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Panel discussion on Challenging Conditions of Confinement in Privately-Run Immigration Detention Centers

While this panel is about privately-run immigration detention centers, those facilities are part of the larger industry of privatized correctional services, including for-profit prison and jail management, medical services, food services and transportation.

The modern iteration of private prisons began in the mid-1980s, largely as a result of get-tough-on crime rhetoric and harsh sentencing laws, including mandatory minimums. The U.S. prison population increased dramatically as a result with a need for additional prison beds, and private companies quickly capitalized on this market opportunity.

Privately-run immigration detention facilities, first under the INS and now under ICE, began to develop in the mid-1990's as the political rhetoric shifted from tough on crime to tough on crime and immigrants – many of whom had committed no crimes. They were refugees, asylum seekers or undocumented, but were marginalized and politically unpopular. As a result of increased detention needs following the 1996 Immigration Reform Act, private prison companies began operating immigration detention centers.

The largest players in the industry include CCA, GEO Group (formerly Wackenhut), Cornell and MTC. This is a multi-billion dollar industry, spurred by the federal government, which helped to bail out CCA, the nation's largest private prison operator.

In 2000, CCA was in financial crisis due to large debts and a disastrous restructuring of a spin-off real estate investment trust. The company's stock dropped to under \$.50 a share and it was on the verge of going under. The feds responded with contracts for 7,500 beds in 2000 under CAR I and CAR II ("criminal alien requirements"), with CCA getting several lucrative contracts that enabled the company to make a comeback.

The immigration detention population is seen as a lucrative market because many detainees do not have criminal convictions beyond illegal

entry issues, and are thus low-risk, generally more docile, require lower security and therefore more profitable to house.

To understand the profitability of this industry you must understand the business model. Around 70% of operational expenses for detention facilities are related to staffing in terms of number of employees hired, how much they are paid, benefits, training, etc. While private prison companies cut corners in terms of prisoner amenities, such as fewer blankets, lower quality food and less toilet paper, the main cost reductions are in staffing.

This translates to fewer employees being hired, vacant staff positions being left vacant as long as possible, lower wages and fewer benefits than in the public sector, and less training. As a direct result there is much higher staff turnover in private prisons – up to 52% according to the industry's own numbers. Comparable figures in the public sector are around 16%. Higher turnover results in the hiring of less qualified staff, less experienced staff, and instability in the detention environment – historically this has resulted in more staff misconduct, more riots, escapes and violence, at higher levels than in publicly-run detention facilities.

What are the consequences of this business model? I will briefly examine three examples of privately-run immigration detention centers, in terms of conditions of confinement.

1. Esmor Detention Center in Elizabeth, NJ, run by Esmor Corr. Services in the mid 1990's under contract with INS.

On June 18, 1995, detainees at the 300-bed Esmor facility rebelled; they ran off the private guards, damaged the facility and held off authorities for 6 hours. Twenty detainees were injured. What caused this usually docile population of non-criminal detainees to riot?

- * Windowless warehouse
- * Complaints of physical abuse and sexual harassment and touching.
- * Female detainees were watched by male guards when they showered
- * Detainees shackled to toilets or furniture
- * Subjected to ethnic slurs and verbal abuse
- * Forced to take psychotropic medications
- * Denied food
- * Subjected to digital body cavity searches

At the time of the riot there were only a dozen Esmore staff on hand, who had received three hours of training and were paid \$7.00/hour.

As a result of these conditions and the subsequent riot, a class action and two separate federal lawsuits were filed. The class action, *Brown v. Esmor*, settled in August 2005 for \$2.5 million.

Esmor changed its name to distance itself from the incident, becoming Corrections Services Corp., and was later bought out by GEO Group. CCA took over the contract to run the Elizabeth, NJ facility, and experienced continued problems that included abuse by staff and the involuntary forced medication of detainees.

2. MTC-run Willacy County Processing Center in Texas. The facility consists of domes made from Kevlar, with a population of 2,000; run under contract with ICE, and built in 2006.

