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KEEP THE FIRES BURNING

A NEWSLETTER BY AND FOR CALIFORNIA PRISONERS

Gathering in Modesto of Families Hit by Police Violence

[Content Warning: police killings, grief]

On Saturday, March 25th, a Solidarity BBQ entitled "Stronger Together" was held in Modesto to give a platform to families impacted by police violence. This was the second such gathering, the first took place in the spring of 2021 and was organized by the family of Trevor Seever. Trevor was murdered by Modesto police on December 29, 2020. As folks may know, the Central Valley is home to some of the most dangerous, racist, and trigger happy police departments in California. There were far too many stories. Some were killed in their car while sleeping, many were killed during a mental health episode. In every case, following these killings, the police enacted an immediate and forceful strategy to control the story, lie about the events, and degrade the victims. It was heartbreaking to hear story after story after story of dozens murdered in basically the same way, to witness how the pain of their loss ripples out to so many loved ones, and to see how people's lives are now dedicated to seeking justice for their father, uncle, grandson, son, sibling, cousin.

The space was opened up by a Yokut ceremony that filled the pavilion with the deep smell of sage. Below the banners and flags with the faces of loved ones dressing every side of the space, small altars were built to those lost. The two of us who went hung our George Jackson banner along the fence to the rear of the stage. There was hope and camaraderie in the shared pain... a tangible sense in the air of a growing and sharper understanding of the strategy of lies... the double talk and victim blaming put in motion around police killings no matter where they happen.

The event centered squarely on the families and their stories. We were honored to offer our support and bear witness. There is power in collective mourning.

Loudly Ringing In 2023

On the last day of 2022 we joined other abolitionists from the bay in driving several hours in the rain to converge with Southern California organizers at Corcoran State Prison. About 15 people held a raucous noise demonstration for about two hours. The demonstration began at the entrance to the facility where speeches were read and people going in and out of the facility were treated to boisterous speeches and a lot of noise.

The group then marched along part of the highway to an area of fencing nearest some of the cell blocks. There was yelling, chanting, air horns, banging of pots and pans, and several readings of speeches from current and historic inside organizers. Our voices could be heard echoing off of the concrete inside and back to us. If you or anyone you know could hear what we were saying from inside, please let us know!

Here is a statement that was read outside the facility, coauthored by someone inside and their loved on:

"As the year comes to a close, many of us will be thinking about the hours we spent with our loved ones, the number of miles driven to get to them, and all the other ways we show up for our loved ones inside. This year has been overwhelming— with COVID lockdowns, concern for our loved ones safety, and even the anxiety of whether or not you're going to get a phone call that day. CDCR by nature has been designed to break our loved ones and create distractions from doing the work. We encourage you to not be satisfied with the simple victories— do not let the passing of things like free phone calls cause you to stop vocalizing all the other injustices our loved ones face. Do not let the threat of transfers and mixing yards leave you feeling hopeless. Let all of these things fuel you— free phone calls means change is possible and we are being heard; that yard mixing and transfers means that what we're doing on the outside and what our loved ones are doing on the inside has them worried. They wouldn't do it otherwise. But most of all, let us celebrate today for what it is— getting to share those sacred moments with the people we love inside. We stand in solidarity with you and everyone inside Old Corcoran, SATF, and every other prison. We hope that this can offer you words of encouragement to keep on, keep holding it down, and remind you that at the end of the day, despite all their setbacks, we are stronger than the administration."

Other statements read through the bullhorn included an excerpt from the statement from the negotiating team of the Attica prison uprising and the immortal words of George Jackson, "settle your quarrels, come together, understand the reality of our situation, understand that fascism is already here, that people are already dying who could be saved, that generations more will live poor butchered half-lives if you fail to act. Do what must be done, discover your humanity and your love in revolution."

Noise demonstrations outside prisons and jails have been a new years tradition for several years among abolitionists, anarchists, and others who work against the police state.

