

VOLUME 24, NO. 1

FALL 1996

SOUTHERN UNIVERSITY LAW REVIEW

UNIQUE PROBLEMS ASSOCIATED WITH THE LEGAL
DEFENSE OF POLITICAL PRISONERS AND
PRISONERS OF WAR (PP/POWs)

Sundiata Acoli

SOUTHERN UNIVERSITY



LAW CENTER

ESSAY

UNIQUE PROBLEMS ASSOCIATED WITH THE LEGAL DEFENSE OF POLITICAL PRISONERS AND PRISONERS OF WAR (PP/POWs)

SUNDIATA ACOLI*

*"The beginning of knowledge is to call things by
their proper names."*¹

A political prisoner (PP) is a person held in confinement because of their beliefs, views, color, image, proclamations, associations or actions related to the government of society. The operative word is "government." It instructs that the PP is held for political reasons: matters related to government rather than matters related to law. The word "held" is also instructive. The PP may have been detained for some real or contrived matter of law but is currently held solely for political reasons.

Most people are familiar with the 1949 Geneva Convention's definition of prisoner of war (POW) but are unaware of its further expansion during the 1960s/70s by the newly emerged independent nations of Afrika to include captured freedom fighters who struggle for self-determination and independence. We POWs in the US have adapted that expanded definition to define ourselves as follows.

A POW is a combatant captured in an armed conflict involving the struggle of a people against colonial and alien domination and racist regimes², and for their right to self-

* The author considers himself the Black Liberation Army's prisoner of war, and is currently incarcerated at the United States Penitentiary Allenwood in White Deer, Pennsylvania.

1. ~~AKELIAN~~ THE MAJORITY OF ONE → Amiri Baraka
2. UN Resolution 3103 (XXVIII) of 12 December 1973:

1. The struggle of people under colonial and alien domination and racist regimes for the implementation of their right to self-determination and

determination and independence³, and who is held in confinement for political reasons. And last there is the requirement that a POW declare him/herself as such.

A cursory glance at the major political trials⁴ in the US

independence is legitimate and in full accordance with the principles of international law. . .

3. The armed conflicts involving the struggle of people against colonial and alien domination and racist regimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions, and the legal status envisaged to apply to the combatants is to apply to persons engaged in armed struggle against colonial and alien domination and racist regimes.

4. The combatants struggling against colonial and alien domination and racist regimes captured as prisoners are to be accorded the status of prisoner of war and their treatment should be in accordance with the provisions of the Geneva Convention, relative to the Treatment of Prisoners of War, of 12 August 1949.

3. *Id.*

4. See *U.S. v Cinque*, 25 F.Cas. 421 (No. 14,794)(Slave ship *Amistad's* mutiny); *Dred Scott v. Sanford*, 60 U.S. 393 (1856)(fugitive slave); *Commonwealth v. Sacco*, 158 N.E. 167 (Mass. 1927)(Anarchist); *Garvey v. U.S.*, 4 F.2d 974 (2d Cir. 1925)(Pan-Afrikanist organizer); *Rosenberg v. U.S.*, 346 U.S. 273 (1953)(Communist); *Comite Pro-Celebration v. Claypool*, 863 F.supp. 682 (N.D. Ill. 1994)(Albizu Campos trial and four Puerto Rican Nationalist; colonialism, independence); *Lynn v. Delgado*, 145 F.Supp. 906 (D. Puerto Rico 1956); *People v. Newton*, 87 Cal. Rptr. 394 (Cal. Ct. App. 1st Dist. 1970)(Black Panther Party); *Davis v. Lindsay*, 321 F.Supp. 1134 (S.D. N.Y. 1970)(Communist); *Bin-Wahad v. Coughlin*, 853 F.Supp. 680 (S.D. N.Y. 1994)(Black Liberation Army); *Bukhari v. Hutto*, 487 F.Supp. 1162 (E.D. Va. 1980); *Peltier v. Henman*, 977 F.2d 461 (8th Cir. 1993)(American Indian Movement); *Dougherty v. State*, 773 S.W. 2d 320 (Tex. Crim. App. 1989)(Irish Republican Army); *U.S. v. Odinga*, 576 F.Supp. 1038 (S.D. N.Y. 1983)(Black Liberation Army); *Shakur v. Hawk*, No. 95-1907SS, 1996 WL 601445 (D.D.C. 1996); *Abdul Wali v. Coughlin*, 754 F.Supp. 1015 (2d Cir. 1985); *U.S. v. Buck*, No. 94 Cr. 220, 1991WL 243426 (S.D. N.Y. 1991); *Baraldini v. Thornburgh*, 884 F.2d 615 (D.D.C. 1989).

