

From the Forest to the Courts, We Have Each Other's Backs!

movement
legal
advocates
discuss
repression
resilience

From RICO charges in Atlanta, to SLAPP suits in Appalachia, to steep or withheld bonds, to felony and domestic terrorism charges, land defenders are facing a phase of escalatory state repression. While on the one hand, this is the state's way of giving us quite a favorable rating (five stars, we are actually a threat), we who strive to live lives unmanaged by institutional and state power may find ourselves caught up in months or years long legal processes, which can be emotionally, mentally, financially, and logistically taxing for us as individuals and for our collectives, campaigns, and movement communities as a whole. Even when these processes don't end in long sentences (and sometimes they do), the state (and the life destroying interests they serve) uses the threat of such punishments, as well as the kafka esque nature of the carceral system to intimidate and distract us, to defuse our resources, to divide us, and to slow our momentum.

It can be hard to know how to prepare for potential legal consequences while at the same time being real that there are no guarantees when it comes to state sponsored punishment strategies.

All action in some way requires a leap of faith, going forward without knowing the outcome. Yet spontaneous and creative direct action need not be in opposition to preparation around legal risks, what some call REPRESSION RESILIENCE or LEGAL FIRST AID.

We spoke to a handful of anti-authoritarian friends with long time experience supporting or defending land defenders and frontliners, committed people who are themselves organizers and freedom fighters. We came to them with a variety of questions culled from recent conversations we've had in the past few months. These are only a few questions and concerns being raised frequently by those of us who have seen different iterations of state repression come and go, as well as those of us new to these fights.

In the responses you'll read below, a few themes repeat. The importance of historical perspective to our current fights, knowing what has worked and what hasn't worked for our resistance communities facing repression in the past, and the importance of campaigns building repression resilience from the beginning, rather than as an afterthought. The interviewees also talked about how natural it is to feel fear and confusion, and to be overwhelmed, and for long legal processes to sow tension

and conflict within campaigns and defendant groups, as well as what we can do about it. They echoed each other on the balance between collective and personal responsibility, that in the end, each person must make their own choices around risks and legal consequences and their path as a defendant while also understanding their impacts on a larger resistance community from whom they can seek support. They discussed multiple ways to seek such support and inter-reliance, and ways to build trust and solidarity.

And of course, whether or not you make it to a know your rights training, have a public defender or a movement lawyer, spend a night in jail, or months on the inside, face misdemeanors, felonies, or grand juries, are an insurrectionist, an elf, a hobbit, an ent, or god forbid a commie, some basic principles always apply: Don't name names, don't implicate your friends, and don't make statements to the police.

J is a criminal defense lawyer who was very involved with direct action environmental movements before law school and now regularly provides legal support for land defenders.

Timothy Coming Hay is a member of Ikce Wicasa legal advocates, a grassroots nonlawyer centered volunteer legal support organization based in North Dakota.

Garrett Fitzgerald is a legal worker and anti-oppression activist in Minnesota.

These interviews were conducted separately over a period of months, via email, voice memo, or phone conversations. They have been edited into one conversation and condensed for length and clarity.

EF!J: Can you offer some advice on how to better prepare people for the changing landscape of escalated charges for direct action and land defense?

J: First and foremost being super real about it before they get into situations where it kicks in. People may go into a situation thinking it's really low risk or they're going to be fine, but when more experienced organizers know the risks that are on the table, they need to be up front about that in really specific ways. It's a difficult balance, because you don't want to scare people out of an action. On the other hand, if there's a real risk of a no bond hold, a felony charge (that sticks) or an extended civil proceeding, it's important to think about that. If you can't honestly look at yourself and think, Yes I'm mentally and emotionally prepared to handle that in a good way to the best of my ability, if you don't think you could be in a worst case scenario without being tempted to cooperate, then it's time to step back.

I'm not trying to be fear mongering or pessimistic. It's important to say too, that there are real risks to NOT taking action right now. But at the same time if you're going to be really scared and intimidated by navigating a legal process, you can be a liability to others. Some basic preparation can help with that.

GF: I'm curious what is meant by "the changing landscape of escalated charges." I'm not sure I see it the same way. Repressive forces are going to resist us

with whatever tools they can get away with using. They are limited by the organizing we do, and have done, that makes escalation and expansion less desirable. So, the best antidote for repression is more (thoughtful) organizing.

