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Martin Sostre – Enemy of the State

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Martin Sostre – Enemy of the State

Laura Molik†

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Introduction – Remembering Martin Sostre

In American prisons, which are extraordinary violent places, the most vicious form of punishment is simply to lock a person in an empty room for years with absolutely nothing to do. This emptying of any possibility of communication or meaning is the real essence of what violence really is and does.

David Graeber¹

Martin Ramirez Sostre was born in East Harlem on March 20, 1923, to a Black father and Puerto Rican mother.² A World War II

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1. DAVID GRAEBER, *THE UTOPIA OF RULES: ON TECHNOLOGY, STUPIDITY, AND THE SECRET JOYS OF BUREAUCRACY* 59 (Melville House 2015).

2. Alexandria Symonds, *Overlooked No More: Martin Sostre, Who Reformed America’s Prisons from His Cell*, N.Y. TIMES (Apr. 24, 2019), <https://www.nytimes.com/2019/04/24/obituaries/martin-sostre-overlooked.html> [https://perma.cc/4G9Z-PDV9]; John L. Hess, *Clemency Given to Sostre and 7*, N.Y. TIMES (Dec. 25, 1975), <https://www.nytimes.com/1975/12/25/archives/clemency-given-to-sostre-and-7-sakharov-and-others-urged-governor.html>

Tuskegee veteran, jailhouse lawyer, “brilliant” teacher,³ radical activist, and fearless prison organizer, Sostre was one of the leading figures in the Black liberation movement of the 1960s. He inspired some of the most prolific Black Anarchists of the late twentieth

[<https://perma.cc/T9NK-54WK>]; David Vidal, *The Prison Attorney*, N.Y. TIMES (Dec. 25, 1975), <https://www.nytimes.com/1975/12/25/archives/the-prison-attorney-martin-sostre.html> [<https://perma.cc/9DEY-J634>]; William C. Anderson, *The Unforgettable Life of Prison Rebel Martin Sostre*, ROAR MAG. (Aug. 12, 2000), <https://roarmag.org/essays/martin-sostre-prison-activist/> [<https://perma.cc/UBH5-7HLR>]; FRAME UP! THE IMPRISONMENT OF MARTIN SOSTRE (Pacific Street Film Collective 1974) (Sostre’s father was a merchant seaman and his mother dropped out of Textile High School in New York City after tenth grade); Joseph Shapiro, *How One Inmate Changed the Prison System from the Inside*, NPR (Apr. 17, 2017), <https://wamu.org/story/17/04/17/how-one-inmate-changed-the-prison-system-from-the-inside/> [<https://perma.cc/Y4BA-WXQX>] (“[Sostre’s] parents were black and Puerto Rican — his father a house painter and mechanic; his mother, a seamstress. He dropped out of high school during the Great Depression to help support his family.”); Malcolm McLaughlin, *Storefront Revolutionary: Martin Sostre’s Afro-Asian Bookshop, Black Liberation Culture, and the New Left, 1964–1975*, 7 SIXTIES 1, 4 (Jul. 3, 2019) (“Martin Sostre was . . . raised in poverty by his Puerto Rican mother during the turbulent years of the Depression — a time of ‘picketing, agitation, uprisings and gang fights,’ as he later recalled.”).

3. FRAME UP!, *supra* note 2.

century,⁴ including Kuwasi Balagoon,⁵ Ashanti Alston,⁶ and Lorenzo Kom'boa Ervin.⁷

4. Dana M. Williams, *Black Panther Radical Factionalization and the Development of Black Anarchism*, 46 J. BLACK STUD. 678, 679–80 (Jul. 2015) (“The key figures of Black anarchism . . . are Ashanti Alston, Kuwasi Balagoon, Lorenzo Kom'boa Ervin, Ojore Lutalo, and Martin Sostre. These individuals began to discover anarchism during the period of the late 1960s through the 1970s, to develop their ideas into the 1980s, and then began to have an influence upon American anarchism beginning in the 1990s. All except Sostre were members of the BPP All spent time in prison for a variety of crimes (including allegedly fabricated charges), which they and supporters considered politically motivated crimes and prosecutions. None began adulthood as anarchists, but all moved toward anarchist positions after their participation in the Black freedom movements in the 1960s. Each articulated a distinct version of Black anarchism, as they emphasized different concerns, defined anarchism differently, advocated different strategies for social change, and spoke to different audiences—consequently ‘Black anarchism’ appears to be a somewhat heterogeneous ideological subvariant in anarchist thought and practice.”).

