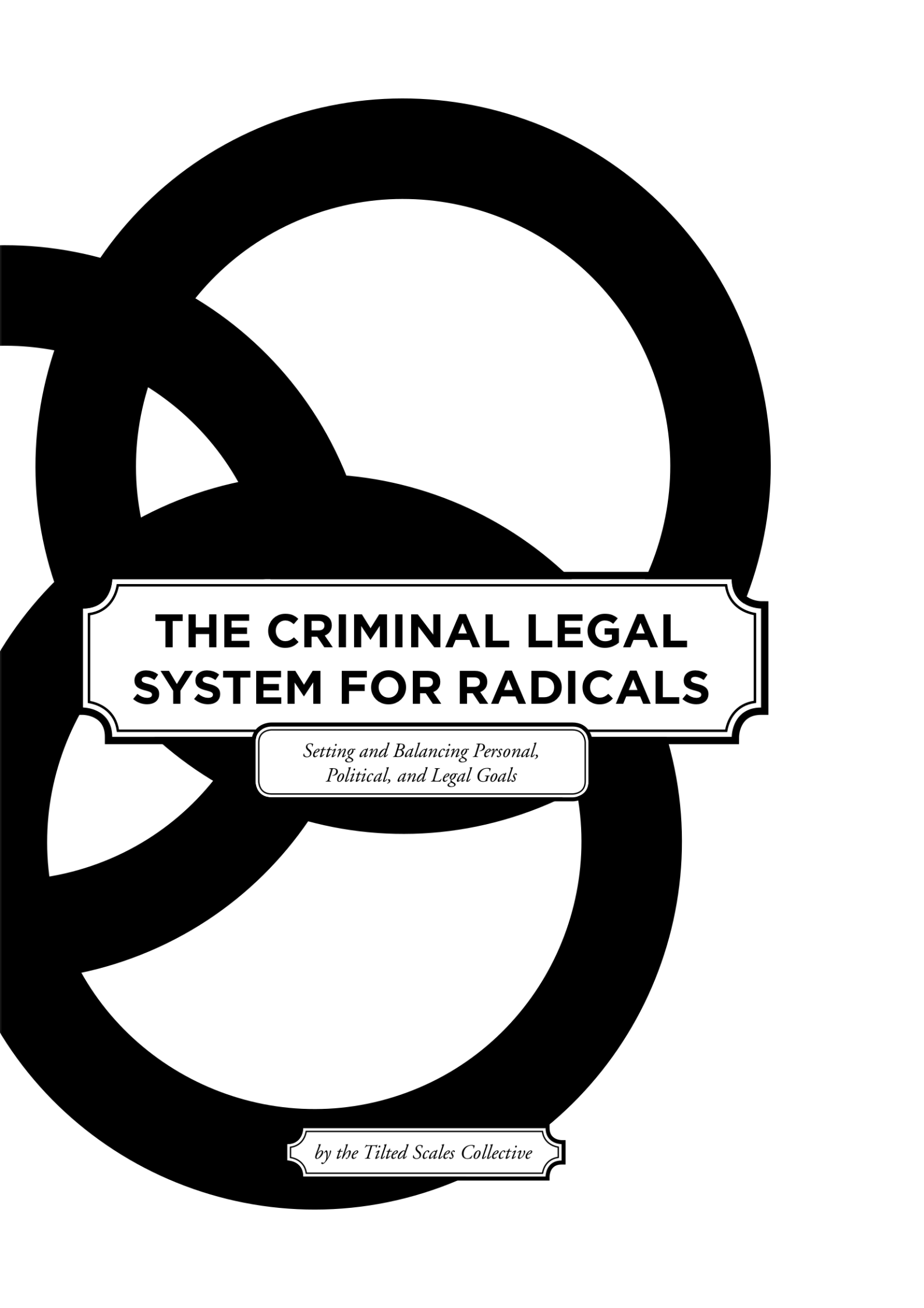




THE CRIMINAL LEGAL SYSTEM FOR RADICALS

*Setting and Balancing Personal,
Political, and Legal Goals*

by the Tilted Scales Collective

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upcoming A Tilted Guide to Being a Defendant,
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AS A POLITICAL DEFENDANT, YOU WILL BE DEALING WITH THE CRIMINAL legal system on its own turf. The political level of your situation includes largely unfathomable technicalities and procedures that are designed to disempower you and make it necessary to hire an expert (i.e., a lawyer). You can also approach your predicament on a political level, which may be more familiar ground to you and your supporters. A political defense may be less limited by the court's rules, ranging from complete disregard of those rules to calculated rebellions against the court's authority while attempting not to jeopardize your case entirely. Regardless of the balance you strike between political and legal defenses, you will also need to think about the personal level: what *you* want to achieve and what *you* are willing to endure.

This chapter is meant to help you think about your charges in broad, strategic terms. We explore three goal areas in this chapter: personal, political, and legal. These goal areas overlap a lot, but we have broken them down to facilitate their exploration. We also offer thoughts on ways to effectively balance these goal areas, although we do not presume to be able to tell anyone how they should handle

their case. Rather, we encourage all defendants to consider the different ways in which their decisions affect them and others before committing to a course of action. Our social movements do not need more prisoners, yet when people are thrust into these situations, our movements do need dedicated, smart, and informed defendants who hold strong in the face of terrible consequences.

We must begin with examining one of the premises we bring to this chapter: criminal charges can be addressed with both a legal defense and a political defense. When we say “legal defense,” we refer to the legal process itself: pleading not guilty, filing pre-trial motions to dismiss charges and suppress evidence, going through all the stages of trial (from jury selection to the verdict), being acquitted, or being sentenced and mounting appeals. If your legal team sees an opportunity to create social change through your case, or at least to limit the most outrageous abuses of the criminal legal system, your legal defenses may be creative, push the boundaries of the established rules and procedures in court, and/or attempt to inject the politics of the case into the legal record through oral arguments and written motions.

When we say “political defense,” we refer to a much broader set of strategies and tactics. A political defense can take many forms, including talking about the politics of the case in the media, pressuring elected officials to drop the charges before the trial starts, seizing on opportunities within the legal proceedings to talk about the politics of the case, disrupting trial proceedings to make political points, or completely refusing to engage in the legal process at all. Many defendants have blended legal and political defenses, using the legal procedures and processes when doing so could be beneficial or strategic, and blatantly flouting them when doing so was necessary to make their political points.

While blending legal and political approaches can be powerful and effective, they can be incompatible in some ways. For example, the courtroom drama may actually be more important to you than an acquittal, if your primary goal is to further your political cause. Many political activists have used the court as their stage, not caring or not believing that they can get justice there. That perspective might lead them to make statements that are self-incriminating, so that they look guilty in the eyes of the law (though not necessarily in the eyes of the public or supporters). A legal goal, in contrast, would be to stay out of jail or off probation, which may not be achievable while arguing a

THE POTENTIAL POWER OF POLITICAL DEFENSES

CeCe McDonald is an African-American trans woman who was charged with second degree murder for the stabbing death of a white supremacist. The man was one of three white people who attacked her and her friends one night in June 2011 outside of a bar in Minneapolis, Minnesota. CeCe and her friends were all African-American, most of them queer. Community members quickly flocked to her support, countering the legal assault by accusing the county attorney of continuing the racist, transphobic attack on CeCe that could have easily led to her death. (Many queer/trans people do not survive attacks like the one she endured.) The county attorney (an elected politician who is straight) wanted people to believe that he was sensitive to the needs and experiences of gay people, both in his employment practices and through his prosecutions. Thus, the defense committee applied political pressure to expose the hollowness of this claim and make the prosecution of CeCe politically undesirable.

While the county attorney did not much care what a group of radical queers and allies thought of him, the defense committee was able to make enough noise about CeCe's case that the mainstream media eventually covered it. A particularly beneficial news piece came out a month before her trial, which embarrassed the county attorney's office and ratcheted up the pressure. In the final month before trial, the political campaign picked up steam and, during jury selection, the prosecutors offered a plea agreement to second degree manslaughter with a sentence of just over three years—significantly lower than the two decades they had been threatening. Nothing substantial about the legal situation had changed; indeed, the prosecution had the advantageous position since the judge had issued pre-trial orders limiting the scope of the defense. In the minds of many supporters, the political pressure campaign determined the legal outcome of CeCe's case.¹

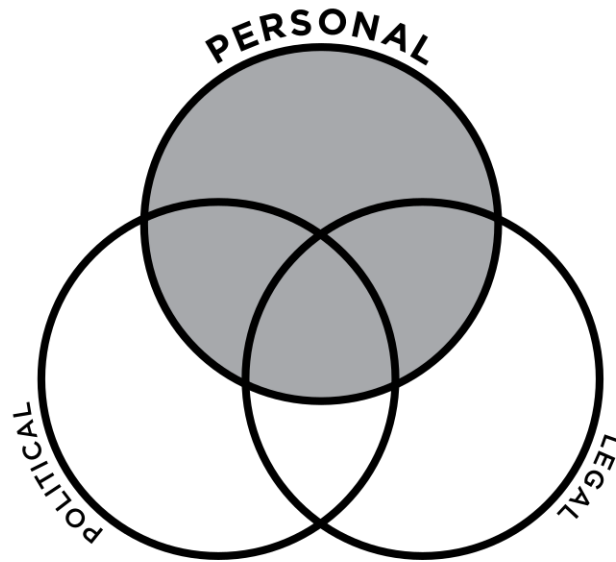
political point in the courtroom. This is a frequent spot for friction between political defendants and their lawyers, as well as between defendants and their loved ones or supporters.

