

The Felon Factory

How one prison corporation replicates criminals,
recycles inmates, and bilks the Montana taxpayer ...
over and over again.

“Private prisons ... compare poorly to our own Bureau facilities. They simply do not provide the same level of correctional services, programs and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security.”

Sally Q. Yates
Former United States Deputy Attorney General
from her “Memorandum for the Acting Director, Federal Bureau of Prisons”
August 18, 2016

Law & Justice Interim Committee
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EXHIBIT 21

by
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DEDICATIONS

To my past fellow inmates:

Of course, this book is for you... for Dave, Clive, Martin, Johnnie, Lou, Chuck, and a host of others who struggle every day in their search for meaning, purpose and fulfillment. God knows that's not easy, especially in the face of such huge institutional duplicity. However, please remember that hardship, injustice, cruelty, pain, and stupidity all exist outside of prison walls as well as within. Whine less, pray more, and (most importantly) keep the faith. Trust me: things really will get better!

To Aunt Pat:

You are a professional, doctoral-level, mental health clinician who was my therapist for over one year. Your knowledge of combat-related Post Traumatic Stress disorder (PTSD) was downright profound, and I benefitted enormously from our sessions.

Speaking of "our sessions", I often found myself speechless – at a total loss for words (a state not easily achieved) – when working with you. At the very moment I most wanted one, I could think of no cunning retort or clever reply (much less any workable excuses). You were right: you ARE smarter than I am!

Oh yeah – one more thing: I owe you my life.

... And Most of all, to the "Coach":

You are a highly effective educator and leader, a former collegiate football coach and English instructor. Better than any other staff member at the Crossroads Correctional Center, you understood the crucial role of literacy instruction in the rehabilitation of young felons. I'd like to believe that, together, we accomplished a great deal, none of which would have been possible were it not for your unfailing dedication and support. I don't honestly know which one of us is the better writer, but undoubtedly you're the better man. Your sincerity, effort, honesty, and candor earned the respect of the entire inmate population.

Incidentally, per our previous "agreement", I've arranged for two Mormon missionaries to immediately visit your home. In your case, I felt there was no time to lose.

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INTRODUCTION

This is not a pirate story. At least, it isn't a story about the swashbuckling kind of pirate, the sort who swaggers about the deck waving a cutlass and shouting things like "Avast me hearties!" The characters in this story do not wear feathered hats or silver-buttoned tunics (although they may have a pistol or two stashed in their belts). Nor do they prowl the Caribbean seeking out Spanish treasure galleons. Rather, they wear Brooks Brothers' suits with matching silk ties and Johnson-Murphy shoes, and they roam throughout the United States in search of your tax dollars. They are the senior executives of the prison-for-profit industry, and this is their story. It is the story of the buying and selling of our nation's penal system, the erosion of your tax dollars, and the perversion of the judicial process itself. Maybe this is a pirate story after all.

Not-so-long ago, other buccaneers of a different ilk plundered our nation's penal system. These were the favored contractors and corrupt prisons officials who exploited prison labor gangs. The contractors would bribe prison officials, who in-turn provided an inexhaustible supply of free convict labor (labor needed for fruit harvesting, road repair, agricultural field work, etc.). For the contractor, it was a terrific deal: no salaries to pay, no workman's compensation or social security, no medical insurance costs. Best of all, there were no pesky labor unions. For the prison administrators, it was an even better deal: a whole lot of anonymous, tax-free, untraceable cash.

Taxpayers, on the other hand, received no benefit whatsoever from this arrangement. There were no rebates given to reimburse public coffers for the zero costs of labor. Likewise, consumers enjoyed no retail price reductions. Apples, oranges and asparagus, for example, still cost the same despite the free harvest labor. In all cases, the "contractors" simply pocketed the change, and it was all pure profit. Perhaps most harmful of all was the disappearance from the local economy of good-paying, legitimate jobs, jobs which were replaced by a black market (often quite literally "black") in human bondage. Why should a contractor hire (and pay) anyone legitimately when free convict labor was available? Ironically, this all occurred well after the Civil War, long after the theoretical end of slavery.

The present-day version of prison piracy operates a bit differently. Today, profit-based, multi-billion-dollar corporations are integrated directly into a prison's administration. The executives of these companies have no need to bribe prison officials -- they ARE prison officials! Now, such corporations build their own prisons, invest in the necessary infrastructure, and hire their own supervisory staff (wardens, guards, etc.). A company will then lease its facility to a local law enforcement jurisdiction such as a state's department of corrections. In return, the jurisdiction pays a fixed per diem rate for each inmate incarcerated. Indeed, in many cases, the contracting jurisdiction must pay for a minimum 90% prison occupancy rate, even though the incarcerated population actually numbers far less.

Now, read that last sentence again! Can you imagine renting lodging space from a motel chain that also charges you for the adjacent empty room?

Taxpayers are told they receive four benefits from this novel arrangement:

1. The operational costs of a state's penal system are reduced.
2. The surrounding host community is safer.
3. Criminal recidivism is reduced through stricter prison discipline.
4. Local economies benefit (more jobs and increased income for local merchants).

This book will show that all of these supposed benefits are illusionary. Indeed, it will demonstrate how the prison-for-profit industry, as it is presently construed, operates grossly against the public's best interests. Specifically, this book will explain how:

1. Corporate-owned and operated penal institutions are, on an actual services-rendered basis, far costlier than their publicly managed counterparts.
2. Corporate-run prisons deplete local law enforcement resources.
3. Corporate-run prisons encourage (rather than reduce) criminal recidivism.
4. Communities hosting corporate-run prisons benefit very little financially. Only a select, elite few enjoy the cash spoils.

All of this notwithstanding, mine is not a book about hopeless scandal -- scandal, maybe, but not hopeless. The final two chapters offer specific recommendations that, if carefully implemented, can save taxpayers millions of dollars and make communities safer places in which to live.

For nearly five years, I lived the story you are about to read. I am a 71-year-old convicted felon guilty of securities fraud. I recognize that my own criminal history is an obstacle to my credibility. After all, no one trusts a criminal (least of all another criminal). But then, it's also true that no one knows a pirate better than another pirate.

In this work, I occasionally lampoon the personal foibles of my fellow inmates. Still, make no mistake: the policies, procedures, and firsthand observations I offer are all very real. Indeed, I have purposely omitted some of the more egregious events which, although true, would have strained credibility to the breaking point. If you find yourself muttering, "It can't be this bad," -- you're right -- it's worse!

In any case, I certainly don't expect you to accept at face value what I've written. Rather, I invite you to do your own "due diligence." Do your own additional reading and research. A good place to start is the August, 2016 report by the United States Department of Justice, Office of the Inspector General, entitled "Review of the Federal Bureau of Prisons' Monitoring Contract Prisons". In part, this review found that:

1. inmate-on-inmate assaults occurred 28% more often in contract prisons than in government-run facilities, even though the populations of contract prisons consist of more benign, lower level offenders and those charged with immigration offenses.
2. Federal inmates in private prisons were found to be nine times more likely to be placed on lockdown than those at other federal prisons, and were frequently subjected to arbitrary solitary confinements. Often, they were automatically placed in solitary confinement as a way of combating overcrowding, rather than for any disciplinary infractions.

3. On other occasions, solitary confinement was used to intimidate prisoners and silence their complaints.¹

An Executive Summary of the Inspector General's report is found in this book at Appendix "B" (page 54).

Again, I encourage you *not* to accept my statements at face value. Rather, evaluate my documentation and firsthand experiences for yourself, and reach your own conclusions. It is, after all, your dime.



¹ This is precisely the tact undertaken by CCA at Tennessee's Metro Davidson County Detention Facility following an outbreak of scabies. The outbreak went uncontrolled by CCA staff, and inmates were threatened with solitary confinement if they complained to family members or the media. See Annex "A" (p. 48).

Chapter 1

The Assembly Line

The successful manufacture of any product (say, for example, a plastic soup spoon) requires at least two elements: good quality raw materials (the plastic) and a properly formed, spoon-shaped mold. A manufacturer may compensate for poor quality plastic by adding expensive chemical supplements to his raw material. However, even the unrestricted use of such supplements will never compensate for a warped mold of poor integrity. The soup spoon will still emerge deformed and useless. It will hold no soup.

So it is with the rehabilitation of young felons. Incarcerated criminals are obviously poor quality “raw material,” and the use of costly supplements like detoxification wards and individual cognitive therapy *might* be of some help. However, if the incarcerating authoritative mold itself lacks basic integrity -- if the supervisory mold is warped and distorted -- no amount of behavioral supplements will make any difference. The inmate “product” will emerge from incarceration more deformed than when he first entered.

Such is the case at the Crossroads Correctional Center, a penal institution operated by the recently rebranded CoreCivic Company (formerly marketed as the Corrections Corporation of America or CCA) ² as under contract to the Montana Department of Corrections. I was imprisoned in this facility for nearly five years. Day-in and day-out for 53 months, I watched flawed human raw material (young inmates) poured into a warped, self-serving mold. Most of these young men inevitably left prison far more behaviorally deformed than when they had entered. This was despite the widespread use of costly “supplements” like Cognitive Programming and Restructuring, anger management classes, and substance abuse counseling. These young inmates emerged warped and broken because the CCA/Crossroads mold is, itself, warped and broken.

Certainly, some portion of CCA’s “product failures” (criminal recidivists) occur because of the base nature of the “raw material” (inmates). However, at the Crossroads Correctional Center, CCA doesn’t worry too much about its own rehabilitative shortcomings. To the contrary, the company *thrives* upon rehabilitative failures! Recidivist criminals are not a corporate liability -- they become a corporate financial asset. The Crossroads Correctional Center welcomes back recidivist felons simply because it welcomes back your tax dollars. It’s just that simple.

Where else do you, the customer, pay for the repeated recall of a manufacturer’s defective product? Where, in any other business transaction, would you tolerate such idiocy?

² Throughout this book, I will use the company’s “old” moniker of Corrections Corporation of America or CCA. I do this for the sake of historical clarity, and I make no apologies. Notably, as of August 25, 2017, the company’s own website still refers to itself as “CCA” and displays the same corporate logo. Also, its common stock is still traded on the New York exchange under the same symbol; (CXW). The gross corporate malfeasance I document in this book has not been corrected by a simple name change. To paraphrase Shakespeare, “**A rose by any other name will still smell...**”

How much of this is intentional? At the Crossroads Correctional Center, to what extent is institutional posturing and “lip service” deliberately substituted for meaningful rehabilitation? I simply don’t know. Even in a court of law, issues of intent are vague and often ambiguous. Such issues are often a shadowy combination of forensics and clairvoyance, and I am adept at neither. I do, however, pose one simple question: when, in the last thirty years, has a CCA quarterly financial report listed “lower prison populations” as a corporate financial goal?³

Let’s be real.

CCA is not the only corporate player in the incarceration-for-profit business. However, I contend that all such companies operate contrary to the public interests. This is not necessarily because their executives are corrupt. Rather, it is due to an inherent flaw in any corporate prison’s core business model. This is a model wherein a company profits the most when it actually achieves the least: when it continually re-incarcerates its own rehabilitative failures.

To state the obvious, any profit-based corporation is in business to make a profit! This is not only acceptable, it is vital to the function of free markets. Indeed, it is crucial to the economic preservation of a democratic society. Now, get ready for the “but” ...

BUT when a company is selling the solution, it shouldn’t be permitted to create the problem! For example, a street vendor shouldn’t open a Band-Aid stand and then prance around sprinkling thumbtacks on the sidewalk. He’d probably make some quick sales, but such behavior is not ethical. This sort of perverse capitalism sabotages the very society which spawned it! Indeed, such behavior is the very antithesis of how free markets should operate in any democracy worthy of the name.

So it is with the prison-for-profit industry. These companies should not be permitted to open a prison and then sprinkle unreformed, recidivist felons on your community’s sidewalks. Such companies should be held accountable for their end “product”, just as is any other principled manufacturing or service corporation. It makes no difference if that “end product” is an intangible; the principle is the same.

Herein lies the inherent conflict between privatized prisons and core public interests. Prison corporations currently have a financial interest only in refilling prisons. “Good,” you say. “Keep the murdering bastards locked up forever!” The problem here is that “forever” soon becomes very expensive, and present-day prison populations contain millions of far less heinous criminals. Drunk driving, public displays of mental instability, family altercations, and even animal abuse are all examples of offenses committed by inmates I have known. Do you really believe it’s good public policy to incarcerate a teenager for a year (at a taxpayer cost of \$60.00 to \$70.00 per day) because he tortured your cat? (I’m a cat lover, by the way).

³ After its rebranding to CoreCivic in 2016, CCA has supposedly moved into the rehabilitation business. However, no vestige of this is currently found in Montana and certainly not at the Crossroads Correctional Center. Moreover, isn’t it a conflict of interest for a prison-for-profit company to open a separate facility for rehabilitation? Isn’t there an inherent financial incentive to make the rehabilitation fail in order to reincarcerate the program’s participants? Indeed, why doesn’t the needed rehabilitation occur within the prison in the first place?

Notably, the Corrections Corporation of America receives the same per diem fee for imprisoning the cat abuser as it does for incarcerating an axe murderer who has just raped two little girls⁴. It ultimately makes no difference to the CCA Chief Financial Officer. The money is all the same shade of green.

Now consider for a moment the two reasons we incarcerate criminals:

1. To ensure public safety by isolating dangerous offenders (or to protect the inmate himself).
2. To punish wrong-doing.

However, we don't punish "wrong-doing" to simply "get even". Imprisonment should serve a higher purpose than vengeance. Don't we incarcerate criminals "to teach 'em a lesson"? Presumably, that lesson is that crime doesn't pay, and there are more productive lifestyles than "sex, drugs, and rock-and-roll". As a society, we place great emphasis upon this lesson because it's in our own best interests. Repeatedly locking away recidivist offenders only compounds risk and is exorbitantly expensive. Ultimately, we reduce both risk and expense only by restoring offenders to productive citizenship. Isn't a Department of Corrections supposed to correct? This all makes eminent sense – unless you hold stock in CCA.

The concept of restoration is at odds with the corporate prison business model. Consistent with public safety and the interests of justice, it is in the taxpayer's best interests to incarcerate as few inmates as feasible for the shortest time possible. Just the opposite is true of a prison corporation. It's in their best financial interests to incarcerate as *many* as feasible for the *longest* time possible. This is the equivalent of criminal recidivist poker, a perverted card game wherein victims suffer crimes, criminals lose freedom, and taxpayers ante up the cash. Only the dealer wins: the prison corporations who reap huge profits by continually re-incarcerating their own rehabilitative failures. The more failure, the greater the profit.

As a former inmate incarcerated in a corporate prison, I have witnessed first-hand this perversion of public policy for the preservation of corporate profit. This narrative is not based upon rumor or hearsay. I was there.

For me, "there" was the Crossroads Correctional Center (CCC) in Shelby, Montana. This is presently an all-male penal facility operated by the Corrections Corporation of America under contract with the Montana Department of Corrections (MDOC). Though the corporation will vigorously deny it, the de facto training policies at this facility actually encourage criminal recidivism. While the company may publicly extol "constructive" inmate management and its commitment to the rehabilitation process, actual staff conduct and corporate procedures paint a quite different picture.

⁴ This particular example is hyperbole. However, at one time or another, I have personally shared a cell with a rapist, a pedophile, and several murderers. CCA received the same compensation for my incarceration as it did for theirs.

Hypocrisy? To use a common Montana idiom: "You bet!" One late evening, the night before a scheduled state regulatory visit⁵, I watched a new sign being painted above the office of the prison's Chief of Unit Management:

"FOCUS ON RE-ENTRY" (in red paint, no less).

At that time, I had been incarcerated for nearly four years. I couldn't help but wonder: why, the night before a state audit, was there such a sudden corporate interest in my "re-entry"?⁶ Incidentally, the paint was literally "still wet" when the auditors passed by that next morning.⁷

How truly "focused" on inmate re-entry were most Crossroad's guard employees? In other words, how did a nominal corporate policy of rehabilitation actually translate into effective protocols and staff conduct? Here are a few personal observations:

- I once overheard the facility's training officer instructing new employee guards: "Treat an inmate like he raped your Grandmother."
- I have personally observed a guard publicly humiliate a young Native American who was in my reading class struggling to become literate. "Whatta you doing here, Tonto? You can't read. Who do you think you're kidding?" (Yes, the guard actually referred to this Native American inmate as "Tonto". The young man's name was actually Clifford).
- I have stood next to a female guard (a supervisory Sergeant, yet) when she verbally ridiculed the size of an inmate's penis: (Sorry ... I'm not going to quote that one).

So much for "Focus On Re-Entry" ... so much for encouragement, rehabilitative support, and constructive role-modeling.

If I seem a little bitter, the reason is quite simple: I *am* bitter! However, don't waste your time or sympathy on me or my fellow inmates. If you really need to feel sorry for someone, feel sorry for *yourself*! After all, it's your tax dollars that finance all of this. You are the one buying the tickets for these silly little ego excursions on the CCA railroad. Moreover, you buy that same train ticket over and over again. Young inmates emerge from the Crossroads Correctional Center angry and contemptuous because they are routinely treated with anger and contempt. This really isn't rocket science! These young men then return to their communities, re-offend, and are incarcerated once again... and once again CCA collects your tax dollars for the re-imprisonment costs.

Throughout my book, you will encounter this same, reoccurring theme: the physical danger and enormous financial costs of consistently inept correctional role modeling and inmate mismanagement. Understand that an abusive guard does far more than simply threaten an inmate. He does that, of course, but through such unprofessional conduct, that guard also creates

⁵ See Chapter # 4 (page 18) for a general review of failed audit protocols.

⁶ "Re-entry" was a corporate buzz word referring to an inmate's rehabilitation programming.

⁷ I had intended to be in the hallway that next morning as the inspection team passed by. My idea was to reach up and "accidentally" brush against the wet paint, smearing it all over myself. I wanted to "expose the charlatans, by God!" I'm ashamed to say I "chickened out".

a serious threat to you and your community. His "creation" – a young, angry, recidivist offender – may one day confront you in your driveway. Worst of all, your tax dollars will continue to pay for that young inmate's long-term, cyclical reincarceration.

Whenever an incarcerating authority mistakes intimidation for control -- when "teaching 'em a lesson" contradicts the very lessons to be taught – the entire purpose of incarceration is subverted. Mistaking oppression for control fosters only rebellion, not compliance. This basic psychological tenet, sometimes referred to as the "principle of legitimacy" is discussed especially well in Malcolm Gladwell's fine book David and Goliath (Little, Brown, and Company, New York, 2013).⁸ I further explore Gladwell's ideas in Chapter #10 (page 35).

Ironically, the quintessential example of poor role modeling (a warped corrections mold) is found at the Crossroads Correctional Center in the one place you'd least expect it: the facility's education department. In theory, it is this department's function to provide an inmate with core educational skills, skills which facilitate his successful rehabilitation and eventual re-entry into society. Hopeful, the young offender also develops a sense of accomplishment and self-worth quite separate from his criminal activity.⁹

However, one department staff member doesn't see it quite this way. He has aspirations of becoming a police officer, and he believes God put him on earth to punish the wicked. (rehabilitation be damned!). This individual was actually first hired at the prison as a security guard ("corrections officer"). While so employed, he applied to various local law enforcement jurisdictions to become a police officer, listing his prison guard experience as a pre-qualification. For whatever reason, his applications were denied, and he subsequently accepted a vacant Crossroads teaching position (unlike guards, teachers perform no late-night shift work). However, also unlike guards, teachers wear no uniforms. Within the education department, casual office attire is the norm. Our hero found this very disconcerting: "NO UNIFORM? WHAT THE HELL IS THIS!"

Fear not, for our hero found an innovative solution. He volunteered overtime hours on his days off, working as a security guard. The truly nifty thing about this arrangement was that it allowed him full access to all guard paraphernalia. Consequently, each and every day (regardless of his specific, assigned duties), he would appear inside his classroom wearing a Batman-style police officer's utility belt (complete with handcuffs, pepper spray, and FM radio). He wore this Bat-belt OVER his non-uniform, civilian teaching attire! He wore it to class, he wore it in the cafeteria, he wore it to departmental meetings. I do not know if he wore it inside the men's room or when he went to bed each night. In any case, his demeanor mirrored his dress. He became the education department's chief "enforcer", the "cop on the beat".¹⁰

⁸ In addition to Gladwell's work, similar themes may be found in most any modern teacher's preparation textbook. Also, the United States Military Academy at West Point offers an unequalled curriculum in leadership, and several of the academy's suggested volumes are listed on The US Army Chief of Staff's Professional Reading List (online at http://www.history.army.mil/html/books/105/105-1-1/CMH_Pub_105-1-1_2011.pdf).

⁹ This is the prison department in which I worked as an inmate tutor of remedial reading and English. For further discussion of inmate education at the Crossroads Correctional Center (or lack of it), see Chapter 9 (page 32).

¹⁰ Each day, there was already a uniformed security officer assigned in the education department. This time around, Batman was back-up to Robin!

Since you, the taxpayer, are paying this man's salary (and buying all of that cool equipment), you might wish to ask a few questions:

- What sort of role model does this man present to his inmate students? Does he model dignity and civility – or silly pretense and arrogance?
- Does he encourage respect for prison authority – or does he provoke ridicule and scorn?
- Most importantly, what impact does his conduct have upon the future behaviors of his young inmate students? Will they forsake confrontation and bullying, or will they more likely imitate Batman's posturing and aggression?

Remember, after being formed from the Batman's mold, the young inmate "product" is slated for public distribution! Programmed with cynicism, disgust, and contempt, the former inmate is next released into your community. Sadly, the young man may discover he reads only at the level of an average 3d grader, and he remembers how Batman actually campaigned *against* a prison-wide, peer-tutored literacy program.¹¹ That former young inmate now finds himself unemployable, humiliated, and angry – the product of a failed, cyclically defective correctional system – and it's now your turn to deal with him. Maybe you can borrow Batman's utility belt.

What happens next is entirely predictable. The young ex-felon recidivates. He again commits a crime. Perhaps he burglarizes your home or steals your car. He's caught, of course (he's no better at crime than he is at anything else). So it is that the "product" your tax dollars paid for – the product of a corporate-run prison – is "recalled for defects." The former inmate is reincarcerated, and you again get to pay the corporation for his imprisonment – the same corporation that failed you in the first place.

This cyclical manufacture of criminal recidivists is just one side of the very expensive CCA corporate coin. In later chapters, I'll examine CCA's corporate history and political activities. Also, I'll explain how CCA prisons displace badly needed tax revenue, overcharge for substandard goods and services, and overburden local civic and law enforcement resources. However, first let me share a personal reminiscence, a brief anecdote which offers a glimpse inside a CCA facility.

¹¹ Despite Batman's best (or worst) efforts, the program was put in place and became the best attended class in the institution's history. Unfortunately, it was discontinued a few months after my release.

Chapter 2

Sanchez and the Metal Detector (a personal reminiscence)

No one personified the ills of a corporate prison better than Little Bear Hampton, a young man who became my close friend. This may seem a bit strange, since we had so little in common other than our incarceration. Little Bear was a 19-year-old Native American raised in poverty on a Federal reservation. He had neither a father nor any formal education beyond the 7th grade. I, on the other hand, am a 71-year-old Caucasian, the father of three adult daughters, the product of an upper-middle class family, and a graduate of one of the world's great universities.

Yet, we were best buddies ... go figure.

I met Little Bear during the summer of 2011 when we were both inmates in "F" cellblock at the Crossroads Correctional Center. "F-pod" was a "low-side" housing unit, so called because its residents presented minimal risk to themselves, staff, and other inmates... and if ever an inmate presented a "minimal risk," it was Little Bear Hampton.

Soft-spoken and compliant, this young Native American stood only 5'6" and must have weighed no more than 140 pounds. Although not well educated, he was intelligent, articulate, and polite. He did, however, have one serious flaw (at least, it's "serious" if you're a prison inmate): Little Bear hated stupidity. All of which brings me to the tale of Sanchez and the metal detector.

Emilio Carlos Sanchez was a prison guard who fancied himself a Wyatt Earp-style Western lawman. He was, as you might guess, a Latino. Now, this ethnicity posed no obstacle for my friend Little Bear. However, for Corrections Officer Sanchez, Little Bear's "family tree" was another matter. Sanchez, you see, hated only one thing worse than inmates: *Indian* inmates!

That such an attitude is counter-productive in a Northern Montana prison filled with Cheyenne, Blackfoot, and Lakota Sioux was an insight which escaped Officer Sanchez. Then again, numerous insights probably escaped Officer Sanchez. To put it kindly, would-be Marshal Sanchez was a bit slow on the draw. More candidly, his cognitive Smith and Wesson would seldom clear the holster (much less fire a penetrating thought). To be entirely blunt, Sanchez's six-shooter intellect was seven rounds short of a full load.

It came to pass that a walk-through metal detector was installed just outside the prison's dining hall. This machine was similar to those found in our nation's airports, and it was Sanchez's task to monitor the device. At first, this seemed to me a good idea. I was an "elderly" inmate new to prison, and I didn't relish dining with any young, hostile, knife-wielding felon. The precaution seemed to make sense.

One particular evening, "F-pod" inmates were called first to dinner. With Little Bear and me in the lead, thirty-six of us approached the metal detector and dining hall. Sanchez stood dutifully at his post, hands on his hips, wearing a starched uniform, shined combat boots, black leather

gloves, a black baseball cap, and sunglasses with silvered lenses (remember, it was the *evening* meal). He looked magnificent!

Little Bear started through the metal detector, stopped, gestured with his right hand, and began to speak. That was all it took.

