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Brian Farren

The University of Montana

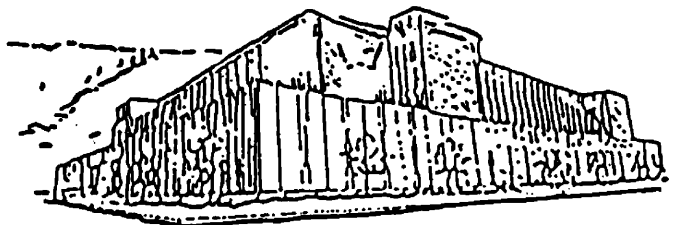
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**ASSESSING THE POTENTIAL FOR A PRIVATE
NOT-FOR-PROFIT PRISON
IN SOUTHWEST MONTANA**

By

Brian Farren

B.A. Carroll College 1996

Presented in partial fulfillment of the requirements

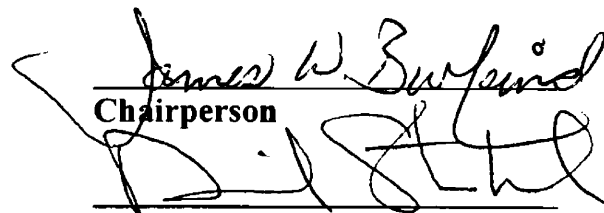
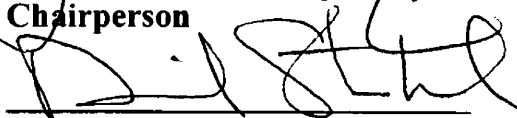
For the degree of

Master of Arts

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1998

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Dean, Graduate School

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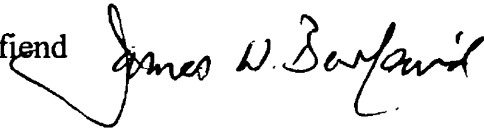
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Assessing the Potential for a Private Not-For-Profit Prison in Southwest Montana

Director: James Burfiend

A handwritten signature in black ink, reading "James W. Burfiend". The signature is written in a cursive style with a large, sweeping initial 'J'.

Prisons today are facing many challenges. Chief among these challenges are overcrowding and increased cost of incarceration. Private prisons are starting to reemerge as an alternative to the public prisons and the problems accompanying them.

Private prisons existed in the 1800s, however the first era of private prisons was not a big success. Many problems existed, but at the top of this list was corruption. Today with the reemergence of private prisons, there are many critics of privatization. These opponents have a variety of arguments ranging from the cost of these facilities to fear of corruption. Thus an assessment of the viability of private prisons is necessary.

There are two types of private facilities, not-for-profit and for-profit. As the present time is showing a need for private facilities, the future is uncertain on which type of private facility is better for our society. Thus, an assessment on not-for-profit and for-profit facilities is necessary. Part of this assessment will take place by examining a proposed not-for-profit facility in Southwest Montana.

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INTRODUCTION

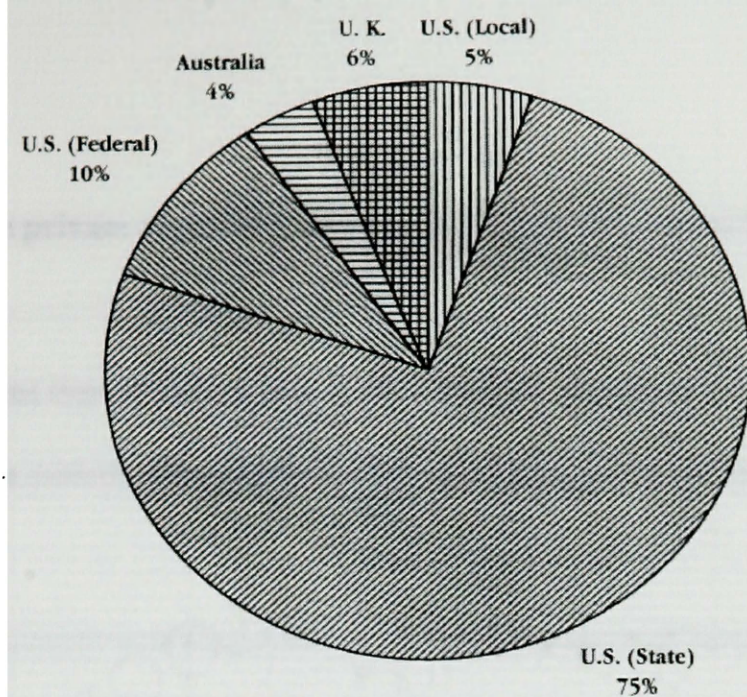
. . . where on a scaffold that will be erected there, the flesh will be torn from his breasts, arms, thighs, and calves with red hot pincers, his right hand holding the knife with which he committed the said parricide, burnt with sulphur, and on those places where the flesh will be torn away, poured molten lead, boiling oil, burning resin, wax and sulphur melted together and then his body drawn and quartered by four horses and his limbs and body consumed by fire, reduced to ashes and his ashes thrown to the winds (Foucault 1995:12).

This gruesome account of an eighteenth century condemnation characterizes the dramatic shift in the administration of punishment. Within these two centuries of change, there have been many experiments with different forms of punishment. By the beginning of the nineteenth century, brutal acts of torture and public execution were slowly disappearing. New forms of punishment were replacing the old; among the new was imprisonment. Today as we approach the twenty-first century, imprisonment is the dominant form of punishment. Prisons are located all over the world. From a nation of great wealth like the United States to the poorest of third world countries, some form of imprisonment exists. The worlds' prisons are very diverse and it is likely that no two are alike. However, one concept is universal among all of them: They take away an individual's freedom.

As with any form of punishment or correction, controversy surrounds the

administration of prisons. The debates concerning imprisonment are numerous and complex. Imprisonment is by no means a perfect form of punishment. Many adjustments to past problems have been implemented. However solutions to existing problems are continuously being sought. Perhaps the biggest problem that prisons in the United States are facing today is overcrowding. The United States is one of the world leaders in per capita incarceration. In terms of total numbers, the U.S. has about 1.6 million people in a state or federal prison on a given day (Bureau of Justice Statistics 1997). In addition to this, there are roughly 500,000 people in local jails on a given day (Criminal Justice Institute 1995). The total number of people in state or federal prisoners at mid-year of 1996 has doubled since 1990 (Bureau of Justice Statistics 1997). The total cost of incarceration today is well over 30 billion compared to just 2.2 billion in 1975 (Criminal Justice Institute 1995). For years, scholars, policy makers, activists, and correctional leaders have been looking for new ways to deal with the crisis of a bulging inmate population and the resulting economic encumbrance. The contracting of prisons by the state to private entities is the growing trend for dealing with this crisis.

The term “private prison” refers to a place of confinement that is privately owned, operated, or managed under control by the government (Logan 1990). Whether or not one agrees or disagrees with the idea of private prisons, it is a growing reality in the U.S. and other countries. The U.K., Australia, and Canada also have prisons that are contracted to private organizations by the government. As indicated in Figure 1, in 1995 there were 104 fully operational private facilities, 92 of these are in the U.S.



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Figure 1. Distribution of Private Prisons in 1995. (LIS Inc. 1996).

The trend towards privatization seems irreversible (Harding 1997). With privatization playing a larger role annually, we need to be confident that it is a legitimate alternative to public run facilities. In addition, there is a need to find out what type of private prison is best. “Types” of prisons refers to private prisons *for-profit* versus private prisons *not-for-profit*. A private prison for-profit is a prison whose main goal is to make money. It is a business. A private prison not-for-profit is a prison whose main goal is providing a prison mainly for local economic development. Both types of private prisons exist to help alleviate some concerns facing the public system.

Through a literature review on public versus private prisons, as well as studying a proposed not-for-profit private prison proposal in Montana, the following questions will be addressed:

1. Are private correctional facilities a viable alternative to public run facilities?

2. What type of prison, for profit or not for profit, will be the most beneficial in assisting the public facilities with the problems they face.

