1980)[5] case as well suffering from a serious economic

[5]In addition to this case filed in Federal Court, some county jail inmates and a number of counties had filed suit against the state prison system in State District Courts, seeking relief from their own overcrowding. See, for example, *Alberti v. The Sheriff of Harris County* (filed in the early 1970s, added *Harris County v. State of Texas* as third party defendant in Oct, 1989); *The County of Nueces v. the Texas Board of Corrections* (filed in Oct, 1988); and *Harris County, Texas v. State of Texas* (tried Dec, 1992).

decline. Within this difficult legal and economic context, the group of people who converged in Austin February 10 1987, to discuss the proposed legislation had a variety of motives and ideas about solutions to the urgent problems facing the state of Texas. Some had quite different motives. Others had similar motives but saw quite different solutions to the overcrowded, unconstitutional prison conditions within the state. As this chapter will show, from the earliest days of design and implementation, this complex, contradictory environment contributed to the unintended outcome.

Much of the information in this chapter is derived from listening to tape recordings of the Senate Criminal Justice Committee hearings and presentation to the full Senate. These recordings are supplemented by recent interviews with most of those early participants. In addition, newspaper and journal articles are used. Finally, the personal papers, including some archived documents, supplement the other resources.

Key Participants

The purpose of this section of the chapter is to introduce many of the key participants, including policy makers and others, who formulated S.B. 251. Most had converged in Austin on February 10 1987, to attend the Senate Criminal Justice Committee meeting where the legislation was formally introduced to the public for the first time. Many were registered to speak; a few were not at the meeting but played key roles in formulating this legislation and the resulting policy and so are included. Some people mentioned in this section were heard from during the Senate floor hearings, which occurred in 1987 on February 19, March 17, and April 2. Finally, the Clements administration quickly became engaged in the final formulation of this bill and their involvement is described here.

Senator Ray J. Farabee

Senator Ray J. Farabee (D) sponsored the bill in the Senate; his staff worked with the Texas Legislative Council to draft the bill (Kansteiner interview 1998). Farabee was first elected to the Senate in 1975 from the 30th State Senatorial District, an area that included Wichita Falls, located about 140 miles northwest of Dallas near the Arkansas state line. Described as "involved in everything," (Texas Monthly (c), 1983:112) he carried legislation that would affect most aspects of state government. As a new Senator, his first graduation speech was given at a prison. Thus began his interest in prison policy. During his tenure in the Texas Senate, he served on most Senate and joint committees that influenced criminal justice policy in Texas. Farabee left the Senate in 1989. Today he currently serves as Vice Chancellor and General Counsel for the University of Texas system.

Known as a defender of various social programs, (Texas Monthly (b), 1981:103) Farabee had a long and involved interest in the various problems confronting the prison system, and for many years had sponsored both legislation and research that would provide alternatives to incarceration. His intense desire to introduce effective alternatives to incarceration threads throughout his legislative career and continues today (interview 1998).[6] Over the years, he sponsored many bills which indicated his support for alternatives to incarceration. These included community service and work release authorization for convicted felons, restitution programs, halfway houses and residential treatment facilities ("Hall of Honor Award," 1987:n.p.). Indeed, it is clear that Farabee still advocates for alternatives to incarceration where possible: "It is politically dangerous to build too many prisons because no matter how many we build, we will fill them. I believed then and still believe that we do need alternatives" (Farabee interview, 1998).

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[6]This interest is evident from many additional sources. See "Legislative Options," 1981; Bounds, 1985:27A; Robison, 1986(a):1; Robison, 1986(b):1.

In 1987, Senator Farabee was commonly known in the press as "Fair-Bee," indicating his propensity for fairness. As a Senator, he received many awards from diverse groups, representing a variety of interests such as the Citizens United for the Rehabilitation of Errants (CURE, a group representing prisoners' rights) award in 1983. He also was recognized by such groups as the "War on Drugs" who awarded him their Outstanding Leadership award in 1985. Governor Clements (R) appointed him to a Blue Ribbon Committee on Criminal Justice in 1982. Beyond alternatives to incarceration, Farabee introduced and guided passage of a wide range of legislation that influenced most aspects of criminal justice policy. These included hazardous duty and longevity pay for correctional officers, compensation for crime victims, minimum standards for juvenile detention facilities, substance abuse treatment for prisoners, and good time policies ("Hall of Honor Award," 1987:n.p.). The wide range of these statutes indicate his desire to improve conditions within the corrections community for all who were affected.

Potential Vendors

Although the private prison industry was relatively new, several vendors had been interested in contracting to managed prisons in Texas for several years. Though most interest came from the for profit sector, several non profit entities also attended the Senate Committee hearings. Potential vendors, both profit and nonprofit, were present to advocate their avid support for S.B. 251. Many of the firms hired professional lobbyists. By the time this bill was presented to the legislative committees in each house, a general consensus existed. Despite almost certain acceptance, lobbyists from the private sector and local officials "besieged the capitol" (Ethridge and Marquart, 1993:38).

The for profit sector included representatives from three companies who hoped to eventually gain the proposed contracts to be awarded by the Texas Department of Corrections (TDC). Among these were Thomas Beasley from Corrections Corporation of America (CCA),

George Stewart of Detention Centers, Inc., and his lobbyist, Billy Wayne Clayton. Other potential vendors who testified included T. L. Baker and his attorney, Jerome Johnson. Baker was a former Texas county sheriff; in 1987 he was the owner of Detention Services, Inc. The only potential nonproft vendors attending were Bill Robinson, Corrections Concepts, Inc. and Robert Lynch of Lynch Funding, who was working with Robinson.

Beasley was well-known to the policy makers in Texas; he is a very determined and forceful advocate for his company. He and others he had hired had been lobbying in Texas for private prisons since 1983, the early days of then Governor Mark White's term (White interview, 1998). CCA is the largest private prison firm in the world; until late 1998, they had more prison beds in Texas than did any other vendor. By 1987, this company had been in business for four years and operated ten secured facilities located in four different states. At that time in Texas, CCA managed two Immigration and Naturalization Service (INS) detention centers. As Beasley testified, CCA then had an average daily population of 1,500 prisoners (testimony 1987). Acquiring TDC contracts for Texas inmates would be a logical next step; by gaining even one of the four proposed 500 bed facilities, Beasley stood to greatly expand his company.

Originally a real estate and insurance investor in Tennessee, Beasley says he first got the idea for his company at a cocktail party from a Magic Chef stove company executive who "said he thought it would be a heck of a venture for a young man: To solve the prison problem and make a lot of money at the same time" (Hurst, 1983:n.p.). Although CCA located their first facility in Texas, and lobbied heavily there for years, Beasley is well established in Louisiana. In addition to the unnamed Magic Chef executive, Beasley also was encouraged by former Tennessee Governor Lamar Alexander, a close friend. Beasley's Tennessee financial and Republican connections pre-date his involvement in private prisons (Weiss 1989:30-31). Notably, since CCA first began, the company has tried, at least twice, to pay that state as much as

$250 million dollars for a 99 year lease of the entire prison population (Tolchin, 1985 and McCarty, 1998).

Initially, two of CCA's chief executive officers were former Tennessee corrections officials. Prior to creating CCA, in addition to his other investments, Beasley had served as chair of the Tennessee Republican party. Other interested parties include the Nashville, Tennessee based Massey Birch investment group (which also owns Kentucky Fried Chicken and the Hospital Corporation of America). Massey Birch helped launch CCA in 1983 with $35 million in venture capital (Weiss 1989:30-31). Private prisons were only one of Beasley's many commercial interests.

Detention Centers, Inc., was represented by its owner, George Stewart, who had hired Billy Wayne Clayton as a lobbyist in his effort to compete in the bidding for the four private prisons which were being considered by the Texas Legislature. Clayton, still active as one of 1998's highest paid lobbyists, (Tinsley, 1999:A10) had diligently worked to lay fertile ground for his client. Mr. Clayton was widely quoted in the press as an advocate for the forthcoming legislation (Kilday, 1987:B3). In spite of a former career in public service as Speaker of the Texas House of Representatives, Mr. Clayton was laudatory about the advantages of the private sector, extolling the virtues of the free market.

From Amarillo, in the Panhandle area of Texas, T. L. Baker and Jerome Johnson, the attorney hired to lobby on Baker's behalf, appeared to testify at the Criminal Justice Committee hearing. Baker clearly had an interest in gaining a contract. He was already building facilities under contracts with counties. Noting that he had 2,400 beds in the construction phase, he added: "If you need 'em, they're gonna be on-line. I hope (testimony 1987)." By 1989, Baker was described as wanting to be the Colonel Sanders of the private jail industry. One of the first to bring out of state prisoners into Texas, Baker had imported more than 200 inmates from Washington DC into his South Texas, Zavala County Detention Center.

However, according to later media reports, Baker had not met Texas' minimal requirements. The men incarcerated there were described as being basically in continual lock-down because there was not enough staff to let very many of them out at any given time. Further, the facility did not met the American Correctional Association (ACA) standards which the DC system had been ordered to provide its inmates (Curtis, 1989:89-90). Further, in 1990, the Texas Jail Standards Commission ordered this facility closed. Although County Judge Pablo Avila protested, the Commission found that high risk inmates were being held in minimum security conditions with "no indication the high risk inmates can be moved out in the immediate future" ("Official Blasts Prison Closing," 1990:13B).

There were two representatives from the nonprofit sector. Bill Robinson, owner of Corrections Concepts, Inc. (CCI) was accompanied by Robert Lynch, president of Lynch Funding. The two were planning to work together on their proposed undertaking and represented the only nonprofit vendors that would address the committee. In addition to a long, active interest in criminal justice issues (he had served on the Dallas Crime Commission Task Force), Lynch had experience building government facilities other than prisons. He had used tax-exempt lease purchase plans as well as such as jails and schools using tax-exempt lease purchase plans. Today, Lynch has gone on to other business endeavors.

Robinson, however is still actively trying to gain a project with the Texas Department of Criminal Justice (TDCJ).[7] He readily acknowledges that he spent time in prison in the seventies. In 1983, several years after he left prison, he became a Christian and since that time has felt led by God to be involved in prison ministry (Robinson interview, 1998). He, and others who are

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[7]For years known as the Texas Department of Corrections (TDC), in May 1989, the state Legislature approved H.B. 2335 (Acts 1989 ch. 212). This bill completely reorganized TDC by combining several other agencies and creating the new "umbrella" agency named the Texas Department of Criminal Justice (TDCJ). TDC will be used when referring to events prior to May 1989, TDCJ will be used when referring to events after that time.

involved with him on his projects, believe his personal experience as a prisoner gives him insight into the needs and requirements of prisoners. In fact, Robinson served both federal and Louisiana state time for writing hot checks and reportedly had a problem with alcohol and drugs.

In 1985, six months after founding CCI, he was indicted on five counts by a federal grand jury in Tyler for conspiring to defraud the federal government by selling illegal tax shelters which involved investment in a book. Deciding he was "guilty in spirit" Robinson decided to plead guilty to the count of conspiracy and testify against others who were also accused in the case. In exchange, the government agreed to drop the other charges and gave him a suspended five-year sentence. In addition, he was ordered to work 1,000 hours of community service and placed under the supervision of a probation officer for five years (Hight, 1989:A1).

Local Jurisdictions -- YIMBY[8] comes to Texas

Traditionally, the response to the prospect of a prison in one's community has been characterized as NIMBY -- Not In My Back Yard. However, the economic hardships in many local jurisdictions had created a new attitude -- YIMBY -- YES In My Back Yard. Struggling, generally rural, county and city governments throughout the state saw this as an economic development opportunity for their jurisdictions. Those who gave testimony at the Committee hearing included County Judge L. D. Williamson of Red River County, City Manager Jack Holt of Clarksville (Red River County) and Mayor Ronnie McWaters of Cleveland. Each of these men gave strongly supportive statements regarding S.B. 251, although each emphasized different aspects of the issue.

Williamson and Holt accompanied Robinson and Lynch to the hearing to support the idea that Corrections Concepts, Inc., a nonprofit firm, be awarded a contract to manage a prison to be located in their county. Located deep in East Texas, less than twenty miles from the Oklahoma

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[8]Thanks to Professor David H. Rosenbloom for this suggestion.

state line, Red River County is an impoverished community, with a high percentage of elderly people. While Williamson testified in his capacity as County Judge, Holt stressed his lengthy experience as a prison volunteer rather than as a City Manager.

Another economically deprived community, Liberty County, was also represented. Mayor Ronnie McWaters of Cleveland (the county seat) was there to testify in support of the bill, with the hope that they would become the site of one of the new prisons. Liberty County is not as isolated as Red River County -- it is about an hour's drive north of Houston. Nevertheless, like most rural communities, they were feeling the economic crisis even more strongly than did the urban areas. "When Houston sneezes, Cleveland gets a cold" (Petropolis interview, 1998). Mr. McWaters has since passed away. Bill Petropolis helped initiate the community effort to procure one of the contracts which they did eventually acquire, and he will be quoted in the following text. Soon after these hearings, Cleveland, Liberty County, and CCA forged a symbiotic, almost idyllic relationship that lasted until late 1998.

Resource Witnesses

Resource witnesses attend these meetings to present information. These witnesses represent state agencies; they speak neither for or against the proposed legislation. In this case, they were there because their agencies had experiences in contractual relationships with private vendors. The invited agencies and their representatives who addressed the committee included Bill Anderson, Director of the Texas Juvenile Probation Commission (since retired); Cherlyn Townsend, Texas Youth Commission (has moved on to Arizona to their Youth Commission); and John Byrd, Director of Board of Pardons and Paroles.

In addition, the Texas Department of Corrections also had representatives there; James "Andy" Collins and Larry Kyle from TDC addressed the Committee. Mr. Collins went on to become a highly regarded Executive Director of the Agency, especially respected because he had

come up "through the ranks," beginning his career as a correctional officer. However, in 1998, he was indicted for conspiring with the private supplier of a meat-substitute, to defraud the agency. Both Collins and Kyle, along with two other TDCJ employees, lost their jobs in connection with these charges (Ward and Herman, 1998).

Small Opposition

Only a small opposition appeared to question the proposed legislation. The Texas State Employees Union (TSEU), was represented by Wakie Martin who presented a well prepared statement that carefully itemized the union's objections to the committee meeting. Gara LaMarche, Executive Director of the Texas chapter of the ACLU, was unable to appear, but sent a letter to register his opposition to the prospect of privately managed corrections. Among the Senate Committee members, only Senator Craig Washington raised any objections or questions critical of the proposed legislation. Senator Washington later went on to become a U. S. Representative. Today he lives in Bastrop, Texas. He is an attorney in private practice, often representing those with civil rights causes.

When S.B. 251 was introduced to the full Senate for its first reading, only Senator Carlos Truan joined Senator Washington to speak and vote (in the first Senate Floor Hearing) against the bill. Senator Truan still serves in the Texas Senate where he has long represented District 20, which includes the Corpus Christi area. Having served on a range of committees, he often focuses on educational opportunities for all Texas citizens. Today he is known as "Dean of the Senate," a title earned because has remained in that office longer than any other current member.

Governor William H. Clements

After overwhelming approval from the legislature, Governor Clements, with a strong statement of support for the legislation (Clements Apr 1987), signed S.B. 251 into law on April 14, 1987. First elected in 1978, Clements was Texas' first Republican Governor in over 100

years. His career began as a "roughneck" in the oil fields. He later drilled oil rigs and eventually founded Sedco, Inc. In 1947, which led him to become a multi-millionaire. His public service career began in 1973, when he served until 1977 as a Deputy Secretary at the United States Department of Defense. During that time, he was honored with the Distinguished Public Service Award from the Defense Department in 1975; in 1976 President Gerald Ford awarded him the Bronze Palm (Raimo, 1985:303-304).

He narrowly won the 1978 campaign when he defeated former Attorney General John Hill (D) by only fifty to forty nine percent. However, in the 1982 campaign he lost to former Attorney General Mark White (D). Described as "rancorous," one of the major issues was the rapidly deteriorating economy (Raimo, 1985:304-305.). Perhaps for the same reasons, in 1986, he defeated White in another antagonistic campaign. Along with the declining economy and education, the increasingly urgent problems within the state's prison system led to heated exchanges and accusations. Along with many other officials and citizens in the state, during his first term, Clements had been convinced that Judge Justice's orders in the *Ruiz*[9] case were unreasonable and likely to be overturned. He "fought the courts on prisons" (Barta, 1996:256) in sometimes creative ways such as creating "tent cities," that ultimately housed 4000 prisoners in tents (Crouch and Marquart, 1989:134).

However, by the time Clements was elected for his second term (1987), the climate was changing. Judge Justice had threatened $800,500 daily fines if the state did not immediately take action to comply with his mandates. The Governor recognized that the state was going to have to respond and arranged for an unprecedented meeting with Judge Justice. Although reluctant even eleven years later to discuss specifics of this meeting, Clements clearly was pleased with the results. In this meeting, he established communication with Justice and then began to work on

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[9]For greater detail regarding this lawsuit and the principals involved, see Crouch and Marquart, 1989; Feeley and Rubin, 1998; Kemerer, 1991; and Martin and Ekland-Olson, 1987.

solutions to the problems. "I guess you could say we became partners instead of enemies - we got on the same side of the issue and determined how we could reach a solution. Judge Justice made it very clear that his patience was at an end" (Clements interview, 1998). To keep his agreement with the judge, the Clements administration quickly became integrally involved in this and other legislation designed to help Texas conform to *Ruiz* mandates.

Conclusions Regarding Participants

These, then are the major speakers that represented numerous interests in the outset of private corrections facilities in Texas. Most of those present supported the idea, a few urged caution, even fewer openly spoke against the proposed legislation. It is evident that this situation fits both the Allison and Elmore models. The situation was complex; a number of participants, each with different motives took part in the bargaining which took place along regular channels. The rest of the chapter recounts how these various interests, with many different motives came together and bargained with one another to keep the process going. The majority above all, wanted private prisons authorized; other aspects, other details were negotiable in order to keep progress in motion.

Legal Motivations

This section of the paper describes the legal dimensions of the key players' motivations. During the committee and Senate floor hearing, key players expressed a number of legal issues and interests. S.B. 251 was introduced to settle the question of the legality of contracting with vendors for the management of prisons in Texas. Most attendants felt the bill addressed the germane legal issues; some had specific requests. The resource witnesses urged caution and specificity. All opponents raised constitutional, legal, and ethical questions.

Key Legal Motivation

The key legal motivation for S.B. 251 was "an elephant in the room that nobody was talking about" (Washington interview, 1998). That is, the *Ruiz v Estelle* case. In 1980, Federal District Court Judge William Wayne Justice issued a 250 page document which outlined specific requirements for the state to follow in order to reduce the overcrowding and other unconstitutional conditions within TDC (*Ruiz v. Estelle* 1980). Texas government, including previous legislatures, past and present governors, and TDC had resisted these orders for years. Finally, in 1986 Justice issued the threat of a fine amounting to $800,500 a day if the state did not begin to comply. The state had to take a number of steps to comply with *Ruiz*. These proposed 4,000 beds did not meet even half the total required capacity expansion which was only one of numerous steps that had to be taken in order to comply with court mandates. Various other measures had to be enacted. This legislation was one of many bills introduced in the 1987 Texas Legislature that addressed the numerous, complicated problems within the prison system.

Senator Farabee

Farabee sponsored S.B. 251 to settle the question regarding the state's authority to contract with private vendors for prison operations. The issue had been heavily debated, with most agreeing the constitutional requirement for statutory authority was already covered by existing law. However, during appropriations meetings prior to the opening of the Seventieth Legislature, Representative Bill Hollowell had argued that it was illegal for the state to contract for corrections management.

To settle that question, Farabee introduced S.B. 251 which would make it legal for the state to contract with vendors to "finance, construct, operate, maintain and manage secure adult correctional facilities" (S.B. 251 §1, Sec. 1 (a)). The specific legal issues addressed by S.B. 251 regarding these proposed management contracts included: 1) that the vendor be required to meet

all court orders and constitutional standards as well as ACA requirements; 2) the state would remain ultimately liable for civil rights and constitutional violations; 3) vendors could not use the defense of sovereign immunity; 4) the state could delegate use-of-force authority; and 5) the state would retain the discipline function (Reynolds 1987).

Potential Vendors

On February 10, 1987, speaking to the committee, the vendors vigorously proclaimed their support for this bill. As would be expected, their comments often supported causes specific to their own organization's needs. At times, amendments were requested that would ensure each company's ability to compete, and in a way that would, if not favor them specifically, certainly enhance their opportunity to gain a contract.

For instance, Baker, the former sheriff who was in the beginning stages of his business, asked the Committee to be sure to make it legal for him to contract with counties; in fact, he had existing contracts with counties. S.B. 251, §1, (a) and §8 (49) specifically permitted this. Baker further indicated that he also hoped to gain business from the federal government. Near the end of the hearing, Johnson, his attorney, asked that the bill be amended to allow facilities under construction could be eligible to bid for a contract even if they exceeded the 500 bed limit. Two of the facilities Baker had under construction were designed for 750 beds. This was ultimately provided in §1, Sec. 1 (c).

Beasley, zealously speaking for CCA, declares he had seen legislation from at least six other states and Beasley proclaims S.B. 251 "one of the best bills that I have seen." Again, addressing the aspects most specific to his organization, Beasley states that he "unilaterally imposes" ACA accreditation on all CCA contracts because he feels this protects him from

§1983[10] lawsuits. Because the federal courts have held that ACA standards exceed minimal constitutional requirements, these standards insulate him in case of lawsuits. Finally, ACA standards enable him to gain the liability insurance S.B. 251 requires (testimony 1987).

Some of his assurances, however seem somewhat self-contradictory. In one instance, he assures the Committee that by contracting for management, the state will expand its control (rather than lose it). On the other hand, he later assures the committee that no one could sue the state over events in theses private prisons. Thus, the state is buffered by the private sector. Somehow, according to Beasley, the state would expand its control at the same time it transfers its own risk away to the private sector (testimony 1987).

Robinson, from the nonprofit sector, concurred in his evaluation of this bill; it was one of the best he had seen as well. Robinson and his supporters were at that time, and still are, anxious to provide programming that was "faith-based, in a not-for profit prison." Robinson has been greatly encouraged in his quest for a faith-based prison by recent events. In December, 1996, Governor George Bush released "Faith in Action . . . A New Vision for Church-State Cooperation in Texas Report." This Report was the final conclusion of his Advisory Task Force on Faith-Based Community Service Group. Though not unanimous, in this report the majority of the Task Force urges Texas officials to permit faith based organizations to play a more significant role in the rehabilitation of criminal inmates. The report includes information about these sorts of programs and mentions (but does not cite) studies to support their recommendations. Not to be outdone, in 1997, both the House (HCR 135 75(R) 1997) and Senate (SCR 44 75 (R) 1997) issued resolutions urging the entire criminal justice community to recognize and permit faith-

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[10]Here Beasley refers to 42 United States Code §1983, (1871) Civil Rights Act. Most lawsuits filed by or on behalf of prisoners against the State are filed under this act. §1983 was enacted after the Civil War to protect freed slaves by holding all public officials accountable for any actions that might abridge the "rights, privileges, or immunities" of individuals within their jurisdiction. For a detailed discussion of the evolution and current use of this statute, see Rosenbloom and O'Leary (1997), pp. 265-280.

based correctional programs, facilities, and initiatives to play a more significant role in the rehabilitation of criminal offenders.

Local Jurisdictions

One overriding legal concern emerged from the local jurisdictions. The Red River County contingency wanted statutory assurance that the bill would specify that only low risk inmates would be housed there. Judge Williamson, as eager as he was to have a prison in his county, wanted further assurance that the state would not later "come along and say 'we're going to put some wire round here and now we've got a maximum security prison (testimony 1987).'" Holt, city manager of one of the towns in Williamson's county, stressed the importance of "not simply warehousing people" and wanted assurance that dangerous prisoners would not be mixed in the population they might receive (testimony 1987).

Resource Witnesses

The resource witnesses urged caution regarding the legal aspects of this proposed bill. Three aspects were characterized as being absolutely essential. These were 1) specific requirements; 2) specific enforcement mechanisms; and 3) close monitoring. Cherlyn Townsend, from the Texas Youth Commission (TYC) stated: "the private sector can be of most assistance when we are very specific about our needs, in terms of who is to be served and what outcomes we expect them to achieve." While careful not to criticize any vendor, Townsend stressed that the state must establish tough standards and precise specifications for every detail of operation. In addition to specific standards and requirements, financial sanctions should be stated and imposed for any deficiencies and failures to comply with contractual agreements. "There should be a range of sanctions, and we've found that they're most effective when they're financial." To ensure this occurs, Townsend pointed out that consistent, close monitoring is essential, "from the very beginning, before operating begins (testimony 1987)."

The final legal issue addressed by the Resource Witnesses was the insurance requirement. The juvenile services vendors were experiencing extreme difficulty in trying to meet their mandated insurance requirements. Townsend: "They've had a great deal of difficulty finding insurance at reasonable cost, without exclusions in the areas where they're the most vulnerable." After an exchange of questions and answers, Senator Washington incredulously asked: "They want to be excused from negligence? What do they cover?" Townsend's final point was that if the state planned to require the vendors to provide liability insurance, then the state should factor the cost it into the total cost of the contract. Although she did not specifically state that TYC had encountered problems, the content of her remarks should have left no doubt that all had not been smooth in their dealings with private management firms (testimony 1987).

Those opposing S.B. 251

The opposition raised a variety of legal questions. Their questions and remarks included moral and constitutional aspects of privatizing prison management. Although the TDC representatives spoke in full support of the legislation and assured the Senators that the employees at that agency did not object to the bill, Wakie Martin, from TSEU presented several legal objections to the bill on behalf of the unionized workers in the state. His testimony began by reminding the Senators that Texas had first contracted with the private sector in the 1800's: "The private sector involvement in corrections in the past has been poor." Further, the inherent abuse that resulted from that experience "caused the legislature to abolish the practice by the beginning of the century (testimony 1987)."

Martin's testimony on legal issues was bolstered by a letter from the Texas Civil Liberties Union. In that letter, Gara LaMarche raised constitutional questions. The original letter is lost; LaMarche later published an article that pointed out some of those issues, including delegation of government function and liability. He referenced two cases that were currently in

the courts that involve Immigration and Naturalization Service (INS) contracts with vendors for management of adult secured facilities. In the first case, the INS had tried to avoid liability for civil rights violations that took place in privately managed detention services. There, a guard had used a shotgun as a cattle prod to move prisoners about. The gun went off; one inmate was killed and another was seriously injured. When both the private corporation and government were sued, the INS unsuccessfully argued that because the plaintiffs were in the custody of the private company, the government had no liability for their acts. The case was at that time on appeal before the U.S. Fifth Circuit Court.

In the second case, at that time in Houston, Texas district court, damages were sought by Alvaro Jiminez, a Colombian detained in the CCA managed INS detention center there. Jiminez was stabbed several times by an ex prison inmate who was there waiting deportation. The suit charged that the inmate had twice attacked Jiminez earlier that day but the CCA guards had done nothing to separate them (LaMarche 1988, editorial). Both these cases had implications for the state of Texas as they were considering this legislation.

Another of the legal issues in these cases concerned the responsibilities of government and whether these could, or should, be delegated to the private sector. In the first Senate Floor Hearing, both Senator Washington and Senator Truan raised questions concerning the responsibilities of government. Truan stated, "There are some non-delegable (sic) duties that a government, has, and it seems to me that corrections, at least in my judgment, is very closely akin to or a part of the police power of the state (remarks 1987)."

Elaborating on concerns he had earlier mentioned in the Committee meeting, Washington joined Truan, stating "a police function is a power that, in my judgment, only a state acting by and through the authority of its people, can exercise. And, I'm worried about the policy consideration of us delegating the responsibility of one of the primary functions of government to a non-state agency (remarks 1987)." Martin, earlier in the Committee meeting made the most

pointed comment: "It is morally wrong for the state to delegate to a private corporation the deprivation of an individual's liberty. Corrections is something government does to people, rather than for the people (testimony 1987)." S.B. 251 addressed these concerns; the Bill Analysis prepared by Senator Farabee's office specifically stated that vendors assumed liability, were required to insure themselves against these sorts of claims, and that the state was ultimately liable for civil rights and constitutional violations and could delegate use-of-force liability (Reynolds 1987:1-2).

Governor Clements

This legislation was already prepared when Governor Clements began his second term. It followed years of discussion and lobbying. There is no indication his administration had any legal concerns regarding this legislation. The overarching legal issue facing the Clements administration was to immediately reduce the overcrowded conditions of TDC, as he had promised Judge Justice in their January 9, 1987, meeting. He had come into office determined that the state would not be an enemy of the court: "I may not agree, but a deal's a deal" (Barta 1996 p. 340). Part of the reduction plan included providing for 11,000 new beds in the 1987 Legislative Session. Believing that the four 500 bed private PreRelease Centers could be built more quickly than those built by the state, Clements signed S.B. 251 on April 14, 1987, making it legal for the state to contract with vendors for corrections services.

Economic Motivations

This section of the chapter first reviews the key economic dimensions of S.B. 251. Next, the key players' motivations are discussed. These can best be summarized as those who wanted to save money and those who wanted to make money. The resource witnesses also testified regarding several economic issues they faced when contracting with vendors.

Key Economic Aspects of S.B. 251

The State's economic interests were represented quite prominently in S.B. 251. The proposed legislation distinctly mandated a ten percent savings. Specifically, the bill required any vendor to provide: "a level and quality of programs at least equal to those proved by state-operated facilities that house similar types of inmates and at a cost that provides the state with a savings of not less than ten percent" (S.B. 251, §1, Sec. 3 © (4)). Other agencies were to be involved. The Legislative Budget Board was assigned to determine the cost and therefore the ten percent savings (S.B. 251, §1, Sec. 3 © (4)). Providing that contracts were awarded, the Sunset Advisory Commission was directed to review the costs and quality of service and report to the 72nd Legislature including wage and benefit comparisons (S.B. 251, §1, Sec. 6 (a), (b) (8)).

Those who wanted to save money.

The state was interested in the prospect of the private sector saving money. Probably cost savings was not the primary reason for turning to the private sector. The overriding concern was to promptly get those 11,000 beds available in a way to prove to Judge Justice that Texas was serious about complying with his *Ruiz* mandates. Many state officials, and most other speakers, seemed convinced that these beds would be built more quickly and managed more efficiently than the remaining 9,000 that the state was committed to produce.

The Legislature

Those in the legislature who argued for this bill gave two major economic reasons. First, many in the legislature clearly believed that competitive bidding had the potential to drive down the cost of incarceration. Senator Bob McFarland noted that the lobbyists "are coming out of the woodwork. . . . If you've got ten people trying to outbid each other, then the state benefits. And there are a lot of folks entering the playing field" (Kilday, 1987:B1). Of course, considering the dire condition of the economy in Texas, the idea of saving the state money would interest many

of the policy makers. Because the state was facing declining revenue, as well as extreme pressure for major capacity increases in the prison system, the possibility of saving money appealed to many.

Second, Senator Farabee noted that the money saved here could be spent on AFDC and other human resources services such as providing for the aged. In both the Committee (Feb 10 1987) and Senate floor hearings (Feb 19 1987), Farabee reminded the Senate that the state had many obligations to its citizens and this would allow funds to go to other causes. The small liberal voice in Texas was not impressed. Texas Observer, the recognized liberal press in Texas, characterized S.B. 251 as "the worst bill to emerge from the House and Senate so far" (Denison, 1987:2). Thus, while using the prospect of cost savings when addressing the media (see, for instance Stutz, 1987:20A and Toohey, 1987: 14) and the 70th Legislature, clearly Farabee had purposes other than a simple savings in mind as he advocated for these prisons.

The Clements Administration

The Clements administration was also interested in saving money. "We had to build a lot of prisons and didn't have the money (Clements interview, 1998)." The governor faced two major economic issues. First was his notion that non-violent offenders did not need to be in maximum security prisons. Early in his second term, when addressing the Texas Society of Association Executives, the governor stressed that non-violent offenders should be kept in special detention centers and placed in jobs during the day. "They don't belong down at Huntsville commingled with those violent prisoners" (Toohey, 1987:14). His reasons were economic, given the cost of prisons and *Ruiz* demands.

Later on in the Session, when the talk turned to financing the construction of these privately managed PreRelease Centers as well as all the other prisons to be authorized, Clements led the effort to introduce the idea of selling bonds to finance the construction of these prisons.

"People in the legislature were wringing their hands, but to me, as a businessman, it made no sense to pay for them on a current cash basis. So, we needed to sell bonds although it had never been done before in Texas (Clements interview, 1998)." This issue turned out to be quite controversial and later in the Session, led to other delays in the implementation of S.B. 251.

Those who wanted to make money

Those who wanted to make money, the for profit and nonprofit potential vendors, indicated a dual view. On the one hand, they clearly wanted to make a profit. On the other hand, they promised substantial savings to the taxpayers. Though in reality, their goal was to make a profit, they used the concept of savings to the state to encourage Texas legislators to approve S.B. 251. Comments such as "we believe the private sector can provide a beautiful service for much less cost" (Denison, 1987:3) were voiced by the vendors and their lobbyists throughout the media.

For Profit Sector

Lobbyists representing the for profit vendors furthered this dual purposed appeal. For instance, former legislator Buddy Jones, one of several lobbyists hired by CCA, noted that scores of private companies would be interested in bidding on the contracts: "At the same time the state is saving money, I'm sure there is an opportunity to make a profit. It could be a win-win situation." In his statement to the press, he promised prison beds that would be "faster and cheaper" than the state's bureaucracy could provide (Kilday, 1987:B3). Billy Clayton, in his capacity representing Mr. Stewart's Detention Services Inc., agreed that "free-market forces could solve one of the biggest problems facing state government. 'Private industry has always done more for less -- I guess because of the competitive spirit of free enterprise, people are on their toes as far as cost containment is concerned'" (Kilday, 1987:B3).

As noted before, often the vendors addressed issues specific to their particular company's best interests. Clayton, for example, in his testimony before the Criminal Justice Committee (Feb 10 1987), spoke to a practical, specific economic interest, relative to his client. S.B. 251 originally had required a history of successful construction and operation of juvenile or adult correctional facilities. Retaining the history requirement would automatically eliminate Mr. Stewart's company from participating in the bidding. Thus, Clayton strongly urged the Committee to adopt Senator Ted Lyon's amendment that would omit this requirement. Lyon's logic was that because the field was so new, the experience requirement would be unduly restrictive. Because Clayton's client was new to the industry, it was in Detention Services' economic interest for their lobbyist to voice his strong support for the amendment. In response, as with most other specific requests, the language alleviated the experience requirement to demand "qualifications to carry out the terms of the contract" (S.B. 251, §1, Sec. 3, (b) (1)).

Nonprofit Sector

Bill Robinson, representing CCI, (the one nonprofit vendor present at the Criminal Justice Committee meeting) for the same reasons as Mr. Clayton, shared this support for eliminating the experience requirement. Robinson's experience with prisons at that time was from the inside, as a prisoner. Thus, he also needed Lyon's amendment if he was to be able to compete for a contract. (Both the House and Senate adopted this amendment.)

The nonprofit sector promised even more savings than other vendors could provide, first stressing "I think there's room for ever'body (sic) (testimony 1987)." The CCI owner's economic arguments emphatically pointed out that because his firm was nonprofit, they would be more cost-effective than the other vendors. Specifically, his organization was tax exempt, would have access to grants and contributions, and have greater access to volunteers than would a state or for

profit facility. Finally, Robinson pointed out the savings would be compounded even because the construction costs would be less expensive than the for profit vendors could achieve.

Expanding on Robinson's comments, Lynch (who was planning to work with Robinson to finance and construct any facility awarded to them) noted that he had worked with both the for profit and nonprofit sectors. Lynch assured the Committee that by using nonprofit financing for construction, the state would save even more money than if they turned exclusively to the for profit vendors. "You can finance this with tax-exempt fundings, (sic) which brings a lower cost to the State of Texas (testimony 1987)." He further assured the committee that his firm would build comparable, if not superior facilities, which could be paid off at a lower cost to the taxpayers.

Local Jurisdictions

The overriding interest from officials in local jurisdictions was economic. The possibility of attaining a contract for a private prison was seen as a way to develop the deprived economies many had to deal with. The overarching concern among this group was potential jobs for people in their jurisdictions. One County Judge reports that they had a series of public meetings to inform the voters that a prison was to be located in their community. "We had one lady show up who registered against the prison. When we explained to her that the company had promised to hire 126 local people, why, she said she would not object at all (Pawelek interview, 1998)." Although corrections officers and some support staff are often hired locally, most wardens and senior staff are brought in to the communities by the private prison companies. Most of these come from the public sector. These people too are highly prized by the communities. At least one warden of a private prison has been elected to the city council.