Sanchez immediately shoved Little Bear through the metal detector, backing him against the wall. Shouting in my friend's face, Sanchez demanded that an inmate ... any inmate ... immediately comply with a guard's directions with no hesitation or question. Little Bear was cursed, verbally demeaned, and forced through the metal detector a second time. Rules, after all, are rules!

Before you decide that such a "firm" approach is always appropriate when supervising inmates, consider what Little Bear noticed that Sanchez didn't -- a minor discrepancy which had completely escaped the guard's attention: the metal detector was unplugged.¹²

Now, consider the purpose of incarcerating Little Bear in the first place. As noted earlier, we imprison not simply to punish or "get even". We imprison criminals to "teach 'em a lesson." So what exactly were the lessons taught to inmate Little Bear by Corrections Officer Sanchez? Did Little Bear learn that:

1. Rules and regulations have a purpose and are necessary to a well-ordered, civilized society?
2. Authority figures must be respected?
3. Interactions between individuals should be conducted in a civil manner whenever possible?

Of these three lessons, how many did Officer Sanchez communicate to inmate Little Bear?

Zip..... Nada None!

Little Bear was not taught the value of rules in an ordered society. Rather, he was taught that rules are pointless and have no intrinsic value. Nor was he taught much about respecting authority! To the contrary, Little Bear came away from the Sanchez encounter *hating* authority.

Of course, Little Bear is ultimately responsible for his own conduct. Should he again commit a crime and find himself imprisoned (at the public's expense), he is the person culpable. Yet, is it possible that Officer's Sanchez's conduct will have had a role to play, and that society (not Sanchez) will suffer the after-shocks of this officer's correctional stupidity?

Remember, you're the one paying Mr. Sanchez's salary (albeit indirectly). Remember that your tax dollars paid for the purchase, installation, and operation of the metal detector. Most of all, remember that you, the taxpayers, are annually paying CCA a lot of your money to operate a professional corrections facility.

Are you getting your money's worth?

¹² Shortly before I was paroled, this metal detector was moved a few feet down the hall and permanently wired into the building's electrical system.

Chapter 3

CCA

CoreCivic, or The Corrections Corporation of America (CCA), is a publicly held, billion-dollar stock company whose shares are listed on the New York Stock Exchange (symbol: CXW).¹³

Since its founding in 1983, the company has certainly prospered. As of December 31, 2015, CCA was the largest private corrections corporation in the United States, managing over 65 penal facilities housing 90,000 inmates in 19 different states. At current valuations (market close on September 1, 2016), CCA common stock pays its shareholders a whooping dividend yield of 13.48%, with the company's total market capitalization exceeding 1.84 billion dollars. Since that time, the company's stock has nearly doubled in value and offers a dividend yield of 6.6% (as of market close on October 12, 2017).

This company was co-founded by three individuals: Thomas W. Beasley, T. Don Hutto, and Dr. Robert Crants. In addition, a member of the corporation's initial board of directors was Maurice Sigler, a former chairman of the United States Board of Paroles.¹⁴

Thomas Beasley is a graduate of both the United States Military Academy at West Point and Vanderbilt University's law school. At the time of CCA's founding, he was the Chairman of the Tennessee State Republican Party. To say he enjoyed great political influence is to acknowledge the obvious. Notably, a significant portion of the cash initially invested in CCA came from Vanderbilt University, Beasley's law school alma mater.

T. Don Hutto held various high-ranking administrative positions in corrections, to include Director of Prisons in Arkansas and Virginia. Conveniently, Hutto became President of a national prison oversight organization in the same year he established CCA. This organization, the American Correctional Association, has roots extending back to the 1870's and, prior to 1954, was known as the National Prison Association. It is a private, non-governmental trade organization (similar to a Chamber of Commerce) which formally accredits penal institutions throughout the United States.¹⁵ Certainly, the question must be asked: how objective and unbiased can a prison inspection be when the "reviewer" owns the prison being reviewed? I'll further discuss the American Correctional Association in the next chapter.

¹³ All fiscal, historical, and biographical data related to the Corrections Corporation of America was taken directly from their corporate website (www.cca.com), various annual corporate reports, and the company's 2016 and 2017 fiscal analysis by Yahoo Finance.

¹⁴ Any "board of parole" must ascertain an inmate's suitability for early release (not an easy task). However, remember that a company such as CCA generates its revenue **not from how many are paroled, but from how many remain incarcerated.**

¹⁵ While it has no formal enforcement powers (to levy of fines or penalties), the American Correction Association's endorsement is highly coveted within the private prison industry. Indeed, CCA frequently lauds its own accreditation as "proof" of the company's best prison practices. See Chapter 4.

The final member of CCA's founding triad was Dr. Robert Crants. Mr. Crants' academic background is also impressive. A West Point graduate like Beasley, he completed his graduate schooling at Harvard University. He had extensive experience in the real estate and the cable television industries before becoming a corporate founder.

Since its inception, CCA has been headquartered in Nashville, Tennessee (one of my favorite American cities). Unfortunately, for the taxpayers who fork over millions of dollars to CCA annually, there's more going on in Nashville than "The Grand Old Opry." CCA takes the official corporate position that "*(The company) does not, under longstanding policy, lobby for or against policies or legislation that would determine the basis for or duration of an individual's incarceration or detention.*"¹⁶ The reality is quite different. In effect, the Nashville corporate headquarters is spending millions of taxpayer dollars to induce the payment of more millions of taxpayer dollars! The chart below (published on-line by a nonpartisan government watchdog organization)¹⁷ illustrates the point. Within a six-year window, CCA spent nearly 6.5 million dollars in lobbying the federal government.



CCA has no qualms about using its financial clout (that is, your tax dollars) to block federal legislation considered politically disadvantageous or threatening to its profit margins:

*"The company has also spent money to help block bills that have directly tried to affect CCA and other private prison outfits. Most recently, they've directed lobbying funds towards the Justice Is Not for Sale Act of 2015, a bill pushed by Sen. [Bernie Sanders](#) (I-Vt.) that would have banned private prisons, and the Private Prison Information Act of 2015, which would have subjected private prison records to Freedom of Information Act requests. Both bills died in committee."*¹⁸

However, all of this is not without repercussions. On August 18, 2016, Deputy Attorney General Sally Q. Yates announced that the United States Department of Justice would cease using private prisons for its incarceration needs. Her reasons were compelling:

¹⁶ www.cca.com, August 23, 2016

¹⁷ OpenSecrets.org (Center for Responsive Politics), Emma Baccellieri, August 23, 2016

¹⁸ Ibid

"They (private prisons) simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security,"¹⁹

I can't be certain that the inept management, corrupt practices, and fiscal irresponsibility I witnessed at the Crossroads Correctional Center are endemic throughout CCA. I have, after all, never been incarcerated in any other CCA prison. However, here are a few current news articles which indicate such issues extend far beyond Montana and my personal experiences:

1. "Private prison operator Corrections Corporation of America is trying to seal from public view documents in a lawsuit that claim female visitors to a Tennessee prison were forced to undergo strip searches to prove they were menstruating. Three women have accused the company of violating their rights by forcing them to expose their genitals to guards after they tried to bring sanitary pads or tampons into South Central Correctional Facility, about 85 miles southwest of Nashville." (WWTC-AM, Eagan, Minnesota, August 25, 2016).
2. "A federal appeals court has upheld a contempt order against Corrections Corporation of America (CCA) for violating terms of a settlement agreement over how it operated the Idaho Correctional Center. The ruling stems from a federal class-action lawsuit brought by the American Civil Liberties Union against CCA on behalf of prisoners incarcerated at the facility. The complaint alleged deliberate indifference by CCA officials, inadequate staffing and supervision, and a failure to adequately investigate acts of violence at the prison." (American Civil Liberties Union, aclu.org, May 23, 2016).
3. "If you're looking to make some money, try locking up toddlers. One for-profit prison company has found that incarcerating infants, toddlers, children, and mothers—as long as they're undocumented immigrants—is a great way to boost their revenue by upward of \$49 million over the previous year. The latest quarterly finance report from Corrections Corporation of America, a for-profit prison company, indicates that its contract with Immigration and Customs Enforcement to manage a detention center packed with immigrant mothers and children is very helpful to its bottom line. Part of the reason their deal is so lucrative? The public isn't particularly bothered by it." (The Daily Beast, Betsy Woodruff, September 9, 2015).
4. "The private contractor operating the Idaho Correctional Center (ICC) south of Boise has acknowledged that employees at the prison falsified staffing records last year in violation of Corrections Corporation of America's (CCA) contract with the State... resulting in an overbilling to taxpayers of 4,800 man-hours of labor." (The Spokesman-Review, Betsy Z. Russell, April 11, 2013).

These few items were randomly selected from a plethora of similar news articles and indicate a nationwide pattern of CCA corporate malfeasance. The Idaho Correctional Center outrage (item #4) is discussed in more detail later in this book. **Also, Annex "A" contains a more comprehensive chronology of CCA malfeasance nationwide.** For now, however, it's time to consider the pseudo-inspection protocols that lead to such debacles.

¹⁹ Washington Post, August 18, 2016, DOJ official memo

Chapter 4

The American Correctional Association

In certain ways, a corporation is similar to a human being. A case-in-point is their mutual concern over public image. Both try very hard to create the most favorable public image possible. To this end, companies make wide use of the media, often banding together in trade organizations to promote themselves. An historic precedent is medieval trade guilds, while more contemporary examples are organizations such as the National Association of Realtors, the National Automobile Dealers Association, and even the Chamber of Commerce.

The incarceration-for-profit industry has such an organization. With its roots leading back to the post Civil War era,²⁰ the American Correctional Association (ACA) today is an international trade organization with thousands of members, including the private prison corporations, treatment professionals, supporting vendors, and associated industry executives. Although it has no regulatory authority, the American Correctional Association does offer its member clients a formal accreditation. Indeed, many penal jurisdictions require this accreditation before contracting with any private prison corporation. The association is essentially self-funding, today receiving nearly all of its revenue from its client-members, the prison operators themselves.

No, that last sentence is not an error: **the very organization that accredits private prisons receives its revenue from the same prison corporations it accredits. Indeed, the inspection teams themselves have historically been comprised of employees of the audited corporations.**²¹

These audits are generally conducted in 1 to 3 year intervals and involve site visits to the institution seeking accreditation. During this visit, various prison functions and departments are supposedly surveyed in detail, and a composite score (based on a scale of 1 to 100%) is ultimately issued.

I was actually involved in the preparation of such a survey. While an inmate, I was instructed to clear and clean a classroom's bookshelves in anticipation of an ACA inspection. This sounded like a very simple and legitimate tasking to me, and I certainly had no ethical problem with the assignment – until it came time to replace books on the cleaned shelves. I was instructed to re-shelf ONLY those textbooks less than three-years-old. The remaining volumes (the majority) I placed in cardboard boxes for storage in a locked metal cabinet elsewhere in the prison. I was told that one of the ACA inspection criteria involved the currency of our prison's educational materials. Out of sight... out of mind!

The timing of ACA accreditation surveys is itself suspect. These inspections are all prearranged and announced months in advance, frequently with a businessman's lunch or dinner reserved at a local restaurant. The objective, after all, is to "be fair", polite, and not disrupt the institution or

²⁰ The organization was founded in 1870 under the name "the National Prison Association." Its name changed to the American Correctional Association in 1954.

²¹ For more about this blatant conflict of interest, see <https://www.prisonlegalnews.org/news/2014/oct/10/how-courts-view-aca-accreditation/>

embarrass local prison officials. This actually impacted directly on me when, during the dead of a Montana winter, the Crossroads Correctional Center had chronic problems with one of its heating units. This is not good in Northern Montana where seasonal temperatures can plunge to -40° F. **Within several cells, ice formed in sinks and toilets.** So how could such conditions pass an ACA audit? Simple ... delay the inspection until summer.

In light of all this (and as a former military pilot), I couldn't help but recall the legendary Air Force General, Curtis LeMay. LeMay was a WWII bomber pilot who went on to become the Commanding General of the Strategic Air Command (SAC) and later Chief of Staff of the Air Force. For "old Iron Pants", audits or surveys took on an entirely different dimension, one very different from that of the American Correctional Association. LeMay instituted a system of Operational Readiness Inspections (ORIs) in which, with no prior warning, he personally would appear at a military airfield totally unannounced. Strolling into the Control Tower or Flight Operations shack with his iconic cigar stuck between his teeth, LeMay would proclaim:

"I'm General LeMay. This is an operational drill. The United States was just attacked by the Soviet Union. Show me what you'll do about it."

With LeMay, there were no polite prior notifications or scheduled businessman's lunches. For the General, it was simple: either his pilots could fly and flight... or they could not.

Of course, it isn't only ACA that fails to spontaneously monitor prison operations. The current contract with CCA (Core Civic) provides the Montana Department of Corrections (and by implication any state legislator) with right of full access to the prison with no prior notice whatsoever. Yet, during the entire period of my (nearly five years) incarceration, no such unannounced inspection ever occurred.²²

Let's take the LeMay - ACA inspection comparison a step further. As I previously mentioned, I was directly involved in the preparation for a particular ACA inspection. As the inspection progressed, the visitors viewed a sparkling, immaculate, and empty classroom (the same room I had personally cleaned). The inspectors were suitably impressed. LeMay, on the other hand, would have simply asked, "Where are all the books ... and students?"

While I appreciate that ACA inspectors are not trained telecommunications specialists, their inspection in this regard was also faulty. A certain number of telephones are mandated in each cell block for inmate use. On my cell block, I watched the ACA inspectors dutifully count the required four telephones... and leave. This would have meant nothing to "fly and fight" LeMay. He would have picked up each telephone headset and listened for a dial tone. Had the ACA team done so, they would have discovered two of the four phones were disconnected.

When she was 4-years-old, I once instructed my daughter to "clean your room...especially the turtle tank". When I inspected the results, it all appeared pretty good for a 4-year-old ... until I discovered the dead turtle under the bed. My concern is that if childish deceptions can hide dead turtles (and outdated textbooks), what other, more sinister discrepancies are being hidden? Are

²² "Contract for Operation and Management Services, Montana Department of Corrections and Corrections Corporation of America" (July 22, 1998), Section X, item "A" (contract page 13) and Section XII, "Program Audits"(contract page 16).

prostitution, drug trafficking, theft, or extortion present within the prison? Do public dollars go for private gain? Is medical care (or denial of it) used as a disciplinary tool?

To count the skeletons in a corporate closet, you must first open the closet door without knocking. LeMay understood this. Despite all of its corporate posturing over suspiciously high ACA audit scores (or perhaps *because* of them), the Crossroads Correctional Center is long overdue for a Curtis LeMay-style inspection.

Such an inspection should be totally unannounced, unrestricted, and encourage the confidential testimony of both inmates and employee "whistle-blowers" (arrangements should be made to protect such individuals and their confidentiality). Should corporate prison administrators or Department of Corrections officials object to such an inspection regimen, you (the concerned legislator) should be immediately suspicious. After all, if nothing improper, illegal, or embarrassing is being hidden, then nothing improper, illegal or embarrassing will be found. In which case, prison officials have nothing to fear.

The public disinterest in prison inspections is understandable. You (the law-abiding taxpayer) believe there are numerous other causes worthier of your concern. So why bother yourself about strict oversight of your state's corporate-run prison? The answer is: it's in your own self-interest... more specifically, the interests of your wallet! Don't get suckered in and hooked by a prison corporation's dangling bait, bait which can come in various appealing guises:

1. "We're tough on crime."
2. "Prisons are not paid vacations."
3. "Teach 'em a lesson they'll never forget."
4. "If they don't like the time, they shouldn't do the crime."

Right.

These lures are all attractive to a law-abiding taxpayer who's been victimized by crime. The problem is, without your vigilance, these platitudes lead to your further victimization! The public is left flopping like a dying fish at the bottom of CCA's corporate tuna boat. You, the state taxpayer, pay disproportionate costs for substandard goods or (as in Idaho) for no goods at all (see chapters 3, 5, and 7). In the meantime, society suffers from the criminal recidivism stemming from inadequate, ineffective, or non-existent rehabilitation programs. In the following pages, I'll discuss several additional examples of a prison corporation trolling for your tax dollars. In the meantime, be smarter than a fish... avoid the bait.

Chapter 5

Econ 101: The Real Costs of Corporate-run Prisons

Most Americans (and too many economists) know very little about economics. This is for two reasons. First, for most people, raw numbers (statistics) are boring. Do you really care about the precise numerics of our nation's current account deficit, or are you happy just being employed at a local Toyota plant? To put it another way, are you truly concerned about the precise, digital temperature inside your refrigerator, or are you just happy that your root beer stays cold?

The second reason economics textbooks are not on anyone's best sellers list is that, in general, they are written in convoluted, obtuse, often pompous jargon which no reasonably literate, non-nerd, non-economist reader can understand.²³ For example is it really necessary to always use a phrase like "Marginal Physical Product (MPP) of labor"?²⁴

In this chapter, I'll discuss some basic economic principles as they relate to the private prison industry. It isn't necessary to read this chapter while holding an economic textbook in your opposite hand (God only knows I try to personally avoid this trap). All that's really required is some common sense blended with a dash of skepticism about a prison corporation's economic claims.

CCA prison contracts are carefully vetted by an entire array of corporate professionals (accountants, lawyers, statisticians, etc.). These executives are not idiots. To the contrary, they are extremely shrewd business people who know, to the very penny, the per capita daily costs of incarcerating any given size inmate population in any specific geographic location. There is a certain economy of scale involved in this. Generally, a larger prison tends to operate at a lower inmate per capita cost simply because there are many more inmates over whom to amortize the expense. For example, a larger prison incarcerating twice the number of inmates will not cost (on a per capita basis) twice the amount to build and operate as its baby brother housing only ½ that number. However, this "size advantage" is not linear. Regional variations in the cost of land, local taxes, utility services, waste disposal, seasonal weather patterns, etc. can result in a "large" prison incurring a higher per capita inmate cost than a smaller institution in an adjacent state.²⁵

To mitigate these regional variations, CCA whenever possible contracts with third-party national vendors for its prisons' necessary goods and services. For example, during my incarceration, all

²³ I'm being more than a little factious. Actually, a good place to start is Common Sense Economics by James D. Gwartney, Richard L. Stoup, and Dwight R. Lee (St. Martin's Press, New York, 2005).

²⁴ In case you're wondering, this refers to the "real" additional amount of goods a company can make by hiring additional workers. Doubling the work force, for instance, doesn't necessarily result in a doubling of product output.

²⁵ For you truly hard-core, die-hard mathematical types, this is also due to outlier cost data falling outside the domain of a profitable economic function. For example, a higher prison population might incur disproportionately higher per capita medical expenses, the result of the greater number of infectious disease vectors present (i.e. a greater percentage of inmates became ill in the larger facility because larger populations transmit disease more efficiently).

food services at the Crossroads Correctional Center were contracted through Trinity Services Group of Oldsmar, Florida. Similarly, all pharmaceuticals were purchased from an out-of-state vendor, Diamond Pharmacy Services in Pennsylvania. In short, as few items as possible are purchased locally, despite CCA's statements to the contrary.

In this manner, CCA obtains the lowest possible unit cost for its required goods and services. Of course, reducing costs is a legitimate goal and makes perfect business sense (especially, as CCA claims, when such lower costs are passed on the client jurisdictions).²⁶

Revenue Displacement: How your Montana taxes fix pot holes in Florida

However, this also means substantially reduced economic benefits to the communities hosting CCA prisons. For example, if an inmate at the Crossroads Correctional Center needs an aspirin, that aspirin is not coming from a downtown pharmacy in Shelby (or anywhere else in Montana, for that matter). Rather, the aspirin is mailed from Pennsylvania. This is not good news for you if you're employed at that local Shelby drug store. Fewer sales mean a lower business income for that pharmacy's owner. This, in turn, means lower employee salaries... and fewer jobs. Effectively, CCA just mailed your drug store job to Pennsylvania.

Also lost is the beneficial compounding effect of in-state dollars spent locally. Obviously, the money CCA just mailed to Pennsylvania won't be spent by you in Montana. It will not be recirculated between local buyers and sellers, but will effectively disappear from our state's cycle of commerce. Those dollars will now go elsewhere (e.g. Pennsylvania or Florida). Of course, these other states will tax this income, and those taxes (generated with your money) will pay for some other state's road repairs and school system. Incredibly, some studies of such revenue displacement show that \$8.00 is lost to the local economy for each dollar sent out-of-state.²⁷

Notably, unlike a corporate-run prison, state (and county) operated penal facilities tend to spend your state tax dollars within your own state! At the State Prison in Deer Lodge (or in numerous Montana county detention centers), that inmate's aspirin tablet is much more likely to come from a Montana pharmacy. The economic benefits to your state treasury (and therefore to you) are enormous. Because domestic business revenue increases, more business income taxes are paid to the state (rather than to Florida or Pennsylvania). In turn, this increased corporate tax revenue mitigates the need for individual income taxes. Also, as local businesses prosper with the increased prison business, they expand and hire more people. Salaries go up, jobs become more plentiful, and the need for any increase in personal income taxes is greatly diminished.

All of this is one reason cost comparisons between corporate and state-run prisons can be so misleading. Such comparisons simply don't consider the very real costs of revenue displacement inflicted upon the host state by a prison corporation. As example, it might cost state taxpayers \$97.00 per day to house an inmate in a state-operated institution. A company like CCA, on the

²⁶ More on this later. For now, suffice to note that in its entire 17-year history in Montana, CCA has never voluntarily offered any rebate to the state for such cost savings.

²⁷ This is the reverse of a phenomenon known as the Local Multiplier Effect (LME) and was first discussed by renowned economist John Maynard Keynes in his 1936 book, *The General Theory of Employment, Interest and Money*.

other hand, might offer to incarcerate that same inmate for only \$67.00. So what do you do, staff your own state prison or hire CCA? At first glance, this is a "no brainer". You should contract with CCA and save \$30.00 per diem for each inmate, right?

Wrong.

When you calculate the value of dollars displaced from your state's revenue stream (that is, the value of your tax dollars now spent out-of-state), You may find that CCA is by far the more expensive choice.

The Hamster Effect

There's a second reason that cost comparisons between a state-run institution and a CCA facility can be deceptive. Thankfully, this one is a little less ethereal than revenue displacement. Simply put, you should get what you pay for. In more formal economic jargon, you are due a qualitative and quantitative level of goods and services commensurate with the value of your traded currency. For instance, suppose you're in the market for a new car. Car dealer "A" (a local guy) offers you a nice new Chevy Cavalier for \$25,000. However, Car dealer "B" (an out-of-town business) advertises what is apparently an identical vehicle for only \$19,999. Despite the inconvenience of travelling out of town, you feel compelled to do business with dealer "B" and save \$5000. Consequently, you "do the deal" with the out-of-town vendor.

However, while driving home, you sense the acceleration of your new Chevy is a bit sluggish. You pull over and check beneath the hood, only to discover that the two advertised cars weren't quite identical after all. Instead of a V-6 internal combustion engine, dealer "B" sold you a car powered by six hamsters running on a treadmill (the treadmill is hooked to a small CD player which makes a "Vaa- ROOM" sound whenever you step on the gas pedal). You've traded currency legitimately valued at \$19,999 for goods of an inconsistent (much lower) value. Moreover, you discover it will cost another \$10,000 to install a real engine in your car, bringing your total expense to \$29,999. Obviously, you would have been better off doing business with the local dealer and paying a bit more up-front.

So it is with your state's penal system. You may be better off absorbing the initially higher per diem cost of a state-run facility if, in the longer term, you avoid costly law suits, defective goods, and sub-standard rehabilitative services (resulting in higher rates of criminal recidivism). How the "hamster effect" works against you at the Crossroads Correctional Center is discussed later in this chapter.

The Prison Marketplace

A unique aspect of the corporate prison business is the nature of its market. Sadly, the need for prisons will always be robust. Our nation's increasing population and the pandemic of drug abuse force law-abiding citizens to fund penal institutions. Unfortunately, the taxpayer has no choice. You might postpone the purchase of that new car, but can you postpone incarcerating a dangerous felon? Not likely. In "econo-speak", this is referred to as a "demand driven market"

or “inelastic demand” (rising costs do not affect your demand... and companies like CCA know it!). So you, the taxpayer, are forced to fund a prison... but how much are you forced to spend?

In a state-run penal institution, the amount of necessary funding is an algebraic function of three basic cost factors:

1. The aggregate size of the inmate population.
2. The unit costs of all necessary goods and services to operate the institution.
3. The “moral judgement” factor (what level of goods and services are humanely necessary to support each incarcerated individual).

The size of the inmate population can be the least controllable cost factor. A state’s increasing population density, crime rates, and mandatory sentencing are all beyond the taxpayer’s control. Likewise, there is only limited flexibility in negotiating the price of necessary goods and support services. We are therefore left with the “moral judgement” factor. This involves your moral and legal responsibility to confine an inmate under ethically acceptable, humane conditions. But what *are* those humane conditions; what specifically *are* the moral judgement issues?

The amount and quality of food, availability of competent medical care, and environmental factors (heat, light, space) are all matters of moral judgement. Unfortunately, penal jurisdictions have historically regarded such moral issues as the most flexible of the three cost factors. Turning down the thermostat in winter is a lot easier than renegotiating a natural gas contract, floating a new taxpayer bond issue, or releasing dangerous criminals.

It is not my purpose to address such moral concerns themselves. This book makes no arguments for better inmate care or a higher standard of living. I do not, for example, argue that inmates should be fed fresh bananas once a week to avoid potassium deficiencies in their diet. Such a moral judgement (in this example, deliberately frivolous) is up to you, the taxpayer.

However, if you *do* decide to supply fresh bananas, the inmates should get the bananas the you pay for! At the Crossroads Correctional Center, taxpayers simply are not getting their “banana’s worth”. This is because, in a corporate-run prison, the taxpayer now encounters a fourth cost factor: corporate profit. If you decide not to give inmates their bananas, shouldn’t the resulting cost savings go to you, the taxpayer, rather than to a prison corporation’s shareholder or CEO?

