The Crowley Prison Riot and the Evils of the Private Prison System

By Bill Trine, Esq.

Following the prison riot at the Crowley County Correctional Facility (CCCF) in July, 2004, I filed consolidated lawsuits[1] for more than 200 inmates who did not participate in the riot, but were innocent victims of the gross negligence of Corrections Corporation of America (CCA), the largest private "for profit" operator of prisons in the United States. After eight years of litigation and facing a 25-week jury trial, CCA finally began offering individual settlements to our remaining 198 clients.[2] When the offers, after lengthy negotiations, were in an amount that I could recommend, we began settling each individual case and the court vacated the trial set for March 11, 2013. The court dismissed each client's case as it settled.[3]

Many of you followed this litigation with some interest - perhaps because of its length and complexity - and I am now free to divulge some of the evils inherent in the private prison industry as revealed in the formal pre-trial discovery. I can do so because I refused to enter into a confidentiality agreement as a condition of settlement. But before publicizing those evils, let me first give you a capsule summary of the eight years of this epic litigation.

We were in the appellate courts five times resulting in two published opinions[4]; defended the depositions of 126 inmate/clients[5]; took the depositions of 30 CCA employees; and reviewed over 150,000 pages of documents produced by CCA, the Colorado Department of Corrections and the Inspector General. Multiple motions were filed, including 13 motions in limini. Just weeks before the scheduled trial, the court dismissed CCA's frivolous affirmative defenses[6] and struck the 483 designated nonparties[7]. The court had earlier dismissed CCA's counterclaims and ruled that the evidence supported plaintiffs' claims for punitive damages.

So what did this entire discovery reveal of the evils inherent in permitting private "for profit" corporations to operate our prisons? It clearly demonstrated that CCA's quest for greater profits caused the Crowley prison riot because they used the cost saving practice of understaffing prisons with untrained and poorly paid personnel and treating prisoners as merchandise to be transferred in large groups from one prison to another for greater profits. They often made transfers to isolated rural areas of the nation on short notice, separating inmates from friends, family and any support system. The evidence produced in these lawsuits demonstrated that it was this willful and wanton conduct by CCA that caused the initial disturbance, which CCA then permitted to escalate into a four-hour prison-wide riot when the CCA staff quickly abandoned the recreation yards and housing units at the first sign of trouble. So here is the Crowley story that demonstrates why government should not permit private companies to use our prison system for profit, rather than protecting the safety, welfare and rehabilitation of its inhabitants.

The Crowley Prison Riot

The Location

To increase profits, private prison companies try to locate their prisons in rural areas where there is a cheap labor market, a lower tax base, and a local government that will become dependent on this new industry and support its growth. CCCF was therefore ideal. It is isolated about 50 miles east of Pueblo in a rural county, surrounded by sparse prairie grassland conditions, some ranch land and a few farms. The county is also home to a state operated prison. These two prisons constitute the only "industry" in Crowley County. **The 2010 census showed 5,518 county residents of which 2,682 were prisoners, giving Crowley County the highest percentage of prisoners of any county in the U.S.** There are only four small towns in the county, which includes the county seat, Ordway, with a population of 1,080, a gas station, one small restaurant, and no overnight lodging. These demographics are relevant when considering the importance of family contact and visitation to successful rehabilitation.

The First Riot

The first riot occurred at CCCF in 1999 when another private prison company operated it.[8] That company

arranged to have a large group of medium security prisoners transported from the state of Washington to CCCF in order to fill vacant beds and increase profits. The transfer interrupted the Washington inmates' rehabilitation and educational programs and jobs, interfered with family visitation and contact with lawyers, and placed them in an isolated environment. Soon after the transfer, a small group of Washington inmates started a disturbance, which became a riot with destruction of property. Following the riot, the Washington inmates were transferred back to their home state.