See also, e.g. for a discussion of unreported trials: Daniel S. Fabricut, *Thomas R. Gray and William Styron: Finally, a Critical Look at the 1831 Confessions of Nat Turner*, 37 AM. J. LEGAL HIST. 332 (1993)(Nat Turner Slave Rebellion); David R. Papke, *Eugene Debs As Legal Heretic: The Law-Related Conversion, Catechism and Evangelism of an American Socialist*, 63 U. CINN. L. REV. 339, 361 (1994)(Bill Haywood/Chicago Haymarket and IWW Union Organizers); Bill Halton, *Save Us From Scopes II! Monkey Business: The Sequel*, 32 TENN. B.J. 37 (1996)(Religion); Stephan Landsman, *History's Stories of Scottsboro*, 93 MICH. L. REV. 1739 (1995)(Scottsboro boys); Note, *The Military and State Secrets Privilege: Protection For the National Security or Immunity For the Executive?*, 91 YALE L.J. 570 (1982)(Anti-Vietnam War); John Roemer, *Every Which Way But Out*, 14 - Jul CAL. LAW 59 (1994)(Geronimo Pratt, Black Panther Party); Lisa A. Crooms, *Stepping Into the Projects: Lawmaking Story-*

shows that most revolved around politics, race and/or to a lesser extent, religion. Today, the PP/POW is usually a Black or other person of color, poor, and of anti-colonial/anti-capitalist politics, or a white person in solidarity with such people and causes, who has been charged with or convicted of an offense against a white authority figure or institution.

The US is a white racist capitalistic state. Everything in the US society is colored by race and when combined with politics in the form of the PP/POW it makes for a particularly volatile situation. The government's reaction is to brand the PP/POW as an enemy of the state who must be crushed at all cost. Some POWs do not recognize US courts as a legitimate authority to try them and do not participate in their "trials."⁵ Although the US does not acknowledge their right, POWs who take that stance are correct in doing so. The United Nations (UN), World Court and International Law supersede all national laws, including US law. International Law explicitly forbids trial of POWs in national courts or holding POWs in penitentiaries. Instead, it requires in UN Resolution 2674 (XXV) of 9 December 1970 that "freedom fighters . . . struggling for self-determination, should be treated in case of their arrest as prisoners of war in accordance with the principles of the Hague Convention of 1907 and the Geneva Convention of 1949."

Other PP/POWs, as is their right, choose to present defenses in court of the charges against them. Some represent themselves with an attorney acting as co-counsel or advisor, while others let the attorney defend them. Given the foregoing definition of PP/POWs, their context in the US society and the fact that the US does not recognize or admit the existence of its PP/POWs or political trials presents substantial and unique problems in the legal defense of such persons.

The foremost problem is the state. With unlimited funds and resources it brings the full weight of its power deter-

telling, and Practicing the Politics of Identification, 1 MICH. J. RACE & L. 1 (1996)(Assata Shakur); Bradley T. Winter, *Invidious Prosecution: The History of Seditious Conspiracy - Foreshadowing the Recent Convictions of Sheik Omar Abdul-Rahman and His Immigrant Followers*, 10 GEO. IMMGR. L.J. 185 (1996)(Ohio 7, Sedition).

5. See *Comite Pro-Celebration v. Claypool*, 863 F.Supp. 682 (N.D. Ill. 1994); *Adul Wali v. Coughlin*, 754 F.Supp. 1015 (2d Cir. 1985).

mined not only to convict the PP/POW but to crush him/her and anyone associated, including the lawyer. In turn, the PP/POW needs first a lawyer who can withstand such pressure. Most PP/POWs are too poor to pay for an attorney but tend to shun acceptance of Public Defenders because they are paid and assigned by the same state that is determined to legally lynch them. The PP/POW's defender of choice is usually a political lawyer: an attorney with social consciousness who identifies with an oppressed people's struggle for freedom, self-determination and/or independence. Political lawyers can better withstand the state's pressure because most have dedicated their careers to defending PP/POWs, oppressed people, and doing political work in lieu of making lots of money. A problem is that there are few such lawyers.

Whether political or not, any legal defender of PP/POWs can expect to encounter the following problems: hostile interference from prison officials when seeking access to the PP/POW; a judge who tends to rule against the defense in most instances; a determined and often overzealous prosecutor armed with a battery of investigators, forensic scientists and experts who are paid by the state, testify for the state, and tailor their testimony to fit the state's version of the case; previously undisclosed (i.e., "surprise") state witnesses approved to testify on short notice during trial; handover of state's exculpatory reports (i.e., favorable to the defense) delayed or withheld altogether; and defense witnesses no longer willing to testify after visits from the prosecutor's "investigators."

Poisoned atmosphere created by the media is another problem. The state uses its enormous leverage with news media to orchestrate a disinformation campaign designed to prejudice the public and potential jurors against the PP/POW and guarantee a conviction before trial begins. From day of arrest to the verdict the public is barraged with one lurid story after another associated with the case, all originating from "leaks" from the prosecutor's office and other anonymous police sources.