This argument is not simply hypothetical. During my incarceration, CCA (through its food vendor Trinity Services Group) elected to remove eggs and milk from the inmate’s diet. Guess how much of the resulting cost savings was passed on to Montana taxpayers. If you guessed anything above “zero”, you’re too high. Notably, had such dietary restrictions occurred at the state-operated prison in Deer Lodge, 100% of the cost savings would have gone to Montana taxpayers (albeit indirectly). The corporate prison marketplace is indeed unique.

More “Hamster Effect”

Some years ago, the Wendy’s hamburger chain very successfully lampooned its competition with a series of clever television commercials. As a result, the expression “Where’s the beef?” forever became part of the English language. Today, its usage denotes a lack of substance or

gross underperformance. In the case of the Crossroads Correctional Center, "Where's the beef?" has a very literal application.

While incarcerated, I was frequently served a meal listed on the prison menu as "stroganoff hot dish." In theory, this dish consists of macaroni noodles covered with a ground beef puree – and *sometimes* it did. That is, sometimes the dish actually contained meat (or something akin to meat). More often, however, I was served a "bouillon" – water with dissolved beef flavoring sprinkled over the macaroni. Similar discrepancies existed with menu items such as "cheese" and "fresh" fruit. The "fresh" fruit, for example, was often apple sauce.

Once, I was served a dish billed as "three-bean soup". I had assumed this meant a bean soup with three different types of beans. However, the posted menu was literally correct! My serving proved to be a watery broth containing precisely three beans!

I'm certain you, the law-abiding taxpayer, don't feel much sympathy for a poorly fed inmate... and you shouldn't. Rather, the sympathy you feel should be for yourself (maybe outrage is a better word)! You, after all, are the one paying for the non-existent meat, cheese, milk (and, of course, the missing beans).

Chapter 6

Jimmy Four-Eyes (a personal reminiscence)

The economic distortions I discussed in the previous chapter extend throughout all aspects of operations at the CCA-operated Crossroads Correctional Center. Certainly, this includes medical services... which brings me to the story of Jimmy Four-Eyes. Jimmy was my cellmate for over six months. A jovial, chronic alcoholic incarcerated for continual public drunkenness and (foolishly) taking a "swing" at a police officer while intoxicated, he really had no business being imprisoned with murders and rapists. Jimmy hated his nickname, derived from his terrible eyesight, but he would never acknowledge his condition. All he would say was "I have some vision issues."

"*Vision issues?*" Actually, Jimmy had *vision Armageddon!* In an unfamiliar room, he would hurt himself unless I followed him around and occasionally shouted "Wall!" His thick glasses could be used to ignite campfires, and every seeing-eye dog on the planet had refused to take him on as a client. I mean, this guy was worse than a bat without sonar!

Unfortunately, Jimmy had developed an allergy to the plastic frames of his glasses. This resulted in a severe inflammation of his tear ducts. A visiting ophthalmologist prescribed a specific medication, but the Doctor himself didn't actually deliver the medicine. As previously noted, CCA contracts with an out-of-state vender for all prison pharmaceuticals. Consequently, Jimmy's order was submitted to a Pennsylvania wholesaler in February... or so he thought. By mid-March, Jimmy was puzzled: no medication had been forthcoming. By April 1, Jimmy was annoyed: *still* no medication. By the end of April, Jimmy was downright angry. His eyes were inflamed, his head hurt, he couldn't sleep, and his medication was now two months AWOL!

After repeated trips to the prison pharmacy, Jimmy finally received a straight answer. CCA's cost of medication violated the company's profit margin guidelines. In effect, the costs of pharmaceuticals purchased by CCA are reimbursed by the Montana Department of Corrections through the prison's state contract fixed per diem rate. Consequently, CCA has rigid profit margin guidelines related to pharmaceutical costs. Should that margin be compromised, the medication in question is simply cancelled. Such was the case with Jimmy. The CCA medical auditor in Texas (a corporate employee) reviewed Jimmy's prescription order and deemed it unnecessarily expensive. The attending clinician's judgement was overridden, and Jimmy (after continued complaints) ultimately received a less effective, less costly medication. Of course, Montana taxpayers realized no benefit from all of this. That is, the Montana treasury received no reduction in per diem cost despite CCA's lowered expenses. The company simply kept the change.

I had a personal experience similar to Jimmy's. When first incarcerated, I was in my mid-sixties, and I had a history of hypertension. Left untreated, my bold pressure tended to soar somewhere out beyond the orbit of Jupiter. This condition requires daily medication which (to its credit) CCA provide in a timely manner... sometimes. It once took ten days to refill my prescription, and the lengthy delay was explained to me by an unusually candid CCA pharmacy technician:

"We'll get a bunch of meds after the first of next month. Your prescription renewal date happens to coincide with the end of the company's fiscal quarter, and we're on a tight budget until then."

This is a paraphrase, but an accurate one. What the pharmacy technician unwittingly revealed was a corporate accounting ploy, an attempt to "cook the books" and delay reporting corporate financial liabilities until the next fiscal reporting period. Such tactics allow a company to temporarily appear more financially successful than it truly is, and it's just such appearances that drive the value of a company's common stock. Unfortunately, Montana taxpayers don't enjoy such flexible accounting options. Through our state income taxes, we pay CCA right on time... every time.

Medical care provided at the Crossroads Correction Center is determined by a corporate balance sheet, not a patient's medical chart. Reducing inmate medical expenditures is certainly a legitimate goal, but reducing the quality of inmate health care to enhance shareholder profit is unacceptable.

I should note that I encountered several devoted medical professionals at the Shelby facility, but they didn't seem to hang around long. Indeed, during my 4 ½ - year incarceration at the Crossroads Correctional Center, the prison's clinic cycled through seven primary care providers (MDs and Nurse Practitioners). **Ironically, at a Shelby dinner party celebrating my release, the facility's former director of medical services (like myself, a Mormon) arrived to shake my hand and confirm his frustrations with the corporation's dollar-driven medical practices.**

Chapter 7

CCA versus the Boeing Aircraft Company

The Boeing Company is one of the most successful corporations in American history. The company has made enormous contributions to our country's national defense, transportation infrastructure, and space program, and its scientific contributions are too numerous to mention. Like the Corrections Corporation of America, Boeing is a publicly held company whose stock is freely traded on the New York Exchange. Here, all similarities between the two companies end.

Unlike CCA, Boeing manufactures a tangible product to precise specifications. Both the design and fabrication of Boeing aircraft are closely monitored by a wide array of public agencies, to include "end users" such as the Department of Defense. As a former military aviator, I have frequently flown Boeing products and interfaced with the company's technical representatives. To be sure, Boeing engineers are exceptionally bright, well educated people, and any comparison to a CCA prison guard is not exactly fair. Nonetheless, an examination of each company's management practices and corporate culture reveals some startling differences.

In the case of CCA, in 2014 a federal judge found that the company had deliberately and systematically understaffed its client facility, the Idaho State Penitentiary. During the court proceedings, both inmate counsel and the American Civil Liberties Union maintained that CCA had simply lost control of the facility. It was shown that, to maintain a minimum of order within the Idaho prison, CCA had actually negotiated with inmate gang leaders, offering them certain perks and privileges in exchange for "policing" the prison.²⁸ The company's chronic understaffing had "forced" local CCA officials to bribe gang members! However, this understaffing did not prevent CCA from billing the state of Idaho for several thousand hours of non-existent guard services.²⁹ Wait a moment! Isn't that fraud? They put you in prison for that, don't they? (not if you own the prison).

Contrast this with Boeing's crisis management. At about the same time as the CCA Idaho fiasco, Boeing suffered a series of inexplicable, perplexing fires aboard its new model 787 aircraft (the "Dreamliner"). This aircraft is a fully computerized, state-of-the-art flying machine with an extremely complex electrical system, making the malfunction all the more puzzling. However, Boeing faced the crisis "head on." It supplied a huge amount of technical data to the Federal Aviation Administration, the National Transportation Safety Board, client airlines operating the Dreamliner, and even to the news media at large. In short, Boeing attempted to conceal nothing, and no proverbial stone was left unturned.

Subsequently, the problem was solved by installing additional isolation cells within the aircraft's lithium batteries. Notably, Boeing did not have to be investigated by the FBI (like CCA) or dragged into court. The company corrected the problem through its own forthrightness. So why didn't the Corrections Corporation of America take a similar tact in Idaho?

²⁸ American Civil Liberties Union, aclu.org, May 23, 2016

²⁹ The Spokesman-Review, Betsy Z. Russell, April 11, 2013).

The answer lies in the two corporations' divergent business models. As earlier noted, CCA does not manufacture a tangible product in wide public use. Far more Americans ride airplanes than visit prisons, and honest, efficient corrections' management is not high on most people's Christmas list. Consequently, CCA can afford to be something less than forthcoming, as demonstrated by the delayed public outcry over Idaho prison staffing. Public outrage was slow to develop, but inevitably develop it did. What the outrage lacked in timeliness was made-up in legislative fury. The Corrections Corporation of America no longer does business anywhere within Idaho.

Boeing, on the other hand, continues to fly the Dreamliner, an aircraft which has proven to be tremendously profitable for that corporation. Maybe, after all, honesty *does* pay.

Chapter 8

The Outlaw Josie Wade (a personal reminiscence)

I've never met Clint Eastwood. As a boy, I immensely enjoyed his television series "Rawhide", and since that time I've watched several of his motion pictures. Other than this, old Clint and I don't have much of a relationship.

Still, I admire Clint. He's my kind of guy. More accurately, I admire the characters which he portrays. Typically, these are men who have endured great hardship and depravation, but who have somehow transformed it all into great accomplishment and success. My friend Clint has been shot, lynched, beaten, spat upon, and otherwise had some really bad afternoons. He has been robbed, betrayed, deceived, tricked, and fooled (sort of like the Montana taxpayer). What hasn't been done to Clint he's regrettably done to himself. Yet, he perseveres.

Now, the really weird thing about all of this is that some people hate Clint Eastwood for this very reason. They hate him *because* he's persevered. They hate him because of his courage, strength, and stamina. They hate him, of course, because he exhibits the very qualities they lack.

A prison guard I knew got me to thinking about all this. He was a Clint Eastwood hater (at least metaphorically). This CCA corrections officer (actually a senior Captain) seemed to despise any inmate who attempted to better himself, and he would continually demean (or even sabotage) any inmate's efforts in any endeavor. Why? Good question.

I'm not a psychologist, sociologist, or any other sort of "ologist", but I suspect this man had some pretty serious self-worth issues. I believe his compulsion to belittle inmates was driven by a corresponding compulsion to edify himself. This is not uncommon; such people can be readily found throughout society at large.³⁰ Although they can be really annoying, they are usually harmless.

The problem, however, is that a prison is not "society at large", and prison guards are not harmless. The Crossroads Correctional Center is a self-contained, rigidly (though ineptly) controlled little world all onto itself. It is a place which offers few opportunities for meaningful achievement and success, much less rehabilitation and redemption. Consequently, the negative effects of authoritarian bullying are greatly exacerbated, especially since an inmate has so little recourse. This brings me to the story of another one of my Native American friends.

Like my buddie Little Bear Hampton, Clifford was a younger Native American. Clifford, however, was a Sioux,³¹ and he had actually graduated from a reservation high school. The only

³⁰ Some even become President!

³¹ Hampton was actually a member of the Blackfeet tribe.

problem was... he couldn't read!³² That's why I became involved in his life. Due to my academic background, I had obtained an inmate job as a tutor of English and remedial reading in the prison's education department.³³

My first impression of Clifford was that, on a scale of one- to- ten, his self-esteem ranked about a minus twelve! Consequently, I spent the first few weeks convincing him he wasn't inherently stupid, and that written English wasn't just for us blue-eyed, Nordic, old white guys.

The time soon came when Clifford began displaying notable improvements in his reading skills. His sight word inventory had dramatically increased, and his phonics skills had likewise improved. Things were looking good... until that fateful day when, upon leaving the classroom, he was accosted by the Clint Eastwood hater. I listened, totally chagrined, as that Captain spoke to Clifford:

"Whatta you doing here, Tonto? You can't read. Who do you think you're kidding?"

The next morning, Clifford disenrolled from the prison's literacy program.

As I previously noted, this particular corrections officer clearly had issues of his own. However, I maintain that the Captain's words reflect a broader dysfunctional mentality within the prison's administration. At the Crossroads Correctional Center, "Treat inmates like they raped your Grandmother"³⁴ is the institutional norm. Of course, by adopting such a management posture, the institution's staff virtually ensures criminal recidivism, and, in a very literal sense, recidivism in turn guarantees the staff's continued employment. Increased recidivism, after all, means more housed inmates, and (for prison employees) more housed inmates equates out to greater job opportunity.

Remember that it was the Corrections Corporation of America that hired our Clint Eastwood hater. It was a CCA prison warden who promoted him to Captain. It was a CCA official who discontinued the prison's inmate literacy program. Why? As noted throughout this book, at the Shelby prison there exists no financial incentive whatsoever for the Corrections Corporation of America to rehabilitate anyone. Rather, the company makes its profit from an ever increasing, repetitive flow of human failure.

³² On various placement tools, Clifford tested out at the reading level of the average 4th grader, despite his high school diploma.

³³ Shortly after I was paroled, this position was eliminated and the prison's adult literacy program terminated. See the next chapter.

³⁴ See Chapter #1, page 10.

Chapter 9

“Readin’ and Rightin’ and ‘Rithmetic”

Inmates at the Crossroads Correctional Center were encouraged (sometimes required) to find employment within the institution. This employment involved activities such as building maintenance, janitorial duties, food preparation, etc., and would actually pay the inmate a nominal salary (twenty-five cents per hour, or so). Because my academic background is in education (the teaching of English and remedial reading), I found employment in the prison’s education department. For three years, I tutored fellow inmates and aided in the development of a comprehensive remedial reading curriculum. It was the most fulfilling work I’ve ever done.

If you purchased this book, it probably means that you can read. In turn, this implies that you have never suffered the appalling effects of adult illiteracy, a malady which today affects 37 million adult Americans and erodes the very foundations of human civilized behavior.³⁵ Indeed, there is a direct correlation between illiteracy and criminal behavior (especially violent criminal behavior).³⁶ If you are illiterate, communication (socialization) with those around you becomes cumbersome, frustrating and demeaning. An illiterate young man in today’s society is likely unemployed, socially inept, sexually dysfunctional, debt-ridden, malnourished, welfare dependent... and very, very angry. The news media continual reports about such men: young illiterates attempting to prove their manhood through the commission of violent criminal acts.

The Crossroads Correctional Center houses a number of such men. Many read below the third-grade equivalent level, and for them prison is a revolving door. They place “civilians” (non-inmates) into one of two categories: you’re either their prey, or you’re their day-care provider. Either way, you pay.

Both the Montana Department of Corrections and the Corrections Corporation of America (alias Core Civic), nominally acknowledge the importance of inmate literacy. In light of the available data, it’s impossible not to. In a 2004 university-level research project, the State of Washington’s Institute for Public Policy at Washington State University (Olympia) found that for every dollar invested in inmate literacy, the state’s criminal justice system saved \$5.65³⁷, an “investment return” of over 500% !

Such data is not lost on the executives of CCA. However, it’s the ironic case that literate inmates are both an asset *and* a serious liability to a prison corporation. On one hand, literate inmates can better comprehend posted notices, rules, and regulations. Such inmates can read and actually *understand* institutional policies. In my experience, literate inmates tended to be less violent and more compliant.

³⁵ For multiple reference sources, see the website of an organization called ProLiteracy: <https://www.proliteracy.org>

³⁶ Ibid

³⁷ Due to the lowered costs of reduced prison populations, fewer court proceedings, and the reduction of needed law enforcement activities

However, a literate inmate is also an *empowered* inmate, and in the eyes of the Crossroads' administration, this is not good. A literate inmate, after all, is much more likely to make embarrassing public disclosures and file successful court actions (like those of the inmates at the CCA-run prison in Idaho). Moreover, the literate inmate is much less likely to reoffend. He is therefore less likely to reappear in a CCA facility, whereas an illiterate recidivist is prone to such reimprisonment. In other words, to the Corrections Corporation of America, the "cash value" of an inmate diminishes as his literacy increases! The company's revenue stream is adversely affected because the literate inmate "fails" to reoffend and is not reincarcerated!

I recognize that this all sounds pretty cynical and difficult to believe. Yet, the unfortunate truth is that these thoughts did not originate with me. Rather, they came from no less an authority than the Crossroads' Director of Education. Shortly before my parole, his closing remarks spoken directly to me were:

"We want them literate... but not too literate."

Regrettably, CCA mimes the importance of inmate education while surreptitiously subverting it. For example, at the Crossroads Correctional Center, the success of the institution's educational program was measured by the number of inmates taking classes. At first, this might seem to be a useful metric. However, it all depends on how you count: one inmate taking three classes was actually counted as three students. Moreover, it made no difference if a class was not truly educational in nature. Such courses as finger painting, ceramics and (of all things) crochet were all counted as "core education." While such courses were popular with entertainment-starved inmates, they were recreational and can hardly be called "educational". When applying for post-release employment, should a parolee list "advanced crochet" as an educational qualification?

Another interesting educational statistic presented to a visiting group of Montana legislators was the apparently impressive rate of inmates completing the GED (a high school equivalency certificate. The state of Montana has since begun using the HiSET³⁸). In the spring of 2014, the Crossroads education department reported that 100% of students taking the GED examination completed it successfully... *both* of them! It turns out that the prison population had been carefully screened, and only those two (who were assured of passing) were permitted to attempt the examination. At the time, the Crossroads Correctional Center housed 567 inmates, approximately 1/3 of whom lacked their high school diploma. Wouldn't it have been better to allow, say, 100 students to take the GED test with a resulting success rate of 50%, rather than testing only two students with a 100% success rate? Of course, while benefiting more inmates, this would have deprived the Crossroads administrators of their propaganda ploy.

The number of illiterate inmates at the Crossroads is not necessarily a function of age. However, because a disproportionate number of prisoners are under thirty-five, a correlative number of illiterate inmates are young adults. When these younger offenders are sentenced, the presiding judge will frequently make completion of the GED a prerequisite for parole.³⁹ Supposedly, this is in the best interests of both society and the offender, promoting successful rehabilitation and a

³⁸ High School Equivalency Test

³⁹ In my personal experience, several young inmates with learning disabilities had received such a parole restriction. However, at the Crossroads Correctional Center, special education programs for such inmates are simply non-existent. This makes continued incarceration a certainty for such impaired individuals, to the benefit of CCA's corporate revenue stream.

return to productive citizenship. However, keep in mind that if the inmate is denied parole and continues to be incarcerated, CCA continues to be paid! The prison corporation, then, has an inherent financial incentive to obstruct an inmate's GED efforts (see previous page).

I suggest there is something dreadfully wrong with any business model which profits from illiteracy.⁴⁰

⁴⁰ Although it proved to be the most popular academic program in the history of the prison, our adult literacy program was discontinued shortly after I left the Crossroads. Indeed, under a new Chief of Unit Management, the entire educational program has been greatly diminished. Why? ...good question.

Chapter 10

Hamlet, Big Bertha, and the Principle of Legitimacy

In his iconic play Hamlet, William Shakespeare offers no comfort to illegitimate authority, (authority improperly wielded for its own aggrandizement and profit). Neither should you. Just as Polonius corrupted the moral authority of the Daish throne, so private prison corporations can destroy the legitimacy of your state's penal system. Consider:

- An inmate sits down to his noon meal of bean soup, only to discover a total of three beans floating in a bowl of dark-brown water. He ponders his own financial crime while contemplating the "taxpayer beans" skimmed from his soup for corporate profit (see Chapter 5).
- My cellmate lies on his bunk with a wet towel covering his face. His eye inflammation is especially severe today, but he lacks proper medication. Montana taxpayers are humane people, and they've provide funds to help. However, the necessary prescription violates a billion-dollar corporation's profit margin... by \$6.00 (see Chapter 6).
- A nineteen-year-old felon considers his own five-year sentence for robbery as he contemplates the fate of a CCA prison official who embezzled three times as much... and walked away unpunished.⁴¹

Such hypocrisies subvert the effectiveness the state's penal system and legally imposed punishment. As these incidents illustrate, integrity is neither taught nor modeled at the Crossroads Correctional Center. Rather, episodes like these transform a correctional institution into a graduate school for sociopathic behavior. In the eyes of an inmate, the legitimacy of the state is grossly diminished, as the incarcerating officials themselves make a mockery of rules and regulations.

Within a corrections environment, the effectiveness of rehabilitation programs is a direct function of the perceived legitimacy of supervising authority. That is, the less legitimate authority appears to be, the less effective will be any rehabilitation effort. Ultimately, authority abused is authority lost. Formally, this is known as the principle of legitimacy, and it explains the long-term *effective* use of power over other human beings.

The principle of legitimacy is not new. Over forty years ago (before his first combat deployment to Vietnam), a very young, very naïve Second Lieutenant I know intimately was taught the principle of legitimacy by Sergeant-Major Lloyd Squires of the 11th Armored Cavalry Regiment. In more recent years, the concept has been formalized by such academics as David W. Kennedy of the Harvard Law School.⁴²

⁴¹ I was a personal witness to this. The female CCA employee in question was actually my former case worker who, when her dishonesty was discovered, was simply allowed to resign with no criminal charges filed.

⁴² Kennedy graduated Magna Cum Laude from the Harvard Law School in 1980 and has taught at that university for over thirty years (with stints at Brown University, Stanford, and numerous European educational institutions). His seminal works include "Viewing crime and justice from a collaborative perspective: plenary papers of the 1998 Conference on Criminal Justice Research and Evaluation".

Malcolm Gladwell, in his thought-provoking book, *David and Goliath*,⁴³ describes the principle of legitimacy as a three-fold ethic:

1. Rules must be clear and consistent.
2. Rules must be equitably enforced.
3. A subordinate's voice should not be suppressed.

In other words, by not continually changing the rules, by consistently applying those rules to everyone in a like manner, and by simply listening, authorities will encourage compliance rather than provoke rebellion.

It sounds so simple, doesn't it? Yet, from Baghdad to Saigon, from Warsaw to Watts (and especially at the Crossroads Correctional Center), the principle of legitimacy has been consistently ignored. In each instance, authorities perceived as illegitimate lost control and resorted to harsh, repressive tactics (tactics which themselves ultimately provoked more rebellion).

In a penal setting, rebellion is not usually as dramatic as rioting inmates torching their cells (although numerous CCA facilities around the United States have a recent history of such insurrections).⁴⁴ More often, rebellion tends to be "Hamlet-like", resulting in a sullen, surly inmate who is now unlikely to ever reform. Such an inmate vows silently to "get even." He becomes consumed with reclaiming his metaphorical Danish throne. In his mind, *he* is now the victim, and such an attitude virtually ensures his recidivism and reincarceration. It will be the general public, not a prison corporation, who ultimately pays the price. After all, The CCA Chief Financial Officer would welcome back the former inmate with open arms, an open cash register... and handcuffs.

The principle of legitimacy is unknown to Big Bertha. Although she is a senior Crossroads' administer (a "Unit Manager" who supervises three cell blocks), nothing in her training syllabus ever addressed such a concept. Consequently, her corrections paradigm flounders in a sea of misunderstanding and hostility. For Bertha, staying afloat is not easy. She finds herself dragged under by the cross currents of personal ambition and effective inmate management. This isn't entirely her fault. At the Crossroads, corporate promotions are a function of one's perceived attitude toward inmates, and empathy is not well regarded. Ironically, empathy - the very quality which could enhance Bertha's legitimacy and improve her effectiveness - is the same quality which would inhibit her promotion. The logic of Crossroads management runs something like this:

"Inmates are criminals. They are failed human beings. It is our duty to protect society by punishing them for the crimes which brought them to prison."⁴⁵

⁴³ Little, Brown, and Company. New York. 2013. Mr. Gladwell's discussion of the British experience in Northern Ireland is especially compelling.

⁴⁴ Unfortunately, CCA facilities around the United States have a disturbing history of riots and insurrections. These facilities include the Crowley Correctional Facility in southeastern Colorado (2004), the Natchez County Correctional Facility in Natchez, Mississippi (2012), and the Cimarron Correctional Facility near Cushing, Oklahoma (2015). See Appendix "A" for a more comprehensive summary, or google *rioting at CCA prisons*.

⁴⁵ My paraphrase

Actually, it isn't! Imprisonment itself is the punishment. It is a prison official's job to maintain institutional safety and order, not to improvise additional punishment beyond that which the courts dictate. To do otherwise is the Afghani Taliban version of justice, a management tact totally inconsistent with American values.

Big Bertha doesn't see it like that. She believes that punishment is justice, and justice is her righteous duty. Incredibly, I've actually overheard her suggest that inmates be "corrected" (punished) before they commit an infraction.

Think about that for a moment.

Bertha wants to punish you so you won't do something requiring punishment! She actually believes that this is an inducement for good behavior!

Shortly after becoming a unit manager, Bertha issued a major disciplinary report (DR)⁴⁶ to six inmates for the same offense: walking on the second tier of a cellblock when the inmate resided on the first level. The only problem was that, under established facility policy for my cell block, this activity was not prohibited. A number of inmates (myself included) routinely climbed stairs or walked about the cell block just to stay fit. Bertha's six inmates broke a rule that didn't exist! Remember the first rule of the principle of legitimacy:

1. "Rules must be clear and consistent."