Hunger Strike Update From Hamilton Ontario

by Barton Prisoner Solidarity

Prisoners ended their hunger strike yesterday (April 24th) after five days, having gotten a number of concrete promises and concessions from Barton Jail administration:

- More frequent mail and formal permission to send mail within the institution
- Yard at least 3 times a week
- Smudge at least 3 times a week
- Razors regularly
- Bedding regularly
- Lockup is at 8 instead of 7:30
- During lockdown days when they are short staffed, ranges will be out of their cells for half a day, rather than locked up all day. It will rotate between floors
- Access to equipment for haircuts (to look presentable at court)

We call on the administration to follow through on the rest of their promises immediately. We also call on the administration to stop reprisals against organizers, which has already been happening. Prisoners have already let us know that if admin doesn't follow through, they are ready to act again. And so are we.

When prisoners act together and those of us outside show our solidarity, the prison listens. Direct action gets the goods!

An artistic tribute to our dear founder and comrade Cole Dorsey who passed away one year ago this May by L.G.

The Repealed Right

By Frankly Speaking

It is well-known fact that regulations often get "Repealed" from the Title 15 in the throes of Sacramento where the voice of prisoners is silent. Also, those very same regulations sometimes get passed by prison officials through the office of administrative law with very little fanfare. It is that same silence that watched the right for "group appeals" get repealed.

The Department of Corrections and Rehabilitation holds public comments that incarcerated people cannot attend, but where families and friends of the incarcerated can voice their opinions, which very few ever actually do.

When word of mouth spread the news throughout the state that CDCr was going to repeal our Prisoners' Rights to file a "Group Appeal," I, like some prisoners, was in complete disbelief, only because everybody was too numb about it. The entire 602- appeal process including the filing forms and format were overhauled to supposedly make it easier for prisoners to understand and file grievances.

Of course, they claimed it would be cost-effective to "repeal" numerous regulations. Our right to file a group appeal was repealed and without so much as a peep from the prisoner population or from the ever present Jailhouse Lawyers Community, which was strange to see a bunch of lawyers so quiet!

The move to overhaul the 602- appeal process after it had just had a makeover ala new forms and a format was in my personal opinion a sham of a move, and a complete waste of taxpayer dollar$! In fact, the appeal process is not easier, it was only stripped down to a mere skeleton of itself. Our prisoner's rights were watered down in an era where the public is talking about the overinflated 12 billion dollar budget for prisons, and shutting down at least 5 prisons is on the agenda.

We as incarcerated people, have to ask the real questions–

"Where was it cost effective to repeal so many regulations?" And *"where did it make sense to repeal an essential right?"*

And someone please count the number of repealed regulations in the Title 15 CCR.

We can go on and On about what the new Title 15 CCR is really saying! But the font is not bigger, that's a fact! As much as I would love to throw out some figures and stats there is no time! Because the time is now to Raise Our Voice!!!

We must take this issue to the reform justice narrative, and show the public that laws and senate bills to reform regulations are taking the wrong direction and are not in sync with the will of the people. The history of CDC is apparently repeating itself. As I pick-up the latest Title 15 CCR with an eye toward reforming prisoner's rights, (they are human rights) one word jumps out, "Repealed!"

Well ladies & gentlemen the proof speaks for itself, and the silence must end now!

In Solidarity,

Frankly Speaking.

Fighting from Inside

By Charlotte Rosen

Editor's note: This is the second part of a three part serialization of this piece. The first part was published in KTFB issue #11, please write us if you want a copy!

One of the first landmark cases challenging prison conditions began in 1965 in Arkansas; as with elsewhere in the South, the state's prison system operated through

Jim Crow–style racial terror and labor exploitation. A vestige of the Southern plantation, Arkansas's Cummins Prison used a trusty system, whereby imprisoned people were assigned to guard other imprisoned people, often on the basis of race.

Under the supervision of these prisoner-guards, imprisoned people were forced to work in fields for six days per week, often for up to ten hours per day. They lacked proper clothing and food and were subject to brutal whippings at the whim of prisoner-guards.