PP/POWs are rarely given bails, or affordable ones. Confinement limits their ability to take a more active role in their defense or to effectively counter media slander. The task falls primarily to the PP/POW's lawyer who, already immersed in defense preparations, must now take on the

additional job of holding press conferences, interviews, and speaking at rallies, demonstrations, and other public events to combat the negative media campaign. As soon as the attorney begins to effectively counter the state's slander, the judge slaps a "gag" order on both the attorney and the prosecutor "in the interest of fairness." Nevertheless, "leaks" invariably continue from the prosecutor's office while the PP/POW's attorney is restrained from commenting on the case. If the PP/POW is convicted and the case comes up for post-conviction appeal or parole hearing, the state unleashes a similar barrage of negative media that is intended to bias the public and to make the appellate judges or parole board feel compelled to keep the PP/POW imprisoned by denying the appeal or parole.

Lack of money is also a problem. As with race, money affects every element of US society, including the courts. One usually gets the defense that one pays for, although to a lesser extent if the defendant is a person of color; O.J. Simpson being a rare exception.

The state provides indigent defendants little or no money to hire the investigators and experts needed to counter the testimony of the state's experts. Expert testimony is an expensive but crucial necessity for an adequate defense in most cases. Since political cases rarely pay financial rewards, most political lawyers are poor. To earn a living most work full time at conventional law offices while doing political cases as a sideline. If the trial or PP/POW is held at a distant location, it adds extra time and travel expenses to the attorney's problems. Many are forced to pay basic and other expenses out of their own pocket. Raising money to hire the necessary experts and investigators requires the attorney (and the PP/POW) to again divert attention from the purely legal aspects of the case to engage in fundraising activities. Success is spotty, some fundraising events pan out, others don't; the attorney is promised a fee to speak at some events and often is not paid. If the PP/POW is convicted, the financial emergency repeats itself with the preparation and presentation of each post-conviction appeal or parole hearing on his/her behalf.

Jury selection is always a problem but one where people of color and/or consciousness can make the greatest impact. Jury panels in federal or non-urban cases are predominately

white, as are many in urban areas. Most PP/POWs are tried before predominantly white juries. Besides the racial factor, most jury panels have already been polarized by the state's negative media campaign. If not, once they appear for jury selection they are certain to be polarized, even terrified, by the extraordinary display of security encircling the courthouse, sharpshooters stationed atop, intersections cordoned off and deputies halting traffic with machine gun in hand as an armed convoy with siren blasting announces the daily arrival of the defendant. The potential juror is met with metal detectors set up at the entrance to the courthouse and to the courtroom itself where inside plainclothed and uniformed police saturate the audience, court marshalls ring the walls, bulletproof glass seals off the court dock and big fierce-looking Marshall is posted near the judge presumably to protect him/her but actually to limit the interaction between the defense and the jury and to keep them distracted and frightened out of their wits so that they will convict even a "ham sandwich" under such circumstances and the public will be inclined to condone the denial of release by the appellate court or parole board each time the PP/POW comes before them.

And last, defense conflicts between the legal and the political are a problem. Political lawyers are still lawyers. They are duty bound to advise the PP/POW of the best legal course to pursue at each juncture but it doesn't necessarily mean it's the best political tack to take. The PP/POW is duty bound to do what is overall best politically, often to the consternation of the attorney, and the honorable resolution of such conflicts are normal problems in political cases.

Political lawyers are also human. They suffer all the frailties of other humans: personal problems, sickness, child rearing, depression and stress compounded by the constant pressure of being overworked, underpaid and overextended because there are so many PP/POWs, prisoners and oppressed people in general needing help, so many pleas for assistance and so few political lawyers to answer to call. The work is hard, applause infrequent and the challenge great, but so is the reward in terms of the soul and the triumph of the human spirit.

Obviously, the legal defense PP/POWs presents numerous and unique problems but they are by no means insur-

mountable. Any and all of these problems can be overcome by one thing: *the support of the people*. Although a problem in itself, it is also the solution.

Support of the people can overcome the awesome power of the state, negative media, lack of money, investigators and experts, biased jury panels, overloaded political lawyers and a host of other ills. The more massive the support, the more people can be found to solve the problems encountered.

The power of the state is used to reward or punish people depending on whether they cooperate with the state's case or not. A strong supportive person or people can neither be bought off nor intimidated and thereby can negate state power. Mass support of the people through donations of time, money and expertise can neutralize the state's financial advantage and the defense's lack of money and legal resources. The state's negative displays are effective only if they frighten people away so that it can do its work in the darkness. A supportive person or people will seek out, listen to and publicize the defense's side of the story. They will come to court, see for themselves the inner workings of the "justice" system, expose the lies and get on juries to make sure they hear the other side and that justice prevails.

In a word, the support of the people is everything, particularly when it comes to the fate of the PP/POW. And since Afrikans are the majority of the PP/POWs, Afrikan people have a special obligation to be foremost in mass support of PP/POWs. Unfortunately, this has not always been the case and remains a unique problem associated with legal defense of PP/POWs that Afrikan people have yet to come to grips with.