Two factors explain Bertha's zeal for DRs. First, a Crossroads employee is considered lax if he or she fails to write DRs. Similar to a traffic cop with a speeding ticket quota, it was in Bertha's self-interest to write as many disciplinary reports as possible. Secondly, remember that DRs decrease an inmate's chances of being paroled (again, see footnote #46 below). In other words, DRs increase CCA's chances of prolonging an inmate's incarceration. Prolonged incarceration allows CCA to continue its daily billing of Montana taxpayers for the inmate's imprisonment ... day after day, week after week, year- end and year- out. In short, CCA employees have an inherent financial incentive to issue disciplinary reports.

Contrary to the views of my fellow inmates, Big Bertha is neither Satanic nor stupid. Rather, she is functioning quite rationally in a closed-loop, self-reinforcing system with intrinsic financial inducements to inflict punishment and discourage rehabilitation. In effect, you, the taxpayer, are paying Bertha to write disciplinary reports so that her company can incarcerate more inmates --- and Bertha can then write still more DRs. And around and around it goes...

Don't you feel a little like that hooked fish in Chapter #4 ?

⁴⁶ This action is not to be taken casually. DRs came in two varieties: major and minor. In my personal experience, a minor DR may involve an infraction as insignificant as sharing a piece of bread with another inmate at dinner. Major DRs involve infractions such as arguing with a guard or cursing (as well as more serious offenses such as fighting or assault). All DRs have a negative impact upon an inmate. They can result in a lower quality of housing, denial of family visits, and loss of parole eligibility. A DR is serious stuff!

Chapter 11

Inside the Coliseum (a personal reminiscence)

The film Gladiator depicts the aging Roman emperor Marcus Aurelius and his trusted general, Maximus. The emperor is assassinated by his conniving son, who then banishes Maximus to a life of gladiatorial servitude. As you've probably guessed, I loved the movie. However, I mention it for a very different reason: the film's uncanny parallels with the management of the Crossroads Correctional Center.

Banishing the "opposition" is a case-in-point. As the Crossroads, a favorite disciplinary tactic was to relocate the objectionable inmate to a different cell block. While the physical environments are essentially the same, the social dynamics on the various blocks are quite different. Some are more raucous, housing a greater number of younger, more violence-prone offenders. Here, fights are much more frequent, and the prevailing atmosphere is far more tenuous. In prison jargon, such cell blocks are known as "gladiator schools."

To relegate an inmate to a "gladiator school" is a simple process; it requires no formal disciplinary action and can be done entirely capriciously. Consequently, banishment to a "gladiator school" became the punishment of choice among many Crossroads officials. My friend Igor suffered just such treatment. Igor and I lived on the same cell block: "D-pod", known as the "honor pod" (so designated because only compliant, older inmates were housed there). Igor certainly fit that description. A man in his mid-forties, he was soft-spoken and possessed a remarkable talent for calming people. He would speak logically, simply, and quietly, and his words were always insightful and appropriate.

However, to be entirely candid, there is another factor accounting for Igor's calming influence: his size. The man was simply enormous. He stood over 6'8" tall and measured about as wide. Weighing in at over four-hundred pounds, he presented an overwhelming presence. Whenever Igor walked in the prison's exercise yard, any nearby wildlife (squirrels, rabbits, buffalo or grizzly bears) would all flee in terror. Igor could activate the flashing red lights at a railroad crossing by simply strolling down the tracks, or he might initiate a total solar eclipse by standing fully erect. I mean, this man was *big*!

Due to the great esteem in which he was held, Igor became the inmate representative to the prison's Offender Welfare Fund (OWF) committee. The OWF is a cash account which derives its revenue primarily from the vending machines present in the prison's visiting area. These proceeds are to be used strictly for the benefit of inmates (a "pizza day" once or twice a year, additional library books, etc.), and the OWF committee oversees such purchases.

In the course of one OWF meeting, Igor became uncomfortable with audit documents presented to the committee by the prison administration, and he began to ask some embarrassing questions (questions like "What's the benefit to inmates?" and "When did we vote for this?"). The documents seemed to show that OWF funds had been spent on construction materials for an advertising parade float extolling the Corrections Corporation of America. The float was to be

displayed in the opening parade of the local Toole County Fair, and it carried a sign reading, "Celebrating 30 years of Corrections Excellence".

Igor wanted an explanation... and he got one the next morning.

He was called into a prison administrator's office and told he was being removed from the honor pod. When my flabbergasted friend asked why, he was told, "Your OWF questions are inconsistent with the good order of the institution."⁴⁷ Igor was transferred to a gladiator school that same afternoon.

I have never seen those questionable OWF documents.⁴⁸ Consequently, I have no way of verifying Igor's story. However, I believe him. After all, my friend (like Maximus) did end up in a "gladiator school" for no other apparent reason.

There's a second similarity between the Crossroads Correctional Center and the ancient Roman coliseum. In the coliseum, handlers would stick spear shafts through the cage bars and jab at the confined animals. The idea was to enrage the confined beasts and enhance their ferocity at "game time" (their release into the coliseum's performance arena). The animal handlers would then wager on whose lion or tiger became the fiercest.

In several occasions, I have personally witnessed similar conduct by CCA prison guards when interacting with Crossroads prisoners. I recall one particular instance quite clearly. I was in the prison's health clinic awaiting treatment when a fellow inmate arrived early for his appointment. The female guard on duty in the clinic flew into a rage over this and demanded that the inmate return to his cell. When the inmate explained that "pod control"⁴⁹ had ordered him to report early, the clinic guard only became more enraged.

"Don't you dare argue with me, sonny. I'll throw your butt into 'the hole'.⁵⁰
Get the hell out of here and go back to your cell."

Immediately following the inmate's departure, the clinic guard telephoned "pod control", giggling as she spoke to the pod control officer. I overheard her remarks:

"Send him right back. Let's see how many round trips he can make before he loses it.
I got five bucks that says he's good for only two trips."

Before you become too amused by this, remember that you, yourself, may one day face this same young, tormented beast... but now in your *own* coliseum: on your front lawn or in the parking lot of a local Walmart.

⁴⁷ I was not present at either the OWF meeting or Igor's subsequent meeting with the administrator. This quotation was supplied to me by Igor himself.

⁴⁸ However, quite by accident, I did see the CCA advertising float under construction.

⁴⁹ This is the guard operating a central kiosk in each wing of cell blocks.

⁵⁰ Prison jargon for solitary confinement

Chapter 12

Flashback

May 30, 2014. It was the thirty-ninth anniversary of the fall of Saigon and the end of the Vietnam War. It was also my 1100th day of incarceration, but I needed no calendar to recognize the parallels. The administration of the Crossroads Correctional Center and the inept political conduct of the Vietnam War share astonishing similarities. In this chapter, I explore these similarities and suggest they do not bode well for our nation's criminal justice system.

Ironically, the Vietnam War and corporate-run prisons share the same origin: fear. In the first instance, the onset of the Cold War and the threat of Soviet and communist Chinese expansionism pushed our frightened leaders into an ill-conceived Southeast Asian quagmire. Likewise, fear of escalating crime and the emergence of an entire drug subculture provoked mandatory sentencing, ballooning prison populations, and the proliferation of corporate-run prisons. The commercialization of our penal system became a reality.

Both in Vietnam and at the Crossroads Correctional Center, I lived behind razor wire and steel mesh. However, the reasons for this were diametrically opposed. In the first instance, the razor wire supposedly protected me. At the Crossroads, the wire supposedly protected *you*. In both cases, the protection was illusionary, a façade erected to calm fears rather than address some very real and difficult socio-political issues. The razor wire at the CanTho Army Airfield did not prevent our Vietnamese barber from directing mortar fire down upon my parked helicopter. Neither will the razor wire surrounding the Crossroads Correctional Center prevent the transformation of youthful offenders into life-long, career felons. Disregard of the principle of legitimacy (see Chapter 10) spawned the Vietnam debacle, and today the same dysfunctional mindset spawns habitual criminals at the Crossroads Correctional Center.

To both my Vietnamese barber and my fellow Crossroads inmates, ruling authority seemed illegitimate, selfish, and corrupt. To them, the authority structure was self-serving, driven by profit motive and capitalistic greed. Such a perception inevitably radicalizes personal behavior, producing habitual felons in Montana just as surely as it produced communist insurgents in Vietnam.

Moreover, both the politicians of the Vietnam era and the executives of the Corrections Corporation of America have troubling histories of duplicity. The American involvement in Vietnam was initially justified by a 1964 bogus North Vietnamese attack on two United States Navy warships.⁵¹ This "operational deception" resulted in the Gulf of Tonkin congressional resolution authorizing large-scale deployment of American forces to the Vietnamese peninsula. Likewise, the Corrections Corporation of America perpetrated its own operational deception at the Idaho State Prison by falsifying staffing reports and claiming thousands of non-existent work hours (see Chapters 3, 7 and Appendix "A"). Like the Johnson administration, CCA denied the

⁵¹ The destroyers USS Maddox and USS Turner Joy. See "Grand Delusion: US Strategy and the Tonkin Gulf Incident." (Naval History Magazine, August 2014, Volume 28, Number 4. United States Naval Institute, Annapolis, Maryland).

allegations. To their credit, however, CCA did *not* claim their Idaho staff had been attacked by North Vietnamese torpedo boats (Idaho, after all, is landlocked).

Success on the battlefields of Vietnam was measured by "body-count", just as today the success of a CCA prison is measured by inmate count. During the war, the number of Vietnamese actually loyal to "our side" was operationally irrelevant. It made no difference to my senior commanders how many Vietnamese I befriended. They were only interested in how many I killed. Likewise, at the Crossroads Correctional Center, success is measured by the number of "bad guys" incarcerated, not by the number of inmates rehabilitated. Of course, Whether in Can Tho⁵² or Shelby, Montana, the "body-count mentality" measures failure, not success. Just as a successful counter-insurgency operation results in the "conversion" (rather than the death) of indigenous people, so a successful correctional system will rehabilitate, not reincarcerate.

Another parallel between operations at the Crossroads Correctional Center and the Vietnam War is the over-reliance on technology. During the war, the United States was the most technologically advanced nation on the planet. No adversary on Earth could match our exotic weapon systems and tremendous air power. However, the North Vietnamese didn't need to *match* us; they simply *outlasted* us! Our adversaries played a different game by different rules, and that made our technology simply irrelevant. Ultimately, it was the Vietnamese perception of our lack of legitimacy that defeated us (see Chapter 10).

Like American soldiers in Vietnam, staff at the Crossroads Correctional Center are awash in technology. The facility contains metal detectors, motion detectors, audio alarms, video cameras, electrified fencing, remotely controlled cell door locks, audio alarms, communication radios, intercom systems, etc., etc. Yet, none of this has any effect on an inmate's mindset or future behavior. Certainly, any prison has need of systems which ensure physical security. However, simply adding another TV monitor or building a higher fence does nothing to address the public's longer-term safety. Sooner or later, the vast majority of Crossroads inmates will be released. What then? Will residents of Shelby surround their homes with razor wire or install electrified fencing? Rather than purchase more security toys for their facility, Crossroads administrators should provide their staff with meaningful instruction in human dynamics, body language, principles of authoritative legitimacy, and leadership. By applying such training (and by modifying their behavior to be more supportive of inmate rehabilitation), Crossroads staff can better assure the public's welfare and safety.

These similarities between the Vietnam War and the prevailing management tactics of Crossroads administrators, together with only cursory legislative oversight and our state's reliance on a profit-based, corporate-run prison, all bode ill for the public good. It's time that we Montanans reevaluate this "corrections-by-proxy" paradigm and reassume responsibility for our own penal system.

⁵² Can Tho is a larger provincial Vietnamese city located in what was the American IV Corps (or Southern-most) area of combat operations.

Chapter 13

The Quantum Mechanics of Corrections

Thus far, this book has led you into some pretty strange places: from inside a corporate-run prison to the internal workings of the world's prima aircraft manufacturer, from a hero Western cowboy to Shakespeare's Danish prince, and even into a Roman-style "gladiator school"! By now, you're no doubt wondering what rabbit hole this weirdo author will next fall into.

Well, would you believe the eerie world of sub-atomic particle physics?

In some respects, the criminal justice system is akin to quantum mechanics. At the sub-atomic level of high-energy particle physics, apparent contradictions are rampant. Cause and effect become disjointed, and our observations defy traditional logic and common sense. So it is with our nation's penal system.

We impose lengthy prison terms to reduce crime, only to discover that such sentencing can actually *promote* criminal behavior. We demand strict *institutional* control of our inmate populations, believing this will "teach 'em a lesson". Yet, we somehow fail to instill *self*-control. We live in the freest society on Earth (like the song says, "the land of the free and home of the brave"), but we still imprison more people than China, Russia, and North Korea combined. The United States has only 5% of the world's population, yet we incarcerate 25% of the world's prisoners.⁵³ Our quantum world of corrections is riddled with paradox.

So how do we deal with all of this and still remain just and humane? As I've previously noted, I'm not a psychologist, criminologist, or any other type of "ologist" (much less a particle physicist). However, here's the perspective of a mature (read "very old") ex-felon with some experience inside our penal system.

Late in my life, I committed a "white collar" crime that deeply hurt my friends and family. I deserved to be imprisoned. What I *didn't* deserve was to be toyed with, to become a game token on a corporate prison's monopoly board so that the company could "pass go" and collect \$200.⁵⁴

⁵³There is a huge number of various sources confirming this data, including several university studies, international organizations, and The US Department of Justice. A convenient tabular listing (compiled by the University of London) can be found at http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All. Notably, politicians from all sides of the political spectrum have acknowledged this problem. See "Sen. Rand Paul (R-Ky.), news release on Web site, March 9, 2015" and "Hillary Rodham Clinton (D), speech on criminal justice at Columbia University, April 29, 2015". See also Michelle Ye Hee Lee, Washington Post Fact Checker at https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/?utm_term=.e2405f143d9e

⁵⁴ CCA earned a *lot* more money off me than \$200. I was imprisoned for 4 ½ years, but it took the company less than three days to make its first two-hundred bucks!

The debt I owe is to society and my aggrieved clients, not to a billion-dollar, international corporation (especially when that corporation itself commits fraud).⁵⁵

Herein lies the solution to the quantum corrections conundrum: **get real!** Hypocrisy is the one sin most damaging to both an effective correctional system and a legitimate scientific inquiry. It totally devastates either process, replacing credibility with cynicism, truth with lies. To accomplish this destruction, however, hypocrisy requires your assistance. You're aghast at crime, so you want to hire a third party (like CCA) to rid you of the problem. You, after all, like the company's website, and you want to "get tough on crime." But why? What's your true agenda? Here are some possibilities:

1. You're "tough on crime" because draconian sentencing prevents criminal recidivism and keeps you safer.
2. You're "tough on crime" because you want all those worthless, sub-human bastards to get their just desserts.
3. You're "tough on crime" because you really don't want to be bothered. You want to just "lock 'em up" and be left alone (even if that further enriches a multi-billion-dollar, out-of-state corporation).

You may actually believe options #1 or #2, and that's O.K. by me. Factually, you're *wrong*, but at least you're being involved and "real". Option #3 is a different matter. If you chose #3, you're proclaiming you are lazy and uncaring. In fact, isn't this the message you send to your small child when you relinquish discipline to a relative or babysitter? Isn't this the same message you give to your teenaged son when you leave his behavior problems to the high school principal? Indeed, it is the same message you broadcast to young felons when you hire corporate surrogates to administer your state's penal system.

Not surprisingly, this is the perception of most young Crossroads inmates. They believe that, more than you hate crime – more than you hate *them* – you hate inconvenience.

In your worldly view, a prison is a prison is a prison. It makes no difference who's in charge. However, at the quantum level of a young incarcerated inmate, the perspective is quite different. Here, corporate profiteering and staff self-interests smash violently into his rehabilitation nucleus. As in quantum physics, this collision produces a highly unstable particle, a sort of human quark exhibiting strange characteristics and abnormal behaviors: in other words, a criminal.

This should not surprise you. If you seek a different result, then adopt a different model! If your serious about an effective correctional system – a correctional system which actually *corrects*, keeps you safer, and lowers long-term costs – then reject the "out-of-sight, out-of-mind" mentality. Reject the incarceration-for-profit business.

⁵⁵ Again, see chapters 3, 7, and Appendix "A".

The Corrections Corporation of America (or CoreCivic) faces a quantum challenge of its own: how to reconcile Idaho malfeasance with its corporate business model. Indeed, can the company sustain its profit margins while incarcerating fewer inmates? More specifically, can the corporate revenue stream be made a function of successful inmate rehabilitation (rather than criminal recidivism and repeated incarceration)?

Like senior physicists, this company's executives must reexamine the sub-atomic structure of their business. They must accept a quantum contradiction and become more profitable with fewer inmates. It's time to stop the body count and embrace a business model more consistent with the public's best interest.

The next chapter proposes such a model.

Chapter 14

A Quantum Solution

The senior executives of prison corporations are not inherently wicked. Like Big Bertha (Chapter 10), they are simply functioning rationally in a closed-loop, self-reinforcing system designed to maximize profit. As noted throughout this book, it is this system which financially rewards rehabilitative failure but penalizes rehabilitative success. In Montana, CCA is paid only so long as an inmate is incarcerated.

It doesn't have to work this way. Prison corporations and their client jurisdictions can flip that correctional paradigm to reward rehabilitative success and financially discourage rehabilitative failures. In such a business model, a prison corporation would receive a quarterly stipend (or "good behavior dividend") for a released offender's continued good conduct. This "dividend" could be calculated and paid for in a number of ways. For example, it might begin after a released offender has been drug-free and compliant for no less than one year. At least part of the dividend would be paid by the offender himself, who each month would surrender a pre-determined portion of his employment income to the state's Department of Corrections. In any case, the cost to the state for such a dividend would be far less the per diem expense of the offender's reincarceration.

For more intractable offenders (those with a lengthy criminal history), the amount of the "good behavior dividend" could be negotiated with state authorities on a case-by-case basis. In effect, this means that the more successful are the corporation's rehabilitative efforts with "hard-core" offenders, the greater will be the company's financial rewards.

However, should the former inmate recidivate, commit a crime, and be reincarcerated, the company's "good behavior dividend" would immediately cease, and the repeat offender could not be rehoused in any of the corporation's prison facilities. Should demographic circumstances (i.e. overcrowding at state or county facilities) leave the state no other alternative than to reincarcerate at a corporate facility, the corporation would incarcerate the reoffending individual at a discounted per diem rate commensurate with its actual daily operational expense. In other words, no profit would be allowed for reincarcerating rehabilitative failures. I suspect that the imposition of such conditions would immediately cause drastic changes in employee attitude and conduct at the Crossroads Correctional Center, with more serious attention given to rehabilitation programs.

Montana taxpayers benefit from this plan in three ways. First, the number of repeat offenders is lowered. Fewer recidivists mean lower prison populations, resulting in cost savings to the state. Also, public money no longer rewards corporate failure, and the former inmate is no longer taxpayer dependent for his daily sustenance.

The second benefit is similar. The former inmate becomes a revenue *producer* rather than a public tax liability. The inmate now *pays* taxes, rather than consuming them. The benefit to the state's treasury should be obvious.

Third, the successfully rehabilitated inmate becomes a customer of local businesses. He is no longer *given* his groceries, clothing, housing, medical care, etc., but must now purchase them himself. This not only lifts a burden from the shoulders of other taxpayers, but it contributes to the income of community businesses, helping to expand the local economy. Over time, this results in the expansion of local businesses, with an associated increase in salaries and available jobs.

Finally, there are pronounced benefits for the prison corporations themselves. Record profits notwithstanding, building and operating a penal facility is a tremendously expensive undertaking, requiring large "upfront" capital outlays. The company hopes that, at some future date, these initial outlays will be offset by accumulated profits (assuming that the facility operates smoothly without encountering any of the historical glitches enumerated in Appendix "A"). My proposal would reduce this risk and free up large sums of corporate capital for other purposes. Alternate corporate investments (equities, real estate, etc.) would diversify the company's portfolio and provide both enhanced financial security and return-on-equity. Stock buy-backs, increased dividend yields, and higher funding of corporate retirement plans all become possible.

To summarize, there is a better way. It requires only the will to make it happen.

Chapter 15

In the Mean Time –

The “quantum solution” I advocated in the prior chapter will not occur overnight. However, If your state is already hosting a corporate prison, there are several immediate actions you and your legislators can undertake to make corporate interests more congruent with your own. Here are some suggestions:

1. First and most importantly, demand that your state legislators and other officials conduct meaningful, unannounced audits and facility inspections, not prearranged social engagements (reference chapter 4). **Such proactive oversight is critical to your safety and economic welfare, and its importance cannot be overstated.** These inspections should occur at any time, day or night, during all seasons of the year, and should include the activities of any sub-contractors that the corporation employs. Particular attention should be given to financial transactions involving meal preparation and healthcare. **Also, it's critical that during a facility visit, the inspection team randomly interview inmates and lower level employees. Suitable arrangements should be made to ensure there is no corporate retaliation.**⁵⁶
2. Carefully examine the relationship between your state's parole board and companies like CCA. Is there a pattern of collusion or interaction involving luncheons, dinner parties or other social engagements? Are any parole board members shareholders of the corporation's common stock? Corporate prison operators have an inherent financial interest in seeing as few inmates paroled as possible. You, on the other hand, have an interest in paroling as many as possible consistent with public safety. **Don't allow your state's parole board members to line corporate pockets with your tax dollars.**⁵⁷
3. Many contracts with the Corrections Corporation of America permit the company to pick-and-choose who it incarcerates. This is bad public policy. It allows a company like CCA to house the least troublesome, least costly inmates, while the costlier troublemakers are housed in a state-run institution. In addition to the economic issues revealed in chapter 5, it therefore should not surprise you that CCA incarcerates inmates at a lower per capita cost. Prisoners requiring the added expenses of closer monitoring or treatment are simply shuffled off to a state facility.
4. Demand that the prison corporation in your state pay its employees a competitive wage. At one time, my teenaged daughter was earning more per hour at a fast-food restaurant than an entry-level guard at the Crossroads Correctional Center. Such inequality affects you in two ways, the first being your personal safety. Underpaid security staff are more prone to error, and they are also more likely to undertake the sort of inmate abuse I've describe in previous chapters. After all. It's difficult to behave professionally when

⁵⁶ One method might be to supply either the interviewee himself or a family member with a “hot-line” telephone number or other direct access to members of the inspection team.

⁵⁷ If your state doesn't already do so, it's also a good idea to periodically replace parole board members with new appointees.

you're paid an unprofessional wage. Second, underpaid staff contribute far less to the local economy and (despite their employment status) may actually qualify for public assistance (food stamps, etc.). Again, you, the taxpayer, get stuck with the tab.

Conclusion

Over fifty years ago, a young lawyer named Ralph Nader wrote a book entitled *Unsafe at Any Speed*. Mr. Nader disclosed a host of shocking malfeasance within the American automobile industry, to include a litany of issues jeopardizing public safety. For this, Mr. Nader's personal life was smeared by General Motors (ultimately resulting in GM's formal apology to Mr. Nader before a congressional committee).⁵⁸ This proved to be a watershed moment within the industry, ultimately resulting in the much safer vehicles we drive today. While I lack Mr. Nader's talent (and his courage), I believe the incarceration-for-profit industry is long overdue for such a watershed. As it is presently construed, the industry operates contrary to Montanans' public interest and is incompatible with the fair administration of justice.

Companies like CoreCivic (or the Corrections Corporation of American) operate contrary to the public interest first because they are costly. They deliver a substantially diminished level of goods and service, yet charge a disproportionately high price. Were a state-run institution to adopt similar draconian economies, the costs to the taxpayer would be far less than CCA's sticker price. In short, the CCA hamburger may initially appear less expensive, but it has no beef.

On a more fundamental level, CCA's revenue stream depends upon incarcerating as many inmates as feasible for as long as possible. The taxpayers' best interest is just the opposite. Consistent with public safety and the cause of justice, taxpayers seek to imprison as *few* as feasible for the *shortest* time possible. Furthermore, a corporation like CCA has no inherent financial interest in rehabilitating anyone. To the contrary, recidivist offenders actually offer the corporation a continuing revenue stream of public tax dollars.

The CCA Chief Financial Officer loses no sleep over an inmate's guilt or innocence. Indeed, throughout its existence, the Crossroads Correctional Center has failed to provide the access to "prison-appointed" attorneys as required by contract with the state.⁵⁹ The prison's "legal library" consists of a small closet lined with legal volumes, permitting use by only a one single, lone person at a time. Even if the required attorneys *were* provided, there exists no space for them to work with inmate clients.

In closing, when I next walk your streets as a free man,⁶⁰ I don't want to encounter a knife-wielding, hate-filled, young ex-convict who was taught his perverted conduct at a corrupt penal facility, a facility corrupted by corporate expediency and profit. I don't want my tax dollars misallocated. I don't want literacy restricted or curtailed. Most of all, I don't want our penal system to continuously manufacture more criminals. We already have enough.

⁵⁸ For an excellent historical summary of these events, see: CHRISTOPHER JENSEN, New York Times Nov. 26, 2015

⁵⁹ See Appendix "D", Section XXIV, Item "E", contract page #30

⁶⁰ I was paroled in October, 2015.

APPENDICES

A (page 50)	A Troubling History of Duplicity
B (page 54)	Executive Summary Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons (Office of the Inspector General, US Department of Justice) August, 2016
C (page 59)	Court Opinions Concerning the Efficacy of Private Prisons and The Audit Protocols of the American Correctional Association
D (page 63)	State of Montana Contract with the Corrections Corporation of America July, 1998

Appendix "A"

The Corrections Corporation of America (CCA) - aka CoreCivic⁶¹

A Troubling History of Duplicity

The following is a random sampling of major incidents occurring at CCA facilities over the past twenty years. This list is obviously not all-inclusive, but it does offer some insight into a pattern of CCA corporate failures at institutions nation-wide. The reader is encouraged to utilize the referenced sources and obtain additional information. All articles are reproduced verbatim from the referenced sources.