There are other instances in which a legal defense strategy and a political defense strategy may rub against one other. The differences may show up around use of the media, protests targeting the prosecutor, and attitudes about informers and *agents provocateur*. The battle outside the court affects the battle inside it at all stages, including in the sentencing phase. For example, if a judge receives lots of letters supporting a convicted felon because the battle for public opinion has been conducted well, the defendant's sentence may be lighter. Alternatively, the sentence may be higher if the judge took offense to any content of the letters or felt they were conveying disrespect for the law or the authority of the court. The consequences of mixing a political defense and a legal defense are not easy to predict, and they undeniably affect one another in powerful ways.

The courts would like you to believe the criminal legal system is a sacrosanct process unto itself that ensures law and order are upheld and justice is done. This myth says that once someone has been charged, the court process will proceed in a fair and impartial fashion so that the truth will be revealed. Furthermore, the myth continues, the case is about the alleged crimes alone, devoid of any context other than the legal one.

Now for a reality check: this system has nothing to do with justice and everything to do with maintaining state control and the existing power structures in society. This system is political through and through, from the way political dissidents are targeted to the way oppressed communities are routinely terrorized.

And the system has teeth. Prosecutors and judges are both skilled in and well prepared for hitting us hard when we buck their system. They will try everything in their power to get us to snitch on each other and betray ourselves. Thus, we must find strength in our solidarity and in our role in our movements to withstand these incredible pressures and avoid contributing to our own and others' repression.



PERSONAL GOALS

Personal goals invariably have a significant effect on the other goal areas. Few people intend to catch serious charges or go to prison, so most are faced with figuring out how they want this unwelcome development to be a part of their lives overall (or how much disruption they are willing to tolerate).

Some activists have chosen to leave the country or go underground (or further underground) to avoid ever being put through the trial process once they got wind of potential charges or grand jury subpoenas coming their way. These people clearly prioritized their personal goals above either legal or political goals, trying to avoid any entanglement with the criminal legal system at all. These people decided to handle their (potential) legal situations more on their own terms—although uprooting oneself from one's life due to the threat of incarceration by the state is clearly a coerced decision. Avoiding capture becomes the overriding consideration in life for an activist who is underground, sometimes neutralizing their political activities. Moreover, the cat and mouse game with the government never ends, since the state rarely forgets about a political defendant who is underground. For example, Sarah Jane Olson (formerly known as Kathleen Soliah) evaded law enforcement for twenty-three years but was eventually captured and convicted for her involvement in two attempted pipe bombings and a bank robbery carried out by the Symbionese Liberation Army.²

In general, however, people lack the advance notice it would take to go underground and have no choice about dealing with the legal

cases against them. Obviously, this guide assumes that you will be engaging with the criminal legal system. Determining your personal goals for your case is the first step in devising the rest of your strategy.

The most fundamental question is whether you will fight your charges or resolve your case as quickly as possible. There are many perfectly valid personal reasons to opt for a quick resolution, including the general state of your health, your commitments to children and other people you care for, your particular role in your movement, and your financial situation. A conviction may complicate your immigration status, domestic and international travel, child custody, access to hormones, and access to other necessary medical treatments. Taking your case all the way to trial puts you at risk of receiving harsh penalties, while negotiating a settlement quickly may soften those penalties (although this is not guaranteed!). Not to mention that resolving your case quickly reduces the uncertainty of the waiting game.

This guide explicitly emphasizes the value of fighting charges and getting some kind of victory out of the fight. We take inspiration from the many political prisoners and prisoners of war who have continued to engage in and contribute to their struggles despite the state's best efforts to break their wills and isolate them from their communities and movements. Stories from our captured comrades are spread throughout this guide to show how much their struggles in court and in prison have strengthened and added to our movements. Their strength, resolve, and resilience show that people can figure out ways to handle their situations with dignity, integrity, and a commitment to the radical principles that made them targets of state repression in the first place. Life is not over, and our contributions to our movements do not end, when we catch charges or go to prison.

If, however, you are not in a position to fight your charges for several years and risk even more years of incarceration, it would likely be better for your supporters, comrades, and co-defendants if you were honest about that from the beginning and set your political and legal goals accordingly. Likewise, being certain that you are willing to fight your charges no matter how long the process takes will likely help you make good political and legal decisions.

“Resolving your case as quickly as possible” means pleading guilty to something. Often, this is something you either did not do, or did and feel justified in having done. Consider carefully whether you can live with a guilty plea. For example, if you are innocent or feel like

THE SERIOUS CONSEQUENCES OF SNITCHING

We must constantly be on guard against the pressures and manipulations of the cops and prosecutors to get us to snitch on others and incriminate ourselves. When you are under indictment or investigation, keep yourself and your comrades safe. Never speak to cops, prosecutors, prosecution investigators, and other people you do not know and trust who are asking about your case, associations, or activities. Snitching destroys our movements and communities much more effectively and quickly than all the state's repressive actions combined. We can come together to defend ourselves and our movements when attacked by our enemies, but not if we turn on each other when faced with consequences for our radical organizing.

Despite what prosecutors like to promise to cooperating defendants, snitches do not always receive dramatically lighter sentences than those who stand strong in the face of state repression. While some snitches have gotten lighter sentences, many have served more-or-less equivalent sentences as those who did not cooperate. In the case of the Cleveland 4³, for example, the fifth person arrested in that case cooperated after being held for only a couple months. He originally negotiated a sentence of no more than fifteen years when all the defendants were facing life sentences. After testifying against his former co-defendants (who were sentenced to between eight and eleven years), he withdrew his plea agreement and petitioned the court for a lighter sentence so he would not serve more time than the ones who did not snitch. The judge subsequently sentenced him to six years with lifetime supervised release, just two years less prison time than the non-cooperating defendant who received the lightest sentence. (All of the defendants received lifetime supervised release). At the time of this writing, the cooperating defendant is still serving his time without any support or solidarity from other activists.

The pressure to cooperate with the state is particularly difficult if you regret an action you carried out years ago, if you had a falling-out with your former friends and comrades, if your political thinking has changed dramatically,

...Continued on next page...

or if you now have people relying on you (such as children) when you did not before. Nevertheless, the safety of others (former comrades and newer radicals alike) and the success of the movement you were once a part of depend on your non-cooperation. We urge you to hold out for a plea agreement that does not require you to incriminate others; see Chapter 8, “Resolving Your Case,” for more about negotiating those agreements.

For snitches, their cooperation and betrayal of their comrades and principles has always entailed a loss of dignity for themselves and support from the movement, which makes a raw deal from the state even worse. Staying in solidarity with your co-defendants and sticking to your revolutionary principles can often help you set clear legal goals and make smart decisions to achieve them. And doing so always helps you retain your dignity in the dehumanizing machines called the criminal legal system and prison-industrial complex.

your actions were justified, how would pleading guilty affect your emotional well-being and sense of integrity? Similarly, if you do not recognize the authority of the state, would pleading guilty legitimize the state in ways that you cannot live with?

You should not make your personal decisions at the expense of others. The most critical part of setting personal goals is making your decisions with everyone’s best interests in mind: your co-defendants (if any), unindicted comrades, the movement you care about, and your loved ones. There likely will not be ideal options and many may make you feel disgusted, but it is important to remember that radical organizing and revolutionary activity will inevitably be met with harsh repression and stiff punishments. While you may have been unfairly singled out to suffer these consequences and that should not have happened, you now must make decisions that are in both your own and the movement’s best interests, striving not to sacrifice one for the other. And you must be absolutely certain that you do not make personal decisions at the expense of others.

The most common way that defendants make personal decisions at the expense of others is to snitch—they provide information to the prosecution about former comrades in exchange for the promise of a lighter

punishment and a quick end to their ordeal. You can expect that the prosecution will try to enlist your active help in going after your political comrades as a condition of reducing your charges and settling your case right away. In order to withstand this pressure and not snitch, what are you willing to risk, suffer, or lose? What do you need from your comrades when you protect them from prosecution? You owe it to yourself to answer these questions honestly. Be honest with yourself, whatever your answers are—*not* what you think other people want or expect them to be. Prepare yourself to make decisions in your case accordingly, own the consequences as necessary (including years in prison), and insist on the support you need. While it is your responsibility to defend your movement and protect your comrades, it is their responsibility to appreciate and support you through ongoing and active solidarity.

If you cannot fight the charges against you indefinitely, you will be reaching a plea agreement sooner than others who might have been charged with you, and/or sooner than comrades who might still be under investigation. Be extremely careful about this plea agreement! A plea agreement contains a statement of facts, and your statement of facts can help the state prosecute others. Similarly, if you give a sentencing statement in court, be sure not to incriminate others or compromise their legal situations. (This concept will be explored more thoroughly in a chapter titled “Resolving Your Case.”)

If you cannot accept pleading guilty to something you did not do or to something you feel was justified, you could join the ranks of other revolutionaries who have fought their charges through a jury trial and the appeals process, regardless of the costs or consequences of doing so, because their integrity and dignity required that resistance. Resistance has inherent value, and resistance is always met with repression, so the risks should not be taken lightly—yet there are many times when they must be taken. Our principles and the ways we strive to live up to them make us dangerous to our enemies, so we must draw on the strength of those principles when put to the test. One of the most important goals of this guide is to help defendants fight their charges and win something for themselves and their movements.

