



## **PRIVATIZATION OF PRISONS**

By Ted Volskay

### **BACKGROUND**

Many states have turned to private prisons to address the issues of prison overcrowding and the capital expense of building new prisons, and to reduce the cost of prison operations. In 2011, the corrections services market (including federal and state prisons, but excluding jails) in the United States was valued at approximately \$70 billion. The portion of corrections services market that is outsourced to private corporations is approximately 10 percent or \$7 billion.<sup>1</sup>

Advocates of privatizing correctional services state that private prisons can achieve savings over public prisons by purchasing in bulk, eliminating overtime and employee benefits, and reducing the red tape. Opponents of privatizing prison services argue that a true and accurate comparison between public and private costs and services is difficult and complex, and does not provide a compelling argument for privatizing prison services.<sup>2</sup>

#### **Privatization Case Study: Pennsylvania Child Care Center**

**Governmental Level: County (Luzerne County)**

**Primary Privatization Mechanism: Defunding publicly owned and operated juvenile detention center**

On February 18, 2011, a federal jury convicted former Luzerne County Common Pleas Juvenile Court Judge Mark A. Ciavarella, Jr., on 12 of 39 counts of racketeering, money laundering and conspiracy in connection with the infamous “Kids for cash” scheme.<sup>3</sup> Ciavarella and former Judge Michael T. Conahan reportedly received \$2.6 million in kickbacks for sending thousands of juveniles to two private detention centers.<sup>4</sup>

The scheme began when Robert J. Powell, a wealthy personal-injury lawyer from Hazelton (PA) contacted Judge Michael T. Conahan, Ciavarella’s colleague, to learn how he might get a contract to build a private detention center. When Judge Conahan became the “president” judge in January 2002, he obtained control over the county courthouse budget. Judge Conahan subsequently signed a secret deal with Powell, whereby the court would pay \$1.3 million dollars annually to rent Powell’s private juvenile detention center, in addition to the tens of millions of dollars that the county and state would pay to house delinquent juveniles.<sup>5</sup> Two detention centers, Western Pennsylvania Child Care and Pennsylvania Child Care, were eventually constructed in Pittston, Luzerne County.<sup>6</sup>

Conahan and Ciavarella systematically shut down the public juvenile detention center that was owned and operated by Luzerne County. First, the judges refused to send delinquent juveniles to the public detention center and, then, cut off funds for its operation.<sup>7</sup> Although county commissioners were the only ones authorized to sign contracts for detention centers, Judge Conahan left them with little alternative but to sign a contract with the privately owned and

operated detention centers because Conahan had eliminated funding for the Luzerne County juvenile detention facility.

A state audit of the private detention center was conducted that described the lease of the facility as a “bad deal.” The center’s owner filed a “trade secrets” lawsuit against the Luzerne County controller who leaked the findings of the audit, and Judge Conahan subsequently sealed the suit to limit the release of other documents. During a separate audit, state auditors determined that the detention center was systematically overbilling the county and was receiving shutoff notices from utilities because they had fallen behind in paying their bills.<sup>8</sup>

The “Kids for cash” scheme began to unravel when Ciavarella sentenced a 15-year-old college-bound high school student to three months in juvenile detention after she made fun of an assistant principal on MySpace and was cited for harassment. The girl’s mother took her daughter’s case to the Juvenile Law Center (JLC), a nonprofit advocacy group that promotes juvenile justice and child welfare reform in Pennsylvania. The JLC determined that their client’s case was not exceptional.<sup>9</sup> In 2002, Judge Ciavarella sentenced twice as many juveniles to detention compared to the prior year and sentenced juveniles to detention at a rate that was twice the state average over a subsequent five-year period.<sup>10</sup> One of the cases involved a 12-year-old boy who went joyriding with his mother’s car and ran over a barrier. Although there were no injuries, the car was damaged, and the boy was cited after his mother filed a police report so that insurance would cover the damage. The boy, who was not represented by an attorney, pleaded guilty and spent two years in the detention center.<sup>11</sup>

The JLC asked the Pennsylvania Supreme Court to assume jurisdiction over all the cases of juveniles adjudicated delinquent in Luzerne County since 2005. The Luzerne County District Attorney opposed it and the Pennsylvania Supreme Court denied the JLC petition without comment. Subsequently, after the FBI began an independent investigation into Ciavarella and Conahan for accepting money from certain detention center developers, the Pennsylvania Supreme Court reconsidered and granted the JLC petition. One of the developers, who has not been accused of criminal wrongdoing but is a defendant in a class action lawsuit, is the Allegheny County District Attorney’s brother and a former Pennsylvania Supreme Court Justice’s son.<sup>12</sup>

## **THINGS TO CONSIDER**

- This case illustrates the need for stringent state oversight procedures to be firmly in place when transitioning from public sector to private sector detention centers. Furthermore, it is important to monitor changes in patterns of incarceration when for-profit incentives are involved.<sup>13</sup>
- One of the benefits argued by proponents of privatization is that free market competition is ultimately good for the taxpayer. In the case of the “Kids for cash” scheme, defunding the existing county juvenile detention center achieved the goal of privatizing juvenile detention services, while eliminating any meaningful competition that would have existed had the public detention center remained operational.