At the time, Arkansas's prisons were so overcrowded that ten or more people shared tiny cells with a single toilet, which could only be flushed from outside the cell. Media investigations exposed the prison's frequent use of corporal punishment, including electroshock and forcing incarcerated people to stand for a long time on a teeterboard.

In response to these conditions, jailhouse lawyers—imprisoned people who teach themselves the law and assist fellow prisoners in navigating the legal system—filed several petitions contending that the superintendent of Cummins was violating their constitutional rights. In 1970, Chief Judge J. Smith Henley packaged the petitions into a class-action suit that prompted a review of the entire system. He found that the "totality of conditions" in Arkansas's prisons were unconstitutional and ordered immediate remedies under the oversight of the federal courts. "For the ordinary convict," Judge Henley wrote, "a sentence to the Arkansas Penitentiary today amounts to a banishment from civilized society to a dark and evil world completely alien to the free world, a world that is administered by criminals under unwritten rules and customs completely foreign to free world culture."

In finding the "totality of the conditions" unconstitutional, Henley also implied thatthe problem was systemic, rather than simply the result of individual bad actors. This not only enabled him to deem a wide array of harms to be Eighth Amendment violations but also gestured further toward the potential for prison-conditions litigation to challenge the overall practice of incarceration.

For the next twelve years, the federal court supervised Arkansas's prison system and ameliorated some of its most horrific practices. Throughout the course of the litigation, Judge Henley proved extremely active in his oversight, making a point of visiting the state's prisons, which both generated publicity for the case and signaled his commitment to pursuing remedies to unconstitutional practices. In one of Judge Henley's most substantive orders, Finney v. Hutto (1976), he offered a meticulous assessment of the Arkansas prison system that highlighted a number of continuing problems the state needed to address to bring the prison into constitutional compliance. Notably, Henley found that the prison system's sentencing of imprisoned people to indeterminate periods of punitive isolation and administrative segregation, where they were crowded into windowless cells and fed a diet of inedible "grue"—a four-inch square of mashed meat, potatoes, syrup, and other ingredients—was "unreasonable and unconstitutional."

In 1978, the US Supreme Court not only affirmed Henley's opinion regarding the prison system's unconstitutional solitary confinement practices, but made clear that the Eighth Amendment restriction on cruel and unusual punishment applied not only to "physically barbarous" punishments but also to harmful prison conditions. The opinion signaled a monumental declaration of the court's willingness to understand imprisonment as, if not outright unconstitutional, then at least "subject to scrutiny under Eighth Amendment standards." It also affirmed Judge Henley's extensive involvement in matters of prison administration, paving the way for other federal court judges to order and oversee major remedies to unconstitutional prisons and jails.

Even as punitive politics rippled throughout American institutions, imprisoned people's legal activism coerced the federal courts to open up powerful ground for prisoners and their allies to limit and even reverse the growth of prison and jail populations. To be sure, the courts would never rule a state's right to imprison someone for committing a crime unconstitutional on its face. But imprisoned people's vigorous legal challenges made a compelling case that the realities of confinement in the United States rendered imprisonment unconstitutional. Court-mandated remedies could lead not only to serious improvements in correctional administration but also to prison releases or limitations on prison admissions. At just the moment when carceral policy makers were conspiring to make mass racialized criminalization and retributive justice the norm, prisoner-rights litigation launched a powerful assault on the legitimacy and expansion of corrections in the United States.

The most extensive prisoner conditions case of the era developed in Texas, beginning in 1972. While imprisoned in the state's Eastham prison plantation, David Ruíz filed a handwritten pro se petition in federal court citing medical neglect, overcrowding, and the use of "building tenders," or prisoner guards, as evidence of sanctioned brutality by the Texas Department of Corrections. The tender system in particular was so agonizing, he wrote, that it prompted imprisoned people to self-mutilate—a means to express their desperation, protest their torture, and tactically secure their removal from solitary confinement, as Robert T. Chase explains in We Are Not Slaves. Ruíz himself had self-harmed multiple times. His petition catalyzed an interracial, statewide campaign by prisoners who drew on Black Power and Chicano movement analyses to challenge the state's routine violation of their human rights and mass incarceration more broadly. Using a mix of strategies that included legal testimony, preparing and filing petitions, prisoner work strikes, and letter-writing campaigns, Texas prisoners forced the courts and the broader public to confront the horrors of the Lone Star State's prisons.