Further, even though many donated the land, these local jurisdiction stood to benefit in a tangible way from the sale of public utilities such as water to the facilities. Another financial

resource for these communities is from the payments made "in lieu of taxes." In addition, the vendors make donations for other causes and needs that arise in these communities. Vendors have provided such benefits as five hundred dollar scholarships for graduating high school seniors, draperies for a courtroom, and furniture made by prisoners for elementary schools. The private management firms also buy many of their supplies locally. The combined job prospects and potential revenue made the idea of locating a prison in their area overwhelmingly appealing, overcoming any fear of escapes or problems that might result from having a prison nearby. Their economic status was so poor that where other communities refused to allow prisons in the area, these rural, deprived local jurisdictions were clamoring for a prison -- public or private. Later, many local jurisdictions came to prefer private prisons, feeling they offered more to the community.

The testimony given before the Committee by these local officials, however, did not speak to these economic issues. Rather, three other economic issues were publicly noted. First, Williamson continued his theme of support for a nonprofit prison. He voiced concern that the profit motive would lead to cost cutting measures that could endanger the citizens of his county. "I was in business for about thirty two years; I know you've got to have a profit, and I know you do some things you really prefer not to do in order to make a profit. So, I'm concerned with what would be cut out if the system was not profitable (testimony 1987)."

Second, to bolster Williamson's economic argument for nonprofit contracts, Holt noted that Family-to-Family, the volunteer program he had participated in for eleven years, had experienced a high rate of success in reducing recidivism. He was sure the kind of intensive, personal attention and concern afforded prisoners in such a program would produce the same sort of successes the program had generated in the Federal system. Not only was this to be more economical, but by locating in rural communities, there was a greater likelihood of people volunteering to help in these sorts of programs.

The third economic argument from the local officials was quite intriguing -- it involved jobs for inmates. Mayor McWaters of Cleveland noted that he had "verbal commitments from industries that would want to locate within one to two miles" of the prison (testimony 1987). Jobs, according to McWaters, were going to come to the prison. This would be possible because of Cleveland's proximity to Houston. As Farabee noted in an exchange with McWaters, the idea was that prisoners from the proposed PreRelease Centers would have the opportunity to work in an organized world and thus be more likely to re-integrate into the community. The hope was that the prisoners released from these facilities would then be less likely to recidivate.

State Employees

The employees of the state of Texas were of two minds regarding this issue. Those from the Department of Corrections who addressed the Senate Committee said that their fellow employees had no objection to S.B. 251. However, another group of state employees did object. Both points of view are described below.

TDC Employees

State employees made up a third group with a direct economic interest in the proposed legislation. However, there were two different views from this group. Larry Kyle and James Collins, the Resource Witnesses from TDC, assured the Committee that the agency and its employees solidly supported this bill. They were concerned that their jobs would be protected, but Farabee noted that the bill addressed these concerns by guaranteeing that no prison currently being operated or constructed by TDC would ever become privately managed (S.B. 251, §1, Sec. 5 (1) (2)). Collins agreed, noting that "it's very obvious to our staff that prisons are going to be a long-term business in the State of Texas, and there's certainly going to be enough clientele to share that with other entities." Interrupted by laughter, Collins went on to add that the agency viewed privatization not as a threat but rather as a management tool that could be used to solve

specific problems (testimony 1987). Today, long term TDC employees remember that they had no problem with the idea that the state would privatize four new facilities. They did, however, struggle with the rhetoric coming from so many quarters that the private sector was going to do a better job than they had. The feelings were intensified by the realization that the private prisons were going to house only the low security risk inmates.

Texas State Employees Union

The TSEU, represented by Wakie Martin, their legislative coordinator, felt quite differently than the TDC employees. Martin delivered a forceful statement opposing S.B. 251 which included five points related to economic issues. First, he noted with great concern that corporate prison guards and managers would have a conflict of interest. Because of the profit motive, their focus would be to increase profits and further the interests of the corporations. Existing evidence indicated that this would be done by paying lower wages and benefits to employees and reducing vocational and other education services for prisoners. The result would be less money for the community and less rehabilitation for the inmates. Second, he was further concerned that the profit motive would lead to increased occupancy rates, as well as skewed good time and parole decisions. The legislation addressed these issues: wages and benefits were to be compared in the Sunset review (S.B. 251, §1, Sec. 6 (b) (3)), the level and quality of programs must at least equal those found in state facilities (S.B. 251, §1, Sec. 3 (b) (4)), and the private sector was barred from making release, furlough, good conduct or classification decisions (S.B. 251, §1, Sec. 3 (e) (1-4).

The question of "creaming" often comes up in the literature and figured prominently in Martin's third economic point which concerned cost comparisons. This refers to the practice of consigning only those prisoners who are easiest to handle to private facilities. There is no question that, in Texas, only prisoners classified as low or medium security are sent to the private

vendors (S.B. 251, §1, Sec. 2). In addition, they are within two years of release, which is an additional personal motive to stay on their best behavior. Further, once there, any prisoner who is a discipline problem is sent back to the state, and immediately replaced with another "easier to handle" inmate. Any prisoner who requires hospitalization beyond 48 hours is also returned to the state and replaced with a "healthy" inmate (Lynaugh interview, 1998). This practice, by anyone's definition, constitutes "creaming."

Because of this creaming, according to Martin, cost comparisons were likely to be skewed. Further, because the field was so new, only a few cost studies existed at that time. He noted an ACA study in Florida had concluded that private corporations "achieved no significant reduction in operational cost when compared with similar state-run facilities." The Pennsylvania Legislative Budget and Finance Committee indicated the private federal detention centers cost more per diem than government centers. A study by Pennsylvania had found that a company in Kentucky "decreased costs by eliminating nearly all its programs. The company claimed it was reducing costs to make a profit (testimony 1987)." Martin's report included the only references to cost savings studies. All other participants seemed to assume that this was going to be cheaper. None of these, however, referred to any studies as Martin had. No one addressed his comments regarding these studies.

Martin next voiced concern about what would happen if a company was unable to make a profit and could not conclude the contract. What would be the result to the state? Finally, he cautioned the Committee to be aware of hidden costs such as contract preparation, monitoring, and other administrative costs. In fact, S.B. 251 required the state to purchase and assume operations if a vendor went bankrupt or was found unable to perform its duties (§1, Sec. 3, (g) (12)). However, these concerns were not answered by any of the policy makers in the room. The only support for Martin's issues was a letter prepared and sent by Gara LaMarche, then Director of the Texas Civil Liberties Union.

Resource Witnesses

The other three Resource Witnesses also addressed the Senate Criminal Justice Committee concerning economic issues. Each noted some important differences between the proposals in S.B. 251 and their own use of contracts with vendors. Mr. Byrd, at the time Director of Pardons & Paroles, spoke of their extensive contracting for halfway house services since 1981. At the time of his testimony, this agency had thirty two facilities under contract. In 1986, they had placed over 6,600 TDC releasees in these facilities. The average length of stay was 45 days. This agency's experience was that over the most recent three years, the per diem paid to vendors for operating costs had declined from twenty five to twenty three dollars. He attributed this decline to the competitive nature of the bidding process Pardons & Paroles had developed. Mr. Anderson's brief testimony concerning the Juvenile Probation agency's experience noted that their main use of the private sector was for subsidized church-operated facilities. This precluded, or made difficult, any sort of cost comparison.

Ms. Townsend, of TYC, noted that her agency had been purchasing service contracts for thirteen or fourteen years, mostly with nonprofit community residential programs. They currently had 120 contracts, providing services to over 600 youth. The contracts awarded by TYC were primarily for alternatives to state operated programs, which consisted mainly of community residential programs. Townsend introduced three economic issues. First, she noted the great difficulty TYC encountered when trying to asses their own costs as well as vendor's costs. Often, the agency had not paid the actual expenses because many were church operated facilities which subsidized the cost of care. Thus assessing costs had proven to be almost impossible in their experience. Second, the agency had observed that the private sector, both nonprofit and for profit, was not always less costly than the state. The third issue related to the second. In TYC's

experience, competition was often favorable to the public sector, but was causing some "issues that have to be faced by the private sector (testimony 1987)."

Thus, representatives from each of these agencies recognized notable differences in their own experience from those that were proposed in S.B. 251. First, the overwhelming majority of vendors named in their testimonies by these three experts were nonprofit, often religious organizations. Further, these agencies were awarding contracts for management of halfway houses and residential programs, not secure adult corrections facilities. The length of stay (often less than two months) in these facilities was much shorter than what was being proposed (as long as two years). As with Mr. Martin's concerns, these important differences were not dealt with during any public deliberations.

Political Motivations

This section of the chapter describes the political motivations of most of the key actors. As might be expected, there was a wide range in the spectrum represented in Austin in early 1987; most of the key players had differing political motivations. Some wanted to bring about change. Corrections policy in Texas had become a volatile, dominant political issue and campaign promises had to be met. Local support was presented as key. Some difficulties mentioned included the precarious balance between the public and private sectors and potential ethics problems.

Senator Farabee

Described as a "true legislative craftsman," (*Texas Monthly (b)*, 1981:104) Farabee masterfully demonstrated this ability as he led the Senate Criminal Justice Committee hearing regarding S.B. 251. His staff had constructed a bill that addressed most, if not all, of the major issues and concerns in the academic and legal literature. When these were mentioned in the Committee hearings, as most of them were, Farabee was ready with answers and explanations. In

most cases, if possible to do so without compromising the integrity of this legislation, he readily incorporated wording or added amendments to include the concerns of each speaker.

Fulfilling the characterization of as having "a deep-rooted faith in the process of compromise," (*Texas Monthly (d)*, 1985:117) Farabee guided this bill through the legislative process in the Senate using humor and insight. He clearly understood the specific interests of each legislator who questioned him. For instance, when introducing the bill to a fiscally conservative and cash starved Senate, Farabee stressed the ten percent savings the bill mandated. When Senator Truan objected to the delegation of the state's responsibility, Farabee built on the idea of savings, noting that this would allow the state to spend more on human services (Truan's special interests) such as education and nursing homes. When (civil rights attorney) Senator Washington expressed doubt that the private sector could make a profit and meet court requirements, Farabee reminded him that the bill mandated the vendors meet ACA standards, all court orders, and met the civil rights concerns Washington had raised in the Committee hearing by requiring indemnification.

One of Farabee's primary political purposes in introducing privatization to the Texas corrections system was to interject a "feeling of competition;" while being careful "not to have too much competition" (Farabee interview, 1998). Probably driven less by a desire to drive down costs of incarceration, the competitive model Farabee had in mind was a means to advance two other political goals. First, was to further his ideal of alternatives to incarceration. S.B. 251 laid out a very definite mission: the private facilities were intended to be heavily programmatic in nature. Although §1, Sec. 3 (b) (4) specifically requires "a level and quality of programs at least equal to those provided by state-operated facilities that house similar types of inmates," Farabee made it clear that he expected the private sector to go beyond what the state had accomplished in the area of programs (Bunting, 1987:A1).

Plans were for men within two years of release to be sent these proposed PreRelease Centers where they were supposed to receive a great deal of training and education. In fact, the local communities had already explored possibilities of businesses locating nearby to provide job options for the inmates, indicating their expectation that these private facilities would provide a number of alternatives to traditional prisons in Texas (McWaters testimony1987). Thus, hopes were that enacting this legislation would further the cause of introducing alternatives to incarceration.

The second reason a modicum of competition would be useful was as a way to encourage the agency to change. TDC, like most large organizations, was having difficulty trying to change its culture. Previous legislatures[11] and administrations had also been reluctant to respond to Judge Justice's orders, feeling that the federal courts had no right to interfere in the state's business. However, TDC employees had endured the horrors of the recent past within the state's prisons and wanted to improve conditions. Most people within the agency, the legislature, and the current administration, wanted to correct the deficiencies in the prison system. The question, the problem, was how to do bring about the kind of integral change required to do this. This problem perplexed everyone; all were discovering that this sort of comprehensive, internal organizational change was not easily accomplished. There was hope that this minor infusion of competition could help move the agency toward changing its culture. In these two ways, Farabee saw benefits to introducing a form of political competition.

Governor Clements Joins the Effort

Although he supported the idea of private prisons, once receiving the legislation, Clements balked at signing it into law, reportedly because he wanted review power over who

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[11]Years earlier, reportedly using "calm appeals to logic" Senator Farabee led the legislature to stop its stonewalling against Judge Justice's decree to end overcrowded conditions in state prisons (Texas Monthly (b), 1981:103).

would receive the contracts. From the earliest days of his second term, Clements was concerned about the management of TDC. "In all candor, when I first began to dig into this problem there was a complete atmosphere of misinformation that could even be called a cover-up by the administration of the penal system. We had to dig through all this facade to find out what really was the problem. There were many" (Clements interview, 1998). Of course, most involved in the prison system had for years resisted compliance with Justice's *Ruiz* mandates. Still, as the Governor began to move in that direction, he saw the management of TDC as an obstacle.

Regarding his delay at signing S.B. 251, he was accused of playing politics. One accusation was that he wanted to prevent CCA from getting a contract because John Fainter, former Secretary of State under Mark White, was one of many CCA lobbyists they hired to negotiate with state officials (Ratcliffe, 1987:14). And, because of his involvement with an SMU scandal he was accused of wanting to show his veto gun was loaded. "He may want to prove that he still must be reckoned with" ("Private Prisons, 1987:12a). However, his legislative liaison insisted that Clements feared "sweetheart deals" and referred TDC's past "track record" (Ratcliffe, 1987:14). The House refused to compromise (Kuempel, 1987:20a). After about three weeks, the bill was approved (without giving the governor oversight authority) by the Senate and the House and sent to the governor for his signature. In the end, he signed the legislation, saying he "never even considered a veto" (Bunting, 1987:A1).

Vendors Unite with Local Jurisdictions

The vendors had been actively lobbying state and local officials since as early as 1983 (White interview, 1998). CCA also had worked closely with local communities such as Cleveland (Petropolis interview, 1998) to build community support for the idea of locating a prison in their backyards. Wackenhut and other for profit firms also followed this practice (Pawelek interview, 1998). Robinson, of nonprofit CCI, had worked and today still works

closely with the Red River County Judge. Many local jurisdictions responded positively to this lobbying. In some cases, the communities sought out the vendors. At the Committee hearing, equal numbers of vendors and local community representatives spoke in support of this bill. Curiously, although it had been legal since 1983 for counties to contract with vendors (Acts 1983 ch. 898), there had not been much movement in that direction until after this legislation was enacted.

In 1987, Tom Beasley (CCA) noted that he was hiring lobbyists close to Governor Clements and House Speaker Gib Lewis. Evidently, he was not concerned about the difficulty of managing a prison. He seemed to think the difficulties were in obtaining the contracts. "Obviously, I did. . . .Operating these prisons is not that tough. Betting the job is tough. You've got to bring as much muscle as you can on the persuasive part (Galiney, 1987)."

The local authorities also addressed political issues as they spoke in support of S.B. 251. The primary issue, according to them, was the need for community support. Because most of them had already met in public meetings within their communities to build this support, they no doubt saw this as giving them an advantage when the time would come for bids to be awarded and sites selected. The Red River County contingency stressed their efforts to gain community acceptance with Robinson guaranteeing "community acceptance from Red River County (testimony 1987)." When Williamson spoke, he noted he had "resolutions from all the incorporated cities in the county, and the Commissioner's Court (testimony 1987)." Holt continued this theme by noting that "smaller communities were more likely to produce volunteers" and stressed the importance of "changing the hearts" of inmates (testimony 1987).

Mayor McWaters stressed the fact that his community had held a number of public hearings addressing the possibility of gaining one of these contracts. The Liberty County Commission and City Councils within the county had passed resolutions. In addition, seventy one South Texas counties had passed resolutions supporting privatization, "specifically speaking

about the Correction Concepts Inc. And Volunteers of America proposals McWaters testimony 1987)." These programs represented the religious based, Christian oriented programs referred to throughout these hearings. The mayor agreed that the community participation, the opportunity afforded individual citizens to speak, made the idea of minimum security prisons more palatable to the community.

Indeed, the city of Cleveland, and Liberty County, worked diligently to gain one of the contracts. The Clements' papers contain a number of letters, from a variety of businesses including banks and realtors. In addition, the public sector supported this idea; letters from the Cleveland Police Chief and Superintendent of schools were written. Though only hinted at in testimony by McWaters, many of the letters voice enthusiasm for the prospect of a facility with "Christian values."

Evidently, prisons were not the worst consideration of these desperate communities. When questioned further about community involvement, Mayor McWaters noted that "unlike toxic waste sites, we did come back with favorable results. I think if the plan is presented properly to the public, if it's a worthy plan to begin with, probably you'll get favorable results (testimony 1987)." Today, the private prison has been such a success in Cleveland that the local Chamber of Commerce routinely holds its annual banquet in the prison gymnasium. Guest speakers have included Doc Krantz, one of the founders of CCA and then Governor Ann Richards (Petropolis interview, 1998).

Resource Witnesses

The Resource Witnesses carefully noted the political aspects of the proposed relationship. Their reticent comments carefully explained the tenuous balance between the vendors and their particular agencies. They diplomatically urged caution and specificity, circumspectly pointing out difficulties and differences between their contracted facilities and those adult secured

facilities proposed by the legislation. Byrd, from Pardons & Paroles, noted that the success they had experienced relied greatly on community support. Their residential programs emphasized employment which, of course, relied on community involvement. Because their contracts were for this and other community services, local backing was essential in their case (testimony 1987). Anderson, of the Juvenile Probation Services, said the least, noting that since 1907, "We have been highly dependent upon the private sector to perform our duties (testimony 1987)."

Townsend, from TYC, added: "most things we have learned have been positive and hopefully we've learned from the mistakes that we've made. Our experience has generally been positive." TYC had found that the private sector could respond quickly and had access to funding and capital that would have been more difficult for the agency to attain. On the other hand, she pointed out, vendors have had to face their own issues: "they've had to balance their responsibilities under contract with the state with their own identity and autonomy and survival. Private agencies, because they are dependent on the state may sometimes feel that the state takes advantage of that (testimony 1987)." Townsend and the Resource Witnesses from other agencies alluded to at least the possibility of difficulties but there was little follow up to these remarks. It is possible that these had been discussed during the preparation of the legislation, still it is odd that these concerns were not more directly answered in this setting.

As noted previously, TDC representative Collins publicly assured the Committee that TDC employees were not concerned about losing their jobs. However, some TDC employees at the time, especially those not in administration, did feel troubled. The vendors, and many others, had touted and assumed the superior abilities of the private sector. These comments were hurtful to those who had been trying to do their best under extremely difficult, even dangerous conditions not of their own making. The remarks are unwise at best when considering that Texas vendors have hired extensively from the very agency they insinuated was less capable. In almost every prison, wardens, majors (security heads) and other upper to middle managers come from the

public sector. Most come from the Texas Department of Criminal Justice, the very agency under attack.

The Opposition

Martin's reference to the ACA study of a Florida privately operated correctional facility also included political issues. This study found that the corporation had "experienced more than twice the number of escapes as in the previous year under the prison run by the county (testimony 1987)." Martin also expressed concern that because of the "creaming," because only low risk prisoners would be sent to the vendors, the state officers would be left to deal with the most violent of inmates. This practice would therefore increase risks to the state employees. Both LaMarche and Martin were concerned about the influence of lobbyists who might become advocates for law and order legislation that would lead to stricter sentencing practices and an ever burgeoning prison population.

LaMarche elaborated on this concern. Beyond the conflict of interest problems that would emerge from this sort of contracting, he was concerned that vendors would hire lobbyists in an effort to influence legislation. Even then, "law and order" legislation was on the rise. Now, a new lobby with a clear economic stake would try to continue and probably try to expand the catch all solution of locking up convicted offenders, regardless of the nature of their crime (interview 1998). The first step, in LaMarche's opinion, is to change policies so that only violent offenders would be placed behind bars. "When all non-violent offenders are being dealt with through expanded use of alternatives to incarceration, then maybe it will be time to talk about new construction or privatization" (LaMarche, 1988:editorial).

Conclusion

It is ironic that the two people involved who shared a deeply wanted identical goal -- that of finding new, improved alternatives to locking every type of offender away, saw quite

differently about this topic. Not only conflicting motives, but varying ideas about how to obtain these goals existed. Also, it is clear that many other key players had varying motives; there was no wide-spread consensus on what the state's policy should be. Thus, the Elmore and Allison theories that unintended consequences result from different groups bargaining and pulling in different directions is quite confirmed by what happened in Texas regarding the enabling legislation for private corrections facilities.

The conflation of many forces, uniting to enact this bill, resulted in a document that reflected the major and sometimes minor issues of participants. Most parties who addressed specific concerns left the bargaining table with at least some of what they had requested. The final Senate vote was unanimous, in the House nineteen voted against; 122 favored the legislation. Governor Clements, who did not get the final veto authority concerning contract award decisions he requested, ultimately signed the bill and thanked Farabee for his leadership in accomplishing legislative approval. Although these participants all seemed in agreement by the time S.B. 251 was approved, soon enough new differences would emerge in quite vocal ways.

The unpredicted outcomes soon emerged. It is difficult to say whether the force of time, increasing local jail crowding, or approval of S.B. 251 was the catalyst that led more and more local jurisdictions to establish public proprietary prisons. They soon become involved in importing prisoners, at times contracting with vendors to manage them. There may be no direct cause; indeed, some of this was going on prior to the approval of S.B. 251. However, following approval of this legislation, local government became ever more active in this endeavor, leading Texas to be the major importer of out of jurisdiction prisoners. In addition, a "permutation" has emerged at the local level. Some local governments do not contract with a vendor to provide these services. Instead, they bring out of jurisdiction prisoners into their locally owned and operated "public proprietary" (Sechrist and Shichor, 1993:3) prisons. Texas is home to the

largest number of these hybrid arrangement for adult corrections where these prisoners are usually managed by the local sheriffs.

Chapters Three and Four will describe the outcome; that is, the current status of private prisons in Texas. It will show that the results of this negotiated legislation are quite different from the intentions of many of the initial major participants.

CHAPTER THREE

THE ACTUAL (UNINTENDED) OUTCOME OF S.B. 251

Currently, more than forty private prisons, some as large as 2,000 beds, exist in Texas. This is quite different from the original plan for four private prisons with a maximum size of 500 beds each that was foreseen in 1987. Although Senate Bill 251 carefully outlined specific constraints, the private prison population in Texas exponentially grew beyond the original concept. As implementation theory states, often policy outcome is different from the intentions of the policy makers. Certainly, this is the case regarding private prison policy in Texas. The purpose of this chapter is to describe the current status of prison privatization in the state of Texas.

Texas contains many various "types" of private prisons. Any distinguishing "categories" are contrived; as the reader will see, these overlap and are constantly in flux. However, in order to depict the outcome of S.B. 251, the representative categories chosen for description include: Texas Department of Criminal Justice contracts, "public proprietary" prisons, and federal government facilities. Within each of these major categories, two or more sub-categories exist; each of these will also be described. While current reports[12] reflect a large aggregate private prison population, a closer look reveals some important distinctions that may help to explain the proliferation of private adult secure correctional facilities that emerged in Texas.

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[12]See, for example, Camp & Camp, 1998; Thomas, 1998; and McDonald, 1998.

Introduction

According to one census, as of December 31, 1997, Texas was home to nine private prison vendors who managed forty three facilities, with a total of 29,690 prisoners.[13] (For a list of vendors, see Appendix IV.) These private prison companies had contracts to manage prisoners from the Texas Department of Criminal Justice (TDCJ), other Texas jurisdictions, states other than Texas, and several federal agencies. In addition, a number of city and county governments within the state held prisoners from these same jurisdictions. (For a list of these, see Appendix V). The first section of the chapter, following, explains the TDCJ contracts.

Texas Department of Criminal Justice

In 1989, several criminal justice agencies in Texas (including the Department of Corrections, Board of Pardons and Paroles, and Adult Probation Commission) were reorganized under a newly created umbrella agency, the Texas Department of Criminal Justice (Acts 1989, ch. 212). Other divisions have been added since that time.[14] Today, three divisions within TDCJ supervise prisoners in adult secured facilities which involve contracts with vendors for management services. These divisions are the Institutional Division, the Pardons and Parole Division, and the State Jail Division. Each of these is explained in more detail in the following sections.

TDCJ - Institutional Division

What is now the Institutional Division of TDCJ was known as the Texas Department of Corrections (TDC) prior to the 1991 reorganization. Since that reorganization, the Institutional

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[13]See http://web.crim.ufl.edu/pcp/census/1998/Chart1.html and http://web.crim.ufl.edu/pcp/census/1998/Chart3.html for complete information.

[14]For a good overview of TDCJ, see the agency web site, http://www.tdcj.state.tx.us, which is very informative and thorough.

Division (TDCJ-ID) continues to be responsible for prisons that confine incarcerated felons in the state of Texas. Their stated mission is: "to provide safe and appropriate confinement, supervision, rehabilitation, and reintegration of adult felons, and to effectively manage or administer correctional facilities based on constitutional and statutory standards" (Acts 1991, ch. 16, amended by Acts 1995 ch. 321). These are in fact the same classification of prisoners that had been confined by TDC, and were the original inmates managed by private vendors. This legislation, the foundational authority for all management contracts between any TDCJ division and any vendor, is incorporated within the statutes, Texas Government Code Chapter 495.

TDC, of course, had been under the jurisdiction of the federal courts in the *Ruiz v. Estelle* (1980) case for many years, and was the original state agency authorized to contract with vendors for the incarceration of adult prisoners. After numerous appeals, and petitions to exempt various facilities, the federal courts determined that *Ruiz* mandates would apply only to the facilities existing at the time of the initial ruling. Thus, only TDCJ-ID units built before 1980 are directly impacted by the *Ruiz* rulings. However, the *Ruiz* standards have imbued the agency and those values are reflected across the divisions. Thus, even the many facilities that do not fall under those standards nevertheless mirror them; *Ruiz* values have imbued the agency.

Recently, Judge William Wayne Justice answered the latest appeal from the state of Texas (*David Ruiz v. Johnson* 1999). While recognizing that the agency had "dramatically overhauled its prison system," and commending TDCJ for employing "many conscientious public servants," he also found that "Texas prison inmates continue to live in fear." Justice determined that in spite of the efforts of TDCJ-ID, many prisoners are refused protection, officers still use excessive force, and administrative segregation subjects inmates to extreme deprivation and daily psychological harm. As a result, the state remains under the purview of the federal courts. As a matter of policy, all TDCJ-ID units built subsequently also are designed to comply with the

federal court orders. In addition, the agency has required all vendors contracting with TDCJ-ID to meet the *Ruiz* standards and mandates.

Table 1, following, summarizes current TDCJ-ID contracts.

Table 1. TDCJ - ID Contracts with Vendors*

VENDOR	LOCATION	CAPACITY	VENDOR Market Share
1. Corrections Corporation of America (CCA)	Venus	1,000	24.5%
2. Management & Training Corporation (MTC)	Diboll Overton	518 500	25.0%
3. Wackenhut Corrections Corporation (WCH)	Bridgeport Kyle** Lockhart*** Cleveland	520 520 500 520	50.5%
	Total	4,078	100.0%

*Data accurate Jan 12, 1999. Provided by TDCJ - State Jail Division Report titled "Secure Facilities Operated by Private Vendors Under Contract with TDCJ."

**All TDCJ-ID contracts with vendors are PreRelease Centers except Kyle, which is a chemical dependency treatment center.

***Lockhart Female PreRelease Center has since been transferred to the Parole Division to enable women prisoner's participation in the Work Program.

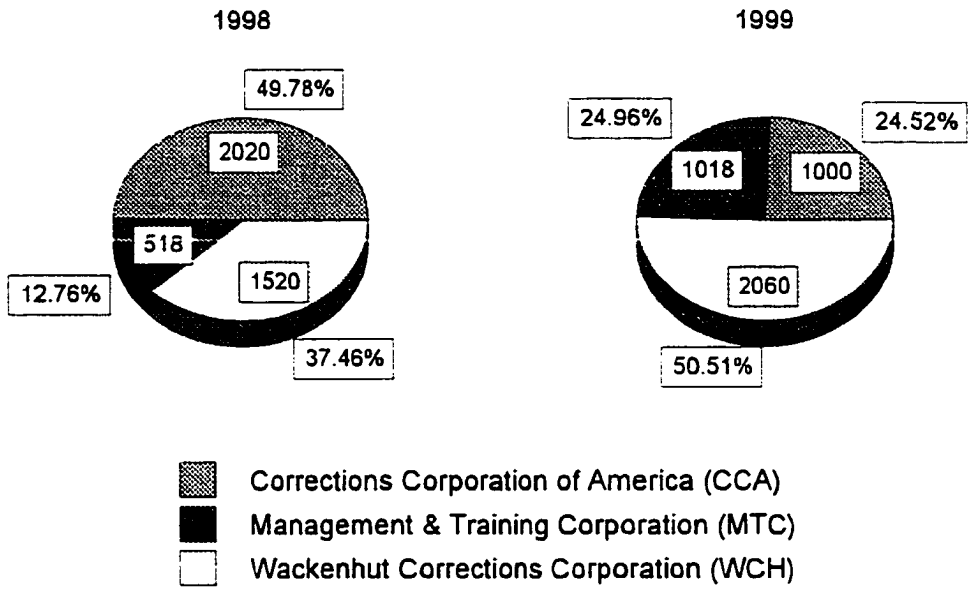
As Table 1 summarizes, TDCJ-ID currently contracts directly with three vendors to manage eight facilities. (The Division has approximately eighty units.) The capacity of these contracts is just over 4,000 beds (about three percent of the approximate total 123,000 ID capacity). As Table 1 indicates, in 1999, Wackenhut held the contracts for approximately one half the total contracted beds; CCA and MTC each manage approximately one-fourth of the total

private beds. All except one of these ID facilities are PreRelease Centers (PRCs). Six are for men; the one PRC for women was located at Lockhart. However, in late 1999, responsibility for that facility was transferred to the Parole Division so that women incarcerated there could become eligible for the Work Program already in existence for the men.

As noted, at least part of the original legislative intent was for the private sector to prepare prisoners to re-enter society. The hope was that the PRCs would be different from the traditional Texas prison. The private sector was supposed to be innovative in coming up with more and better programs, training, and counseling to equip those leaving for the free world. This is the reason that, by law, the prisoners assigned to these PRCs are classified as minimum or medium security (Texas Government Code Ch. 495 §002). They are deemed more "trainable." In addition, if one of these prisoners becomes ill, or a behavior problem, he is returned to TDCJ-ID. Thus, where prisoners of the state of Texas are concerned, the "creaming" question is easily answered. By statute, only the lower security classified prisoners are assigned to the private sector.

The one non PRC that TDCJ-ID contracts for is a therapeutic community, the Kyle New Vision Facility. Originally one of the first four PreRelease Centers established in 1987, later, under the leadership of Governor Ann Richards, the state converted the Kyle prison to a chemical dependency treatment center. While most TDCJ prisons have some form of substance abuse therapy available, this Wackenhut contract mandates that the entire prison be devoted to treatment for substance abuse, totally devoted to recovery from substance addiction. Each person affiliated with the unit, including prisoners, officers, even administrative staff receives on-going training and instruction. However, it is important to note that in order to pay for the added teaching, programs and services, Wackenhut receives an additional $7.00 per day, per prisoner above the basic contract price considerations.

Figure 1, following, depicts the market share changes that took place during 1998.



*1998 data provided by TDCJ, State Jail Division Report titled "Secure Facilities Operated by Private Vendors Under Contract with TDCJ." Mar 23 1998.

*1999 data provided by TDCJ, State Jail Division Report titled "Secure Facilities Operated by Private Vendors Under Contract with TDCJ." Accurate Jan 12 1999.

Figure 1 - TDCJ-ID, Contracts with Vendors 1998-1999

Figure 1, above, shows the significant market share changes that took place in 1998 among these TDCJ-ID contracted prisons. As indicated, the 1999 market share is quite different than the earlier years. Throughout most of the nineties, CCA dominated the market throughout Texas, including these TDCJ-ID contracts. Until 1998, CCA had the Venus, Cleveland and Overton facilities, for a total capacity of 2,020 (almost 50 percent of the market); MTC had only the Diboll facility, capacity 518 (less than 13 percent of the market); and Wackenhut contracted for Bridgeport, Kyle and Lockhart, capacity 1540 (just over 37 percent of the market).

contract. MTC doubled theirs to almost 25 percent (1,018 beds) by adding the Overton unit. Finally, Wackenhut increased their market share to over one half by adding the Cleveland unit. Thus, today, Wackenhut dominates the TDCJ-ID contract market. These striking changes are the result of competitive bidding.

These TDCJ-ID contracted prisons exemplify what S.B. 251 proposed. Even these were expanded from four to eight facilities. The maximum size, 500 beds, also expanded to 1,000 in the case of Venus, and Lockhart (although it no longer contracts with TDCJ-ID). However, considering the total TDCJ-ID population has more than tripled, growing from 40,499 (since 1987) to 133,260 (1998), a mere doubling of the private population is less noticeable than it might otherwise be. In fact, the vendors' market share reduced from five to three percent of the total TDCJ-ID beds.

TDCJ - Parole Division

The Parole Division of TDCJ also contracts with private vendors for secure facilities. Their mission is to "supervise and reintegrate felons into society after release from confinement" (Acts 1991, ch. 16). (At times, TDCJ - Parole Division is confused with the Board of Pardons and Paroles. In Texas, the Governor independently appoints members of the Board, who have sole authority regarding parole decisions including release, revocation, and special conditions.) While the Parole Division works closely with the Board, the two are separate entities with distinctly differing responsibilities. The Board decides who gets out of the Texas prison system, and when. The Parole Division then becomes responsible for oversight of the releasees after the Board makes their determinations. Today, in addition to the offenders who serve out their sentences in Texas communities, the Parole Division also supervises inmates in secure facilities. These secure facilities house prisoners who are within a short time of release, and include

These secure facilities house prisoners who are within a short time of release, and include programs to prepare them for release into the community. The programs are similar to, and in some cases overlap with, the TDCJ-ID PreRelease Centers' programs.

The Parole Division has over twenty years experience contracting with vendors for work-release and halfway house programs that predates the 1987 legislation. So much experience that, as noted in an earlier chapter, the director testified regarding their experience with contracting with private vendors during the Senate hearings prior to Senate Bill 251 being approved. TDCJ - Parole Division has more than 150 contracts for a variety of programs and facilities. However, most of these are not secure facilities. Prisoners in secure facilities supervised by the Parole Division are in nine contracted prisons. While eight of these contracts are with private vendors, in one case, a total of 420 men are in beds contracted with TDCJ-ID.

Table 2, below, shows the market distribution of the vendors who have contracts with the Parole Division.

Table 2. TDCJ - Parole Division Contracts with Vendors*

VENDOR	LOCATION		Vendor Market Share
1. Corrections Corporation of America (CCA)	Bridgeport	200	
	Brownfield	200	
	Mineral Wells	1,800	56.3%
2. Correctional Service Corporation	Houston	450	11.5%
3. Texson Management Group	La Villa	192	4.9%
4. Wackenhut Corrections Corporation (WCH)	Ft. Worth	400	
	Lockhart	500	
	San Antonio	165	27.3%
	Capacity	3,907	

*Data accurate as of Jan 12, 1999. Provided by TDCJ, State Jail Division Report titled "Secure Facilities Operated by Private Vendors Under Contract with TDCJ."

As indicated in Table 2, CCA has more than one-half the beds contracted with the Parole Division. Wackenhut is next in market share with just over one fourth the total beds. Correctional Service has just over ten percent and Texson Management Group has the smallest number of beds contracted, less than five percent. With the exception of 420 Intermediate Sanction beds that Parole has contracted with ID to house in the Baten unit, located in Pampa, all secure beds within the Parole Division are contracted with vendors. Unlike the extreme 1998 changes within the ID contracts, the Parole Division contract distribution is very similar to previous years. The Texson Management Group facility, is the only addition, and only change concerning Parole Division contracts in recent years.

Table 3, following, shows the distribution of these beds among program and vendors.

Table 3. TDCJ - Parole Division Program and Vendor Distribution*

VENDOR	PROGRAM CAPACITY**			
	Work*** (n = 500)	PPT (n = 2,000)	ISF (n = 1,215)	MSF (n = 192)
1. Corrections Corporation of America (CCA)		100%	16.5% (n = 200)	
2. Correctional Service Corporation			37.0% (n = 450)	
3. Texson Management Group				100%
4. Wackenhut Corrections Corporation (WCH)	100%		46.5% (n = 565)	

*Data accurate as of Jan 12, 1999. Provided by TDCJ - State Jail Division Report titled "Secure Facilities Operated by Private Vendors Under Contract with TDCJ."