Even if you fight your charges vigorously and well, victory usually will not come as complete vindication. As we have already mentioned, most defendants either plead guilty to at least one charge (often on the eve of trial) or are convicted at trial of at least one charge. The criminal legal system is designed to force plea agreements and send people to

DRAWING YOUR LINES

Bomani Shakur (aka Keith LaMar) is one of the Lucasville 5, five prisoners who were at the Southern Ohio Correctional Facility in 1993 when a riot broke out. The rebellion was a result of the deplorable prison conditions and the warden's refusal to provide Muslim prisoners with a tuberculosis test that did not require the injection of alcohol into their skin. These five were singled out as leaders and variously charged with the murders of nine prisoners and a guard; another prisoner snitched on them and the five were sentenced to death. During his sentencing statement, Bomani said:

"Throughout the whole trial it's been said, repeatedly said by the prosecutor that every man must be held accountable for his actions. I agree with that. In 1988, I was caught stealing some jewelry at a jewelry store. Because of my actions I pleaded guilty and was sentenced to two years' imprisonment. In 1989, I killed a man...and because of my actions, I pleaded guilty and I was sentenced to a term of eighteen years to life imprisonment. In 1994, I was charged with nine counts of aggravated murder with death penalty specifications. But because of my actions, I pleaded not guilty and I placed my life in the hands of uncaring people, man....

"I could beg you not to kill me. My faith ain't gonna allow me to do that. You know, I don't wanna sound like I'm disrespecting anyone or even disrespecting myself, but I understand, you know, the result, the conclusion of this outrage. And I just want the record to reflect that I stand unmoved by your threats and promises of death. Death is a gift. It's inevitable. All of us must face it, but all of us aren't gonna face it the same or under the same circumstances. I just want the record to reflect that my faith is in He who created me. I'm not going to be governed by man-made laws, laws where it's left me to live death my whole life, been living the death my whole life. But within the confines of the prison I found myself and I'm not willing to sacrifice myself or belittle myself or bow to something I don't believe in. I don't believe in what took place in this courtroom."⁴

NECESSARY CONSEQUENCES

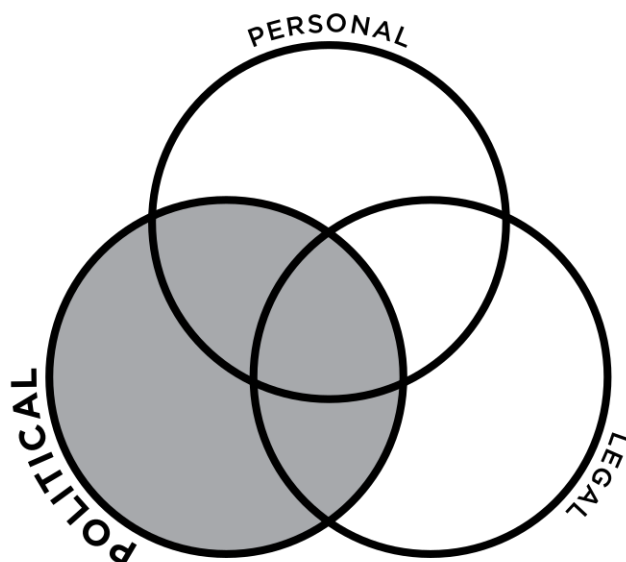
After the resolution of the RNC 8 case, which involved felony conspiracy charges for organizing resistance to the 2008 Republican National Convention, co-defendant Luce Guillén-Givens wrote:

“Is a movement of people unwilling to risk felonies and short prison sentences a movement strong enough to win? I hoped we would see acquittals at trial but, more importantly, I hoped that even if we saw convictions we would have had the opportunity to show that while we are not yet strong enough to end state repression, we can support and care for those who stand up to it. In my mind, this is part of laying the groundwork for a truly revolutionary movement.

“I’m not suggesting that we should ignore the real impact of felony convictions and incarceration on individuals and movements, or that we should charge forward with reckless disregard for consequences. But I am saying that as long as mere felony convictions—which a few million people in this society manage to live with every single day—deter people, we’re cheating ourselves out of the potential to win.”⁵

prison, not to reveal the truth about crimes committed or to ensure that only the people who are actually guilty of committing a crime are punished.

A final word on setting your personal goals—it is of the utmost importance that you confront your own fears. Do you want to stay out of prison more than anything else? Prison is a terrible place that is designed to destroy people’s characters, hearts, minds, and souls. Being afraid of prison is healthy! Whatever your fears, try to acknowledge and appreciate them rather than letting them make you feel ashamed or inadequate. Also weigh them carefully as you determine what you are willing to risk, suffer, or lose. Only the state benefits from your will collapsing because you did not adequately prepare yourself for potential consequences of your politics and political activity. You do not need to be alone in this preparation—reach out to those you trust and find strength in their support and solidarity. (The chapter “Surviving in Prison” will contain stories and advice from radicals who have spent time behind bars.)



POLITICAL GOALS

When setting your political goals for your case, ask yourself, “How do I want to position myself and my charges in relation to revolutionary struggle?” The most important premise at the foundation of any answer to this question is that cooperation with the state is never an option. Another important premise for any answer to this question is that, regardless of how you wound up facing charges, you are in your position in part because of the way the government perceives your politics and because they are waging campaigns against dissidents to protect their own power. Whether you have been an active part of revolutionary organizing for decades or whether your first exposure to radical organizing entailed being entrapped by an informant, your case is part of a broad campaign of state repression, not an isolated incident or a legal matter that only concerns you (although you are clearly the most affected).

The particulars of your case will weigh heavily as you set your political goals. For example, if you are one of the first people in your state or at the federal level to be charged under a new law, could beating the charges discourage future prosecutions? Even if you were convicted, would there be an opportunity to appeal and have the law struck down by a higher court? Would going to trial force the government to disclose information about surveillance, informants, broader investigations, or other information that would be valuable to the movement? Could your case result in some unfavorable publicity for the criminal legal system itself, or for the government overall? Could you

THE SMITH ACT PROSECUTIONS

In 1940, Congress passed a law against teaching about, advocating for, or encouraging the overthrow of the United States government through force and violence. The first activists arrested under this law (called the Smith Act) were Trotskyist trade unionists, mostly involved in the Teamsters' union in Minneapolis. When eighteen of them went to trial in 1943, they defended themselves by arguing the case for Marxism in the courtroom. Their centerpiece 8-hour lecture did not seem to convert even one juror, and it certainly did not win acquittal for any of the accused.

Five years later, eleven top leaders of the Communist Party USA were indicted under the Smith Act. They argued that (1) they did not advocate force and violence, but rather a peaceful transition to a new order, and (2) that their speech should be protected because they spoke on behalf of a political party. In other words, they attempted to defend Marxism, as well as appealing to the First Amendment. A jury convicted them anyway, and an appeal to the Supreme Court (*Dennis v. United States*, 1951) upheld the jury's verdict.

More than one hundred prosecutions followed. As these wore on, defendants relied more heavily on the First Amendment defense and less on the fine points of Marxism. This defense gained traction, even though the country was in the grips of anti-communist hysteria. Finally, in 1957, the Supreme Court split some hairs and decided (*Yates v. United States*) that defendants could not be prosecuted on the basis of their *beliefs* in revolution, only on the basis of their *actions* towards overthrowing the government forcefully. Grudgingly, the criminal legal system allowed people to criticize the state because to do less would be hypocritical, based on its own Constitution. This limited victory came about as political defendants gained skills at using the system's rules against it, rather than arguing the correctness of their political position in the courtrooms.⁶

discredit evidence handling or entrapment techniques? Could your trial set some helpful legal precedents or favorable political conditions that would affect other cases or organizing campaigns?

Using your trial to achieve such a goal could mean consequences for you, including incarceration; that is why we urge you to carefully evaluate your personal situation as you set your legal and political goals and strategies. Examining how your case fits into an intricate web of resistance and repression is one way to keep your case in perspective and to clarify what you want to happen as a result.

Another important question to ask yourself is whether your case carries serious liabilities for your movement. Chances are, the government already knows more about your organizing than you would like through surveillance, seizing computers and documents, and maybe even through others snitching. In your gloomiest moments, you might imagine that the state knows *everything*. That is seldom true, however, and it is a good idea to carefully consider the additional information the government may be able to gain through the pre-trial and trial proceedings. What are the chances that your case could result in some repressive precedents if you are convicted? The outcome of a trial is never a certainty and always entails risks, many of which cannot be predicted.

Consider the political points you could make that are the best suited for a legal proceeding. This system inherently limits what we are able to talk about, as the judge has the final say over what evidence can be admitted and can restrict the arguments you or your lawyers can present in the courtroom. At times, these limitations prevent you from achieving the political wins you want from your charges, and you might make greater progress in the court of public opinion.

Working towards political goals through the criminal legal system also runs the risk of diverting attention away from the political issues because you necessarily have to focus on the legal ones. Additionally, some supporters may find the legal battle more compelling than the political battle you were fighting before being charged. It is easy to fall into the trap of adjusting the narrative of the case to get the most sympathy and support possible. For example, if you were charged with felonies as a result of a public organizing campaign against an animal testing facility or fracking pipeline that involved using sidewalk chalk to write slogans, you might find it tempting to frame your case as one

about free speech instead of the original issues. Free speech issues can often appeal to more people than any particular campaign, as people from a variety of political persuasions may agree that you should be able to express your views even if they do not care about your views or the issues. Thus, you might be tempted to focus on the issue that appeals to the most people rather than the one that got you involved in the campaign in the first place.