- Although parents and local child advocates accused the former judge of harsh sentencing, many in the community, including the local schools, supported him. When Judge Ciavarella decided upon a policy to incarcerate juveniles arrested at school, local schools were more than happy to send trouble makers out of town by calling the police for just about any incident that they preferred not to address. Ciavarella himself pointed to the low recidivism rate as justification for his tough judgments.<sup>14</sup>
- Two of the largest private prison corporations, Corrections Corporation of America and Geo Group are publicly traded on the New York Stock Exchange; NYSE Symbols (CXW) and (GGO), respectively. In fact, consistent with their for-profit culture, private prison corporations include as part of their business plan finding alternative means of filling their facilities.<sup>15</sup> According to Corrections Corporation of America, “Utilization Drives Earnings.”<sup>16</sup>
- During the 2008 election cycle, the three largest publicly traded prison management companies contributed approximately \$679,000 to political groups and politicians from states where they are courting new business. The boards of directors for Corrections Corporation of America and Geo Group include formerly elected representatives and government officials from former Republican and Democratic administrations.<sup>17</sup>
- In a free market, the consumer chooses between companies that provide a service. The for-profit prison market is different because prisoners cannot choose where or how long they will be incarcerated. Furthermore, prisoners typically do not have a strong representative voice. They are vulnerable to efforts by privately owned/operated detention facilities to increase profitability by reducing or eliminating any prison expense that might not be required but substantially affects prisoner welfare.

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## ENDNOTES

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<sup>1</sup> CCA (Corrections Corporation of America) Second Quarter 2011 Investor, Power Point Presentation, August 18, 2011. [Corrections Corporation of America - Presentations & Webcasts](#)

<sup>2</sup> Dina Perrone and Travis C. Pratt, “Comparing The Quality of Confinement and Cost-Effectiveness of Public Versus Private Prisons: What We Know, Why We Do Not Know More, and Where We Go from Here,” *The Prison Journal*, Vol. 83, No. 3, September 2003, pp. 301-322. Not accessible online.

<sup>3</sup> Lindsey Davis, Frank Mastropolo and Lauren Sher, “Pennsylvania Judge Convicted in Alleged ‘Kids for Cash’ Scheme,” ABC News, February 21, 2011. <http://abcnews.go.com/US/mark-ciavarella-pa-juvenile-court-judge-convicted-alleged/story?id=12965182>

<sup>4</sup> Ian Urbina, “Despite Red Flags About Judges, a Kickback Scheme Flourished,” *The New York Times*, March 28, 2009. <http://www.nytimes.com/2009/03/28/us/28judges.html>

<sup>5</sup> See endnote 4.

<sup>6</sup> Tracie Maunello, “Detention scheme was lucrative, harmful,” *Pittsburg Post-Gazette*, February 15, 2009. <http://www.post-gazette.com/pg/09046/949273-85.stm>

<sup>7</sup> See endnote 3.

<sup>8</sup> See endnote 4.

<sup>9</sup> Wendy N. Davis, “Town Without Pity,” *ABA Journal*, September 1, 2009. [http://www.abajournal.com/magazine/article/town\\_without\\_pity/](http://www.abajournal.com/magazine/article/town_without_pity/)

<sup>10</sup> See endnote 4.

<sup>11</sup> See endnote 3.

<sup>12</sup> See endnote 9.

<sup>13</sup> Vanessa M. Cross, J.D., LL.M., “Commentary: Privatization of Juvenile Detention Centers”, National Institute for Law & Equity (NILE), (no date provided).

<sup>14</sup> See endnote 9.

<sup>15</sup> Fiona Donson, “Kids for cash”: the dangers of private prisons laid bare, CCJHR (Center for Criminal Justice and Human Rights) blog, March 27, 2009. [CCJHR Blog: "Kids for cash": the dangers of private prisons laid bare](http://www.ccjhr.org/blog/2009/03/27/kids-for-cash-the-dangers-of-private-prisons-laid-bare)

<sup>16</sup> See endnote 1.

<sup>17</sup> Nancy Cook, “How the Recession Hurts Private Prisons,” *Newsweek*, June 30, 2010. <http://www.newsweek.com/2010/06/30/how-the-recession-hurts-private-prisons.print.html>