The Second Riot and CCA's Willful and Wanton Conduct

CCA then took over the management and operation of CCCF on January 19, 2003, and sent a CCA employee, Richard Selman, to function as the Chief of Security. He arrived in April 2003 and immediately recognized the need for changes that were necessary to improve security. At that time, CCCF had four housing units and two recreation yards, east and west, and it released all inmates at the same time for recreation. They could congregate and wander freely between yards. So in the summer and fall of 2003, Selman recommended significant and costly changes to improve security including fencing around both yards to control inmate movement "versus the whole yard being an open style compound where inmates could be everywhere." He recommended that they enclose an observation tower and staff it 24 hours a day; and schedule shifts for use of the recreation yards by inmates.[9]

However, CCA's home office ignored these recommendations as it was planning a substantial expansion of the prison to increase its profitability. It planned to add two new units to house several hundred new inmates. Construction started in the fall of 2003, and when it was nearly complete in the spring of 2004, CCA arranged to have 300 prisoners from Washington again transferred to CCCF to fill it. The plans for this transfer of prisoners caused Warden Leland Crouse concern because the entire prison population could move freely from one recreation yard to the other. So he developed a plan that he discussed with his regional supervisor to control movement by establishing a recreation schedule so that "only one pod or one unit would have access to one part of the yard at a time."[10] These plans were in place, but they had not implemented them before the transfer of Washington inmates.

Upon learning of the planned transfer, CCCF inmates and correctional officers (CO) who had been present during the 1999 riot voiced their concern and fear of another riot should the transfer of Washington inmates again take place. CCA's management in its home office in Nashville, Tennessee ignored the objections and concerns, and the first 100 inmates arrived in late June 2004, followed by a second group two weeks later.

Upon arrival, the Washington inmates learned that there would be no conjugal visits with their wives, no smoking and no Washington law library, all of which were available to them in Washington prisons. Instead, CCCF offered isolation with limited programs and jobs. Nearly all inmates were from poor Washington families who would be unable to travel to Colorado for visitation. They could not afford frequent long distance telephone charges at the elevated rates prisoners pay.[11] They complained, and some threatened to riot. Although the threats of a riot worried other inmates and some COs, CCA management ignored them as tension mounted.

Then, on the morning of July 20, 2004, there was a visible show of force when COs restrained an 18-year-old Washington inmate in the yard and carried him to segregation as hundreds of inmates watched. Some angry Washington inmates, who thought they used excessive force, planned a confrontation that evening when both yards would be open for recreation to all 1100 inmates.

As word of this plan spread, many inmates, concerned for their own safety, voiced their fears to COs and warned them of the plans. The COs notified their superiors and voiced their own concerns. The captain in command called a meeting of the COs that evening, before releasing the inmates, to discuss the threats. During that meeting, several COs opined that they should not release inmates for fear of a riot. They felt the prison should remain in lockdown until tempers cooled and they dealt with inmates grievances. The captain overruled them and simply cautioned the COs to be careful when they patrolled the yards.

They released all inmates for yard recreation in both yards, despite the advance warnings. A group of Washington inmates in the west yard immediately confronted the two yard COs, demanding to see the warden to voice their grievance over the morning incident. When the COs refused, groups of inmates began forming in that yard. The COs panicked and ran from the yard, as did the two COs in the east yard. Then the two COs in each of the five housing units abandoned those units, as the disturbance became a full-blown riot.

Realizing that the skeleton crew of COs on duty had essentially abandoned the prison, rioters went on a rampage - setting fires, breaking into housing units, destroying property, looking for sex offenders and creating chaos. The CCCF Operations Manager, did not have adequate staff and munitions to control the initial disturbance and developing riot, and had to wait for three hours for special operations response

teams (S.O.R.T.) to arrive from distant facilities in order to retake control of the prison. In taking control, CCA indiscriminately treated all inmates as participants in the riot, even those who had been in their cells, the medical ward or the library throughout the riot.