With the charges coming out of Atlanta I have been thinking about the AETA4 case, which was basically folks charged with terrorism for chalking back in 2009 as well as the SHAC7 who did time for running a website.

While I don't want to play a role in chilling bold action, I also think we could do more to get more out of the risks some folks take. If we are seeing more repression coming than we can be resilient to, it's an indication that there's more (often less risky but also less flashy) organizing that needs to happen to build the power to push back on that repression.

TC: I think it's valuable to share that we are doing much more on jail support now than was done ten years ago. Ten years ago jail support was just like, Hey make sure everyone who goes to jail gets out and we're tracking them and they don't get lost. But now, the Water is Life movement has started paying people's bonds and paying people's fines.

That started to happen when large amounts of money for legal support starting coming in. That was around August of 2017 at Sacred Stone, when LaDonna and others started a fund for bail. This wasn't exactly unheard of, but it was unheard of to bail out hundreds and thousands of people. Then that sort of became a foundation of the Water is Life movement, which is mostly based in the Northern Midwest. All these Indigenous Ojibwe and Dakota matriarchs showed us that model.

Basically, anarchist collective organizing and Indigenous fundraising came together. Anarchist collectives could be like, Let's fuck up the state and now we actually have money to pay for our bail. It's a much bigger process now. We are down to about seventeen cases still open from line 3 but there are thousands of volunteer hours that have gone towards that.

EF!J: We've all been to know your rights trainings that make it sound like police interactions or legal processes are in some way "guaranteed" or will likely follow a routine. Are there ways to prepare people to face charges, jail time, and state repression that don't feel "one size fits all", and can be useful for a variety of situations, identities, contingencies, regions, and campaigns?

TC: A lot of the trainings feel very based in an older model, position, or place, that white men made. No one is comfortable in positions that white men made

anymore and that might be part of the backlash that's happening, and that's part of what we can work against. We can say, The legal system sucks but navigating that system doesn't have to be done by middle aged white men.

Rights are so different depending on who you are. Know your rights trainings are great for white folks, but I have never once in my entire life been protected by my rights. Most of the time I've been drawn into traps believing that my rights were going to save me. When I do a know your rights trainings for white people, it's completely different than the one I give for Indigenous people, Indigenous people in the cities, Black folks in the cities.

More so than know your rights trainings, I think Q and A's are important. When I do a question and answer session with Indigenous folks, they'll be sometimes two and a half hours long, everyone just hanging out. I don't know any of the answers, I just know most of the problems [laughs].

EF!J: What would you say to people who are concerned that typical know your rights trainings or legal support workshops feed into scripted or formulaic actions, overseen by an “organizer class”, as opposed to autonomous or spontaneous actions?

GF: I would want to hear more about this critique because I don't really understand it and I don't want to misrepresent other comrade's experiences. When I was coming up, during the end of the anti-globalization era, if you were active you were organizing. We were all activists and we were all organizers and we all (at our best) took responsibility for what happened and for each-other. So the move to having separate organizers or seeing organizing as something the NGOs do is a newer phenomenon, that has less to do with KYR and more to do with a lack of interest in collaborating across difference to build complementary strategy, which is part of what organizers are willing to do. I sometimes see folks show up and do their thing without fully considering the impact of their actions or taking responsibility when the outcome is different or more negative than they expected. I think we should be discouraging this. Every new emerging campaign, I see folks show up excited to push the edges and encourage others to do so, but then not stick around to deal with the negative impacts. If anything, that is what is creating an “organizer class”. Organizers are the ones who stick around and take responsibility for the outcomes of actions and try to imagine how to do better.

The best way to avoid feeling stuck in scripted and formulaic actions with a separate “organizer class” is to participate in organizing, which means taking responsibility for goal setting and strategizing, AND outcomes. It means stepping up to build relationships

and set boundaries to collaborate across difference with folks you might not always like or prefer to be around.

EF!J: How do you see Know Your Right Trainings overlapping with the subject of security culture? Are there ways that people taking frontline direct action without being offered a know your rights training or getting some basic information about legal/jail support put campaigns and communities at higher risk?