Remember, criminal charges are inherently in the state's domain. Prosecutors start out with the upper hand in a system designed to give them the advantage and ensure convictions. At times, they outmatch us and the most strategic move is to cut our losses and push our struggles forward in other ways. Additionally, since this is their game, prosecutors and judges are highly skilled in ensuring the harshest sentences for those who resist and attempt to push the boundaries of the system.

These considerations are in no way intended to discourage anyone from making a political defense, or from blending a political defense with a more traditional legal defense at trial. Many times, the most important way to protect and advance our movements is to fight back within this system and accept the risks and possible consequences of doing so. Once you have a clear political understanding of your charges, there are several other areas you should consider as you set your political goals. These can roughly be broken down into framing your case and evaluating the potential political implications of going to trial and being convicted.

FRAMING YOUR CASE

How do you consider yourself in relation to the charges the state has levied against you? Do you want to describe yourself as a “political prisoner”? The term carries some implications—the most obvious being that you have been targeted for some sort of political philosophy, politically motivated action, or political associations. People are going to want to know what that philosophy is and you might run the risk of some activists withholding solidarity if you are not exactly aligned with their politics. Likewise, the government and the media are going to be watching your response and that of your defense committee, if you have one. You, your supporters, and your lawyer need to decide the best approach. You might see this as a wonderful opportunity to talk about the issues that are important to you. Someone else might

fear that talking too much about their political beliefs would increase the chances of spending decades in prison. There is no right answer here. Yet if you identify publicly as a political prisoner, it is important to anticipate the questions and to have a strategy in place for dealing with them.

Alternately, do you consider yourself a “Prisoner of War” (POW)? Historically, radicals and revolutionaries who have chosen this term have rejected the authority of the United States government and all state governments to bring charges against them. Some New Afrikan revolutionaries, for example, declared the government illegitimate and refused to recognize the legitimacy of the courts in trying Black people.⁷ Many Puerto Rican independence fighters (*independentistas*) rejected the authority of the government to try Puerto Ricans because colonialism is illegal under international law; some of these revolutionaries demanded that their trials be moved to international courts (which, of course, did not happen).⁸ People who have taken this approach have historically refused to participate in any trial proceedings, which often resulted in prosecutors steamrolling them at trial and locking them away for decades. Yet the revolutionary example they set through their fierce refusal to bow to illegitimate authority strengthened their movements in many ways, inspired others to take action, and helped motivate people to support them for decades as they were held hostage by the state.

You and your supporters will likely be talking about your case in the public realm to a greater or lesser extent at some point. The state will most definitely describe your case in the worst possible terms to demonize you and bolster their myths about protecting society, maintaining law and order, and so on. How do you fight back against their narrative?

First, talking openly and honestly about your case is not the same as discussing the details of the allegations against you, any pieces of evidence, or your legal strategy. As a hypothetical example, you could talk about being targeted as a prominent environmental activist without discussing what happened or who else was present the night you were arrested at a pipeline construction site.

Second, you have the responsibility to come up with framing that is both honest and aligns with your political goals, values, and ethics. For example, imagine that you are charged with conspiracy to commit property damage at a protest, and you maintain you neither planned

POLITICAL PRISONER OR PRISONER OF WAR?

One of the seditious conspiracy cases against alleged members of the Fuerzas armadas de liberación nacional (FALN, or Armed Forces of National Liberation) illustrates the ways that a POW approach can co-exist with a legal defense approach. The FALN was a clandestine Puerto Rican independence group based in the United States. Alejandrina Torres, Edwin Cortes, Alberto Rodriguez, and Jose Rodriguez were arrested in July 1983. Jose Rodriguez decided to take a legal defense whereas the others took a POW approach, as the revolutionaries indicted on seditious conspiracy before them had done. They were all convicted; Jose was given probation and the others were sentenced to thirty-five years in prison. While these different approaches were clearly able to co-exist during the legal proceedings, the consequences varied drastically, to say the least. We offer this example to highlight how unpredictable the consequences of any given approach can be, not to argue for the value of one approach over the other.

nor committed any property damage. You could decry your arrest as a sign that the government is trying to criminalize you simply because of your political beliefs and associations (i.e., a political witch hunt). Alternatively, you could bring attention to the necessity of revolutionary struggle through a diversity of tactics while still asserting your own innocence. Then again, you could point out how often the state completely manufactures the conditions for their prosecutions in order to neutralize an organization or movement. Whatever framing you use, being honest in your narrative of your case will ultimately be the best approach to advancing your goals.

Please note: we cannot stress enough the difference between being honest in the way you frame your case and talking about the facts of your case—particularly those that could incriminate you or others. In the example above, you should not say anything about what you or others actually did that could be prosecuted as a crime (either one you are charged with already or another one). Thus, if you were in fact guilty of conspiring to damage property, then your framing should not include a denial of those actions. However, your framing

REVOLUTIONARY HONESTY AND INTEGRITY

We want to emphasize the importance of honesty in framing political cases because we have seen prisoners lose support unnecessarily because they were not honest about their cases. We cannot stress enough the importance of not presenting untrue, exaggerated, or politically opportunistic reasons for being targeted. You may be involved in the criminal legal system for several years or decades, and supporters will have many opportunities to hear accusations against you. If you make your stand on solid ground from the beginning, the accusations will fall flat, at least in the minds of your supporters. And you need your supporters for the long haul! Also, if the support you receive helps you slog through the criminal legal system long enough to beat the charges at trial or have them thrown out through legal maneuvering, you will want to be able to walk away knowing you took a principled stand and that people supported you for it.

could focus on the hypocrisy of the government criminalizing property damage at a protest while giving defense firms lucrative contracts to destroy entire countries abroad. This framing would satisfy the joint criteria of being an honest presentation of your case and not being incriminating.

Third, remember that accountability with your supporters flows both ways. Your supporters must be clear about why they support you. Perhaps they whole-heartedly agree with your tactics; perhaps they agree with your right to say what you think, and not with the content of your thoughts; perhaps they have reservations about your tactics but greater reservations about the repressive measures the state has employed against you. All of these are legitimate reasons. Pay attention to the limits and conditions of their support. You, in turn, must be accountable to them because they are putting in their time, energy, and labor to help you fight your charges and win your freedom.

Here are some additional pitfalls that should be avoided when discussing legal charges:

- *Do not distort the reasons why you are being charged:* Do not say that you have been targeted for reasons unrelated to the allegations. For example, if you are a member of a revolutionary organization that is being investigated by the government, you are in a stronger position if you just say so. If you claim that you are being targeted because you work with youth or community gardens, or because of some aspects of your identity, later on you will have to explain that you are also a revolutionary and that this is the actual reason why you were targeted.
- *Do not falsely claim that charges are a fishing expedition or witch hunt:* Often, people quickly call investigations, grand jury subpoenas, and criminal charges fishing expeditions or witch hunts when the reality is not so clear cut. Granted, the state will seize every opportunity to persecute political dissidents and collect intelligence on revolutionary communities and organizations. Law enforcement agencies will also set up sting operations and entrap people. However, the state gathering additional information through subpoenas, house raids, and interrogations after an incident occurs is different than the state simply trying to gather intelligence without much direction (i.e., a fishing expedition). Likewise, the state gathering additional information after an incident is different than the state casting a particular political group as the enemy and seeking individuals to take the fall (i.e., a witch hunt). All of these actions and motivations should be decried and resisted, of course. What is important is calling things what they are as best we can, even though we rarely know exactly what the state is trying to do.
- *Do not promise to go to trial “no matter what”:* Many defendants come out strong when charged, vowing to fight the charges to the bitter end. As the pre-trial proceedings get underway and they learn more about their legal situations, however, these stances can change. There is nothing inherently wrong in accepting a non-cooperating plea agreement—doing so could be the most strategic move just as easily as it can be a capitulation to the state. However, leading supporters to think they should stand in solidarity with you because of your dedication to going to trial, as opposed to the fact that you are being charged at all,

can set you up for going back on your word should you ever decide to take a plea agreement.

- *Do not say that you know nothing about an alleged crime when there is evidence that you do:* Many times, defendants will claim that they know nothing about an alleged crime when there will be evidence (e.g., computer or cell phone records) that prove or suggest that they do. People choosing to break the law as part of revolutionary struggle should be supported, of course, and guilt or innocence should never be part of the discussion of criminal charges. In these situations, defendants should clearly be careful not to admit guilt unless they are pleading guilty and should not talk about the details of the case in ways that could harm them or others. Yet there is a difference between talking about, for example, the illegitimacy of the laws being used to bring charges against you, the political motivations of the charges, or your rejection of the state's authority to impose laws and telling your supporters something that the state knows to not be true.
- *Do not hide what you are being charged with:* In a handful of cases, defendants have chosen to go public with being charged but have not specified what the charges are or what the alleged incidents were that led to the charges. This is a stupid approach since the state is left knowing more about the situation than the people being asked to extend solidarity. An important reality of legal charges to keep in mind is that most court documents (e.g., indictments, motions, court transcripts) are public documents, so many of the state's allegations and evidence against you are made public even if you do not go to trial. There is a difference between talking publicly about the state's allegations and talking about information related to the charges that are best kept secret for your and others' safety and security.
- *Do not make statements that damage yourself or others:* Some defendants have made damaging or incriminating statements about their charges, whether online, to the media, during phone calls or visits in jail, or in court. Consider all statements thoroughly before making them, particularly when you have co-defendants or when other people could be charged with related crimes.

