

***Testimony of Geoffrey Segal, Director of Government Reform,
Reason Foundation to the Utah Law Enforcement and
Criminal Justice Interim Committee, September 21, 2005.***



Mr. Chairman, members of the committee it is a pleasure to be with you here today. My name is Geoffrey Segal and I am the director of government reform at Reason Foundation a non-profit research and education “think tank” based in Los Angeles. For over 35 years Reason has conducted research on various policy issues focused on how to make governments work better and smarter – focusing on policy tools that enable them to be more effective and efficient in their mission

The question before the committee is whether or not the Utah legislature should consider privatizing some aspects of corrections and treatment. Note that Utah is one of just a few western states that does not use contracted prison services. If I may suggest, the question is best phrased when privatization is replaced with contract-out. It must be understood that we rarely privatize in this country—especially when discussing correctional services. Regardless of what you do, responsibility for safety and quality care will ultimately rest with this government, although contracts can alleviate exposure to liability.

Either way my answer is the same; yes. Why wouldn’t you consider an alternative service delivery that has the potential to dramatically improve the quality of service and care, reduce costs, lower capital risks to the state, and produce results?

The key component or critical piece in this discussion is the importance and value of competition i.e., what competition enables and why it is needed to produce results or outcomes. In his latest book, *The Price of Government*, noted government reform expert David Osborne relates that “the fastest way to save money and increase value is to force public institutions to compete.” Corrections should not be excluded.

There is little doubt that competition forces quality and performance improvements. Competition changes the incentives, shifting them toward results and performance. Absent competition, public managers operate in a monopoly setting, free from external pressure to improve or keep costs down. Generally speaking they receive greater appropriations every year, regardless of how they perform. Since the funding is essentially the same regardless, there is little, if any, incentive to become more productive or cost-effective.

Now consider the case where a private company competes against the public agency for the right to provide correctional services. Suddenly, the public agency must minimize its costs, focus on results and spend its resources wisely because the private sector is putting

forth its best effort as well. Note, that it is not even necessary for the private company to win the contract to provide better incentives to the public agency. The mere *threat* of competition will force the public agency to act as if it were in a competitive marketplace, rather than a monopoly.

It is clear that neither a fully public or fully private corrections system is necessarily ideal. Instead of arguing about “privatization,” the debate should be focused on outcomes. Experience shows that a competitive environment is the best option to ensure perpetual performance improvements and outcome attainment.

Upon conducting a direct comparison of public and private facilities there are 23 reputable studies, performed either by a university or government entity, comparing the cost of government run and private prisons. This research supports a conservative estimate that private facilities do operate at about a 10 to 15 percent lower cost than do government facilities. It is important to note that is achieved without sacrificing quality—there are six reputable independent studies examining the quality of private adult correctional services in the US and the UK. Every one of the studies found quality in the private prisons to be at least as high as in government prisons. Overall, the research supports a pattern of high quality services in private facilities. Indeed, in many cases the initial push for contracting is to improve prison quality.

But again, I suggest that the important piece is that of competition. Two recent studies highlight the importance of competition. First, two professors from Vanderbilt University found that the use of private prisons in a state resulted in the reduction of daily incarceration costs for the public corrections system by 4.45 percent annually. This could result in a cost avoidance of approximately \$7 million for Utah given its \$156 million corrections budget.

Second, the Rio Grande Foundation in New Mexico, compared per-prisoner department of corrections budgets across 46 states. By measuring an entire department's spending rather than just a particular prison's spending, the study accounts for the cost savings public prisons can achieve in response to private competition. The study uses the percentage of prisoners under private management as its measurement of the extent of private prisons in each state.

Holding other factors constant, this study found that states with 5 percent of their prison population in private prisons spent about \$4,804 less per prisoner in 2001 than states without any private prisons. As the extent of private participation increases, so do savings. New Mexico, for example, has 41.8 percent of its prison population under private management; it spent \$9,660 less per prisoner in 2001 than did counterpart states without any private prisons. New Mexico has gone farther down the private prison road than any other state, saving \$51 million in 2001 alone, according to the Rio Grande study.