**Work = Work Program; PPT = PreParole Transfer Program; ISF = Intermediate Sanction Facility;
MSF = Multi-use Facility.

***Only approximately 200 men are employed at any given time.

As noted in Table 3, above, four different types of facilities exist to meet the needs of Parole Division prisoners that are placed in secured prisons. These are designated by the Division as the Work Program, PreParole Transfer Program, Intermediate Sanction facilities, and Multi-use Facility. As indicated, the Intermediate Sanction Facilities program is shared by CCA, Correctional Service Corporation and Wackenhut. The remaining three programs are contracted with only one vendor for each separate program. CCA has the PreParole Transfer program, Texson has the one MultiUse Facility, and Wackenhut has the only work program. Each of these is explained in greater detail below.

Work Program

The Work Program originally was housed in one 500 bed facility for men located in Lockhart. Wackenhut has the contract for this facility and program. Prisoners who voluntarily accept jobs in this prison industry program receive minimum wage, or the prevailing local wage. However, because no similar industries exist in Lockhart, employed prisoners, by default, receive only minimum wage. Out of this salary, they agree to pay a maximum 80 percent of their wages for room and board, cost of supervision, restitution, care of their own dependents, crime victim funds, and maintain their own savings accounts.

This same facility also has a separate 500 bed unit for women. Until late 1999, these women (and the Wackenhut contract) were under the auspices of TDCJ-ID. However, in order to enable women to participate in the Work Program, they were transferred to the Parole Division. In spite of much effort, most of the men and women incarcerated at Lockhart do not have jobs. The average employment for the men is around 200. As is often the case for imprisoned women, they fare even worse: as of August, 1999, only eleven women had jobs.

The three industries located here include manufacturing novelty signs that are sold in convenience stores; circuit boards for computers; and air conditioner fittings. Just recently, the

Board of Criminal Justice voted to expand the program so that more men, and women, can be hired. The work program is also overseen by an independent board of Governor appointed officials. The Texas Private Sector Prison Industries Oversight Authority is charged with making sure that all federal, state, and local laws are obeyed by these program participants (Acts 1997, ch. 1236). The Parole Division and vendor are working to find more space and additional employers so that more of the prisoners, both men and women, can be productively employed.

Pre-Parole Transfer Program

The Pre-Parole Transfer Program addresses prisoners who are within one year of parole or release. However, although transferred to the Parole Division, the prisoners continue to be in a secure prison. Parole contracts with CCA for two of these facilities. Bridgeport is the location of one 200 bed facility; an 1,800 bed facility is located in Mineral Wells. Programs for these transitional institutions include counseling, life skills training, substance abuse, on-site academic and vocational education. Inmates in these facilities continue to earn good conduct time in the same manner as ID prisoners.

Intermediate Sanction Facilities (ISFs)

ISF facilities were established so that parole violators could avoid being returned to TDCJ-ID. Generally, low risk offenders with no pending charges but who have violated the conditions of their release agreements are placed in these secured facilities. The idea behind this program is that the prisoner needs a "shock" taste of incarceration that may influence him to carefully follow his parole requirements after release. The Parole Division contracts with three vendors for four locations for the ISFs: Wackenhut has a 400 bed ISF in Fort Worth and a 165 bed ISF in San Antonio. Correctional Service Corporation has a 450 bed ISF in Houston. CCA has a 200 bed ISF in Brownfield. Ironically, when viewed with the realization that the ISF program is an alternative to returning a prisoner to TDCJ-ID, the Parole Division also contracts

with TDCJ-ID for 420 beds in the Pampa unit of the Institutional Division. Thus, a program established to avoid TDCJ-ID ends up contracting for beds with that very agency.

Multi-Use Facilities

The Parole Division contracts with one vendor for a Multi-Use Facility which provides a variety of custody, both secure and non-secure, functions. Parole violators, known as Blue Warrant Detainees, are placed in secured facilities; half-way house residents, while sharing the same facility are free to leave for jobs during the day. Texson Management Group, Inc. has a contract for a 192 secure bed facility in La Villa. At times, an MSF might also contract for substance abuse beds. (In late June, 1999, an MSF was added in El Paso, where Southern Corrections Systems now houses 200 prisoners. In addition to Blue Warrant Detainees and half-way house residents, the El Paso facility contains Substance Abuse beds.)

Although not foreseen by the original policy makers, the Parole Division grew from no contracted secure beds to more than 1,000. It seems a logical extension of their already extensive experience with contracting for services that they would look to the private sector when charged with providing secure beds. The larger question concerns why, and how, the Parole Division came to be responsible for prisoners who require secure facilities. Likely, this was another way the state devised in their effort to exempt as many beds as possible from the *Ruiz* mandates.

TDCJ - State Jail Division

In 1993, the 73rd Legislature approved Senate Bill 532 which created a new division of TDCJ, the State Jail Division (TDCJ-SJD). This legislation established the State Jail Division mission to "operate, maintain, and manage state jail felony facilities" (Acts 199e, ch. 988). The SJD manages non-violent fourth degree felony prisoners, known as State Jail felons, by overseeing the operations and work, rehabilitation, education, and recreation programs in State Jails as directed by the legislature.

Like the newer TDCJ-ID and the TDCJ-Parole Division facilities, the TDCJ-SJD prisons are also exempt from *Ruiz* mandates. One of the most obvious examples of that exemption is the fact that State Jails are built as dormitories, an arrangement forbidden by *Ruiz*. There are some dorms within each State Jail that house therapeutic communities, but many of them have no special programs. A number of the prisons that have contracts for management of State Jail felons, also house prisoners from various jurisdictions, including out of state prisoners. Today, Texas has a total of seventeen State Jails; six of them are privately managed.

State Jail Felon

The first step in 1993 to creating the State Jail Division was Senate Bill 1067 which established what may be a unique category of felony offense in the United States corrections community, the State Jail felon (Acts 1993, ch. 900). State Jail felons are guilty of less serious crimes (mainly low level property and drug felony offenses). What had been non-violent class A misdemeanors and third degree felonies became State Jail offenses. The punishment range could include up to two years incarceration and a fine not to exceed $10,000. The law mandated community supervision upon release. Texas judges could sentence an offender found guilty of a state jail felony to any condition within the punishment range.

As is often the case, there were mixed reasons for creating the State Jail concept. First, no one denies that part of the motivation was to provide Texas with prison beds that avoided the *Ruiz* mandates. Most Texans, regardless of political orientation, resented the interference of the federal courts. In some cases, participants take pride in their accomplishments of sidestepping the court's authority. Another objective was to try to ameliorate the old "ID" mentality, to try to introduce more progressive ideas and attitudes into the entire Texas prison system.

Further, this was an effort to reduce the overcrowding that continued to plague the state prison system by making TDCJ-ID bed space available for more violent offenders. It is a fact

that for many crimes, the penalties prescribed in S.B. 1067 were less than before the State Jail felon was created. At the same time the punishments for some non-violent crimes were reduced, many violent crimes received harsher penalties. However, in spite of this logic, the State Jail concept met with immediate controversy, which has continued unabated.

Initially, 55 criminal offenses were reclassified as state jail felonies. Such crimes as controlled substance possession, credit card abuse, check forgery, or unauthorized use of a vehicle now became State Jail felonies, punishable by probation as long as five years, and a sentence of up to two years (no good time allowed). At the same time, the penalty for crimes such as murder and aggravated robbery or sexual assault now are punished by a requirement to serve half of their sentence rather than the one quarter previously mandated. This is an increase from 30 to 40 years actual time served (Robison and Liebrum 1994). Every Legislative Session since 1993 has "tinkered" with the State Jail concept.[15] Most recently, in 1999, House Bill 1428 was approved, making it a State Jail felony for any adult to take a girl out of Texas to have an abortion.[16]

State Jail Division Contracts

As shown in the following Table 4, Management & Training Corporation (MTC), a relatively new private prison contractor, contracts for over 47 percent of the beds, the largest percentage of any vendor. Wackenhut follows with just under 40 percent while CCA maintains almost 13 percent of the state jail contracted beds. Most of the private facilities house around

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[15]See for instance, Acts 1995, chs. 273, 318, 321, 659 eff. Sep. 1, 1995; Acts 1997, chs. 165, 1031, 1051 eff. Sep 1, 1997; Acts 1999, H.B. 2921, H.B. 3256, S.B. 31, S.B. 365, H.R. 5.

[16]Not yet published or incorporated into the statutes. Can be viewed on-line at http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=76&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=01428&VERSION=5&TYPE=B

Table 4. TDCJ - State Jail Contracts with Vendors*

VENDOR	LOCATION	CAPACITY	Vendor Market Share
1. Corrections Corporation of America (CCA)	Bartlett	1,001	12.9%
2. Management & Training Corporation (MTC)	Henderson	1,700	
	Dallas	2,000	47.5%
3. Wackenhut Corrections Corporation (WCH)	Jacksboro	1,031	
	Travis County	1,033	
	Willacy County	1,021	39.6%
	Total Capacity	7,786	

*Data accurate Jan 12, 1999. Provided by TDCJ, State Jail Division Report titled "Secure Facilities Operated by Private Vendors Under Contract with TDCJ."

1,000 prisoners. However, the two MTC prisons are significantly larger, containing 1,700 and 2,000 inmates.

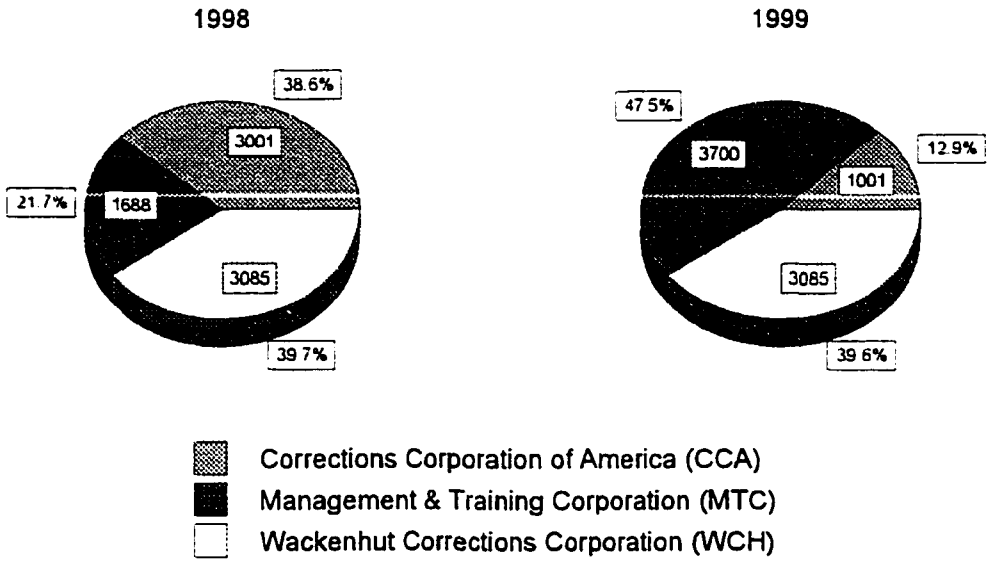
Another goal of the creators of the State Jail concept was to bring about community involvement. The legislature wanted to determine if local involvement would provide a better outcome. Thus, two distinct *modes* of State Jails were mandated. *Mode I* required TDCJ-State Jail Division to build and operate no less than 70 percent of the bed space. *Mode II* State Jails, the remaining 30 percent of the bed space, were to be developed and operated by contract; communities were encouraged to participate in the process. The local jurisdictions received broad discretion in how to contract for the management of these designated State Jails. The dual mode requirement expired on September 1, 1995 and so no longer determines how the State Jails are operated. However, of the 22,920 available State Jail beds, the Division contracts for a total of 7,786, or just over 34 percent of the total bed space, which is very close to the original legislative mandate (Champion 1998).

Until recently, despite the expiration of the requirement for *Mode II* contracted facilities, the originally contracted prisons continued to be managed by private vendors. However, as is so often the case with the Texas prison system, there has been a recent development that may change this trend. The Travis County Community Justice Center, a *Mode II* State Jail that was touted as a particularly progressive facility was recently ordered to be taken over by TDCJ. A number of lawsuits had been filed by prisoners including charges of sexual abuse, excessive force, retaliation and contraband. The ensuing investigation led to all the women being removed and a judgement by the Board of Criminal Justice to terminate the Wackenhut contract and take over the facility (Copelin, Quinn, and Ward 1999:A1) (Quinn (a) 1999:B1) (Quinn (b) 1999:B1).

In 1998, the State Jail contracts were re-bid for the first time, with two significant results. The first noteworthy event was a savings to the state of $21 million dollars below the previous contract fees. In fact, the State Jail contracts were re-bid earlier in the year than the TDCJ-ID contracts. The resulting savings encouraged that Division to re-bid their own contracts later that year. Second, also similar to the TDCJ-ID situation, one of the new contracts was awarded to a different vendor for the first time, resulting in a notable market share change.

As Figure 2, following, depicts, CCA's State Jail market share dropped to just under 13 percent in 1999 from just over 38 percent in 1998. MTC's market share more than doubled, from less than 22 percent in 1998 to over 47 percent in 1999. This was due to CCA's loss to MTC of the 2,000 bed Dawson State Jail facility. The State Jail Division judged MTC's bid as more competitive. Wackenhut's market share remained almost constant from 1998 to 1999, although that will drop significantly when the state takes over the Travis County Community Justice Center.

State Jails were established with the goal of trying alternatives, including another experiment, beyond what TDCJ-ID had done, with the private sector. It is interesting to note that, as the requirement for *Mode II* prisons expires, the state is having to move in and take over



1998 data provided by TDCJ. State Jail Division Report titled "Secure Facilities Operated by Private Vendors Under Contract with TDCJ." Mar 23 1999.

1999 data provided by TDCJ. State Jail Division Report titled "Secure Facilities Operated by Private Vendors Under Contract with TDCJ." Accurate Jan 12 1999.

Figure 2 - TDCJ-State Jail Contracts with Vendors 1998, 1999

management of at least one State Jail. In light of the disarray found at the Travis County facility, the Board of Criminal Justice has promised to thoroughly audit all other State Jails managed by vendors. It is possible that further changes lie ahead.

The next section of the chapter describes public proprietary prisons.

Public Proprietary Prisons

Sechrist and Shichor coined the term "public proprietary prison" to characterize those institutions that are built and/or operated by local governments specifically to bring prisoners from other jurisdictions, even out of state, into the facility for profit (1993:3). Though unforeseen, and certainly unplanned within the state, "public proprietor" prisons have flourished

in Texas. In some instances, the private prison companies have initiated and built these facilities. In other cases, the counties or local jurisdictions have built facilities on their own initiative and directly receive the payment, and profits. One Texas county has its own prisoner work program. These types of facilities are also known as speculative or "spec" prisons because in most cases the public proprietor does not have a contract. Instead, there is a hope that "if we build it, they will come." The term speculative is reminiscent of the early oil field days when drilling spec or wildcat oil wells was rampant throughout the state.

Various arrangements, contracts, and Intergovernmental Agreements (IGAs) exist for management as well as financing and construction of these facilities. This proliferation of arrangements has led to some interesting combinations and permutations within the state of Texas, all falling under the general rubric "private prison." Generally, contracts exist between the local governments (usually counties; in some cases, cities) and Texas, other states, and federal agencies. At times, the local jurisdiction chooses to sub-contract with a private vendor for management. Thus, the two sub-categories are those public proprietors who sub-contract with the private sector for management and those who manage the prisoners themselves.

Texas counties have authority to sub-contract with vendors based on Local Government Code 351 §102-104. Municipal governments receive their authority based on Local Government Code 361 §061-067. Both of these statutes are remarkably similar to the Texas Government Code 495, the TDCJ authority to contract for prison management, which is based on the original 1987 legislation, S.B. 251. Today, out of state jurisdictions may only contract with a county or municipality in Texas for prison management. Though not always the case, current Texas law prevents jurisdictions seeking to export their prisoners from contracting directly with a vendor for prison management. Rather, the agreement must be between the Texas local government and the exporting jurisdiction. The local jurisdiction may then sub-contract for management services. Of course, federal government is not bound by this state law.

Many of these public proprietor prisons hold inmates from more than one jurisdiction. Often, the local jurisdictions include their own jail inmates along with the out of jurisdiction prisoners. A visitor to some of these facilities will see prisoners in as many as four or five different colored uniforms, an almost surreal experience to the uninitiated. Each jurisdiction has its own distinctive color so that prison officials can easily identify which inmates they are dealing with.

In addition, different rules or policies apply to the prisoners from these varying jurisdictions. For instance, TDCJ does not pay its prisoners for work (other than those in special work programs). Instead of monetary reward, Texas inmates earn "good time" which counts toward an earlier release. However, some states that send their prisoners to public proprietor prisons in Texas have a policy within their system to pay a minimal, token, daily wage to their inmates. Thus, two people in the same prison, doing the same job, might be treated quite differently. Generally, prisoners from the same jurisdiction must share cells; however, the cell block can contain prisoners from different jurisdictions. The following section attempts to describe the presence and types of public proprietary prisons that exist in Texas.

Public Proprietors who Contract with Vendors

Table 5, following, depicts the prisons owned by public proprietors, local jurisdictions, that have sub-contracted with vendors for management of their prisons. As illustrated, effective December 1997, eight different vendors sub-contracted with either a county or municipal government to manage inmates from a variety of jurisdictions. In this category, with eleven of twenty six facilities, the state prison agency, TDCJ, by far is the major jurisdiction to contract with local government for housing state inmates. Ranking second are out of state jurisdictions who have prisoners in seven sub-contracted facilities. (Texas continually imports more out of jurisdiction prisoners than any other state.) Third are other jurisdictions within the state. In most

cases, these are county prisoners. Note the Garza County, MTC facility is indeed a "spec" prison with no contract in hand, yet is offering 1,000 beds to the marketplace.

Table 5. Public Proprietary Prisons, Sub-Contracts with Vendors*

VENDOR	LOCATION**	CAPACITY	SOURCE OF PRISONERS**			
			TDCJ	OTHER TX***	OUT OF STATE	FEDERAL
1. Bobby Ross Group	Karnes County	500			X	
	Newton County	872			X	
	Webb County	500		X		
	Dickens County	489			X	
2. Civigenics	Limestone County	816	X			
3. Cornell Corrections, Inc.	Big Spring (Complex)	1,352				X
4. Correctional Services Corporation	Pearsall	295		X	X	
	Tarrant County	350		X		
	Travis County	74		X		
	Houston	400	X			
5. Corrections Corporation of America (CCA)	Brownfield	200	X			
	Dallas County	2,000	X			
	Eden	1,222				X
	Liberty County	382		X		
	Williamson County	962	X			
6. The GRW Corporation	Odessa	100			X	
7. Management & Training Corporation (MTC)	Garza County****	1,000				
	Longview	275			X	
	Henderson County	1,704	X			
8. Wackenhut Corrections Corporation (WCH)	Ft Worth	400	X			
	Jack County	1,000	X			
	San Antonio	623	X		X	X
	Travis County	1,000	X			
	Willacy County	1,000	X			
		17,516	11	5	7	3

*Data obtained from Thomas (1998). Accurate as of Dec 31, 1997. Available online at: http://web.crim.ufl.edu/pcp/census/1997/index.html

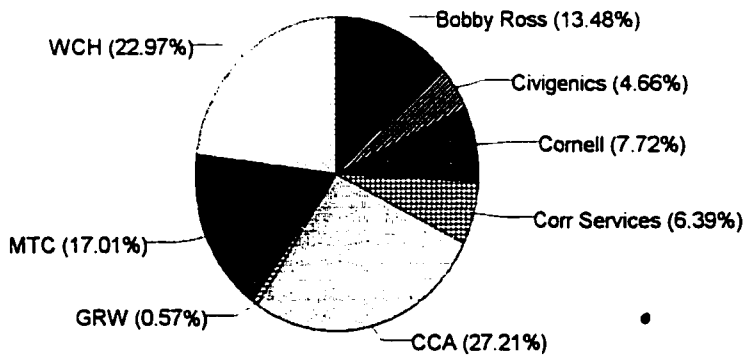
**All are sub-contracts.

***Other TX = other jurisdictions within Texas such as the county itself.

****Source for prisoners to be announced.

The least prevalent jurisdiction imprisoning inmates within sub-contracted facilities in Texas is the federal government. Such agencies as the Bureau of Prisons, Immigration and Naturalization detainees, and U. S. Marshals Service house their prisoners within the state. Although the federal government agencies are exempt from the Texas law requiring contracts to be with local jurisdictions, none of the federal agreements currently existing in Texas are between a vendor and the agency; all are agreements with a local jurisdiction who may then sub-contract to manage prisoners from other jurisdictions.

Figure 3, following, reveals market share data concerning these sub-contracted public proprietor prisons.



Data obtained from Thomas (1997). Accurate as of Dec 31 1997. Available online at: http://web.crim.ufl.edu/pcp/census/1997/index.html

Figure 3 - Public Proprietary Prisons, Sub-Contracts with Vendors

Figure 3, above, reveals market share data concerning these sub-contracted public proprietor prisons. As the chart indicates, CCA, with just over 27 percent of the total, has the largest share of this market. As has so often been the case in Texas through most of the 1990s, Wackenhut, with almost 23 percent, is a close second. Together, they make up just over one half the total public proprietary prisons who sub-contract with vendors. MTC, with 17 percent and Bobby Ross with just over 13 percent make up about one fourth of the total market. This leaves the other four vendors to split less than one fourth of the total market.

Public Proprietors, No Sub-Contracts

Table 6, following, illustrates the distribution of public proprietary prisons that do not sub-contract for management.

Table 6. Public Proprietary Prisons, Locally Managed*

COUNTY	TDCJ	TDCJ Beds	Out of State	Out of State Beds
1. Bowie	X	232		
2. Comanche			X	342
3. Dallas			X	81
4. Franklin			X	150
5. Morris			X	25
6. Palo Pinto			X	15
7. Red River **			X	46
8. Titus			X	65
9. Van Zandt			X	130
			X	40
		232		894

*Data obtained from Texas Commission on Jail Standards. Excludes federal jurisdictions. Accurate as of Jun 1, 1999. Current reports available online at: http://link.tsl.state.tx.us/tx/TCJS/poprpt.htm

**Red River County is only local jurisdiction to have a prison industries program.

According to Table 6, 1,126 prisoners are found in Texas public proprietary prisons that are self managed. Most of these are from out of state jurisdictions (not including federal prisoners). Note that Red River County is the only local jurisdiction to have a prison industries program. This county is exempt from oversight by the state Private Sector Prison Industries Oversight Authority (Acts 1997, ch. 1236). County representatives avidly and successfully lobbied for this exemption. Thus, there is no state oversight, regulation or control of this industries program.

Because the data are collected from different sources and at different times, it is difficult to directly compare these two subsets of public proprietor prisons. However, note the differences. Most public proprietors in Texas do choose to sub-contract with vendors. Compared to the 17,516 prisoners who are in sub-contracted prisons, only 1,126 are in self-managed prisons. Also, distinctly, most prisoners in Texas public proprietary prisons are TDCJ inmates. Although a large percentage of out of state inmates are housed in self-managed public proprietary prisons, because of the large numbers in the sub-contracted facilities, TDCJ is clearly the major consumer overall. Thus, most public proprietor prisons in the state are managed by vendors; most prisoners in those facilities are TDCJ inmates.

Texas is known as a tough place to "serve time." In fact, several horrific events have occurred there which have reached the national media. Perhaps the best known is the Brazoria County beatings and dog attacks that were broadcast throughout August, 1997 after video tape of the event was discovered. It is a fact that most of these disasters have occurred in public proprietary prisons. When these first emerged, there was no oversight or regulation of these facilities. The following chapter will deal with the specific events and resulting legislative context. However, it is important to note that currently, directly resulting from the disasters that occurred in these prisons, the Commission on Jail Standards is charged with overseeing these public proprietary prisons. Their web site includes such information as "Counties Planning

Construction" and "Jails with 100 or More Beds."[17] Thus, jurisdictions, or brokers, seeking available beds for prisoners need only log on to see which public proprietor might accommodate their overcrowded population.

The next section describes the final major category of private prisons in Texas, the Federal Government.

Federal Government

Three federal agencies contract to house inmates in secure facilities in Texas. These are the Immigration and Naturalization (INS), the Bureau of Prisons (BOP) and the United States Marshals Service. The first privately managed adult secure prison located in Texas (it may have been the first in the United States) was an INS facility. Since 1984, CCA has maintained their contract with the INS to house detainees in their Houston facility. This contract agreement pre-dates, by three years, the initial 1987 Texas legislation authorizing the state to contract with vendors for adult secure facilities.

Most federal agency contracts involving private vendors are actually Intergovernmental Agreements (IGAs). While a few contracts between the BOP and private vendors exist in other states, this may be the singular type of proprietary arrangement that does not exist in Texas. Generally, IGAs are negotiated between the federal agency and a local (or, in some cases, state) jurisdiction. These IGAs are not typical of other government contracting arrangements in the commercial sector. There is less structure and regulation governing IGAs. And, there is no real competition for these agreements. Rather, they seem to be based on mutual need and availability of beds.

Some of these local jurisdictions have then elected to sub-contract with a private vendor for the actual management of the facilities. (While these are actually public proprietor prisons,

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[17]For further information see http://link.tsl.state.tx.us/tx/TCJS/

because of the uniqueness of the IGAs, are explained within this separate category.) There is nothing in the IGA to prevent this sub-contracting on the part of the local vendors, although it was never the intention of the federal agencies. However, once the local jurisdiction has chosen to sub-contract with a vendor, like the state of Texas, for the most part, the federal government carefully selects medium and low security risk prisoners to go into any of these contracted facilities. There is a real concern about the safety of the community, and sense of responsibility of the agency to protect local citizens and the incarcerated.

Although very early to enter the "private prison" market, the federal government has proceeded very cautiously. The Reagan-Bush administration saw a tremendous growth in the federal prison system because of new laws (especially drug control laws) and there was a need to find space quickly. The conservative political climate led to the initial contracting with state and local agencies for space. This has generally worked well for the federal agencies; the IGA arrangement is more efficient than competitive bidding, and provides a legal context for the facilities. For instance, there is no question that local jurisdictions can use force if necessary. Like the state of Texas, the federal agencies have learned the value of closely monitoring all aspects of these contracted facilities. Also, in keeping with their long standing policy of not allowing a profit to be made on incarceration of individuals, the BOP closely monitors expenditures. To regulate costs, they pay a per diem to the local jurisdiction that declines as the number of inmates rises.

The unanticipated tendency of local jurisdictions to sub-contract with private for-profit vendors resulted in a slippery slope toward privatization that was unintended. For instance, the facility at Eden began as a small, 200 bed venture by a real estate entrepreneur who speculated he could fill the beds by contracting with the BOP. In 1995, CCA took over the management of the Eden prison. In 1999, they bought the facility which has been expanded to 1,300 beds. The prison is located near the center of the small town which has a population of 1,900. The city, the

vendor, and the agencies all have monitors on site. All emphasize the importance to themselves that continual scheduled and unscheduled monitoring go on at all times. Regardless of whether a profit is being made, the economic significance of this institution to the local community cannot be overstated.

Most of these facilities in Texas house prisoners or detainees from two or even three federal agencies. Many of the inmates are undocumented aliens and will be deported once they have served their sentences. For instance, they may have broken a law with a penalty of federal prison time. Once they have served their prison sentence, because they are in the United States illegally, they are turned over to the INS. Often, their INS cases have already been heard (usually, on site, at the prison). Once officially "released" from prison, they are turned over to the INS for deportation. Because most are from Mexico and will be returned there, the proximity of Texas to their homeland may make it a logical place for these facilities.

In Texas, the BOP has IGAs that are sub-contracted with two private vendors for management. Cornell Corrections, Inc. has a complex in Big Spring with a total population of 2,033. CCA has a facility in Eden housing 1,302. (While the BOP has a few prisons that were competitively bid contracts with vendors, none of these facilities are located in Texas.) Reeves County has chosen (after a brief, unsatisfactory stint with a private vendor) to manage their own BOP population of 1, 098 (BOP 1999). The INS has contracts in Taylor, Laredo, and Houston that sub-contract with CCA. The United States Marshals Service has a number of contracts with local governments to house their prisoners.

Based on the limited available data, it is safe to conclude that the federal government brings an early, measurable influence to the private prison action in Texas. On the other hand, compared to the state itself, the presence of the federal government is limited. It is true that, despite a policy of no profit, the fact that vendors are indeed making a profit is not discussed.

Conclusion

Whether the implementation of S.B. 251 is viewed as successful could depend on one's views regarding private prisons. Certainly, the outcome was not what was conceived by the policy makers in 1987. In that sense, the policy "failed." As the reader will appreciate, getting a handle on private prisons in Texas is not an easy task. The status constantly shifts and changes. Still, it is obvious that there is an extensive presence of all sorts of private prisons within the state. Even though a number of out of jurisdiction prisoners, including federal prisoners, contribute to these large numbers, it is the case that TDCJ is the largest consumer of the private prison market within Texas. Whether or not public proprietors are included, the fact is that Texas is home to most private prisons in the world.

CHAPTER FOUR

OUTCOME: PROBLEMS AND GOVERNMENT RESPONSE TO TEXAS PRIVATE PRISONS, 1987-2000

This chapter has a two-fold purpose regarding to implementation theory. First is the need to determine and explore the outcome of the policy under study. This chapter continues the explanation begun in Chapter Three by further delineating the unforeseen outcome of S.B. 251. Where the earlier chapter dealt with the numbers, explaining how many private prisons and what kind exist in the state, this chapter examines the outcome related to the required government response. All three branches and multiple levels of government had to address various problems that arose as the private prison industry flourished throughout the state. This chapter will review some of the more glaring problems that developed from 1987 through 1999, and the resulting multiple governmental responses and reactions necessary to deal with the many issues that emerged.

The second aspect of implementation theory this chapter deals with is the notion that although in the earliest stages of any new policy negotiations, all parties will cooperate in order to keep the issue going, once the policy is in place, the interested parties will begin to pull in different directions, each seeking to satisfy their own motivations and goals. That prediction is consistent with this case. While Chapter Two showed that all the parties were cooperating to ensure the enabling legislation passed, this chapter will show that soon after S.B. 251 was approved, the interested parties began to reach in various directions, each seeking to achieve their own individual purpose. As implementation theory would predict, the results were not at all what

the original policy makers had in mind when they approved the idea of allowing private prisons in the state.

This chapter begins analyzing the process Texas went through as the state tried to regulate, through legislation, judicial action and bureaucratic rules, the unprecedented expansion of the private prison industry. As the various types of private prisons emerged, Texas had to deal with a number of unanticipated problems and issues. The earliest recorded problems involved the contracts with the vendors chosen to manage the first four state prisons. Not much later, the vendors and local jurisdictions developed institutions which were unanticipated and unregulated. All three branches of government have struggled to contain and rectify these problems since S. B. 251 was enacted. In addition to upholding implementation theory's prediction of unintended outcomes, the results of this chapter will show that like Texas' public prisons, the private prisons also need regulation.

Earliest Problems; Government Responds

Two early unanticipated problems emerged that required legislative action. First, the vendors were unable to obtain performance bonds and funding for construction. This greatly delayed the "quicker" response promised by the private sector and expected by the state. Although the vendors had promised at the Senate Committee hearings that they could be operational in six months (Beasley testimony 1987), the actual implementation took much longer. Second, shortly after the private PreRelease Centers (PRCs) received inmates, initial audits were very unfavorable. These two problems required responses from both the state and local jurisdictions, including legislative and agency action as is described below.

Financing and Performance Bond Problems

One of the first problems to appear was the inability of the vendors to obtain construction financing as well as performance bonds. In spite of promises by the vendors, and the intent of

legislators that the vendors obtain private financing, the management firms never obtained their own funding. Several potential vendors had testified at the hearings, promising it would be no problem to obtain the necessary money and bonds required by S.B. 251 (Acts 1987, ch. 18) to build the four initial private prisons (Beasley, Lynch, Robinson testimonies 1987). Tom Beasley, then president of CCA, had stressed the advantage to the state because: "the private sector brings its money to the table. The use of capital is the private sector's capital; the state pays only the operating cost." He further promised that because of the analysis CCA had done the investment bankers were willing to risk the money due to "the quality of the performance." Lynch and Robinson agreed; they were certain the not-for-profit sector could easily gain financing because of the "tax exempt funding."

Certainly, the intent of the legislation was clear. S.B. 251 stated that the purpose of the legislation was to authorize contracts between the state and private vendors to "finance, construct, operate, maintain and manage secure adult correctional facilities" (S.B. 251 §1, Sec. 1 (a)). Further, in his introduction of the bill to the Criminal Justice Committee, Senator Farabee stressed the value of requiring the private sector to be responsible for the capital expenses, noting that "it doesn't use state money," and stressing the benefit to the state of using the millions of saved dollars for AFDC or Protective Service or other social programs (Farabee 1987). However, in spite of vendor promises and legislators' intentions, neither of the private companies ever obtained private financing to construct the approved four prisons.

Performance bonds were another problem for the vendors. Insurance companies, like the private financiers, were not willing to risk this venture. S.B. 251 required a performance bond that would cover construction, design, and engineering of the facilities. However, because the private prison management companies were not building contractors, they were unable to find an insurance company to underwrite the bond (Rice 1988:B-5). Both the financial and insurance communities expressed uncertainty and reluctance to get involved in this new venture of private

prisons; they did not share the enthusiasm expressed by the vendors. Thus, the experiment early on faced obstacles that required further state action.

Peggy Smith, cofounder of the original group which eventually obtained public financing, explains that "no one would touch" the financing; those with capital were unwilling to invest in the unheard of concept of private prisons (Smith interviews 1998) After several months of effort on the part of the vendors, the state had to step in. Six months after the initial authorization for private prisons was passed, On August 4, 1987, the Legislature approved H.B. 146 authorizing "certain cities and counties to issue bonds to finance correctional facilities" (Acts 1987, ch. 70). The state was going to have to act where the private sector failed. H.B. 146 enabled the formation of the Texas Correctional Finance Corporation, which was the vehicle used to fund the necessary bonds.

However, many months of negotiation and mediation were required between the numerous involved parties. These included the private vendors, local governments, TDC and other agencies, as well as Governor Clements' administration. There were twists and turns along the way. For instance, TDC wanted the vendors to be responsible for the debt service. But, in that case, "it becomes a private activity bond and loses its tax exempt status" (Scott 1988). The vendors, on the other hand, not only wanted to retain the tax exempt status, but also wanted to be guaranteed that daily occupancy levels would ensure their ability to service the debt (Scott 1988).

Consistent with implementation theory, in this case, agreement and cooperation between the major participants dominated the Senate hearings before the bill was passed. However, once the legislation passed, at this early post-legislative negotiation stage, the interested parties began to barter for their own advantage and became less concerned about unity. As Allison (1969:707) and Elmore (1978:217-226) note, when bargainers begin to pull in different directions, unforeseen results occur in implementing policy. As they would predict, varying motives and

conflicting interests of the major participants in this case began to emerge. These competing motives and interests, according to implementation theory, result in unanticipated outcomes.

The next major decision occurred in October, 1987, when the Texas Board of Corrections chose Becon-Wackenhut and Corrections Corporation of America to build the four PreRelease Centers, "contingent upon successful contract negotiations" (Gaylor 1987:1A) ("Board Selects" 1987:17A). Board members expressed "hope that the Centers will be operational by the end of 1988" (Gaylor 1987:6A). In November, 1987, Provident Financial Group put together a consortium that known as Becon-Wackenhut. This entity would eventually build all four of the new 500 bed private prisons (Gonzalez (b) 1988:n.p.). Provident was owned by business partners Peggy McAdams (now Smith) and (former state legislator) Bill Blythe who had formed the company in 1986 "designed to help government entities and private businesses in financing public projects" (Downing 1987:14F). Provident would lead the way as Texas' first "private prisons" came to be publicly funded.

Then came the task of establishing the Texas Correctional Finance Corporation as authorized by H.B. 146. The then city manager of Cleveland (in Liberty County which had been chosen as one of the four sites), Bill Petropolis, was anxious for his jurisdiction to receive this responsibility. Because of their dire economic situation, the city and county had expended many resources to be chosen as the location for one of the four PRCs. They did not want to lose this commodity over funding difficulties (Petropolis interview 1998). Thus, they aggressively worked to attain the requirements to be named the Finance Corporation authorized by H.B. 146. After many more months of effort, in April of 1988, the Liberty County commissioners ordered the creation of the Texas Correctional Finance Corporation ("Liberty Creates" 1988:16). At approximately the same time, the state's Bond Review Committee approved the financing, allowing up to $50 million in tax-exempt bonds for prison construction (Graves 1988:n.p.).

CCA never met state performance bond and insurance requirements to construct the facilities or obtain financing on their own. After weeks of negotiation with the state over their inability to obtain a performance bond, TDC allowed CCA to contract with their competitor, Becon-Wackenhut, to build all four private prisons. Putting aside the legislative intent to use two different firms, the agency allowed one contractor to build all four PreRelease Centers. The main reason TDC allowed this variance was that the Texas prisons were grossly overcrowded and struggling to comply with *Ruiz v. Estelle* (1980) mandates to alleviate that condition (Rice 1988:B-1).