In an attempt to answer these questions, this paper will review the background and history of private prisons. Next discussed are several important issues dealing with the contracting of private prisons. Then, an assessment of the viability of private prisons is presented. From there, the proposed not-for-profit facility in Montana will be introduced and discussed. Finally, an assessment of for-profit versus not-for profit prisons will take place.

BACKGROUND

This growing trend towards privatizing prisons is nothing new in the history of the U.S. In the mid 1800s, state legislatures awarded a contract to several private entrepreneurs to operate and manage the first state prison in Louisiana. This was also the case in New York's Auburn and Sing Sing penitentiaries (Smith 1993). Others were to follow, by the late 1800s it was quite common to find private prisons all over the country. In Texas, Michigan, California, Arkansas, and many other jurisdictions, all or part of the prison was privately owned and operated at one time or another (Prison Fellowship Ministries 1996). Although some prisons were completely privatized, most privatization was limited at this time. Smith (1993:2) explains, "Typically, privatization was limited:

The state leased or contracted convict labor to private companies.” Today this is still common, however the idea of privatization has shifted. Today privatization refers to the full operation of a prison facility by a private entity.

A decision in the Virginia Supreme Court (*Ruffin v. Commonwealth* 1871) stated that a prisoner has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accord him. He is, for the time being, the slave of the state. The courts had a “Hands Off” doctrine, which meant that the courts refused to be a part of the operation of correctional facilities (Prison Fellowship Ministries 1996). Thus, private companies and the state were able to decide on their own, for the most part, the contract to be issued. Ideologically these prisons were supposed to pay for themselves as well as turn a profit for the private company and the state.

The system began to run into some troubles. As Smith (1993) explains, labor and business began to complain that using “unpaid” convict labor constituted “unfair” competition. Smith goes on to say that of equal concern to reformers, but not as important to politicians, was the issue of prisoner abuse. Across the country an ugly picture was painted. Most private prisons were poorly run and some were known to be corrupt (Diulio 1988). At times government has permitted and sometimes encouraged private prisons to exploit and abuse prisoners (Diulio 1988). Moreover, testimony revealed that as late as 1920 both Alabama and Florida were involved in convict lease arrangements with private firms that yielded significant financial benefits to both the firms and the prisons (Prison Fellowship Ministries 1996). However, state officials remained indifferent. There were rumors of the private interest groups buying off the state officials. Investigations into

these private systems revealed that prisoners were suffering whippings, malnutrition, overwork, and overcrowding. One report stated, “Conditions were so horrid that some inmates were driven to suicide, while others maimed themselves to get out of work or as a pathetic form of protest” (Diulio 1988:71). The result was public outrage. Thus, government regulation on abuse was implemented. However as the U.S. approached the twentieth century, a combined effort of labor, businesses, and reformers forced the state to take direct responsibility for the prison system (Smith 1993). This marked the end of the first era of private prisons. This era tends to be more remembered for corruption and abuse than it does for quality incarceration (Beiser 1997).

Both capitalism of the twentieth century and the soaring inmate populations have revitalized the once dead idea of privatization. The harsh realities of the first effort of privatization have done little to deter this new wave. Smith (1993) explains that the shift to privatization in the-mid 1980s is a result of three primary forces: the ideological imperatives of the free market; the huge increase in the number of prisoners; and the increase in imprisonment costs. Ideological imperatives of the free-market refers to the instilled American belief that the free market will provide competition to create growth and innovation. Thus in U.S. society, the private sector has been used for many public services. Diulio (1990) agrees with these conditions of shift, stating that the soaring numbers of inmates, the escalating correctional costs, and the widespread perception that public correction bureaucracies do not provide public protection, deterrence from crime, just punishment, and the rehabilitation of criminals in a humane and cost-effective way, are the main reasons for the privatization trend. In addition, prison reformers and prisoner

rights groups have found less to complain about in private facilities than in public facilities (Easton 1997). As each of these conditions intensifies, private correction's initiatives are likely to increase. The prevailing assumption is that private corrections can do it cheaper and more efficiently without reducing the quality of service. The first go around of private prisons in the 1800s could be considered a huge failure, however now they are under much more scrutiny by the press, the courts, and a wary public. This scrutiny can help insure many of the ideals needed for success will be intact, where they were absent in the 19th century.

Public correctional facilities are facing a crisis with the increasing inmate population and the increasing cost of incarceration. The reason the trend is towards privatization is because very few other politically or economically reasonable solutions exist. With private prisons becoming a reality, assessing the viability becomes increasingly important. The contract itself, and the issues involved with the contract are some of the most important aspects of a private prison project. The next section will examine this more in-depth.

ISSUES OF PRIVATIZING PRISONS

Privatization of prisons is a very complex process with many issues needing to be addressed. Most literature examines the issues of quality and cost. Although these are crucial areas that must be examined, other areas of equal importance should be taken into account. Based upon scholarly review of private prisons, a number of other key issues also appear to be critical to the introduction of private prisons. Issues dealing with

propriety, liability, numbers and growth, security, corruption, and more will be addressed.

As Charles Logan (1992), one of the leading researchers comparing public to private prisons, suggests, double standards should not be present. Many critics identify potential or actual problems. They also tend to raise questions about private prisons and then just walk away. They do not apply those same questions and concerns with prisons that are run by the government. “For any problems, questions, and concerns to be arguments against privatization, it must be shown that they apply more to private than to governmental prisons” (Logan 1997:1). Obviously there will be areas of privatization that are problematic and need improving. However, assessing whether or not the government has the same problem is where one can do quality, unbiased research.

The process of contracting is complex and deals with a variety of issues. To assure the best possible arrangement, the state or government can follow some guidelines that are laid out in a report for The National Institute of Justice (Hackett, Hatry, Levinson, Allen, Chi, Feigenbaum 1987). Following these guidelines will help insure that a thorough and fair contract will be awarded. Before the actual contracting process begins, states should undertake a detailed systematic, pre-analysis to determine if, and under what conditions, the contracting of a prison will be helpful to the system of corrections that is currently in place. On a general level, once this has taken place the actual contracting process can begin. Now that the process is underway, many concerns will need to be analyzed.

PROPRIETY

Propriety is one of the most controversial issues that private prisons face today.

The propriety issue looks at the question: Is it proper to contract out the power to deprive people of their freedom? Opponents of privatization will argue that the government should be the only entity that is able to take away individual freedom. In moral thinking, they argue, it is not right to profit off of a criminal or victim's misfortune. In contrast to this argument, it will be shown that this is not the case for private prisons that are not-for-profit. In other areas of corrections, privatization has been a great success. For instance, since 1981 the Federal Bureau of Prisons handed over the pre-release housing to private companies. Some of which are for profit and some that are not. Although evaluation research is limited, the pre-release programs are commonly thought to be very successful (Thatcher 1998). The criticism that says that private companies should not have the right to take away personal freedom is somewhat misguided. For example, the catchers, convicts, and sentencers are the ones depriving the person of their freedom. The prisons are simply housing what the criminal justice system is sending. The important issue here is whether or not duly authorized punishment is any more or less legitimate when it is administered by the government or by a private company that has been given the contract from the government (Logan 1997). Why should the government only have the right to administer punishment? In answer to that; they should not and they do not solely have that right. The people of the United States delegate that authority to the government. The government is a representative of the people. These private prisons have to abide by the same laws that the government-run facilities do. As Logan states, "... it is the law, not the

civil status of the actor, that determines whether any particular exercise of force is legitimate.” An example of this could be a prison guard that oversteps his or her authority. Whether or not this particular guard is employed by the government or the private company, he or she will be reprimanded for the rules or laws they have broken. The laws are similar because they have been contracted through the government.

Another factor to insure propriety, that Logan points out, is that wardens working under the contract of the state will have incentives to run the prison fairly. By doing this, they will enhance the legitimization, increase cooperation, lower the costs, and most importantly win renewal.