EVALUATING THE POLITICAL IMPLICATIONS OF TRIAL AND CONVICTIONS

As you set your political goals, you would be well served to consider the myriad implications of going to trial. Subjecting your political organizing and actions to public scrutiny through the criminal legal system presents dangers as well as opportunities. You clearly did not have any say about whether you were charged or not. You also cannot be sure whether the jury will side with you if you go to trial. You will have limited say, if any, about the charges you plead guilty to if you decide to take a plea agreement. Even so, your charges and the outcome of your case have many implications for you, your comrades, and the movement as a whole. Thus, the decisions you make about your case, no matter how limited in scope they are allowed to be, will have implications for others. This aspect of your political goals overlaps greatly with your legal goals for your case.

Consequently, you must consider the political implications of putting information on the record in court—that is, of providing the state with information. Often, people in radical movements draw a hard line against providing information to the state. This is clearly an important principle in general and it should be adhered to rigorously whenever someone is questioned by law enforcement or prosecution investigators. When going to trial, though, you will need to present some information in court and, at times, the prosecution might not know this information in advance. As a result, you will need to consider the political implications of this information and ensure it does not incriminate yourself or others, or otherwise damage your movement or others' organizing.

A lot of information about cases is presented in pre-trial proceedings, as these typically set the terms and scope of the trial—and in many ways the range of political topics that can be brought up in your case. Thus, it is important to make convincing arguments about the evidence to be introduced, the specific charges to be considered, the expert witnesses to be called, and the judge's instructions to the jury. That is, your lawyer (or you, if you are pro se) must present information to the court—some of which the prosecution may not know. Typically, judges favor the prosecution in determining what is and is not allowed to be put on the record in trial, which might mean that the state can put a lot of damaging information about you and your comrades onto the record at trial while you cannot put much out

there about them. Additionally, to argue your pre-trial motions successfully, you may be forced to divulge information the government has not already picked up through its investigations. Similarly, some of your pre-trial motions may require testimony from other activists, which could put them in the position of revealing information that the state does not know and that it would be best for them *not* to know. The state can also subpoena your comrades to testify against you. If they refuse to answer questions, they could be charged with contempt of court and handed jail time of their own.⁹ While we do not want to discourage you from going to trial and taking these risks,

MANEUVER FOR YOUR OWN ADVANTAGE

In 2006, radical environmental activists Daniel McGowan, Jonathan Paul, Nathan Block, and Joyanna Zacher¹⁰ faced serious prison time as a result of a series of arsons carried out by members of the Earth Liberation Front (ELF). A former comrade set them up for prosecution by engaging them in “reminiscing” about ELF actions while taping their conversations. To make matters worse, some of their co-defendants snitched. Their legal situation looked terrible and prosecutors threatened the four defendants with the harshest possible sentences.

McGowan’s attorney filed a motion to reveal any National Security Agency (NSA) spying in his case, as unconstitutional spying could potentially have led to his case and other “Operation Backfire” cases being thrown out. The judge ordered the government to reveal whether the NSA had been involved in any surveillance in the case. Shortly thereafter, McGowan’s attorney withdrew the motion and McGowan and his co-defendants accepted plea agreements that explicitly stated that they would not have to provide information on any other activists. It seems that the pressure this motion applied on the government was a turning point in the case, and this creative legal maneuvering helped the defendants negotiate better sentences for themselves, as well as protect their comrades. As journalist Will Potter wrote, “While this agreement impedes investigation into other ELF crimes, the government avoids a national security investigation.”¹¹

we do want to remind you that the deck is always stacked against you in the criminal legal system.

Nevertheless, the state runs similar risks by going to trial, as prosecutors may be forced to disclose information they would prefer not be made public in order to effectively argue their pre-trial motions. There is no way to predict what will happen in the lead-up to trial or during trial, and thus these proceedings inherently carry both a lot of potential and risk.

The same is even truer of trial, as trials tend to expose more to the light than pre-trial proceedings. Both sides have incentive to put evidence on the record during trial to argue their positions and set themselves up for strong appeals. Additionally, prosecutors are often adept at getting evidence on the record in one trial that will help them in future prosecutions. If you testify on your own behalf, the prosecution may be able to ask for information that damages you, your unindicted comrades, and/or your movement during cross-examination. The same goes for your comrades—they could be called on to testify against you. If someone refuses to answer questions from the prosecution, they could be held in contempt of court (which could entail being held in jail until the trial is over and/or facing criminal charges for contempt). And, of course, no matter how much you prepare, you never know what will be revealed during someone's testimony.

We also must not forget that going to trial involves a high risk of being convicted. How would a conviction affect your movement? Your comrades? Your future organizing? Your life? For example, would a conviction on hacking charges prevent you from using computers after you are released? Would probation or parole after incarceration prevent you from associating with your closest comrades and loved ones? At times, these consequences are necessary to bear so we can advance our struggles. These risks should always be taken with full knowledge and consent, of course.

Alternately, could the public and your support base believe you acted in the right, even if a jury finds you guilty? Or that you are innocent in moral terms even if you are guilty in legal ones? A legal defeat in this kind of situation may be a political victory, as it could lead to opportunities to challenge laws and the powers you are struggling against in your organizing.

Another important question to ask yourself is, "If I decide against going to trial, would pleading guilty discredit my action, movement,

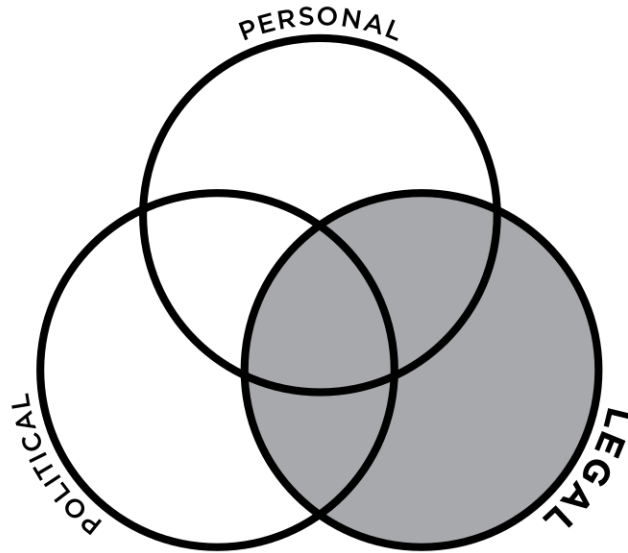
THE WOUNDED KNEE TRIALS

A notable example of successful outcomes from a political trial is the case against Dennis Banks and Russell Means, who were charged as leaders in the seventy-one-day siege of Wounded Knee in 1973. After an eight-month trial in which the defendants rested their case after only a few days of defense testimony, the jury stalled in their deliberations after one juror was hospitalized. The prosecution refused to accept a verdict from only eleven of the twelve chosen jurors and, rather than calling for a mistrial, the judge dismissed the charges against the defendants. Later, most of the jurors formed a group and advocated that the government dismiss the charges against other people arrested during the siege of Wounded Knee, even writing a letter to the attorney general urging him to drop the charges and talking with Justice Department officials in Washington, DC.

The prosecution appealed the dismissal of the charges but the appellate court upheld the decision, so the alleged leaders of the Wounded Knee siege walked free. This trial also exposed the military's presence on the reservation (a blatantly illegal use of the military), an FBI informant who had infiltrated the American Indian Movement (AIM), and extensive FBI misconduct during the siege and afterwards. Additionally, the extensive publicity about the trial helped AIM talk about treaty rights and the abhorrent conditions Indians faced on the reservations. The victory for AIM was mixed, though, as some other Indian rights activists were convicted subsequently on Wounded Knee charges and the extraordinarily long and intensive trial sucked up a lot of the organization's resources, energy, and momentum for their broader struggles against imperialism and genocide.¹³

and/or comrades?” For example, if you are charged with terrorism for nonviolent civil disobedience, would pleading guilty to terrorism (as opposed to a lesser charge of trespassing, property destruction, etc.) bolster the state’s demonization of your movement and facilitate future prosecutions against your comrades under those same laws? If you are charged with conspiracy, would your guilty plea be used against your co-defendants, either at trial or to pressure them into taking plea agreements as well? Whether you plead guilty to lesser charges or are convicted at trial, how would you discuss your case to counteract any possible discrediting with supporters or the general public?

Alternately, would pleading guilty bolster your movement or express pride in your choice of tactics? For example, the Tinley Park 5 (Alex Stuck, Cody Sutherlin, Dylan Sutherlin, Jason Sutherlin, and John Tucker) are anti-racist and anti-fascist activists who were arrested after an attack on a white supremacist gathering in May 2012 at a restaurant in Tinley Park, a suburb of Chicago. A number of anti-fascists broke up the meeting with physical force. Ten of the white supremacists were injured, and three of them required hospitalization. In January 2013, the defendants all took non-cooperating plea agreements with sentences ranging from three to six years. Early into his prison sentence, Jason wrote, “It’s time to ask yourself some hard questions when thinking about taking direct action. Are you prepared to be locked up? Are you willing to stay locked up to protect your comrades and community? Solidarity is a gift and a responsibility.”¹² While the tactics were controversial and all the defendants received prison sentences, they stood in solidarity with each other and owned their actions.