GF: I see KYR/Legal 1st Aid, and Security Culture as components of Repression Resilience. Repression Resilience is partially about organizing strategically so that we gain more than we lose when we take risks. To have a successful strategy you have to know your opponent, know yourself, and understand the material conditions (including emotions and intuitions of people involved). Whether we put stock in a “rights” framework or not, it is unwise to fight such a powerful adversary without knowing their strengths and limits. Security Culture is one way to look at ourselves and understanding how we can work together among ourselves to limit our vulnerability, though I think we have a lot of disagreement about how that actually looks. I'm a big believer that we are stronger when we let ourselves be known - when we build the relationships that make us WANT to support each other, we show ourselves to be people that folks outside our movements want to support or join, and we limit our adversaries' ability to project on us. Many believe security culture means hiding as much about yourself as you can from as many people as possible. I believe this undermines movement in the long run, but I think I'm in the rhetorical minority on that one.

So, yes, I do feel like folks not knowing these things puts others at higher risk, though I would say the greater cost is actually that it is a major drain on movement resources and capacity. Modern counter insurgency policing is more about controlling populations by nipping at the edges as opposed to the “decapitation” strategies used during the 60's and 70's. So it is often less connected, less experienced, and less resourced comrades that are getting the heaviest cases. This means that those of us who do repression resistance support en mass end up mostly spending our time helping folks with less connection to our movements, who often don't stick around after their cases are resolved, but the outcome of whose cases often end up defining the realm of possibility for future actions.

EF!J: What about the varying degrees of experience levels within actions? Does this mix of experience levels help or hinder people getting the preparation/support they need for going into actions and long term legal processes or facing steep charges?

TC: A lot of people show up on the frontlines with

great intentions and then don't have any idea what the fuck they're doing, and then they're like, OK, I'm not good at chopping wood and washing dishes so I'll just get arrested. They need to think, what is the intent of their arrest? You're looking at one hundred hours of volunteer hours to deal with your charges. If you're coming to the frontlines the least you should do is find out the basics of the legal system, what happens if you're held over night, if you're held without bail, and these are things that the people planning the action should be able to talk over with you.

J: I would remind people that it's natural to be scared and part of getting people ready is to demystify the processes and help people understand what's ahead of you. People do get worst case scenarios, and it's not pleasant but people do navigate and do survive it and don't cooperate. Be honest about where you're at, what you fear, and what you need to know to face that fear or to feel comfortable with the risk you're taking. As for those of us who have more experience, we have the responsibility to make sure that those who do not are asking the right questions.

GF: I think pluralism in experience is great. It's one way newer people learn from more experienced people. I do think we could do a better job of teaching newer people what expectations are and what core-competencies they need for certain types of risk. It's on everyone in the group to make sure everyone is prepared, so if the new person doesn't know something, others share the responsibility to help them learn. If you realize too late that they didn't know something they needed to, accept your share of the responsibility for that failure and work to correct it.

EF|J: How can newer folks know who to trust when they are facing a long legal process and seeking advice? Should they be listening to more experienced people who've faced similar charges? To lawyers? To activists in support roles? Co-defendants? What are good ways to establish trust and solidarity and mutual support in long term legal processes?

TC: People should be establishing those trust and support systems at home and bring them to the frontlines. Showing up and just being like, Hey can you take care of me isn't the right way to do it.

J: I think you want multiple perspectives. There may not be one simple right answer. A lot of law is judgement calls. You could get six lawyers in a room and get six opinions. That's not to say there's never a right answer. Sometimes there definitely is. But there's often a lot of gray areas. Be wary of over confidence from lawyers and from activists, but also be open to taking advice, and applying it to your situation.

GF: Folks need to get grounded in the reality that, as

a defendant, they are the most impacted person. They have the final say and they need to live with the outcome. They are responsible for the choices they make. Period. There is no "right" answer, so stop looking for someone to tell it to you. Then, YES, talk to all the people (while balancing caution around sharing details of your case)! I think we build trust by authentically listening and responding to each-other. People worth trusting are the ones that will tell you WHY they think what they do and how it applies to your situation. Solid comrades will turn over ideas with you so you can understand how your choices will impact your different goals. A lot of this work is harm reduction, so you need to decide what you will let slide and what is most important to protect. That is deeply personal and no one else can tell you that answer. This causes a lot of pain and confusion for defendants and their supporters because they want a clear path forward, but rarely is there one, especially for more serious charges in more complicated cases.