As a result, the plaintiffs (none of whom participated in the riot) sustained physical and psychological injuries in varying degrees. Nearly every plaintiff suffered from smoke and gas inhalation, from fear of injury or death, from excruciating pain resulting from the punishment inflicted on all inmates once the riot was under control and from months of lockdown. Most plaintiffs, after guards cuffed them and placed them in the yard, had to urinate in their clothing and wear that clothing for many hours or even days. Many had to shower at gunpoint, without curtains, in front of female guards who made fun of them and videotaped them in the nude. Many spent time in overcrowded cells with no bedding, mattresses or hygiene products (even toilet paper) for days. Many slept on concrete floors or hard steel bunk beds for days. COs fed them baloney sandwiches, by dropping the food on the cell floors. COs mistreated or punished all of them - the guilty and innocent alike - as rioters and locked them down for up to three months with little or no contact with families.

There were also injuries to some individual plaintiffs that were not common to all, but were unique because of preexisting conditions that were aggravated by the riot, or because of more brutal treatment inflicted on some. For example, those plaintiffs who were told to lie face down in their cells in sewage water that flooded their cells, then drug through the water by their ankles to be cuffed so tightly that the ratcheted plastic cuffs cut into their skin and numbed their hands and shoulders as they were left in that condition for hours. Or those inmates who were tear gassed at close range while lying in the yard, cuffed, and being told, "That's what you get for rioting." Some inmates were under treatment following major surgery and begged not to be re-injured and their complaints ignored. Some had a serious asthma condition and were denied use of their inhalers. Some were under treatment for mental illness and their medications discontinued. Some were severely traumatized and have had recurring nightmares of being trapped and burned alive, or beaten to death by crazy inmates.

All of this because CCA transferred a large group of unhappy Washington inmates to Colorado to fill newly built units and increase profits, then ignored their complaints and the advance notice of a planned disturbance — a disturbance that was not controlled because of CCA's cost saving practice of understaffing its prisons with untrained personnel.[12] Lengthy investigations conducted by the Colorado Department of Corrections (DOC), and the department's Office of the Inspector General,[13] revealed the cause of the riot to be directly related to the cost saving conditions existing at the prison and the bulk transfer of Washington inmates who were transferred on short notice, and separated from friends, family and any support system.[14]

CCA's Spoilation or Destruction of Evidence

In the course of this litigation, we also discovered that CCA has a policy of conducting its own internal investigation of the cause of riots in its facilities, and did so in this case by immediately sending a team of five Wardens selected from other CCA facilities as an "After Action" team to conduct the investigation. The team leader authored an "After Action Report" for the home office, which was kept secret and never disclosed to the DOC or Office of the Inspector General. However, several COs testified that they were interviewed by the after action team, and one, the Captain who authorized the release of inmates to the yards on the evening of the riot, testified he was immediately put on administrative leave following the interview, and later discharged by CCA.

CCA failed and refused to provide the "After Action Report," which plaintiffs requested in formal discovery, claiming that they could not find the report. The trial court then granted plaintiffs' Motion for Sanctions, ruling that plaintiffs were entitled to a jury instruction that would permit the jury to conclude that the report was favorable to the plaintiffs and adverse to CCA.[15]

Unresolved Trial Problems and Legal Issues

The complexity of this litigation created unusual problems and legal issues. First, how would a jury hear the testimony of 198 plaintiffs over the course of 25 weeks and be able remember that testimony, particularly when each plaintiff was asserting injuries and damages unique to that plaintiff. Those still incarcerated would be testifying by telephone, compounding the problem.

It was a foregone conclusion that there would be a mistrial, inconsistent verdicts or inability to render verdicts. The obvious solution would be an initial trial of just a few plaintiffs on all issues. If the plaintiffs prevailed on liability, issue preclusion (collateral estoppel) would permit trying the remaining cases in groups of ten to the same jury, which would decide only damages. If the first trial resulted in defense verdicts, the court would have to dismiss the remaining cases based on the doctrine of issue preclusion.