Construction began in July, 1988 (Krausse 1988:n.p.). This was one year and five months after the potential vendors had promised they could be operational within five to six months. Finally, more than two years after S.B. 251 authorized them, the privately managed PRCs received prisoners. Not surprisingly, the two Wackenhut facilities opened first. Kyle received their first prisoners on June 20, 1989; Bridgeport received their first prisoners on August 10, 1989. CCA soon followed. August 21, 1989 they received their first prisoners in Venus; September 11, 1989 the first prisoners arrived in Cleveland (Clements 1989:n.p.).

As Table 7, following, summarizes, the process between authorizing the state to contract with vendors for correctional facilities and actually placing prisoners in those prisons took much longer than the promised six months or so. While the private sector tends to blame problems on government red tape, the reality is that in this case, the private market, including financial firms and insurance companies, did not see fit to invest in this venture. However, in spite of the fact that "free market" principles such as competition got lost in the effort, in spite of the fact that government had to step in and fund the construction, eventually the four "private" PRCs were built. And, as the section following Table 7 explains, the first reports from this experiment were not favorable.

Table 7. Time Line, Early Implementation of S.B. 251

Feb 1987	S.B. 251 approved by Texas Legislature allowing TDC to contract with vendors to "finance, construct, operate, maintain and manage secure adult correctional facilities." Vendors promised to be operational within six months.
Aug 1987	H.B. 146 approved by Texas Legislature to allow "certain cities and counties to issue bonds to finance correctional facilities;" vendors had been unable to attract private sector interest in financing the private prisons.
Oct 1987	Board of Corrections chose Becon-Wackenhut and Corrections Corporation of America to build the four PRCs.
Nov 1987	Provident Financial Group formed Becon-Wackenhut consortium to construct, via public funding, the four PRCs.
Apr 1988	Texas Correctional Finance Corporation, authorized by H.B. 146, created in Liberty County.
	Texas Bond Review Committee allowed up to $50 million in tax-exempt bonds for prison construction
	TDC allows Becon-Wackenhut to construct all four facilities because CCA is unable to meet state requirements.
Jul 1988	Construction begins.
Jun 1989	first prisoners placed in private facilities

Initial Audits

In December, 1989, a Wackenhut spokesman touted the advantages of private prisons, noting that they offered a higher concentration of life-skills classes (Krausse 1989:B1). However, by May of 1990, less than a year after the first PRC received prisoners, the state Board of Criminal Justice strongly criticized the management firms, citing the results of an early internal audit (Acts 1987, ch.1049).[18] The Board had ordered an audit six months after the initial opening; members were described as "outraged" by the final report. For instance, Wackenhut had saved

[18]This legislation created an Office of Internal Audits within TDC, ordered to "conduct recurring financial and management audits," "evaluate department programs, and "recommend improvements in management and programs" (§11 (b 1-3)).

$125,000 and CCA $155,000 by failing to fill staff positions in the nine months they had been operating the prisons (Robison 1990:n.p.).

Contradicting the late 1989 Wackenhut statement, the 1990 TDC monitors' report criticized both Wackenhut facilities for "inadequate education programs" and "minimal participation" in substance abuse treatment In addition, the audit found the two Wackenhut facilities deficient in access and delivery of medical and dental care to prisoners (Ward (b) 1990:A1, A14). Bridgeport was further shown to have falsified records indicating attendance and completion of job training classes (Hoppe (e) 1990:1A).

CCA facilities at Cleveland and Venus received even harsher criticism. The audit revealed that CCA provided only one vocational course where seven were required by the contract. Health care and mail handling were found "not acceptable." A November 1989 use of force violation had led the state to recommend disciplinary action. The company had not initiated any such proceedings. CCA also was assessing a non-authorized ten percent surcharge on prisoner-made crafts sold at Venus (Ward (b) 1990:A14).

Some vendor representatives were defensive; others more conciliatory. One Wackenhut official accused the Board of playing "we gotcha," while another declared they would "take whatever actions are necessary." A CCA attorney acknowledged that some of the education programs were not on line and asserted their intent to correct that immediately. Board members adamantly determined to "hold their feet to the fire" (Ward (b) 1990:A14). Evidently, the Board meeting was quite intense; it was described as "a vituperative prison board assault against the two companies" (Fair 1990:23A). Board members were described as "frustrated and angry" (Draper 1990:34).

Just a couple of months later, the tone was different. By July of 1990, things were described as "a lot friendlier" (Fair 1990:23A). Although the previous Board meeting had involved pronouncements of miserable failures, threats of canceled contracts, and allegations of

improprieties, this Board meeting was different. State prison officials described the intervening negotiations with Wackenhut and CCA representatives as "very cooperative," noting that both private vendors had made "major program changes and, perhaps, major attitudinal changes" (Fair 1990:23A).

The presidents of both companies told the Board that the poor attendance in literacy and job training classes occurred because the rules were unclear. They did not know if or how to discipline inmates who did not want to attend the classes. Officials agreed to put guidelines in writing "stating that classes are mandatory and that inmates who do not participate face being sent back to the penitentiary and loss of good time credit" (Hoppe (d) 1990:13A). The Board strengthened policies regarding participation in work and educational programs which earlier had been considered optional (Gonzalez (a) 1990:1-12).

The agency reported that most of the deficiencies had been resolved with new policies "implemented to ensure the state contracts are being followed" (Ward (a) 1990:B2). The Board president, Charles Terrell, however, indicated his intent to make the private prisons a "permanent agenda item" (Hoppe (d) 1990:16A). At the same time, he promised to give the vendors "whatever you need, however strong you need it;" Terrell explicitly noted that the Board wanted the private prisons to succeed (Ward (a) 1990:B2) (Fair 1990:25A).

Legislative Response

Evidently, although the TDC report was not made public until early 1990, concern about the vendors' performances emerged behind the scenes. Late in the 1989 Legislative Session, H.B. 1992 was approved (Acts 1989, ch. 479). This bill strengthened the contract specifications between the vendors and counties or the Board of Corrections. Included in the mandate were requirements for more monitoring, stricter minimum standards, and adequate insurance and

liability coverage. In spite of this legislation, the vendors did not appear to move to correct any deficiencies until confronted by the final report and stern reprimand of the Board in 1990.

Bureaucratic Response

In the years since H.B. 1992, the bill strengthening contract requirements, was approved, the agency has learned to strictly adhere to the principles contained in that legislation. TDCJ has learned it must be extremely precise in their contracts with vendors for management services. Thus, over time, in addition to closer monitoring and stricter standards, the Request for Proposal (RFP) forms and contracts have become much more detailed than they were in the beginning. The vendors tend to take nothing for granted, and if not specifically mandated, the vendor will not comply.

In one case, the agency omitted their requirement for a chaplain. After the contract was signed, the vendor refused to provide one. TDCJ however, realized that in order to meet their required ACA standards, the private management firm had to provide a chaplain. Thus, the vendor was forced to comply. It is true that the agency may have overlooked the need. On the other hand, prisons in Texas always have chaplains and other opportunities for religious expression. It seems that a reasonable vendor would have pointed out the oversight and then bid according to that need. Comparing the length of the RFP provides an illustration of how well TDCJ has learned to be explicit. The first 1987 RFP designed by the agency was fourteen pages long ("Request for Proposal" 1987). The more detailed, more precise 1998 form is 119 pages long ("Solicitation, Offer and Award" 1998).

The agency has further learned that in addition to being specific, the contracts must contain sanctions for failures to follow contract demands. For instance, an early problem was the agency's expectation that teachers be provided in each private prison. However, the vendors collected their per diem whether or not a teacher was on the payroll. The agency felt that the

vendors were too slow in hiring teachers. (The vendors note that it is not easy to find a teacher who qualifies and that it takes time to do the required security clearances.) Nevertheless, today's RFPs and contracts specify that if a facility goes without a teacher for more than two months, the vendor loses that salary until the position is filled.

Thus, close monitoring, strict standards, and well-defined contracts containing specified sanctions for failure to meet requirements, seem to be key to successful relations between the agency and the vendor. Once those lessons were learned and these principles were followed, most of the major problems (until 1999) that arose in Texas' private prisons took place in private and public proprietary prisons that were outside the purview of state government. As the next several sections indicate, the state had to grapple with many problems that arose from these initially unregulated facilities.

Apex v. N-Group;[19] the Courts become Involved

In the late 1980s and early 1990s, as TDC struggled to implement S.B. 251 and its mandated contracts with vendors, other occurrences outside the parameters of the original legislation were emerging across Texas. While the Legislature had intended to provide a means to deal with the state's grossly overcrowded prisons, other entities stretched that plan and created new genres of private prisons. Local jurisdictions within Texas began to import prisoners from outside the state. A number of problems arose from this practice. In fact, until 1999, most of the serious problems the state faced had to do with out of jurisdiction inmates. One of these situations, ending in a 1993 federal lawsuit, is described below. As this section will show, several counties in Texas experienced great turmoil and loss of resources as a result of the N-Group debacle.

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[19]*See Apex Municipal Fund, et al., v. N-Group Securities, et al.* 841 F. Supp. 1423. Oct 27 1993. See also *Apex Municipal Fund, et al., v. N-Group Securities, et al.* H-92-546. (S.D. Texas)

N-Group Securities, Inc. was a company formed by Patrick and Michael Graham, two brothers who had "miraculously transformed themselves from small time clothiers to big-time political players" (Frankel 1995:76). The two had worked in their uncle's Houston clothing store before becoming involved in several enterprises that led to financial fiascoes. Both had done business with many Democratic and Republican state leaders. However, by 1997, they both were convicted felons. Their schemes included a number of financial endeavors (Hoppe (a) 1997:1A).[20]

The N-Group scheme regarding early private prison development began with the Grahams' affiliation with the Nashville, Tennessee based company, Pricor, Inc. In October, 1987, TDC named Pricor as alternate when Wackenhut and CCA were chosen as the vendors to manage the original four PreRelease Centers. If either of the first two chosen vendors could not successfully negotiate with Board staff, Pricor would then become eligible to negotiate for two of the four contracts ("Board Selects" 1987:17A). In spite of the difficulties CCA and Wackenhut experienced, Pricor never got the opportunity to negotiate with the state for one of the original PRCs. However, the chosen alternate company soon became involved in the N-Group, planning to manage a different sort of private prison venture within the state of Texas.

Beginning in late 1987, Pricor and the N-Group joined together in a scheme that ultimately ended in a $70 million lawsuit (Freelander 1991:A1). N-Group was the developer of the plan. N-Group's "development" involvement went beyond the normal bounds of such an arrangement -- they planned to set up the corporations that would issue the bonds, market the

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[20]Recently, the Grahams were involved with Andy Collins (first introduced in Chapter Two as one of the Resource Witnesses in the original S.B. 251 hearings). Collins had become Executive Director of TDCJ but in late 1995 was forced to resign because he had conspired to grant a state contract to another of the Grahams' companies, VitaPro Foods, without competitive bidding. Although the case has not yet come to trial, Collins was served with an eight count federal indictment (Ward 1996:A1). While not a case of private management, this incident further illustrates the ethical problems that can emerge when government contracts with the private sector.

bonds and provide the architect and contractor and prison operator, Pricor (Hight 1993:A1). The two firms hired former Governor Mark White (D) to speak for them and persuade rural county governments to set up nonprofit corporations (Wong 1991:5). Later, White's law firm, Keck, Mahin & Cate was hired to represent the bond underwriter -- Drexel, Burnham, Lambert, Inc. Ray Hutchison, former Texas Republican Party leader and husband of then State Treasurer and present United States Senator Kay Bailey Hutchison (R), and his law firm were hired as bond counsel to the corporations, thus giving a "nonpartisan air" to the deal (Hight 1993:A1).

In a May 1989 Dallas meeting, county officials were "wined and dined," enjoying a "memorable weekend" (Wong 1991:5) designed to entice the local government participation the scheme demanded. Those in attendance were taken on dazzling tours of Hutchison's firm as well as the offices of Drexel Burnham. And, former Governor White spoke to the county representatives, strongly supporting the N-Group plan (Hight 1993:A1). (Following this May speech Gov. White's role ended.)

That October, six counties, Angelina, Falls, LaSalle, Pecos, San Saba, and Swisher, agreed to form the necessary corporations. They would borrow, through bond issues authorized by H.B. 146 -- the legislation originally intended to approve financing the original PRCs -- almost $75 million to build six 500 bed prisons. The county officials were told these would be maximum security facilities and that the state prison system would send them prisoners from their overcrowded prison system (Hight 1993:A1).

In the troubled times that were to come, when county officials expressed doubts -- the Dallas weekend experience, and the support of the idea by former Governor White-- always emerged in the discourse and calmed the fears (Frankel 1995:76, 77). In one case, the lingering influence of the former governor was described as "impressive" (Hight 1993:A1); a County Attorney described it as "uncanny" (Wong 1991:5). Although not named in the lawsuit, White was deposed for the trial. He noted he had thought it odd that there were no competitive bids, but

when he asked, he had been "assured that it was legal, so I felt free to participate" (*Apex v. N-Group* 1983).

The N-Group made large PAC contributions in the 1990 elections to many of the involved politicians. Jim Mattox (D), who as state Attorney General had to approve the sale of the bonds, received $55,000 for his campaign from the Grahams. The White (D) campaign received $225,000 through various PACs from the Grahams and their business allies. It was that campaign's largest contribution (Frankel 1995:77). Both were running against Ann Richards in the Democratic primary and lost to her. Clayton Williams' (Republican candidate for governor who lost the general election) campaign received $12,000. Following her triumph in the general election, one of the Graham's PACs donated $10,000 to Governor Richards' campaign (Hight 1993:A1).

In spite of the bipartisan nature of organization and PAC donations, the N-Group venture did not materialize as planned. One of the biggest problems for all involved was the lack of a source of prisoners. Although the Grahams had promised TDC would supply them, in fact, the agency had warned them that the facilities were substandard and did not meet *Ruiz* standards. The chairman of the Board of Criminal Justice, Seldon Hale, perceptively described them as "an economic rip-off, built with sub-quality construction ... just big tin barns with steel boxes for inmates" (Cinelli (b) 1991:A1, A13). Hale made no secret of the fact that he hoped the bonds would default so that the state would be able to "buy some of the jails at fire-sale prices." He noted that state appraisers would evaluate the facilities and that he was responsible to be frugal with state money, adding: "I'm not going to recommend that the Board of Criminal Justice pay $12 million for a $6 million dollar jail" (Cinelli (a) 1991: A1, A11).

At the same time, Kay Bailey Hutchison, as state treasurer, openly campaigned that these private prisons be utilized by the state, neglecting to mention that her husband's law firm was deeply involved in the transactions (Cinelli (c) 1991:A1, A23). Later, during the federal lawsuit,

a spokesman for Rep. Hutchison blamed the politics, saying that because the Grahams had supported Richards' opponents, her administration declared the N-Group prisons unfit for occupancy (Hight 1993:A1). Having visited one of the N-Group prisons, my own observation is consistent with Mr. Hale's: "tin barns with steel boxes" is a very correct description of these prisons (site visit by author Nov 19 1998). TDCJ eventually purchased the buildings for about $6 million and now uses them as transfer facilities, where low security risk prisoners are housed while awaiting permanent assignments.

The Legislature also got into the act. Prior to the default, both houses approved H.B. 841 which would allow out of state inmates to be housed in county jails (Senate Journal IV 1991:3741). However, Governor Richards later vetoed the bill, stating: "It is not good public policy to accept prisoners from other states at a time when the State of Texas is not able efficiently to handle its own state prisoners." Not unaware of the motivation behind the legislation, she continued, "County jails built upon speculation appear to have been the motivating factor in this legislation (Senate Journal III 1991:3332)." Eventually, the N-Group prisons did go bankrupt and never housed out of state prisoners.

Fredie Capers, Pecos County Judge, noted that they never accepted the N-Group building in their jurisdiction because of the many problems: the stainless steel in the kitchen was ruined by a leak, the cell toilets rusted, and pipes on the outside of the building were never sealed. All this before a single prisoner was held there. "In twenty years, we'd have had a building that was rotted" (Capers interview 1998). In fact, Pecos County was the first entity to take action against the N-Group prison development plan.

In November, 1991, the county indicted N-Group Securities Inc. and the Grahams on criminal antitrust charges. They also named as unindicted coconspirators the contractor, architect, bond broker, and the former Pecos County Attorney. In addition, Pricor of Tennessee, Inc. and Pricor of Texas, Inc. were charged by Pecos County ("Prison Firm Indicted" 1991:17).

In spite of feeling foolish (Barrett 1992:64), and as a consequence of their early action, because they cooperated with the bond holders in their investigation, eventually Pecos County got their money back, including expenses (Capers interview 1998).

Soon after the Pecos County action, Pricor disbanded (Barrett 1992:64). The president, Gilbert R. Walker, formed a new firm, GRW, Inc. and now has contracts in several states, including one in Texas where they subcontract with the city of Odessa to manage 100 out of state prisoners (Thomas 1998). Wackenhut at one point had agreed to mange the N-Group prisons and in fact "was expected to supply between one third and one half of the prisoners to fill the N-Group detention centers." However, they suddenly withdrew from the project before ever becoming involved (Frankel 1995:75).

Problems due to the lack of prisoners were compounded because the bonds were mortgage revenue bonds, payable not by taxes, but only by revenue generated from the facilities themselves. Thus, if there were no prisoners, there was no way to repay the bonds. Further, the Texas Attorney General warned that accepting out of state prisoners would jeopardize their tax exempt status (Frankel 1995:77). The state had determined the facilities did not meet *Ruiz* standards and could not house their inmates. Eventually, because of the lack of prisoners, the bonds were defaulted. The investors responded by filing the *Apex v. N-Group* case in Houston's federal court.

This was no simple lawsuit; the list of plaintiffs, defendants, and their lawyers is over four pages long. There are cross defendants and counter defendants. Total damages awarded amounted to $80.8 million damages with an additional $5 million punitive damages. The jury put the greatest blame on Keck, Mahin, & Cate, Gov. White's former law firm that served as counsel to the underwriter. One of the defendants won a counter claim against the plaintiffs for $1.5 million which left a net verdict against the defendants at $84.3 million ("Securities Fraud" 1995:C12). The jury was accused of "lawyer bashing" and not understanding the complexity of

the case. The foreman of the jury adamantly declared that they did know exactly what they were doing (Sapino 1994:1). Later, the two sides reached a confidential settlement, "well within Keck's insurance coverage" ("Securities Fraud" 1995:C12).

In spite of all the problems associated with the N-Group, the number of out of jurisdiction prisoners continued to grow in Texas. As noted in Chapter Three, Texas currently imports more prisoners from other jurisdictions than any other state in the U.S. Nothing seems to slow this down. The lawsuit, the resources expended by the affected counties, the poor quality of construction, the unsavoriness of the characters involved, even Governor Richards' 1991 veto, none of this action affected the rate of growth of imported prisoners in Texas. As the next section will show, even as the N-Group fiasco unfolded, there were other mishaps and problems that required state action. Most of the difficulties involved prisoners from other jurisdictions.

Problems and Legislative Response: Late 1980s - Early 1990's

At the same time the N-Group debacle was unfolding, other problems in Texas' private prisons emerged. As the number of out of jurisdiction inmates in Texas grew, reports of escapes, riots and other problems in public and private proprietary prisons began to permeate the media. This is not to say that the state's prison system was free of difficulties. However, these events regarding proprietary prisons are important because the private sector presents itself as "better;" as the solution to the problems found in the United States public prison systems. Furthermore, the state of Texas was spending its resources to solve the problems occurring in these profit making, revenue enhancing facilities.

These earliest stories represent in a small way what was to grow and occur across the state as the numbers of imported prisoners increased. Riots and escapes, prisoners inappropriately classified for the type of facilities contracting to manage them, and lawsuits developed in 1990. Further, various levels of government – local, federal, and even Mexican

authorities had to become involved in solving these problems such as finding escapees or settling riots. At times, the proper local authorities were not notified of emergencies in a timely way, endangering citizens they were supposed to protect. As these events emerged in Texas, the 72nd Legislature responded. This section relates some examples of the problems of this era; concluding with a discussion of the resulting legislation.

Early problems with Out of State Prisoners

One of the first private proprietary prisons in Texas is located in Zavala County. Managed by Detention Services, Inc., the Ron Carr Detention Center imported prisoners from the District of Columbia Department of Corrections. In May of 1989, a riot involving more than 200 of these prisoners erupted at the Detention Center. In September, a jailer from the Center was arrested by immigration officials; he was charged with taking two inmates to a bordello in Piedras Negras, Mexico.

That December, the Texas Commission on Jail Standards found that more than half of the prisoners in the facility were murderers and rapists with life sentences. Because the Carr Detention Center was not designed to house this type of serious offender, more than 100 of the 224 prisoners were returned to D.C. (Hoppe (e) 1990:1A). Even this was not enough to bring the Center into compliance with the existing regulation. Finally, in March 1990, the Jail Standards Commission ordered the Ron Carr Detention Center in Zavala County to close down because "the facility was built in a low-risk vein and is being used to house other than low risk inmates" ("Official Blasts" 1990:13B).

These out of state prisoners were not their first choice; Zavala County had tried to interest local and state officials in their available space. However, in February 1989, the county had decided to accept the D.C. prisoners because no Texas authority would send them prisoners. Although County officials disagreed with the Jail Standards Commissions findings, by April

1990, "more than eighty lawsuits – most originating in Zavala County – alleging that the county jails do not offer the sorts of training, recreation, drug treatment and health care available in the District of Columbia's prison system" had been filed ("Cells for Rent" 1990:221). Although the Commission's March directive had not prevailed, by December, 1990, "alarmed by the vats of homemade wine bubbling in shower stalls and fights by bat wielding inmates, the District withdrew from the $46.50 per inmate per day contract" (Mason 1991:A1).

Another 1990 event concerned an escape from a San Antonio private prison located just across the street from the downtown police station. Wackenhut Corporation had contracted to manage this facility where INS, U.S. Marshal's and overflow Bexar County prisoners were held. Three cellmates, all held on federal drug charges, escaped after pulling a gun on a corrections officer. The officer was responding to one of them who had pretended to be ill. One of the three was an alleged drug kingpin who had been accused of running a cocaine and marijuana smuggling ring operating in Mexico and South Texas. $10 million was seized from him when he was arrested (Hoppe (e) 1990:1A). Local, federal, and Mexican authorities were involved in the search as the three were believed to be headed for Mexico ("Drug Suspects" 1990:13) ("Alleged Drug Kingpin" 1990:n.p.).

As the search continued, more of the story emerged. The three had locked two officers in a closet, overpowered another, and then seized security control panels which enabled them to open a door for their escape ("Three Inmates Remain" 1990:12D). Also, San Antonio police were not notified of the jail break until nearly an hour after the escape was discovered ("Drug Suspects" 1990:13). Although first believing that visitors had smuggled in the gun, later in the search, FBI officials began giving lie detector tests to the employees ("Three Inmates Remain" 1990:12D). The three escapees were still at large in July; Wackenhut announced they had adopted some procedural changes to circumvent any further episodes (Hoppe (e) 1990:1A).

Legislative Response to Early Problems with Out of State Prisoners

Incidents such as these led the 1991, Texas 72nd Legislature to respond. As one resident asked in a meeting convened to air protests to a private prison, "If someone escapes, will there be shooting? You know, bullets can go anywhere" (Douglas 1991:1). With every incident, concern increased. By the time they convened, the 72nd Legislature recognized the need for action. The Commission on Jail Standards had some authority over the facilities by virtue of their long-standing mission to oversee the municipal and county jails in the state. As the local authorities allowed out of jurisdiction prisoners to be placed in their jails, the Commission was the logical agency to try to ensure the safety of all concerned. Thus, the Legislature passed two laws concerning the Commission's responsibilities and authority in overseeing these proprietary prisons.

The first bill attempted to recoup some of the costs lost when the proprietary entities used public resources as they made their profits housing and managing prisoners from other states. Thus, S.B. 380 (Acts 1991, ch. 740), directed the Commission on Jail Standards to "set and collect reasonable fees to cover the cost of performing services" (§511.0091 (a)) for municipal or county jails operated by a private vendor. Specifically, the Commission was to charge for services such as construction documents and inspections. Clearly, the state was no longer willing to bear the financial burden for these profit making facilities. Still, there was a nod to smaller facilities and those housing a lower percentage of out of jurisdiction prisoners. Fees were to be charged only if the facility had a rated capacity of 100 or more prisoners and 30 percent or more of the prisoners were sentenced by jurisdictions outside of Texas (§511.0091 (b) (c)).

The second bill, H.B. 93 (Acts 1991, ch. 10), required counties housing out of jurisdiction inmates to submit monthly reports to the Commission on Jail Standards. No doubt in response to the reported escapes and riots, now counties were ordered to submit regular reports to the Commission. The reports required such information as the sending jurisdiction; the total

number of prisoners; as well as the security classification and reason for detention of each individual held (§511.0101).

TDCJ Private Prisons Expanded

H.B. 93 also impacted TDCJ facilities. In spite of the problems that were emerging in the local private prisons, the 72nd Legislature doubled the minimum number of beds originally established by S.B. 251. Now, the maximum allowed daily population for each TDCJ facility doubled from 500 to 1,000 (§2.01 (b) (1)). Deferring to the local governments, county commissioners courts were given authority to determine whether the population increase would be allowed or not (§2.02 (f)). Thus, if the four existing counties allowed it, TDCJ would now have double the number of contracted beds originally set in 1987.

However, as the next section shows, the problems in Texas' proprietary prisons continued. Perhaps part of the reason is evidenced in the Legislature's actions. At the same time, they tried to contain the growth of private prisons, in one case, in the same bill, they allowed 100 percent expansion of TDCJ contracted beds. This approval indicates the Legislature's confidence in the ability of TDCJ to oversee their contracts with private management firms. However, it does tend to blur the goal of the legislature. On one hand, they are trying to constrain and regulate the growth of private prisons. At the same time, they doubled the maximum beds allowed.

Problems and Legislative Response: 1993 - 1994

In spite of the legislative, judicial, and bureaucratic efforts to control the problems with out of state prisoners, they did not stop. Riots and escapes involving public and private proprietary prisons continued. For instance, in April 1993, 200 out of state prisoners at the privately managed minimum security Limestone County Detention Center rioted for about eleven hours. Authorities finally bombarded the rioters with tear gas to contain the incident.

Fortunately, only minor injuries were reported at this prison located just east of Waco ("Pecos Prison Disturbance" 1993:28A).

Earliest reports indicated this was a minor incident where a prisoners had "torn up a few things outside the recreation area" ("Pecos Prison Disturbance" 1993:28A). However, time revealed a more serious disturbance. Prisoners had seized control of two of the three wings of the facility. They had used weight room equipment to tear down doors and damage sinks, lockers and mirrors in addition to destroying cameras and two control rooms (Christenson (b) 1993:22). In fact it was three months before the $14.9 million facility was back in full operation. The prison, managed by Capital Correctional Institute, was completely shut down and prisoners were transferred to other facilities while repairs were made. Described as "a long and costly chapter," the amount of damages costs and lost revenue was never revealed (Christenson (a) 1993:14).

Federal prisoners in public and private proprietary prisons also were involved in rioting and escapes. Because they were under the jurisdiction of the federal government, the state could do nothing to control the classification or placement of these prisoners. Yet, at times, Texas governments had to get involved in resolving the problems.

In May, just a month after the Limestone County riot, about 400 federal prisoners were involved in a "disturbance" at the Reeves County Law Enforcement Center, a public proprietor located in Pecos. Multiple levels of government responded to the incident. The Pecos Police Department, Reeves County Sheriff's Department and state Department of Public Safety were sent to control the situation. Local ambulances were also sent to the scene. In addition, the U.S. Border Patrol was called for backup assistance ("Pecos Prison Disturbance" 1993:28A).

Later, in February 1994, a federal prisoner escaped from the Jefferson County facility, another public proprietor. This man was a U.S. Marshal Service prisoner who had been taken to a hospital emergency room for a self-inflicted wound to his hand. He fled and was finally captured in Louisiana four months after his escape ("Beaumont Escapee Recaptured" 1994:22).

In July of 1993, federal prisoners in a private proprietary prison escaped. In July of 1993, two criminal undocumented immigrants escaped from the CCA private prison in Houston. The men had pried a perimeter fence away from a pole and then slid underneath to make their getaway ("Two Men Escape" 1993:23). Not long after this escape, Don Hutto, former Arkansas Corrections Commissioner and one of the CCA founders, was quoted as saying that their standards were often higher than government: "We can't afford even one prison escape" (Handelman, 1994:E1). In spite of this pronouncement, problems continued within Texas' ever growing private prisons.

Finally, in spite of the confidence the Legislature had shown in the private sector by doubling the allowed capacity, in May of 1994, two prisoners escaped from a TDCJ contracted prison. While on a recreation break, the two scaled the fence at the Wackenhut managed Kyle facility. Local law enforcement pursued them. In addition, two state law enforcement agencies were involved in the search. Both the Texas Rangers and the Department of Public Safety assisted ("Two Inmates Escape" 1994:24A). The two were later captured at a restaurant about five miles away from the prison ("Beaumont Escapee Recaptured" 1994:22).

Once again, several state agencies got involved in capturing the two escapees. Although these were Texas prisoners being held at Texas taxpayers' expense in a Texas prison, the fact is that Wackenhut was making a profit, promising they were "better" than the public institutions. Like the other riots and escapes where state agencies had to intervene, this one also occurred in a prison that benefitted either a profit making private proprietor or even a local government that increased its revenue by transferring these costs to state government. In these cases, some public or private entity benefitted at the expense of Texas taxpayers. The proprietors made a profit for themselves and in some case their stockholders; they spent none of their own funds, yet state resources were expended to solve problems resulting from their presence.

Legislative Response

Still trying to grapple with the situation, the 1995, 75th Legislature once more addressed the issue of these difficult to control counties that were importing prisoners from other jurisdictions. Again, they turned to the Commission on Jail Standards and increased their responsibilities by approving S. B. 1168 (Acts 1995, ch. 171). Such riots and escapes as those described above had raised concern about the importing of prisoners that were classified as higher security risks than the facilities were designed to manage. Therefore, the Commission was directed to adopt rules "relating to requirements for segregation of classes of inmates." The bill also called for further rules regulating maximum capacities for these county jails (§1 (a) (11)).

Problems: 1995 - 1996

Even as the 1995, 74th Legislature met and grappled with the situations in the local private prisons, other problems continued. Late 1995, and especially 1996, led to some striking problems that required further legislative, bureaucratic, and judicial responses. A number of interacting issues led to the early proliferation of private prisons, yet there is no doubt that the proprietors became very creative as they outpaced the existing legislation. What had been a trickle of reported incidents increasingly surged as the 1990s progressed.

The end of 1995, and especially 1996, were landmarks for disasters in Texas private prisons. "Who in the hell would have thought that someone would try something like this?" (Bardwell (a) 1996:1) expresses the sentiment of one Senator as events unfolded. It must have seemed to the legislature that no matter what they did to try to oversee the proprietary prisons, the private and public entrepreneurs kept thinking of new ways to sidestep the law. Certainly problems appeared earlier and have continued since that time. However, as the following section will illustrate, this era in the history of Texas' private prisons was fraught with difficulties.

Late 1995 Incidents

In August of 1995, 500 Colorado inmates in the Bowie County public proprietary prison "strongly protested" the unconstitutional conditions in the facility housing them. The prisoners' complaints included lack of sanitation, roach infestation, and spending too much time in lockdown as well as inadequate work and counseling programs (Foster 1996:6a). This "prison" actually had been a postal warehouse before it was transformed into a county jail. Later, it became a corrections facility (Lloyd 1996:3). In time, as many as 90 lawsuits alleging unconstitutional conditions were filed against Bowie County by Colorado prisoners; the cases later were consolidated into one $17 million class action suit led by the American Civil Liberties Union (Lipsher 1995:A-01) ("Prison Expert"1995:22A).

Early in the Bowie County experience, Sheriff Mary Choate defended the county's decision to import out of state prisoners, noting that the benefits far outweighed concerns. Because of the payments received, she pointed out that her department's operations are "basically free" to taxpayers. However, after only six months of housing the out of state prisoners, Bowie County lost $10 million of the two year, $14.6 million contract when Colorado canceled their agreement and relocated the prisoners to Karnes County in January, 1996 (Weber 1995:6a).

The year ended with two escapes from privately managed prisons in Texas. In October, 1995, two Utah felons escaped from a work detail at the Crystal City Detention Center and were believed headed for Mexico. One was convicted of killing his wife; the other of child molestation. A third man joining them in the escape was captured near the prison soon after the escape. However, the two felons remained at large for several weeks ("News Around Texas" 1995:26A). Later, they were discovered in Louisiana after being arrested for car theft. Utah officials had word that the two were arrested somewhere in Louisiana. They spent several hours calling each county jail in the state because of their concern that the local authorities would not

know the true identity of the two. Sure enough, the two were located in the Lake Charles jail under false names (Donaldson 1995:A8).

The final 1995 escape involved two federal inmates from the CCA managed federal correction center in Eden. They were discovered missing during a routine inmate count; it was believed they had climbed the fence surrounding the low security prison. The Concho County Sheriff's Department and federal authorities were involved in the pursuit of these escapees who had possibly stolen a car from a nearby ranch ("Illegal Entry Inmates" 1995:27). These 1995 incidents occurred too late for the 74th Legislature to address. Unfortunately, they preceded further, often more serious, incidents that were to occur in 1996.

Examples of events such as riots and escapes due to improperly classified inmates being sent to inadequate facilities; prisoner lawsuits being filed; transferred costs of quelling riots, locating escapees, and responsibility in legal action from other jurisdictions to Texas citizens -- most of the major issues facing governments today -- occurred during 1996. The escalating seriousness of incidents even included untimely deaths. In some cases, the bureaucracy got involved before the legislature could respond.

1996 - The State Bureaucracy Steps In

In 1996, several riots and escapes led to extensive state bureaucratic involvement. Beginning in January, three Utah prisoners escaped from the Frio County Detention Center, managed by Dove Development Corporation (Shannon 1996:34A). In February, the Crystal City Detention Center, another Dove managed prison, was the site of a serious riot. The Crystal City Center was one of the earliest privately managed facilities in the state and had a reputation for problems. This time, Missouri prisoners housed there rioted and burned one section of the Center; they also gained entry into the control room. The situation was so dangerous that law enforcement agencies from five counties were sent to help the local police and firefighter

departments. In addition, three Texas agencies: the Department of Public Safety, the Texas Rangers and TDCJ Dilley unit corrections officers clad in riot gear assisted in subduing this riot ("Uprising Quelled" 1996:16A).

Following both these events, Polunsky, chair of the Texas Board of Criminal Justice, had publicly questioned the wisdom of allowing the existence of unregulated jails leased by counties to private prison management vendors, calling for state regulation of prisoner importing ("Uprising Quelled" 1996:16A). From the beginning, Texas private prisons had been inaccurately lumped into one large category. Although the locally owned prisons were totally outside the purview of TDCJ, the agency found itself pulled into the spotlight, at times even blamed for the incidents over which they, or any other state agency, had no control. Thus, in March, the Board officially called on the state to regulate these types of facilities (Shannon 1996:34A).

Justifying this concern, in June, two convicted murderers escaped from the Crystal City facility by using a pair of forty cent tweezers they had purchased in the prison commissary. Polunsky continued to openly force the issues and point out the problems of importing prisoners. Following the tweezers escape, he publicly questioned whether other states were "dumping their problem prisoners on us," stressing that "county jails are not designed for long-term incarceration of problematic prisoners" (Bell (e) 1996:1A).

The Frio County Center again appeared in the headlines in September. The Center warden announced the Utah prisoners were rioting and requested assistance from the nearby TDCJ Briscoe unit in Dilley. However, the agency refused to help after investigating. They determined that the incident was merely a "standoff" where a group of dormitory prisoners had refused to move from one location within the prison to another. The warden defended his request, noting that because the prison is right in the middle of town, he felt the citizens were endangered. As a result of this incident, Polunsky directed TDCJ to devise guidelines

determining when the agency would respond to a private prison emergency. He ordered that only recognized local or state law enforcement agencies such as the Department of Public Safety would be able to request help. Further, TDCJ was directed to charge the private vendors for the costs of their services in quelling riots or locating escapees ("State Limits Its Response" 1996:8) ("State Orders Restrictions" 1996:38A).

A year later, beginning in early 1997, TDCJ had collected $15,552 from three firms. In January, Wackenhut had paid $10,872 for guards, horses, and tracking dogs to hung an escapee for more than two days. In January, 1997, the escapee had fled from the Lockhart Correctional Facility, a private contract prison for federal prisoners. Capitol Corrections Company paid $1,939 for help in capturing an escapee from the Limestone County Detention Center in April, 1997. Bobby Ross Group paid $2,741 for help in catching two escapees in separate 1997 incidents from the Karnes County Correctional Facility. In addition, Bobby Ross owed $1,550 for an August 1997 escape from the Newton County Detention Center. Dove Development Corporation owed an outstanding balance of $4,794 for state help in a September 1997, riot and locating an escapee a month later. Both incidents occurred in the Frio County Detention Center. The company was no longer in business ("State Charging" 1997:16A). From 1997, the private companies who boasted of reduced costs would no longer receive the benefit of state help for free. On the other hand, the state and local governments still had to pay the cost of supporting and maintaining emergence response forces ("Private Prisons Must Pay" 1997:7).