This experience is only solidified with real world experience and data. As one of the largest users of private corrections, the state of Texas provides us a unique look at the long-term benefits of competition to a correctional system (see figure below – labeled

Figure 10). The Texas Criminal Justice Policy Council conducts a biannual review of the average cost per day of government facilities and the average contract price at private facilities. The first study was published in 1991; subsequent studies have been conducted every other year since, with the latest published in 2003. This data represents the best longitudinal evidence of the benefits of competition—over that time, Texas’s in-house per diem cost has gone down i.e., they’ve gotten more efficient because competition has made them. Indeed, in 1992 the average in-house cost of incarceration is only slightly higher in real dollars than it was thirteen years prior in 1989. Texas’ correctional system has gotten more efficient with the introduction of competition—saving on both the contracts themselves but the avoided costs as well. Data from Arizona also shows a similar story.

While cost may be important, successful prisons should be judged on the results they produce i.e., are they effective in providing offenders with the skills and education needed to remain outside of prison. Mark Kleiman argues that “a little competition based on recidivism rates might help jump-start the interest of the public systems in installing one-way exits instead of revolving doors.” This of course assumes that performance-based budgeting is used i.e., appropriations follow the greatest outcome attainments.

By establishing sound standards and outcome measures, correctional facilities may be more accurately evaluated and compared to other facilities. Such comparisons will reveal which practices and programs are working best, and thus deserve to be emulated elsewhere.

Kleiman further notes that “if arrests for serious new crimes are much less frequent among probationers in one probation office than among similar probationers in another office, or if the graduates of one medium-security prison are much more likely to be back inside within six months than the graduates of another, then the worse-performing institution might have something to learn from the better-performing institution,” and resources should be adjusted accordingly. Note that the greater the number of agencies that utilize performance-based budgeting, the greater the variety of corrections programs and practices that can be compared, thus creating a greater likelihood of successful and innovative programs being recognized and adopted by poorer-performing facilities.

Identifying what *doesn't* work is just as important as identifying what does work. Without competition, this isn't possible. Perhaps more importantly though is that competition drives innovation. By definition competitors will attempt to gain a better hand and try new programs.

I think these two points are best exemplified by the computer industry. Computers today are better, faster, and more powerful than ever before—yet their price has continued to fall!

To conclude, I thought it would be helpful to provide some background or perspective on the extent of prison contracting in the United States to demonstrate that Utah is not on an island for considering corrections contracting-out. Currently there are over 160 private

facilities with more than 135,000 functioning beds—representing 5 or 6 percent of the total U.S. prison population. While the growth of private prisons has slowed, they have continued to enjoy a modest increase in number of facilities and rated capacity. In addition, several other countries including our neighbors to the north, Canada, the United Kingdom, South Africa and Australia all use private corrections to some extent.

Furthermore, with the release of the U.S. Department of Justice's recent incarceration figures it is clear that private corrections will continue to play a significant role in years to come as governments seek to restrain costs and improve the quality of their correctional systems.

Indeed, more governments are moving toward increasing the involvement of private competition than are moving away from it. Even the federal government has an implicit policy encouraging the use of private contractors.

Finally, I'd like to again emphasize the importance of competition and encourage you to seek more opportunities for competition in your corrections system.

Links to studies and supporting information:

Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services, Part 1: Employing a Best-Value Approach to Procurement

<http://www.reason.org/ps289.pdf>

Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services, Part 2: Reviewing the Literature on Cost and Quality Comparisons

<http://www.reason.org/ps290.pdf>

Frequently Asked Questions about Private Prisons

<http://www.reason.org/prison/index.html>

Figure 10: Texas Criminal Justice Policy Council: Time Series Data

