

COURT SOLIDARITY INTRODUCTION

Legal Solidarity is a strategy that has been used to protect people while they're in the legal system. Jails and courts are intended to make you feel powerless, but through Solidarity you can gain more control over what happens to you. You make this happen by making decisions as a group, acting in unity with each other, and committing yourselves to safeguarding each other. Legal Solidarity has been used effectively for decades in the civil rights, peace, environmental, anti-corporate, and other movements to make protests more effective and to protect activists who were arrested.

Why Court Solidarity is Important

We use Legal Solidarity in an effort to keep people who are more targeted by state violence from getting singled out for harsher treatment in jail and court (e.g. people of color, immigrants and non-U.S. citizens, people who appear to be queer or who are transgender, people with previous records, strikes, or existing warrants, people perceived as political, etc.). Court Solidarity involves people working together to fight their legal battles in court. Strategically speaking, the best way to do this is to use the strength of numbers to put pressure on the court system in order to: 1) get everyone's charges dismissed, 2) negotiate a plea bargain that is agreed to by everyone, will cover everyone and will not have a harsher impact on targeted individuals or 3) if this can't be done, vigorously fight individual cases and work as a group to help everyone mount a strong defense.

TACTICS AND DEMANDS

A tactic is something you do (e.g. insist on a speedy trial). A demand is something you want (e.g. a fair plea bargain). You use tactics to get demands met (e.g. we're all going to insist on a speedy trial unless we get a fair plea bargain). Matching tactics to demands is key to successful Legal Solidarity.

Some Court Solidarity Tactics

- plead not guilty at arraignment
 - this forces them to hold many trials, clogging the court system
- insist the court appoint a free attorney to represent each defendant
 - this creates a vast amount of paperwork for the court and prosecution, as well as a huge expense
- insist on a speedy trial
 - this forces them to bring everyone to trial within approximately 90 days (depending on jurisdiction) of your first court appearance, as opposed to scheduling trials to start long after, at their convenience
- fight the case vigorously before trial by submitting a lot of motions and requiring lots of hearings in court (a motion is a legal argument the judge or prosecutor has to answer, usually in writing)
 - this puts strain on the court bureaucracy

Some Court Solidarity Demands

- A charge and sentence that corresponds to the "crime" you allegedly committed (As we all know, groups of people targeted for state violence and oppression by the justice system often face outrageous charges and/or sentences)
- same charges for everyone (same goes for individuals)
- same sentence for everyone
- charges and or/sentence cannot have harsher impact on internationals

* People are only entitled to court-appointed attorneys if they're facing jailtime and have a low income. If you're charged with a crime for which the penalties don't include jail (for example, a parking violation), or you can afford to hire your own lawyer, the judge will not appoint a free attorney for you.

PLEA BARGAINING

In the U.S., only about 15% of all criminal cases actually go to trial. Most of the time there is a negotiation between the defendant and/or the defendant's lawyer and the prosecutor called a plea bargain. By accepting a plea bargain, you agree to plead guilty (or no contest) to a particular (usually lesser) charge and/or sentence.

Negotiation

Because of the limits of bureaucracy, when a lot of activists are arrested together and are using Solidarity, their bargaining power increases. Initially, it is important to discuss whether you all want to try to negotiate a plea bargain, but it is also important to begin to prepare for trial (talking to your lawyer about your defense, gathering evidence, witness statements, etc.). The prosecutor is more likely to negotiate if she or he knows that you are not making empty threats but that all of you are ready to go to trial.

A difficult but important demand for a plea bargain in any diverse group of arrestees is that *everyone gets the same deal*. This is important to prevent targeted individuals from being singled out for harsher charges and/or sentences. People with prior convictions, people on probation, people charged with felonies, and non-U.S. citizens are more vulnerable, but getting them covered by the same plea bargain will be much more difficult and is likely to be a sticking point for the prosecution.