Although there are many arguments for the propriety of contracted prisons, there are still some legitimate concerns. Most of these are legal concerns such as: issues dealing with the use of deadly force, jurisdiction problems, and the anti labor issues(unions, salaries, hiring, firing etc.) that are threatened when a public employee becomes a private employee (Logan 1990). In addition to that, there may be some shortcuts taken by the prison to increase profits. Although most of these “shortcuts” will be regulated, it is possible for them to exist.

LIABILITY

Section 1983 of the Civil Rights Act of 1871 clarifies that private prisons contractors will not be able to escape liability. Liability refers to financial or reputation damage as a result of illegal or below-standard performance. According to Hacket et al (1987) the contracting government entity will be unable to protect itself from suits

resulting from wrongful acts of the private company it selects. This is a very important issue because through this law, the government will be more selective in the contracting process. This will prevent the contractor from making careless decisions. In addition to increased contractor liability, tighter regulation will occur. The government will provide strict regulations that must be carried out to reduce the chances of wrong doings and therefore liability to them. This is a very important issue to inmate, administrative, and public interests.

Logan (1990) says governments can reduce their liability in several ways: by running prisons better, and thus avoiding lawsuits; by achieving certification, which greatly enhances the defense against lawsuits; by carrying insurance; by agreements in which the contractor defends the government in court and indemnifies it against legal damages; by developing extensive legal expertise and resources both for preventing and for fighting lawsuits; and by settling quickly out of court, which is easier for private firms than for public agencies.

The government and private facility can take steps to reduce liability. However it is crucial to the success of privatization that the government contractor, as well as the private entity have significant liability.

SECURITY

Security is an issue, like most others, that is important to the inmates, the administration, and the public. The safety of these three components is generally dependent on the security of the facility. Are private prisons as secure as public ones?

Security in a private facility should be dealt with along the same lines as in a public run facility. From previous experiences, private facilities have stacked up well against public facilities. Moreover they have even shown to be more secure concerning escape rates (Logan 1997). One of the reasons for this is the unlikely event that the guards and administration will strike. A strike is likely to terminate a contract and thus terminate jobs. The fear of a striking officer losing his job is a harsh reality in the private prisons. Escapes and riots can occur when guards, who are unhappy with conditions, simply walk out of their jobs. Although private prisons do not guarantee that this will never happen, the chances are reduced because a strike or other disruption will result in termination of the contract and unemployment for all who work there (Logan 1997). In addition to riots, other security issues are escapes, crimes against other inmates or staff, and contraband transactions through the prison.

In the contract there is usually a set of plans to deal with emergencies. Emergencies may be fire, riots, or a strike. For whatever the particular emergency, a specific plan will be ready for implementation ahead of time. This goes back to the notion of the state having liability. Whether it is public or private, police, state agents, and the National Guard provide backup to prison staff as needed (Logan 1990).

Opponents of privatization also have some valid arguments. Inadequate training and inexperience of staff may be a reality. These issues should be dealt with before the contract is arranged, but that is not always the case. Contracting can cause high employee turnover at transition as a result of some of the anti-labor issues listed earlier (Logan 1990). This is a security issue because of the changes. Not only may new staff members

be less experienced, they also have to learn to cooperate and work with there new colleagues.

A big argument of privatization critics is that the facility will make security cut-backs in order to increase profits. This is a legitimate argument. Since there is no production of items, profits come through efficiency and, for lack of a better term, cut-backs. One way to deal with this is regulation. In the contract, a security layout should be provided and the government should accept nothing less than what is known to be the appropriate level of security. This appropriate level depends on the particular prison. Obviously larger, maximum-security prisons would have stricter security requirements.

The worry of security can be greatly reduced. New regulations concerning training, technology, policy, etc. can help eliminate the idea that private prisons will be less secure than public facilities. Even now, there is no evidence that private facilities are less secure than their public counterparts.

NUMBERS AND GROWTH

This category looks at the growth of privatization. Many critics are opposed to increasing the number of private prisons simply because they are opposed to the increase in prisons in general. They argue if we build more prisons, inevitably they will be filled. This is a fair argument because incarcerating more people does not seem to be the answer to our crime problem. However, overcrowding is a major problem in our penal system today. Many issues are coming to a head because of inmate population increases. As long as the judicial system is sending them, there must be some where to put them.

Another concern here that Logan (1997) briefly comments on, is that corporations that own the private prisons may become powerful lobbyists, lobbying for harsher punishments in order to increase demand for their product. Right now there is a real demand for private prisons, due to overcrowding. However we have to be careful not to artificially create a larger demand. As long as there is a necessity for more prisons, private prisons should grow with the demand for them. In addition, growth and competition may help generate improvements in all realms of prisons. Along with the generation of profits, this is the whole basis of capitalism. The private sector may stimulate new ideas and programs that the government's prior monopoly on prisons may never have developed. In contrast, it should be noted that not all competition is positive. Competition may also breed corruption through illegal practices that are performed to turn larger profits. However through strict regulations this corruption can be limited. The next section will elaborate on this.

CORRUPTION

Corruption is an area that played an intricate part in the failure of the first private prisons. Corruption in this sense can refer to acts that are illegal, unfair, or even unethical. Corruption can come in many forms from inmate abuse to contracting fraud. Thus, careful evaluation, regarding seriousness and extent of corruption is critical. Opponents of privatization contend that corruption is a basic side effect of privatization. On the other hand, proponents argue that some corruption will likely occur, however it is nothing that the public prisons are not dealing with too.

There are numerous ways in which corruption can occur. Favoritism, black-mail, bribery, conflicting interests, nepotism, misuse of public funds, links to organized crime, and more (Logan 1990). However it is necessary to point out that the abuses that occurred in the past came at a time when the criminal justice system as a whole was much more corrupt. For example, some public run facilities were profit-making enterprises to the same extent as those who used private contractors. In the arena today, both politically and legally, such corruption is highly unlikely. Logan (1997:7) emphasizes the importance of the idea that corruption is not solely a result of privatization, “Political corruption is a corollary of government, not just of government contracting. The ingredient common to all instances of corruption is not private ownership, but public power.”

Corruption is a legitimate concern for the critics of privatization. However one thing must be understood, privatization should not be considered a corrupt area of corrections unless it proves to be more corrupt than public corrections. It is possible in some cases that a private facility will be less corrupt. This may be due to the fact that the managers of these private facilities have a more vested interest in the reputation of their particular institution (Logan 1997).

Some opponents feel that most of the corruption and fraud may occur during the contracting process. To help avoid accusations of fraud, government should use a competitive bidding process (Hacket et al 1987). To obtain a maximum number of bidders, a government can:

- Advertise in major state newspapers and national correctional journals
- Develop and maintain a list of potential bidders.

- Permit both in state and out of state, as well as both not-for-profit and for profit organizations to place a bid.
- Include information about the evaluation process and criteria involved to potential bidders.

Criteria involved can refer to:

- The organizations past experiences and success.
- The qualifications of the staff.
- The proposed programs.
- The firm's financial condition and references.
- The cost.

These are areas concerning the government's role in the contracting process. Any issues of dispute should be settled before the contract is awarded.

The criminal justice system as a whole is continually working to improve these types of short-comings. Since the 1800s, the system has made drastic improvements and is showing that it will continue to do so. Privatization is one area that may result in further significant improvement. This improvement may be from new ideas that privatization may present. In contrast, improvements may occur through a process of elimination. Perhaps we will learn that privatization is not the answer. If so, private prisons will be eliminated and the correctional system will have learned from the failures. From these failures, corrections can be made accordingly. Either way, privatization will present new options for bettering the system as a whole.

QUALITY

The quality of a private prison is a central and complex issue in the debate of prison contracting. There have been many in-depth studies (United States General Accounting Office 1996, Logan 1992, Home Office Economics 1997) produced by private and governmental agencies, as well as the leading researchers in the area of privatization. For example some leading researchers have issued statements. “The private sector could hardly do worse than some public prisons in terms of quality” (Logan 1990:56). However, this section will briefly describe and elaborate on the more general arguments that are being presented today by both sides for and against privatization of prisons.

