



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

Private Prison Strategies: Litigation

When Bryan Alexander, 18, died in January 2000 at a Texas boot camp operated by Correctional Services Corporation due to untreated pneumonia, his death set the stage for the demise of the company. Alexander's parents sued and were awarded \$38 million; while some of that award was paid by CSC's insurers, the company never recovered from the verdict and two years later was bought out by GEO Group, another private prison operator.

GEO didn't fare much better when Gregorio De La Rosa, a prisoner at the company's facility in Raymondville, Texas, was murdered by two other prisoners wielding locks in socks in April 2001. The resulting trial in a civil suit filed by De La Rosa's family revealed that GEO staff had allowed the murder to take place and destroyed evidence – a video of the incident. The jury awarded \$47.5 million in damages; their verdict was upheld on appeal but the damages were reduced to \$42.5 million. The lawsuit then settled under undisclosed terms.

These cases represent two of the three largest individual awards in prison cases in the United States – both against private prison firms. Private prison companies carry liability insurance, but sustained litigation resulting in settlements and judgments can make them uninsurable, forcing them to self-insure. As stated in a CCA annual report, “Unanticipated additional insurance costs could adversely impact our results of operations and cash flows, and the failure to obtain or maintain any necessary insurance coverage could have a material adverse effect on us.”

A decade ago, the Human Rights Defense Center decided to focus litigation efforts on private prison companies, which are in some ways more vulnerable to litigation; for example, they are not entitled to raise a qualified immunity defense, unlike government defendants.

Over the past ten years HRDC has filed at least 13 lawsuits against private prison companies, all of which have been successfully resolved, usually through settlements. They include five public records suits, two censorship cases and six wrongful death suits involving prisoners who died due to suicide, homicide and medical neglect (and in one case the death of a prisoner's baby).

The goal of HRDC's litigation campaign was to drive up the costs of private prison operations through litigation, accompanied by negative media attention (e.g., prisoner deaths), in a long-term effort to make the companies uninsurable. In most cases that CCA and GEO Group have taken to trial, they've fared poorly – jurors dislike the notion that the many problems at private prisons, including deaths and injuries, are directly attributable to the companies' profit motive. As a result, private prison firms tend to settle cases rather than go to trial.

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Private prisons are susceptible to litigation due to abuses that result from their business model of cutting costs to generate profit, particularly costs related to staffing and medical care. Some ways that organized labor groups can support litigation against the private prison industry include:

- Organizational sign-ons to amicus briefs in cases against private prison firms, particularly on the appellate level. Offering legal support to write such briefs is also very useful. This is a way to show courts that unions which represent public-sector correctional officers have positions against and concerns about for-profit prisons.
- Support public records litigation by either bringing public records suits against private prison companies and/or supporting organizations that do. Private prisons often do not explicitly fall under state public records laws, as they are private contractors. However, HRDC has successfully litigated public records suits against private prison firms in four states – Texas, Vermont, Florida and Tennessee – using the argument that when managing prisons or jails, companies like CCA and GEO Group are acting as the “functional equivalent” of government agencies and thus should be subject to public records laws. Expanding such litigation in other states would remove the veil of secrecy that applies to private prison companies, exposing information about their internal operations.
- Help identify meritorious cases involving private prisons – particularly wrongful death or catastrophic injury cases. Private prisons typically have to report the circumstances of prisoner deaths and injuries to the corrections agency they contract with. To the extent possible, sharing this information with organizations that engage in litigation against private prison firms would lead to more lawsuits that otherwise might not be filed.
- Fund the creation of a website that enables attorneys who file lawsuits against private prison companies to share non-confidential documents, such as pleadings, discovery materials, deposition transcripts, etc. Such networking and information sharing would significantly improve the chances of success in litigation against private prisons.
- Fund litigation campaigns that specifically target private prisons, such as sponsoring a fellowship which covers the cost of a staff attorney dedicated to researching and filing lawsuits against private prisons. Typically, start-up funding for 2 or 3 years is necessary, and such positions can be self-sustaining after that time through attorney fee awards.