However, collateral estoppel only applies when the court enters the final judgment. Entry of final judgments would allow the parties to file appeals following the first trial, thus delaying trial of the remaining cases. If courts affirmed liability on appeal, the plaintiffs would have to try the remaining cases before a new jury, necessitating a duplication of the liability evidence that supported punitive damages. Therefore, it would take a stipulation of the parties agreeing to apply collateral estoppel to the results of the first trial - without entry of final judgments - in order to proceed with a series of trials, using the same jury to decide only the issue of damages. The parties would also have to agree to delay entry of final judgments until the conclusion of those trials.

CCA was unwilling to enter into such an agreement. Instead, it proposed a bellwether approach[16] that would divide plaintiffs who might have similar injuries into groups, then proceed to trial with only a representative of each group as a plaintiff. Everyone in a designated group of plaintiffs would then be bound to accept the same amount of damages that the jury awards to the group representative. We could not ethically or legally utilize the bellwether approach (sometimes used in class actions when it is easy to calculate the damages to each member of the class) where each plaintiff's non-economic damages were unique. Further, this was not a class action, and the court had no jurisdiction to order a bellwether approach absent the consent of all parties. Because it was unethical to group plaintiffs in the manner requested,[17] and we could not group the plaintiffs' by their damages, we would not stipulate to a bellwether agreement.

Instead, we filed a motion for separate trials, asking the court first to proceed with a trial of only a few plaintiffs on all issues. If plaintiffs prevailed on liability, then we wanted to use the same jury to decide the damage issues in trials of the remaining plaintiffs in groups of ten. The court denied the motion, and the Colorado Supreme Court refused to intervene.[18]

Hence, in the absence of an agreement or court-ordered separate trials, we prepared for a 25-week trial for 198 plaintiffs, certain that the trial would end in a mistrial or reversible error resulting in an appeal.

The second problem was a practical, not legal problem. The court denied our motion to change venue out of Crowley County when CCA was the only remaining defendant. The trial court and the parties knew that jury selection would be very difficult. There were only 2,826 residents in Crowley County exclusive of prisoners, including children and others who were not qualified for jury service. The prison system employed many of those residents or they knew people who worked there. In addition, the small courtroom would accommodate only a handful of jurors. In an effort to remedy these problems, the trial court set aside the first week of trial for jury selection in a church in Ordway, which the state rented for that purpose. Then the state summoned 360 residents to appear there as jurors on two consecutive days in groups of 180. Finding jurors willing to sit for 25 weeks would alone pose a potential insurmountable barrier for jury selection. The other legal issues and problems are best left for a future "Trine's Tales.

Conclusion

The only villain in this case is CCA who transferred a large group of unhappy Washington inmates to Colorado for a profit, knowing that the transfer placed the prison at high risk for a riot that CCA would be unable to control. It understaffed the facility with inadequately trained COs. CCA knew that a riot would harm many innocent inmates and place its own employees at risk. In fact, when the rioting began, frightened employees abandoned the yards and housing units. Many later resigned. Why work at low wages when your employer fails to protect you from harm.

CCA was the legal custodian of the innocent inmates - responsible for their health and safety. It was also responsible for the safety of the surrounding community and for those who responded to the riot. It was responsible for the safety of its employees. This villain violated all of those duties and responsibilities - blinded by the desire for greater profits.

The plaintiffs were victims. The employees were victims. The responders were victims. I can also argue that the Washington inmates who started the disturbance and riot were victims of CCA's total indifference to their need for family contact and rehabilitation, when transferring them to an isolated prison in Colorado. The plaintiffs, who had no control, could only trust that CCA would protect them. CCA betrayed them instead.

So, did CCA learn anything from the Crowley experience? Apparently, it did not. It contracted with the California DOC to send its inmates to the 2400-bed medium-security prison operated by CCA in Sayre, Oklahoma, resulting in a riot started by the California inmates on October 11, 2011, seven years after the Crowley riot. The Oklahoma riot resulted in injuries to many inmates.