This first example is actually the most current, occurring in June of 2017 at Nashville's Metro-Davidson County Detention Facility (Nashville, Tennessee is actually home to CCA's corporate headquarters). One cannot help but wonder: if CCA cannot adequately manage inmate health care in its own home town, what's going on 2000 miles away in Shelby, Montana?

- NASHVILLE — The female inmates of Nashville's privately operated jail could scratch the rashes spreading across their bodies. **But officers warned inmates they'd be put in solitary confinement if they talked about what caused the rashes they'd had for weeks or months,** alleges a new federal lawsuit filed Friday. "CoreCivic officers began threatening Plaintiff and other inmates that if they mentioned the word 'scabies,' complained about it, or filed a grievance, they would be placed in solitary confinement," the lawsuit states.

"Inmates attempted to inform their family members about the scabies infestation over the phone and asked their families to research scabies on their behalf. Because (CoreCivic) monitors all phone calls, those inmates immediately had their phone privileges revoked, in retaliation for attempting to bring light to the epidemic."

Allegations of threats, retaliation and denying medical treatment pepper the 21-page lawsuit, which seeks class action status for all female inmates who have suffered or will suffer from a scabies outbreak that, after weeks of festering in one portion of the jail, earlier this month led to treatment for all inmates at the 1,300-bed facility and many local courthouse workers. The outbreak occurred at the Metro-Davidson County Detention Facility, operated by CoreCivic, a Nashville-based private prison company previously known as Corrections Corporation of America or CCA.

As word spread of the outbreak, allegations CoreCivic denied treatment or downplayed the severity of the disease prompted questions from judges as well as local and state lawmakers.

The previous example of duplicity and malfeasance is not an isolated incident. Almost from its very inception, CCA has had a troubling history of such malfeasance. The following examples are listed in chronological order, beginning in 1988 (CCA was founded in 1983).

⁶¹ As earlier noted, in 2016 (following a series of nationwide incidents as exemplified in this appendix), the Corrections Corporation of America changed its name to Core Civic.

- CCA was hit with its first major lawsuit in 1988 when the company was accused of failing to provide adequate medical care to pregnant 23-year-old Rosalind Bradford. Bradford was held in CCA's Silverdale facility in Tennessee, where she died from pregnancy complications. **A shift supervisor later testified that Bradford had suffered in agony for at least twelve hours before staff agreed for her transferal to a hospital. The supervisor said in a deposition, "Rosalind Bradford died out there, in my opinion, of criminal neglect."** CCA agreed to pay \$100,000 to settle a lawsuit filed by her family. (Erica Bates, "Private Prisons," The Nation, 1997.)
- Gross denial of medical care is exemplified by a federal lawsuit filed against CCA by Tamara Schlitters in March 2003, charging that prison officials refused to fill a prescription for her 26-year-old son Jeffrey Buller, resulting in his death at Colorado's Kit Carson Correctional Center. Buller suffered from hereditary angioedema, causing his breathing passages to swell, but which could be controlled effectively with medication. **Buller had been supplied with medication throughout his incarceration but in the last few weeks of his stay the supply ran out and, despite repeatedly pleading with CCA medical staff for a new prescription, no new supply was reordered. Buller died a day before he was supposed to be released.** CCA settled the lawsuit out of court in 2004. (Henri E. Cauvin, "D.C. Jail Stay Ends in Death For Quadriplegic Md. Man," The Washington Post, October 1, 2004.)
- A lawsuit was filed against CCA in 2004 over the death of 27-year-old quadriplegic Jonathan Magbie who was held at Correctional Treatment Center in DC. **Jonathan was not given his diaphragmatic ventilator which led to him dying of respiratory failure four days into a ten-day sentence.** (News Herald, August 19, 2002. Cited in)
- In July 2004, guards at Colorado's Crowley County Correctional Facility ignored prisoners' requests to speak with the warden over conditions, resulting in a quickly escalating riot with over 400 prisoners. An after-action report by the Colorado DOC highlighted the poor training of CCA staff and insufficiency of emergency response procedures, making particular mention of staff members' disregard of prisoners' complaints and their use of excessive force as central reasons for the riot's escalation. (Colorado Department of Corrections, "After Action Report. Inmate Riot: Crowley County Correctional Facility," 1 October 2004). After the riot, numerous prisoners said they were assaulted by CCA employees, including prisoners who did not participate in the disturbance. **One prisoner, who was trying to assist a deaf cellmate, was forced to lie down in sewage, dragged from his cell by his ankles, and left outside all night in handcuffs. Others were forced to relieve themselves in their pants as they were taunted and gassed by staff, then video-recorded in the showers by female employees.** Over 200 prisoners filed lawsuits against CCA and in April 2013, CCA reached a \$600,000 settlement. (Alan Prendergast, "Crowley inmates settle lawsuit for \$600,000," Denver Westword, April 24, 2013.)

- In Idaho, a 2008 state-run study obtained by the American Civil Liberties Union found that there **were four times as many prisoner-on-prisoner assaults at the state's CCA-run prison than at Idaho's other seven prisons combined.**
- Even when CCA officials knew about potential protests in advance, staff have often failed to put appropriate response procedures in place. In May 2012, CCA staff were informed about a protest concerning poor food and medical care at Mississippi's Adams County Correctional Facility (Holbrook Mohr, "FBI reports Mexican group 'Paisas' started prison riot in Adams County," *The Associated Press*, August 13, 2012). CCA employee Catlin Carithers was beaten to death, other employees were taken hostage, and at least five staff members and three prisoners were treated for injuries. An FBI affidavit describes a chaotic scene, with prisoners hurling tear gas canisters back at guards, many of whom abandoned the facility. **Mississippi Representative Bennie G. Thompson commented that the riot "brings into question the effectiveness of privately owned and operated prison facilities."** (Robbie Brown, "Mississippi Prison on Lockdown After Guard Dies," *The New York Times*, May 22, 2012.)
- "The private contractor operating the Idaho Correctional Center (ICC) south of Boise has acknowledged that employees at the prison falsified staffing records last year in violation of Corrections Corporation of America's (CCA) contract with the State... **resulting in an overbilling to taxpayers of 4,800 man-hours of labor.**" (*The Spokesman-Review*, Betsy Z. Russell, April 11, 2013).
- "Private prison operator Corrections Corporation of America is trying to seal from public view documents in a lawsuit that claim female visitors to a Tennessee prison were forced to undergo strip searches to prove they were menstruating. **Three women have accused the company of violating their rights by forcing them to expose their genitals to guards after they tried to bring sanitary pads or tampons into South Central Correctional Facility,** about 85 miles southwest of Nashville." (WWTC-AM, Eagen, Minnesota, August 25, 2016).
- The Sept. 12, 2015, riot at Oklahoma's Cimarron Correctional Facility left four inmates dead and sent several to the hospital. The prison has a capacity of just fewer than 1,700 inmates, and its section on the CCA website boasts of a few awards, including a recognition for "Best Performance in Safety" from 1998. There are no awards listed from this century. **From 2012 to 2016, a third of all homicides committed in Oklahoma prisons occurred in the two state-contracted CoreCivic facilities, though they held only a little more than 10 percent of the state's prisoners, according to data from the Oklahoma Department of Corrections.**

only a little more than 10 percent of the state's prisoners, according to data from the Oklahoma Department of Corrections.

- “A federal appeals court has upheld a contempt order against Corrections Corporation of America (CCA) for violating terms of a settlement agreement over how it operated the Idaho Correctional Center. The ruling stems from a federal class-action lawsuit brought by the American Civil Liberties Union against CCA on behalf of prisoners incarcerated at the facility. The complaint alleged **deliberate indifference by CCA officials, inadequate staffing and supervision, and a failure to adequately investigate acts of violence at the prison.**” (American Civil Liberties Union, aclu.org, May 23, 2016).

Appendix "B"

EXECUTIVE SUMMARY:

**Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons
(Office of the Inspector General, US Department of Justice, August, 2016)**



Office of the Inspector General
U.S. Department of Justice



Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons

EXECUTIVE SUMMARY*

Introduction

The Federal Bureau of Prisons (BOP), which is the component of the Department of Justice (Department) responsible for incarcerating all federal defendants sentenced to prison, was operating at 20 percent over its rated capacity as of December 2015. To help alleviate overcrowding and respond to congressional mandates, in 1997 the BOP had begun contracting with privately operated institutions (often referred to as "contract prisons"), at first on a smaller scale and later more extensively, to confine federal inmates who are primarily low security, criminal alien adult males with 90 months or less remaining to serve on their sentences. As of December 2015, contract prisons housed roughly 22,660 of these federal inmates, or about 12 percent of the BOP's total inmate population. These contract prisons were operated by three private corporations: Corrections Corporation of America; GEO Group, Inc.; and Management and Training Corporation.¹ The BOP's annual expenditures on contract prisons increased from approximately \$562 million in fiscal year (FY) 2011 to \$639 million in FY 2014. In recent years, disturbances in several federal contract prisons resulted in extensive property damage, bodily injury, and the death of a Correctional Officer.

The Office of the Inspector General (OIG) initiated this review to examine how the BOP monitors these facilities. We also assessed whether contractor performance meets certain inmate safety and security requirements and analyzed how contract prisons and similar BOP institutions compare with regard to inmate safety and security data. We found that, in most key areas, contract prisons incurred more safety and security incidents per capita than comparable BOP institutions and that the BOP needs to improve how it monitors contract prisons in several areas. Throughout this report, we note several important corrective actions the BOP has taken, in response to findings and recommendations in our April 2015 audit of the Reeves County contract prison, to improve its monitoring of contract prisons, including in the areas of health and correctional services.²

The BOP's administration, monitoring, and oversight of contract prisons is conducted through three branches at BOP headquarters and on site. According to the BOP, at each contract prison, two BOP onsite monitors and a BOP Contracting Officer, in cooperation with other BOP subject matter experts, oversee each contractor's compliance with 29 vital functions within 8 operational areas, including correctional programs, correctional services, and health services. The BOP

* Redactions were made to the full version of this report for privacy reasons. The redactions are contained only in Appendix 9, the contractors' responses, and are of individuals' names or information that would enable an individual to be identified.

¹ In January 2007, the BOP awarded a contract to Reeves County, Texas, to operate the Reeves County Detention Center compounds R1 and R2 (RCDC I/II). Reeves County subcontracted operation of RCDC I/II to the GEO Group, Inc.

² See Department of Justice OIG, *Audit of the Federal Bureau of Prisons Contract No. DJB1PC007 Awarded to Reeves County, Texas, to Operate the Reeves County Detention Center I/II, Pecos, Texas*, Audit Report 15-15 (April 2015), iii.

monitors contractor performance through various methods and tools that include monitoring checklists, monitoring logs, written evaluations, performance meetings, and regular audits.

Results in Brief

We found that in a majority of the categories we examined, contract prisons incurred more safety and security incidents per capita than comparable BOP institutions. We analyzed data from the 14 contract prisons that were operational during the period of our review and from a select group of 14 BOP institutions with comparable inmate populations to evaluate how the contract prisons performed relative to the selected BOP institutions. Our analysis included data from FYs 2011 through 2014 in eight key categories: (1) contraband, (2) reports of incidents, (3) lockdowns, (4) inmate discipline, (5) telephone monitoring, (6) selected grievances, (7) urinalysis drug testing, and (8) sexual misconduct.³ With the exception of fewer incidents of positive drug tests and sexual misconduct, the contract prisons had more incidents per capita than the BOP institutions in all of the other categories of data we examined. For example, the contract prisons confiscated eight times as many contraband cell phones annually on average as the BOP institutions. Contract prisons also had higher rates of assaults, both by inmates on other inmates and by inmates on staff. We note that we were unable to evaluate all of the factors that contributed to the underlying data, including the effect of inmate demographics and facility locations, as the BOP noted in response to a working draft of this report. However, consistent with our recommendation, we believe that the BOP needs to examine the reasons behind our findings more thoroughly and identify corrective actions, if necessary.

The three contract prisons we visited were all cited by the BOP for one or more safety and security deficiencies, including administrative infractions such as improper storage of use-of-force video footage, as well as more serious or systemic deficiencies such as failure to initiate discipline in over 50 percent of incidents reviewed by onsite monitors over a 6-month period. The contractors corrected the safety and security deficiencies that the BOP had identified. As a result, the BOP determined that each prison was sufficiently compliant with the safety and security aspects of its contract to continue with the contract during the period covered by our review. However, we concluded that the BOP still must improve its oversight of contract prisons to ensure that federal inmates' rights and needs are not placed at risk when they are housed in contract prisons.

Our site visits also revealed that two of the three contract prisons we visited were improperly housing new inmates in Special Housing Units (SHU), which are normally used for disciplinary or administrative segregation, until beds became available in general population housing. These new inmates had not engaged in

³ We selected these categories of data to analyze as potential safety and security indicators because they provided information on areas addressed by American Correctional Association standards on security and control, inmate rules and discipline, and inmate rights, and because these data were tracked by both the contract prisons and the BOP institutions. See Appendix 1 for more information on our methodology, including our data analysis.

any of the behaviors cited in American Correctional Association standards and BOP policies that would justify being placed in such administrative or disciplinary segregation. When the OIG discovered this practice during the course of our fieldwork, we brought it to the attention of the BOP Director, who immediately directed that these inmates be removed from the SHUs and returned to the general population. The BOP Director also mandated that the contracts for all contract prisons be modified to prohibit SHU placement for inmates unless there is a policy-based reason to house them there. Since that time, the BOP informed us that the practice of housing new inmates in the SHU is no longer occurring in the contract prisons and that the BOP has not identified any further non-compliance to date regarding this issue.

Finally, we found that the BOP needs to improve the way it monitors contract prisons. We focused our analysis on the BOP's Large Secure Adult Contract Oversight Checklist (checklist) because, as described by BOP operating procedures, it is an important element of the BOP's Quality Assurance Plan, as well as a mechanism BOP onsite monitors use to document contract compliance on a daily basis. We believe onsite monitors are best positioned to provide the BOP's quickest and most direct responses to contract compliance issues as they arise. We found that the checklist does not address certain important BOP policy and contract requirements in the areas of health and correctional services. As a result, the BOP cannot as effectively ensure that contract prisons comply with contract requirements and BOP policies in these areas and that inmates in contract prisons receive appropriate health and correctional services.

For health services, the checklist does not include observation steps to verify that inmates receive certain basic medical services. For example, the observation steps do not include checks on whether inmates received initial examinations, immunizations, and tuberculosis tests, as BOP policy requires. We also found that monitoring of healthcare for contract compliance lacks coordination from BOP staff responsible for health services oversight.

For correctional services, the checklist does not include observation steps to ensure searches of certain areas of the prison, such as inmate housing units or recreation, work, and medical areas, or for validating actual Correctional Officer staffing levels and the daily Correctional Officer duty rosters.

Recommendations

We make four recommendations to the BOP to improve the monitoring and oversight of its contract prisons, including enhancing its oversight checklist, which we believe should assist the BOP in ensuring that the significant number of inmates it houses in these facilities receive appropriate health and correctional services and that the contract prisons are safe and secure places to house federal inmates.⁴

⁴ After incorporating the BOP's formal comments into this report, the OIG also provided a copy of the final report to each contractor. The OIG has reviewed the contractors' responses, which are attached as Appendix 9. The analysis in our report is based on information BOP has provided, and the OIG has determined that the contractors' responses do not affect our analysis or the conclusions reached in this report.

Appendix "C"

Court Opinions Concerning Efficacy of Private Prisons and The Audit Protocols of the American Correctional Association

"How the Courts View ACA Accreditation"⁶³

The American Correctional Association (ACA), a private non-profit organization composed mostly of current and former corrections officials, provides accreditation to prisons, jails and other detention facilities.

According to the ACA, "Accreditation is a system of verification that correctional agencies/facilities comply with national standards promulgated by the American Correctional Association. Accreditation is achieved through a series of reviews, evaluations, audits and hearings."

To achieve accreditation a facility must comply with 100% of applicable mandatory standards and at least 90% of applicable non-mandatory standards. Under some circumstances, the ACA may waive certain accreditation standards. There are different standards for different types of facilities, such as adult correctional institutions, jails, juvenile detention facilities and boot camp programs.

The standards are established by the ACA with no oversight by government agencies, and the organization basically sells accreditation by charging fees ranging from \$8,100 to \$19,500, depending on the number of days and auditors involved and the number of facilities being accredited. [See, e.g.: *PLN*, Aug. 2014, p.24]. The ACA relies heavily on such fees; it reported receiving more than \$4.5 million in accreditation fees in 2011 – almost half its total revenue that year. The organization thus has a financial incentive to provide as many accreditations as possible.

Notably, the accreditation process is basically a paper review. The ACA does not provide oversight or ongoing monitoring of correctional facilities, but only verifies whether a facility has policies that comply with the ACA's self-promulgated standards at the time of accreditation. Following initial accreditation, facilities are re-accredited at three-year intervals.

⁶³ The article was written by Alex Friedmann and published in The Prison Legal News, October, 2014, page 18. This is a verbatim reproduction of Mr. Friedmann's remarks.

As a result, some prisons have experienced significant problems despite being accredited. For example, the Otter Creek Correctional Center in Kentucky, operated by Corrections Corporation of America (CCA), was accredited by the ACA in 2009 when at least five prison employees were prosecuted for raping or sexually abusing prisoners. [See: *PLN*, Oct. 2009, p.40]. Kentucky and Hawaii withdrew their female prisoners from Otter Creek following the sex scandal, but the facility did not lose its ACA accreditation. The prison has since closed.

The privately-operated Walnut Grove Youth Correctional Facility in Mississippi was accredited by the ACA even though the U.S. Department of Justice found “systemic, egregious practices” at the facility, including “brazen” sexual activity between staff and offenders that was “among the worst that we’ve seen in any facility anywhere in the nation.” When approving a settlement in a class-action lawsuit against Walnut Grove in 2012, a U.S. District Court wrote that the facility had “allowed a cesspool of unconstitutional and inhuman acts and conditions to germinate, the sum of which places the offenders at substantial ongoing risk.” [See: *PLN*, Nov. 2013, p.30].

More recently, the ACA-accredited Idaho Correctional Center, operated by CCA, has been cited for extremely high levels of violence, understaffing and fraudulent reporting of staffing hours. A video of CCA guards failing to intervene while one prisoner was brutally beaten by another has been widely circulated. CCA was held in contempt by a federal court in September 2013 for violating a settlement in a class-action lawsuit against the facility, and a separate suit alleges that CCA employees collaborated with gang members to maintain control at the prison. The state took control of the Idaho Correctional Center on July 1, 2014 and the FBI is currently conducting an investigation into CCA’s staffing fraud. [See: *PLN*, Oct. 2013, p.28; May 2013, p.22; Feb. 2012, p.30]. Regardless, the facility remains accredited by the ACA.

Prisoners who litigate prison and jail conditions cases sometimes try to raise claims related to violations of ACA standards, even though the standards alone do not create enforceable rights. On the other side of such lawsuits, the ACA says the benefits of accreditation for corrections officials include “a stronger defense against litigation through documentation and the demonstration of a ‘good faith’ effort to improve conditions of confinement.”

But how do the courts view ACA accreditation – and comparable accreditation of prison and jail medical services by the National Commission on Correctional Health Care (NCCHC) – both in terms of claims alleging violations of accreditation standards and as a defense by prison officials?

The U.S. Supreme Court noted in *Bell v. Wolfish*, 441 U.S. 520, 543 n.27 (1979) that accreditation does not determine constitutionality. With respect to standards established by organizations such as the American Correctional Association, the Court wrote: “While the recommendations of these various groups may be instructive in certain cases, they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question.”

In *Grenning v. Miller-Stout*, 739 F.3d 1235, 1241 (9th Cir. 2014), the defendants contended that the level of lighting in a prisoner’s cell “passed the national accreditation standards of the ACA....” However, the Ninth Circuit said it was “unable to determine ... the significance of the

'accreditation' by the ACA. We are not informed of the standards of the ACA, nor are we informed about the thoroughness of the testing performed" at the prison. The mere fact of ACA accreditation did not entitle the defendants to summary judgment on the prisoner's Eighth Amendment claim. [See article on p.40].

The Fifth Circuit stated in *Gates v. Cook*, 376 F.3d 323, 337 (5th Cir. 2004) that it was "absurd to suggest that the federal courts should subvert their judgment as to alleged Eighth Amendment violations to the ACA whenever it has relevant standards. Additionally, the ACA's limited inspections are not be [sic] binding as factual findings on the magistrate or on this court. While compliance with ACA's standards may be a relevant consideration, it is not per se evidence of constitutionality."

Further, in a lawsuit challenging inadequate medical care in the jail system in Maricopa County, Arizona, a federal district court wrote: "The Board Defendants argue that because the parties stipulated to incorporate in the Amended Judgment the 'essential' standards for health services in jails of the National Commission on Correctional Health Care ('NCCHC'), Correctional Health Services adopted policies conforming to NCCHC standards, and Correctional Health Services substantially complies with all of the 'essential' NCCHC standards, they have met their burden in proving there are no current and ongoing violations of pretrial detainees' federal rights."

However, "The Court decides independently whether there are current and ongoing violations of pretrial detainees' constitutional rights and does not rely on any determinations made by an accrediting organization such as the NCCHC. The NCCHC 'essential' standards do not specifically focus on all of pretrial detainees' constitutional rights."

Additionally, the district court noted that "Some of the NCCHC 'essential' standards address administrative functions and are not narrowly tailored to meet constitutional requirements," and "[a]lthough the NCCHC standards may be helpful for a jail, the Court makes its findings based on the Eighth and Fourteenth Amendments of the United States Constitution."

The court found that healthcare services provided by the defendants remained unconstitutional despite NCCHC accreditation. See: *Graves v. Arpaio*, 2008 U.S. Dist. LEXIS 85935 (D. Ariz. Oct. 22, 2008) [*PLN*, Jan. 2010, p.43; May 2009, p.28].

In Texas, a federal district court commented on accreditation of Texas Department of Criminal Justice (TDCJ) facilities by both the ACA and NCCHC.

"While TDCJ's participation in the ACA accreditation process is to be commended, accreditation, in itself, is not a clear indication that TDCJ is properly following its policies and procedures. Experts from both parties recognized the limitations of ACA accreditation," the court wrote, noting "that ACA accreditation is a tool, but not a constitutional standard."

The district court also remarked that one expert had "testified to a number of examples where a prison system was accredited by the ACA, but was, nevertheless, held by a court to be operating in an unconstitutional fashion, including prisons in Florida and the San Quentin prison in California."

With respect to accreditation by the NCCHC, the district court stated: "Rather than analyze the actual quality of the medical care received by inmates, the NCCHC's evaluation focuses on the written standards, policies, protocols, bureaucracy, and infrastructure that makes up the medical care system [cite omitted]. Further undermining defendants' attempt to use NCCHC accreditation as a proxy for a certification of the constitutionality of its medical care is the fact that at least two of the plaintiffs' experts who testified about profound shortcomings in the quality of care in TDCJ-ID also work as NCCHC accreditors.... While NCCHC accreditation does bolster defendants' claims that its medical care system is functioning constitutionally, the accreditation simply cannot be dispositive of such a conclusion." See: *Ruiz v. Johnson*, 37 F.Supp.2d 855, 902, 924-25 (S.D. Tex. 1999), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001).

A U.S. District Court in Puerto Rico also found that prison medical care was unconstitutional despite accreditation by the NCCHC, with the court noting "the National Commission on Correctional Health Care in 1992 had accredited the medical care programs at four prisons and provisionally accredited four more, with several additional prisons under consideration for accreditation. However, one of the monitor's consultants, Dr. Ronald Shansky, found noncompliance with at least one essential standard at every institution the Commission had accredited." The court further observed that "During this investigation, Department of Health personnel provided the monitor's staff with credible evidence that other employees had falsified documents in support of accreditation." See: *Feliciano v. Gonzalez*, 13 F.Supp.2d 151, 158 n.3 (D.P.R. 1998).

A Florida district court addressed ACA accreditation in *LaMarca v. Turner*, 662 F.Supp. 647, 655 (S.D. Fla. 1987), *appeal dismissed*, 861 F.2d 724 (11th Cir. 1988), stating: "Defendants make much of the relevance to this litigation of the accreditation of prisons and [Glades Correctional Institution] in particular by the American Correctional Association. **The Magistrate found that the GCI accreditation had 'virtually no significance' to this lawsuit because accredited prisons have been found unconstitutional by courts.** Having considered the GCI accreditation along with the remainder of the evidence, the undersigned district court finds it of marginal relevance in this case."

And in a challenge to the adequacy of the law library at the Buena Vista Correctional Facility in Colorado, a district court stated it was "simply ludicrous" for the defendants to argue they were entitled to summary judgment because "the American Correctional Association formally accredited" the facility and ACA standards address prison law libraries. See: *Boulies v. Ricketts*, 518 F.Supp. 687, 689 (D. Colo. 1981).

However, other courts have taken ACA accreditation into consideration when determining the constitutionality of policies or practices at correctional facilities, such as in *Yellow Horse v. Pennington County*, 225 F.3d 923, 928 (8th Cir. 2000) (suicide prevention procedures) and *Grayson v. Peed*, 195 F.3d 692, 697 (4th Cir. 1999) (death of restrained prisoner).

Therefore, incarcerated litigants should use caution when basing arguments on violations of accreditation standards rather than violations of constitutional or statutory rights, and should note the above case law when corrections officials raise accreditation as a defense in lawsuits related to conditions of confinement in prisons and jails.