In December 1980, Judge William Wayne Justice handed down a 249-page "damning indictment" of Texas's correctional department. "It is impossible for a written opinion to convey the pernicious conditions and the pain and degradation with which ordinary inmates suffer within [the department's] walls," Judge Justice wrote in his conclusion.

> *The gruesome experiences of youthful first offenders forcibly raped; the cruel and justifiable fears of inmates, wondering when they will be called upon to defend [against] the next violent assault; the sheer misery, the discomfort, the whole-*

sale loss of privacy for prisoners housed with one, two, or three others in a forty-five-foot cell or suffocatingly packed together in a crowded dormitory; the physical suffering and wretched psychological stress which must be endured by those sick or injured who cannot obtain adequate medical care; the sense of abject helplessness felt by inmates arbitrarily sent to solitary confinement or administrative segregation without proper opportunity to defend themselves or to argue their causes; the bitter frustration of inmates prevented from petitioning the courts and other governmental authorities for relief from perceived injustices.

Citing the tender system, overcrowding, understaffing, and poor medical and mental health care, the judge ruled the state's prison system unconstitutional and mandated far reaching reforms. He even attempted to bar the Department of Corrections from building large prisons and instead significantly shrink its prison system by constructing smaller-scale prisons closer to metropolitan areas. The Fifth Circuit Court of Appeals struck down the order, even as it upheld Judge Justice's ruling that Texas's prisons were unconstitutional. But the intent of Ruíz, as Chase writes, was always to "reduce the size of the prison population to stem the growing tide of mass incarceration."

While many prisoner-initiated civil rights and class-action lawsuits focused on Southern states, where the legacy of slavery and lack of professionalization made state prison systems especially brutal, prison litigation was not geographically confined. In Harris v. Philadelphia, imprisoned people in Philadelphia's prison system, which was nearly 70 percent Black, filed a pro se class-action suit alleging that overcrowding violated their constitutional rights. In 1986, choosing to settle rather than go to trial, the city agreed to reduce their population to 3,750 or face a court-ordered admissions moratorium that would force them to turn away individuals accused of nonviolent offenses when the prisons exceeded this number. A wave of prisoner petitions in Colorado from the notorious Colorado State Penitentiary culminated in Ramos v. Lamm (1979), in which prisoners and the Colorado ACLU alleged that conditions in the state's correctional system—including overcrowding, censorship of prisoner mail, and limits on access to counsel and employment—constituted cruel and unusual punishment. Judge John Kane issued a memorandum opinion in 1979 that ordered the prison to be closed entirely.

"The law is a tool of class domination and . . . racial domination," Mumia Abu-Jamal wrote in Jailhouse Lawyers, "but it can sometimes be wielded against that domination by those who make themselves adept at its use." The criminal legal system remained an unspeakably violent and racist terrain, responsible for disproportionately Black, brown, and Indigenous prisoners' incapacitation and civic degradation. But strategic pressure in the courts had the power to break centuries-long judicial precedent, expand constitutional protections for imprisoned people, and prove a nimble vehicle for instituting material limitations on the nation's transformation into a penal state. Federal court consent decrees, or court-approved agreements brokered between plaintiffs and defendants outlining an enforceable plan for reforms, placed pressure on states to reduce overcrowded populations, fix ghastly health and food services, improve infrastructure, implement due-process procedures, and more.