LEGAL GOALS

Facing criminal charges necessarily requires defendants to set legal goals. These goals often cover areas such as not admitting guilt to a crime you did not commit, minimizing or avoiding prison time, not paying restitution, or not having a felony on your record. Some defendants may set a legal goal of resolving their cases in ways that require them to serve prison sentences without probation afterwards so they can move on, whereas others may set a legal goal of avoiding prison time in favor of probation. Of course, rarely will there be times when a defendant will be able to negotiate the most ideal plea agreement or have a smooth road to acquittal at trial so they can walk free.

Setting your legal goals is in many ways figuring out how to make the best of a bad situation, even if the best means years or decades in prison. There are also many other considerations that tie in to your personal goals, as criminal convictions and press coverage of high-profile charges (regardless of whether you are convicted on them or not) can have drastic impacts on your life. Similarly, the legal consequences you are willing to accept will likely influence the political goals you set for your case.

Whatever decisions you make for your case, you should be absolutely certain that you do not directly or indirectly implicate other people. Despite what prosecutors like to promise to cooperating defendants, they do not always receive drastically lighter sentences than those who stand strong in the face of state repression. While some snitches have gotten lighter sentences (particularly in contrast to

draconian sentences such as those meted out to Eric McDavid¹⁴ and Marius Mason¹⁵), many have served more-or-less equivalent sentences as their non-cooperating former co-defendants.

With non-cooperation as a given, your task will be to determine the consequences you are facing, the options available to you, and the support and resources you have available. The consequences in large part depend on the crimes you are charged with and your life situation as a whole, as some people are in better positions than others to cope with a lengthy pre-trial incarceration or years of prison.

Your options in large part depend on legal matters such as lesser-included charges (or other lower-level crimes) that you might be able to present to the jury at the close of your trial or plead guilty to, the sentencing guidelines for the charges you are facing (if any exist), mandatory minimum sentences for your charges (if any exist), the judge's history of handling cases like yours or other serious cases, and any number of other factors that are impossible to predict. Talking with your lawyer about your full range of options is one of the most valuable benefits of working with a lawyer. Of course, not all of these options will actually be available to you even if they are theoretically available, so various legal maneuvers might be necessary for you to get the option you want. Various political maneuvers might be necessary as well since political pressure can be successfully applied to the criminal legal system through a variety of means (the chapter "Working with Your Defense Committee" will contain more ideas on this topic).

In terms of support and resources, ideally you will have a solid lawyer who understands your politics and a strong defense committee that will support you through everything. Even if you do not feel you have everything set up ideally the moment you are slapped with the charges, do not give in to the pressure from the cops or prosecutors. In summer 2012, Occupy activists in both Cleveland and Chicago were entrapped and charged as terrorists. The Cleveland 4 were entrapped by an FBI informant and thus faced federal charges with terrorism enhancements at sentencing, whereas the NATO 3¹⁶ were entrapped by two undercover Chicago cops and charged with terrorism, conspiracy, and possession of incendiary devices under the Illinois state version of the USA Patriot Act. In both cases, the activists were largely new to radical politics and did not have the strongest support bases at the outset. Yet other activists came together to form defense committees to support them and help them through their legal processes

and incarcerations. Even if you do not have resources such as this, non-cooperation should be your guiding principle, as snitching on others will inevitably lead to you losing any potential support and being faced with weathering all your ordeals with neither support nor your integrity.

While every person's situations will be different, there are some general legal considerations that many defendants may find useful and that may not be immediately obvious when setting legal goals and making decisions about cases. Unfortunately, the vast majority of people who are charged end up pleading guilty to or being convicted at trial of at least some charges. All charges carry some consequences, some of which you might find tolerable whereas some would be devastating to your life and political organizing. The consequences that come to mind most readily for most people are lengthy prison sentences, long and strict probation terms, and exorbitant fines and restitution. After all, everyone knows how devastating a felony conviction can be for one's abilities to find a job, housing, education loans, and other necessities. These consequences are legitimate causes of concern and should be evaluated carefully as you make your legal decisions in your case.

There are also many consequences that are less obvious, such as how convictions on certain crimes can prevent you from finding future work in certain fields whereas a conviction on another crime at the same level (e.g., felony, gross misdemeanor) may not. As a hypothetical, if you were planning on working in health care, would a conviction on a charge of violence against people prevent you from entering that field but not a conviction on a charge of property destruction? Talk with your lawyer about whether lesser-included charges may be a possibility for your jury to consider when you go to trial to hedge your bets. Alternately, if you are able to gain leverage in your case to negotiate a plea agreement to a charge that would not have as many collateral consequences, that may be the legal goal you set for yourself.

Other considerations include implications for immigration status, domestic and international travel, child custody, access to hormones, and access to other necessary medical treatments. Another potential consequence to consider is whether an admission of guilt to a particular crime could set you up for future legal actions such as civil suits for defamation, copyright infringement, and other such civil legal situations. The range of potential scenarios and their likelihoods of

coming to pass are impossible to predict, of course, but talking with your lawyer about these potentialities can help you make the most informed legal decisions about your case.

BALANCING YOUR GOALS

Balancing your personal, political, and legal goals is no easy task. There are no formulas to follow, no simple answers, no magical solutions. Nevertheless, working through these clearly and in depth will help you make the best decisions for your case—the best for you, your comrades, and your movement. Taking this approach will make you much more likely to come out of the experience with something you and your comrades can consider in some degree a victory. As you decide upon the overall weight of each of these goal areas, you would benefit from keeping your focus on how you want to conduct yourself in the revolutionary struggle. Answering this question will likely help you set your particular goals more easily.

Criminal legal charges are never of our choosing and are solely the result of the oppressive system that implements them. The state can take nearly everything away from us—our freedom, our agency, our loved ones, our health, our lives. Yet the state cannot take our dignity or our integrity; only we can give those away. No matter how your circumstances change as your case proceeds, no matter what else is going on in your life, these truths remain.

WORKING WITH OTHERS TO ACHIEVE YOUR GOALS

Out of necessity, you will be working with other people to achieve the goals you set. You will likely be working with your lawyer to advance your legal and personal goals, and hopefully your lawyer will take your political goals equally seriously. Have clear, open conversations with your lawyer about your political goals, and discuss ways to achieve them as you make your legal decisions. Whether your lawyer is one of your choosing or one appointed for you, ideally you will work together as comrades, or at least as peers. Remember that your attorney works for you, not the other way around. (The chapter “Working with Your Lawyer” will discuss much more about this critical relationship.)

If you have co-defendants, then you will also need to work with them in setting and achieving your goals. Advancing political goals in the criminal legal system can entail bucking that system in ways that lead to unpleasant consequences. Thus, everyone who could be affected by actions or choices should be able to participate in making decisions about them. Similarly, every defendant must be careful when taking actions, issuing statements, and making decisions not to negatively affect other defendants or make decisions for them. (The chapter “Working with Your Co-defendants” will talk more on this topic.)

Your supporters, unindicted comrades, and loved ones will be your main help in achieving your goals. Fighting criminal charges requires a lot of organizing, emotional energy, and time. Talking with people you know and trust about your plans and decisions can be an invaluable asset as you weather the pre-trial and trial proceedings. (The chapter “Working with Your Defense Committee” will contain more information on working with supporters.)

Court battles necessarily disrupt our lives and divert resources from other projects to legal defense and support needs. However, they do not need to put an end to all organizing. Many political prisoners have urged people to keep on with their work to show that repression will not succeed in disrupting or destroying the movement. Joe Hill, renowned for his labor movement songs written while active in the Industrial Workers of the World (IWW), famously wrote before his execution, “Like a rebel I lived and like I rebel I will die. Don’t mourn for me, organize.”

ENDNOTES

- 1 CeCe McDonald gained international recognition and support as a result of the political organizing undertaken by her supporters. She was released from prison in January 2014, having spent the entirety of it in men’s facilities, to serve the remainder of her sentence on parole. For more on CeCe, visit [HTTPS://SUPPORT-CECE.WORDPRESS.COM/](https://support-cece.wordpress.com/). There is also a documentary about her case entitled “Free CeCe!” More information available at [HTTP://WWW.FREECECEDOCUMENTARY.NET/](http://www.freececedocumentary.net/). Accessed May 10, 2016.
- 2 The Symbionese Liberation Army operated in California from 1973 to 1975. The group grew out of prison organizing between an African-American activist and radical white supporters on the outside. They proposed to move the African-American freedom struggle forward through urban guerrilla warfare. One notable

action was the kidnapping of millionaire heiress Patty Hearst. Kathleen Soliah apparently participated in robbing a bank in 1975 (in which a customer accidentally was murdered), and in making and placing two pipe bombs under police cars. After her indictment for the bombing attempt and before she could be arrested, she fled California for Minnesota. There she assumed the name Sarah Jane Olson, married a doctor, raised three daughters, participated in community theater productions, and worked on progressive political causes. An episode of *America's Most Wanted* (a TV show) profiled her in 1999, and a tipster phoned the FBI with an identification. See [HTTP://EN.WIKIPEDIA.ORG/WIKI/SARA_JANE_OLSON](http://en.wikipedia.org/wiki/Sara_Jane_Olson). Accessed October 2014.