One thing is clear: when a private prison company's duty as a custodian, to protect the safety and welfare of its inhabitants, conflicts with its desire to create profits for its shareholders, the profit motive always prevails. ▲▲▲

Bill Trine has been a successful trial lawyer for 54 years. He has logged more than 150 jury trials throughout his storied career. A past president of CTLA and the first recipient of the Norm Kripke Lifetime Achievement Award, he also founded and served as president of Trial Lawyers for Public Justice, a Washington D.C. based public interest law firm. He is on the Board of Directors of the Trial Lawyers College in Wyoming and the Human Rights Defense Center in Vermont, which publishes Prison Legal News.

Endnotes:

[1] *Adams v. Corrections Corporation of America* filed in the District Court of Crowley County, State of Colorado, Case Number 2005CV60 Div. B, consolidated with *Abrahamson v. CCA,* Case Number 2006CV08.

[2] We filed lawsuits for more than 230 inmates. Several died during the lengthy litigation. Some returned to Washington prisons after the riot and did not respond to discovery requests or other court orders. Some became homeless, and we lost contact. The court dismissed their cases. Of the 198 remaining who received offers of settlement, we could no longer locate five. One had permission to visit his dying mother, but failed to return to the halfway house and remained a fugitive. Another had been deported, and we could no longer locate him. The others essentially "disappeared" with no family contacts.

[3] My co-counsel and daughter, Cheryl Trine, was an enormous asset from the beginning. She assisted in writing briefs, taking and defending depositions, arguing motions and preparing for trial. I would also be remiss in not publically giving credit to my dear friend and great trial lawyer from Washington D.C., George Shadoan, who helped defend the depositions of our clients and assisted me as a consultant. I also credit my able assistant, Jenny Lindberg, who has had constant contact with the plaintiffs since 2004.

[4] *See*, *Adams v. Corrections Corporation of America,* 187 P.3d 1190 (Colo. App. 2008) and *Adams v. Corrections Corporation of America,* 264 P.3d 640 (Colo. App. 2011). Adele Kimmel, a lawyer with Trial Lawyers for Public Justice, authored the winning brief in the first appellate decision, 187 P.3d 1190, making new law to permit inmates to sue in Colorado courts without first exhausting administrative remedies.

[5] Nearly all were by telephone, each lasting 2-3 hours. Many of the inmate/clients were in prison facilities in WA, CO and WY. We had to prepare for depositions with each client by telephone. Colorado trial lawyers who assisted as volunteers in defending depositions of plaintiffs are Deborah Taussig and John Taussig of Boulder and Steve Shanahan of Fort Collins.

[6] CCA argued that even if the plaintiffs did not actively participate in the riot, 47 were guilty of comparative fault by leaving their cells during the riot to phone family or by remaining in the yards when they could not return to their units - they were locked out. CCA argued that this conduct constituted an "assumption of risk."

[7] CCA named over 483 inmates as designated nonparties, claiming some participated in the riot, 189 made telephone calls during the riot, 106 were on the facility grounds "and/or outside their assigned cell/unit, failing to lockdown" and that 21 were allegedly involved in an assault on another inmate. CCA also designated, wholesale, the Colorado Department of Correction's SORT and ERT teams who responded to the riot. In striking all of the nonparties, the court adopted plaintiffs' arguments that the designations did not comply with C.R.S. 13-21-111.5(3)(b).

[8] On Jan. 1, 1999, Crowley County entered into an agreement with a Delaware company, Crowley County Correctional Services (CCS) to operate CCCF.

[9] Selman's deposition testimony at pages 14-16.

[10] Crouse deposition at pages 60-62.

[11] In a perverse system of kickbacks, prisons contract with private companies to operate the prison's phone systems. The private companies charge prisoners "commission fees" on every minute of each call. Those commissions create an incentive to select phone companies that charge the prisoners more. *See*, Drew Kukorwski, "*The Price to Call Home: State Sanctioned Monopolization in the Prison Phone Industry."* Prison Policy Inst., Sept. 11, 2012, and Justin Moyer, "*After Almost a Decade, FCC has yet to Rule on High Cost of Prison Phone Calls*," Wash. Post, Dec. 2, 2012.