Particularly notable was the potential of prison-conditions litigation to spur decarceral remedies amid an otherwise rabidly punitive political culture. In the early years of mass incarceration, addressing apparently rising crime through the expansion of correctional systems was not a foregone conclusion. Even as fear mongering around crime and rising prison populations stoked calls for tougher punishment, state legislatures and the public were not immediately eager to spend public funds on more prisons. Imprisoned people, prison reformers, correctional administrators, and legislators alike frequently argued that states could not build their way out of the crisis. Prison conditions litigation, and the pressure from federal courts to remedy overcrowded and inhumane prison conditions, enabled experiments with prisoner-release and early-parole policies and with prison population caps, all of which helped to remove people from correctional institutions or prevent them from entering them in the first place. Advocates anticipated that such litigation might also discourage the building of more prisons and prompt decarceration due to the high costs of judicial review and of new prison construction.

It is unsurprising, then, that prisoner suits posed serious problems to state legislators, correctional administrators, and law enforcement officials invested in tough justice. Allowing these lawsuits to proliferate and continue to gain favorable rulings in federal court endangered the profitable myth that prisons and jails were lawful or rehabilitative institutions needed to protect society from dangerous criminals. Relatively easy access to the courts provided imprisoned people a stage to publicize their grievances and a wider audience to hear them. Their lawsuits opened tightly guarded prisons and jails to public and political scrutiny, ensuring a regular stream of outside judicial observers and other visitors. They also tangled up state resources, forcing the state to constantly invest time and money both in defending their constitutionally dubious practices and in adjusting correctional systems to meet constitutional standards. So long as the federal courts had the power to order expansive remedies, especially orders related to limiting or reducing prison populations, the legitimacy of law-and-order politics would contain frail edges for prisoners and their allies to productively exploit.

Despite its earlier facilitation of prisoner-rights litigation, the Supreme Court struck the first blow against the potential for imprisoned plaintiffs to win civil rights suits. In Bell v. Wolfish (1979), the nine justices overturned a lower-court ruling that a federal jail in New York City had violated prisoners' constitutional rights by doubling up on cell capacity; they also reprimanded federal courts for becoming "increasingly enmeshed in the minutiae of prison operations." This struck a heavy blow by effectively legalizing prison overcrowding, which had previously served as compelling evidence of unconstitutional prison conditions. In Rhodes v. Chapman (1981), the high court similarly overturned a ruling that "double celling" of sentenced prisoners constituted cruel and unusual punishment. In doing so, the court limited the application of the Eighth Amendment in prison-conditions cases, specifically regarding the constitutionality of prison overcrowding, and reallocated power to prison administrators, once again curtailing prisoners' constitutional rights. As Justice Lewis Powell, a Nixon appointee raised under segregation in Virginia, wrote in the majority opinion, "The Constitution does not mandate comfortable prisons."

These and other doctrinal changes forged by the Supreme Court did not entirely eliminate the flow of prisoner-rights cases, nor did they dissuade federal courts from engaging in wide-scale institutional reform. District Judge Norma Shapiro, for example, oversaw court-mandated prison population controls in Philadelphia's prison system well into the 1990s, provoking ire from punitive local and law enforcement officials who smeared the court's intervention as undermining the city's efforts to get tough on crime. In 1994, the Philadelphia councilwoman Joan Krajewski called the court ordered releases of imprisoned people an "outrage" and demanded that Judge Shapiro resign, but was ultimately powerless over the judge's decisions. "I don't know if it takes an act of Congress, an act of the president's office or what, but this woman is definitely doing a disservice to the citizens of the community," Krajewski proclaimed. Her words echoed a common racialized trope that court oversight of prisons and jails, and specifically the mandates that the city reduce its prison population, threatened public safety by releasing supposedly dangerous criminals back onto the streets.