Quality can refer to a wide variety of aspects as taken through a review of literature on this subject. The wide variety of aspects generally refers to prison conditions, staff qualifications, programs and services, security, facility design, and administrative leadership.

The question of quality is centered on whether private providers are able or motivated to provide adequate or superior service for inmates and employees (Howard Society 1994). With regards to prisons, quality is a key issue. A major argument by opponents is that these private facilities are only able to be run more cheaply as result of cutting corners. They argue that this can mean less and poorer quality of food, fewer services and programs, and cheaper labor with less professionalism and training (Logan 1990). There has been evidence through studies in Tennessee that found a 30 percent negative response concerning quality in private prisons. However, in that same study

there was a 49 percent favorable response by people directly associated with the prison. Advocates of contracting argue that privatizing prisons will result in a higher quality for both private and public prisons (Calbrese 1993). One reason being that a private director has a more vested interest than a public facility director. This usually results in a higher quality facility. As more prisons become better quality, competition will eliminate a poor quality facility from the picture. This will happen because contracts are not issued or renewed to a facility with poor quality. Government prisons should be able to compare their services to those of the private sector. Currently government has nothing to compare itself with (Howard Society1994). Furthermore, quality is a good source for measuring differences between private and public facilities. By introducing competition into the area of prison management, the government will be forced to have high quality services, and in doing so their standards may increase (Howard Society 1994). The private sector will have to maintain a certain level of quality in order to maintain their contracts. As capitalism has experienced in the past, the competition can promote new found enthusiasm and creativity to both sectors. This can involve learning from mistakes and lowering costs, but more importantly it may open doors to new ideas and procedures. This is not implying that competition will create a corruption-free system. In fact, as stated previously, sometimes competition may breed corruption. However in an area like prisons that is continually searching for new ideas and possibilities, competition presents a more positive future than it does negative.

In studies comparing public facilities with private, the results have been mostly mixed. However evidence compiled from various evaluations shows that private prisons

have a slight edge over their governmental counterparts. Figure 2 shows the quality index scores calculated from the official records data. The numbers refer to the quality level with one being the optimal level. According to Logan (1992), the study used 333 empirical indicators of the eight dimensions of quality were constructed for the state and private prisons. Of these, 131 were available for the federal prisons. This allowed a total of 595 pairwise comparisons among the three prisons. Each comparison was tested for significance and then categorized either as being “non significant” (suggesting no real difference between the two prisons) or as being “favorable” to one and “unfavorable” to the other of the pair. The Prison Quality Index was calculated for each prison according to the following formula: $\text{Favorable Differences} + (\text{Similarities} / 2) / \text{Total Comparisons}$

Another example of comparing quality was a study done comparing private facilities in Massachusetts and Kentucky with their government counterparts. The study compared a number of performance indicators. The results of these indicators were as follows, “By and large, both staff and inmates gave better ratings to the services of the programs at the privately-operated facilities; escape rates were lower; there were fewer disturbances by inmates; and in general, staff and offenders felt more comfortable at the privately-operated facilities” (Logan 1990:57). This may be due to the fact that private prisons are required by contract to meet the standards of the American Correctional Association. Only a handful of government run prisons have this same requirement. Logan (1990) explains that certification does not guarantee quality, but its requirement is evidence that private prisons are expected to meet high standards, and their high rate certification proves that they are doing so.

Quality Index Scores For Private, State, and Federal Prisons

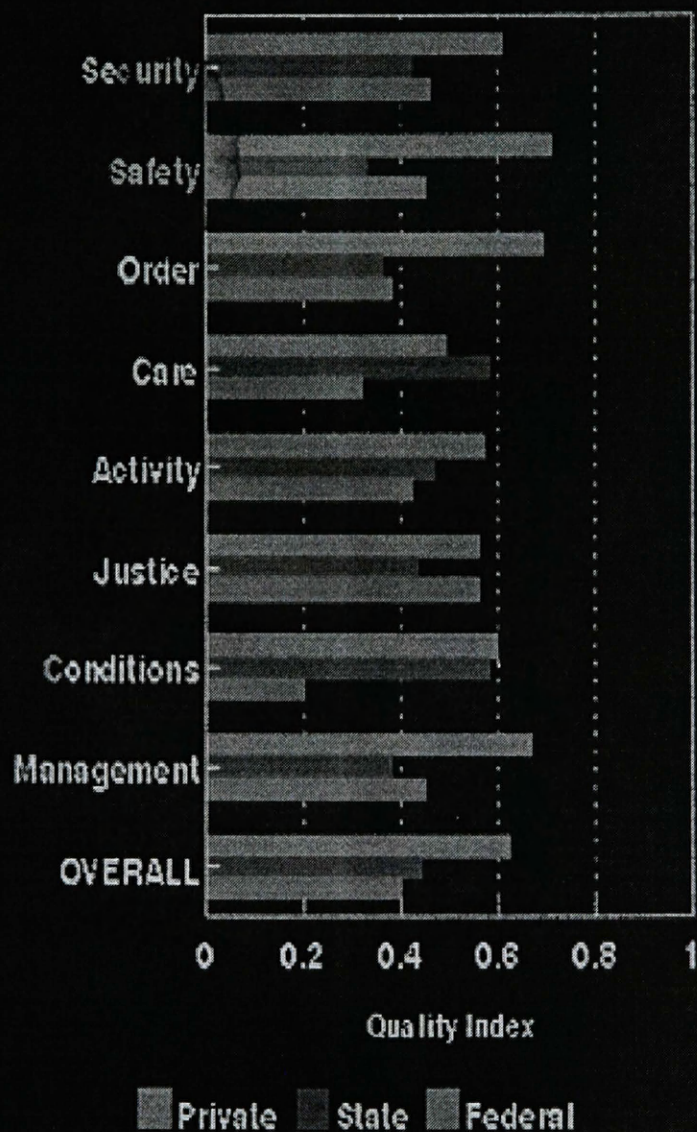


Figure 2. Quality Index Scores for 1995. (LIS Inc. 1996).

COST

The United States is now one of the leading countries in terms of total people incarcerated. Thus we have thousands of prisons, with more continually being built. As noted earlier, building more prisons does not seem to be the solution to the crime problem in this country. Yet they are still being constructed at a rigorous pace. Privatization of prisons is an important issue because, theoretically, they can be built cheaper.

Some officials believe that private prisons must meet a certain standard of cost savings compared to government run facilities. In Florida it is seven percent and ten percent in Texas. With these savings the prison must still be evaluated to make sure that it is providing equal or superior services to public facilities. There have been many claims by newspapers and magazines that privatization has had savings of up to fifty percent. However Logan (1990) says that these articles that claim savings up to fifty percent are simple comparison studies that totally ignore hidden costs. He goes on to say that five to fifteen percent is much more realistic. Support for his statement comes from a study on contracting issues for private operation of prisons and jails by the Hackett et al 1987.

Certain areas of privatization are argued to be cheaper and more efficient. In contrast, there are also specific areas where opponents argue that there will be no savings and may even be more expensive. The Howard Society (1994) provides arguments for both sides. Proponents argue that savings will come from:

1. The business sector is better equipped to finance and construct prisons swiftly and inexpensively.
2. Contractors can create economies of scale by contracting across

jurisdictions. For example, the prison in Texas is able to save money by contracting out extra space to places like Hawaii and Montana.

3. Contracting can greatly reduce public employee pension and benefit plans while also making more effective use of personnel. Better working conditions and less overcrowding will also result in higher employee morale.
4. Privatization discourages waste and encourages material management without tight restrictions that the government tends to place on itself.
5. Governments tend to have hidden costs such as maintenance and staff training. Private prisons include these costs in contracting, thereby accounting for the total cost of incarceration.
6. Unlike private facilities, governments continuously try to enlarge their budgets in anticipation of later cutbacks. A large budget will allow them to weather these cutbacks.