EF|J: How have you seen allied lawyers be helpful in long term legal support for direct action efforts? What are ways that lawyers are not helpful? What would you like to see allied lawyers do more of? Less of?

J: Lawyers who want to be helpful do a disservice when they don't understand that political cases aren't always treated like normal cases. There may be cases where it makes sense to try a protest case like a straight up criminal case, but in many cases, such as in the cases from the Atlanta Forest, judges and especially prosecutors can perceive those not as routine criminal cases but as an attack on their own institutions.

As an observer of the way the bond hearings went down after March 5 in Atlanta, I think some of the lawyers were probably surprised that people were no-bonded based on evidence that probably would not have been sufficient to issue a no-hold bond in a normal criminal case. But those were not normal cases, and that lack of insight from some of the lawyers might have led to a lack of preparation for the type of representation these cases require.

Often, when lawyers want to be helpful but are not rooted in movement or don't care to develop cultural competency in it, they hinder their own ability to provide competent, thorough and rigorous representation. As a defendant, you do a service to the movement when you educate these lawyers on solidarity and vet them for future help when the movement needs lawyers. Some lawyers are assholes and should never be fucked with and collectively we can vet that out. But I don't think we should vet lawyers out just because they don't share our exact politics or are not the most likable. Unfortunately, a lot of lawyers are just not great people, but that doesn't automatically mean they won't do a good job for you in a rough situation where help is desperately needed and options are limited.

On the flip side, lawyers do a disservice when they try to be all hot shit and use your case as a chance to show off their politics. For a low level misdemeanor charge, if your client wants a spectacle, have at it. But it's a much higher stakes decision to do that for higher charges or higher risk cases. That's not to say these cases should never be litigated politically, but informed consent is important, and lawyers do a disservice to the movement when they prioritize their own radicalism above providing support in the form of highly competent representation.

It's important to remember that under the rules of professional conduct, the client always sets the objectives of representation. The client always sets the ultimate goal. Within that, the lawyer gets leeway into strategies and tactics toward meeting that objective. Under the rules of legal ethics, what your lawyer cannot do is try to force an outcome that you don't want to pursue. That means that if your lawyer is an asshole and wants to push you to cooperate, you can say no. You're the boss. No one can make you do that. Conversely, if someone is bent on cooperating, in the end their lawyer can't stop them.

GF: First, I would note that "allied" is a spectrum. There are some lawyers I have worked with for over a decade who are at least as much comrades in struggle as someone politicized six months ago who is showing up to their first action. The best lawyers are willing to work hard even when the spotlight fades or the work isn't sexy. The best lawyers are able and willing to organize and be organized. The best lawyers are willing to collaborate with non-lawyers as authentic equals.

Lawyers who act confident that they are the smartest person in the room or are bad communicators are big flags for me. Law school trains some of these bad behaviors, so we have to work hard to train lawyers out of them.

If I could wave a magic wand and make lawyers start acting different, they would start organizing with each other to pay for their labor instead of putting a fundraising burden on the defendant's supporters. That is how things were in the 60s and 70s. The Wounded Knee Defense Offense Committee, which included the lawyers working on the Wounded Knee cases, didn't take money from the American Indian Movement. The lawyers fundraised for themselves and each other using their connections because they had more access to wealth. Some organizations like the Civil Liberties Defense Center, the Peoples Law Office, and more recently the Water Protector Legal Collective and Climate Defense Project have found ways to make this work but they are still in the minority.

EF|J: How do you see the role of defendant solidarity playing out in current campaigns? What do we do when some allied lawyers don't

understand it and some do?

J: The saying "Nobody Talks Everyone Walks" is there for a reason. it's often true. J20, for example, was so well done (just speaking as an observer). People said, Fuck you, no one talks. They put the most absurd cases first, and the state looked like fools.

Years ago, for example, there was a land defense campaign where dozens of people were sued and the industry tried to use the legal process as an intelligence gathering operation. The first person deposed was asked to incriminate alleged co-conspirators. They held the line under direct threat of contempt. After months of legal briefings, the judge ultimately agreed that they could not be forced to testify.