In October, two Utah felons, one convicted of criminal homicide and one of aggravated assault, escaped from the Frio County facility by cutting a hole in the chain link perimeter fence. This time the county Sheriff's Department and state Department of Public Safety were called in to assist ("Two Utah Felons" 1996:5A). A few days later, the remaining Utah prisoners were bused back to their home state. A total of eight prisoners (including three murderers) had escaped during the year they were in Frio County. Two were still undiscovered (Thompson 1996:A28).

In one case, the FBI, Texas Rangers, and Mexican federal police were assisting local authorities in their search for the escapees ("Troublemaking Prisoners" 1996:36A).

The Karnes County Correctional Facility also experienced incidents during this time. Hoping for better management than the public proprietor had provided, in January, Colorado moved its prisoners there from Bowie County because of the conditions that led to the multiple lawsuits. However, the move to a different facility did not solve all the problems. In August two violent prisoners escaped; one had been convicted of burglary, the other of robbery, kidnaping, and sexual assault ("Two Inmates from Colorado" 1996:23a).

In October, two other men escaped from the Karnes County Facility. One was convicted of aggravated robbery and described as mentally unstable; the other was convicted of attempted murder of a Colorado Magistrate and her assistant (Miller 1996:B-04). They stole a truck and in the course of their escape ran roadblocks , at times exceeding over 100 miles per hour in their attempt. After two days, they were stopped when deputies shot out the truck's tires ("Two Escapees" 1996:18D).

TDCJ was asked and had initially agreed to help recapture the Colorado escapees. However, once authorities learned the prisoners had escaped the day before, they called off the search. The length of time that had passed made it impossible for the dogs to pick up a scent. "TDCJ is not a temporary employment service on call to private operators," noted Prison Board Chair Allan Polunsky. Subsequent to calling off the search, TDCJ billed the Bobby Ross Group $1,200 for the state dog team that was requested by the Karnes County Sheriff's Department. Thus, the two requirements approved following the Frio County incident just the month before were obeyed. This time, a recognized law enforcement agency had requested assistance and the cost to TDCJ was recovered ("Texas Southwest Digest" 1996:2).

Not every agency was as concerned as TDCJ that the state strictly regulate privately managed prisons. The Central Texas Parole Violators Facility in San Antonio had been a Bexar

County jail. Although the original intention was to relieve overcrowded county jails ("Central Texas Parole" Executive Summary undated:1), at some point, Wackenhut began to use the facility to import prisoners out of state prisoners. However, it seemed to be not quite ready to hold the type of prisoners Wackenhut planned to bring in. Indeed, the records from Governor Clements' administration regarding the conversion of this facility for private use are filled with "General Exclusions," and approved "Application for Variance" forms granted by the Commission on Jail Standards. In every case, the Commission finds that there would be no adverse impact on the prisoners ("Central Texas Parole" undated:n.p.).

Perhaps this lenience, the many variances allowed by the Commission, led to an August 1996 escape by a prisoner from Oklahoma. A man convicted of a double murder escaped by squeezing through bars that were six inches apart ("Killer Sought" 1996:12D). The prisoner, sentenced to life without parole, then slid down a homemade rope from the fourth floor of this prison located near a residential area. He was captured three days later. Wackenhut readily agreed to improve security procedures at the facility ("Murderer Who Fled" 1996:17A). They also spent $20,000 on new doors and locks ("Murderer's Escape" 1996:27A).

1996 - Public Proprietorships Experience Escapes

Other incidents occurred throughout the state that year. In these cases, the bureaucracy did not immediately get involved but public concern and attention continued to mount. In addition to the Bowie County episodes described above, two other public proprietary prisons experienced escapes that endangered the public. Both the Odessa City jail and Dallas County jail were involved in these 1996 episodes.

In January, two women prisoners convicted of violent crimes in Oklahoma escaped from the Odessa City jail. One of the women was a convicted murderer; the other was in prison on drug and weapons charges. The escape was unsettling to the Odessa residents, as well as others

throughout the state. One of the first official voices in Texas to protest was that of Andy Kahan, Houston's crime victim's service coordinator. He said: "It's ironic that we go from having no space to being Motel 6," as he noted that Texas was the leading importer of convicted felons in the nation (Hoppe (c)1996:1A).

Soon after this, in February, three convicted murderers from New Mexico attempted an escape from another public proprietor, the Lew Sterret Justice Center, which served as the Dallas County jail. The men used a bed sheet rope to break out of their fifth floor cell. Someone, evidently a cellmate they left behind, cut the sheets, sending one man plunging 65 feet to the ground. This man suffered a spinal fracture; his two companions, who fell shorter distances, were treated for rope burns. They were discovered by a woman coming to the jail to post bail for another prisoner. Again, the local community did not react positively to this sort of incident ("Prisoner Cuts Off Cellmates' Attempt" 1996:3A) (Shannon 1996:3A).

1996 - Private Proprietary Prison Escapes and Riot

In addition to the public proprietary prisons, the privately managed facilities in Texas experienced escapes. In February, a Hawaiian prisoner convicted of kidnapping, terrorist threats, and assault escaped from the Newton County Fillyaw Correctional Center, managed by the Bobby Ross Group. This prisoner climbed over a razor wire fence and made his way to a home in an isolated area about 1½ miles from the prison where he kidnapped a woman. Using her car and credit cards, he drove her into Mexico. When the car broke down, she escaped and caught a ride back into the United States (Hoppe and Hancock 1996:30A).

Perhaps the most dramatic escape, certainly one that caused a great deal of consternation throughout the state occurred in August in Houston. Late one night, two sex offenders from Oregon escaped from this CCA facility. The private prison had been at the location since 1984, housing INS detainees. However, unknown to any state, county, or local authority, CCA had

imported 244 sex offenders from Oregon for a pilot therapy program (Bardwell (a)1996:1). City, county, and state officials were variously described as stunned, shocked, appalled, and outraged (Bardwell (a) 1996:1) (Bardwell (b)1996:1) (Hoppe (b) 1996:1A).

Although the INS knew the Oregon offenders were present, CCA did not tell them of the escape for several hours; thus the federal agency was unable to help track them. As the story unfolded, other reports told of CCA officers previously searching for other escapees on their own and not contacting law authorities (Zuniga 1996:33). Most critical to Texas, as the situation developed, it turned out that the Oregon prisoners had not violated any local or state law. This was because they escaped from privately employed officers who were certified as security officers, not peace officers or public servants as the law required.

Truly, at that time in Texas, it was "not a crime to escape from a corporation (Gerhardstein 1999)."[21] And, because Oregon has no authority within Texas, the escapees could not be prosecuted under that jurisdiction either (Koidin 1996:38A). Fortunately, for everyone except the assaulted officer, the escapees attacked one of the CCA officers, took his keys, and stole his car. Thus, the state and local authorities could pursue the escapees for these crimes associated with the escape. Finally, after eleven days, the two escapees were apprehended 200 miles away and charged with unauthorized use of a motor vehicle (Koidin 1996:38A).

To explain why Texas had no laws to deal with such a situation, the Chair of the Senate Criminal Justice Committee, John Whitmire was quoted: "no one ever thought someone would be stupid enough to do that" (Koidin 1996:38A). Indeed, there was no legislative context for these public and private proprietary facilities that contained out of jurisdiction prisoners. Rather, gaping loopholes existed in the law which made it impossible to punish inmates escaping from private prisons. Further, no mechanism existed to require vendors or sending jurisdictions to

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[21]Thanks to Al Gerhardstein, Jan 29, 1999. Private Prison Workshop, University of Minnesota Law School, Minneapolis MN.

notify state or local jurisdictions that their prisoners were being imported to Texas (Brooks and Greene 1997:S1). Throughout 1996, Texas found itself scrambling to keep up with the escapes, riots, and other problems resulting from the many out of jurisdiction prisoners being moved into the state.

Also in August, a riot occurred in the Dickens County Correctional Center, located in Spur and managed by Bobby Ross Group. Prisoners from Montana and Hawaii, protesting strip searches for inmates who do community service outside the prison, small portions of food served, and low wages for prison work rioted. Shots were fired; one prisoner was shot. Both the county sheriff's department and state police were called in to assist the prison security staff ("Private Texas Prison Reports Disturbance" 1996:12D). Conditions were so bad that in early 1997, a minister there "resigned in disgust" ("Counselor Quits" 1997:14A). Later in 1997, a Montana prisoner was murdered by a prisoner from Hawaii during a disturbance between the two groups (Schlosser 1998:52).

1996 - Federal Riot

During the interim between the escape and capture of the Oregon sex offenders, the Eden Federal Correction Center again experienced a problem. This time, the prisoners there rioted. The men in this prison were undocumented immigrants under the jurisdiction of the federal Bureau of Prisons because they had been convicted of crime in the United States. During the day long episode in August, six inmates were shot. There were a total of seventeen injuries, including three prison officials (Turner 1996:33). Two Texas agencies responded. The State Department of Public Safety was called in. They sent twenty troopers and Texas Rangers, intelligence officers and a helicopter, along with two riot squads. In addition, a TDCJ SWAT team was sent in. The division of labor was clear; the state officers were there to secure the perimeter, while

CCA, the vendor, was left with the task of internal security ("At Least Six Inmates Shot" 1996:30A).

Initial reports indicated that the riot began as a sit in by a group of prisoners who were upset by a lack of choice in food, clothing and little access to crafts ("At Least Six Inmates Shot" 1996:30A). Later, a team of federal inspectors found a "long list of security and operations deficiencies" (Brooks and Greene 1997:S1). In 1998, I visited this facility, including the craft room. The warden stressed the fact that he provided over 30 million toothpicks and 500 gallons of glue per year for the prisoners to use in making crafts. No doubt in response to this riot, and even though federal prisoners are supposed to pay for their own craft supplies, CCA had decided to foot the bill for these. Of course, the state has no jurisdiction over a federal facility of any sort, yet news of the incidents resounded throughout Texas, no doubt because of the ongoing search for the Oregon escapees.

1996 - Out of Jurisdiction Prisoner Dies

Soon after, another incident, perhaps more tragic than any other, took place at the Mansfield Law Enforcement Center. For almost a year, 600 Oklahoma prisoners had been housed in Texas. Five had escaped and one died of natural causes when in September of 1996, a prisoner serving two life terms was killed behind bars in this prison managed by Capitol Corrections Inc. The possibility for problems was not unknown to the management company. Both the victim and his family had recently reported the potential for trouble to the prison officials. Just two weeks prior to the murder, during a visit, the victim told his relatives he was having problems with his cellmate and had asked prison officials to transfer him. His family also spoke with the vendor. The prison management did not respond. Tragically, the victim's cellmate was eventually arraigned in the death. Texas officials stated they were not aware that

maximum security prisoners were housed in the facility (Espinosa 1996(a):A11) (Espinosa (b) 1996:A1).

1996 - Prisoners Attacked

Perhaps the most notorious incident, known throughout the United States, occurred shortly after the Eden riot. In August 1997, nationwide television news reports showed clips of a vicious attack on Missouri prisoners housed in the Brazoria County Detention Center. However, the incident had actually occurred a year earlier, in 1996. After the numerous riot and escape incidents in the Crystal City facility in early 1996 (as described above), Missouri officials moved their prisoners to Brazoria County where they hoped for better management. They announced that the new facility had been built as a maximum security prison and provided better ability to control inmates (Bell (d) 1996:01A). Unfortunately, this move was not the end of problems for Missouri prisoners.

Two days after the Missouri inmates were transferred from Crystal City to the "improved" Brazoria County facility, the disaster that was to become infamous took place. In August 1996, the beatings and attack seen on television news across the United States occurred. This violent attack was videotaped for training purposes by Capital Correctional Resources, Inc. (CCRI), managers of the Brazoria facility at the time of the incident. Later, when a lawsuit was filed by one of the prisoner victims of this incident, the existence of the tape became known.

In the video, taped by a deputy sheriff for training purposes, inmates are seen being beaten, kicked, dragged, electrocuted by a stun gun by correctional officers and attacked by a dog. Prisoners are ordered to crawl naked on their stomachs into a hallway where they are strip searched, and at least three men are shocked with a stun gun. One man, moving more slowly than the others, had a broken ankle. Unaware of this, a deputy drags and zaps him until an off camera voice informs him of the broken ankle. An attack dog pants, barks and lunges at men on the

ground; at least three men are bitten; one screams (Bell (b) 1997:01A). Following this episode, Missouri brought home their prisoners (Bell (c) 1997:01A).[22]

A Missouri inmate who later filed suit in Galveston federal court noted that the incident had been taped. Local officials stonewalled; some would discuss its existence, but no one would surrender a copy of the tape. Although the prisoner had filed complaints with jail officials, his case went nowhere until his federal lawsuit revealed the existence of the tape (Graczyk 1997:33A). A number of other inmate lawsuits were filed against CCRI, Brazoria County and the state of Missouri. The Missouri Attorney General's office also filed against CCRI and Brazoria County (Moritz 1997:1).

Eventually, more than 700 men filed 33 prisoner lawsuits. Although attorneys for the prisoners held Missouri officials partially responsible, the bulk of the litigation was aimed at the Texas county government and vendor. It was learned that three of the officers had been sanctioned for abusing inmates in the past; one had served prison time for beating a prisoner while employed by TDCJ (Bell (a) 1997:D2). Brazoria County finally approved a $2.22 million settlement to the Missouri inmates ("Settlement OK'd" 1999:4A). The first criminal trial to be filed against one of the involved officers ended in a mistrial (Moran 1999:23).

Due to the early proliferation of both private and public proprietary prisons, Texas early on encountered many unanticipated problems that continue to emerge across the United States in other jurisdictions who later allowed private prisons. As illustrated by the above examples, evolving circumstances revealed that in spite of the well thought out early bill that legalized contracts between TDCJ and private prisons, a legislative context much broader than was foreseen in 1987 is needed by any state that allows private prisons to exist within its boundaries.

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[22]Other Missouri inmates, located in Gregg County Correctional Center, also managed by CCRI, were taped in 1997. In this tape, jailers turned fire hoses on prisoners, shackled them in their underwear, and forced them to line up facing a wall outside. Texas Jail Standards Commission Deputy Bob Dearing stated: "From this day forward, our first question will be "Was it taped?"" (Bell (b) 1997:01A).

The next section reviews the ensuing legislation approved as Texas policy makers attempted to grapple with the mushrooming private prison population across the state.

Legislation: 1997 Additions and Revisions

By the time the 1997, 76th Legislature met, incidents like the above had occurred throughout Texas. These events led to further action regarding out of jurisdiction prisoners by the state government. It was clear to those immediately concerned, as well as a large portion of concerned citizens, that a more thorough legislative context was needed to properly oversee and contain the public and private proprietary prisons in Texas. The vendors and in some cases, local governments, had become very creative in the use of prisons for profit. Thus, a series of laws and amendments were added by the 76th Legislature to try to oversee and regulate the proprietary prisons.

The numerous escapes had led to citizen concerns about the presence of out of state prisoners. One of the primary considerations was that the out of state prisoners be sent home and not be released in Texas. Thus, H.B. 485 (Acts 1987, ch. 485), the first bill pertaining to private prisons passed that session, mandated any county, municipality or private vendor operating a correctional facility under a contract housing in Texas, "inmates convicted of offenses committed against the laws of another state of the United States must require as a condition of the contract that each inmate to be released from custody must be released in the sending state." This legislation mandated that, in Texas, from this time forward, any public or private proprietary prison had to ensure that the sending jurisdiction would bring its prisoners home before their release.

The Commission on Jail Standards continued to receive attention in the 1997 Legislature. In the past, the Commission had some authority over the proprietary prisons because many of them met the state's definition of jails. And, as earlier noted, some legislation was passed in

recent Sessions to strengthen their authority. But, the effort to date had been fragmentary at best. S.B. 367 consolidated these past efforts by codifying and greatly expanding the authority of the Commission on Jail Standards to oversee the county and municipal facilities with contracts for out-of-state inmates. First, the Commission was to ensure that the "only entities other than the state that are authorized to operate a correctional facility to house in this state inmates convicted of offenses committed against the laws of another state" are a county or municipality (§9) (Acts 1997, ch. 259).

This new requirement was even more specifically restated in the same bill. Any private vendor operating a correctional facility must only be under a contract with "a county under Subchapter F, Chapter 351, Local Government Code, or a municipality under Subchapter E, Chapter 361, Local Government Code" (§9 (a) (1 &2)). From 1997 forward, no entity outside the authority of Texas would be allowed to house prisoners. Because they wanted the facilities to remain, the local governments and vendors were quick to comply with this newly specified requirement.

S.B. 367 further gave the Commission authority to determine whether any local facility is proper for housing any out of jurisdiction prisoners it contains. The determination procedure is also specifically stated: first, the county or municipality must agree to submit to the Commission on Jail Standards. Next, the local authority must submit a statement of custody level capacity and availability. In addition, the governing body must submit a written plan explaining procedures to coordinate law enforcement activities in response to any emergency situation such as a riot, rebellion, or escape (§9 (b) (2)).

Following submission of these written documents, the Commission must inspect the facility as well as review the documents. After the inspection and review, the Commission is instructed to determine whether the correctional facility is a proper facility for housing the custody level of inmates being sent there. The local jurisdiction is then to be provided a copy of

that determination (§9 (b) (2)). Further, the legislation directs the Commission to ensure that vendors do not enter into a contract with any other state or jurisdiction in another state to house prisoners in Texas (§9 (c)). Finally, each facility must meet minimum Commission standards (§9 (d)).

Instructions to the facilities are also specified For instance, before out of jurisdiction prisoners are transferred into Texas, the receiving facility must review records for compliance with classification standards to ensure the custody level is compatible with construction security level in accordance with Commission rules. Further, medical information, specifically regarding certification of tuberculosis screening or treatment must be reviewed. Also, unless the Commission specifically exempts a particular facility, receiving institutions may not accept any inmate who has a record of institutional violence involving a deadly weapon or attempted escape from secure custody. Finally, each inmate must be released into the sending state (§9 (d) (e)).[23]

Two other agencies were impacted by S.B. 367. In the past, the Private Investigators and Private Security Agencies Act vested authority to test and certify the private management company officers and other employees (Article 4413 (20bb), Civil Statutes). However, now all such employees would be under the authority of the Commission on Law Enforcement Officer Standards and Education certification (§9 (f) (2)). Although the Private Investigators Board did not easily give up this authority, the incident involving the Oregon escapees from the Houston INS facility made this change necessary. Clearly, private prison corrections officers needed to be law enforcement officers.

Another concern regarding the Houston incident was addressed by S.B. 367. CCA knew about the escape for hours before reporting it to any authority. In response to that incident, this legislation mandated that every county, municipality, or private vendor was required to

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[23]Evidently, Texans were quite concerned about the issue of releasing prisoners. This repeats what had earlier been mandated that same session in H.B. 485.

"immediately notify the (Jail Standards) Commission of any riot, rebellion, escape, or other emergency situation occurring at the facility" (§9 (f) (4)).

The fee system was also impacted by S.B. 367. The previously mentioned 1991 legislation (S.B. 380) had introduced the idea of recapturing for the state some of the expenses that had been shifted or added to Texas. Now, in addition to reimbursing the Commission for its costs, any sending state or entity must reimburse the state for any cost incurred by a state agency when "responding to any riot, rebellion, escape, or other emergency situation occurring at the facility" (§9 (g)). And, private vendors housing out of state inmates must now compensate the Commission for all costs regarding regulation and technical assistance to the facility (§9 (511.0093) (a)). Thus, other jurisdictions and any private vendors now must pay Texas for its costs in regulating these proprietary prisons.

Further expanding its authority, S.B. 367 directed the Commission to regulate the number of federal prisoners and prisoners from jurisdictions other than Texas housed in a correctional facility operated by a municipality, county or private vendor under contract with a county or municipality (§9 (511.0093) (b)). Of course, any such facility housing only federal prisoners is excluded from these provisions if the contract is between the federal government and a county, municipality, or private vendor. However, if any of these entities begin to house state, county, or municipal prisoners or prisoners of another state, "it shall report to the Commission before placing such inmates in a correctional facility housing only federal prisoners" (§9 (511.0094)). The bill also directed the Commission to adopt rules that would protect the health and safety of both Texas and out of state prisoners, as well as personnel and the public (§9 (511.0093) (c)).

Finally, with its eye on the possibility of overcrowding recurring in the Texas prison system, S.B. 367 also directs that if the Commission determines that any receiving facility is needed to house prisoners convicted of offenses against Texas, that facility may be required to terminate its out of jurisdiction contract and receive Texas prisoners. The facility must be

compensated (§9 (511.0096)). Thus, from 1997 forward, any public or private proprietary prison in Texas must prioritize its beds for use by the state if needed.

Table 8, on the following page, summarizes legislation pertaining to private prisons that has been enacted by the Legislatures and signed by the Governors from the original 1987 act that allowed private prisons to exist in the state. As Table 8 shows, almost every Session since the original legislation was passed has required action. As much of this chapter indicates, many unforeseen incidents emerged over time that necessitated this response. In addition, the administration and judiciary have had to get involved in solving problems caused by out of state prisoners being imported by county and municipal governments in Texas. Of course, the courts have also been drawn into the action. Finally, various levels of government have been incorporated as Texas developed a legal context for its mutable private prison variations. Although the 1999 Session did not address private prisons specifically, a different sort of problem emerged late that year.

Recent Problems and Response

The statutes described above and depicted in Table 8 were clearly added in direct response to the mayhem that occurred in public and private proprietary prisons within Texas. As the vendors and local jurisdictions created and tried a variety of arrangements that were not regulated by statute or any sort of home state authority, the disasters continued throughout the late 1980s and 1990s. Although TDCJ seemingly had a firm hand on its vendors, many of the prisons who were not governed by S.B. 251 hosted this series of disasters. In spite of the seriousness of the problems, including danger to those inside and outside the prisons, most of the counties and local governments continue to house out of jurisdiction prisoners.

The 1999, 76th Legislature did not pass any legislation specifically related to problems with proprietary prisons. However, shortly after the Session adjourned that year, a new series of

Table 8. Outcome: Legislative Context Needed to Oversee Private Prisons in Texas

Feb 1987	**S.B. 251** - authorized the state to contract with vendors to "finance, construct, operate, maintain and manage secure adult correctional facilities."
Aug 1987	**H.B. 146** - authorized certain cities and counties to issue bonds "to finance correctional facilities." Necessary because private sector would not do so.
Sep 1987	**S.B. 245** - mandated internal audits of all prisons.
Aug 1989	**H.B. 1992** - stricter minimum standards for contracts.
Aug 1991	**H.B. 93** - required monthly reports to Commission on Jail Standards by counties housing out of jurisdiction inmates. - further, doubled the maximum number TDCJ contracted beds.
Sep 1991	**S.B. 380** - directed Commission on Jail Standards to set and collect fees for the cost of performing services to facilities operated by a private vendor.
Aug 1995	**S.B. 1168** - directed the Commission on Jail Standards to require inmate classes be segregated. - further, the Commission was to regulate maximum capacities for all local facilities housing out of state inmates.
May 1997	**H.B. 485** - mandated any public or proprietary prison housing out of state inmates in Texas to ensure prisoners would be sent home before their release.
Sep 1997	**S.B. 367** - codified and expanded authority of the Commission on Jail standards to oversee local facilities with contracts for out-of-state inmates. Established that private vendors could only contract with counties or municipal governments; the Commission would determine the fitness of every facility for the classification prisoners held there; receiving institutions forbidden to receive violent inmates. - further, private management company employees must be certified by the Commission on Law Enforcement Officer Standards and education. - further, required immediate notification to the Commission of any riot, escape, or other rebellion occurring at any facility. - further, any state agency that responds to any emergency situation at the facility must be reimbursed for all its costs. The Commission is to be reimbursed for all its costs regarding regulation and technical assistance to the facility. - further, facilities housing federal prisoners must report to the Commission beforethey house any other jurisdictions' prisoners. - further, the Commission must adopt rules to protect the health and safety of all prisoners, personnel, and the public. - finally, if any facilities are needed to house Texas state prisoners, the receiving facility may be required to terminate its contract with any other jurisdiction. The facility must be compensated

disasters emerged. This time, two TDCJ contracted facilities were the site of serious incidents. The Travis County Community Justice Center, a State Jail managed by Wackenhut, was the focus of an investigation of "allegations of widespread crime behind bars." The County District Attorney and Sheriff announced they were investigating complaints of sex between guards and inmates, assaults, retaliation, contraband and attempts to silence witnesses. In addition, there was concern about the lack of response from jail managers to any problems ("Investigation Looks" 1999:n.p.).

The State Jail Division joined the investigation, and state prison officials soon decided to take over the facility. Wackenhut announced their decision to discontinue its contract, effective January 3, 2000, as if it were their own decision ("Operator of Prisons" 1999:B2). All promised an orderly transition from private to the public sector. As the investigation progressed, the Board voted in October to take over the prison November 8, earlier than originally planned (Jennings 1999:33A).

Results of the early investigation were so troubling that all the women prisoners were transferred to a different State Jail facility. This prison had been "touted as a statewide model for rehabilitation" since it opened in 1997, due in part to the on-going community involvement from the planning stages ("State Moves" 1999:n.p.). Thus, the situation was all the more troubling for the state and local officials. In December 1999, twelve former Wackenhut employees from the Travis County facility were indicted on charges ranging from rape to sexual harassment. At that time, the indictments were characterized as the first of an expected continuing series of indictments. Authorities also noted the investigation had broadened and now they were looking into allegations of administrative and financial fraud by Wackenhut as well as the falsification of documents and misuse of funds by jail administrators (Walt 1999:1). In addition, civil complaints arising from this facility were filed against Wackenhut. For instance, a former correctional sergeant at the Travis County facility sued, saying he was fired after ordering another

employee to continue videotaping a situation involving a "major use of force" against an inmate, countermanding his supervisor's direction (Tedford 1999:17).

The second major incident also involved a TDCJ - Wackenhut contract. This time, the Institutional Division Lockhart facility, site of the only TDCJ-sanctioned Work Program, was the site of additional sexual misconduct allegations. A former officer there was charged of sexually assaulting a woman from May to August 1996. The allegation stated that he threatened her that if she told, he would contact her parole board to make certain she was not paroled. After her release, the woman reported the incident and later filed a lawsuit.

The TDCJ Internal Affairs Division investigation found that the sex was not consensual. However, Wackenhut officials didn't fire the officer. He was later implicated in a separate sexual harassment incident and resigned only after that second episode was reported. After her release, the victim filed suit in U. S. District Court in Austin. The state had earlier decided not to present the case to a grand jury, but because of "additional information involving further allegations of wrongdoing at the Lockhart prison," they had decided to take action (Osborn 1999:B7).

These two incidents led the state Board of Criminal Justice to conduct an audit of all privately run state correctional facilities. This wide-spread sexual abuse of women prisoners in these two state contracted facilities led to currently on-going investigations by state into all contracted facilities While noting that it was premature to speculate about other facilities, "we have problems, but not of the magnitude that we found in Travis County," Polunsky, Board Chair, wanted the audits to be completed by the end of the year (Jennings 1999:33A).

Conclusion

As this chapter has shown, a great deal of government intervention has been necessary to cope with the burgeoning number of private prisons in Texas. The courts became involved, and the bureaucracy had to continually make rules as they attempted to manage the situation. In

addition, the legislature had to make many statutory revisions and additions to the legislation that followed S.B. 251. This governmental response, in many cases reaction to serious problems, points out that private prisons cannot exist in a vacuum. Rather, where private prisons exist, there must be a legal context.

Unfortunately for Texas, because they had to deal with the problems so early, this meant the state had to learn some lessons the hard way. Other jurisdictions can benefit from these lessons by reviewing the laws Texas needed to approve in their effort to control the ubiquitous private prisons that appeared throughout the state. Thus, they can make an informed decision regarding whether or not to allow these private facilities within their authority. If they decide to allow private prisons, other jurisdictions can then follow the guidelines established as Texas led the way in allowing and then attempting to control private prisons within its borders.

Governments must realize that there are additional costs to allowing these reputedly more cost efficient institutions within their borders. When out of state prisoners escaped, Texas state and local law enforcement had to act. Sometimes the federal government became involved. Regulation of these enterprises that benefit local government and private companies incurs state costs. When conditions in these facilities are unconstitutional, state and federal courts must act. The existence of private prisons leads to all sorts of government response. The goal of reducing government involvement is not necessarily achieved in this case. Oregon authorities may not have to act when Oregon prisoners escape in Texas, but Texas does. Oregon may reduce its burden, but the reality is that burden is shifted to Texas in such a case.

If not for the late 1999 incidents, it would be easy to conclude that the problematic private prisons are the proprietary facilities – those outside the authority of the state. The audits of the TDCJ privately contracted facilities are not yet available and thus it is too early to make any grand conclusion about any differences that might exist between state contracted facilities and proprietary prisons. It is worth noting that the state contracted Travis County facility only

opened in 1997 and the problems were discovered relatively early in its history. However, the Lockhart facility been operational since 1993. And, authorities evidently were aware of serious problems in the women's unit there, although their interpretation of events may have been specious.[24]

Perhaps the answer transcends the issue of which -- public or private -- is better. It may lie in the very nature of prisons. As Johnson has noted, violence is perhaps the most obvious and serious problem in our prisons (1996:6). In order for "prisons to be civilizing institutions, there must be a conscious effort to make decent, humane settings of confinement" (Johnson 1996:5). Thus, one conclusion is that prisons are not places where good things tend to happen, even under the most ideal circumstances. Whether public or private, it is incumbent upon the imprisoning jurisdiction to strive continually to ensure everyone involved is safe from harm. Further, policies and programs must be developed which ensure each prisoner have an opportunity to habilitate.

This story from Texas illustrates that government regulation of all prisons, public and private, is absolutely necessary. All face the same problems, and authorities must ever be on their guard to ensure that prisons are safe and humane. Clearly, the vendors and local governments tried many different arrangements; those outside the bounds of clear regulation often led to disasters that impacted the prisoners, staff, and community. All prisons must be regulated; certainly the care and custody of people cannot be just handed over to the private sector. Texas saw the need, took steps to regulate, and still grapples with containing and controlling the result of their allowing proprietary prisons to exist within the state.

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[24]During a site visit, Apr 1 1998, Warden Skeens, the Major, and Assistant Warden Smith, expressed great concern with the women and how difficult they were to manage, compared to the men. Further, the vendor has placed at least three different wardens in the facility in less than two years time. At that time, there was no mention or consideration of the fact that women had were being sexually abused by one or more male officers.

These problems led to intervention by and costs to all three branches of state government. Even local governments incur unforeseen costs when they allow these facilities to exist within their own jurisdiction. If this story had ended in 1998, or even early 1999, it would be easy to conclude that the proprietary prisons are the site of the most glaring problems. However, the late 1999 TDCJ incidents show that is not the case. Indeed, the public and private proprietary prison management entities may have discovered what public prisons have known all along. Prisons are not a clean business. The "inventory" is not cooperative. It cannot be stockpiled or stamped and will not necessarily stay put.

Whether public or private, a prison costs money. Where such facilities are private, and profits go into the coffers of a public or private proprietor, the state will incur costs. All the regulation, as well as response to problems, result in often unforeseen and unpredictable costs to the receiving state. Even as Texas state prisons still find themselves under federal court order because of their own shortcomings in managing their prisons, the state has learned that government cannot simply turn over its responsibilities to other profit making entities. Texas' experience has shown that while government has its own shortcomings in imprisoning people in a constitutional, safe and humane way, the private sector does not necessarily offer an alternative.

Chapter Five

Implementing Private Prison Policy in Texas: The Economic, Legal, and Political Influences

Implementation theory posits that while policy makers have intended outcomes in mind, often the decisions they make have unintended consequences. In order to understand how this happens, the theory suggests that first the intentions and motives of the principal policy makers be explored; next that the actual outcome should be determined. Once this is done, the gap between intent and outcome can be explained by analyzing the implementation processes. Chapter Two explained the various motives of the many interested parties, while Chapters Three and Four detailed the unintended, rapid growth of these facilities and many of the resultant vicissitudes.

This chapter continues to follow Pressman's and Wildavsky's model by examining the processes of implementing S.B. 251 to explain the gap between the modest experiment that was proposed and the sweeping number and types of private prisons that appeared. This explanation then will answer this study's fundamental research question, "why did private prisons proliferate in the state of Texas?" As Ruth Lane notes, it is necessary to "dig beneath the appearances to the deeper explanations that can be found in the underlying processes" (1997:9). Thus, some of the underlying processes are related in this chapter in order to understand why so many private prisons appeared. Both Allison and Elmore help explain this. Elmore notes that interested parties bargain in order to keep process moving along (1978:217-219) while Allison postulates that

many groups pulling in different directions lead to an unexpected outcome (1969:707). This chapter will show that the implementation of private prisons in Texas followed those predictions.

My thesis is that legal, economic, and political processes entwined to become "an interconnected chain" (Lane 1997:63) of events that produced the large number of private prisons in Texas. Legally, a number of lawsuits in federal and state courts forced Texas authorities to respond to the critically overcrowded prison system. Economic realities created additional pressure. A number of isolated areas in the state came to see the value of hosting private prisons; a number of organizations were interested in making a profit from managing prisons and needed willing communities to locate their facilities. Finally, this analysis will show that politics, defined by Lane as selfish people with selfish agendas who use "their official positions and resources to protect their own turf" (1997:10) imbued the entire process from the beginning, and continues today. Politics overcame legislative intent to produce a totally unforeseen variety and number of private prisons in the state of Texas.

Legal Processes

This section of the chapter will explain the ongoing legal processes regarding the prison system in Texas when S.B. 251 was passed. The federal court's *Ruiz* mandates to reduce overcrowding prevented TDC from accepting sentenced prisoners waiting in the counties' jails because the state prisons were so overcrowded. Unfortunately, this led to further overcrowding in county jails across the state. As a result of that situation, lawsuits proliferated. Prisoners from county jails and state prisons began to file suits against the counties and the state on issues related to overcrowded conditions in local jails. In return, counties sued the state in federal and state courts. These various cases, combined with the federal *Ruiz* case, left the prison system of Texas besieged by lawsuits. Several representative cases are described below.

Ruiz v. Estelle - Impacts a Broad Spectrum of Events in Texas

As Schultz notes, since *Brown v. Board of Education* (1954), litigation has been used by individuals and groups to bring about social reform (1998:117).[25] The Texas prison system federal lawsuit, *Ruiz v. Estelle* (1980)[26] is important case to the body of case law regarding the court's influence on social change. In Texas, *Ruiz* tremendously impacted prison policy throughout the state of Texas. Though not the first prison conditions case found in federal court, it is no doubt among the most perdurable. As a result of U.S. District Judge William Wayne Justice's *Ruiz* mandates, since 1980, Texas has had to answer to the federal court for approval of many of its corrections policy decisions. Whatever academic conclusions one draws in the debate regarding the efficacy and propriety of the federal courts' influence over any state's policies, the fact is that *Ruiz* had, and continues to have, a tremendous impact on Texas' corrections policies.

While it is true that the state did not respond exactly as the court wanted; today the entire Texas prison system is greatly improved over the pre-*Ruiz* agency. In March, 1999, U.S. District Judge William Wayne Justice's latest *Ruiz* ruling, he recognized the notable achievement of TDCJ-ID (*Ruiz v. Johnson* 1999). Judge Justice makes it a point of commending the many conscientious public servants within the agency. He specifically points out that TDCJ-ID has remade itself into a professionally operated agency, striving to achieve correctional excellence "in spite of its formidable task." Justice concludes, however, that in spite of the agency's new found professionalism and other vast improvements since his original findings, that the prison system

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[25]For additional discussions of court actions' impact on social policy, see Horowitz (1977), Ely (1980), Cooper (1988), Rosenberg (1991), and Feeley and Rubin (1998).

[26]For a thorough discussion of this case, see Crouch and Marquart (1989). See also Martin and Ekland-Olson (1987), DiIulio (1990), and Kemerer (1991).

itself must further advance, stating that "the Texas prison system continues to violate inmates' constitutional rights."[27]

Justice determined that medical and psychiatric care are still "at times plagued by negligent and inadequate treatment" but no longer so deliberately indifferent as to be unconstitutional. On the other hand, according to the judge, the Texas administrative segregation units do violate the United States Constitution's prohibition against cruel and unusual punishment because of the extreme deprivations and repressive conditions. He also found that the agency "has failed to take reasonable measures to protect vulnerable inmates from other, predatory prisoners" as well as "overzealous, physically aggressive state employees." This situation, as a result, means that TDCJ-ID prisoners "still live under conditions allowing a substantial risk of physical and sexual abuse from others" (*Ruiz v. Johnson* 1999). Thus, the scope of federal court influence over TDCJ has been narrowed over time, but the prison system in Texas continues, in some well-defined areas, to be under the supervision of the federal courts.