Opponents argue that the private sector will have many problems reducing cost,

such as:

1. Contracting adds profit margins to the basic cost, thus resulting in more costly incarceration.
2. Contracting creates its own hidden costs such as; initiating, negotiating, managing and monitoring contracts. Termination payouts and retraining for displaced government workers can also be hidden costs.
3. The private sector may be involved in “lowballing”. This refers to underbidding each other and then raising prices in contract renewals.
4. While contracts encourage competition originally, there will be little competition in later phases because the government is likely to stay with the established.
5. Methods used by the private sector to cut costs, could also be taken advantaged of by the government.

In all cost analysis and comparisons there are limitations. There have been many different results from many different studies. Sometimes the problem is that it can be like comparing apples to oranges. The U.S. General Accounting Office (1996) did a comparison study of operational costs. They compared reasonably matched public to private facilities. Studies were done in California, Tennessee, Washington, and Texas.

Four comparisons looking at operational costs were done between California, Tennessee, and Washington. Of these four, two had no significant differences, one had a seven percent difference in favor of privatization, and one revealed a private facility that was more costly than one public facility but less costly than another. The study in Texas was based on hypothetical public facilities. The result here was a 14 to 15 percent difference in favor of the private facility.

Methodological problems have occurred in some studies and generalizations should not be made from any study. The cost of operation continues to be the most widely debated issue of contracting. Studies have shown data that help both sides. However each prison, whether public or private, is unique and should be looked at on an individual basis.

VIABLE ALTERNATIVE?

Prisons, whether private or public, are very complex systems. Very seldom are any two alike. For this reason, it is difficult to compare private to public, or even public to public for that matter. Are private prisons a viable option to public run facilities? Although there are various intermediate sanctions such as pre-release housing, pre-trial release, drug court, and electronic monitoring, there are few correctional options out there for serious offenders, especially violent offenders. We must examine this question in the context of a system that has few other alternatives. With this context in mind, one who is well read and has reviewed the data can make that decision that privatization is a viable option. The past several pages have examined arguments for and against the concept of

privatizing prisons. Through looking at various comparative studies and data, many legitimate arguments can be raised for both sides. However, from the research, readings, and personal experiences, the conclusion is that that, yes, privatization is a viable alternative to public run facilities and the problems they face today. Charles H. Logan (1997:1) the leading researcher on private prisons agrees:

In all my reading, and in all my discussions and debates with others on privatization, however, I can say with confidence that in no area have I found any potential problem with private prisons that is not at least matched by an identical or closely related problem among prisons that are run by the government. Privatization raises no unique or truly new issues for prisons, but it does offer some new solutions.

Privatization is by no means a perfect solution to an imperfect problem. However at this stage in our society many problems are occurring in the correctional system. Alternatives are continuously being sought and should continue to do so. Presently privatization is one viable alternative that is becoming a reality. The reality is a result of necessity.

SOUTHWEST MONTANA MULTI-JURISDICTIONAL DETENTION CENTER

The state of Montana is at a point where there is a continual need to incarcerate convicts, but a lack of manageable prison space is causing a problem. The 1997 legislature spent a considerable amount of time trying to develop a solution that would create adequate capacity for correctional infrastructure in Montana. The challenge now is to create a timely, comprehensive alternative to contracting out-of-state prison beds using the tools provided by the 1997 and previous legislatures.

The Department of Corrections (DOC) currently contracts for more than 400 prison beds with out of state private facilities in Tennessee and Arizona (McLaughlin 1998). According to DOC this number could reach 600 by the year 2001. In addition to this, DOC believes that it will require 60 county jail beds and 96 prison beds in a new unit to be constructed within the walls of the Montana State Prison (MSP). However there is an uncertainty where and when the funding for this will come. Even if a 500 bed private facility would be constructed in the year 2000, Montana could still face a large under capacity problem by the next year, thus requiring more out-of-state contracting. Projections for in-state bed need, however, appear to change on a regular basis. Latest forecasts show zero beds for SMMJDC and an anticipated 900 beds for the Shelby facility by the year 2003. (Department Of Corrections)

Not only is there a major overcrowding issue with prisons, there is perhaps, a bigger problem with local jails. According to several law enforcement agents during a public hearing in Southwest Montana, there are more warrants outstanding than jail space available. As a result, there is a selective service of warrants. This means that the local law enforcement can not serve all outstanding warrants; instead, they have to pick and choose who they are going to serve them to (Citizens Against Prison 1998). This is due to lack of space. Anaconda-Deer Lodge and Butte-Silver Bow are the counties that seem to be experiencing the most problems. Both counties have 80 year old jails that are tremendously overcrowded. The concerns for public safety and risk management require that these counties must act now.

Montana Energy and Research Development Institute (MERDI) and Community

Counseling and Corrections Services, Inc. (CCCS) have developed a proposal for a regional facility in Southwest Montana. MERDI is a non-profit organization that was organized in 1974. MERDI's basic goal is to continually focus concern on the nation's economic, educational, and technological improvement and develop and administer programs and projects based on these needs. MERDI is headquartered in Butte, Montana and has over 380 employees (Kovenesky et al.1997). CCCS was formed in 1983 and is also headquartered in Butte. It is a non-profit corporation with the purpose of developing constructive incarceration alternatives for the State and local correctional systems. CCCS currently has over 60 full time positions as well as a large part time staff. Between the men's and women's pre-release center and new DUI offender facility, CCCS has over 185 offenders within its operation (Kovenesky et al. 1997).

MERDI and CCCS realize that the construction and operation of this facility will require a variety of professional skills and services. In addition to consulting with individuals and companies with expertise in management of correctional facilities, this project will utilize the services of various planning and architectural specialists such as Dick Anderson Construction, Harrison Fagg and Associates, O'Brien- Kreitzberg, and Robert Glass and Associates (Kovenesky et al. 1997).

The Southwest Montana Multi-Jurisdictional Detention Center (SMMJDC) will be a not-for-profit private entity. It will attempt a "three-point solution" This three-point solution includes a private prison, multi jurisdictional detention center, and private MSP expansion. Data shows that there is a need for all three.

The private prison would be a 500 bed private prison. House Bill 83 at the 1997

state legislature authorized the Department of Corrections to issue a request for proposal, the House Bill issued the following time table:

7/1/97	Request for Proposal begins
10/1/97	Request for Proposal issued
4/1/98	Proposals due
6/1/98	Contractor selected; construction begins
6/1/99	Construction complete
10/1/99	Operational

In retrospect, this timeline was viewed as unrealistic by the administrators of the SMMJDC. The delay in the passage of HB 83 coupled with stringent construction deadlines prohibited the projects timely completion.

A multi jurisdictional detention center is authorized by Title 7 Chapter 32 part 22, Montana Code Annotated. This act known as the *Detention Centers* act authorizes two or more local governments to enter into an agreement with a private entity to provide, maintain, and operate a detention center. This detention center will hold an additional 75-100 inmates. Anaconda-Deer Lodge and Butte-Silver Bow counties have agreed on such a facility.

Montana State Prison Expansion is a project that would expand the facility at Deer Lodge by 192 beds. This would help eliminate some of the existing overcrowding problems. Since federal funding for such a project may not be forthcoming, it makes sense to have a private party design, finance, and construct the expansion. After doing so, the private company could then lease the facility back to the state.

FINANCING

When developing a proposal for a private prison, the issue of financing is as important an issue as any. The Southwest Montana Multi-Jurisdictional Detention Center will propose to issue revenue bonds. There are various approaches of financing through the use of revenue bonds. In this case, D.A. Davidson handles the issuance of the industrial bonds, where they are sold in New York(Thatcher 1998). A public hearing to determine whether there is sufficient public interest also must be conducted. Obtaining the bonds is done by pledging the revenues generated from the lease and use agreements of the facility. This corrections facility is confident that it can deliver the state of Montana a per diem rate that is less than the current out of state costs.