APPENDIX "D"

Contract Between Montana Department of Corrections

and

The Corrections Corporation of America (Core Civic)

While the "core" contract (signed in July of 1998) contains only 42 pages, the entire document now numbers 212 pages. The present version contains 19 pages of annexes, together with 150 pages of contract amendments undertaken since its original signing. Since all of my narrative's contract references are contained in the core contract itself (and in the interests of the reader's sanity), I have included only the core contract in this appendix. *

*The contract in its entirety (to include all annexes and amendments through September, 2016) may be found at:
<http://cor.mt.gov/contracts>

Click on "C" in the upper left hand alphabet display, than choose "[CCAOperation and Management](#)" from the drop-down list.

CONTRACT FOR OPERATION AND MANAGEMENT SERVICES

**Authorized by the Private Correctional Facility Act:
53-30-601 through 53-30-611, M.C.A. (1997)**

MINIMUM, MEDIUM, CLOSE, SECURITY PRISON FOR ADULT MALE OFFENDERS

BY AND BETWEEN

**MONTANA DEPARTMENT OF CORRECTIONS
1539 11th Avenue, Helena, Montana**

and

**CORRECTIONS CORPORATION OF AMERICA
10 Burton Hills Boulevard, Nashville, Tennessee 37215**

RECITALS

WHEREAS, in House Bill 2 the Fifty-fifth Montana Legislature authorized the Department to issue a Request for Proposals and enter into a contract with a private vendor during the 1999 biennium for the construction of a correctional facility of approximately 500 beds and the housing of inmates in the facility; and

WHEREAS, the Department of Corrections issued a Request for Proposals and received bid proposals from 5 private prison companies, including Corrections Corporation of America; and

WHEREAS, on the basis of the proposals, further clarifications, and best and final offers the Department of Corrections selected Corrections Corporation of America's proposal as the most advantageous for the State of Montana; and

WHEREAS, in House Bill 83 the Fifty-fifth Montana Legislature set standards for the construction and operation of private prisons in Montana; and

WHEREAS, the Montana Legislature has required that private prisons must substantially conform with American Correctional Association standards and National Commission on Correctional Health Care standards;

NOW THEREFORE, the Department of Corrections and Corrections Corporation of America as parties to this contract, and in consideration of the mutual promises contained herein, agree as follows:

THIS CONTRACT IS CONTINGENT UPON APPROVAL OF FUNDING BY THE FIFTY-SIXTH LEGISLATURE AS WELL AS FUNDING BY EACH SUCCESSIVE LEGISLATURE.

SECTION I

Contract Terms

ACA; means American Correctional Association.

ACA Standards; means Standards for Adult Correctional Institutions published by the American Correctional Association, in effect as of September 1999, and as the same may be modified, amended, or as supplemented in the future.

Biennium; means the two-year period beginning on July 1 and ending on June 30 of odd numbered years which correspond to Montana's legislative sessions and the state's budgeting period.

Bona fide Montana resident; means a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be Bona fide residents of Montana.

Conflict of Standards; means that a conflict exists between ACA Standards, NCCHC Standards, federal, state or local law or regulation, and/or the Contract.

Contract Monitor; means the MDOC employee or employees designated to monitor the operation of the facility for compliance with the Correctional Services Contract.

Contractor; means Corrections Corporation of America.

Department; means Montana Department of Corrections.

Facility; means the fully equipped and furnished prison which is operated by the Contractor. Facility includes all housing units, administrative offices, classrooms, hearing room, medical infirmary unit and all other structures of whatever kind including roads, fences, infrastructure, utility systems, etc., to be constructed for the incarceration of inmates assigned by MDOC.

FF&E; means furnishings, fixtures and equipment with a unit cost of \$500.00 or more and a useful life of one year or more for the facility.

Fiscal Year; means a one year period beginning July 1 and ending June 30 the following year.

For Cause; includes, but is not limited to:

- 1) failure of a party to comply with the terms of this Contract;
- 2) Contractor bankruptcy, reorganization, or liquidation; or
- 3) failure of Contractor to comply with the Private Correctional Facility Act, ACA or NCCHC Standards, Department rules.

Infrastructure; means the utilities, roads, sewers, lagoons, and water system.

Inmate Day; means each day, or part of a day, including the first but not the last day in which an inmate is housed at the facility.

MSP; means Montana State Prison.

NCCHC; means National Commission on Correctional Health Care Standards for Adult Correctional Institutions published by the National Commission on Correctional Health Care, in effect as of September 1999, and as the same may be modified, amended, or as supplemented in the future.

Per Diem; means the cost per inmate per day to which these parties agreed.

P.O.S.T.; means Montana Peace Officer Training Standards.

Proposal; means all materials submitted by the Contractor in response to the Department's RFP and any amendments thereto including the Department's Addendum #1 to the RFP dated December 19, 1997, follow up clarifications to Addendum #1 dated January 27, February 5 and 10, 1998, written responses to all questions for clarifications, and Contractor's Best and Final Offer dated June 12, 1998.

RFP; means the Department's Request for Proposal, "RFP No.PP.500-97".

Security "Minimum"; means the custody level of inmates whose movement within the Facility is unrestricted. Moderate supervision may be implemented when minimum custody inmates are secured within their assigned housing unit or work site. Work assignments are authorized inside and outside any perimeter fence. For movement within the Facility, no restraints are required. A minimum of one staff must escort on transports outside the Facility.

Security "Medium"; means the custody level of inmates whose movement within the Facility is restricted. Work assignments are authorized in a double or single fenced compound with indirect supervision. For movement within the Facility, no restraints are required. For movement out of the Facility, wrist and belt restraints are required. A minimum of one staff must escort medium custody inmates on transports out of the Facility.

Security "Close"; means the custody level of inmates whose movement within the Facility is very restricted. These inmates typically include inmates released from Maximum custody or disciplinary segregation who have serious records of institutional misconduct and who are re-entering general population. Close custody also includes reception inmates awaiting transfer to the appropriate housing unit (excluding On Leave to Custody (OLTC) and ten day furlough returns), "Temporary Lock up" for inmates facing disciplinary and reclassification hearings for serious rule infractions and inmates serving detention time for disciplinary violations. Work assignments are limited to inside a double-fenced perimeter with direct supervision. For movement within the Facility, no restraints are required. For movement outside the Facility, wrist, belt and leg restraints are required. A minimum of two staff must escort Close custody inmates on transports out of the Facility.

State; means State of Montana

Supervision "Direct"; means constant, uninterrupted supervision of an inmate. The staff must be in the immediate presence of inmates at all times.

Supervision "Indirect"; means a non-routine lapse in Direct Supervision is allowed for short, temporary periods provided the inmate is in a secure area or, staff may have visual supervision of an inmate without being within the immediate presence of the offender.

Supervision "Moderate"; means inmates may be in an assigned area without the immediate presence of staff, but staff check on the inmate at specific, non-routine intervals.

SECTION II

Policy Statement

- A. This Contract between the Department and the Contractor for the operation and management of a private prison, entered for the benefit of the public and inmates, is premised on the following goals of privatization:
1. to provide the public with prison services that are cost efficient and effective with respect to the purposes and goals of incarceration;
 2. to provide inmates with proper care, treatment, rehabilitation, and reformation;
 3. to provide the public and inmates with prison services that meet the requirements of the American Correctional Association, the National Commission on Correctional Health Care, licensing requirements of the State of Montana, and other minimum standards that may be promulgated by the Department; and
 4. to provide the State of Montana with the opportunity to compare the costs and benefits of privatized corrections with the costs and benefits of public corrections.

This Contract is entered in consideration of these goals of privatization.

General Requirements

- A. The Contractor shall provide all services and management for the operation of a 500 bed, minimum to close security prison for adult male offenders. Contractor shall begin accepting inmates no later than September 1, 1999, on a schedule of up to 100 inmates per week. Total occupancy level is estimated to be achieved on or before November 1, 1999.
- B. It is anticipated that the Facility capacity will be expanded. Contractor shall cooperate with the Department concerning scheduling Facility expansion.
- C. The Department's RFP, Addendum to the RFP, follow up notices to the Addendum, Contractor's Proposal, and Contractor's changes to Proposal through the Best and Final Offer

Process are hereby incorporated by reference and are made a part of this Contract as if set forth in full herein. This Contract consists of and precedence is established by the order of the following documents incorporated into this Contract:

4. This Contract document;
 2. The RFP, including Addendums and follow up notices; and,
 3. The Proposal, including Addendums and Contractor's Best and Final Offer, as accepted by the Department.
- D. The Contractor shall notify the Department in writing of any alleged conflict between the documents and any alleged conflict shall be resolved by the Department after review of the alleged conflict according to the considerations set forth herein. The documents in the preceding paragraph are complementary and what is required by one shall be binding as if required by all. However, in the case of any conflict or inconsistency arising under the documents, a higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency.
- E. In accordance with requirements of 53-30-601 through 53-30-611, MCA, the Facility must be licensed by the Department as a "private correctional facility" by August 1, 1999.
- F. The Contractor must achieve ACA accreditation within three years from the opening date of the Facility and must maintain ACA accreditation for the life of this Contract.
- G. The Contractor must achieve National Commission on Correctional Health Care accreditation of its health services operation within three years from the opening date of the Facility and must maintain NCCHC accreditation for the life of the Contract.
- H. The Facility will house minimum, medium, and close custody adult male offenders as authorized by the Private Correctional Facility Act: 53-30-601 through 53-30-611, M.C.A. The Contractor shall comply with the provisions of 53-30-603, M.C.A. for housing inmates. In the event the law permits housing inmates, other than those assigned by the Department, the Department retains first option to house its inmates in the Facility.

SECTION III

Duration

- A. The Operations and Management Contract will cover an initial term of four (4) years, scheduled to begin on September 1, 1999, and end on August 31, 2003. The parties may renew this Contract for eight (8), two (2)-year periods, all said periods subject to satisfactory evidence of contractual compliance. The total life of the Contract shall not exceed twenty (20) years.
- B. The parties shall mutually notify the other party in writing not less than 180 days prior to the expiration of the Contract of the party's intention to renew or not renew this Contract. Failure of a party to notify the other as set forth herein shall be construed as a decision not to renew this Contract.

- C. It is understood and agreed that this Contract is dependent upon appropriation of funds for this Contract by the Montana Legislature. Further, the parties recognize that the act of appropriation is a legislative act. The Department agrees to take such action as is necessary under the laws applicable to the State to timely and properly budget for and request the appropriation of funds from the Legislature of the State of Montana which will permit the Department to make all payments required under this Contract.

SECTION IV

Conditions for Termination

- A. The Contract will be subject to the following termination provisions prior to its expiration date. The Contract may be terminated by the Department for:

Default/Non-compliance
Contractor Insolvency
Unavailability of Funds
Destruction/Condemnation

1. Termination for Default or Noncompliance

- a. If the Department determines that Contractor is determined to be in breach of any of the terms and conditions of this Contract, and such breach is not cured within 60 days of receipt of written notice thereof, Contractor shall be declared in default. The Department shall have the right by further written notice to terminate this Contract on any future date not less than 10 days from the date of such further notice. The parties, by written mutual agreement, may extend the time period for Contractor to cure a breach. Notwithstanding the foregoing, the Department may terminate this Contract immediately and without notice if there is an imminent threat of injury to life or property caused by a default by the Contractor of a term of this Contract.
- b. A breach of performance by the Contractor for which the Contract may be terminated may include, but is not limited to:
- i. a failure to comply with any federal, state or local law;
 - ii. managing the inmate population in such a manner as to jeopardize the public's, inmates' or employees' safety, and places the Department, the State and the public at legal risk;
 - iii. failure to perform the Contract according to its terms, conditions and specifications.

- c. The Contractor and/or its surety must be jointly and severally liable to the State of Montana/Department of Corrections for all loss, cost or damage sustained by the State of Montana/Department of Corrections as a result of the Contractor's default; provided, however that a Contractor's surety liability must not exceed the final sum specified in the Contractor's bond.

2. Termination for Contractor Insolvency

If Contractor applies for or consents to the appointment of a receiver, trustee or liquidator of itself or of all or a substantial part of its assets, files a voluntary petition in bankruptcy, admits in writing its inability to pay its debts as they become due, makes a general assignment for the benefit of creditors, files a petition or an answer seeking reorganization or rearrangement with creditors or, as a debtor, invokes or takes advantage of any insolvency law, or if an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Contractor a bankrupt or insolvent or approving a petition seeking reorganization of Contractor or of all or a substantial part of its assets, and such order, judgment or decree continues unstayed for thirty (30) days, then the Department may by written notice terminate this Contract effective on any future date specified in such notice. In the event of filing of a petition for bankruptcy by or against the Contractor, the Department shall have the right to terminate the Contract upon the same terms and conditions as termination for default.

3. Termination for Unavailability of Funds

In the event that funds for the Contract become unavailable, the Department shall have the right to terminate the Contract without penalty.

4. Termination due to Destruction or Condemnation

If the Facility is totally or extensively damaged by fire or other casualty so as to prevent or substantially limit Contractor's operations, or is condemned for public use by a legally constituted public authority, either party may upon written notice to the other within thirty (30) days of such casualty or such condemnation, terminate this Contract, effective as of the occurrence of the casualty or the effective date of the condemnation.

5. Procedure on Termination

- a. Upon delivery to the Contractor of a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the Contract is terminated, and the date on which such termination becomes effective, the Contractor shall:
 - i. stop work under the Contract on the date and to the extent specified in the Notice of Termination;

- ii. place no further orders for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
 - iii. terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination, except as may be necessary to avoid the occurrence of penalty assessments and the continuation of which the Department has approved;
 - iv. assign to the Department or a subsequent contractor, as the case may be, in the manner and to the extent directed by the Department all of the right, title and interest of the Contractor under the orders so terminated, in which case the Department or a subsequent contractor shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders;
 - v. with the approval or ratification of the Department, settle all outstanding liabilities and all claims arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provision of the Contract;
 - vi. transfer title to the Department (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Department all files, processing systems, data manuals, or documentation, in any form, that relate to work terminated by the Notice of Termination;
 - vii. complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; and
 - viii. take such action as may be necessary, or as the Department may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the Department may acquire an interest.
- b. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this provision.

SECTION V

Compensation and Adjustments

- A. The Department shall pay Contractor's per diem charge for each day or part of a day, including the first but not the last day in which an inmate is housed at the Facility.
- B. The per diem rate constitutes the sole and exclusive payment by the Department for the provision of all services provided herein, except as otherwise specifically provided in this Contract.
- C. All payments made under this Contract shall be made only upon submission by Contractor of an invoice specifying the amounts due and certifying that services requested under the Contract have been performed in accordance with the Contract. The invoices shall be submitted by Contractor each month for the fixed rate per inmate day of the preceding month and shall contain the names and inmate number (A.O.#) of all inmates in the custody of the Contractor and their date of incarceration at the Facility and date of release, if applicable. The Department shall pay each correctly submitted invoice within ten (10) days of receipt of invoice. The Department will make reasonable efforts to effect payment to Contractor by wire transfer in accordance with Contractor's written instructions.
- D. In consideration for all services provided, and barring any Contractor Compliance Assessment adjustments resulting from the Department's Contract monitoring processes, the Department will pay Contractor according to the following schedules:
 - 1. The Operations and Management per diem rate for the contract year ending June 30, 2000 shall be \$40.25 per inmate day for a total compensation estimated to not exceed \$623,875 per month, and \$7,365,750, for the period.
 - 2. The Operations and Management per diem rate for the contract year ending June 30, 2001 shall be \$41.34 per inmate day for a total compensation estimated to not exceed \$640,720 per month, and \$7,543,957 for the period.
 - 3. The Operations and Management per diem rate for the contract year ending June 30, 2002 shall be \$42.45 per inmate day for a total compensation estimated to not exceed \$658,019 per month, and \$7,747,644 for the period.
 - 4. The Operations and Management per diem rate for the contract year ending June 30, 2003 shall be \$43.60 per inmate day for a total compensation estimated to not exceed \$675,786 per month, and \$7,956,830 for the period.
 - 5. The Department will advance the Contractor six (6) months of the first year operating per diem in the amount of \$3,622,500. This advance will be made by no later than July 5, 1999. The Contractor agrees that this advance will be deducted from its monthly invoice beginning December of 1999 and ending May of 2000.

SECTION VI

Contractor Indemnification

The Contractor agrees to protect, defend, and save the State and any political subdivision, their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, or subcontractors under this agreement.

SECTION VII

Responsibility for Habeas Corpus and Litigation Procedures

- A. The Department shall defend Contractor, Contractor's subcontractors, representatives and employees in any habeas corpus or post-conviction relief action to the extent such action challenges the validity of the conviction or the sentence to the Montana Department of Corrections or the decision to transfer an inmate to the Facility. Except as provided herein, the Contractor's costs of legal services for protecting its interest in actions the Department has agreed herein to defend, shall be deemed usual costs incidental to the operation of the Facility.
- B. The Contractor shall notify the Department of any litigation filed by Department's inmates and served upon the Contractor by complete FAX copy within twenty-four (24) hours of service upon or receipt by the Contractor, and Contractor shall also mail copies of such documentation to the Department within such twenty-four (24) hour period. All such documents will be faxed and mailed to the Department's chief legal counsel in Helena, Montana.
- C. The Department shall notify the Contractor of any litigation filed by Contractor's inmates and served upon the Department by complete FAX copy within twenty-four (24) hours of service upon or receipt by the Department, and Department shall also mail copies of such documentation to the Contractor within such twenty-four (24) hour period. All such documents will be faxed and mailed to Linda Cooper, Vice President, Legal Affairs, Corrections Corporation of America, in Nashville, Tennessee.

SECTION VIII

Insurances

- A. General Insurance Requirements: Binders required by this section must be received within 10 days of the execution date of the Contract and copies of all certificates and endorsements must be received prior to the service commencement date. The Department reserves the right to require complete copies of all insurance policies at any time. All Insurance coverage must remain in effect for four (4) years following termination of the Contract.

- B. The Contractor must maintain for the duration of the Contract, at its cost, primary insurance coverage against claims for injuries to persons or damages to property including contractual liability which may arise from work performed under this Contract. This insurance must cover claims that may be caused by any act, omission, error, negligence, or failure to comply with the Contract, by the Contractor, its officers, agents, representatives, assigns, or servants; as well as all costs and expenses incurred by the State for defense of causes of action brought by or on behalf of an inmate that accrues while the inmate is incarcerated in the Facility. The insurance must provide coverage for any claim which accrued prior to termination of this Contract.
- C. The Contractor must require all subcontractors to obtain, maintain, and keep in force insurance coverage in accordance with the terms of the Contracts. The Contractor must sign a waiver which requires its insurance carriers to directly notify the Department of any and all changes in coverage or carrier, including but not limited to notices of intent to cancel coverage, cancellation of coverage, or requests to change coverage during the term of this Contract or during the term of subsequent contract renewal period(s).
1. **Liability Insurance:** The Contractor must provide and maintain commercial general liability, bodily injury liability, property damage and workers' compensation insurance, insuring the interest of all parties including additional insureds, from claims for bodily injury and property damage arising from the Contractor's operations whether such operations are performed by the Contractor or by any of its subcontractors.
- a. The bodily injury liability insurance must pay on behalf of the insured all sums up to the limits provided by the policy which the insured is legally obligated to pay as damages caused by any occurrence, because of bodily injury, sickness or disease, including death.
- b. Coverage must be extended to include civil rights violations, which will include all claims brought by any persons based in whole or in part on an alleged violation of the United States or Montana constitutions, statutes, or regulations, including but not limited to suits brought pursuant to 42 U.S.C. Section 1983. Coverage must also include medical and professional liability for employed nurses including all health care workers, doctors, attorneys, counselors, psychologists, social workers and teachers. If Contractor sub-contracts any health services to be provided on-site and does not indemnify sub-contractor, evidence of sub-contractor's current insurance coverage must be retained at the Facility.
- Limits: \$1 million combined single limits per occurrence
\$3 million annual aggregate combined single limits per year
2. **Property Insurance:** At its sole cost and expense, the Contractor must keep the building and all other improvements on the premises fully insured throughout the term of the Contract against the following hazards:

- a. Loss or damage by fire or other such risks in an amount sufficient to permit such insurance to be written at all times on a replacement costs basis. Such loss may be insured against by attachment of standard form extended coverage endorsement to fire insurance policies.
 - b. Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises.
 - c. Loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks, or similar apparatus now or hereafter installed in a building or buildings on the premises.
3. **Vehicle Insurance:** Automobile liability insurance must be Occurrence coverage with combined single limits of \$1 million per occurrence/\$2 million aggregate per year for bodily injury, personal injury and property damage. If commercial automobile liability insurance or another form with a general aggregate limit is used, either the general aggregate limit must apply separately or the general aggregate limit must be twice the required occurrence limit.
- B. Contractor's insurance coverage must be primary insurance in respect to the State, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute to it.
 - C. The Contractor must provide copies of all insurance coverage renewals to the Department's Contracts Manager annually.
 - D. All insurance coverages required by this section must be placed with an insurer with a Best's Rating of not less than A-.

SECTION IX

Contractor's Performance Bond

The Contractor will be required to purchase a performance security bond in the amount of \$1,836,406.25, the bond being equal to 25% of the per diem rate per inmate per day times 500 times 365. The performance bond will be renewed each year and shall be required throughout the term or renewal terms of the Contract. The \$1,836,406.25 performance bond covering the first contract year must be submitted to the Department's Contracts office no later than August 1, 1999.

SECTION X

Right of Entry

- A. The Department shall have a right to enter the premises at any time, with or without notice.
- B. The Department shall have the right to assume emergency control of the Facility if there exist substantial violations which affect the life, health, or safety of the inmates, Facility employees, or the public or that otherwise substantially impact the security of the Facility. If the Department assumes control of the Facility, the Department shall suspend payments to the Contractor.

SECTION XI

Prevailing Wage and Preferences

- A. The Contractor agrees to pay the applicable standard prevailing rate of wages as determined by the Commissioner of Labor and Industry, State of Montana for work performed by Contractor's employees or the employees of Contractor's subcontractors. Appendix I contains the current Montana standard prevailing rate of wages, including fringe benefits, and is incorporated herein by reference.
- B. Except for heavy and highway construction, the Contractor must pay 1) the travel allowance that is in effect and applicable to the district in which the work is being performed and 2) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Income Security Act of 1974 and other Bona fide programs approved by the United States department of labor and is in effect and applicable to the district in which the work is being performed.
- C. For heavy and highway construction, the Contractor shall pay the heavy and highway construction wage rates established statewide for the project.
- D. Contractors, subcontractors, and employers who are performing work or providing services under the Development Contract shall post in a prominent and accessible site on the project or work area, not later than the first day of work, a legible statement of all wages to be paid to the employees employed on such site or work area.
- E. Pursuant to Section 18-2-404, MCA, the Department will withhold the first \$1,000.00 of the Contract price of the Development Contract until termination thereof.

Preferences

- A. The Contractor must give preference to the employment of Bona fide Montana residents.
- B. The Contractor must use Montana-made goods if they are comparable in price and quality to goods manufactured outside of Montana, as required by 18-1-112, M.C.A.

SECTION XII

Facility Administration

The Contractor shall confine and supervise Montana inmates which the Department has determined are suitable for transfer to Facility. Contractor shall furnish subsistence and all necessary routine medical, dental and mental health care; provide for the inmates' physical needs; provide programs, training and treatment which are consistent with individual needs; retain the inmates in safe, supervised custody; maintain proper discipline and control; make certain that sentences and orders of the committing court are faithfully executed; provide access to legal assistance for inmates of the Facility; and comply with all applicable federal and state constitutional requirements, laws, rules, regulations, ordinances and court orders.

- A. Subject to the terms of this Contract, it shall be Contractor's responsibility to ensure that its Warden has in place a method to facilitate communication, establish policy, explore problems, ensure conformity to legal and fiscal requirements and implement programs which from time to time the Department may request incorporated into Contractor's operation.
- B. The Contractor shall have a policy and procedure manual pre-approved by the Department which specifically describes its programs and services which it offers. The policy and procedure manual must be submitted to the Department for review and approval on or before May 1, 1999. Contractor's policies will generally be similar to Montana State Prison and Department policies to encourage consistent inmate management and treatment. Contractor may utilize its own procedures for policy implementation. The Department will review and provide approval or comments within 30 days of receipt of the policy and procedure manual. The policy manual shall be reviewed annually by the Contractor and updated when necessary. All revisions to the manual must be submitted to the Department for review and approval prior to implementation. The manual must be accessible to all employees and all revisions must be circulated to all employees prior to implementation.
- C. The Contractor must have a system in place to self-monitor its programs through inspections and reviews by the warden or designated staff.
- D. The Contractor shall, on an annual basis, review its Contingency, Emergency Response and Mutual Aid plans as required in Section XVI, Security and Control. The Contractor shall meet with the Department on an annual basis to review the plans.
- E. Within the first twelve (12) months of opening the Facility, the Contractor must file an action plan with the Department for achieving ACA accreditation within 3 years from date of opening. The Contractor must thereafter make application for and successfully achieve ACA accreditation by no later than September 1, 2002, which constitutes a period of 36 months of acceptance of the first inmate. The Contractor shall provide the Department with copies of all correspondence between ACA and

the Contractor as it relates to the Facility, within five (5) working days or receipt of said correspondence. If there exists a difference between the standards and state laws, the higher standard will be followed.

