

CONGRESSIONAL BRIEFING ON H.R. 2450

January 25, 2010

Rep. Sheila Jackson-Lee, Congressional Honorary Host

Presentation
by
Alex Friedmann *

If non-federal correctional facilities that house federal prisoners were as accountable to the public as federally-operated prisons, then we would not be here today. If information about non-federal facilities – particularly privately-operated prisons – was as accessible to the public through the Freedom of Information Act as it is from government-run prisons, then we would not be here today. But it isn't, which is why we are.

On June 26, 2008, I testified before the House Subcommittee on Crime, Terrorism and Homeland Security concerning H.R. 1889 – the previously-introduced version of H.R. 2450. During that testimony I discussed various examples where private prison companies did not release documents pursuant to FOIA or public records requests, some of which I will discuss here.

The day **after** that hearing, the Private Corrections Institute (PCI) received a letter from Immigrations and Customs Enforcement (ICE), in response to a FOIA request submitted by PCI field organizer Frank Smith. Frank had requested documents related to the Regional Correctional Center in Albuquerque, New Mexico, operated by Cornell Corrections. ICE had pulled all 600 of its detainees out of the facility in 2007, citing concerns as to whether Cornell could provide a “safe and humane environment.”

The information that Frank requested in his FOIA included the number of staff positions at the facility, the employee turnover rate, the number of staff terminations and resignations, and the reasons for same. ICE responded by stating they had conducted a comprehensive search of their files, but were “unable to locate or identify any responsive records” in those categories.

Did understaffing result in dangerous conditions at the Cornell prison that led ICE to remove all of its detainees? Was the staff turnover rate exceedingly high, which contributed to instability due to inexperienced staff? Were Cornell employees being terminated for breaking prison rules or committing crimes such as smuggling contraband or having inappropriate relationships with detainees? We don't know. And we don't know because ICE was unable to provide any responsive records to our FOIA request related to those issues.

Had the Regional Correctional Center been operated by ICE or any other federal agency, the information requested through FOIA would have been available – the number of employees, the staff turnover rate, the number of employees fired and if their terminations were due to misconduct or criminal activity. But not at a privately-run prison, even though it houses federal detainees for a federal agency.

Cornell has that information – but under current law does not have to directly respond to FOIA requests.

The lack of available information concerning private prisons under contract with federal agencies was cited by the Government Accountability Office in an October 5, 2007 report (GAO-08-6). The GAO found that “A methodologically sound cost comparison analysis of BOP and private low and minimum security facilities is not currently feasible because BOP does not gather data from private facilities that are comparable to the data collected on BOP facilities.” Further, the “BOP does not collect or maintain sufficient data on private facilities to account or adjust for these differences in a cost comparison.” The GAO concluded, “Without comparable data, BOP is not able to evaluate and justify whether confining inmates in private facilities is more cost-effective than other confinement alternatives such as building new BOP facilities.”

If the BOP does not gather data from private prisons, then they cannot provide it to people who file FOIA requests seeking that data. If the GAO is unable to obtain sufficient data concerning private prisons that house federal inmates, then how can members of the public?

I know firsthand how difficult it is to obtain information from private prison companies that would otherwise be available from public agencies. I am presently the plaintiff in a public records suit against CCA, filed in Tennessee, after the company refused to produce records in compliance with the state’s Public Records Act. CCA argued, unsuccessfully, that despite the undisputed fact that it operated prisons and jails, and incarcerated prisoners, it was not the functional equivalent of a government agency and thus subject to the public records law.

The trial court disagreed, and CCA appealed. The Court of Appeals also disagreed, stating, “With all due respect to CCA, this Court is at a loss as to how operating a state prison could be considered anything less than a governmental function.” CCA has appealed to the Tennessee Supreme Court and I cross-appealed on fees. The case remains pending, almost three years after I first requested records from CCA.

Clearly, CCA is not concerned with being accountable to the public or transparent in its operations, or even in following established law in terms of compliance with the Public Records Act in Tennessee, where the company is headquartered.

Further, in April 2008, I sent public records requests to a number of state and local agencies that contract with CCA, requesting specific data including the number of inmate-on-inmate assaults, inmate-on-employee assaults, disciplinary reports and use-of-force incidents. I also requested data concerning CCA employees who had been charged with criminal offenses.