FACILITY

The SMMJDC will be a state of the art facility with the ability to hold 580 federal, state, and local inmates. It will have a central building surrounded by three to four smaller buildings. Each smaller building will be connected to the main building. This is a village style concept which will allow maximum security at cheaper construction costs.

Advanced security and monitoring technology will be utilized. The facility will contain living, educational, dining, recreation, and treatment areas. In addition to this, the facility has been designed to allow further expansion if deemed necessary in the future.

STAFF

The SMMJDC will employ 130 full-time and well trained-staff. This diverse staff includes security officers, case managers, counselors, psychologists, support staff. In addition to these staff members, a group administrator will be employed to provide direction and support in the day to day operation of the facility. The facility will also employ an executive director whose requirements are a bachelors degree (masters preferred) and at least ten years experience. Various part-time employees will be hired as seen necessary (Kovenesky et al. 1997).

TREATMENT and PROGRAMS

Every inmate that is entering this facility will be assigned his own treatment team. This team will include several counselors as well as a case manager. The team and the inmate will work together to develop a program that will best benefit the inmate and the public.

Moral Reconation Therapy (MRT). This is a program used by various public and private prisons throughout the nation. The program is designed to promote positive self-image and self identity, help inmates learn positive social behaviors and beliefs, and help them make decisions based on higher moral judgement. This is generally accomplished through systematic self evaluation and goal setting activities.

Educational and Vocational Programs. For any inmates interested, pre and post GED training and instruction will be provided. Inmates also have the option of participating in educational and vocational programs. These programs may take place at

the facility site, Butte Vo-tech, and even Montana Tech of the University of Montana. Libraries, classrooms, and computers will be provided at the facility. In addition, an on site group of educators will provide and coordinate the specific programs.

Industry Programs. In collaboration with the MSP, the SMMJDC will work on the development of industrial programs. The premise of this program is to help inmates contribute to the cost of their incarceration, while providing some financial retribution to the victims of their crimes. Inmates may also create some financial savings that will help them when released.

Psychological and Addictive Services. The facility will employ two full time staff psychologists who will provide resident and staff evaluation and counseling services. Trained and certified staff members will be available to provide addiction counseling and recovery programs. The programs used will be specifically geared toward the criminal justice system.

NOT-FOR-PROFIT VERSUS FOR-PROFIT

The SMMJDC is only the second correctional facility to experiment with idea of a privately run prison that is not pursuing financial profit or gain. Thus comparing and analyzing data between for-profit and not-for-profit is difficult. This section will examine the first and only other not-for-profit facility that exists. In doing so, similarities between that facility and the proposed SMMJDC are discussed. In addition, advantages and disadvantages of a not-for-profit compared to a for-profit are examined.

THE APPLETON CORRECTIONAL FACILITY

The concept of a not-for-profit private correction facility was originated by Mr. Bob Thompson (1997) for the city of Appleton, Minnesota. The city opted for the not-for-profit prison because it could not find any financing for a for-profit prison venture. The city formed a corporation for the development of the prison called the Appleton Prison Corporation. This facility is fully accredited by the state and the American Corrections Association.

Financing and Construction. The city of Appleton issued bonds for the entire start-up and construction of the facility. These bonds were revenue bonds, not government obligation bonds. The construction phase of the project was approximately 20 months. Other state contracts including Colorado and Puerto Rico provided funding for operation of the facility (Thompson 1997).

Public Reaction and Support. According to Mr. Thompson (1997), the attitude was initially mixed about the concept of a not-for-profit prison in the region. However, after the Appleton Prison Corporation and the local government communicated the economic impacts and the need for a solution to the overcrowding problems, the public supported the project. The communication to the public was done through an extensive marketing campaign highlighting both economic and social benefits of the project.

Problems. The facility encountered some problems which the SMMJDC can learn from, including:

- The not-for-profit did not have a good relationship with the Minnesota

Department of Corrections. “The situation was a political nightmare” (Thompson 1997). Initially Minnesota did not have any inmates in the facility. That situation has since changed and the state contracts regularly with the facility.

- Many states could not contract with the facility for the housing of inmates. At that time few states had the statutory authority to contract for housing prisoners. This situation has changed. Initially the facility took inmates from Colorado and Puerto Rico. There was a significant communication problem with the inmates from Puerto Rico which caused both financial and public relation problems.
- The staff was very “green” and inexperienced.
- The facility had a difficult financial situation in the beginning. This situation resulting in failure to pay the bond holders. Corrections Corporation of America (CCA) made a bid to buy out all the existing bond holders. The successful buyout resulted in the facility becoming completely managed by CCA. However it still remains not-for-profit.

Inmate Programs. The facility offers a well-rounded program of services , including many educational programs, for the inmates. The facility is currently a satellite campus for one of the technical colleges in an area. Thus, the facility has a full-time fully accredited teaching staff. The quality of the services demands a higher per-diem than other private and government facilities. In addition to educational programs, the facility provides several rehabilitation programs as well as a number of organized recreational activities.

Growth. The Appleton Correctional Facility started out with 516 beds and 170 employees in 1987. It is currently in the process of expanding up to 1003 beds and 350 employees.

Recommendations. Mr. Bob Thompson recommends:

- Get commitment contracts from potential parties. These parties would include the Marshal's service, the state, and local counties. He stated that commitment contracts are a bargaining tool with potential financing sources because they want to make sure they will get some return from their investment.
- Make certain potential contract parties have the statutory authority to contract. Do not limit statutory requirements to the state. Make certain that cities and counties possibly using the facility also have the capacity to enter into contracts for the purposes of jail services. County/city ordinances statutes are a good source of this information. It could take time to change laws or create laws if they are not already in place. For this reason, make sure to start early.
- Form a positive relationship with the Montana Department of Corrections as soon as possible. This relationship is imperative not only for the start-up of the facility but for its continuation.
- Do not be afraid to charge a higher per diem than other entities if you are providing superior services. Sell what you have!

SIMILARITIES

The Appleton Facility and the SMMJDC have some important similarities. For this reason, the Appleton model has been used as a helpful tool in decision making processes for the organizers of the SMMJDC. Similarities are prison size, public reaction and support, financing, and most importantly a not-for-profit approach.

As previously stated, the Appleton facility started out with 560 beds and 170 employees. The SMMJDC is planning on 600 beds between the prison and county jails and over 140 employees. At one point, the SMMJDC was considering an 1100 bed facility as recent as January of 1998. However, the organizers realize that this is a very complex task and too much too soon could have very negative results. However expansion will still be an option in the future.

The Appleton facility had a mixed public reaction to the prison. The SMMJDC is

experiencing very similar reactions. The majority of public feedback has been in favor of the prison. However there has been some significant opposition. The feedback generally was voiced at a series of public hearings. The public hearing process was a real learning experience for both the proposers and the community at large. The State of Montana has a very specific procedure to allow for citizen input. This procedure not only involved a series of public hearings but necessitated the approval of the local city councils. Although the procedure was followed closely and there was initially overwhelming support, there was a last-ditch, well organized, effort to derail the project.

At a recent a public hearing several issues were raised by the group opposing the prison. They felt that, although there would be initial economic benefit from the construction and new employment, the prison would, in fact, hinder future economic growth. They felt the community would be labeled a “prison town” and this would discourage other companies looking to relocate. Unless the prison itself expanded, they did not feel its presence would encourage the creation of new jobs in Anaconda. They also argued that the very presence of a prison would negatively impact already established businesses. They specifically felt tourism and recreational operations (skiing, fishing, boating, etc.) would absorb the bulk of the impact. Their final argument was based on the specific prison location and the fact that people entering the community of Anaconda would first see the prison and immediately form a negative impression. The group was adamant about the project being forced down the community's throat and was calling for a delay in the decision or a completely new site location. It appeared the project was splitting the community and causing serious internal problems. Many public

comments were becoming personal in nature and seemingly unrelated to the issue at hand.