That's not always how it shakes out, but I think it's important for people to understand [when we are facing repression] that collectively we have been here before. We have faced criminal proceedings that have tried to pit people against each other, and sometimes, when we fight back and refuse, we win. That's why it's important to understand our collective history. Whatever situation you're in, you're probably not the first.

I say this not to minimize the risk of legal repression, but to remind us that the state and the fossil fuel industry use the law to inspire fear, and it can help if we go into these situations knowing our history, and having good legal support structures in place up front so that there are people who will do everything they can do to have your back.

TC: We had two major victories in line 3, one in Hubbard County and one in Aitken County. In Hubbard County we tried to accept a mass plea deal. They didn't accept the mass deal, but they did start offering that same deal to each defendant individually. And then in Aitkin, by the time we got super organized there were about 37 of us and 3 were felonies. We had a court date where 20 people were having their pretrials and we'd had a meeting earlier that week where we'd said to the misdemeanor defendants, OK ask your lawyer to tell the judge that you would have accepted the plea deal that was offered if the same deal had been offered to the gross misdemeanor defendants as well. The gross misdemeanor and felony defendants had been meeting on their own, but the rest of us had been figuring how we could support them. So at the pretrial, the first person came up and their lawyer said, My client would have taken the plea deal that was offered if it had been offered to everyone. The second person came up, their lawyer said the same thing. Third person, same thing. The judge said, I have to say I don't like the way this is turning out. I don't think your clients should be putting pressure on the state like this. And the lawyer said, I'm sorry Your Honor, but I can't force my client to take the plea deal. For the rest of the day, over and over, that's what happened. Every defendant said the same thing.

I won't take a plea deal unless it's offered to everyone. And it worked. They did a mass plea deal for everyone.

GF: At a recent event, a defendant asked what the point was of solidarity because they weren't seeing any benefits from it, just a bunch of hassle. This really broke my heart, and I was angry at first, but it is actually a useful thing to hear, because it's a reminder that solidarity isn't just something we like because we are nice and want to help each-other, it is a praxis that is meant to help us all do better and build power to push back on our adversaries. So yeah, performing ineffectual "solidarity" by just having a bunch of meetings or signing a petition isn't what we should be striving for.

Solidarity is standing together to use our collective power for mutual benefit. It isn't just one thing. It could look like some sort of mass refusal to take pleas or a global resolution. It could look like fund raising and awareness raising together. It can also change over time, and defendants need to play a major role in what solidarity looks like in their particular cases. In my recent experience, too few defendants (or their immediate comrades) engage in their own legal support work, and too few show up to provide legal support for others facing charges in the same campaign. There may be some agreement on a cookie cutter plan, but I don't often see a lot of deep investigation, building of connection, and sharing of goals.

Obviously, in Atlanta specifically, there are limits on defendants ability to communicate with each other, which makes this all really hard and I'm not sure what the answer is. I do think that I have seen folks be in more effective solidarity with less direct collaboration when

they have built shared understandings beforehand. This goes back to why folks should engage in KYR/ Legal 1st Aid, or Repression Resilience training and discussion.

J: I am a big proponent of nuance about pleas. I know some people think that you're betraying the movement if you take a plea or don't go to trial. I wish people would talk about this with nuance. There's a hell of a lot of difference between a snitch agreement and a plea that doesn't negatively impact another person, and the defendant just wants the charge the hell off their plate. In situations where a movement is strapped for legal support, sometimes individual pleas like that can benefit the group as a whole by freeing up resources for others. There are definitely situations where certain types of pleas set bad precedents for the movement as a whole, but again, there are distinctions to be made. Different situations should be talked about differently.

EF!J: Any other thoughts you want to share?

TC: There are ways to be better prepared legally that are not in conflict with our values. Instead of waiting until two days before the action to tell your movement legal support, We need you to be ready, you should bring in your support from the beginning of the action planning, so they can help you prepare.

J: I also really encourage campaigns that are at higher risk to focus on functional legal organizing ahead of time because I think when those structures are in place it's a lot easier for people to feel confident and to stay in solidarity. It's always better to have these conversations up front than to have them on a recorded jail line. Which is why I'm glad this article is coming out.

