

JUST CAUSE LAW COLLECTIVE

Examples of Jail/Court Solidarity

The term “solidarity tactics” encompasses many different forms of non-cooperation, all of which are designed to produce leverage for collective bargaining. Most people are familiar with the solidarity tactics used by organized labor: picket, boycott, slow down (work-to-rule), sick out, strike, fasting, or sit in. While the use of solidarity tactics by criminal defendants is less well known, it can be quite effective—particularly when the defendants are well-organized, similarly-situated, and working together in large numbers.

Examples of Solidarity Tactics in Mass Civil Disobedience Actions

The following summaries outline the ways in which different types of solidarity tactics were used successfully in mass civil disobedience actions in three cities, between November 1999 and August 2000. The activists used these tactics to negotiate collectively with the authorities, in order to gain fair and equal treatment. Before each of the demonstrations, activists and their legal teams participated in trainings in which they role-played booking, plea-bargaining and arraignment, among other scenarios. As a result, they were able to apply solidarity pressure at two key points:

- 1) The activists withheld their names and addresses after they were arrested, to force the authorities to keep them in custody, thereby putting a strain on the jail system.
- 2) The activists pleaded not guilty, and invoked their rights to a speedy trial and to court-appointed counsel, thereby putting a strain on the court system.

In addition, a steady stream of press releases and press conferences helped build public support for the activists, while rallies and vigils at the jails and courts were a visible reminder of those inside.

Seattle, WA

Arrests: Approximately 600 people were arrested over two days of demonstrations in opposition to the World Trade Organization Conference, in November 1999.

Primary Tactics: The vast majority of people refused to give their names and remained in custody for 4 to 5 days, while thousands of supporters surrounded the jail. Although negotiations were initiated, the prosecutor never made any realistic offers. So the activists left jail and moved the struggle to the courts. They pleaded not guilty, insisting on speedy jury trials and court-appointed counsel.

Outcome: Only 7% of the activists took deals (diversion, dispositional continuance, guilty plea). As the 90-day window for holding speedy trials narrowed, 92% of the cases were dropped. In the last few weeks before the statutory limit, the prosecution chose six cases to bring to trial. Five of these defendants were acquitted or dismissed. The only activist who was convicted was sentenced to community service and a small fine.

JUST CAUSE LAW COLLECTIVE

Comments: A large proportion of the defendants were not expecting to be arrested and had not made arrangements to leave work or school for any length of time. This limited their ability to stay in jail. Realizing that many would soon have to go home, they chose to leave custody all together, rather than dwindle away. They then focused on exerting pressure on the court system, which proved highly successful.

Washington, DC

Arrests: Approximately 1300 people were arrested over three days of demonstrations against the World Bank Meeting, in April 2000.

Primary Tactics: About 150 people remained in jail, refusing to give their names or addresses. The chief judge ordered their court-appointed attorneys to file motions for release on recognizance. Most of the attorneys complied, over their clients' objections. When the U.S. Marshals attempted to transport activists to hearings on these motions, the prisoners stripped and tied themselves to their bunks. Those few who were taken to court anyway appeared *in pro per*, dismissing their court-appointed counsel and withdrawing the motions for release. After several such colloquies, the bemused judge ordered the prosecution to negotiate with defense lawyers chosen by the activists.

Outcome: The court-ordered plea bargaining was successful and the misdemeanor charges were reduced to civil infractions carrying a \$5.00 fine. The deal applied to activists arrested at any of the three events. Those who had already pleaded or forfeited bail had the opportunity to withdraw their pleas and take advantage of the negotiated agreement.

Comments: A standing court order imposed financial penalties on the warden, whenever the population of the jail exceeded a certain limit. Since the jail was already at capacity, it took only 150 activists to put the population well over its cap. This pressure ultimately led the warden to seek help from the chief judge, who then forced the prosecution to negotiate.

Los Angeles, CA

Arrests: Approximately 170 people were arrested over three days of demonstrations during the Democratic National Convention, in August 2000.

Primary Tactics: 50 people refused to provide their names or addresses and remained in custody. They refused to eat until a district attorney came to the jail and negotiated with them directly. The vigil outside the jail included over a dozen people fasting in solidarity, and fifty life-size puppets named J. Doe, representing each of the incarcerated activists.

Outcome: The misdemeanor charges were reduced to infractions, and fines were suspended in consideration of the time spent in jail. The deal applied to activists arrested at any of the three events.

Comments: The Los Angeles jail system holds 20,000 prisoners and books 1,000 people a night, so the activists knew that their numbers would be too few to exert pressure on the jails. Therefore, they

JUST CAUSE LAW COLLECTIVE

decided in advance to fast in jail, which they did with careful attention to safety, obtaining medical advice and appointing certain activists as “designated eaters” to monitor their physical and emotional well-being. At arraignment, each activist announced that s/he was fasting and read the following statement:

Your Honor, I am in solidarity with all the other activists arrested here. We want to negotiate collectively with the prosecutor, to work out a universal plea bargain. Until then, we will not give our names or addresses, nor will we promise to return to court if we are released. At this time, I plead not guilty while reserving the right to demur; I do not waive time; and I request court-appointed counsel.