As the problem began to unfold over the next two weeks the opposition called for a community vote to determine support or opposition to the project. The developers strongly opposed this suggestion, citing time constraints and the fact that they strictly adhered to all public comment requirements. In addition, they had the support of the city councils from both Butte and Anaconda. When it was obvious a county-wide vote would not be taken, the opposition employed a private poll taking organization to get a “feel” from the community. The independent poll showed a 70 percent favorable response to the project and its proposed location. This apparently has quieted the opposition but shows how a proposed prison can often divide a community. More importantly, it demonstrates the necessity of sound, objective community involvement.

Financing for the SMMJDC is consistent with the Appleton facility in that its main source of money will come through revenue bonds. Contracts from other states, in addition to a variety of other financing options are continuously being sought and evaluated. Revenue bonds will be responsible for the large task of construction and start up of the facility.

The greatest similarity between the two prisons is that they are not out to gain a profit. This is very significant because they are the only two existing not-for-profit private prisons in the U.S. This similarity resulted in much of the other similarities between the two. The Appleton facility had experienced some difficulties early in its existence, but has been flourishing since its buy out by Correction Corporations of America. The

SMMJDC plans on learning from the Appleton facility and avoiding some of the problems they went through. In contrast, the SMMJDC will emulate some of the Appleton's successes. In certain areas the SMMJDC can learn from other private prisons as well as take innovative steps in developing a successful private prison. However the Appleton facility, as a model, will provide valuable information that only a not-for-profit can provide to a proposed not-for-profit.

ADVANTAGES AND DISADVANTAGES OF A NOT-FOR-PROFIT APPROACH

The not-for-profit approach to privatizing prisons is a new concept that has only been in existence since the late 1980s. In addition to the brief period of operation, the small number (one) of these types of prisons has made it difficult for any comparative analysis with private prisons for-profit. However, with a new private not-for-profit in the works and a growing success of the Appleton facility, it will be of great value to do a comparative analysis. This comparison will be similar to the format used to compare private prisons, as a whole, with public run facilities. In addition to this, there will be some issues addressed that concern only private prisons.

When comparing public to private it is important not to have any double standards. The same rule applies when comparing not-for-profit versus for-profit. Obviously there will not be as much discrepancy between these two types of private prisons as there is among public versus private. On the other hand, enough difference exists for an analysis to take place.

The next section will examine the same issues used to assess public versus private

prisons. However in this section these issues will be used to assess not-for-profit versus for-profit. In addition, other issues of importance will be presented and assessed.

PROPRIETY

The propriety of a not-for-profit prison is the strongest argument in favor of creating such a facility, whereas it is a very controversial issue when looking at public versus private. The propriety of a not-for-profit helps alleviate some of the negative views that generally accompany a privately run prison proposal.

Another controversial issue that is somewhat put to rest with a not-for-profit prison is the idea of someone profiting off of another's misfortune. The idea of misfortune may refer to the victims of the crime or the offender's misfortune. This tends to be more of a moral issue than that of a political or economic one. Yet it is still a big argument for opponents of privatization. Since, a private facility makes money by the state contracting prisoners to their facility, the more prisoners the more money. This could create some conflict of interest problems between the courts and these private facilities that are out to make a profit. The not-for-profit approach, again, alleviates much of the concern of making money off of crime.

LIABILITY

The issue of liability is a major concern for the government because they are largely responsible for the private contracts. By the government holding more responsibility, a more selective process will take place. This will generally favor a not-for-profit facility because of many of the propriety issues that will need to be dealt with.

However this does not mean that a not-for-profit will have any less liability than a for-profit. It simply means that a not-for-profit will have the advantage of winning the contract. One reason being, a for-profit prison is a more vulnerable target for lawsuits since it is profit making enterprise.

SECURITY

Security is an issue that is fairly even when comparing for-profit against not-for-profit. One argument may be that some of the cutbacks to create more profits may result in less or poorer quality security. One of the biggest concerns of a private run facility is the cost-cutting measures that will be taken in order to produce a profit. These so called “cutbacks” or “shortcuts” may come in many different forms. Perhaps a for-profit prison will reduce the amount of programs available to the inmates, make cutbacks on insuring the safety of the inmates and the public, or reduce the quality of services it provides. This is not a central concern for a not-for-profit prison because providing a first-class high-quality prison is the main objective. This is not to say that the not-for-profit will turn away from making a profit. It simply means that it is not on its list of top priorities, whereas it is the number one priority of for-profit prisons. This is a valid argument; however security will be an area cutback only as a last resort for both types of private prisons. Renewing the contracts with the state is of great importance for a private facility. One of the first areas that will be examined in this renewal process is security. Thus, cutbacks or shortcuts in security for either type of facility is unlikely.

NUMBERS AND GROWTH

Growth of private facilities appears inevitable. The big issue now for government contractors is whether or not they should contract to a not-for-profit before a for-profit. As mentioned earlier, these private entities that own the private for-profit prisons may become powerful lobbyists. Thus they will lobby for harsher punishments in order to increase demand for their products (Logan 1990). Creating more prisons and incarcerating more people is not the answer to our crime problem. Thus, construction of a private prison should only take place on an as needed basis. There should not be more incarceration of people because there is the ability or capacity to build a private prison to accommodate them. Not-for-profit prisons are there to help with the problems that the state prisons are facing and help develop the local economy. They are not here to make money by doing everything they can to get more prisoners. Many opponents of privatization believe that this is the case for private for-profit prisons. However a not-for-profit facility significantly limits their argument here.

CORRUPTION

The opponents of privatization believe that corruption is a basic side effect of prison privatization. Although corruption played a large part in the first private prisons, steps have been taken to limit the amount of corruption that will occur in the present situation of privatization. Moreover a not-for-profit private prison will likely reduce more skepticism that still exists. Corruption can take a variety of shapes and forms. Corruption of both private and public correctional systems in the U.S. could be a paper in itself.

However, due to the premise that a not-for-profit is not concerned with making money off of incarcerating people, corruption is likely to be lessened from that of a private system whose main focus is on turning a profit.

QUALITY

Quality of a prison refers to looking at the services it provides for inmates and employees. Private prisons are being run more cheaply than public. If they were not cheaper, then they would not exist. Critics argue that the ability to run the prison cheaper comes from lowering costs and cutting corners. This may mean that the quality, in a variety of areas, is less than it is in a public run facility. Quality Index Scores (Kovenesky, Thatcher 1997) shows that this is not the case. Critics are falsely accusing private prisons of less quality.

A not-for-profit does not guarantee a higher quality of prison than a for-profit private facility. However based on the similarities and differences between the two, the logical argument is that a not-for-profit will naturally provide better quality. Quality costs money and more money spent means less profits, thus quality for a not-for-profit will likely be higher than that of a for-profit.

COST

The cost of a private facility compared to a public facility is generally cheaper. Further, the cost of a private not-for-profit should be cheaper than a private for-profit facility. This is primarily do to tax breaks associated with the not-for-profit status. In

SMMJDC's case their 501C-3 non-profit designation means that they do not have to pay any property taxes (Thatcher 98). Hidden costs may be present in each type of private prison, however this is more of an issue concerned with the specific prison itself and not one that should be generalized to a not-for-profit or a for-profit.

It must be mentioned that all prisons, private for-profit or not-for-profit, are different and should be treated that way. Some generalizations can be made. However we should remember that these are generalizations that have not been supported by an abundance of empirical evidence. On the other hand, this analysis does have value. It gives a good idea of the overall picture among these big issues that all private facilities will have to deal with.

Not only does this analysis consist of the main issues, but also from the experiences of the SMMJDC. Through research, interviews, and personal experiences, other conclusions can be made about the benefits of a not-for-profit approach for the SMMJDC. These areas of help may or may not be limited to the SMMJDC.