- F. The Department Contract Monitor(s) and other authorized Department employees/agents, including the Montana Legislative Auditor, shall have immediate, unlimited access at all times to all areas of the Facility. The governor and members of the Legislature shall be admitted into the Facility at any time. All such persons desiring access of the Facility shall be subject to Contractor's routine security inspection. Contractor shall be given reasonable advance notice to accommodate organized tours of the Facility.
- G. The Department's Contract Monitor shall be provided an office and furnishings including a dedicated telephone line for the sole use of the Department's Contract Monitor at no cost to the Department. The Department shall be responsible for long distance telephone call expenses. After assignment of such work space, no change in the Contract Monitor's work space or equipment shall be made by Contractor without the prior written consent of the Department. Contractor shall provide equipment for the use of the Contract Monitor(s) at no cost to Department.
- H. In the event of a conflict of standards, the most stringent standard shall apply.

General Administration

- A. The Contractor shall develop and implement a Forced labor and Earned Incentive Program consistent with that operating at MSP.
- B. The Contractor must have written policies which are implemented to ensure that no inmate or group of inmates is in a position of control or authority over other inmates.
- C. The Contractor must develop and implement written policies and procedures consistent with Department policy 4.1.3, Offender Personal Property, specifying the personal property that inmates may retain in their possession.
- D. Contractor must adopt MSP's No Tobacco Use Policy 1.3.101.
- E. All Facility rules and regulations pertaining to inmates must be conspicuously posted in the Facility housing units.
- F. The Contractor must develop and implement a plan for the dissemination of information about the Facility to the public, governmental agencies and the media. The plan must be made available to all persons upon request.
- G. The Contractor must develop and implement a written policy and procedure consistent with Department policy 3.3.4, Media Access to Offenders.

- H. The Contractor must develop and implement policies on incident reporting and self-monitoring of Facility standards.
- I. The Contractor shall establish an Inmate Welfare Fund whose operation substantially conforms to the Montana State Prison Inmate Welfare Fund.
- J. The Contractor will be responsible for replacing all equipment, perishables and supplies during the term of the Operations and Management Contract. At the conclusion of the Contract, all equipment will become the property of the State.
- K. The Contractor will be required to provide complete inmate laundry services. Inmates must be furnished prison uniforms and climatically appropriate outer-wear which must be re-issued as needed. Clean linen including pillow cases, sheets, blankets and towels must be provided to each inmate at least weekly, or sooner, if excessively soiled.
- L. The Contractor shall be responsible for all costs associated with a trial of an inmate for escape and for the trial of an inmate for the commission of any other crime committed in or at the Facility, as provided in 53-30-110, MCA .
- M. The Contractor shall submit a Facility Condition Inventory (FCI) to the Department annually, utilizing the format set forth in the attached Appendix V.

Fiscal Management

The Contractor must, on a timely basis, provide the Department with copies of all annual reports on Form 10-K, quarterly reports on Form 10-Q, and reports on form 8-K required to be filed by Contractor with the Securities and Exchange Commission.

No Adverse Change

On an annual basis, Contractor must certify by signature of its authorized representative, that since the date of the Contractor's most recent financial statements, there has not been any material adverse change in Contractor's business or condition, nor has there been any change in the assets or liabilities or financial condition from that reflected in the financial statements which is material to Contractor's ability to perform its obligations under this Contract. If requested, Contractor agrees to provide the Department with a copy of its most recent financial statement.

Program Audits

The Contractor must make available the necessary access to Facility, records, financial records, staff and inmates to enable the Department, the Montana Board of Pardons and Parole, or the Montana Legislative Auditor or other entities of the State, the opportunity to conduct periodic program reviews and/or Contract audits of the Facility and its programs.

SECTION XIII

Records and Information Systems

The Contractor will be required to maintain offender records and reports which conform to those of the Department in both format and content. The Contractor will be required to utilize the Department online offender management system and incorporate it into its operation as well as interface with the current information systems developed for and in use by the Department on September 1, 1999, to report and track inmate records information including inmate population census reporting. Contractor must maintain current and accurate inmate records.

- A. The Contractor is required to provide a Local Area Network with Internet Protocol (IP) capabilities for access to and use of the Department's adult offender information system (AOIS) and the State's electronic mail system. AOIS is hosted by the Department's IBM AS/400 mid-range computer, supported by the Department's Information Services Bureau personnel. The Department is responsible for the total actual cost of maintenance and support of the AOIS system. All software used by the Contractor must be compatible with the current State Standards. State software standards currently used by the Department are WordPerfect, Lotus, Lotus Approach, Attachmate, and Zip!Office. The Department will alert Contractor concerning any projected change in the Department's software standards including effective dates for implementation.
- B. Contractor will be required to pay connections fees to the Department. The ongoing monthly connection fees are based on the number of staff who will be participating in AOIS and/or Zip!Office. These fees are \$250.00 per month for less than 5 people and \$53.00 per month per person for five or more people. The \$250.00 per month fee does not include any of the connection software (Attachmate) or E-Mail software (Zip!Office). The \$53.00 per month charge includes the software and, in addition, provides support for the Desktop applications. The Department will periodically bill the Contractor for the actual cost incurred by the Department. All setup and installation costs will be the responsibility of the Contractor, if any are required. The Department will provide at no charge to the Contractor, necessary and reasonable training and technical assistance associated with Contractor access to input into AOIS.
- C. The Contractor's personnel responsible for data collection and input into AOIS will be required to attend on-site and/or periodic off-site training sessions provided by the Department relating to AOIS. The Department will charge Contractor for course materials and a \$25.00 administrative fee to cover processing applications and records. Only those Facility employees given security clearance by the Department may input and/or view data. All input data will be audited by the Department. Contractor will be responsible for assuring the accuracy of data input into AOIS, and will be responsible for costs attributed to ensuring and/or correcting incorrect or

inaccurate data. Data collection and input into AOIS must include, but is not limited to, the following transactions relating to inmates assigned to the Facility:

1. inmate movements (internal/external);
 2. custody classification;
 3. disciplinary infraction and sanctions;
 4. demographic information;
 5. scars and marks;
 6. aliases;
 7. address data for offender and family;
 8. risk and needs;
 9. military data;
 10. association information;
 11. legal data;
 12. electronic images;
 13. fingerprints;
 14. sentencing;
 15. treatment and education.
- D. Contractor will not allow inmates any access to AOIS or to reports generated from AOIS;
- E. Contractor will provide inmate access to the Internet in conformance with Department policies 1.6.13, Offender Access to Computers, and 1.6.16, Use of the Internet/SummitNet;
- F. Contractor will ensure all records and reports will be made available to any authorized person appointed by the Department or any other state agency having specific authority to inspect such records and reports; and
- G. Contractor must provide the Montana Board of Pardons and Parole any reports the Board requires concerning the conduct and character of any inmate in the Contractor's custody. The Contractor must provide any other facts deemed appropriate by the Montana Board of Pardons and Parole pertinent to any inmate.

SECTION XIV

Personnel

- A. Contractor shall at all times provide sufficiently trained staff to provide for and maintain the security, control, custody and supervision of inmates of the Facility in compliance with applicable court orders and this Contract. Contractor must comply with Federal and State laws related to employment and personnel practices. Montana residents must be given a hiring preference in the staffing of the Facility.
- B. The Facility staffing pattern shall, at a minimum, include the positions listed in Appendix II. with all positions staffed by qualified employees. It is understood and agreed that from

time to time a vacancy may occur in staff positions required by the staffing pattern. A vacancy in a position is defined to occur when the employee assigned to that position has resigned, been terminated, or is reassigned to another position, and no other qualified person or employee is available to perform the duties of that position. Contractor shall notify the Department Contract Monitor in writing within three (3) working days after the date a position becomes vacant. If a position is left vacant for more than thirty (30) days for security staff or sixty (60) days for all other staff, the Contractor will incur a financial penalty according to the Contractor Compliance Assessment Schedule contained in Appendix III. However, Contractor may, prior to the expiration of the thirty (30) and/or sixty (60) day period, request that the Department grant an extension of thirty (30) days. The request for extension must include: 1) evidence that the Contractor has diligently advertised the vacant position, and 2) copies of all applications or resumes submitted for the vacancy. The Department may, at its sole discretion, grant one thirty (30) day extension. The Contractor will not be assessed a financial penalty for failing to timely fill a vacant non-security position if the Contractor continues to provide the service by contracting for the provision of the service and the Contractor continues to exercise due diligence in filling the position.

- C. Background checks of all potential employees (including consultants, subcontractors and their employees and their agents, independent contractors and their employees and agents, and volunteer workers) are required and must be comparable with those required for Department employees. These include completion of a background investigation questionnaire and a criminal history records check. The Contractor must not hire any person with a prior felony conviction without the Department's approval.
- D. All potential employees must pass a drug test prior to beginning work at the Facility. The Contractor shall not hire a potential employee who fails a drug test. The Contractor must develop and implement a policy that will provide for pre-employment drug testing and ongoing random drug testing in conformity with State law.
- E. The Contractor must develop and implement written personnel policies for the Facility.
- F. Contractor must keep the Department informed as to work which Contractor subcontracts, including the names of the subcontractors. With cause, the Department reserves the right to reject any subcontractor.
- G. The Contractor must include a no-strike provision in any labor agreement that it negotiates with any union that is formed or joined by its employees at the Facility. The Contractor must use its best efforts to reach early and peaceful settlement to any labor dispute including but not limited to picketing, lockouts and strikes. The Contractor must have plans in place in accordance with Department Policy 3.2.1, Emergency Preparedness, to address staffing during a strike. The Contractor must notify the Department at least sixty (60) calendar days prior to the termination of any labor agreement with its Facility employees and must notify the Department immediately upon learning of a potential or impending strike or labor dispute at the Facility. In the event of a strike or labor dispute, the Department may call on available emergency resources to operate or control the Facility until the strike or dispute has ended. In the event of a strike or labor dispute, the Contractor must cooperate fully with the

Department to ensure safe operations and must reimburse the Department for any costs it may incur during or related to the strike or dispute.

SECTION XV

Training

- A. The Contractor must provide, at its expense, employee training programs substantially similar to those used by the Department. Contractor must have a written detailed training curricula plan which differentiates between training provided to different classes of employees (e.g., security, clerical). At a minimum the Contractor's employees must receive the same number of hours of pre-employment and in-service training, delivered in a like fashion (e.g., classroom instruction, on-the-job training, correspondence courses) as are required by ACA standards or Department policy 1.4.3, Training Standards, Requirements, Methods and Records, whichever is greater. The Contractor's correctional officer training curricula must be P.O.S.T. certified.
- B. The Contractor may not employ anyone who fails to comply with training rules or fails to satisfy applicable training requirements. Training instructors must meet or exceed the same minimum job requirements and qualifications as those employed by the Department. Detailed documentation records of all training activities must be maintained by the Contractor and made available to the Department.

SECTION XVI

Security and Control

- A. The Contractor must have a written Fire & Life Safety plan in accordance with Department policy 3.2.3, Fire, Life and Safety. All employees and inmates must be informed of and trained to this policy. Annual inspections by local or state fire officials must be conducted.
- B. The Contractor must have a written Emergency Response (Emergency Preparedness) Plan including appropriate procedures. Department will assist if necessary to ensure the Plan and procedures comply with the Department's Emergency Preparedness Policy. Contractor must have a written plan for dealing with inmate disturbances and hostage taking. Contractor must have a signed Mutual Aid Agreement in place with local law enforcement, fire and health agencies. Contractor's policy on the pursuit of escapees must be consistent with Department Policy 3.2.2, Facility/Program Escapes.
- C. The Contractor and Department shall develop a Contingency Plan by July 1, 1999, for transferring control of the Facility to the Department or another contractor upon termination or expiration of this Contract.
- D. The Contractor must adopt and implement Department policies 3.1.8, Use of Force and Restraints; 3.1.9, Use of Chemical Agents; 3.1.10, Use of Oleoresin Capsicum Spray in Correction Facilities/Programs; 3.1.16, Contraband Control (additional items of contraband may be identified and clearly defined in the Facility policy); and 3.1.17, Offender Searches.

- E. The Contractor must have a written plan to control movement within and outside of the Facility consistent with Department policy 3.1.11, Offender Movement Control. The Facility policy and procedure must account for the whereabouts of the inmates at all times. Contractor will be required to provide security at all times for inmates assigned to its custody. This includes, but is not limited to: inmate counts, court appearances, off-site medical appointments and hospitals stays.
- F. The Contractor must have written procedures governing the transportation of inmates. The Contractor is responsible for all transportation and security functions including, but not limited to, the initial transfer of the inmate to the Facility, transfer of the inmate from the Facility to another correctional or detention Facility in the State of Montana, transportation for health care services, parole board hearings, disciplinary returns, and court appearances.
- G. Contractor must have a written policy and procedure which is consistent with the Department's policy 3.1.20, Standardized Offender Urinalysis Screening, for UA testing. A minimum of 10% of the population must be randomly tested each month and all costs of the program are the responsibility of the Contractor. The Contractor must provide the Department with a monthly report.
- H. Contractor's employees shall be allowed to use force only while on the grounds of the Facility, while transporting inmates, and while pursuing escapes from the Facility.
- I. Contractor's employees shall be authorized to use only the level of force which is consistent with the Department's policies 3.1.8, Use of Force and Restraints; 3.1.9, Use of Chemical Agents; 3.1.10, Use of Oleoresin Capsicum Spray in Correction Facilities/Programs; 3.1.16, Contraband Control (additional items of contraband may be identified and clearly defined in the Facility policy); and 3.1.17, Offender Searches.
- J. Contractor shall be responsible to prevent escapes from the Facility. The Contractor shall engage in hot pursuit of escapees within the property boundaries of the Facility until local or state law enforcement authorities have assumed control of the pursuit. Contractor shall immediately notify local law enforcement agencies, the Montana State Prison Command Post, and the Contract Monitor upon discovery of an unauthorized absence or escape. The Contractor shall be responsible for all costs associated with the pursuit and capture of an escapee and his transportation back to secure custody in the State of Montana. The Contractor shall develop a plan in conjunction with local law enforcement for the apprehension and reporting of escapes from the Facility.
- K. Contractor shall be responsible for all costs incurred by the State or any political subdivision of the State incurred as the result of escapes, riots, disturbances, or other natural or human caused events at the Facility.
- L. Contractor shall not permit any inmate to work outside the fenced perimeter of the Facility without the express written approval of the Department.

SECTION XVII

Food Services

- A. The Contractor must provide three meals including two hot meals for each inmate at regular meal times during each 24 hour period, with no more than 14 hours between the evening meal and breakfast. Variations may be allowed based on weekend and holiday food demands. Contractor must adopt and implement Department policy 4.3.6, Special Diets.
- B. Contractor's breakfast, lunch, and dinner menus must provide a minimum of 63 grams of protein and a minimum of 2,900 calories for each inmate during each 24 hour period. These amounts must conform, at a minimum, to the recommended dietary allowances provided by the National Research Council Food and Nutrition Board. The food service area must comply with state and local health regulations.
- C. Food service staff must develop and publish advance menu plans which are approved by a registered dietician. Copies of all menus served must be kept at the Facility with menu substitutions documented.
- D. Contractor must provide the following special diets in accordance with Department policy 4.3.6, Special Diets: low cholesterol; non-pork; modified vegetarian; strict vegetarian; low sodium; low sugar; modified consistency diet for geriatric inmates; and religious and specialized medical diets, including renal, gluten free, liquid, and diabetic diets.
 - 1. Contractor will provide a single menu for staff and inmates.
 - 2. All regular menus served will be based on the Recommended Dietary Allowances (RDA) for males aged 25-50 years as provided by the National Research Council Food and Nutrition Board.
 - 3. The Contractor must maintain adequate refrigeration, cooler and dry storage space to keep a minimum one-week food inventory supply on hand at the Facility.
 - 4. The kitchen and the dining area must be adequately ventilated, properly furnished and clean. A supervisor must conduct routine inspections on a weekly basis.
 - 5. Documentation at the Facility by state or local inspection authorities that food service facilities and equipment meet established governmental health and safety codes must be maintained. Deficiencies must be noted and corrected as quickly as possible and within a reasonable period of time.
 - 6. All food service personnel must have clean hands and fingernails; wear hair nets or caps; wear washable garments; must be in good health and free from communicable disease and open infected wounds; and must practice hygienic food handling techniques. All foods must be properly stored or disposed of as appropriate at the completion of each meal.

7. Contractor must adopt and implement Department policy 4.3.5, Food Service in Special Housing Units.

SECTION XVIII

Health Services

- A. Contractor will be responsible for providing 1) all medical, mental health, and dental services, including specialty clinics, 2) all medically related transportation, both routine and emergency, and 3) eyeglasses, hearing aids, dentures, and other prosthetics and limited use equipment.
- B. As part of the Facility per diem rate, Contractor shall provide infirmary care including, medical observation, post-operative care, isolation, administration of IV drugs, short term nursing care, suicide observation, seclusion and/or restraint for mental disorders, and chronic medical housing. Services provided on site shall include, reasonable health services including, medical, psychiatric, dental, vision, pharmaceutical, psychological, and other specialty services and health related services. At a minimum, these services must meet ACA and NCCHC standards, federal and state laws and regulations, and Department policies and procedures. At its expense, Contractor must achieve National Commission on Correctional Health Care accreditation of its medical care operation by September 1, 2002. Contractor must implement and conform to the Department's inmate medical co-payment procedures. All Inmate co-pay revenues must be reimbursed to the Department. To enhance with operational efficiencies, mitigate excessive cost to the Contractor and/or the Department, and reduce security risk, Contractor must, to the extent practicable, make health services available on-site at the Facility.
- C. Contractor shall provide, at a minimum, the following services, which are included as part of the Facility per diem rate:
1. availability of twenty-four (24) hour a day, seven (7) day a week emergency medical, psychiatric and dental care;
 2. twenty-four (24) hour a day, seven (7) day a week on-site nursing care;
 3. twenty-four (24) hour a day, seven (7) day a week on-site availability of mental health services. Psychiatric and psychological services should be provided on-site. In the event the Contractor chooses to provide off-site psychiatric and psychological services, the cost shall be the responsibility of the Contractor.
 4. a health appraisal examination screening must occur at the Facility within twenty-four (24) hours of the receipt of inmates. Screening must be completed by health care personnel and must include, at a minimum, a review of the copy of the health care record accompanying the inmate and verification of any care or treatment requirements recommended by the Department.

5. the Department will provide complete health history records (medical records) which will accompany the inmate to the Facility. Contractor's non-health service staff must be informed of inmate's special medical problems within the boundaries of medical confidentiality. Contractor must keep all records current at all times, returning them to the Department when inmate is retaken by the Department.
6. daily triage of complaints, with those inmates referred for primary care physician services being seen within five (5) calendar days of the referral;
7. sick call to inmates in general housing at a minimum of five (5) calendar days per week. Inmates in segregated housing will be evaluated by medical personnel and afforded the opportunity to request and receive medical attention daily, seven (7) calendar days per week;
8. individual health (medical) records;
9. regularly scheduled chronic illness clinics will be conducted under the supervision of the medical service supervisor for the following conditions: diabetes, respiratory, cardiovascular, seizure disorder, tuberculosis preventive therapy, and immunodeficiency;
10. laboratory services by an accredited laboratory with "stat" laboratory work being performed by a local accredited provider. Only tests qualified under the current CLIA "waived test" listing will be performed on-site;
11. radiology services, with plain film studies performed on-site when appropriate and other procedures performed through contract with a local off-site provider;
12. on-site dental services based on routine, preventive care rather than complaint-oriented care. Routine care includes, but is not limited to, examinations, cleaning, extractions, relief of pain and infection, minor repair and adjustment of dentures, pulpomies and root canals as medically indicated by a licensed dentist, fillings, and impressions;
13. a dental treatment plan for each inmate that includes prioritization of needs, counseling on oral hygiene, and conditions for which endodontic, periodontic, prosthetic, and prophylactic services will be provided;
14. pharmaceutical services, prescription and nonprescription drugs and supplies, with no on-site licensed pharmacy provided;
15. optometric services including eyeglasses when medically necessary, provided by qualified personnel. Inmates will be afforded the opportunity of requesting a complete vision exam and if necessary, replaced lenses and/or lenses and frames, every two years - more often if diabetic or presenting history of vision deficit.

16. health education program that addresses, at a minimum, hygiene, nutrition, physical fitness, stress management, sexually transmitted diseases, chemical dependence, AIDS, diabetes, and smoking;
 17. an OSHA exposure control plan will be developed by Contractor prior to Facility opening;
 18. health care specialists, including orthopedic
 19. medically necessary detoxification treatment of substance abusers;
 20. inpatient and outpatient hospital access;
 21. hospital emergency room access;
 22. provision of all on-site health care services including professional medical, physician, mental health, psychiatric, dental, vision, medication services and specialty clinics;
 23. participation by a member of the health services team in the classification process to ensure that no inmate is given a work or housing assignment contradictory to his medical condition
 24. psychological evaluations required by the board of Pardons and Parole
- D. The Contractor shall ensure that any inmate identified as suffering from a major mental illness receives the appropriate mental health treatment required to address the inmate's needs. The use of psychotherapeutic medications shall not be used in lieu of counseling or other psychiatric services for an inmate unless part of a treatment plan initially prescribed by a physician or psychiatrist and reviewed monthly by a physician, psychiatrist, other qualified mental health professional, physician's assistant, or advanced nurse practitioner; or unless required in an emergency to prevent the inmate from causing injury to self or others, or being harmed by others within the Facility.
- E. The Contractor shall not use physical restraints or segregated housing in lieu of counseling or other psychiatric services for an inmate suffering from a mental illness, unless part of a treatment plan prescribed and reviewed monthly by a qualified health care or mental health care professional, or unless in an emergency.
- F. Contractor is responsible for the provision and cost of all medically-related transportation, both routine and emergency, for off-site services.
- G. Contractor is responsible for providing the appropriate level of security at an off-site medical Facility.
- H. Contractor is responsible for the first \$1,000.00 in all off-site health related services per inmate per state fiscal year which would otherwise be the responsibility of the Department. The Department is responsible for off-site health related services in excess of \$1,000.00 per

inmate per State fiscal year. All copies of provider invoices submitted to the Department for payment must be itemized with sufficient detail to justify the balance owing by the Department. Contractor must notify the Department of all hospitalizations exceeding 24 hours, on the first working day following said 24 hour period. Additionally, Contractor must notify the Department's Health Services Unit at 406-444-9839 of Emergency Room visits and obtain approval for all specialty services including diagnostic tests.

- I. The Contractor must use its best efforts to enter into and maintain cost reduction contract relationships with the hospital, clinic and specialty providers utilized by the Contractor for the provision of health care services. The Department will assist the Contractor, if necessary, to obtain cost reduction contracts.
- J. The Contractor must obtain prior written approval from the Department's managed care nurse of all scheduled (non-emergency) inpatient hospitalization and surgery if said scheduled admission will result in exceeding the per inmate annual deductible of \$1,000.00. Contractor must utilize the Department's managed care nurse to certify all hospital inpatient admissions. All unapproved inpatient hospitalization and surgery costs shall be the responsibility of the Contractor.
- K. The Contractor will not be responsible for inpatient hospitalization costs, including any surgery or specialty services, associated with the treatment of persons with Acquired Immune Deficiency Syndrome (AIDS), as defined by the Center for Disease Control. The Contractor shall, however, be responsible for hospitalization costs associated with other HIV infected patients to the same extent as required by sub-paragraph H above.
- L. The Contractor will not be responsible for the cost of providing medications therapeutically indicated for the treatment of AIDS or HIV infection. Such treatment will be at the Department's discretion and expense.
- M. The Facility must have first aid equipment, which meets community and NCCHC standards and which is available at all times for medical emergencies. Staff trained in emergency first aid procedures, including cardio-pulmonary resuscitation must be present on each shift. State licensing and certification requirements must apply to health care personnel working in the Facility to the same extent as they apply to equivalent personnel in the community. The Facility must make provisions for medical evaluation of any employee or inmate suspected of a communicable disease and/or exposure to potentially infectious bacteria.
- N. The Facility must have written policies regarding the possession and use of controlled substances, prescribed medications and over-the-counter drugs. The policies must stipulate that prescribed medications are administered according to the directions of the prescribing professionals. There must be written policies and procedures which specify that the records of all medications distributed by Facility staff will be maintained and audited monthly, and include the date, time and name of the inmate's receiving medication, and the name of staff distributing it.
- O. Written policies and procedures must provide for the prompt notification of resident's next of kin and the Department in case of serious illness, surgery, injury or death. Any death must

be reported immediately to the proper officials as specified in Department policy 4.5.12, Inmate Illness or Death Notification. A post-mortem examination must be conducted at the Contractor's expense on all inmates who die while in the custody of the Facility pursuant to 46-4-122(2)(a), M.C.A.

- P. All medical expenses resulting from the negligence or willful misconduct of the Contractor, subcontractor, its officers, agents, volunteers or employees, shall be borne by the Contractor.
- Q. Informed consent for health care and treatment must be obtained from inmates by medical services staff at the Facility. Such procedure must be consistent with Department policy 4.5.9, Continuous Quality Improvement. Contractor must also ensure that inmates have the right to refuse treatment consistent with Department policy 4.5.10, Level of Therapeutic Care.
- R. Contractor must implement suicide prevention plans including appropriate seclusion and/or restraints protocols according to a policy approved in advance by the Department.
- S. Medical personnel attending the inmate shall be authorized to make the determination concerning when emergency treatment is needed.
- T. Contractor shall provide Continuous Quality Improvement (CQI) information to Department's Medical Director, reflecting all time lines and quality of care.

SECTION XIX

Academic, Vocational, Counseling & Recreational Services

Academic and vocational programs must be comparable to courses offered at Montana State Prison in order to provide a continuum of training for transferred inmates.