5. Kuwasi Balagoon is the author of *KUWASI BALAGOON, A SOLDIER'S STORY: REVOLUTIONARY WRITINGS BY A NEW AFRIKAN ANARCHIST* (Matt Meyer & Karl Kersplebedeb eds., PM Press 3d ed. 2019); Akinyele K. Umoja, *Maroon: Kuwasi Balagoon and the Evolution of Revolutionary New Afrikan Anarchism*, 79 SCI. & SOC'Y 196, 196 (2015) (“Black Panther Party (BPP) and Black Liberation Army (BLA) member Kuwasi Balagoon has emerged as a heroic symbol for radical anarchists and some circles of Black radicals in the United States. He is one of the most complex figures of the Black Liberation movement. His legacy is obscured within broader Black liberation and radical circles. The evolution of his politics and his life as an open bisexual add layers of complexity to his legacy. Balagoon's political biography is a long road that includes his activism as a G.I. in the U. S. army in Germany, a tenant organizer in Harlem, and member of the Harlem branch of the BPP. Documenting the political life of Kuwasi Balagoon reveals his significance as a symbol of Black and radical anarchism. Recognition of Balagoon's contribution to Black Liberation will only emerge with the advance of both anti-authoritarian politics and challenges to homophobia in African-American activist circles.”).

6. Interview by Hilary Darcy with Ashanti Alston, Black Panther Party (BPP) member, in Dublin, Ir. (Mar. 4, 2009), <https://www.interfacejournal.net/wordpress/wp-content/uploads/2010/11/Interface-2-1-pp22-35-Alston.pdf> [<https://perma.cc/U4YB-4UL9>] (“Growing up in Plainfield, New Jersey, during a turbulent and politically charged time, Ashanti's life reads like a timeline of recent revolutionary history. Inspired by the 1967 rebellions across the United States, Ashanti joins the Black Panther Party at age 17 and takes part in setting up a chapter in his hometown. Two years later, with comrades facing the death penalty, he decides to join the Black Liberation Army and organises [sic] to break them out of jail. In 1975 he begins an 11-year sentence for a ‘bank expropriation’ and spends his time self-educating. He has visited the Zapatista movement, organises with Anarchist People Of Colour (APOC) and the Malcolm X Grassroots Movement, and is co-chair of the Jericho Amnesty Movement while also travelling widely to share his experiences with radical movements.”).

7. Lorenzo Kom'boa Ervin is a former member of the BPP and the Black Liberation Army (BLA), as well as the author of *ANARCHISM AND THE BLACK REVOLUTION* (2d ed., Mid-Atlantic Publishing Collective 1993); Nik Heynen & Jason Rhodes, *Organizing for Survival: From the Civil Rights Movement to Black Anarchism Through the Life of Lorenzo Kom'boa Ervin*, 11 ACME: INT'L J. FOR CRITICAL GEOGRAPHIES 393, 393-94 (2015); Jonathan W. Hutto, Sr., *The Black Freedom Struggle: An Anarchist Perspective (A Review of Anarchism and the Black Revolution: The Idea of Black Autonomy, Lorenzo Komboa Ervin)*, in 27