Texas governments' resistance to the original court mandates is well-known. Following Justice's 1980 memorandum opinion, the state immediately appealed. The Fifth Circuit court affirmed Justice's findings, although somewhat narrowing the scope of some of the remedies imposed (*Ruiz v. Estelle* 1982). Texas, for the most part, continued to stonewall against the court mandates. Leaders and citizens of the state resented the federal interference, including the imposition of "those California lawyers," as the lawyers appointed to represent the prisoners were known. As noted by Crouch and Marquart, TDC itself did not resist all aspects of the ruling; prison officials were concerned about overcrowding, and had sought legislative relief throughout the late 1970s. They also had tried to improve the quality of medical care (1989:129). In fact,

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[27]Incidental to this discussion, the basis of this recent appeal was the Prison Litigation Reform Act, (PLRA), (18 U.S.C. 3626), legislation designed to limit federal court intervention and curb frivolous inmate litigation. Judge Justice found the PLRA was unconstitutional, and further not retroactive to his prior rulings against the state in the original *Ruiz* case. (See *Ruiz, et al. v. Johnson*, March 1999).

many in state government objected to the forced intrusion of the federal courts rather than the idea of improving Texas prisons. Nevertheless, it is true that no concerted action was taken toward improving prison conditions in the state until the federal court stepped in.

After years of the state's delaying, in December 1986, Justice threatened fines of $800,500 a day if the state did not move to comply. Finally, in early 1987, during a private session between the two, newly elected Gov. Clements convinced Judge Justice to give the state a little more time to comply. During this unprecedented meeting, held soon after his inauguration, the governor assured the judge that he would take quick action to reduce the extreme overcrowding and other unconstitutional conditions within TDC. "I guess you could say we got on the same side of the issue and said, 'how can we get a solution?' " (Clements interview 1998).

However, Texas' legendary determination to not let the federal courts dictate policy seeped through his administration, even after Clements met with Justice in January 1987. Just six months later, in June 1987, a three page memorandum from a CCA attorney to David Dean, lobbyist for CCA (former member of the Clements administration), outlines the potential vendor's concerns regarding *Ruiz* requirements. Not only does the document outline why CCA questions "the wholesale applicability of *Ruiz* orders to PreRelease Centers," the memo also lays out a litigation strategy to avoid the court orders (Martin 1987:1-3).

The memo concludes by urging serious consideration "be given to the adoption of the posture that community based PreRelease Centers are outside the scope and jurisdiction of the *Ruiz* court" (Martin 1987:3). Just a few months after Tom Beasley had assured the Senate Criminal Justice Committee of CCA's ready ability and firm intention to obey all court ordered mandates, the company carefully plotted its strategy of how to avoid coming under court jurisdiction. There is no indication of how the Clements administration responded to the memo, but CCA did file numerous appeals in federal court, seeking to be released from the mandates.

The papers of special master Vince Nathan, appointed to oversee TDC by Judge Justice, reveal numerous appeals, motions, and responses regarding the PreRelease Centers (PRCs).[28] Plaintiffs' counsel wanted to make the PRCs subject to all *Ruiz* orders. The private vendors, led by CCA and following their plan in the aforementioned Memo, fought those motions. There is some indication that TDC also opposed the plaintiffs' motions. Likely, this was due to Texas' overall resistance to federal court interference. Eventually, before the court ruled on the motion, the parties reached a compromise. All agreed that if an inspection from Nathan's office showed the PRCs were operating consistently with *Ruiz* standards, the plaintiffs would not force the issue. Dave Arnold, with the monitor's office, found that essentially the PRCs were so operating. After his informal report, the issue "just went away" (Nathan interview 2000).

Thus, as CCA intended, the original four PreRelease Centers never actually operated under the jurisdiction of the federal court. Not only did this violate the intent of the legislation and court mandates, this action became a part of the overall resolve to resist court interference. The result of the vendors' opposition was to further postpone the remedial actions ordered by the court. No doubt, desperately needed changes within the state's troubled, overcrowded prisons were further set back by this delaying action on the part of the private vendors, led by CCA.

The overcrowding addressed by *Ruiz* influenced the emergence of both of the two major categories of private prisons in Texas. First, regarding TDCJ contracted prisons, in 1987, when S.B. 251 established the four PRCs, the legislation became part of a much larger prison building program in order for Texas to respond positively to court orders in that case. That is, the private

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[28]See copies of numerous motions and answers filed as *David Ruiz, et al. Plaintiffs, United States of America, Plaintiff-Intervenor, v. James A. Lynaugh, et al.*, Civil Action H-78-987. Dates include Jan 4, 1988; Jan 22, 1988; Apr 20, 1988; May 11, 1988; May 20, 1988; Nov 30, 1988; Dec 21, 1988; Jan 17, 1989; Feb 14, 1989; Apr 13, 1989; Jun 8, 1989; Jun 23, 1989; Nov 6, 1989; Nov 8, 1989. These documents are a part of The *Ruiz* Case Office of Special Master Records Inventory, Center for American History, The University of Texas at Austin.

prisons who contract with TDCJ emerged within the larger context of exponential growth in the number of state prisons in Texas. The following sections discuss this influence.

Influence of *Ruiz* on State Contracted Private Prisons

Governor Clements clearly intended to follow up on his commitment to Judge Justice and reduce overcrowding in the state prisons. Although the response was not exactly what the judge intended – Justice made no secret of his preference for alternatives to incarceration (Justice 1973:720) – this was the first real effort on the part of the state to fully comply with the court. Following their meeting and consistent with his promise, the Clements administration embarked on a massive building campaign.

Early during the Clements administration, a major document, the **Prison Financing and Construction Plan** (Clements 1987), was prepared. In this plan, the administration proposed that in the coming four years, a total of 19,346 beds would be added to the capacity of TDC (Clements 1987:iii). The original four PreRelease Centers became a part of this total increase (Clements 1987:31-36). The **Plan** also, for the first time in Texas, proposed funding prison construction by the sale of bonds (Clements 1987:20-24). The **Plan** makes it evident that this administration, working with the legislature, was finally ready to comply with Judge Justice's *Ruiz* mandates by building more prisons.

Of the more than 19,000 proposed additional beds, 2,000 would be privately funded, built, and operated. Although private prison vendors had been trying for several years to contract with the state (White interview 1998), it is significant that the original four private prisons were legalized only as the state began to respond to *Ruiz*. While the 2,000 beds in the PreRelease Centers were a huge increase in the number of private beds in existence at the time, they were actually a very small part of the total prison beds the state would add in this major expansion program. They were, in fact, a small part of what was to become phenomenal growth in prison

capacity in the state. The growth rate of these privately managed prisons that were contracted with the state seems less significant when compared to the overall growth rate of the Texas state prison system. The privately managed TDCJ contracted facilities did not appear out of thin air. Rather, they emerged within the context of a state grappling to solve major overcrowding and other constitutional problems stemming from that condition.

Influence of *Ruiz* on Public and Private Proprietary Prisons

Ruiz also influenced the emergence of public and private proprietary prisons. In order to comply with *Ruiz* mandates, the state slowed down and at times even stopped accepting sentenced prisoners from county jails. This was because Judge Justice had ordered a population ceiling – no state prison was allowed to house more than 95 percent of its capacity – as a means to reduce the overcrowding in TDC facilities. TDC had devised a quota plan that provided the maximum number of prisoners accepted from each county. Once this population cap was reached, the agency could no longer receive prisoners sentenced to serve state time and the local jails then were forced to hold their own sentenced prisoners. That situation led to the county jails becoming greatly overcrowded. Even federal prisoners were affected as space for federal detainees grew more limited ("Inmates Face" 1987:32A). The jail overcrowding eventually led, at least in part, to the growth of public and private proprietary prisons in Texas, as explained below.

As it dealt with the state prison problems, the Clements administration's **Plan** also recognized the problems facing county jails. It included a recommendation that the State consider financially assisting the counties in return for a promise from each participating county to house a predetermined number of state inmates. The record indicates that some counties were already doing so (Clements interview 1998). Suggestions included the possibility of the State contributing a percentage of the construction cost in addition to total project costs associated with

the state beds. This would, according to the **Plan**, ensure that counties construct necessary capacity to meet local needs and also distribute needed TDC beds throughout the state. This method "could lessen the State's need to construct and operate new facilities" (Clements 1987:42). And, there was interest in placing prisoners throughout the state so they would be closer to their families

In hindsight, it seems clear that this same proposal had the absolutely unintended consequence of influencing the number of proprietary prisons that would quickly emerge in the next few years. As the counties were confronted with their own overcrowded jails, they added facilities. To service the debt, they needed the beds to be occupied. However, as TDCJ built more beds, they no longer needed the county facilities. Left with debt and empty beds, some counties began to import prisoners from other jurisdictions. There was precedent for this practice – some already housed federal U S Marshal's and INS detainees. And, there is no doubt that some counties built only as a means to increase their revenue as well as provide jobs for their residents. Thus, public and proprietary prisons emerged across the state, generally in rural, isolated areas. The overcrowded prison conditions were brought to a head by *Ruiz*; unintentionally this influenced the growth of private prisons throughout the state.

Although, according to the **Plan** presented in July 1987, the administration recognized the difficulties the counties were experiencing, later that year the executive branch took a different tone. In early December, the Governor met with county officials from the most populous counties and TDC representatives to try to find a solution to the overcrowded jails. Clements acknowledged that the TDC quota system was not working, but was unable to offer the county officials any help from the state (Stutz 1987:22A) (Toohey 1987:18).

Two earlier suggestions were, by the end of that meeting, recommended against. It had been proposed that the state pay county jails as well as allowing crowded counties to transfer their state-sentenced prisoners to counties with surplus beds. However, the concern raised at the

December meeting was that this would somehow make county jails subject to *Ruiz* standards. Clements concluded that state government could not help; county officials were left to find their own solutions (Stutz 1987:22A) (Toohey 1987:18). In the end, although the administration recognized the counties' jail overcrowding problems, it was unable to help the counties contain the emerging outburst of their overcrowded jails.

One of the "solutions" eventually chosen by some of the counties was to file charges against the state; another unintended outcome of the *Ruiz* case was additional lawsuits. The myriad of lawsuits filed during that time indicates the acute problems being experienced in the local jails as well as within the state prison system. Prisoners were filing against the state and various counties. In addition, in some instances, at times in response to prisoner lawsuits, the counties filed against the state. Defendant agencies included TDC, the Board of Corrections, and the Jail Standards Commission. Some suits named various state officials.[29] These lawsuits were filed in state and federal courts. One of the earliest filed suits was *Alberti v. The Sheriff of Harris County Texas* (406 F.Supp. 649 1975), discussed below.

Alberti – an Early Symptom of Overcrowded County Jails

Although the counties and others in the state blamed *Ruiz* for the overcrowded local facilities, the *Alberti* case was originally filed in 1972, around the same time David Ruiz filed his complaint with Judge Justice. This indicates that at least in some local jurisdictions, overcrowded jails predated or paralleled the overcrowding in the state system. Nevertheless, the federal court imposed population caps on TDC definitely exacerbated the situation in the county facilities.

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[29]See, for instance, *In Re Travis County Jail Conditions*; *Trivett V. Hickey, et al.*; *Billy Markum v. Tarrant County v. James Lynaugh* 1989; *Ex Parte Rodriquez* 1980; *Michael Allen Runon v. the Texas Department of Corrections and the Texas Commission on Jail Standards*.

Testimony in the case would show that Harris County jail conditions paralleled those of TDC. Like *Ruiz*, *Alberti* is a long lasting case, with many appeals and orders issued.[30]

Lawrence Alberti and others held in the Harris County detention facilities filed suit on behalf of themselves and all prisoners in 1972, complaining of overcrowding and the resulting unconstitutional conditions. In 1975, U.S. District Judge Carl O. Bue Jr. issued a detailed remedial order to force the county to correct the severe conditions (*Alberti, Langer, Pina, II, Sellers v. The Sheriff of Harris County, Texas and the Commissioners Court of Harris County, Texas* 1975). Judge Bue determined that the Harris County Jail and Rehabilitation Center "represented some of the most dire and inhumane conditions in corrections facilities across the United States (406 F.Supp. 657). As is so often true in unconstitutional conditions cases, the problems took a long time to correct. Even after the county built a new $100 million jail and took other ordered actions, nine years after his initial ruling, in 1984, Bue found the county officials in contempt (*Alberti v. Sheriff of Harris County* 1984).

The initial, 1975 ruling noted that 800 of the 2,500 jailed prisoners were waiting to be accepted into TDC and stated that these men and women were affected in ways beyond the insufferable conditions. For instance, people who were held in a local jail and not incarcerated within the prison system were unable to earn good time. More than one prisoner spent more time in jail than they likely would have spent in a TDC facility, had they had the "opportunity" to be transferred into a state prison (Hunt and Bernstein 1986:18) (Gillman 1990:40A) (Tolson 1993:1). Sheriff Klevenhagen stated this was due to a "slight glitch in the law" (Hunt and Bernstein 1986:18).

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[30]See also *Alberti v. Klevenhagen*, (1995); Alberti *v. Sheriff of Harris County* (1992); *Alberti v. Sheriff of Harris County, Tex.* (1991); *Alberti v. Klevenhagen* (1987); *Alberti v. Sheriff of Harris County* (1987); *Alberti v. Klevenhagen* (1986); *Alberti v. Klevenhagen* (1986); *Klevenhagen v. Alberti* (1985); *Alberti v. Klevenhagen* (1985); also *Alberti v. Klevenhagen* (1985).

As the seemingly unending *Alberti* case continued, the County considered its own options. Eventually, in spite of their lingering fears that bringing TDC into the lawsuit would backfire and involve them in the *Ruiz* case, the county decided to name agency officials as third party defendants (Slover (b) 1988:19). In fact, the decision was taken out of their hands when in January, 1989, U.S. District Judge James DeAnda, who had taken over the case when Judge Bue retired, ordered the lawyers to file the motion to include the appropriate TDC officials in the lawsuit, stating this was the "only way to find a solution to overcrowding" (Coulter 1989:25).

Tensions ran high; over time, the courtroom atmosphere became acrimonious. In one instance, Judge DeAnda "excused" the assistant Attorney General who was representing the state from the case, saying "You have (Attorney General) Mattox present someone else here in the morning" (Slover (a) 1989:1). Jail conditions remained quite seriously deficient. One of the worst situations, as is often the case in overcrowded facilities, was that medical care was quite inadequate. The sheriff accused prisoners of faking medical symptoms so that they could be released (Slover, SoRelle, and Byars 1989:1).

In fact, as the lawyers argued in court, years after the initial *Alberti* case was filed, forty eight prisoners had been hospitalized with pneumococcus bacteria. In 1989, two prisoners died from that disease, a woman died from untreated hepatitis, and a man bled to death from an ulcer. Further, one man died of a heart attack after staff failed to perform cardiopulmonary resuscitation, another died of a drug overdose after being strapped handcuffed face down on a stretcher for an hour and yet another man died of lung cancer three months after his condition was misdiagnosed as muscle strain and treated with aspirin (Slover and SoRelle 1989:1). It is hard to imagine how these symptoms were faked.

Two different court monitors' reports further illustrate the complexity of the Harris County Jail situation. In June, 1988, a federal report said that conditions in the jail were bad and getting worse. They stated that jail services were "impossibly stretched" and "at a time of crisis"

("Harris County Jail" 1988:41A). Less than a week later, a state inspector from the Commission on Jail Standards found that "the jails, generally speaking, are being operated safely and suitably" (Slover (c) 1988:24). While the federal monitors considered much broader policy issues than those concerning the Commission, it is difficult to understand how the state inspector's findings could have been so different.

In September 1989, Judge DeAnda responded to testimony including the fact that prisoners formed a "human carpet" on the concrete floor. DeAnda found the conditions in Harris County Jail were unconstitutional, including mental and medical health care as well as egregious crowding. In his ruling, the judge recognized that both the county and state shared responsibility for the conditions (Garcia and Ward 1989:A1). Following the August 1989 Fifth Circuit Court instructions which recognized the influence of *Ruiz* mandates on the county jail, DeAnda called on Judge Justice to help determine the cause and the remedy (In re William P. Clements 1989). At this point, the county was determined not to release dangerous criminals, the state was bound by *Ruiz* orders not to overcrowd TDC prisons, and the prisoners wanted relief from the conditions (Sallee and Dyer 1989:21). Accommodating the demands of these three entities was not to be an easy task.

Numerous other motions were filed; two years later, in July 1991, the Fifth U.S. Circuit Court of Appeals found compelling evidence of state liability and some evidence of county liability (*Alberti v. Sheriff of Harris County* 1991). They later ruled that the *Ruiz* mandates were no defense for the state in the *Alberti* case (978 F.2d 8931992), based on the 1992 Supreme Court finding which established the "deliberate indifference" standard in *Wilson v. Seiter* (1991). Following the Supreme Court's lead in *Wilson*, the Fifth Circuit Court ruled that in the *Alberti* case, deliberate indifference meant awareness of objectively cruel conditions and the failure to remedy them. Thus, the Texas officials met the "state of mind" threshold requirement (*Alberti v. Sheriff of Harris County* 1992). As a result of this ruling, by April 1993, the state was fined $50

per day for every Harris County Jail prisoner above the court set limit of 9,800 (Greene (c) 1993:14A). To add to the complexity of the situation, in addition to this federal case, Harris County eventually filed a separate suit against the State of Texas in state court (*Harris County v. State of Texas*).

In June 1993, for the first time in years, the state removed enough prisoners to bring the jail population to an acceptable number (Greene (c) 1993:14). Of course, like many other local jurisdictions that were not under court orders, Harris County had by that time added a number of beds to its own jail facilities. At the same time, the state found itself generally able to accommodate the sentenced felons from around the state. There were a few problems along the way, but generally after this time, TDC was able to meet its own population requirements and accept sentenced felons (Greene (a) 1994:A25), and (Greene (b) 1994:A1).

The ever changing *Alberti* case illustrates the volatile status of corrections systems in Texas. The Harris County officials' conduct reflects that of Texas generally in their reluctance to yield to federal court orders. Such incidents as the sheriff describing loss of opportunity to earn good time as a slight glitch in the law, or accusing prisoners of faking symptoms of serious illness indicate a pronounced lack of sensitivity to jail conditions. In addition, the incongruous monitors' reports raise further questions about the Commission on Jail Standards' sensitivity to jail conditions. The response of some state and local officials to conditions uncovered by the *Ruiz* and *Alberti* cases indicate a strong reluctance to remedy the serious conditions on the part of some people in positions of authority.

Numerous other suits were being filed across the state on the part of prisoners and local jurisdictions who were suffering due to the overcrowded state prisons. The next section details one of these. While the *Harris County* suits may illustrate more extreme conditions found in the state, the *County of Nueces v. Texas Board of Corrections* (1988) suit represents a more typical

situation. The *Nueces County* suit, discussed below, was filed in state court in 1988, shortly before *Harris County v. State of Texas* was filed.

Nueces County – Another Case, Another Symptom

In late 1988, Nueces County filed this case which may more accurately typify the types of problems Texas counties experienced because of the overcrowded state prison system. The South Texas county found itself with 167 felons sentenced to TDC sleeping on the jail floor. They had taken steps such as sending other prisoners to less crowded jails and renovating an abandoned Levi Strauss factory to hold prisoners, but were left with these 167 sleeping on the floor. "This was creating a big problem for us" noted now District Attorney, then County Attorney Carlos Valdez (Valdez interview 1998).

In the suit, filed October 8 1988, the county claimed TDC had caused them "undue administrative and financial burden" because of their refusal to accept sentenced prisoners. At this time, Nueces County did not seek financial settlement; they filed only to force TDC to accept their sentenced prisoners. Because the problem was spread throughout the state, it was not long before other counties sought to join the lawsuit. County Attorney Valdez agreed, with the stipulation that all would use the same lawyer to represent them. The point of this was to keep the situation as uncomplicated as possible (Valdez interview 1998).

Texas was not the only state experiencing problems with overcrowded prisons leading to further overcrowding in local jails. In early 1989, Ann Snell, representing the Texas counties, submitted a Supplement to her original Petition (SUPPLEMENTAL AUTHORITY 1989). In the Supplement, Snell cited two cases from other state Supreme Courts (*Campbell County v. Commonwealth of Kentucky* 1988) (*Ayers v. Coughlin*, 1988). She felt these in particular had bearing on the *Nueces County* case because their statutes, similar to Texas law, also mandated that convicted felons "sentenced to death, life, or a term of more than ten years in the Department

of Corrections shall be transferred to the Department" (Texas Code of Criminal Procedure Art. 42.09 §3). Referring to the out of state cases, Snell noted that both the Kentucky and New York high courts recently had found a "clear and long lasting duty for the state prison systems to receive convicted prisoners" (SUPPLEMENTAL 1989:4-6). She concludes by asking that the state of Texas be ordered to accept its responsibility as Kentucky and New York had been. (SUPPLEMENTAL 1989:11).

In response, six months later Judge Joseph H. Hart, of the 126th District Court, granted a partial summary judgment. He ruled that the state had no discretion and must "meet its responsibility to house sentenced felons" (ORDER GRANTING 1989). The state's argument that federally imposed *Ruiz* mandates precluded it from complying with Hart's orders was not accepted by the Judge. Meanwhile, the 71st Texas Legislature responded. The Legislature was absorbed with the sweeping reform bill, H.B. 2335 (Acts 1989, ch. 785), which was to totally reorganize the state's criminal justice system. In this bill, the lawmakers also attempted to deal with the lawsuits against the state.

Because of this proposed legislation, Judge Hart delayed the court proceedings so that the legislature could act to rectify the situation. H.B. 2335 included measures such as building more new prisons, instituting community-based corrections programs to be administered by the local jurisdictions. These included boot camps, work-release programs and addiction treatment units; all designed to relieve the jail overcrowding. No doubt, they also hoped these newly designed programs and facilities would be exempt from the *Ruiz* mandates. To try to head off the courts, the lawmakers also agreed to provide a detailed plan for accepting convicts during the next two years in exchange for the counties agreeing to abate their suit (Ward (a) 1989:B3).

However, the counties were not entirely happy with the proposed legislation. One complaint was that the amount of money the state was proposing to pay the counties to administer the community based programs was not enough to cover the actual costs (Ward (c) 1989:A1).

Among other reasons for local objections, it was feared the lack of adequate state funding would lead to local taxes being increased. Another complaint was that the urban areas were over represented in the plan to accept prisoners. For instance, Harris County had seventeen percent of the state's population, but sent almost twenty five percent of the TDC admissions (Ward (b) 1989:D1).

Judge Hart was not entirely pleased either. In May, 1989, the state attempted to have the case declared moot because H.B. 2335 addressed the issues. The Judge, without giving a reason, declined to do so (Fikac 1989:22). In October, Snell filed a brief, noting that while H.B. 2335 removed the word "speedy" in the section of the law requiring the state to transport sentenced felons from the counties, that alteration was inappropriate. In fact, she argued that legislative did not relieve the state of its responsibility for the sentenced prisoners left in county jails (BRIEF IN SUPPORT 1989). A few weeks later, Hart concurred in a letter, quoting Texas Justice Keltner who had just previously ruled in a similar case that two prison systems now exist in the state. One financed by the state budget and "is operated on the books by TDC." The second is less visible, but forces inmates to "languish in increasingly overcrowded county jails (*Tarrant County Commissioner's Court v. Markham* 1989)." In this letter, Judge Hart further notes that the county taxpayers are burdened with the expense of the second prison system. This is wrong, according to Hart. Those costs should be borne by the State of Texas (Hart 1989:11).

Hart's final letter decision in May 1990 clarified and emphasized his decision. He found that the State had enacted ambiguous legislation so as to relieve itself of its financial responsibility. He concluded that the state was responsible to take sentenced felons into custody or reimburse the counties (Hart 1990:1-4). The final twelve affected counties were Bexar, Collin, Dallas, El Paso, Galveston, Hidalgo, Hunt, Lubbock, Nueces, Tarrant, Travis and Victoria. The state was ordered to pay each of these counties $40 a day for every convicted felon housed in

their jails longer than seven days. In addition, Judge Hart instructed county officials to calculate how much they were owed for prisoners held in the past ("Counties Win" 1990:1A).

Influence of Legal Process

Both the *Alberti* and *Nueces County* cases indicate several things. First, *Alberti* indicates that for some time, citizens of Texas in many jurisdictions tolerated overcrowded jails as well as state prisons. The *Ruiz* mandates may have exacerbated the jail crowding, but it did not totally cause it. While all involved needed to act, the pressure was on the state of Texas to solve the problem. The Texas prison system was being pummeled by lawsuits – the federal government, prisoners, as well as local jurisdictions had increased that coercion on the state by resorting to the judicial branch of government. Examining these cases reveals a rather curious detail. It is obvious that the local governments were eager to supply the needed prisons. However, the demand also originates with local government. The urban courts prosecute and sentence those found to have broken the law. The state has little authority over that process, but at the same time, is totally responsible to provide prisons that meet constitutional standards.

State officials had resisted Judge Justice's mandates for years. At the same time, as the local crowding increased, the state hid behind those federal mandates, using them as the reason (and, in fact those mandates were real) they had not responded more favorably to the jail problem. Truly, the solution was not easy to determine as is illustrated by Clements' plan which included help for the counties. Yet, a few months later, he met with them and concluded there was nothing the state could do. And, the Legislature's attempt to excuse itself from responsibility to speedily remove sentenced felons shows a less than enthusiastic reaction to its increasingly inevitable duty. It is clear that at this point, there still was no single minded determination on the part of all state officials regarding what to do to solve the deluge of overcrowding that inundated the state.

Yet, the various courts' decisions underscored the fact that the state had to increase capacity and do so quickly.

How did this legal activity impact the rapid growth of private prisons? The dire circumstances throughout the state provided a fertile field for vendors who had been trying for years to get a foothold in Texas As these lawsuits show, the ongoing legal interactions, the legal processes, were placing great pressure on the state to increase its capacity. A critical mass of court pressure from all directions was forcing the state to move. However, there were other causes as well. The next section of this chapter describes the economic processes that contributed to today's flourishing private prison industry in the state of Texas.

Economic Processes

In addition to legal pressure on the state, economic realities further influenced the growth of private prisons in Texas. Several incidents occurring during the implementation of S.B. 251 illustrate the on-going economic processes. Three will be discussed in this section. First is the process of establishing the per diem and second is the emergence of some other, less obvious costs to government that materialized over time. These two concern only those management firms that contracted with the state of Texas. The third economic process discussed here influenced the overall growth of private prisons in Texas. Both state contracted facilities as well as speculative prisons were able to exponentially expand because the notion of housing prisoners came to be of profound economic importance to many of the local jurisdictions within the state.

Establishing the Per Diem

This process, perhaps more than any other, shows the competing economic interests of the participants. The fact is that the vendors wanted this business to make a profit; of course, they wanted the highest per diem possible. Conversely, the state wanted to save money and was seeking to keep the cost of the PRCs to a minimum. These diametrically opposed goals clashed;

at this point, the cooperative bargaining ceased on the part of the agency and the vendors. In addition, as will be seen, others took a keen interest, and firm stance, in this stage of implementing private prisons in Texas. This situation, these competing interests of various parties, provided the setting for conflict and delay.

S.B 251 stated clearly that the awarded contracts must save the state ten percent of the agency's costs and specifically directed the Legislative Budget Board (LBB) to determine the TDC daily expenditure of maintaining a prisoner.[31] For years, the agency provided members of the Board of Criminal Justice a breakdown of the agency costs at each meeting. This was determined by taking the amount of money spent by the agency each month and dividing it by the number of prisoners held during that month (Minutes of the Texas Board of Corrections, 1985-1987). From 1984 through 1987, Jim Lynaugh served as deputy for Finance and Administration; he provided the monthly reports to the Board.

In the Fall of 1987, as the time to award contracts drew nearer, the issue of the state's actual costs had to be answered. The legislation was quite specific; TDC and the Board knew their daily costs per day per prisoner. In spite of what should have been a relatively straightforward process, the picture soon clouded. Where the process had been relatively serene, with major participants cooperating, at this point things became adversarial. According to Mr. Lynaugh's accounting, the agency was spending $27.62 per day on salary and operating expenses. He provided this information to the LBB (Lynaugh interview 1998). Using this figure, the vendors could expect to receive a maximum of $24.86. However, the LBB soon amended the TDC figures. The following table shows their development of the per diem they eventually recommended to the Board.

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[31] §1, Subsection 3 (c) (4) mandates that the vendor must offer programs at least equal to those provided by TDC "at a cost that provides the state with a savings of not less than 10 percent of the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities, as determined by the Legislative Budget Board." (Acts 1987, ch. 18).

Table 9. History of TDC Cost Per Inmate Per Day Estimate for PreRelease Centers*

Original Estimate - Salary and Operating Expense		$27.62
Add:[1]	TDC Staff Underestimate of *Ruiz* Personnel Requirements and Position Classifications	2.27
	Revised Estimate - Salary and Operating Expense	$29.89
Add:[2]	Building Cost	4.51
	TDC Estimate including Building Cost	$34.40
Add:[3]	Additional Personnel for Enhanced Programs	1.63
	TDC Estimate including Enhanced Programs:	$36.03
Add:[4]	Increase in Salary & Operating Expense Added by LBB Staff	.32
	Increase in Facility Cost Added by LBB Staff	1.07
	LBB Staff Estimate	$37.42
Add[5]	Increase in Staff Costs Added by LBB	1.80
	Increase in Construction Costs added by LBB	2.03
	Increase to provide Start Up Cost added by LBB	.42
	LBB Approved Cost	$41.67

*Data in this table provided courtesy of Mr. Jim Lynaugh, TDCJ, from his files.

As the above table indicates, the LBB made several changes to Mr. Lynaugh's original calculations. Their first adjustment (1) added $2.27 for *Ruiz* costs. The state was going to see an increase in its own costs if they were to meet the court mandates as Governor Clements had promised Judge Justice they would. The same increase then so should be reflected in the per diem awarded to the vendors. The next item (2) added building costs as these were not accounted in the original TDC per diem. While these two additions may seem understandable, the remaining increases approved by the LBB raised a great deal of controversy.

Next, (3), the LBB added $1.63 for the enhanced programs that the vendors were expected to provide. The Legislature had mandated that these PreRelease Centers provide more intensified program options for the prisoners. At some point, the LBB determined that this would require additional personnel. A question as to why this was necessary emerges – the vendors had

promised they could provide more for less money. The legislation specified that they do so. In spite of that, the LBB in effect recommended the private firms be paid more money for programs before the vendors ever demonstrated what they could or would do. This could arguably be seen as a direct violation of the legislation.

This $1.63 was soon compounded, as indicated in item (4). Here, the LBB determined that the additional personnel addressed in item (3) would increase salary and operating expenses by $.32. And, of course, these required additional personal would need added facilities. Thus, the LBB added $1.07 for increased facility cost. The new adjusted per diem at this point was $37.42; almost $10.00 a day more than the state had first calculated their costs. When considering that the state was going to place 2,000 prisoners in the PRCs, the state would be paying these private, more cost effective vendors, almost $20,000 a day more than the state's first calculation of its own daily cost.

However, the LBB added even more additional costs before the October 13 1987, official meeting. As shown in addition (5), estimates for additional staff, construction, and start up costs were added. Finally, the LBB approved a per diem of $41.67 to present at its public meeting. In this meeting, potential vendors, TDC representatives, members of the legislature, and others convened in what has been described as "heated" where some were "taking pot shots at Lynaugh" and some state legislators "hit the ceiling" at what looked like inflated figures. While the *Ruiz* and building costs may have been explainable, the enhanced program costs raised a number of questions. In yet another audit, Arthur Anderson and Company found the TDC 1986 average per diem was $31.50 (1987:5). Although higher than Lynaugh's original determination, it was much closer to that figure than to the LBB approved per diem. Rather than helping, this seemed to fuel the controversy.

During the meeting, several compromises were proposed; none was acceptable to a majority. One attempt was made to refer the decision to a subcommittee, but the TDC Board

Chairman, Al Hughes, noted that they had to have a dollar amount promptly. The Board would be meeting within the next week and they had to know what cost the LBB determined. Finally, Senator Farabee proposed the attendees should recess for a time. During that break, Lynaugh and Hughes were called to meet with a couple of LBB members. They were told that the LBB was going to offer the highest number possible, but that TDC was free to do whatever they wanted to in the actual contract.

Six days later, October 19 1987, the Board of Criminal Justice met. Chairman Hughes instructed the TDC administration to begin negotiations with a cost in mind "near the $36 - $37 range ("Minutes" Sep 14 1987)." Governor Clements was away during this time. When he returned and saw the LBB figure, his response was to "hit the ceiling." He had every expectation that the vendors were going to do be able to house prisoners much more cheaply than the state and therefore was very displeased with the LBB figure (Lynaugh interview 1998).

Evidently the controversy continued; no doubt fueled by the Governor's response. At its November meeting, the Board voted to approve "a certified audit of the daily cost estimates by a 'big-eight' accounting firm" ("Minutes" Nov 9 1987). Months later, when the contracts were finally awarded, TDC authorized a per diem to all four PRCs of $35.25 ("Minutes" Jan 11 1988). Mr. Lynaugh's original estimate, however, may have been vindicated. The 1999 management contracts awarded from TDCJ-ID range from $28.72 to $33.80 per diem (Wilson 2000). The Wackenhut Kyle facility receives an additional $7.41 for its intensive substance abuse treatment program (Ingram 2000).

The fact is that, over time, the per diem paid to the vendors declined. One of the reasons, according to Lynaugh (interview 1998), that the state has been able to contain the cost is because of a key decision made that the state would own and control the realty. Because of this, Texas always has the upper hand when bargaining. If a vendor will not comply, because the state owns the property, it can readily find another vendor to do so, or even take over the facility. Of course,

it could be argued that the private management firms have been efficient and found ways to reduce their expenses, thus keeping down the per diem. Or, that the competition of the market has worked to drive down the costs. These factors cannot be ruled out. However, there are other, more subtle cost considerations that emerged over time within the state. As the state has become ever more involved with contracting for managing its prisons, a number of factors have materialized that influence whether true cost comparisons are being done. Some of these are discussed below.

Other Hidden Costs

One question in the literature is whether the vendors are "creaming" prisoners – are they housing the less dangerous, easier to handle and thus less expensive to manage prisoners (Logan 1990:121-125) (Shichor 1995:183, 236-237)? In the case of the TDCJ contracts, the answer is unequivocally yes. From the earliest legislation, by statute, the private facilities house only minimum or medium security prisoners.[32] Additionally, today, these people must be within two years of their release and therefore are less likely to try to escape. If they become a discipline or security problem while in the private facility, they are returned to the state. If prisoners become seriously ill while in the privately managed prisons, they are returned to TDCJ. Thus, the inmates in the state contracted prisons are low security risk, less inclined to escape and generally in good health. The state, on the other hand, must care for all of prisoners regardless of their security level requirements, likelihood of escape or status of physical and mental health .

The answer to the question of "creaming" is less clear in the case of proprietary prisons located throughout the state. No doubt the sending jurisdictions do not ship out prisoners with major health problems. However, incidents like those described in Chapter Four raise questions

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[32]"The Texas Department of Corrections may confine only minimum or medium security inmates in a facility authorized by this article" (Acts 1987, ch. 18, §2).

regarding classification of prisoners. As noted, in at least some cases, the facilities are inadequate to house and securely control some of the prisoners sent there. The incidence of riots and escapes indicate that these may not be the easiest to manage prisoners. Of course, the per diem paid in most cases is substantially higher than TDCJ pays.

In addition to the fact that the state contracted prisons care only for healthy, lower security classified prisoners, there are other expenses that fall on the state. For instance, all the processing involved in receiving and classifying prisoners falls on TDCJ. This situation of course increases the state's costs as compared to the privates. The vendors do not bear this burden. Because the vendors must comply with all agency policies, many of the forms and procedures developed by the state are provided to the vendors at no cost. (The state now requires vendors to pay their own costs at all training sessions required and provided by the state.) Further, often equipment used in the private facilities is purchased with funds from bond sales. Finally, most of the wardens and chief security officers in the private facilities are products of TDCJ. The state has financed all their training and experience for years. The value of this asset is rarely included by those who glibly proclaim that private prisons are less expensive.

