

Editor's Note

Locked Up: Prison Labor Secrecy Hides Exploitation

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I'm never going to look at my morning eggs the same again. It turns out their production methods are as hidden to the public as their shell-encased yolks.

Alyssa Perloff educated me on the exploitive private for-profit prison complex in my home state of Arizona – shrouded in secrecy because of a public records law interpreted in favor of corporations.

I was astounded by her research findings, published in this issue of *The Journal of Civic Information*. Her paper won the journal's 2021-2022 Student Writing Competition, which came with a \$2,000 cash prize. Perloff, an Arizona native, wrote the piece as a law student at the University of Massachusetts School of Law, mentored by Professors Justine Dunlap and Richard Peltz-Steele, and is now serving as a law clerk for the Supreme Judicial Court of Maine.

She has a great career ahead of her, based on the eye-popping revelations in "Behind Bars: Secrecy in Arizona's Private Prisons' Labor Pool."

Inmates in private prisons, which are funded by taxpayers, are required to work 40 hours a week at miniscule wages – usually no more than \$2 per hour – and they must pay taxes but don't accumulate social security. The prison workers are not protected by safety regulations as they risk their lives lining the profits of corporations, like the farms that provide my local grocery store its eggs. I drive past those farms while headed north from Tucson to the woods. No telling what other products I use that are the result of this exploitation, supported through my own taxes.

All of this is cloaked in secrecy because the courts have said the Arizona public records law does not apply to private prisons. And it's not just in Arizona – other states have long exploited prison labor behind the scenes. Perloff provides excellent suggestions for better public policy, such as the Legislature explicitly making these records public, creating an independent oversight commission, or both.

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The piece follows on previous research exposing the difficulty of getting information about private companies acting in a public capacity, funded in part or fully by taxpayers, whether it is prisons,¹ private universities,² or sweetheart economic development deals.³

This has simply got to stop.

There was a day when tenacious muckrakers exposed wrongdoings of exploitive industries, such as Ida Tarbell's examination of the Standard Oil Company, Upton Sinclair's expose of the meatpacking industry, and even Louis Brandeis' critical writings about big banks and insurance companies before joining the Supreme Court.

Public record laws focused the light on government agencies, and so, ironically, de-emphasized scrutiny of private businesses that have as much or more influence on the everyday citizen.⁴ All the while, corporations lobby behind the scenes to pass further exemptions to hide their indiscretions.⁵

Perloff's suggestion to make these records public is a good start, but more needs to be done, Paul Wright says. Wright is executive director of the Human Rights Defense Center and editor of Prison Legal News, and has been battling secret prisons for decades. He wrote to me while catching a plane to Maine for a public records court hearing:

"As someone who has been both active and adept at using public records laws, I am not sure that is a good substitute because first it implies there is someone interested in getting the records and then once they have them that they have the ability to analyze them and summarize them for public consumption and then have a means to disseminate the information," he wrote via email. "One solution would be to end prison slavery by requiring that prisoners be paid, and actually keep the prevailing wage for the work they perform."

Strengthening the enforcement provisions of public record laws might help, as well as empowering local journalists, nonprofits, and others to acquire and distribute the information.

Meanwhile, until policymakers improve government oversight and transparency, thousands of prisoners will continue to toil in the fields and chicken farms in the Arizona heat for pennies on the dollar, unprotected by safety regulations, to the benefit of corporations and at the expense of taxpayers.

¹ Aimee Edmondson & Charles Davis, "Prisoners" of Private Industry: Economic Development and State Sunshine Laws, 16 COMM. L. & POL'Y 317, 322 (2011); Mike Tartaglia, *Private Prisons, Private Records*, 94 B.U.L. REV. 1689 (2014); Matthew Bunker & Charles Davis, *Privatized Government Functions and Freedom of Information: Public Accountability in an Age of Private Governance*, 75 JOUR & MASS COMM. Q. 464, 466 (Autumn 1998).

² Josh Moore, *Out from the Curtains of Secrecy: Private Univ. Police and State Open Records Law*, 2 J. CIVIC INFO. 1 (2020).

³ Sabrina Conza, *Chasing Smokestacks in the Dark: The Amazon HQ2 Quest Revives Debate Over Economic Dev. Secrecy*, 2 J. CIVIC INFO. 1, 23 (2020).

⁴ This phenomenon is explained well by David E. Pozen, *Freedom of Information beyond the Freedom of Information Act*, 165 U. PA. L. R. 1097 (2017).

⁵ Jeannine E. Relly & Carol B. Schwalbe, *How Business Lobby Networks Shaped the U.S. Freedom of Information Act: An Examination of 60 Years of Congressional Testimony*, 33 GOV'T INFO. Q. 404 (2016).