It remains true to this day that the vast majority of self-described American anarchists are white, a fact that was not lost on Black Anarchists like Sostre and Ervin, who in many ways center their later work in part around a critique of this reality.⁸ The development of the concept of Black Autonomy grew out of a recognition of the forces of systemic racism within majority white movements and the necessity for Anarchists of Color to retain “independence of thought, culture, and action”⁹ in order to make possible “the building of a true freedom movement in this land.”¹⁰ Since the earliest expressions of Black Anarchism in the United States, there have been numerous prolific Black Anarchists who have been lost to history. However, the origin of Black Anarchism as a distinct collection of history, theory, and organization is more accurately ascribed to the legacy of Martin Sostre.¹¹

PERSPECTIVES ON ANARCHIST THEORY 107, 108 (The Institute for Anarchist Studies 2014) (“It is Ervin’s desire to spread anarchist ideas, not to lead people, but to teach them how to better organize themselves.”); Lorenzo Kom’boa Ervin, *Martin Sostre: Prison Revolutionary*, BLACK ROSE ANARCHIST FED’N (Feb. 25, 2020) [hereinafter “Ervin, *Prison Revolutionary*”], <https://blackrosefed.org/martin-sostre-prison-revolutionary-komboal> [https://perma.cc/ZJ63-K3NJ] (“I became an Anarchist, a jailhouse lawyer, and a prison activist during the 1970’s [sic] because of Martin Sostre.”); Anderson, *supra* note 2 (“Sostre’s immeasurable contributions . . . had a big impact on the life and thought of Black anarchist Lorenzo Kom’boa Ervin. It was Sostre who introduced the former Black Panther Party member to anarchism after they met in federal detention. . . . Lorenzo based much of his efforts around Black Autonomy, his own jailhouse litigation and his ‘Free Lorenzo’ campaign that resulted in his freedom on Sostre’s instructions. Through Lorenzo, Sostre indirectly inspired a new generation of Black anarchists (myself [author] included).” (citing Ervin, *Prison Revolutionary*, *supra* note 7)).

8. Ervin, *Prison Revolutionary*, *supra* note 7 (“[S]ince much of the analysis about Black oppression and Socialism was by white radicals, [Sostre] had originally gravitated into Black nationalism. It was only later during his time in prison that he gravitated into Anarchist Socialism. . . . [T]he Anarchist movement generally, had no ties or solidarity to the Black population in the USA, the UK, or the colonized people of color in the Third World. It was essentially a white European movement.”).

9. *Id.* (“Like Sostre had said, we must manufacture our own Anarchist of Color school of thought and revolutionary practice. Nobody can truly speak for us and fight in our name. Black Autonomy means independence of thought, culture and action. We are not racial separatists, but we must be sure that we are strong enough to insist on our politics, leadership, and respect within any broader universal movement. We have been sold out, left out, betrayed, and tricked too many times by internal racism inside majority white coalitions and movements. Black voices matter!”).

10. Williams, *supra* note 4, at 691–92 (“[T]here is a new understanding among at least some Anarchists about how White supremacy is both structurally and ideologically a weapon which prohibits the building of a true freedom movement in this land” (citing Ervin, ANARCHISM AND THE BLACK REVOLUTION, *supra* note 7)).

11. *Id.* at 688.

Sostre's legal victories in federal court as a *pro se* litigant challenging New York State prison practices continue to have profound ramifications for the prisoners' rights movement, particularly around issues of solitary confinement, censorship of written materials and correspondence, religious freedom and expression, and access to courts and legal representation while incarcerated.¹² Yet Sostre is rarely named or even acknowledged in popular accounts of some of the most legally, politically, and socially transformative moments of the civil rights movement of the 1960s and 70s which he directly influenced, including the Attica Prison Rebellion in 1971.¹³ In fact, it was Attica officials' refusal to