The activists explained to the deputies at the jail that their refusal to eat or leave custody could be terminated, if a prosecutor would negotiate with them directly. After the activists had fasted for several days, the sheriff himself attempted to talk them into eating. When they still refused, he called the district attorney’s office. Later that day, a prosecutor came to the jail and spent two hours speaking with the men and another two hours speaking with the women. In the end, he gave the activists the deal they demanded (infractions with fines waived in consideration of time served), and even made repeated public statements acknowledging their integrity and commitment.

Determining When Solidarity Tactics Are Appropriate

In all three cases described above, solidarity tactics achieved favorable outcomes from a criminal defense standpoint. In addition, solidarity tactics were used to gain concessions for the activists while they were in jail: prisoners who had been isolated were returned to the group; prisoners were allowed to hold mass meetings and/or councils of representatives from different groups of prisoners; and attorney/organizer pairs from the legal teams were allowed to meet with the prisoners en masse. Surprisingly, it took relatively few activists to achieve potent solidarity pressure in the D.C. and Los Angeles jails: only 15-20% of the activists arrested chose to stay in jail.

Solidarity tactics were *not* useful in negotiating on behalf of those charged with felonies or with federal offenses, approximately 15 to 30 people in each city. It was necessary to defend these cases using standard legal strategies. The other activists provided support for the felony defendants by fund-raising, attending hearings, and organizing demonstrations on their behalf.

In order to determine whether and how to use solidarity tactics, activists must research the current capacity of the jails (or temporary holding facilities) and of the court system. Activists should ask their lawyers for predictions about how the prosecutor’s office and the judges may react. In addition, they should assess the political forces that might influence negotiations with the prosecution or courts (such as the mayor, the police, the voters, and the business or religious communities).

Criminal defense attorneys occasionally have misgivings about their clients’ use of solidarity tactics, although these concerns are often resolved through discussion, if the activists show that they’re making informed choices. The following are concerns typically raised by criminal defense attorneys, with suggested responses:

JUST CAUSE LAW COLLECTIVE

Aren't solidarity tactics coercive? Do individuals really have the chance to opt out when the proposed tactic isn't in their best interest?

No solidarity tactic requires unanimous participation to be effective, merely enough to create leverage. In Seattle, though hundreds of activists pleaded not guilty, a substantial number (over 40 individuals) took deals. In D.C. and Los Angeles, only a fraction of those arrested actually stayed in jail. And even the activists who refused food in the Los Angeles jails had “designated eaters,” a genuinely useful role for those who were not in a position to fast. In well-organized civil disobedience, it's emphasized that people who cannot participate in a given tactic (such as staying in jail or pleading not guilty) are equally valuable in working on publicity for their fellow activists (by calling, writing, holding vigils, and giving interviews), because community support is a critical part of using solidarity tactics.

Isn't collective plea bargaining inherently unethical, since each defendant is entitled to his/her own strategy and one person's approach may be contradictory to another's?

Package deals have negative connotations because they're usually foisted on the defense by the prosecution. However, group plea agreements drafted by the defendants and supported by solidarity tactics can be extremely advantageous. In the examples described above, local counsel confirmed that the plea bargains achieved by the solidarity activists (infraction convictions, with no probation or fines) were considerably better than the standard dispositions for protestors (misdemeanor convictions, probation, fines and/or community service).

In general, a defendant who's chosen to engage in civil disobedience is acting on principle. This perspective also influences the activist's relationship to the rest of the group. An activist usually *wants* to look after the interests of co-defendants. And some choose to risk engaging in civil disobedience largely because solidarity tactics to keep any one of them from being singled out. The defendant's political and ethical choices must be respected, even if s/he could obtain a more favorable deal by acting independently, and it's usually a straightforward matter for the lawyer to verify that the defendant is making an informed decision. By contrast, a lawyer who pressures a political defendant to renounce solidarity tactics usually causes unnecessary anxiety and drives a wedge between the defendant and the attorney, or between that defendant and the rest of the activists.

Isn't any outcome better than doing jail time?

Under normal circumstances, both defendant and counsel are fervently opposed to jail time. However, many activists see going to jail as a critical part of their protest, particularly from a publicity standpoint. Moreover, many political defendants prefer to spend a few days in jail, especially when they're in a large group, than to pay fines or do community service. And no one wants probation. Many activists have been successful in negotiating plea bargains that exclude probation, by using solidarity tactics that involve staying in jail for several days. The presence of other activists provides both physical and emotional security that renders the jail experience far more tolerable. Activists generally emerge from custody inspired, empowered, and more sensitive to the circumstances of prisoners who don't benefit from skin or class privilege.