When the prosecutor or judge sees a determined group of activists, the bargaining process usually speeds up. For this reason, it is helpful if the activists themselves talk face to face with the prosecutor or judge in a group, rather than having the lawyers negotiate for them. This is a very difficult thing to do; prosecutors like to be high up in their towers and talk only with other lawyers. In the past, when prosecutors have refused to come to the table, activists and their legal support have formed negotiating teams to act as spokes for the arrestees.

In order to negotiate collectively, the whole group must agree on the range of charges and sentences you're willing to accept and communicate this to the people negotiating. It is helpful to agree on a series of fallback positions and a bottom line. For example, "We will not accept any probation. Our first preference is 5 hours of community service, then 10 hours, then 20 hours, then a \$20 fine, then \$20 and 5 hours, etc. and our bottom line is \$20 fine and 100 hours of community service.

Possible Sentence Components

Here are some things you can be sentenced to other than jailtime.

Credit for time served: Every day or part of a day spent in custody usually counts toward your sentence.

Diversion: In a diversion program, you do community service and pay an administrative fee. The charges against you are then dismissed, so you don't get a conviction on your record. However, judges and prosecutors can still see that you took diversion for those charges. Usually, you can only get diversion for the first offense. *Warning: Diversion usually counts as a conviction, not a dismissal, for non-U.S. citizens.* Diversion programs go by a variety of names: deferral, deferred prosecution, dispositional continuance, etc.

Probation: There are two kinds of probation, formal and informal. If you're on formal probation, you have a probation officer who makes rules about who you can see, where you can go, how often you get drug-tested, etc. If you're on informal probation (sometimes called court probation), there is no probation officer and nothing happens unless you get arrested again. If you are accused of violating your probation, you will receive only a streamlined hearing, not a full trial. If the judge decides that you did violate probation, you may be sent to jail. Obviously, being on probation will interfere with your participation in other acts of resistance.

Fines: A Fine is money paid to the government. When fines are imposed, penalty assessments are typically added, which may double or triple the total amount. Make sure you find out exactly how much you're going to pay before agreeing to any deals. Often, there is a standard fine that is attached to every sentence. It may be called a court fee, victim fund fee or restitution fund fee. Although the prosecutor may claim that these fines are mandatory and non-negotiable, in the recent past groups have used Solidarity tactics to negotiate for the suspension of these fines.

Restitution: Restitution is money paid to the victim (which can be a government entity) if you are being sentenced for having damaged property or stolen something. Again, make sure you find out exactly how much you're going to pay before agreeing to any deals.

Community Service: Judges can assign a set number of community service hours instead of a fine, especially if the defendant has a low income. You may be able to negotiate about where you do community service.

Some things to decide when collectively negotiating a plea bargain:

- Will this plea bargain cover everyone arrested that day, or only the people with specific charges?
- How much money are you willing to pay in fines?
- How much community service are you willing to do?
- How much time are you willing to spend in jail?
- Will you accept probation?

Note: Keep your negotiating positions a secret. These meetings should be closed and the terms should not be broadcast (e.g. e-mailed).

COURT

First Appearance

If you're in custody, the authorities are required by law to bring you to court within two business days or “as soon as reasonably possible” depending on jurisdiction. If you're not being held in jail, your first court date may be up to a month, and in special cases, maybe longer, after your arrest.

The first hearing is usually three separate hearings rolled into one—the appointment of counsel, the arraignment, and the bail hearing. The appointment of counsel is when you decide who will represent you: yourself, a private attorney, or a court-appointed lawyer. At arraignment, you find out the charges against you, and you enter a plea. The bail hearing focuses on release issues: bail, bond or release on your own recognizance (OR).

Pleading

Pleas fall into two categories: Guilty and Not Guilty. You probably only want to plead Guilty if you've negotiated a plea bargain (plead out). Instead of pleading Guilty, often people plead No Contest, which is equivalent to a guilty plea but helps protect you from getting sued later.