Several jurisdictions, despite contracting with CCA, stated they could not produce the requested records or data. The Board of Commissioners for Citrus County, Florida provided the number of disciplinary reports but said, “All other information is not received or maintained by this office.” The Tallahatchie County Sheriff’s Office stated, “I do not have anything ref: to what you are asking for in my office. CCA takes care of their own business.” The Hamilton County Dept. of Corrections replied, “No such records are maintained in this office.”

The Louisiana Dept. of Public Safety and Corrections responded, “With regard to your request for information relative to CCA employees being charged with criminal offenses, this office has no information regarding that issue.”

Separately, as stated in a February 2008 issue of “Watch Your Assets,” a joint project by Texans for Public Justice and Grassroots Leadership, “In response to requests for records under the Texas Public Information Act, however, the [Texas Dept. of Criminal Justice] acknowledged that it does not collect basic statistics about private facilities, numbers that it routinely gathers for facilities that it operates itself. TDCJ officials say that its inspectors monitor some employment information during site visits but the agency could not provide staffing numbers for its private facilities. The requested data that the agency did not provide were records on the number of

guards each facility employs, the guard-to-prisoner ratio, guard disciplinary data, and enrollment in drug-treatment programs.”

If public agencies do not maintain or receive records related to private prisons, and there is no legal recourse to obtain them from the private prison companies themselves, then such records are unattainable by members of the public. And the public has a right to know about such things as rates of institutional violence, riots, and prison and jail employees who commit crimes or engage in misconduct.

It is taxpayer dollars that pay for private prison contracts, and the public has a right to know that they’re getting what they’re paying for. There is every indication, however, that the public is not being provided with information that would let them make that determination.

On March 13, 2008, TIME magazine published an article about a CCA whistleblower, Ronald T. Jones, who had been employed as a senior manager in the company’s internal quality assurance office. Mr. Jones stated that under the direction of CCA general counsel Gus Puryear, CCA maintained two sets of quality assurance reports. The audit reports provided to contracting public agencies reportedly did not contain all of the information in CCA’s more detailed in-house reports, which were labeled “attorney-client privileged” and not for distribution outside the company. The quality assurance reports to which Mr. Jones referred included “zero tolerance” events such as riots, escapes, hostage situations and sexual assaults at CCA facilities.

CCA’s general counsel, Gus Puryear, was nominated by President Bush for a federal judgeship. Senator Dianne Feinstein submitted written questions to Mr. Puryear regarding the allegations raised by Ronald Jones. Referring to the detailed audit reports she asked him, “Were CCA’s contract partners (including federal, state, and/or local corrections authorities) aware?”

Mr. Puryear responded, “Because the intent was to use such documents for internal purposes only, so that auditors would feel free to make candid observations to help protect the health and safety of CCA’s employees and inmates, we did not make customers aware of these documents.”

Protecting the health and safety of prison employees and inmates is also a matter of public concern – yet CCA “did not make customers aware of” the company’s detailed audit reports. Those customers included federal contracting agencies. And if the agencies were not made aware of the reports, then they certainly couldn’t produce them to members of the public through FOIA requests under existing law.

Senator Feinstein pressed Mr. Puryear, asking him if anyone else was aware of the detailed audit reports. His response? “CCA did not make anyone else aware to my knowledge.” Senator Feinstein also asked, “Has CCA ever shared such documents with a contract partner or with others?” Mr. Puryear replied, “CCA does share the audit report containing ratings and measurements, but not the separate commentary made by auditors. I am not aware of any request to share such documents.”

Of course CCA was not aware of any request to share such documents, as their general counsel had admitted, in his same responses, that they did not make their customers aware of those documents. It’s hard to ask for something when you don’t know it exists.

H.R. 2450 would address the problems related to public accountability and transparency that I have mentioned here today. The bill would ensure that non-federal correctional facilities that house federal prisoners would be subject to FOIA to the same extent – not a greater extent, but the same extent – as federal prisons operated by the Bureau of Prisons or ICE.

This is a good government bill that simply makes sense. Why should private prison contractors, which are paid with federal taxpayer funds, be any **less** accountable to the public than the federal prison system?

** Alex Friedmann is the associate editor of Prison Legal News (www.prisonlegalnews.org), a non-profit monthly publication that reports on criminal justice issues. He is also president of the Private Corrections Institute (www.privateci.org), a citizen watchdog group that educates the public and policy makers about the deleterious aspects of prison privatization. Further, he is a former prisoner who served six years at a CCA-operated prison in Tennessee, where he saw firsthand how private prisons operate and how they are less accountable to the public.*