- 3 The Cleveland 4 are four anarchists who had been involved in Occupy Cleveland when they were targeted and entrapped by an FBI informant by the name of Shaquille Azir. Azir orchestrated a plot to bomb a bridge outside of Cleveland with C4, arranging the purchase of explosives from an undercover FBI agent and pushing some of the defendants to meet with and strike a deal with this “arms dealer.” Azir provided some of the defendants with free housing, paid work, alcohol, and drugs throughout his operation. Three of the defendants—Brandon Baxter, Connor Stevens, Doug Wright—took plea agreements early on. Joshua “Skelly” Stafford took his case to trial, representing himself, and was convicted. Connor was sentenced to eight years, Brandon to ten, Skelly to ten, and Doug to eleven and a half, and all of them were given life-time supervised release after serving their sentences. They all appealed the life-time supervised release and all of these appeals were denied. More information can be found at [HTTP://CLEVELAND4SOLIDARITY.ORG/](http://CLEVELAND4SOLIDARITY.ORG/).
- 4 The Lucasville 5 are Siddique Abdullah Hasan (aka Carlos Sanders), Jason Robb, Bomani Shakur, George Skatzes, and James Were. There is a documentary film about the Lucasville prison uprising directed by D Jones entitled *The Great Incarcerator, Part 2: The Shadow of Lucasville* (see [HTTP://DARKLITTLESECRETMOVIE.COM/THE-GREAT-INCARCERATOR-PART-2-THE-SHADOW-OF-LUCASVILLE/](http://darklittlesecretmovie.com/the-great-incarcerator-part-2-the-shadow-of-lucasville/)) and a book entitled *Lucasville: The Untold Story of a Prison Uprising* by Staughton Lynd. More information can be found at [HTTP://WWW.LUCASVILLEAMNESTY.ORG/](http://www.lucasvilleamnesty.org/) as well. Additionally, Bomani has published a memoir under his legal name of Keith LaMar entitled *Condemned: The Whole Story* (see <http://keithlamar.org/> for more information). The transcript of his sentencing statement was taken from the video posted at [HTTP://KEITHLAMAR.ORG/](http://keithlamar.org/). Accessed February 27, 2014.
- 5 *Conspiracy to Riot in Furtherance of Terrorism: The Collective Autobiography of the RNC 8*, pg. 376. The RNC 8 were eight anarchists who were pre-emptively arrested and charged with conspiracy and terrorism under the Minnesota version of the USA Patriot Act in the lead up to the 2008 Republican National Convention

in St. Paul, Minnesota. The eight were Monica Bicking, Rob Czernik, Garrett Fitzgerald, Luce Guillén-Givens, Erik Oseland, Nathanael Secor, Max Specktor, and Eryn Trimmer. All of the defendants except for Erik had organized together as part of the RNC Welcoming Committee, which was directly infiltrated by at least one FBI informant and two undercover cops. The defendants were initially all charged with conspiracy to riot in the furtherance of terrorism and conspiracy to commit criminal damage to property in the furtherance of terrorism. The prosecutor later added those conspiracy charges without the terrorism enhancements, totaling four counts for each defendant, and subsequently was forced to drop the terrorism enhancement charges due to a successful political pressure campaign waged by the RNC 8 Defense Committee. After nearly two years of pre-trial proceedings, Erik severed his case and took a non-cooperating plea deal with a sentence of two months in county jail without probation afterwards. Three weeks later, the prosecutors dropped all charges against Eryn, Luce, and Monica. The remaining defendants ended up taking plea agreements to lower-level gross misdemeanors and receiving probation of one to two years with no additional prison time. For more information on this case, visit [HTTP://RNC8.ORG/](http://RNC8.ORG/).

- 6 See Paul LeBlanc, "Smith Act Trial, 1943" in *Encyclopedia of the American Left*, ed. Mari Jo Buhle, Paul Budle, and Dan Georgakas, (University of Chicago Press: 1992), and [HTTP://EN.WIKOPEDIA.ORG/WIKI/SMITH_ACT_TRIALS_OF_COMMUNIST_PARTY_LEADERS](http://en.wikipedia.org/wiki/Smith_Act_Trials_of_Communist_Party_Leaders). Accessed August 24, 2014. Sadly for us, the *Yates* decision has been eroded significantly in the years since, so that people accused of conspiracy can now be convicted based on the most insignificant actions that might threaten the state or a corporation.
- 7 An inspiring example is Kuwasi Balagoon, who was a member of the Black Liberation Army. Kuwasi was radicalized while fighting in Vietnam. After returning to the US, he joined the Black Panthers and was one of the defendants in the Panther 21 case. He later went underground with the Black Liberation Army and was arrested with other revolutionaries in December 1981. He died in prison of AIDS in 1986. Many revolutionaries who loved him came together to pay tribute to him shortly after his death. The program they put together states: "Black revolutionary soldier Kuwasi Balagoon died on Dec. 13 at the Erica County Medical Center in upstate New York. He had been moved there from the New York State penitentiary at Auburn where he was incarcerated for his political-military work in behalf of Black Liberation. Information on Balagoon and quote taken from "A Soldier's Story: The Making of a Revolutionary New Afrikan Freedom Fighter: A Memorial and Tribute to Kuwasi Balagoon," available at [HTTP://WWW.FREEDOMARCHIVES.ORG/DOCUMENTS/FINDER/](http://www.freedomarchives.org/Documents/FINDER/)

DOC513_SCANS/KUWASI_BALAGOON/513.KUWASI.MEMORIAL.TRIBUTE.PDF. Accessed February 25, 2016. To learn more about Kuwasi and to read his trial statements, see *Kuwasi Balagoon: A Soldier's Story: Writings by a Revolutionary New Afrikan Anarchist* by Kuwasi Balagoon.

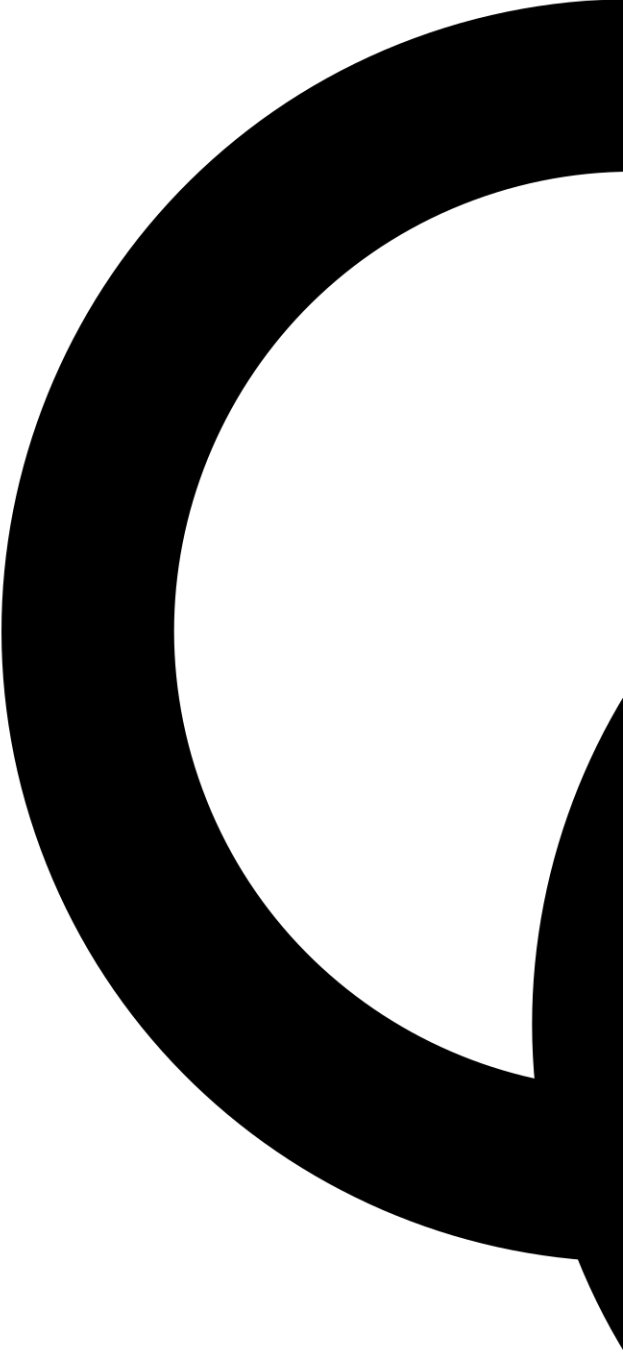
- 8 A good source of information on the Puerto Rican independence fighters comes from an excellent article entitled “The National Lawyer’s Guild Work Defending Independentistas in the U.S.” written by National Lawyers Guild lawyer Michael Deutsch, with assistance from another Guild attorney, Jan Susler. Other independence fighters indicted on seditious conspiracy include Oscar López Rivera, who was sentenced to seventy years and is still incarcerated at the time of this writing, and Maria Haydée Torres, who was sentenced to life but was released after serving thirty years. As explained in the article, “In April of 1980, 11 Puerto Ricans were arrested in Evanston, Illinois and accused of being part of the FALN. They were first tried in state court and sentenced to terms of 8 to 30 years. The US then indicted them for seditious conspiracy, the same charge lodged against Albizu Campos and other Nationalist Party members in the 1930’s and in the 1950’s. Like Morales, the accused FALN prisoners, Carlos Alberto Torres, Carmen Valentin, Dylcia Pagan, Alicia Rodriguez, Lucy Rodriguez, Elizam Escobar, Ricardo Jimenez, Luis Rosa, Adolfo Matos, and Alfredo Mendez also asserted their right to be treated as POWs. Assisted by Guild lawyers who acted as legal advisers, since the accused refused to participate in what they considered an illegal trial, the accused filed an extensive document supporting their claim under international law. The lawyers also filed a petition with the UN Human Rights Commission and raised their case in international fora in Malta, Barcelona and Cuba. The federal prosecution resulted in grossly disproportionate sentences ranging from 55 to 90 years, with the judge lamenting that he could not give them the death penalty.” Available at <http://peopleslawoffice.com/the-legal-work-defending-independentistas-in-the-u-s/>. Accessed February 18, 2014.
- 9 A common assumption is that one can avoid answering questions by simply pleading the 5th Amendment privilege against self-incrimination. The reality is that this privilege is quite limited and it is often up to the judge to determine what risk of self-incrimination is in the case at hand, and thus whether the 5th Amendment applies. For example, someone subpoenaed to testify against an activist facing charges may not be at any risk of facing charges themselves, but may have information that will help the prosecutors win a conviction against the activist. The judge would likely not allow the person subpoenaed to invoke the 5th Amendment, so that person would either have to answer the questions or risk being held in contempt of court for refusing to talk. The bottom line? The criminal legal system writes their laws in ways that benefit the state, not radicals