For the 2.7 Million children who have one or more parents incarcerated, a phone call from mom or dad can cost $20.00 or more for just a few minutes, jeopardizing the finances of families already in peril. If the phone calls cease, it further isolates prisoners from family and friends.

[12] See, Terry Carter, *Prison Break: Budget Crises Drive Reform, But Private Jails Press On,* A.B.A. J., Oct. 2012, *quoting* Judith Greene, director of the non-profit Justice Strategies, who states that the profit margins of private prisons "depend mostly on spending less for the biggest business cost - personnel. That means paying less for prison guards, already an extremely low-paying occupation. One result is high turnover and the incompetence that inexperience brings. *Also see* Scott Cohn, *Private Prison Industry Grows Despite Critics,* CNBC Oct. 18, 2011, *quoting* Alex Friedman, ed., Prison Legal News, "Literally, you can put a dollar figure on each inmate that is held in a private prison. They are treated as commodities. And that's very dangerous and troubling when a company sees the people it incarcerates as nothing more than a money stream. . . . You have fewer guards that are less experienced, that are paid less, who get fewer benefits. . . ." Also, see Sheldon and Teji, *Collateral Consequences of Interstate Transfer of Prisoners,* Ctr. on Juvenile and Crim. Justice (July 2012).

[13] *See*, Colo. Dept. Corrs. After Action Report - *Inmate Riot: Crowley County Correctional Facility, July 20, 2004,* pub. Oct. 1, 2004, at 13-17.

[14] *Id*.

[15] We filed the motion for sanctions pursuant to C.R.C.P. 37, supporting it by *Aloi v. Union Pac. R.R. Corp*., 129 P.3d 999, 1002 (Colo. 2006) (The court has the inherent power to provide the jury in a civil case with an adverse instruction as a sanction for spoliation or destruction of evidence), and *see Pfantz v. Kmart Corp.,* 85 P.3d 564, 568-69 (Colo. App. 2003) (The court is not limited to imposing a sanction only for intentional spoliation, but may impose one based on gross negligence or recklessness.) The tendered instruction in the instant case provided:

> Colorado law required that the defendant, Corrections Corporation of America (CCA), produce a copy of the After Action Report resulting from the investigation of the riot by a team of five Wardens assigned by CCA to conduct an investigation. CCA was ordered by the Court to provide plaintiffs with a copy of the report and CCA did not do so. Therefore, you are instructed that you may conclude, in your deliberations, that the report was favorable to the plaintiffs and adverse to CCA.

[16] A typical bellwether approach selects some plaintiffs as representatives of the larger group(s) of plaintiffs and the selected plaintiffs proceed to trial. The verdict(s) for or against each group(s)'s representative binds the large group(s) of plaintiffs, and each member of a group receives the same damages as the group representative.

[17] Contracts and ethics bound the plaintiffs' counsel to treat each client's case individually and separately. Non-economic damages varied by individual; we could not group them. Even if we could place plaintiffs in clear and distinct categories, this technique could deprive non-parties to the exemplar trial of their Seventh Amendment right to a jury trial and violate substantive and procedural due process. *See*, *In re Chevron U.S.A,* 109 F.3d 1016 (5th Cir. 1997) ("this is not one case but 3000 cases filed individually, not as a class action, and aggregated for trial management. . . . The individual circumstances of each plaintiff's claim defy easy aggregated treatment." Also see, *Abbott v. Kidder Peabody & Co.,* 42 F. Supp. 2d 1046 (1999) (a violation of contractual and ethical obligations to clients) and *Hayes v. Eagle-Pitcher Industries, Inc.,* 513 F.2d 892 (1975).

[18] Colo. Sup. Ct. Case No. 12SA350. Pet. for Rule to Show Cause Pursuant to C.A.R. 21 denied en banc Dec. 21, 2012. Petition for rehearing denied Jan. 9, 2013.