If you can't reach an acceptable plea bargain or simply want to have your day in court, plead Not Guilty and go to trial. Judges are required to take silence as a plea of Not Guilty. Some people make creative pleas by saying something like “I plead Guilty on behalf of the U.S. government,” or “I plead for the redwood trees.” Judges usually end up interpreting these creative pleas as Not Guilty.

When you plead Not Guilty, you will be given a trial date, but that doesn't necessarily mean you will go to trial. There is normally a lot of negotiating between arraignment and trial, so pleading Not Guilty is often just an opening move in the bargaining process. You can change pleas from Not Guilty to Guilty to accept a plea bargain at any time (but not vice versa!).

If you're not ready to enter a plea, ask the judge for a continuance (an extension). Normally, judges will give you a week or so to discuss things with your lawyer (or to find a lawyer).

Another maneuver, instead of entering a plea, is to make a demurrer (pronounced *de-mer*). It's a procedure in which you claim that there is something wrong with the charges against you (such as vagueness). Talk to a lawyer to see whether there's a valid legal or tactical reason to make one. Usually, the prosecutor is given a chance to correct any problems cited in your demurrer. Though a plea will still have to be entered, the demurrer buys some extra time and gives the prosecutor extra paperwork. Demurrers are only permitted in state court; they

have been abolished in federal court.

Trial

About your right to a speedy trial: In California, if you insist on a speedy trial, the trial must be scheduled within 45 days of your arraignment if you're not in jail, and 30 days if you are. Other jurisdictions have similar time limits. If you waive your right to a speedy trial, the trial might not start for many months.

When engaging in Legal Solidarity, it is usually strategically better to insist on a speedy trial as a group, which will overburden the court and pressure the prosecutor, giving you leverage for a good plea bargain. **If you are facing trial alone or with only a few others, you may want to waive a speedy trial, so as to increase the time available for your lawyer to prepare the case and write motions.** This is a decision to be discussed with your attorney. If you and your attorney feel that you need more time to prepare as your trial date approaches, you can choose to waive your right to a speedy trial. Just remember that once you've waived this right, you cannot get it back.

Note that waiving your right to a speedy trial is called "waiving time". Don't be fooled if the judge says "Sure, you can have a speedy trial. Do you want to waive time?"

About your right to a jury trial: You don't necessarily get a jury trial. In state court, you must be charged with at least a misdemeanor to get a jury trial. In federal court, you must be charged with an offense for which the maximum sentence is at least six months or more to get a jury trial. This requirement rules out all infractions and most misdemeanors. A bench trial (a judge but no jury) means that the judge decides the verdict in addition to deciding what will be allowed as testimony and evidence.

About a political or "show" trial: Judges usually forbid political discussion in trial, on the grounds that it would be irrelevant. Lawyers can sometimes get around the judge's prohibitions, but it's tricky. If you're interested in not only politicizing your arrest and charges but the trial itself, you should talk to a lawyer about his/her ability to make a political argument for your particular case and the risks and the sentences you could face if found guilty. Also, when thinking about a "show" trial, one should assess the amount of support work that can be done around one individual trial.

About your right to court-appointed counsel: In order to be eligible for a court-appointed lawyer, a person must prove him or herself to be indigent (that is, your expenses are equal to or more than the amount you earn). Your first step is to find out where to go or what to fill out and what to bring. You can make yourselves and your group tactics more visible by arranging a group field trip to pick up or drop off forms, so that they can see just what a mountain of paperwork you all will create.

LAWYERS

If you qualify for a court-appointed attorney, you may be assigned someone from the Public Defender's office. Public defenders are lawyers who represent low-income defendants in criminal cases. If they cannot take a case (due to conflict of interest or lack of attorneys), the court will appoint a local private attorney who gets paid by the government. These lawyers will probably want to help you, but may not understand consensus process or believe that Court Solidarity can work. Because of this, it's important to have clear communication with lawyers at all times.