Another "hidden" expense of private prisons involves the cost to the state regarding bond sales. A recent study by the Bond Review Board compared the costs of general obligation (G.O.) bonds issued by the Texas Public Finance Authority to fund public prisons with the revenue bonds sold by the non-profit local entities to pay for the private facilities. The Board found that the G.O. bonds cost the state less than revenue bonds. One reason is that the G.O. bonds pledge the full faith and credit of the state. On the other hand, revenue bonds, backed by the local, non-profit entity require a trustee because they do not have the state guarantee. In addition, the revenue bond structure is more complex which further adds to the cost. Ironically, the G.O. bonds are competitively bid on the open market, while the revenue bonds are pre-

arranged with a single buyer. Such costs as these are absorbed by the state, not the vendors (Hernandez interviews 1998, 1999).

Finally, TDCJ has uncovered some rather dubious practices which add to the profits earned by the management firms. For instance, in some cases the vendors were making a large profit on phone calls placed by prisoners. Another problem was the commissary mark-up policy. In some of the privately managed prisons, the prisoners were forced to pay higher prices for commissary items than they would have had to pay in state prisons. The vendors were pocketing these profits. And, a real scandal emerged concerning improperly managed Pell grants. Federal audits resulted in large sums of money being returned to the government by the private firms. A related complaint by some prisoners was that they felt coerced to enroll in the Pell program while in the PRCs. Because they were near the end of their sentences and thus there only a short time, they were unable to complete their education plan. However, upon release, they learned they could only use the Pell grant program once. Since they had taken advantage of that program while incarcerated, they were denied that source of funding to complete their educations after release. The vendors, on the other hand, had increased their income.

These factors influence in two ways. First, they are methods of increasing profits to benefit corporate stock holders at the expense of prisoners. And, the state has the expense of policing – that is – they must constantly monitor in order to detect these sorts of practices. Once uncovered, further state resources are expended in correcting the problems. Of course, the state continually monitors and audits its own prisons and corrects problems. However, the private prisons continue to make a profit while public funds are spent to enable them to operate, regardless of their management practices.

For instance, in the Fall of 1999, a number of serious problems, including a high incidence of rape, emerged from the Wackenhut managed Travis County State Jail. The situation was so serious that the state repealed the contract and took over managing the facility. In further

response, the Board of Criminal Justice ordered a complete audit of all contracted TDCJ facilities. Former employees were indicted on charges such as rape and sexual harassment by the Travis County Attorney (Walt 1991:1).

Attendees to the March 2000 Board meeting learned that over 13,000 man-hours had been expended in the still uncompleted audit. Referring to the original expectation that the private facilities would save the state money, a Board member asked about the cost of the audit. He inquired whether the audit increased contracting costs to the state. The answer was that it did not because those expenses were allocated elsewhere in the budget; auditing expenditures are not operating costs. The Board member seemed satisfied with that answer.

That response is questionable. Regardless of how the accountants allocate the expense, the fact is that this audit DID cost the citizens of Texas money that would not have been spent if the problems directly attributed to the vendor had not occurred. While it is true that all public and privately managed prisons are audited by various internal departments and external oversight agencies,[33] this particular audit was not scheduled for the year, and was not "routine" in any sense of the word. The fact is that the private firms continued to earn profits while the state carried the expense of ensuring compliance with contract demands.

Resulting conclusions of the audit add to this irony. In fact, the TDCJ Inspector General audit resulted in three major findings. The first was inconsistent "policies and contract provisions" that "did not always contain easily understandable performance measures and/or reimbursement methodologies." These inconsistencies, according to the audit, put the agency at risk because it cannot adequately monitor performance standards (McAuliffe, Guinn, and Pyeatt 2000:4-6). Second, the auditors found incomplete records including internal inconsistencies

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[33]See, for instance, Texas Comptroller's Reports 1992 and 1994; Texas Sunset Advisory Commission Report, 1990, 1996, 1998. See also Institute of Internal Auditors 1998; Office of the State Auditor 1996; and Criminal Justice Policy Council 1997, 1999, Jan 2000, and Jun 2000.

which "did not provide reasonable assurance that vendors were conforming with contract provisions," and therefore, the auditors could find no assurance that "reimbursements were appropriate." (McAuliffe, Guinn, and Pyeatt 2000:6).

Finally, the agency found that contract monitoring had been "disjointed and inconsistent" and recommended that all "contract monitors should be reorganized under one management authority" (McAuliffe, Guinn, and Pyeatt 2000:8-9). The solution to exorbitant incidence of rape, so serious that the state had to take over the prison and remove the women prisoners, is for the agency to set improved better performance measures and reorganize contract monitors; the vendors should keep better records. These may be appropriate, needed recommendations for change, but somehow they seem out of step with the original purpose of the audit.

While the report notes that the audit was ordered by the Board to determine "if similar incidents [of rape] were occurring at other privately operated facilities" (McAuliffe, Guinn, and Pyeatt 2000:ii), that specific question is not addressed in the conclusions or recommendations. This oversight resonates when considered in the context of Judge Justice's recent finding that TDCJ-ID prisoners continue to live at risk of physical and sexual abuse from others (*Ruiz v. Johnson* 1999). The emphasis on this audit evolved from one of concern about assault on prisoners to one of improving performance standards and ensuring the vendors are earning their pay.

Whether this shift of emphasis was due to the change in Board leadership (Chair Allan Polunsky resigned soon after ordering this audit) or for some other reason, in terms of doing anything about rape, this seems a futile use of 13,000 man-hours. In terms of cost considerations, in addition to the cost of the audit which was ordered in response to mis-management on the part of the vendor, the recommended solutions also increase the state's costs. The final report does not address the incidence of rape other than to say that the Travis County audit results were

forwarded to the county District Attorney and there were indictments by the County Grand Jury in December 1999 (McAuliffe, Guinn, and Pyeatt 2000:ii).

When the stage of establishing the per diem appeared, when the issue of money arose, not surprisingly, the bargaining stopped. This was the crux of the matter. This process of establishing the per diem fleshed out the true motives of the vendors. In order to get the highest per diem possible, they could no longer make casual promises. Although the passage of time has shown that the vendors were at first overpaid, the per diem has declined over time. No doubt, market forces such as competition have helped to drive down the cost to TDCJ. However, it is also true that the agency has become more educated and more efficient in plugging the loopholes and requiring the vendors to work smarter.

Not every vendor has responded positively - as noted in Chapter Three, CCA has greatly cut back on their TDCJ operations. The reality is that the potential vendors' vigorous resistance to the agency determination of its own costs created another delay. Finally, unless specifically prohibited, prison management contractors in Texas have come up with numerous ways to enhance their bottom line. While they make a profit, taxpayers carry the burden of looking for and then correcting any questionable practices. There are other hidden costs, such as the cost of bond sales and transferred costs of grants which are also absorbed by the public. Certainly, this situation was not intended by the authors of S.B. 251.

Economic Importance to Local Government

Many counties in Texas were, and still are economically deprived. During prosperous times, these mostly rural counties do not enjoy the same robust economic climate as the urban areas. During less prosperous times, these same counties undergo serious problems, with fewer options or opportunities. As one county official put it, "When Houston sneezes, we get a cold (Petropolis interview 1998)." During the late 1980s, because of the declining price of oil, the

economy throughout Texas suffered. Some of these isolated areas suffered more than the rest of the state because of the lack of diverse economic activity. Although policy makers never intended for the PRCs to become an economic development opportunity, that did indeed happen.[34] Because of the dearth of development opportunities, the underprivileged economic status of these rural, isolated counties contributed to the unintended growth of private prisons in Texas. The idea of hosting a prison, public or private, became popular.

In some cases, county officials became aware of the economic possibilities of hosting private prisons first. In others, the vendors brought the opportunity to the attention of local government leaders. Regardless of the chronology, it is evident that by the time S.B. 251 was first introduced in the Texas legislature, many local governments were vying to be named as the site for the forthcoming PRCs. As noted in Chapter Two, at least two counties (Red River and Liberty) had already formed alliances with vendors. The vendors and counties worked together to be named as the location for one of the four original PRCs. Of course, these counties also vied for state prisons; any sort of facility was seen as an economic development opportunity.

Bill Petropolis, businessman who also served as city councilman and city manager relates the story of how Cleveland (in Liberty County) came to be the home of one of the original four PRCs. His story is representative of the events unfolding throughout the state. In the mid 1980s, the community of Cleveland had been chosen as one of twenty five jurisdictions to take part in a Texas State Economic Development program initiated during Governor Mark White's term. By 1986, business people and local government officials composed an Economic Development Team trained together and then sought to bring some sort of economic development to their area. They were ever on the lookout for possibilities.

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[34]For an academic studies of the economic effect of correctional facilities, see Ince 1988:1-4 and Watts & Nightingale 1996. For studies regarding the economic effect on specific communities see Abrams 1985 and 1987; Ammons, Campbell and Somoza, 1992; Avidon 1998; and Smykla 1984.

In 1987, a local car dealer who was a member of the team brought Petropolis' attention to a newspaper article account of a public hearing in the nearby Humble area regarding being selected as a site for one of the PRCs. That meeting reportedly was quite acrimonious; the proposed site bordered a rather exclusive housing development and most of the residents were quite opposed to the idea of having a prison for a neighbor. As he told the car dealer, Petropolis already had tried unsuccessfully to gain the attention of the vendor's consultant. However, the car dealer personally knew the president of the consulting company and made a phone call.

Showing the benefits of knowing someone on the inside, as a result of the car dealer's contact, all parties agreed to a public meeting as soon as legally possible. City and county officials, the public school superintendent, a clergymen, Chamber of Commerce representatives and others were there to speak in favor of locating the PRC in Cleveland. The vendor attended, as did representatives from TDC. More than 200 Cleveland citizens attended the meeting. Only three people, property owners near the proposed site, spoke against the idea. The next day, because of the overwhelming community support, the state awarded Cleveland the PRC.

Officials selected an initial site because water and sewage were available. However, the property owner (clearly of a minority opinion in the county) refused to sell his land to be used as a prison. Not easily daunted, Petropolis remembered learning in an earlier Economic Development training session that a state grant, from the Texas Capital Fund, could be used for infrastructure. Local officials and other interested parties quickly arranged a meeting with representatives from the Fund.

Although this government program had never funded a prison before, it was agreed that because this was a private, for profit facility, the Liberty County prison enterprise did qualify for this grant. After hiring a local firm to prepare the application, and several trips to Austin, the county received a $369,000 grant for water and sewage systems to serve the PRC (Petropolis interview 1998). In this way, the local government received state money that would not have

been available for a public prison. Transferred costs such as these are seldom accounted for when comparing costs between public and private prisons. While the money was used for its intended purpose, it still is a benefit to the private vendors at public expense, and is not added in when measuring these costs.

Like Petropolis, other county officials perceive that the main benefit to the county is employment for local residents. The most often mentioned reason is jobs. In Karnes County the vendor initiated the idea of locating a prison there. When County Judge Pawelek presented the idea to his community, only one person, a woman, appeared at the meeting to oppose the idea of locating a prison there. After learning that 125 jobs, mostly to be locally hired would result, she stated she had no objection at all. In the remaining two required public meetings, no one appeared to object. Regarding the jobs issue, comments like "it is too good to be true" are common. These local leaders are delighted at this economic benefit of hosting a prison.

Among county officials, the consensus is that the private prisons make better members of the community than the public prisons do (Hunt, Pawelek and Petropolis interviews 1998). The private companies hire locally, and most of them train locally. In contrast, the state prison system hires on a state-wide basis. All incoming correctional officers hired by TDCJ are trained at one central location. Although they are paid during this training, the fact is that many people do not have the resources to leave their families and other responsibilities to go away for four weeks of training. On the other hand, if training to work in a private prison, future correctional officers can remain in their homes as they receive on-site training from the vendor.

S.B. 251 mandated that the wages and benefits paid by the vendors be comparable to those received by state employees.[35] However, this is not what has happened. One independent

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[35] S.B. 251 directs the Sunset Commission to audit the PRCs to determine (among other issues) if "the wages and benefits provided to the staff of the facility" correspond to "wages and benefits provided to state employees performing comparable tasks" (Acts 1987, ch. 18 §6(b)(8).

study shows that while entry level TDCJ correctional officers are paid $17,724 (Camp and Camp 1998:148), the average entry level private prison correctional officer in Texas receives only $14,154 (Camp and Camp 1998:398). TDCJ officers are among the lowest paid in the U. S. Perhaps the even lower private wages explain annual turnover rates among the Texas private prisons as high as 161 percent (Camp and Camp 1998:401). The situation is reversed at the upper levels of prison administration. The average warden's salary in a TDCJ prison is $54,358 (Camp and Camp 1998:129), while the average private prison warden in Texas is paid $57,628 (Camp and Camp 1998:398).

To underscore the significance of jobs to the more isolated parts of the state, the Camp and Camp study shows that private prisons in rural areas, where fewer employment options exist, enjoy much lower turnover. Those rates in such isolated areas of the state as Eden, Laredo, and Garza all have less than 15 percent annual turnover while those located nearer large urban areas such as Bridgeport, Bartlett, Coke, and Kyle have personnel changes ranging from more than 70 percent to as high as 161 percent (Camp and Camp 1998:401). While the communities are grateful to have the jobs for their residents, the low salaries paid to officers are in direct violation of the enabling legislation. Further, in addition to the costs of higher turnover rates, the lower wages and lack of benefits paid by private management firms again add to the state's costs. The poor pay and turnover rates eventually cost the state such expenditures as unemployment compensation, health care, food stamps and other forms of welfare .

The next most frequently mentioned economic benefit to local government is that most, if not all, of the state-contracted prisons pay some amount of money in lieu of taxes. The local jurisdictions, including school systems and other taxing entities receive this revenue. Further, the private vendors are known to make small donations such as $500 scholarships to local high school graduates or draperies for a new courtroom. Of course, the state prisons have no such funds and do not make any such payments. In addition, the perception among local officials is

that the employees of the state system do not transfer into the community. Because they do not live there, the state employees do not contribute much financially to the local economy.

Another frequently mentioned benefit is that the private facilities purchase many of their supplies locally while the state facilities' supplies are requisitioned from a central source. This is changing; for several years, the wardens of each TDCJ facility receive a budget and can purchase locally for most items. And, the fact is that the wardens of the private prisons have a maximum – usually $250 – they are allowed to spend before getting approval from corporate headquarters. The final economic benefit that gives a boost to the local jurisdiction is their utilities. Prisons use a great deal of water and sewage. This also results in additional revenue for the local governments. Thus, hosting a prison contributes to the local economy in several direct and indirect ways.

Clearly, state policy makers never intended to create an economic development opportunity for any entity. Yet, this economic motivation on the part of local government to get a private prison, or any sort of prison, definitely emerged as the Texas Legislature authorized S.B. 251. The legislature did intend for the PRCs to be regionally based,[36] but this had to do with habilitation for the prisoners, not developing rural economies.[37] Nevertheless, this change in policy to allow private vendors to contract for prison management compounded with the intent to add a number of beds added to the economic development opportunity for these deprived areas within the state.

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[36] Both the directive and purpose are stated: "The Board shall give priority to entering contracts under this subchapter than will provide the department with secure regionally based correctional facilities designed to successfully reintegrate inmates into society through preparole, prerelease, work release, and prison industries programs" (Acts 1989, ch. 212).

[37] See Ince (1988) for his findings regarding the negative impact on prisoners of locating prisons in isolated rural areas. Also see Welch (1991).

During these state policy changes, local officials realized the potential for their jurisdictions and whole heartedly pursued the possibilities. This motive, this enthusiasm does not necessarily lead to optimum policy choices. Allan Polunsky, recently resigned Chair of the Board of Criminal Justice, noted that: "With all due respect, I do not believe that TDCJ is here to provide an economic stimulus . . . no such decisions should be economically driven on a local basis" (Polunsky interview 1998). However, once the local leaders of these economically deprived communities saw an opportunity, they avidly attempted to gain a prison.[38] In their pursuits, they used various means to get the attention of state officials, including having their that state representative seek to gain a prison for their local jurisdictions. As noted, this heavy lobbying went on in the legislature as well as before the Board of Corrections and has continued. As time went on, communities became bolder and bolder, offering incentives like country club memberships for wardens and longhorn cattle for prison grounds. In one case, a Sunday School class prayed for a prison to be located in their community (Welch 1991:28).

It did not take very long for the building frenzy to spread across the state. If unable to gain a state contract, then in some cases, the local governments became public proprietors and imported prisoners from other states. Some contract with TDCJ to house their overflow.[39] At times, the local governments then sub-contract with vendors to manage the prisons which become private proprietorships. Others manage the imported prisoners themselves. No one foresaw such an outcome – Texas was so early in the contemporary development of the concept of private prisons that the notion of local government seeing this as an economic opportunity just didn't occur to anyone. The policy makers had various motives, but formulating an economic incentive

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[38]See Pagel (1988) for a comparative study of how communities successfully, and unsuccessfully vie to be chosen as a site. See "Competition For Prison" for an example of counties' efforts to be named a site.

[39]On May 19 2000, during their regular session, the Texas Board of Criminal Justice approved contracts with four local jurisdictions for a total of 1,500 additional beds.

for rural government officials was not one of them. Nevertheless, the unintended consequence of economic opportunity for local jurisdictions absolutely contributed to the rapid expansion of private prisons in Texas. Both public and private proprietary prisons have found a welcome home in numerous, mostly rural sites within the state.

The above discussion illustrates the intense desire of these impoverished communities to improve their economies, and enumerates some of the reasons they see prisons as a solution to their destitution. As noted, they competed and lobbied to gain prisons; privately managed facilities are preferred. In addition to the urgency of the state to quickly get additional beds quickly, the local governments seem to have realized, during this process, that this was an economic development opportunity for their jurisdictions. If unsuccessful in gaining a state contract, many of them went on to speculatively build their own institutions. There was nothing in state law to prohibit this or deal with the results which are at times calamitous, as explained in Chapter Four. Of course, these legal and economic factors were political in nature. The following section discusses some of the other political processes that influenced the phenomenal growth of private prisons.

Political Processes

The early process of privatizing prisons in Texas is noted in the literature as being particularly political (Ethridge 1990:125-126) (Ethridge & Marquart 1993:38) (Shichor 1995:236). The above discussion suggests that as the legal and economic events moved along, they became interconnected with the political process. A variety of motives, from many sources with different agendas, merged; the extreme overcrowding within the Texas prison system added its own pressure to the mix. Shichor stresses that privatization of prisons has strong political undertones (1995:74); three incidents in the implementation process in Texas seem particularly "political" in nature and will be discussed in this section. First is the vendor selection decision which directly concerned the TDC contracts. Second is the issue of campaign contributions –

these concern both the contracted prisons as well as the proprietary institutions. Finally, one tale of corruption involving a highly placed state agency employee, concerned the proprietary prison industry in Texas. Together, these serve to illustrate how overtly political the implementation process became.

Vendor Selection

Along with establishing the per diem and choosing sites for the PRCs, determining the vendors were significant decisions. In fact, these three issues were quite entangled, and resolution of one affected decisions about the others. The situation became even more complicated as other interests were injected into the mix. Just as it had been regarding the site selection and per diem process, interest in which vendor was to receive the original PreRelease Center contracts was high. By June 1 1987, over 150 Requests for Proposals were distributed by TDC. On July 9 1987, the agency conducted a Bidder's Conference; more than 75 people attended. In the interest of keeping all interested parties informed, the questions and answers and other notes from that meeting were typed out and mailed to prospective bidders on July 15 (TDC Bidder's Conference Notes 1987). As of July 31 1987, the submission deadline, nineteen firms involving fifty one sites turned in bids to contract with the state (Barry (b) undated: 1).

The TDC PreRelease Review Committee eliminated nine bids after initial review "due to a lack of responsiveness." That is, the submissions were incomplete. In some cases they did not address how the vendor would comply with statutory requirements, how they were going to finance the project, or failed to submit facility designs. Some proposals violated court requirements – such as including double bunking – which had been forbidden in the *Ruiz* court orders (Barry (a) undated: 1-3). After making the initial cut, the Committee eliminated four additional proposals because the program and service descriptions were inadequate (Owens 1987: 1).

Subsequent to this process of elimination, in October 1987, the PreRelease Review Committee recommended six firms "after a thorough review of each proposal in terms of responsiveness, programs, services, facility design, staffing, health services and court compliance." The six finalists were (in order as ranked by the committee) Corrections Corporation of America, Becon/Wackenhut, Pricor/Century Development Corporation, N. R. Cox Associates, Inc., Andrews Co. Industrial Foundation and Detention Centers of America (Owens 1987:1). The memo lists a number of reasons for the ranking; as S.B. 251 directed, the amount of experience of each firm seems to have been quite important. Although many other factors were considered, the detailed memo notes that highest recommended CCA "has the most related experience of all proposers;" while last ranked Detention Centers of America has "no operational experience of a similar nature" (Owens 1987:1, 3). Other criteria included familiarity with Texas prison operations and policies, how well the proposals accommodated *Ruiz* orders and information regarding financing and insurance.

All this seems straightforward, following a rather direct, objective model of decision making. The Review Committee defined the evaluation criteria, eliminated those that did not comply, ranked the finalists, and carefully specified reasons or explanations for each decision in a detailed, thirteen page memo (Owens 1987, Barry (a) undated). However, the Board did not have the luxury of making an insular decision. Awarding the contracts necessitated deciding where to locate the PRCs, how much to pay the vendors as well as which vendors would be chosen to manage the new facilities. And, as the Board and agency grappled with these far reaching decisions, politics materialized. Not only were these three interconnected decisions to be made; other issues, were presented and had to be considered.

Even as the Board struggled with these three major decisions, state Senators and Representatives continuously addressed them on various matters related to these issues. Some appeals were rather divergent from the immediate issue. For instance, October 19 1987, the

Board nominated three finalists from the six recommended by the TDC Review Committee. Senator Bernice Johnson asked that the Board consider the racial make-up of where the centers would be located "so that full minority participation and positive role models can be achieved." She was pleased to note that the Board had just included the only two of the six finalist firms that included evidence of minority involvement in their bids – Becon/Wackenhut and CCA ("Minutes" Oct 19 1987).

A few weeks later, Senator Gonzalo Barrientos, no doubt concerned because two jurisdictions within his voting district were competing to be named a site, requested the Board delay decisions in order for further public hearings to be held. The Board complied, approving a motion to delay their decision for thirty days "to allow for further public input ("Minutes" Nov 9 1987)." Two months later, in January 1988, Barrientos as well as Representatives Bruce Gibson and Ann Cooper requested the PRCs be placed in their respective districts. Johnson returned, reminding the Board to be sure to monitor minority involvement. Although other parties and circumstances may have caused delays at other junctures in this early stage of implementation, there is no doubt that at this time, political activity, on the part of elected representatives, did cause delay. Thus, in addition to the lobbyists hired by vendors and local jurisdictions, elected representatives contributed their voice to the mix.

In the January meeting, following those requests, the Board awarded two PRCs each to CCA and Becon/Wackenhut; at the same time they named the chosen locations and announced the per diem. CCA managed facilities were to be placed in Venus (Johnson County) and Cleveland (Liberty County). Becon/Wackenhut managed facilities were to be placed in "the general location of the City of Bridgeport in Wise County;" and "an area between the Austin-San Antonio corridor . . . provided that the firm hold a public hearing at the site." Both vendors would receive $35.25 per diem ("Minutes" Jan 11 1988). The decisions were finally made, at least all except the exact location of the Wackenhut PRCs. Evidently Senator Barrientos'

competing jurisdictions had not reached a final decision; the Board however was running out of time and had to make a decision so that the process could move forward. Thus, more public hearings in that area near the state capitol lie ahead.

In addition to their keen interest in vendor and site awards, at least some state legislators showed concern about the per diem amount as well. For instance, the LBB consists of elected officials: state legislators and the Lieutenant Governor. Their earlier recommendation to raise the per diem so much higher than that suggested by TDC raises questions. In fact, LBB member and House Speaker Gib Lewis openly accused TDC of making the estimate so low "that private contracts would have trouble operating the facilities" (Ratcliffe 1987:n.p.). The LBB members' interest in and defense of a much higher estimate of costs than TDC recommended is curious, to say the least.

Although it is evident that the decision was not totally politically driven, the record does clearly indicate that the vendors and local entities use the political process to influence these implementation decisions. One result was to slow the proceedings. Whether the final decisions were better than they would have been otherwise is difficult to say. The fact is that the most experienced vendors were awarded the first contracts. Minority concerns were addressed, at least in form. The sites were located near urban areas, as had been determined to be the best policy. The per diem, in spite of great effort and expenditure of resources, finally was set higher the amount first determined to be accurate; but much lower than it could have been. Thus, the multitude of issues related to vendor, site and per diem decisions were resolved in ways that generally met expectations of the policy makers.

PAC Contributions

Both popular and academic literature question the amount and influence of corporate political donations.[40] The major concern is whether or not corporate contributions are driving the surge in "tough on crime" legislation.[41] In other words, are private corporations donating money and trying to influence government to provide more prisoners for them to incarcerate? Is this the method corporations use to increase their market? In Texas, direct PAC contributions are very difficult to trace. All reports are microfilmed and available to the public. But, the reporting information is difficult to interpret. Individuals can make contributions and it would be very easy for unrecognized names to slip through any sort of systematic search.

However, lobbyists' reports allow a glimpse into just how much money is spent to influence corrections legislation in the state of Texas. Each registered lobbyist must file returns indicating who hired them, the topic they addressed, and include a within a range, the amount of money received from each of their clients. Appendix VI is a list of the 1997 vendors who hired lobbyists to work with the Texas Legislature.[42] As noted, six private prison companies, Bobby Ross Group; Cornell Corrections; Correctional Services; CCA, U. S. Corrections; and Wackenhut hired a total of twenty six lobbyists to represent their interests. As indicated, the range paid to each lobbyist could be from "less than $10,000 to as high as $49,000" per lobbyist. Thus, the total for 1997 paid to the twenty six lobbyists by private prison companies could be as much as $959,980. That is almost one million dollars, paid by six vendors during one legislative session

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[40]See Kamerman and Kahn (1989:261-270); Ryan, Swanson and Buckholtz (1987); Sagarin and Maghan (1985:E1-E4); and Shichor (1995:235-238) for further discussion of this question.

[41]Savas (1987) adds that prison officials and correctional officers' unions also have reasons to lobby for higher levels of incarceration. However, it is doubtful that these individuals have the economic resources of corporations.

[42]Current and previous data from The Texas Ethics Commission are available on-line at http://www.ethics.state.tx.us

that dealt very little with any direct issues regarding TDCJ contracts for managing facilities. This figure, of course does not include the direct PAC contributions made one behalf of the vendors to benefit the campaign funds of elected Texas officials.

Whether this is an excessive amount of money is a matter of personal judgment. Of greater importance is the realization that the private interest in prisons is much more extensive than the TDCJ management contracts. Appendix VII lists all the lobbyists who reported to the Ethics Commission that they were retained to work on issues related to corrections. As shown, a total of 164 lobbyists were paid to oversee and influence state legislation during 1997. This indicates that the private financial interest in prisons is more wide-ranging than these contracts with vendors. For instance, in fiscal year 2000, TDCJ will pay approximately $165,000,000 to private vendors for management contracts (McAuliffe, Guinn, & Pyeatt 2000:10). But other large sums of money are paid to the private sector. Health care is contracted – the Legislature appropriated almost $265,000,000 for the year 2000. About $43,000,000 is appropriated for psychiatric care, which is also outsourced. $14,779,680 is designated to pay counties and private entities for temporary bed space. The total capital budget exceeds $60,000,000.[43] These are but a few examples of the many expenditures that are partially or totally paid out to the private sector.

These varied appropriations for contracts suggest that the 164 lobbyists represent a broad range of interests – the "private interest" in prisons is much larger than only the corporations that are interested in contracts to manage state prisons. Private prison management firms may not be lobbying legislators to toughen sentencing laws, but clearly a number of entities carefully attend to the state's actions regarding prisons. One contention is that privatization is basically a political act aimed at diminishing the social role of government (Kamerman and Kahn 1989). Certainly where Texas prisons are concerned, the social role of government has decreased – and private

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[43]All appropriations information is available on-line at www.lbb.state.tx.us (H.B. 1 1999).

industry has benefitted. For the most part, the private sector has not been a dynamic force for change; for innovative new ways to habilitate prisoners. Instead, a broad range of private interests have compelling incentives to maintain the status quo and keep a large number of prisoners incarcerated.

Corruption

According to Kettl, public-private relationships can make it harder to distinguish between public and private accountability by blurring the boundaries between the two . Blurred boundaries, no one being quite sure of accountability, then can lead to ethical problems such as fraud or bribes being paid (1993:13). This sort of problem also emerged in Texas' experience with housing out of state prisoners. In December, 1997, the agency charged with overseeing proprietary prisons located in the state, the Texas Commission on Jail Standards, established a new policy designed to preclude staff members from "having any job that would give the slightest impression of an impropriety" (Robbins 1997:n.p.). This action was necessary, due to an earlier incident of "blurred boundaries."

As noted in Chapter Four, the Dickens County Correctional Center, managed by the Bobby Ross Group, had been the site of serious problems including an August 1996 riot and a May 1997 incident in which one prisoner killed another. Conditions were so bad that in early 1997, a minister had resigned in disgust. This situation in the Dickens County facility had not gone unnoticed. In August of 1997, the Civil Rights Division of the U. S. Justice Department notified the County Judge of their planned investigation into "unspecified allegations related to their private prison" (Babineck 1997:30).

Both Montana and Hawaii housed prisoners in the facility. Although Hawaii announced they were satisfied with the conditions (Babineck 1997:30), Montana, like the U. S. Justice Department, was definitely dissatisfied. In fact, that state's legislature had been monitoring the

site, insisting on improvements, and displeased with the vendor's response to their demands since early 1997 ("Report Says" 1997:22A) ("Shape Up" 1997:n.p.). Finally, in late September that year, Montana cancelled their contract with the Texas county because of noncompliance, citing twenty nine specific violations. In addition, Montana prison officials complained that the vendor, Bobby Ross Group, "spent more time disputing the audit than trying to correct the noncompliances" ("Prison Passes Inspection" 1997:33).

In October 1997, the Texas Commission on Jail Standards made an impromptu inspection of the Dickens County Correctional Center. This was part of a routine check of all ten Texas local jails that housed more than 100 prisoners from out of state at that time. Robert L. Dearing, deputy director of the Commission, headed the inspection team. Following that review, Jack Crump, executive director of the Commission, announced that Dickens County housed satisfied inmates and managed "outstanding, excellent operations with no indication of problems." In fact, according to Mr. Crump, while some of the other ten inspected facilities would require follow up visits there was "no reason for us to go back to Dickens County." Pleased with the Commission's announcement regarding their prison, county officials declared that Montana prison authorities' complaints "were blown out of proportion" ("Prison Passes Inspection" 1997:33).

However, it was soon learned that Dearing, had a problem with "blurred boundaries." In his capacity as deputy director of the Texas Commission on Jail Standards, he earned $48,360 a year. However, Dearing supplemented his state salary by working as a consultant for BRG of Georgia, a subsidiary of the Bobby Ross Group, who held the management contract at the Dickens County facility. BRG paid Dearing $42,000, almost double his state salary, to conduct security inspections at a Georgia youth facility they managed ("State Inspector Was Paid" 1997:n.p.).

After this fact was noted by the media, Jack Crump, executive director of the Commission defended his second in command and stated that "there was no connection with what

was happening in Texas other than Bobby Ross operates some facilities in the state. But I never looked upon that as him being a paid consultant for Bobby Ross." BRG President Larry Young added that he had the Commission's approval regarding his company's contract with Dearing. He stressed that state officials verified the "relationship was appropriate and in compliance with ethical standards." In spite of these and Crump's further assurance that he was certain Dearing's excellent rating of the Dickens County Center was not influenced by his payment from BRG, the deputy immediately resigned his consulting job (Parker 1997:n.p.). A short time later, responding to the public outcry, Dearing resigned from his state job (Robbins 1997:n.p.).

This unethical event was discovered and quickly remedied, once word was out. Nevertheless, Kettl's warning about blurred boundaries is born out by this incident. The fact is that the implementation of private prisons in Texas was complicated by political activity from the very beginning. That pulling in different directions by many self-interested parties created problems. Proper legislation and policies had not solely determined these decisions. Rather, various entities working only in their own self-interest had worked against each other to create a situation where problems emerged. Local governments were struggling with the state to take their sentenced felons; the federal government was trying to get Texas to improve its prison system; the state had for years neglected its prisons and jails and therefore had to act quickly. Private prisons seemed like one solution, although it was never viewed as the only solution. Choosing sites and vendors as well as establishing costs were all processes permeated with various interests and motives. Once the door was opened legislatively, then the combination of the economic need of the local governments with the entrepreneurs' desire to make a profit led to the further proliferation of proprietary prisons.

Conclusion

Thus, as the preceding sections have shown, different concerned entities bartered with each other throughout the early implementation of S.B. 251 "in the interest of preserving the bargaining relationship" (Elmore 1978:217-219). The state of Texas was in a near crisis stage. Legally, Texas was besieged by lawsuits: both the federal courts and state courts were demanding change. In addition to the federal *Ruiz* case, those found in the state courts like *Alberti* and *Nueces County* indicate that the prisons and local jails in Texas had been ignored for many years. This neglect led to gross overcrowding, and the courts were calling for immediate correction. At the same time, the idea of privatization had influenced entrepreneurs to decide to try corrections as a profit making venture. Combined with the dire economic condition of many rural Texas counties; their need to provide jobs and the corporate desire for profit coalesced in the late 1980s. Their compatible needs melded to create a force to establish private prisons far beyond the bounds of the policy makers' intentions regarding S.B. 251.

Of course, underlying these processes was the political aspect. Politics, the force of each interested party to further their own agendas, emerged in full force as the sites and vendors were chosen and per diem determined to fulfill the first PRC contracts. Many varied interests came together to influence that multiple decision. Allison's Bureaucratic Politics model that predicts different groups pulling in different directions will lead to an unexpected outcome (1969:707) is borne out by when studying what happened in Texas. The result was a broad expansion of private corrections facilities far beyond what was envisioned when S.B. 251 was approved by the Legislature and signed by the Governor. In addition to TDCJ management contracts, numerous proprietary prisons have appeared across the state. The result of that unforeseen and unregulated growth has been a number of unanticipated calamities. The political activity continues today; the vendors have not neglected their duty of contributing heavily to the pockets of legislators.

Texas' experience in their endeavor to introduce a small number of private prisons in the state did not turn out as planned. This is consistent with many new policies, as implementation theory notes. In this case, as a consequence of many competing interests, the result of S.B. 251 was not what anyone intended. State government still struggles to keep up with the emerging unanticipated difficulties. The unexpected outcome – namely, the proliferation of private prisons in Texas – resulted from numerous self-interested parties pulling in different directions amid legal, economic and political circumstances within the Lone Star State. Other jurisdictions could well learn from the misadventures of the Texas experience.

Chapter Six

Summary and Conclusion

The purpose of this chapter is to summarize the analysis in each preceding chapter and then to succinctly state the answer to the research question, "Why did private prisons proliferate in Texas?"

As the preceding pages have shown, legal, economic, and political processes in Texas coalesced to create a haven for the private prison industry within the state of Texas. As noted in Chapter Two, a number of people, with varying motives, were interested in bringing private prisons to Texas. Many bargained with each other, not being clear about their motives, and with the thought of getting what they wanted later in the process, in order to keep the option of private prisons available. In the beginning, when S.B. 251 was first approved, policy makers' idea was for the state prison system to contract with a few carefully selected, experienced vendors. The key legal motivation was the force of the federal courts – after years of litigation, Judge Justice had reached the end of patience and the state of Texas had run out of ways to resist his orders in the *Ruiz v. Estelle* case. Although Justice made it clear that he preferred alternatives to incarceration, state officials decided that in order to comply with court mandates, the prison system had to come up with a lot of prison beds, fast.

Vendors, who had been trying for years to gain a foothold with the state, used that opportunity, that moment of great need for prison beds, to increase lobbying to legalize private prisons. In other words, the legal problems of the Texas prison system created an inroad for the corporate world to contract for prison management with the state of Texas. When S.B. 251 was being considered for passage, the vendors' representatives promised many things. They spoke

favorably about every aspect of the bill – calling it one of the best bills ever seen and declaring their intent to comply with every detail. Clearly the goal for this group at this time was to get the concept legalized.

The Senate Committee also was very interested in keeping the bargaining going – the inconsistencies in the given testimonies were not very thoroughly examined. Senator Washington's incredulous question about the fact that insurance companies wanted to be excused from negligence was a rare exception. The local jurisdictions, for economic reasons, also wanted to keep the action moving toward approval. Although there was some opposition testimony, recordings of this meeting leave no doubt that the principals all wanted to keep the legislative process moving forward, toward the goal of establishing legislative permission to bring private prisons to Texas.

The key economic motives are readily identifiable: the state wanted to save money, the vendors wanted to make money. Given the absolute disparity of these goals, it is interesting that there was so much agreement at this early pre-implementation stage. Texas needed to save all the resources they could; the Governor was well aware that the state did not have the capital to come up with all the needed beds. Some Senators felt that the competition would drive down the state's costs and were interested in using the money saved on prisons for other social causes. In every case, the elected leaders were further motivated by the serious economic conditions within Texas at that time. State officials did not anticipate such developments as the would pushing so rigorously to increase the per diem.