Complaints from detainees at the Willacy facility have included lack of medical care and difficulty in contacting outside advocates, including attorneys. In August 2007 there were reports of substandard food being served at the center, with documented cases of meals infested with maggots. According to one unnamed MTC guard, a detainee attempted suicide due to depression over conditions at the facility. There have been community protests at the MTC-managed detention center.

3. T. Don Hutto Residential Center, a CCA-run 500-bed facility that houses non-criminal immigrant detainee families, including women and children. Around half the population was composed of children under age 18. Under contract with ICE.

“Residential Center” sounds inviting – like a place you’d like to take your kids. But make no mistake, the place is a prison. Although conditions have changed recently following the resolution of ACLU litigation in August 2007, which Tom Jawetz will discuss in much more detail, these are some of the conditions prior to the settlement:

- * The facility, which was previously used as a prison, was surrounded by razor wire
- * Detainees, including children, were required to wear prison uniforms
- * Families lived in cells with bunk beds and toilets for 12 hours a day
- * Head counts three times a day
- * Non-contact visits with non-attorney visitors

- * Pregnant detainees were shackled and chained when taken for check-ups.
- * Guards would turn up the air conditioning or turn off hot water as punishment tools
- * Documented cases of staff having sexual relationships with detainees
- * It was recently revealed that some Hutto guards were themselves undocumented workers.

The chair of CCA's board of directors, William Andrews, said the facility was "Almost like a home." Which is true – if your home is a prison.

The facility was named for T. Don Hutto, one of CCA's original founders. That might have been a clue about conditions at the prison. Hutto was previously a director of the Arkansas DOC, and in a 1978 Supreme Court ruling the Court cited cruel and unusual punishment under Hutto's tenure, including rape, torture and 10-hour workdays for prisoners. The Court noted that under Hutto, it appeared the Arkansas prison system was trying to operate its prisons at a profit.

Williamson county recently considered canceling its contract with CCA; however, the county receives around \$15,000 a month from the company and CCA agreed to indemnify them in the event of litigation against the county, plus pay \$5,000 a month for a monitor. So the contract with CCA will continue.

I attended CCA's board meeting in Nashville this past May, and asked CEO John Ferguson if his company planned to expand into the market of housing women and children with no criminal records in detention centers such as the T. Don Hutto facility. He stated that if the government sought to contract for more such facilities, CCA would submit bids.

Summary

In summary, I recently read an article that said there was a bulletin board at Hutto where former detainees had posted messages, mostly indicating that they were happy with their detention at the facility. The company used it as a propaganda tool.

One of those messages said, simply, "Thank you, but you shouldn't have." Which, I think, sums up the privatization of immigrant detention facilities by for-profit companies, whose fixation on the bottom line results in abuses and abysmal conditions of confinement. Simply put, "You shouldn't have."

Litigation Resources:

Reports:

"Alien Detention Standards," GAO audit in July 2007 (both public and private; mostly found problems with phone access by detainees).

"Locking up Family Values," Women's Commission for Refugee Women and Children, and the Lutheran Immigration and Refugee Service, Feb. 2007

Dept. of Homeland Security report by Inspector General, which harshly criticized inspection of ICE facilities, and the dept's own non-compliance with standards, Jan. 2007

Legal Issues:

PLRA does not apply to immigrant detainees who are being held due to civil detentions. Fifth Circuit case of *Ojo v. I.N.S.*, 1997.

Private prison companies can not raise a defense of qualified immunity (*Richardson v. McKnight*, S.Ct., 1997)

Cannot sue private prison companies under federal contracts in Bivens actions, but can perhaps sue individual officers. *Correctional Service Corporation v. Malesko*, 2001. Whether individual officers can be sued is a matter of debate, after a Tenth Circuit en banc ruling that was evenly split on the issue. *Peoples v. CCA Detention Centers*, 2006.

Other things to consider:

Difficulty in class actions due to transient population, as detainees are deported, released, or moved to other facilities nationwide. After the settlement in the Esmor class action, only 456 of 1,180 detainees could be located. This also presents a problem in terms of locating witnesses while the case is progressing.

At CCA facilities, the company conducts internal quality assurance audits, which may be useful in determining what problems existed, when they were known, and who knew them. CCA has moved its internal audit division under its legal department and may claim that such reports are attorney product; however, they should be sought in discovery.