Economic Development. The main focus of the SMMJDC, other than dealing with the overcrowding of the Montana State Prison, is helping the local economy. Old mining counties of Silver Bow and Deer Lodge will be the main beneficiaries of the prison. These counties, which were once predicted to be ghost towns by now, are now experiencing a steady growth. The development of this prison will help insure that this growth continues steadily into the new millenium. The prison itself will provide an abundance of jobs, most of which are better than average paying compared to state prisons (Citizens Against Prisons 1998). Correctional officers with SMMJDC would

start at \$8.50 to \$10.00 per hour while the state starts at \$8.00 per hour. SMMJDC is able to offer higher salaries because the design of the facility allows for greater staff efficiency. According to Mike Thatcher, (1998) administrative positions would meet or exceed state salary levels. Also the non-profit status mandates any profits be returned to the operation of the facility. In addition to this, construction of the prison will provide a large amount of work that is considered very significant to communities the size of Butte and Anaconda.

The prison will directly affect the local economy by creating jobs, in addition to this, it will indirectly catalyze the economy by encouraging more families to come to the area. Families of the workers and inmates will provide more consumerism in the area.

A private for-profit facility would also help stimulate the local economy. However there are many areas that a not-for-profit, whose focus on economic development, will give back to the communities. This will not likely be the case with a prison focused upon making a profit.

Donations. Receiving donations may be an area where the SMMJDC is unique. A tightly knit area such as the Butte/Anaconda area has certain advantages over others. Known for “sticking together” people generally want to see things happen for the good of the whole. Donations were made in all aspects of the prison from preparing the proposal to financing the construction. However the biggest advantage that the SMMJDC has is that the land was donated. The proposed land is a 160-acre tract of land at the intersection of Highway 48 and Highway 1 near Anaconda. As a result of not having to pay land acquisition costs, SMMJDC and its operations subcontractor CCCS will offer facility

employees better employment wage and benefit packages. This donation of land was crucial in finding a site, as well as financing the prison. Due to EPA constraints, this prison site had to be abandoned. As of September of 1998, SMMJDC is actively pursuing the operation of a smaller facility to be located on the Warm Springs campus. They are reviewing a site that would house 144-200 state prisoners and 90 jail prisoners. SMMJDC is guardedly optimistic that they can be operational within the next 12 months.

Team Effort. The efforts of not-for-profit agencies such as CCCS and MERDI are the reason that this prison will become a reality. A not-for-profit has an advantage of putting this all together because of the ability to work within a team concept. Neither agency could have accomplished what has been done without the other. A for-profit entity generally works alone in developing a prison. The job is apparently being accomplished by the for-profit prisons. However, through the team effort that the SMMJDC has engaged in, the transition from idea into reality will be a much smoother process than if it were a for-profit prison.

Passing Legislation. In Montana the idea of a large-scale private prison was not easily accepted. Many of the directors of the SMMJDC proposal believe that if it were not a not-for-profit proposal it would have been rejected. Once again, the idea of someone profiting off of another's misfortune is hard to accept for some people. The not-for-profit proposal alleviated this controversy and shows that the prison is in the best interest of the state and local counties.

Public Support. Much like the passing of the proposal in the legislation, the public support was affected by the not-for-profit approach. Early, a small portion of the public

voiced loud opposition. It is believed that the public support would have been in favor of the prison regardless of whether or not it was profit oriented. On the other hand, the support was not likely to be as lopsided in favor of the prison. This may play a crucial role in future private facility proposals where preliminary public support is divided or in favor of not building a facility. Marketing is the key tool in gaining or losing public support. In addition to a well devised marketing strategy, a not-for-profit approach is crucial to gaining additional support.

Department of Corrections. It remains to be seen what type of relationship the SMMJDC will have with the DOC in the future. Currently the relationship is good and there is optimism about the future. The DOC likes the idea of a not-for-profit facility, but their main concern is quality prisons.

Funding. Funding is one of the few areas that tends to be a disadvantage for a not-for-profit facility. The financial situation is very important to a proposal. To put it simply, private for-profit facilities usually finance the prison themselves with a hope of gaining more than they put in. This can be a problem for not-for-profit agencies. The issuing of revenue bonds is the trend for these not-for-profit prisons. As seen with the Appleton facility some problems can be created. The SMMJDC was lucky enough to receive some financial help through donations, especially the land. However revenue bonds will play an important role in the financing. With a careful financial plan and early success, the prison will be on track to have financial viability and prosperity.

Again, it is important to emphasize that all prisons are different. A not-for-profit approach, in my estimations, will increase success on the previous issues. An analysis is

never a guarantee, but it can be a helpful guide.

DISCUSSION

The not-for-profit approach to privatizing correctional facilities is a new concept that seems destined for success and growth. There are rumors of two new not-for-profit facilities being built in the U.S. However, they are still only in pre-pre-proposal stage. Since there is currently only one not-for-profit in actual operation at the present time, the prospective performance of the SMMJDC is going to be crucial to the future of not-for-profit private prisons. The SMMJDC is looking forward to the challenge of being a pioneer. Mike Thatcher, executive director of CCCS, has an optimistic view of the future direction of the facility.

I think this is a great opportunity for us. We get to be one of the first two prisons in the world of this kind. The future of not-for-profit privatization significantly depends on our successes and failures. I think the directors, organizers, and committee members responsible for developing this are all confident in the capabilities we possess. With that in mind, I believe we will see the emergence of several not-for-profit facilities in the next ten years or so (Thatcher 98).

Many experts, not only view private prisons as the wave of the future, but see more not-for-profit prisons as inevitable. Some say, not-for-profit prisons will never outnumber for-profits because we live in a capitalistic society that values making money. However through a combination of public, private for-profit, and private not-for-profit we will be able to better deal with our correctional problems. In addition, as each of these types of prisons expand and grow we can do more thorough comparisons and see if one is

better than the rest.

SUMMARY

This paper's intent was to review and assess the potential for private not-for-profit prisons. This included an assessment of whether private prisons are a viable option to public run facilities. In addition, an analysis of two different types of private prisons was conducted: prisons *for-profit* and prisons *not-for-profit*.

As defined by Logan (1990:27), a private prison is a place of confinement that is privately owned, operated, or managed under control by the government. The U.S. had an earlier experience with privately run prisons in the 19th century. However, the first experience was deemed a failure. Investigations into these early private facilities revealed, horrid prison conditions, prisoner abuse, and political corruption. As the twentieth century approached, a number of factors led to the abolition of the private prison.

A variety of reasons led to the rebirth of privatization in the mid-1980s. Among these reasons are the imperatives of the free market (principles of capitalism), escalating correctional costs, and public prison overcrowding. Private prisons are slowly but surely expanding as we proceed into the next century.

As privatization continues to grow, the question must be raised whether private prisons are a viable option to public run facilities. A review of relevant research and comparison articles helped develop a format consisting of seven issues. The issues are: propriety, liability, security, numbers and growth, corruption, quality, and cost. It is

important to remember when doing a comparison that double standards should not exist. For criticisms to exist against a private facility, it must be shown that these criticisms apply more to private facilities than public. With this in mind, it was determined that private facilities are a viable option to public run facilities.

The Southwest Montana Multi-Jurisdictional Detention Center is a proposed not-for-profit private prison that is currently in the pre-construction stages. An in-depth evaluation and description of this prison is given to show an example of the not-for-profit approach. In addition the Appleton facility in Appleton Minnesota was also briefly described. These are the only two not-for-profit privately run facilities. The SMMJDC benefited from using the Appleton facility as an example of what to do and what not to do.

Since it was determined that privatization is a viable option to public prisons, the question now is which type of private prison is the best for the future. The comparison of for-profit versus not-for-profit followed the same format that the public versus private did. However, there were some additional areas that were also examined. It was determined, that as a whole, not-for-profit prisons have some advantages over for-profit. This does not infer that all not-for-profit prisons will be better than for-profit. It simply means that the basic premise of the not-for-profit prison is a more solid approach.

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