who do not want to cooperate with them. An informative article published by the American Bar Association on the limitations of the 5th Amendment and ways lawyers can sidestep it to get the information they want can be found at [HTTP://APPS.AMERICANBAR.ORG/BUSLAW/BLT/BLTOOMAY-SHIELD.HTML](http://apps.americanbar.org/buslaw/blt/bltoomay-shield.html). Accessed January 19, 2016.

- 10 Nathan Block (aka Exile) and Joyanna Zacher (aka Sadie) were exposed as neo-fascists in August 2014 by NYC ANTIFA. Their article presents links to Block's blog and postings he has made on social media sites such as Tumblr. While the article mostly focuses on Block, it also specifies racist statements that Zacher has made: "Exile and Sadie's first post-sentencing statement ends with a reference to Charles Manson's racist ecological philosophy ATWA (meaning either 'Air Trees Water Animals' or 'All The Way Alive'). Sadie repeated this formulation as late as 2012 in a letter from prison to the Earth First! Journal. Both in prison and out, Sadie and Exile have repeatedly made disparaging remarks about people of color, and Exile has made statements supporting white separatism, which Sadie defended when Exile was rightfully called-out for making them." The authors identify themselves by writing, "This article was written by longtime Green Scare prisoner supporters in consultation with anti-fascists in Olympia, WA." See [HTTP://NYCANTIFA.WORDPRESS.COM/2014/08/05/EXILE-IS-A-FASCIST/](http://nycantifa.wordpress.com/2014/08/05/exile-is-a-fascist/). Accessed February 24, 2016.
- 11 Will Potter, *Green is the New Red*, pg. 79. More information about Operation Backfire can be found in this book and the pamphlet "Operation Backfire" by the National Lawyers Guild, available at [HTTPS://WWW.NLG.ORG/RESOURCE/KNOW-YOUR-RIGHTS/OPERATION-BACKFIRE](https://www.nlg.org/resource/KNOW-YOUR-RIGHTS/OPERATION-BACKFIRE).
- 12 For more on the Tinley Park 5, including open letters written from prison as well as after release, visit [HTTPS://TINLEYPARKFIVE.WORDPRESS.COM/](https://tinleyparkfive.wordpress.com/). All of the five were released onto parole by late 2014. The investigation into this case may still be ongoing at the time of this writing. A Chicago-based activist named Jason Hammond was arrested in July 2013 and charged with being involved in the same action. He was held for about a month before posting bond. He accepted a non-cooperating plea agreement to 3.5 years in prison in November 2014 and reported to prison in January 2015. He was released onto parole in April 2016. For more on Jason, see [HTTP://FREEJASONHAMMOND.BLOGSPOT.COM/](http://freejasonhammond.blogspot.com/).
- 13 Information for this example comes from *Ghost Dancing the Law: The Wounded Knee Trials* by John William Sayer. The letter that some of the jurors sent to the attorney general read, in part: "We wish you to know we would not have voted to convict either of the two defendants on any of the charges and we would not have voted to convict because each of us concluded that there was not enough evidence to do so. In our view a government that cannot in an eight-month trial present

- enough evidence against the two leaders of the Wounded Knee siege to secure a conviction on any count should for moral and ethical reasons drop the criminal charges against all the other Indian people and their supporters” (Sayer, pg. 201).
- 14 Eric McDavid was sentenced to nearly twenty years in federal prison for “thought crime,” ultimately serving nearly nine years before being released in January 2015 as a result of filing a habeas corpus petition and successfully using a Freedom of Information Act (FOIA) request to expose how the FBI had withheld evidence at his trial. He was arrested in January 2006 as part of the government’s ongoing “Green Scare” campaign against environmental and animal rights activists after being targeted by an undercover FBI informant known as “Anna” who formulated a crime and entrapped him. Eric was arrested with two other activists, Zachary Jenson and Lauren Weiner, both of who quickly cooperated with the state and snitched on him in exchange for light sentences. All three activists were charged with “conspiracy to damage and destroy property by fire and an explosive.” The informant “Anna” spent a year and a half drawing Eric in to the crime she orchestrated and was paid over \$65,000 for her work with the FBI. After a trial riddled with errors, lies, and blunders on the part of the government, a jury found Eric guilty. Many of those same jurors later made damning statements about the FBI’s handling of the case, and two of them submitted declarations to the court stating that they believed Eric deserved a new trial. For more information, visit [HTTP://SUPPORTERIC.ORG/](http://SUPPORTERIC.ORG/).
- 15 Marius Mason (formerly known as Marie Mason) is serving twenty-two years for a number of Earth Liberation Front actions. He had been a long-time environmental activist and member of the Industrial Workers of the World (IWW) before he was betrayed by his ex-husband, Frank Ambrose, who cooperated with the FBI to tape record him and others talking about their previous actions in exchange for a lighter sentence for himself. Marius came out as trans in July 2014 and announced that he wanted to be referred to as Marius Jacob Mason and use he/him/his pronouns. From [HTTP://SUPPORTMARIUSMASON.ORG/ABOUT/](http://SUPPORTMARIUSMASON.ORG/ABOUT/): “Marius Mason is an anarchist, an environmental and animal rights prisoner serving nearly 22 years in federal prison for acts of sabotage carried out in defense of the planet. No one was injured in any of these actions. After being threatened with a life sentence in 2009, he pleaded guilty to charges of arson at a Michigan State University lab researching Genetically Modified Organisms for Monsanto, and admitted to 12 other acts of property damage. The sentencing judge applied a so-called ‘terrorism enhancement’ to his term which added almost two more years than the maximum requested by the prosecution. This is the harshest punishment of anyone convicted of environmental sabotage to date.” Accessed January 19, 2016.

16 The NATO 3—Brent Betterly, Jared Chase, Brian Jacob Church—are three Occupy activists who were targeted and entrapped by undercover Chicago cops in the lead-up to the May 2012 North Atlantic Treaty Organization (NATO) summit in Chicago. The cops, Mehmet Uygun (aka “Mo”) and Nadia Chikko (aka “Gloves”) pushed the defendants to create Molotov cocktails and directed them in doing so, going so far as helping purchase gas for them and cutting up a bandanna to serve as wicks. The cops also provided the defendants with beer on multiple occasions and presented themselves as experienced militant activists to gain credibility with the defendants, who were all relatively new to activism. They were charged under the Illinois version of the USA Patriot Act. They took their conspiracy and terrorism charges to trial in January 2014 and were acquitted of all the terrorism charges, although they were each convicted of two counts of mob action (a lesser-included charge for the original conspiracy to commit terrorism and material support for terrorism charges) and two counts of possession of an incendiary device. The latter charges carried a maximum of thirty years in prison. Brian was sentenced to five years in prison, Brent to six years, and Jared to eight years; they all received credit for two years served in jail while awaiting trial and were designated to serve their sentences at 50% (meaning Brian was to serve 2.5 years in prison with the rest spent on parole, and so on). Brian was released in summer 2014 and Brent in summer 2015. Jared was scheduled to be released in summer 2016 but was facing additional felony charges from an incident that occurred while in custody pre-trial. He pleaded guilty to these charges in April 2016 and was sentenced to an additional year in prison; he has also lost a lot of “good time” due to disciplinary infractions and will serve more than 50% of his sentence. More information on this case can be found at [HTTP://FREETHENATO3.WORDPRESS.COM](http://freethenato3.wordpress.com).



Every year, people are arrested for their participation in radical social struggle. As much as we like to believe it couldn't happen to us, it could. And it's best to be prepared. In this excerpt from the upcoming book A Tilted Guide to Being a Defendant, the veteran legal support activists of the Tilted Scales Collective present an overview of how to balance your personal, political, and legal goals in a criminal trial.

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