Those seeking to gain included the for profit and not for profit sector, as well local jurisdictions within the state. The vendors, for instance, guaranteed they could save the state money as well as make a satisfactory profit. The non profit sector promised even more savings to the state, as they did not have to show any returns to stockholders. The local jurisdictions saw the economic development opportunity – mainly to provide jobs for their citizens. The state

employees presented two different views. TDC assured the Senate Committee of their support; the State Employees Union forcefully opposed the idea. Still, the Union's voice was so small that it was also silenced.

The political motivations were more complex. One goal was for these proposed PRCs to be a step toward alternatives to incarceration. Some state leaders felt that incarceration had not been successful in terms of habilitation; the hope was that the PRCs were going to be a new and accomplished means of reducing recidivism. And, some leaders felt that a modicum of competition would encourage the agency to change. Although most officials within and without the agency recognized the need for integral change, most saw how difficult the task was to be and saw this as a way to inject an element to help the agency evolve and reform.

State employees, who would be directly affected by the legislation, presented two opposing views. In the hearing, the TDC employees' representatives assured the Senate Committee of their support. However, the State Employees Union vehemently opposed the idea, and presented a well researched and forcefully delivered statement. Although the Committee allowed them to speak, their voice was so small that it was virtually unheard. Other state employees, who had been engaged in similar contracting, offered guarded comments.

The vendors had been trying for years to gain a toehold in Texas; they took advantage of this opportunity and joined with local jurisdictions. They seemingly promised whatever they thought the legislature wanted to hear if the state would just allow them to contract for management. They glibly stressed that they could manage prisons cheaper and better. In their view, the actual work of managing prisons was secondary to gaining the contract; CCA founder Beasley thought that operating prisons was easy; the hard part was "betting the job" (Galiney 1987). The local jurisdictions, in turn, gained community support and used that as leverage to convince decision makers to place the PRCs in their back yards. While the opposition spoke, and cited known questions and issues, the fact is that they were essentially ignored. The decision was

made; in early 1987, the state of Texas decided to allow private corporations to manage a small number of their prisoners.

Chapters Three and Four described the outcome, which was quite different from the original intent as detailed in Chapter three, while the 1987 policy makers foresaw only four facilities, the eventual number quite exceeded that goal. Today, prisoners from Texas, other states, and the federal government are housed in numerous privately managed facilities, under a myriad of arrangements. In some, a jurisdiction contracts with a vendor for management; in other cases, local governments have become public proprietors and increase their revenue by self-managing prisoners from other jurisdictions. As of January 1999, TDCJ-ID contracts with vendors for 4,078 prisoners. All are PRCs except for Kyle which has become a substance abuse treatment facility. This is double the original intention of S.B. 251, although the prison system itself has more than doubled in that time. The Parole Division contracts to house 3,907 prisoners in a secured facilities that offer a variety of programs. The State Jail Division contracts for 7,786 beds.

While these state contract results exceed the original intent of S.B. 251, having grown within the context of exponential growth of the prison system itself, what was completely unforseen by the policy makers was the emergence of both public and proprietary prisons which have flourished in Texas. According to one source, at the end of 1997, public proprietary prisons who sub-contract with vendors in Texas housed more than17,000 prisoners from a variety of jurisdictions. While this number wildly fluctuates, in June 1999, the Commission on Jail Standards reported almost 900 out of state prisoners were housed by locally managed institutions; TDCJ contracted for 232 more. In addition, the federal government houses of Bureau of Prisons, Immigration and Naturalization Service, and U. S. Marshals Service prisoners and detainees in the state.

Chapter Four further relates the outcome, with a discussion of the various mishaps and quite serious incidents that resulted from the proliferation of private prisons. The earliest problems occurred in the PRCs. Again, the private vendors were unable to keep their promises regarding financing and performance bond problems. Banks and insurance companies were not interested in becoming involved in such an unknown venture. The state had to step in and enact enabling legislation for the local governments to create funding entities. Once they finally opened, early audits showed they had again been unable to follow through on other promises. The intensive programs were non-existent and basic aspects of prison management like health care and mail handling also were found lacking. The legislature responded by toughening the mandates; the agency had to learn a lot about writing specific contracts. Central to successful contracts is the need to include specific directives and unequivocal sanctions if the vendors fail to follow requirements combined with constant monitoring.

Given the need for such strict oversight, it is not surprising that the most serious problems experienced in Texas, for the most part, have occurred within the proprietary arena, involving out of jurisdiction prisoners. One of the earliest and most unanticipated problem within Texas was the N-Group fiasco. Although some of the local jurisdictions truly lost economically, that experience did not dissuade numerous other counties from becoming proprietors of their own private prisons. Much more serious than financial loss, these facilities that house out of jurisdiction prisoners have hosted the most horrific of the disasters occurring in what is generically known as "private prisons." Escapes, riots, even murders have occurred as other states have associated with local jurisdictions in Texas to provide beds for their prisoners.

The state government has had to respond to many problems after the unforseen emergencies occurred. Agencies have been reorganized and duties and responsibilities changed. Legislation such as ensuring that any prisoner escaping within the state has broken the law or requiring immediate notification of riots or escapes has been necessary. All this governmental

response has expended state resources while the private sector has continued to collect their per diem. This experiences show that any jurisdiction considering allowing private prisons must ensure the necessary legislative context exists. Bringing a prison to town is not as simple a procedure as was first thought.

The reality is that the profit motive has led to some questionable business practices. Vendors failed to provide programs until forced, they found ways to skim extra money from prisoners, they failed to fire an officer known to have sexually abused prisoners. The worst offenses occurred in less regulated proprietary prisons because the lack of close, unremitting monitoring by government allowed the proprietors to take advantage of their freedom from continual oversight. Comparing events within the proprietary prisons ones with the situation in the state contracted facilities shows that the profit motive, unhindered, will prevail over other values.

The vendors have been very creative in coming up with ways to improve their bottom line. For the most part, those vendors dealing directly with the state of Texas have obeyed, once called to task. However, proprietary prisons who do not have such close monitoring have endured a number of serious disasters. That is not to say that disasters do not occur in Texas public or privately managed prisons; of course they do. Rather, the question becomes why are we allowing a private entity to make a profit while the state continues to grapple with and expend resources toward solving the problems created by that very corporation? Further, their claim that the private sector can manage prisons cheaper and better pales when these sorts of events occur. In fact, privately managed prisons are not "better."

Finally, to answer the research question of why this failure occurred, Chapter Five explores the processes that led to the sort of unintended consequences that are so familiar to students of implementation. The legal pressures, compounded with mixed economic motives and underscored by various political interests, led to outcomes quite different from those anticipated

by the original policy makers. The state had to respond to urgent legal processes in order to correct horrific prison conditions; the courts were demanding that the state move quickly to rectify long-standing overcrowding. Economically, although the vendors promised to do more for less money, the fact is that from the very beginning, they were motivated to get the highest per diem possible and found sometimes questionable other ways to enhance their bottom line Finally, the economically deprived local communities were willing and anxious to host the facilities.

Underlying all of this, the process was political from the beginning, and has remained so. Many interested parties participated and bargained to keep the momentum going. For profit, and to a lesser extent, not for profit vendors, local governments and unions attempted to influence legislation and later administrative and bureaucratic decisions. The legislature attempted to influence legal decisions; the executive branch wanted more say. The result of all this pulling in different directions, this bagaining by various parties, is unintended consequences. Responsibility for costly delays, often blamed on government red tape, in reality can often be traced to the vendors' reluctance to follow state mandates. The state has had to deal with many problems as a consequence of the local proprietary prisons as well as unethical conduct.

These private prisons emerged within the context of a state prison system in crisis. This leads to the issue of alternatives to incarceration. One of the problems with corrections privatization is that they have not contributed to discovering or advocating for alternatives to traditional incarceration practices. Rather, for the most part, the utilization of private prisons has become a forceful dynamic for maintaining the status quo. Their programs are not exceptional, and not far outside what is being done within the state managed prisons. Wackenhut's Kyle New Vision substance abuse program is unique, and these prisoners are constantly immersed in therapies designed to help overcome substance abuse. However, there are similar programs conducted by the state and Wackenhut is paid substantially more than the other vendors for that

program. No substantive long term studies have been performed to determine if either the public or private program influences recidivism rates; neither have comparative analyses been done. The fact that they receive a much higher per diem to provide this kind of programming shows that they are not able to do more with less. There is, in fact, no assurance that they can do more with more.

From a policy standpoint, there are serious considerations that emerge from the implementation of private prisons in Texas. Much can be learned from what happened and still goes on in the state. Those who oppose privatization can find plenty of evidence to support their view. Those who support the idea can learn from what happened. First, the legislative context must be in place – these vendors are in business to make a profit; it is the government's responsibility to ensure that the civil rights and welfare of all citizens, regardless of which side of the bars they are located, are protected. Further, jurisdictions must realize that if they are going to allow private prisons, they will be expending additional resources in monitoring and regulating these entities. If they allow entrepreneurial prisons, then they will be expending resources with no benefit to themselves. They must be prepared to pay these costs, or mandate and then establish what they are so they can be reimbursed. Other jurisdictions would do well to heed the lessons learned within Texas since the inception in 1987 of private prisons.

Perhaps the major benefit, particularly long-term, to Texas was the infusion of a modicum of competition. As was hoped, this likely did in fact help to change the organizational culture of the Texas Department of Corrections. On the other hand, the principles ensconced within the New Public Management generally have infused government. Some of these changes, like allowing TDCJ wardens to have their own budget, may have come about without permitting the contracts with vendors. Still, there was a dire need for change, recognized by most, and no doubt the PRCs did help tilt the direction of the agency toward more contemporary corrections management practices.

There are, however, other problems that have emerged and are worthy of consideration. First is a serious question regarding proprietary prisons. In at least two situations, the Commission on Jail Standards, the agency charged with overseeing out of jurisdiction prisoners, has found no serious problems while other oversight agencies strongly disagreed. Initially in the *Alberti* case and later during the Dickens County inspection, the Commission approved the jail conditions while federal monitors found numerous problems of concern. The realization that the *Alberti* decision found for the prisoners coupled with the fact that Montana withdrew their prisoners further indicate that the Commission findings were more lax than other jurisdictions would tolerate. It is clear that Texas and any other state that allows proprietary prisons must have a legislative context which includes strict constant oversight of the facilities.

Further regarding the role of local government, perhaps one of the most unexpected consequences was the way that the idea of private prisons came to be the economic engine of the rural communities. The resulting experiences and difficulties in Texas show that this is an inappropriate reason to place a prison. This is not to downplay the dire conditions found in these isolated areas. The resulting question then is why there are no alternatives for these communities. Surely Texas and other states must work on ways to help these impoverished areas develop their economies. Corrections policies should be driven by needs and knowledge within that own discipline, not whether a given area needs jobs for its citizens or a buyer for water or other public utilities.

Finally, it is most interesting to observe that both the supply and demand for these prisons are locally driven. As illustrated by *Alberti* and to a lesser extent *Nueces County*, the demand for prison beds comes out of local government. Local courts prosecute and sentence prisoners that the state must then care for. Most of these prisoners come from urban areas. At the same time, local rural communities are willing to meet that demand by supplying the facilities and employees to house and guard the prisoners. This rather symbiotic relationship between local

jurisdictions has often resulted in one or another sort of disaster. Once the disaster occurs, the state government, then, must step in and solve, repair or make amends for the harm done. Whether dealing with prisoners sentenced to TDCJ, or out of jurisdiction prisoners, the state is left with the responsibility of keeping all its citizens free from harm. It does seem odd that large corporations are allowed and encouraged to earn profits on this sort of situation

It is clear that the profit motive is a determining factor in how these prisons are run. Whether the TDCJ contracted or proprietary prisons, the need to make a profit influences decisions and actions taken by the vendors. While this is their mission – t earn a profit for the shareholders – the fact is that it is not consistent with obeying mandates and ensuring constitutional rights of prisoners. The earliest example is when the vendors vowed in the Senate hearings that they wanted to and were quite willing to follow all *Ruiz* mandates. At the same time, at least one company had hired attorneys to devise ways to avoid those very court orders. On the other hand, in some cases they were unable to keep their promises as when the banks and insurance companies were reluctant to underwrite the PRCs. Further, the myriad of hidden costs clouds the expectation that there is any real way to save money when incarceration is the only available option.

Another very obvious violation of S.B. 251 is the fact that the officers in private prisons are paid substantially less than those in the public sector. Even where TDCJ contracts are concerned, in spite of specific legislative language, this is not the case. This gets to the question of whether the focus to save money is overwhelming the other mandates. Both the agency and vendors, share a determination to keep costs down. However, it is likely that this determination works against the mandates that the state contracted facilities be rich with programs and training for prisoners in order to enhance habilitation efforts and reduce the incidence of recidivism.

Finally, while it is clear that public resources are expended at the same time the private vendors make a profit for their shareholders, it is the case that the private interest in corrections is

much broader than management firms. Less than one fifth of the total registered lobbyists representing corrections interests work for the private management firms. It is difficult to say with certainty just what all these interests are. Contrary to some concerns, there does not seem to be much direct lobbying in support of longer, harsher sentences. It may not be necessary, in Texas, criminal justice policies are harsh: those chosen for prosecution and convicted are assured of swift, sure, long lasting punishment. On the other hand, there is obviously a strong, broad-based private interest in continuing the status quo. A number of monied interests want the same policies, which do not include alternatives to incarceration, to continue in Texas. In this context, where so many varied parties with such great resources want to continue the status quo, the possibility of real alternatives to incarceration, which do not have a strong influence, is hindered.

Finally, jurisdictions considering allowing private prisons should realize these corporations are not driven by an altruistic desire to habilitate those incarcerated. Rather, private prison management firms must show a profit, and can be very creative in finding ways to improve their bottom line. This is their goal; and they have every right to pursue it. However, any jurisdiction considering allowing a private prison inside its boundaries must be aware that the welfare of the prisoners, their staff, as well as citizens in surrounding communities is not the key factor in corporate management decisions. Profit is the driving motivation. Thus, private management firms must continually and strictly be held accountable to fulfill the expectations and terms of their contracts. While not necessarily an operating cost, the fact is that this increases the overall cost, and must be born by the citizens.

The large number of private prisons in Texas came about because of a unique set of legal, economic, and political processes. Legally, the state prison system was beset by lawsuits charging the agency with serious overcrowding. At the same time, in many isolated areas of the state, the economy was severely deprived. Vendors had been trying to gain permission to manage prisons in the state. These critical conditions merged in 1987 to finally allow private prisons.

Because of the many political interests, what was planned to be a small, contained exercise quickly got out of hand.

While this unique set of circumstances may not be present in most places, the fact is that vendors are constantly looking to expand their market share. In order to avoid the sort of chaos that Texas endured, jurisdictions would be well served by closely observing the events that unfolded in the Lone Star State and analyzing how they can learn from the problems that ensued. A decision to implement private prisons is not necessarily a panacea for overcrowding or other problems associated with corrections policies. While the presence of such a facility may enhance the economic conditions of a particular jurisdiction, it may also drain the resources of another.

The fact is that there are no easy answers, no quick solutions to the problems our society has created by its incautious tendency to lock large numbers of people away. To avoid the unintended outcome that is inherent in implementation of any policy, exact expectations and mandates must be clearly stated. Where private corrections facilities are concerned, the consequences of not doing this can be disastrous because many interests will emerge, all will be pulling and bargaining while hoping to maximize their own gain, most will give little thought to the fitness or best interest of individuals or society at large. The invisible hand of the free market is not appropriate within a total institution.

In the case of private prisons in Texas, even with legislation that reconciled all known potential issues, various interests with competing motives struggled with and tweaked the policy. The result was rapid growth of an unregulated industry that caused great problems for the state. Private prisons, where they are allowed, should not be placed because of economic need or political expediency. Rather, such policy must be exactingly planned, strictly monitored according to precise criteria, and include a careful and extensive legislative context. The contracts must include specific mandates and meaningful sanctions for failure to meet the

standards. Without this kind of prudent, comprehensive design, economic and political forces will lead to unintended consequences.

APPENDIX I

People Interviewed

Name	Organization
Anderson, Bill	Texas Juvenile Probation Commission, former director
Austin, Jim	Institute on Crime, Justice, and Corrections
Baggett, Pamela S.	TDCJ, Mountain View Unit - Senior Warden
Barry, Bill	TDCJ, Ass. Deputy Director, Facilities Division
Barton, John	Texas Legislative Budget Board
Beardsley, Simon	TDCJ, Executive Services
Bell, C. C.	TDCJ, Asst. Warden, Alfred D. Hughes Unit
Beto, Dan Richard	Sam Houston State University
Brorby,Donna	*Ruiz* attorney
Capers, Freddie	County Judge, Pecos County
Champion, Ronald D.	TDCJ, State Jail Division, Assistant Director
Chase, Ron	American Corrections Association
Chief	CCA-T. Don Hutto Correctional Facility
Clayton, Bill	lobbyist, Capital Consultants
Cleckler, Thomas C.	Wackenhut-Major, Kyle New Vision Facility
Clements, Jr., William P.	former Texas Governor
Cornell, David	Cornell Corrections
Craven, Larry	CCA -warden, Eden Federal Detention Center
Dietch, Michelle	consultant
Dixon, Ernest C.	Wackenhut Warden-Kyle New Vision Facility
Ethridge, Philip	Pan American University, Associate Professor
Fabelo, Tony	Texas Criminal Justice Policy Council
Farabee, Ray J.	Senator, Vice Chancellor, University of Texas System
Farrier, Ph.D., Hal	Justice, Durrant Group
Fellner, Jamie	Human Rights Watch
Fillmore, Debbie J.	Texas Commission on Jail Standards
Fick, Susan	Bureau of Prisons, Three Rivers Detention Center
Flanagan, Carla	Bureau of Prisons, Privatization & Special Projects
Flanagan, Timothy J.	Sam Houston State University
Gainsborough, Jenni	Campaign for an Effective Crime Policy, Program Associate
Gonnerman, Jennifer	The Village Voice, Contributing Writer
Gonzalez, Abraham	Nueces County Law Library
Greene, Judith	State Senate Project, MN
Gunn	CCA-T. Don Hutto Correctional Center
Hale, L. DeWitt	Texas House of Representatives
Haygood, Lynn	CURE

Hazlewood, Mel	Texas Senate Education Committee
Hendrix, Deana	lobbyist, Hughes & Luce, Consultant
Hernandez, Jose	Texas Bond Review Board
Hijar, Sandra	Bureau of Prisons, Three Rivers Detention Center
Holt, Jack & Dora	City Manager, Clarksville
Hunt, Melvin	County Commissioner, Liberty County
Ingram, Wendy	TDCJ, Executive Services
Janus, Mike	Bureau of Prisons, Chief, Privatization Management
Kansteiner, Gary	Texas Legislative Council
Kebodeaux, Mike	Wackenhut-Supervisor, Kyle Treatment Facility
Keel, John	Texas Legislative Budget Board, E.D.
Kreneck, Ph.D., Thomas H.	Bell Library, Texas A&M - Corpus Christi University
LaMarche, Gara	ACLU, Texas, director, Open Society Institute
Lacy, Jr., Robert	CCA-Warden, Cleveland PreRelease Center
Lauder, Bob	Texas Comptroller of Public Accounts, System Analyst
Lin, Ann Chih	University of Michigan
Lopez, Ralph	Sheriff, Bexar County
Lucko, Paul	historian
Lumpkin, Major	TDCJ-Major
Lynaugh, James	TDCJ, Chief Financial Officer, Managed Health Care
Lynch, Robert A.	Alternative Fuels Technology
MacDonald, Jim	CCA-Asst. Warden, Cleveland PreRelease Center
Marin, Linda	CURE
Marquart, James C.	Sam Houston State University
Martin, Steve	attorney, author
Mayes, Christopher T.	Caprock Securities, Inc., Exec. Vice President
McDonald, Ph.D., Douglas C.	Abt Associates, Inc., Senior Scientist
McHenry, Susan	Texas Board of Criminal Justice, Adm. Asst.
McLane, Marsha	TDCJ, Parole Division
McNutt, David	TDCJ
Miller, Joshua	AFSCME, Labor Economist, Dept. of Research
Miller, Dennis	TDCJ
Moten, Linda	TDCJ, Warden, Gatesville Unit
Moya, David	TDCJ, Warden, Alfred D. Hughes Unit
Myers, David L.	CCA-President, West Coast Region
Nathan, Vince	*Ruiz* court monitor
Nellis, Ashley	ACLU-Texas
Nilius	CCA-T. Don Hutto Correctional Center
Owens, Ed	TDCJ, former monitor of Cleveland prison
Parenti, Christian	author
Parr, Bill	Texas Legislative Budget Board
Pawelek, Alfred	County Judge, Karnes County
Pelz, Terry	Criminal Justice Consulting
Petropolis, Bill	City Manager, Cleveland, (former)
Pierce, Robert P.	TDCJ former archivist
Pigg, Eddie	TDCJ Warden Ft. Stockton Transfer Facility
Polunsky, Allan B.	Texas Board of Criminal Justice, Chair
Porras, Judith	Texas Public Finance Authority, General Counsel
Proctor, Michael S.	Wackenhut-Deputy Warden, Kyle New Vision Facility

Reynolds, Carl	Texas Board of Criminal Justice, General Counsel
Rich, Victoria	Texas Board of Criminal Justice, Sec to Gen Counsel
Richards, Ann	former Texas Governor
Riley, Jim	TDCJ
Robinson, Bill	Corrections Concepts, Inc., Chairman
Russell-Einhorn, Malcolm	Abt Associates., Inc.
Sapp, Jr., Allen D.	TDCJ, Administrative Services
Seagirt, Laura	Texas State Library
Schultz, Charles	Texas A&M University
Schultz, David A.	Hamline University
Scott, Rider	Attorney at Law
Scott, Wayne	TDCJ, Executive Director
Shanblum, Laurie	CCA
Shaw, Robert	CCA-T. Don Hutto Unit
Skeens, Greg	Wackenhut-Warden, Lockhart Corr. Facility
Smith, Alice	Wackenhut-Assistant Warden, Lockhart Corr. Facility
Smith, Peggy S.	Consultant
Souryal, Sam S.	Sam Houston State University
Sullivan, Charlie	CURE
Terrell, Charles T.	Unimark Insurance Agency, Inc.
Thompson, Major	TDCJ, Chief of Security, Gatesville Unit
Townsend, Cherlyn	Texas Youth Council
Truan, Carlos	Senator
Turnbo, LMSW, Charlie	Correctional Systems, Inc.
Valdez, Sal	Senator Truan's Assistant
Valdez, Carlos	District Attorney
Vaults, LCDC, Lawrence C.	Wackenhut-Travis County State Jail
Walraven, Joe	Texas Sunset Advisory Commission, Policy Director
Washington, Craig	former state Senator and U. S. Representative
White, Mark	former Governor
Williamson, L. D.	County Judge, Red River County
Wilson, Terri	TDCJ, Contract Facility Operations
Woelk, Sarah	Texas Ethics Commission
Wray, Harmon L.	Tennessee Conference Council on Ministries
Young, Carole S.	Texas Board of Criminal Justice

APPENDIX II

List of Special Collections, Archives and Personal Papers Researched

American Civil Liberties Union, Texas Chapter, Austin

Barry, Bill, TDCJ, personal papers, Huntsville

Board of Criminal Justice, State of Texas, Texas State Library (Austin) and Austin Headquarters

Clements, Jr., William H. Former Texas Governor, Texas A & M University, College Station

Department of Criminal Justice, State of Texas, Texas State Library (Austin), and Huntsville Headquarters

Ethics Commission, State of Texas, Austin

Farabee, Ray J. former Texas Senator who introduced the legislation, personal papers, Austin

LaMarche, Gara, former Texas Civil Liberties Union Director, New York

Nathan, Vince. Former Special Master for District Judge William Wayne Justice in the *Ruiz v. Estelle* case. Center for American History, Austin

Pope, Lawrence. Former bank officer, convicted bank robber who amassed a large collection of documents relating to the Texas Department of Criminal Justice, Center for American History, Austin

Reynolds, Carl. Board of Criminal Justice, personal papers, Austin

Richards, Ann. Former Texas Governor who oversaw largest amount of privatization of corrections. Center for American History, Austin

Special Collections and Archives, Bell Library, Texas A&M University, Corpus Christi

White, Mark. Former Texas Governor who was heavily lobbied by vendors, Texas State Library, Austin

APPENDIX III

Site Visits to Texas Prisons

Cleveland PreRelease Center, TDCJ Institutional Division, contract

Eden Detention Center, Bureau of Prisons, contract

Estelle Unit, TDCJ Institutional Division

Fort Stockton Transfer Unit, TDCJ Institutional Division (former N-Group facility)

Gatesville Unit, TDCJ Institutional Division

Hughes Unit, TDCJ Institutional Division

T. Don Hutto facility, TDCJ, contract (public proprietary prison)

Kyle PreRelease Center, TDCJ Institutional Division, contract

Lockhart Unit, TDCJ Parole Division, contract

Mountain View Unit, TDCJ Institutional Division

Three Rivers Federal Correctional Institution, Bureau of Prisons

Travis County Corrections Center, TDCJ State Jail, (former contract)

Walls (Huntsville Unit), TDCJ Institutional Division

APPENDIX IV

Private Vendors in Texas

Avalon Correctional Services, Inc.
Donald E. Smith
13401 Railway Drive
Oklahoma City OK 73157
405.752.8802

Bobby Ross Group
Bobby Ross
1021 Ranch Road 620 South, Suite D
Austin TX 78374
512.263.9480

Civigenics
Gary Eagan
100 Locke Drive
Marlborough MA 01752
508.303.6878

Cornell Corrections, Inc.
Steve Logan
4801 Woodway Suite 100E
Houston TX 77056
713.623.0790

Correctional Services Corporation
James Slattery
1819 Main Street, Suite 1000
Sarasota FL 34236
941.953.9199

Correctional Systems, Inc.
Bud Grossman
209 Camaro Way
San Marcos TX 78666
512.396.7583

Corrections Corporation of America
James Blackin
10 Burton Hills Boulevard
Nashville TN 37215

Corrections National Corporation
Norm Cox
700 North Saint Mary's
One Riverwalk Plaza, Suite 1215
San Antonio TX 78005
210.272.7431

GRW Corporation
Gil R. Walker
P O Box 1403
Brentwood TN 37204
615.373.5703

Management & Training Corporation
Ron Russell
P O Box 9935
Ogden UT 84403
801.626.2000

Southern Corrections Systems
Jerry Sunderland
P O Box 71357
Oklahoma City OK
405.752.8802

Texson Management Group
John Bonner
3007 North Lamar
Austin TX 78705

Wackenhut Corrections Corporation
Dr. George C. Zoley
P O Box 10963
Palm Beach Gardens FL 33410-9603
800.666.5640

APPENDIX V

Local, Proprietary Prisons, in Texas*

Bowie County

Dallas

Franklin County

Houston

Laredo

Morris

Palo Pinto County

Red River County

Reeves County

Taylor

Titus

Van Zandt

*This number, and list, wildly fluctuates. For current information, see: http:\\www.tcjs.state.tx.us/jailpop.html. Also includes list of jails with 100 or more available beds.

APPENDIX VI

List of Lobbyists Paid by Private Prison Vendors, 1997

Bobby Ross Group, Inc. = **$69,999**
1021 RR 620 S Suite D Austin, TX 78734

Cargill, Lauren A.
Read-Poland Associates 1005 Congress Suite 500 Austin, TX 78701
Type of Compensation: Prospective
Amount of Compensation: $ 25,000.00 - 49,999.99

Hance, Kent R.
111 Congress Ave. Suite 800 Austin, TX 78701
Type of Compensation: Prospective
Amount of Compensation: Less Than $ 10,000.00

Ivie Miller, Lisa K.
111 Congress Ave. Suite 800 Austin, TX 78701
Type of Compensation: Prospective
Amount of Compensation: Less Than $ 10,000.00

Cornell Corrections, Inc. = **$84,997**
4801 Woodway Suite 400W Houston, TX 77056

Bailey, Charles C. "Chuck"
Wells Pinckney & McHugh 301 Congress Ave. Suite 2050 Austin, TX 78701-4041
Type of Compensation: Prospective
Amount of Compensation: Less Than $ 10,000.00

Leonard Jr., Bob
600 Congress Ave. Suite 1701 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: $ 10,000.00 - 24,999.99

Smith, Peggy
2117 Ave Q Huntsville, TX 77340
Type of Compensation: Paid
Amount of Compensation: $ 10,000.00 - 24,999.99

Strauser, Robert
98 San Jacinto Blvd. Suite 1600 Austin, TX 78701
Type of Compensation: Prospective
Amount of Compensation: $ 10,000.00 - 24,999.99

Correctional Services Corp. = $69,999
1819 Main St. Suite 1000 Sarasota, FL 34236

Lewis, Gibson D. "Gib"
814 San Jacinto Blvd. Suite 301 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: $ 25,000.00 - 49,999.99

Mitchell, Deborah B.
814 San Jacinto Blvd. Suite 301 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: Less Than $ 10,000.00

Steen, Lias B. "Bubba"
P.O. Box 347 Westhoff, TX 77994
Lobbyist Termination Date: 08/11/1997
Type of Compensation: Paid
Amount of Compensation: Less Than $ 10,000.00

Corrections Corp. Of America = $134,995
102 Woodmont Blvd. Nashville, TN 37205

Donaldson Family Partnership,Ltd/dba State Issue Mgmnt Grp.
1122 Colorado #210 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: $ 10,000.00 - 24,999.99

Donaldson, Jerry "Nub"
1122 Colorado Suite 210 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: $ 10,000.00 - 24,999.99

McMillan, Billy G.
P.O. Box 1112 Huntsville, TX 77342
Type of Compensation: Paid
Amount of Compensation: $ 10,000.00 - 24,999.99

Shipton, Patricia A.
1122 Colorado Suite 210 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: $ 10,000.00 - 24,999.99

Toomey, Michael "Mike"
1122 Colorado St. Suite 220 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: $ 10,000.00 - 24,999.99

Williams, Ellen
1122 Colorado St. Suite 220 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: Less Than $ 10,000.00

U. S. Corrections Corp. = **$299,994**
2500 7th St. Rd. Louisville, KY 40208

Erskine Jr., John M.
111 Congress Ave Suite 900 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: $ 25,000.00 - 49,999.99

Erskine, Candis B.
4304 Green Cliffs Austin, TX 78746
Type of Compensation: Paid
Amount of Compensation: $ 25,000.00 - 49,999.99

Hendrix, Deana D.
111 Congress Ave. Suite 900 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: $ 25,000.00 - 49,999.99

Leo, Myra
111 Congress Ave Suite 900 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: $ 25,000.00 - 49,999.99

McGinnis, Larry
111 Congress Ave. Suite 900 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: $ 25,000.00 - 49,999.99

Wallace, Mack
111 Congress Ave Suite 900 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: $ 25,000.00 - 49,999.99

Wackenhut Corrections Corp. == $299,996
4200 Wackenhut Dr. Palm Beach Gardens, FL 33410

Jackson, Ronald G. "Ron"
111 Congress Ave. Suite 1200 Austin, TX 78701
Type of Compensation: Paid
Amount of Compensation: $ 25,000.00 - 49,999.99

Jonas III, W James
700 North St. Mary's Suite 800 San Antonio, TX 78205
Type of Compensation: Prospective
Amount of Compensation: $ 100,000.00 - 149,999.99

Jones Jr., Neal T. "Buddy"
823 Congress Ave. Suite 900 Austin, TX 78701
Type of Compensation: Prospective
Amount of Compensation: $ 25,000.00 - 49,999.99

Lolley, Diana
823 Congress Ave. Suite 900 Austin, TX 78701
Type of Compensation: Prospective
Amount of Compensation: $ 25,000.00 - 49,999.99

TOTAL: $959,980

APPENDIX VII

List of Lobbyists Retained to Represent Prison Interests, 1997

CORRECTIONS (164 Lobbyists)

Adams, Donald G. "Don"
Akers, Monte E.
Antolik, Cindy M.
Arnold, Gordon D. "Doc"
Arnold, Keith E.
Baber Jr., Eldon C.
Bacarisse, Louis A.
Bailey, Charles C. "Chuck"
Bauman, Ronda
Baumbach, Susan
Berry, Justin M.
Bickerstaff, Steve
Blanton, Paul M.
Boethel, Carey "Buck"
Bojorquez, Alan J.
Boto, D. August
Bristol, George L.
Brown, James T.
Brown, Rick
Burns, Robert
Bushell, Gary
Cadena, Jeanine A.
Cargill, Lauren A.
Carrasco, Carlos R.
Castaneda Jr, Tristan A. "Tris"
Cheng, Albert L.
Clark, Mark R.
Cole, Sheryl N.
Daly, Richard P.
DeLaTorre, Carlos M.
Dennis, Debbie L.
Denton, Bradford E. "Brad"
Donaldson Family
Donaldson, Jerry "Nub"
Donoho, Travis
Erskine Jr., John M.
Erskine, Candis B.
Eschberger, Brenda
Evans, Charles W.
Farmer, Roshunda Y.
Fernandez, Blakely
Fickel, Ann
Ford, Richard A.
Fuller, Jacob C.
Geiger, Richard S. "Dick"
Glover, Sue
Gonzales, Alexander J.
Greater Dallas Chamber Of Commerce
Green, Linda
Guthrie, Carol
Gutierrez Jr., Hector
Hampton, Keith S.
Hance, Kent R.
Harris Sr., H. Dane
Hayes, Patricia
Hendrix, Deana D.
Hernandez, Leslie S.
Holifield, Ronald M.
Hollingsworth Jr., Lonnie
Horton, Susan M.
Howard, Ed
Howard, Justin J
Humphrey, Cynthia K.
Hutcheson, Mark S.
Hutto, Kathy N.
Igo, Shanna
Ivey, Billy D.
Ivie Miller, Lisa K.
Jackson, Ronald G. "Ron"
Jarboe, Jerome A. "Jerry"
Jernigan, Travis E. "Gene"
Johnson Jr., Robert E.
Johnson, Gordon R.
Jonas III, W. James
Jones, Tom A.
Kamm, Robert R. "Bob"
Keeney, Ron
Keller, James K. "Ken"
Kelley, Russell T.
Kennard, Karen M.
Kepple, Robert N.
King, Kenneth R.

King, Lynette
Kosta, Larry
Kralj, Nicholas K.
Kress, B. Alexander "Sandy"
Lemens, Robert L. "Bob"
Lewis, Gibson D. "Gib"
Locklin Jr., Charles H.
Lucero, Homero R.
McCarley, James B.
McFarland, Bob
McMillan, Billy G.
Miksa, Mary S.
Mitchell, Deborah B.
Noble, Shannon
Orr, Roy
Palmer, Eugene
Parker PhD, Carolyn A.
Pitts, John R.
Reid, James S. "Stan"
Roach, Judy
Rudd, Jim D.
Seale, Sam D.
Seidlits Jr., Curtis L.
Shields, Christopher S.
Short, James R. "Jim"
Simpson, Cheryl K.
Small, Ed
Steen, Lias B. "Bubba"
Stone, Jeri
Strickland, Phil D.
Taebel, Holly S.
Texas Municipal League
Torres, Rosie
Wallace, Mack
Ware, Weston W.
Watkins, Joe B.
Wendel, Susan
White, Glenn M.
Williams, Angela Y.
Williams, Ellen
Wright, Michael J.

Koenig, Linda B.
Kouba, Keith
Krampitz, Thomas L.
Lee, Donald C.
Leo, Myra
Lively, Lance D.
Lopez, Donze
Massey, Gary L.
McDaniel, Demetrius
McGinnis, Larry
McWilliams, Andrea
Miller, William J. "Bill"
Moseley, John W.
Norris, Karen A.
Ozymy, T. Michael "Mike"
Palumbo, Dorothy G. "Dottie"
Pewitt, Bill
Redding, Jack
Reynolds, Roberta
Roberts, Jack
Scott, Rider
Seidel, Ronald B.
Self, John W.
Shipton, Patricia A.
Simpson Jr., Don
Slot, Peter "Pete"
Smith, Peggy
Stewart Jr., Jack S.
Strauser, Robert
Sturzl, Frank J.
Tate, Lloyd
Thompson Jr., Frank T.
Vickers, Larry M.
Ward, Lesli L.
Watkins, G. Gail
Watson, Edward L. "Eddie"
Wendler Sr., Ed
White, Michael L.
Williams, Barbara
Williams-Weaver, Anita
Zottarelli, Angelo P.

This research was supported by the Texas Department of Criminal Justice under a research agreement. Points of view are those of the author and do not necessarily represent the position of the Texas Department of Criminal Justice.

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