Academic, Vocational Services

- A. The academic services that Contractor will provide at the Facility include Adult Basic Education and General Education Degree preparedness. Contractor's education programs will operate a minimum of two (2) three hour per day sessions and provide academic instruction to a minimum of 30 % of the population. Each student will enroll in either a morning or afternoon block. After Facility expansion, Contractor will add another three hour block to be held in late afternoon or evening.
- B. The Contractor must provide sufficient vocational courses for a minimum of 20% of the inmate population. Vocational courses must be established in cooperation with the Department. Vocational programs will be provided, at a minimum, in two (2) three hour per day sessions with individual inmates enrolling in one of the two sessions. Contractor will provide *Wheels of Learning* approach to vocational education in the construction and building trades.

Counseling

Programs must be consistent with those offered by the Department and required by the courts and the Montana Board of Pardons as a condition for parole. These include, at a minimum: chemical dependency, anger management, cognitive restructuring, substance abuse treatment and sex offender treatment.

- A. Contractor will provide to inmates who qualify, Contractor's *LifeLine Therapeutic Community* program. The program is divided into three phases: Orientation (60 hours over 28 days), Community class (12-14 weeks) and Senior Phase/Re-Entry Phase (4-8 weeks).
- B. Chemical dependency treatment programming must include examination of criminal personality issues and its role with addiction and should have a strong emphasis on relapse prevention. The Contractor must adhere to the Montana Department of Public Health and Human Services Addictive, Mental Disorders Division, for chemical dependency rules for correctional facilities. Programming shall be provided to inmates who have a court order requiring completion of such a program, whose crime involved drugs or alcohol, who have a history of substance abuse, who volunteer and have an assessment of chemical dependency, or who have been ordered to complete chemical dependency counseling by the Montana Board of Pardons and Parole.
- C. Sex offender treatment programming shall include Phase I, Phase II, including the Orientation Group and Phase III, Aftercare. Contractor should use a cognitive-behavioral approach and adhere to Montana Sex Offender Treatment Association (MSOTA) Standards when providing treatment. Counselors must be eligible to be certified by MSOTA.
- D. Anger Management/Dispute Resolution programming will be provided for appropriate inmates. The course lasts ten weeks and includes; Introduction, Cues and anger reducers, external and internal triggers, developing strategies to incorporate anger reducers in day-to-day-situations, developing effective self-rewarding and self-coaching techniques, understanding short term and long term consequences; identifying and changing anger-provoking behavior, rehearsal of full sequence "win-win" behavior, overall review and reinforcement.
- E. While the inmate is housed at the Facility, Contractor shall provide sufficient counseling resources and personnel to ensure that any court-ordered counseling requirements for the programs listed in subsection (1) may be completed prior to the initial parole eligibility date of an inmate.

Recreation and Hobby

Contractor must provide adequate opportunities for physical exercise. The recreational program will include indoor, outdoor and hobby activities. The type and level of activities

must meet ACA Standards. Contractor must generally conform to and provide hobby privileges consistent with Montana State Prison Policy 22-002.

Religious Activities

Contractor must provide religious programs and activities for inmates. Contractor shall specifically provide for religious programs for Native Americans.

SECTION XX

Inmate Industry Programs

Contractor must provide 10,000 square feet of space exclusively for utilization by Montana Correctional Enterprises (MCE) industries programs. Contractor will also provide inmate labor for MCE industries programs, as well as management and supervisory personnel. Contractor may not compete with or duplicate the Department's existing industry programs. All profits from the correctional industry programs will be retained by the Department and deposited in the MCE proprietary account to be used for expansion and improvement of the industry programs. At the conclusion of this Contract, all funds in the account will be retained by the Department.

SECTION XXI

Inmate Work and Pay

Inmates shall be required to work. Inmate workers must receive pay comparable to that received by inmates in Department facilities and consistent with Department policy. Funds for institutional workers pay are included in the per diem rate as set forth in Section V. Payment to inmates employed in the MCE industries programs will be the responsibility of MCE.

SECTION XXII

Inmate Orientation

The Contractor shall provide orientation to inmates which includes, but is not necessarily limited to, a handbook containing information on: rules, penalties and offenses, disciplinary procedures, access to courts and attorneys, mail, telephone, grievances, medical care, religion, and programs available. Inmate orientation must be conducted within one week after arrival at the Facility and must be documented by employee and inmate signatures.

SECTION XXIII

Mail, Visitation

- A. Contractor must adopt and implement Department policies: 5.4.1, Offender Correspondence; 5.4.2, Incoming Publications; and 5.4.3, Inmate Access to Telephones; and 5.4.4, Offender Visiting.

- B. Contractor must provide physical space, furniture, equipment and supervision for contact and non-contact visitation in accordance with applicable ACA Standards.

SECTION XXIV

Inmate Rights

- A. Contractor must provide the inmates the opportunity to voluntarily practice their own religious activities, subject only to those limitations necessary to maintain the order and security of the Facility. Inmates may not be required to attend or participate in religious services or discussions.
- B. Contractor must adopt and implement Department policy 3.3.3, Offender Grievance Procedures. Contractor must provide the Department with copies of all inmate grievances monthly, along with statistical information on number and type of grievances received as required by the Department.
- C. Contractor must adopt and implement Department and MSP Policy 3.4.1, Adult Institutional Discipline Policy. Disciplinary offenses and penalty codes must be posted in each inmate living area and other appropriate areas accessible by inmates. Contractor must provide the Department with copies of all documentation concerning Severe and Major disciplinary actions taken by the Contractor against inmates on a weekly basis. Contractor shall also provide statistical information on the number and types of disciplinary reports and their dispositions on a monthly basis. The Department shall have final authority to approve, amend, or disapprove disciplinary actions by Contractor.
- D. Contractor may, in conjunction with disciplinary proceedings, make recommendations for the forfeiture of good time credits to the Department. A decision to forfeit good time credits is at the sole discretion of the Department.
- E. Contractor must provide inmates with assistance in accessing the courts. Contractor shall contract with an attorney to assist inmates in the drafting and filing of complaints, post-conviction petitions, sentence review applications, notice of appeal and habeas corpus petitions. The contract shall substantially conform to the terms of the contract between the Department and its contract attorney, which is attached hereto as Appendix IV.

SECTION XXV

Inmate Telephones/Commissions

- A. The Contractor must contract with a public or private telephone company to provide coinless, collect telephone service to the inmate population. The telephone service contract must be submitted to the Department for its review and approval prior to acceptance by the Contractor. Rebates/commissions or other compensation received by Contractor from the telephone company must be directed to a separate Inmate Welfare fund account. Copies of source documentation supporting said rebates/commissions must be available for Department review.

- B. Monies received from use of inmate phones must be deposited in a separate account and utilized for inmate rehabilitative needs, in conformity with the Montana State Prison Inmate Welfare Fund.
- C. The telephone service shall include the capability to monitor and record inmate conversations, the ability to ensure that certain phone numbers cannot be monitored, and the ability to control what phone numbers an inmate may access. The cost of the telephone service to the inmate must be comparable to the cost at similar Department facilities.

SECTION XXVI

Inmate Commissary/Canteen

The Contractor must make canteen items available to inmates. Canteen items must substantially conform to Montana State Prison canteen items. Prices charged for items should be comparable to those charged in Department facilities. The Contractor must provide suitable space, utilities and equipment to provide canteen items. Separate financial records and accounts must be maintained by the Contractor for all canteen business. The Facility commissary/canteen system must interface with the facilities' inmate banking system. Contractor is responsible for all programming costs, including security costs, and all communication links. All profits from the canteen operation must be deposited in a separate account and utilized for inmate rehabilitative needs, in conformity with the Montana State Prison Inmate Welfare Fund. The Department shall have final authority to approve or disapprove use of the funds in this account. Quarterly financial statements - balance sheet, income statement - of the inmate canteen operation including Contractor and subcontractor, if applicable, must be submitted to the Department with a detailed listing of all expenditures for inmate benefits. A quarterly itemized statement of all receipts and disbursements of the Contractor's inmate canteen account must be made available to the Department's Contract Monitor no later than the 15th day of the following month. Employment practices and operating procedures, etc., must be consistent with those employed at similar Department operated prisons. The Contractor must be responsible for providing necessary administration services to the canteen operation. Canteen operations must be audited annually by a Certified Public Accounting firm. The expense of the annual audit of the canteen must be borne by the canteen.

SECTION XXVII

Classification and Transfer

- A. Inmates will be assigned to the Facility and assigned a custody classification by the Department. The Contractor must utilize Department policies 4.2.1, Offender Classification Procedures, 4.2.2, Special Needs Offenders, and other Department classification and housing policies as developed. The Contractor has no authority to transfer, discharge or release an inmate without the prior written approval of the Department. The Department has final authority with respect to any transfer, discharge or release decision.
- B. Inmates placed in the Facility may not be reduced to a classification of lower risk unless mutually agreed to by the Department and Contractor consistent with the policies and

procedures of the Department. The Contractor will be required to perform a custody reclassification review every six (6) months. Contractor shall provide the Department with a summary of reclassification decisions on a monthly basis.

- C. The Contractor will be responsible for preparing, maintaining and providing parole reports, progress reports and disciplinary records to the Department and/or the Montana Board of Pardons and Parole.
- D. The Department shall be solely responsible for the calculation of sentence discharge dates and parole eligibility dates. No inmate shall be discharged from the Facility without written authorization from the Department.
- E. Contractor shall be responsible for providing all necessary services related to the discharge of an inmate, including but not limited to, arranging transportation, property removal, and provision of suitable clothing and the payment of "gate money" as provided in 53-30-111, MCA. The Department will reimburse the Contractor for gate monies paid pursuant to the procedure set forth in Section V, Compensation and Adjustments.

SECTION XXVIII

Communications

The Facility warden or designee will ensure the Montana State Prison Command Post receives daily verbal/telephone reports to at least include severe, major and minor disciplinary infractions; count; escapes or attempted escape; all temporary lock-up incidents; disturbances; identification of inmates in administrative segregation and length of stay; inmate-on-inmate assaults; assaults on staff; use of force; personnel actions; contraband seizures, including weapons, drugs and alcohol; and off-site or medical transport.

- A. Daily telephone reports will be made at 8:00 a.m. to the MSP Command Post at 406-846-1320, extension 2250. Written reports, including incident reports requested by the Command Post will be faxed to MSP at 406-846-2913 and to Department central office, Public Affairs Officer, at 406-444-4920.
- B. In addition to the foregoing, within four (4) hours of an assault, severe or major disciplinary infraction, contraband seizure, off-site or medical transport, disturbance, escape, or use of force, Contractor will fax incident reports to the Department Central Office at 406-444-4920, and to MSP at 406-846-2913.
- C. Any additional incident reports requested by the Department will immediately be faxed to the numbers noted in #2 above.
- D. Video tapes of incidents will be sent upon request to the Department within three (3) days of the request.
- E. Contractor will increase the frequency of telephone reporting upon request of the Department.

- F. Contractor will designate and provide a listing of on-site key personnel responsible for the effective exchange of information.
- G. Open communications will be established between Contractor's investigators and Department's investigators to inform of potential and ongoing criminal investigations.

SECTION XXIX

Indigent Inmates

The Contractor shall provide inmates who are indigent with personal health and welfare items in accordance with Montana State Prison Policy MSP 12-002, "Indigent Packages". The Contractor shall provide indigent inmates with legal postage and materials in accordance with Montana State Prison Policy MSP 14-001, "Indigent Legal Postage and Materials". The costs associated with providing these health, welfare, and legal items is included in the inmate per diem rate set forth in Section V, Compensation and Adjustments.

SECTION XXX

Furnishings, Fixtures and Equipment

- A. The Contractor shall maintain and replace all FF&E to operate the Facility for its intended purpose, including FF&E for the Department's Contract Monitor. The Contractor will be required to safeguard, maintain and account for all FF&E at all times and to turn them over to the Department, or the next Contractor, as the case may be, in good condition, except for reasonable wear and tear. FF&E will remain property of the Contractor except in the event of termination and/or expiration of the Contract.
- B. If replacement FF&E is available through the Department's MCE, the Contractor shall grant MCE the right of first refusal to meet the quality, price and delivery time of FF&E required by the Contractor. If MCE can meet requirements as to quality, price and time of delivery, the Contractor must purchase the FF&E from MCE. The Department will ensure that Contractor is provided with a current copy of the MCE catalogue and all updates to it as they are released.
- C. If any FF&E installed requires software systems to operate and/or maintain the Facility, the Contractor must obtain a license which allows the State or subsequent Contractor to use the software for the operation of the Facility and it must be transferrable without cost or restriction to the State or subsequent contractor.
 - 1. All software, hardware and firmware purchased and/or leased by the Contractor which used prior to, during or after the calendar year 2000, shall include, at no added cost to the State, design and performance so that there is no experience of software abnormality and/or generation of incorrect results from the software due to date oriented processing.

2. The software, hardware and firmware design to insure year 2000 compatibility must include, but is not limited to: date structures (databases, data files, etc.) That provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates the same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; use interfaces (i.e. screens, reports, etc.) That accurately show four (4) digit years; and assurance that the year 2000 will be correctly treated as a leap year within all calculation and calendar logic.

SECTION XXXI

Liaison/Contacts/Contract Monitor

- A. In order to effectively administer this Contract, each party shall appoint contact persons.

1. The Contact Persons for the Department are:

Operational Issues: Contract Monitor
Contract Issues: Contracts Manager
Notice/Litigation: Department's Chief Legal Counsel

2. The Contact Persons for the Contractor are:

Operational Issues: Facility Warden
Contract Issues: Vice President of Legal Affairs
Notice/Litigation: Vice President of Legal Affairs

- B. Replacement of the individuals named herein may be accomplished by written notice to the other party. All notices, reports, billings and correspondence to the respective parties to this Contract shall be sent to the addresses listed above.

SECTION XXXII

Governing Law:

The laws and administrative rules and regulations of the State of Montana shall govern in any matter relating to any inmate confined pursuant to this Agreement.

SECTION XXXIII

Contractor Status

The Contractor shall perform its duties hereunder as an independent Contractor and not as an employee. Neither the Contractor nor any agent or employee of the Contractor shall be

or shall be deemed an agent or employee of the Department. Contractor shall have no authorization, express or implied, to bind the Department to any contracts, liability or understanding except as expressly set forth herein.

SECTION XXXIV

Assignment

- A. No right or interest pursuant to this Contract shall be subcontracted, assigned or delegated by the Contractor without the prior express written permission of the Department.
- B. In the event that permission is granted and some or all of the services are subcontracted or assigned, the Contractor shall guarantee that the subcontractor, assign, or delegee will comply with all of the provision of this Contract.

SECTION XXXV

No Third-party Beneficiary Enforcement

It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Department and the Contractor, and nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other person. It is the express intention of the Department and the Contractor that any entity, other than the Department or the Contractor receiving services or benefits under this Contract, shall be deemed an incidental beneficiary only.

SECTION XXXVI

Venue

This Contract is governed by the laws of Montana. Section 18-1-401, M.C.A., states that district courts of the State of Montana have exclusive jurisdiction on contract claims. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana.

SECTION XXXVII

Severability

- A. If any term or condition of this Contract shall be held to be invalid, illegal or unenforceable, this Contract shall be construed and enforced without such provision, to the extent this Contract is then capable of execution within the original intent of the parties.

- B. If, however, the Department determines that the invalid provision or provisions are essential to the purpose or performance of the Contract, it may terminate the Contract. Such a termination shall be deemed a termination for cause.

SECTION XXXVIII

Risk of Physical Damage to Facility

The risks and costs of physical damage to the Facility incurred as a direct result of the placement of Montana inmates in the Facility shall be considered usual costs incidental to the operation of the Facility and part of the costs reimbursed by the fixed rate per-inmate day as provided by Section V.

SECTION XXXIX

Force Majeure

Neither party shall be deemed to be in default for any delay or failure to perform under this Contract if such delay or failure to perform results from an act of God, civil or military authority, or other occurrence beyond that party's control, provided however, that the Contractor's security obligations under this Contract do not end in the event of an inmate disturbance, riot or other incident. A Force Majeure incident may not be caused by or under the control of the party asserting it and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.

SECTION XXXX

Compliance with Applicable Laws

The Contractor shall, at all times during the performance of its obligations of this Contract strictly adhere to all applicable ACA and NCCHC Standards; local, state and federal laws and regulations, including protection of the confidentiality of all applicant/recipient records, papers, documents, tapes or any other materials that have been or may hereafter be created which relate to this Contract. The Contractor acknowledges that said laws include, but are not limited to: Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1972, the Education Amendments of 1972, the Age Discrimination Act of 1975, the Americans With Disabilities Act, including Title II, Subtitle A, 24 U.S.C. Sec. 12101, et seq. and all rules and regulations applicable to these laws prohibiting discrimination because of race, religion, color, national origin, creed, sex, age or handicap.

SECTION XXXXI

Confidentiality of Records

Unless otherwise provided, and where appropriate:

- A. In the event the Contractor shall obtain access to any records or files of the Department in connection with this Contract, or in connection with the performance of its obligations under this Contract, the Contractor shall keep such records and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the Department.
- B. Contractor shall specifically keep confidential all records and files of Department inmates; Contractor shall obtain prior written approval from the Department before releasing or disclosing the contents of any such records or files. Contractor further acknowledges that this requirement is in addition to and not in lieu of any other laws respecting confidentiality of inmate and criminal justice files and records.
- C. Contractor agrees to notify and advise in writing, all employees, agents, consultants, licensees, or subcontractors of the said requirements of confidentiality and of possible penalties and fines imposed by violation thereof, and secure from each an acknowledgment of such advisement and Agreement to be bound by the terms of this Contract as an employee, agent, consultant, licensee or subcontractor of the Contractor, as the case may be.
- D. Any breach of confidentiality by the Contractor or third party agents of the Contractor shall constitute good cause for the Department to cancel this Contract, without liability. Any records and files delivered to the Contractor shall be returned to the Department.
- E. Any Department waiver of an alleged breach of confidentiality by the Contractor or third party agents of the Contractor is not to imply a waiver of any subsequent breach.

SECTION XXXXII

Headings:

Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Contract.

SECTION XXXXIII

Time of the Essence:

Time is of the essence in the performance of all of the parties' obligations and duties under this Contract.

SECTION XXXXIV

Modification and Breach

This Contract contains the entire agreement and understanding between the parties and no statement, promise or inducement made by either party or agents thereof which are not contained in the written Contract shall be binding or valid. This Contract shall not be enlarged, modified or altered except upon written agreement signed by all parties to the Contract.

SECTION XXXXV

Alternate Dispute Resolution

Any dispute between the parties concerning any and all matters related to this Contract will be resolved as follows:

- A. Step 1: Each party will appoint a person who shall be responsible for administering the resolution procedures regarding claims. Those appointed persons shall attempt to settle such claim. If they are unable to resolve the claim within thirty (30) days after either party notifies the other that the claim has been referred for resolution, either party may declare that an impasse has been reached and proceed to Step 2.
- B. Step 2: Upon declaration of an impasse, the parties will seek mediation by a certified civil mediator who will be agreed to by the parties or, if the parties cannot agree to a mediator within thirty (30) days of the decision to mediate, said mediator will be chosen by the party seeking mediation. The cost of the mediation will be split equally between the parties.
- C. In the absence of an agreement to the contrary by the parties, the mediation process shall be conducted in accordance with the Center for Public Resources Model Mediation Procedures of Business Disputes. the mediation shall conduct all hearings and meetings in Helena, Montana, and, within thirty (30) days of appointment, shall notify the parties in writing of the decision stating separately findings of fact and determinations of law. If non-binding mediation does not resolve the dispute, parties may proceed to Step 3 set out herein.
- D. Step 3: Either party may seek the remedy available under law.

SECTION XXXXVI

Contractor Compliance Assessment

- A. In the event that the Contractor fails at any time following September 1, 1999, to perform or comply with the terms and conditions of this Contract or any applicable court order, the Contractor agrees to pay a Contractor Compliance Assessment as determined by the formula

set forth in Appendix III, which is incorporated herein by reference. The procedure for assessing a fine for non-compliance by the Contractor is as follows:

- B. The decision to assess the Contractor a Contractor Compliance Assessment and the amount of any Assessment shall be the sole discretion of the Department.
- C. The Department's Contract Monitor will prepare a Notice of Non-Compliance which will identify each instance of non-compliance with this Contract. The Department will grant the Contractor a reasonable time, typically 60 days, to rectify the noncompliance. Notwithstanding the foregoing, in the event that the Contractor has previously been notified about a similar instance of non-compliance, the Contract Monitor may, in his or her sole discretion, assess a fine as provided for herein without providing the Contractor an opportunity to rectify the non-compliance.
- D. If the Contract Monitor determines that the Contractor has not rectified the non-compliance within the time period specified, the Contract Monitor shall prepare a Notice of Non-Compliance and Assessment of Fine (hereafter "Notice of Assessment"). The Notice of Assessment shall identify each instance of non-compliance which was not rectified in the requisite period of time, along with the amount of the fine assessed for each instance of non-compliance. Notwithstanding the foregoing, if the Contractor fails to rectify any non-compliance, the Department, in its sole discretion, may declare the Contractor in breach of the Contract and the Department may, at its sole discretion, terminate the Contract no less than 10 days from the date of Contractor's failure to cure the non-compliance.
- E. The Department's Contract Monitor will mail the Notice of Assessment to the Contractor's contact person, certified, return receipt requested.
- F. If the Contractor disputes the assessment, the Contractor shall mail a Notice of Disputed Assessment to the Contract Monitor within 10 days of date of receipt of the Notice of Assessment, and said Notice of Disputed Assessment shall be mailed certified, return receipt requested. The Contractor must specifically indicate the basis for its dispute with the finding of non-compliance and the assessment of fine, and must provide supporting documentation. If the Contractor fails to dispute the finding of non-compliance and assessment of fine within the 10 days, or fails to provide a basis and/or documentation as required by this paragraph, the Contractor waives the right to contest the assessment of non-compliance and fine by the Department.
- G. The Department shall have 10 days from receipt of Contractor's Notice of Disputed assessment to reconsider the assessment of the fine. If the Department does not respond to the Contractor within said 10 days, the Department will be considered to have affirmed the assessment of the non-compliance fine. The Department's action or inaction as set forth in this paragraph shall be considered its final decision.
- H. In the event that the Department's final decision is to assess a fine, the amount of the fine shall be deducted from the next payment made to the Contractor by the Department.

- I. If the Contractor is not satisfied with the final decision of the Department, the Contractor may utilize the Alternate Dispute Resolution procedure provided for in Section XXXV, Alternate Dispute Resolution, of this Contract.
- J. In the event that the Contractor is determined not liable for the fine, the Contractor shall be reimbursed the amount of fine, plus interest at a rate equal to the short term investment pool rate (STIP).
- K. In assessing a fine, the following conditions shall apply:
1. The Contractor shall be assessed a fine for each day of non-compliance.
 2. In the event that an instance of non-compliance may reasonably be assigned to two or more Operation Areas, the Contract Monitor shall have sole discretion to determine the appropriate Operation Area to assign the non-compliance.
 3. In the event that the cause or type of an instance of non-compliance may reasonably be assigned to two or more causes or types, the Contract Monitor shall have sole discretion to determine the appropriate Operation Area to assign the non-compliance.
 4. Each instance of non-compliance may be assessed a fine.
 5. Referring to Appendix III, the amount of fine assessed for each instance of non-compliance will be determined as follows:
 - a. The Contract Monitor shall determine which clause of the Contract with which the Contractor has not complied, and determine the Operation Area assigned to that clause. This determination shall determine the value for "V".
 - b. The Contract Monitor shall determine the type or cause of non-compliance from the column entitled "Contractor Breach" under the appropriate Operation Area. This determination shall determine the value for "B".
 - c. The Contract Monitor shall multiply "V" times "B" times \$50.00 times each day of non-compliance to determine the amount of fine to assess. For example, if the Contract Monitor determines that the Contractor has only provided one hot meal on three separate days, in violation of Section XVII, paragraph A, the appropriate Operation Area Value, or "V" is 3; and the type or nature of the non-compliance is a failure of staff, for a "B" value of 4. The amount of fine would be 3 times 4 times \$50.00 times 3 days, or \$1800.00.

- L. Notwithstanding the foregoing, CCA shall not be assessed a Contractor Compliance Assessment for the failure to meet an ACA or NCCHC Standard prior to Contractor's accreditation by the ACA or NCCHC; provided; however, that the Contractor shall attain ACA and NCCHC accreditation no later than September 1, 2002.
- M. A Contractor Compliance Assessment shall not be assessed if the failure of the Contractor is the result of the acts or omissions of the Department.

SECTION XXXXVII

Changes

The Department and Contractor, can by written approval between both parties, make changes within the general scope of the Contract. If any change of scope causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under the Contract, a mutually satisfactory adjustment must be made in the Contract and must be modified in writing accordingly.

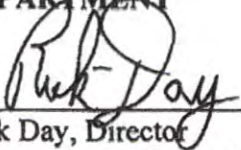
SECTION XXXXVIII

Completed Contract

This Contract contains 43 pages plus five appendices. The Department cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Director's Office, Department of Corrections, 1539 11th Avenue, Helena, Montana 59620-1301.

SIGNATURES:

DEPARTMENT


Rick Day, Director
Department of Corrections

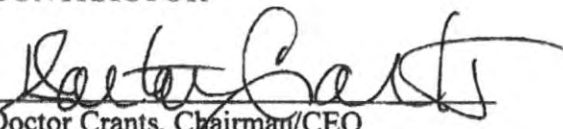
7-22-98
Date


Marc Racicot, Governor
State of Montana

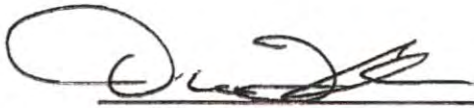
7-22-98
Date

Approved for Legal Content by:

CONTRACTOR


Doctor Crants, Chairman/CEO
Corrections Corporation of America

7-22-98
Date


David L. Ohler
Chief Legal Counsel
Department of Corrections

7/22/98
Date