It would, in fact, take an act of Congress. With prisoner-initiated civil rights suits continuing to proliferate, the state attorneys general and district attorneys who found prison litigation antithetical to cracking down on crime launched an all-out legislative attack. Both the National Association of Attorneys General (NAAG) and the National District Attorneys Association (NDAA) drummed up panic around a so-called crisis of prison litigation and federal court intervention. "The almost continual intervention and interference by federal courts in prison litigation has had an adverse effect on our ability to protect our communities," the NDAA wrote in a 1995 letter to Republican Senator Orrin Hatch, who was then chairman of the Senate Committee on the Judiciary. "Court orders stemming from the unwarranted intrusion by federal judges," the letter continued, "has resulted in the release of dangerous criminals back to our city streets; has resulted in the squandering of scarce resources to meet the whims of self-designated monitors; and has usurped the authority and responsibilities of locally elected officials." The NAAG focused their disdain more on "frivolous" prisoner suits, which they claimed cost them $54.5 million annually. In 1995, Florida's assistant attorney general, Cecilia Bradley, stated that prisoners filed suits simply "to amuse themselves" or "for the pure expense it costs the state." Attorneys general from states as dissimilar as Arizona and New Jersey repeated these talking points in the press, alleging such suits cost taxpayers millions.

Both the NDAA and NAAG worked with members of Congress to author bills that would eventually get consolidated into the Prison Litigation Reform Act. In September 1995, the Republican Senator Spencer Abraham introduced combined legislation that sought to bar imprisoned people from filing suits, restrict federal court judges' ability to order remedies in prison-conditions cases, and empower states and correctional administrations to terminate unwanted federal court oversight of prisons and jails. Frivolous prisoner lawsuits, he argued, "[tied] up enormous resources" and led to "murderous early releases," all the while overindulging prisoners who "should not have all the rights and privileges the rest of us enjoy." His legislation sought to "return sanity and state control to our prison systems."

Claims that prisoner litigation disproportionately clogged court dockets with frivolous suits were entirely fabricated, reliant upon what the legal scholar Margo Schlanger called in a Harvard Law Review article "stylized anecdotes and gerrymandered statistics." As evidence of meritless prisoner claims, pro-PLRA politicians frequently referred to Kenneth Parker, whose suit allegedly concerned the texture of some peanut butter he had purchased from the prison canteen. Parker had sued, they said, because he had received a jar of creamy peanut butter rather than the chunky he had requested. But Parker actually filed the suit because the prison failed to remove the $2.50 charge from his account after he had returned the jar. Parker was not the victim of an imperfect meal; he was the victim of theft. Despite the inaccurate rendering of the case, the example got picked up by the media and spread far and wide, contributing to coverage that, along with testimonies from state attorneys general and district attorneys hostile to prisoner litigation, gave the impression that all prisoner suits were vain, burdensome, and wasteful.

Similarly unfounded were claims that the oversight of prisons and jails by federal judges constituted "judicial

overreaching and led to an inundation of dangerous criminals on the streets. Supporters of the PLRA, for instance, cited spurious assertions that Philadelphia's court-enforced population controls fueled violent murders in the city. But violent crime had actually declined in Philadelphia after the population limitations took effect. Among those who were released, rearrest rates mirrored those of individuals diverted from prison under the city's diversionary programs. Court reports suggest that 54 percent were not even convicted of the crimes for which they were initially imprisoned.

Some Democratic legislators raised concerns about the proposed legislation. Senator Ed Kennedy warned the PLRA would "strip the Federal courts of the ability to safeguard the civil rights of powerless and disadvantaged groups." But the manufactured concerns about trivial suits and federal overreach had generated too much momentum, ushering the PLRA through both houses of Congress. On April 26, 1996, President Clinton signed the PLRA into law. With the stroke of a pen, the golden era of prisoner-rights litigation, already beginning to lose its luster, was perilously weakened.

FINISHED IN NEXT ISSUE!

EDITOR'S NOTE

As always, please send us your thoughts, writings, and feedback! We love hearing from you.

When we select a piece we try to publish it close to as-is, so we make little or no changes unless you ask us to edit your work. We also anonymize all submissions from the inside per our editorial principles. Space is often limited, but even if we aren't able to publish your letter, it may spark important conversations, and we will do our best to respond.

We think the pieces here are thought-provoking and deserve to be read. There is a lot of advantage to disagreement, and we want these newsletters to be a space of developing dialog and collaboration.