There are some excellent lawyers with good politics who can be a great resource. Usually, there are progressive attorneys' associations, like the National Lawyers' Guild (NLG) who can point you in the direction of a progressive lawyer willing to represent activists at a cut rate or even *pro bono*.

Court Solidarity

When you use Court Solidarity, you will need to have meetings with the lawyers. These meetings should include all activists facing trial and all of their public defenders and court appointed attorneys. (The activists need

to meet on their own ahead of time to get on the same page.) Instruct your lawyers to communicate with the other lawyers involved in the case and with any legal support people, including other defendants.

In a typical court case, an individual has one lawyer and they both do as much as they can. Using Court Solidarity means everyone is working together — lawyers and activists alike. So if there are 50 people arrested, there are 50 lawyers involved to write motions, share strategy, etc. and 50 activists and their friends and families to work with them and do support work like media and fundraising.

It's important that the activists know that attorneys should be working with and for their clients. Give lawyers questions and instructions in writing and ask for responses in writing to be sure that they understand what you want and that they do it. Above all, though, approach public defenders and court appointed lawyers with the understanding that they want to help you. Give them the chance to learn about you and your tactics before writing them off. If you get a public defender or court appointed lawyer who makes decisions without consulting you, does not keep you informed or refuses to take direction, ask them to withdraw from helping you. They may help you switch lawyers. If they do not withdraw voluntarily, you can fire them, but you will have to find another lawyer.

There is also the option of representing yourself (going *pro se* or *pro per*) in trial. It is a decision that should not be made hastily and should be discussed with a friendly lawyer. There are resources out there to help people who want to defend themselves, but most of the materials available concern family and divorce law. If you do decide you want to represent yourself, we suggest having a lawyer as co-counsel or advisory counsel to help you prepare your case.

Lawyer Concerns

Many times lawyers have concerns about Legal Solidarity. Share written materials on consensus process and Legal Solidarity with the lawyers, including this handout. Urge the attorneys to consult with colleagues who are experienced in Solidarity-based criminal defense. Here are a couple typical lawyer concerns and suggestions on how to neutralize them:

- Attorneys don't understand consensus process and worry the group will coerce individuals.
 - Explain that none of the tactics require everyone's participation to work, and that people who need to cite out or take deals are truly supported.
- Lawyers worry that collective plea bargaining is inherently unethical.
 - Explain that you want a plea bargain that has equal impact on everyone. As long as each defendant is making an informed decision, the attorney should not have an ethical dilemma. Also, explain to them that Legal Solidarity often results in superior plea bargains.

Note: Non-US citizens *must* have a local immigration attorney check on whether it's safe to take a given plea bargain.

SUPPORT

Legal Solidarity is not only carried out by the people in jail or facing trial, but also by supporters. Support from family and friends is critical for the success of Legal Solidarity. Here are a few ideas for organizing jail and court support. As usual, this handbook is just a guide—let your creativity lead the way.

Court Support

- Generate street heat by holding marches and rallies at the courthouse on the day of the trial or the first hearing.
- Write press releases and hold press conferences.
- Organize a phone call campaign to call the mayor, prosecutor, attorney general, judges, media, etc. in support of the activists facing trial.
- Find out when the hearings and trial are and go to them. Organize lots of people from the community and friendly media to go.

- Take notes on what happens at trial and consolidate them for everyone's use. Pay attention to: name of judge and attorneys, case #'s/ docket #'s, and any decisions that get made.
- Raise money for legal expenses.
- Work with the lawyers
 - Collect evidence and do research
 - Make a database of arrestees and witnesses
 - Create courtroom displays
 - Coordinate Volunteers or Volunteer for Courtroom Observation
 - Make a jury questionnaire for jury selection (voir dire)

If you have any questions, call Midnight Special Law Collective at (510) 834-1883. If we can't answer it, we'll find someone who can.