12. McLaughlin, *supra* note 2, at 16; H.W., *Introductory Note, in* Martin Sostre, *The New Prisoner*, 4 N.C. CENT. L. REV. 242, 242 (1973) ("Among the many liberties advocated by Brother Sostre have been: rights to the free exercise of religion (*Sostre v. McGinnis*, 334 F.2d 906 (1964) [sic]; indigent prisoner's right to appeal in forma pauperis (*Applic. Of Sostre*, 189 F. Supp. 111 (1960) [sic]; rights of prisoners to due process, right to political expression, right to unfettered access to public officials and a rather limited freedom from cruel and unusual punishment (*Sostre v. Rockefeller*, 312 F. Supp. 863 ([1970]) [sic], affirmed in part and reversed in part (*Sostre v. McGinnis*, 442 F.2d 178 ([1971]) [sic]; right to due process in relation to censorship of literature (*Sostre v. Otis*, 330 F. Supp. 941 (1971) [sic]. He has also been the moving force behind the formation of a prisoners' union in New York State and an advocate of minimum wages for inmate workers."); Herman Schwartz, *A Comment on Sostre v. McGinnis*, 21 BUFF. L. REV. 775, 775 (1972) ("*Sostre v. McGinnis* . . . raised almost every important current prisoners' rights issue—the propriety of lengthy and indefinite solitary confinement, interference with mail, procedural due process, exhaustion of remedies, free expression of radical ideas, inmate legal assistance, the legality of punitive and compensatory damages against state prison officials, to list but some."); Ervin, *Prison Revolutionary*, *supra* note 7 ("[I]n the late 1960's and early 1970's, Martin Sostre (1923-2015) was . . . well known as a prison activist, revolutionary, and jailhouse lawyer, who almost single-handedly won democratic rights for prisoners to receive and read revolutionary literature, write books, worship alternative religious faiths, to not be held indefinitely in solitary confinement, and to obtain legal rights to have access to legal rights at disciplinary proceedings. He was the one responsible for prisoners being able to organize during the prison struggle [of] 1967-1974. These lawsuits changed prison conditions nationwide."); Anderson, *supra* note 2 ("Had it not been for Martin Sostre, much of the important work of political prisoners, politicized prisoners and prison movements that we know of today would not have been possible.").

13. Anderson, *supra* note 2 ("Not enough people know Sostre today, though his impact on the prison struggle is as large as Black radicals like George Jackson, Angela Davis and Mumia Abu Jamal."); Ervin, *Prison Revolutionary*, *supra* note 7 ("Sostre's political consciousness and legal activism opened the door for prisoners to have legal and human rights and the ability to organize at a time of civil rights, Black Power, the New Left, and the Vietnam anti-war movements. At one stage, 1970-1976, the prison movement became the central protest movement in America, especially after the August political assassination of George Jackson, and the September, 1971 Attica rebellion. . . . [But] Martin Sostre has been lost to history . . . He literally opened the doors for radical prisoners, Anarchist tendencies of color and radical praxis, yet not one institution or movement today is named after him. . . . Groups of jailhouse lawyers should name themselves after the man who more than anyone, successfully fought for prisoners' democratic rights, was an

implement the “sweeping prison reforms ordered by Federal Courts in the *Sostre v. Rockefeller* and *Sostre v. Otis* decisions” that played no small part in bringing the Attica prison population to its breaking point.¹⁴ But Sostre’s part in the Attica Rebellion and the impact of his pro se cases on prisoner climate at Attica leading up to the rebellion is generally left out of the story, much like the reality of the massacre itself.¹⁵ Sostre traces these ominous omissions to “the white racist conspiracy of silence inherent in oppressive-racist America when the victims of white atrocities are Black.”¹⁶

activist who provided an example of a revolutionary political prisoner, and who prefigured the Black-led revolutionary prison movement, including the Attica rebellion and prison labor and activist movements of the 1970’s-1980’s [sic].”).

14. Sostre, *The New Prisoner*, *supra* note 12, at 247 (“When the 28 Attica Reform Demands presented to and accepted by Commissioner Russell Oswald on September 12, 1971, are viewed against the background of *Sostre v. Rockefeller*, *Sostre v. Otis* and other directives, it becomes clear that your refusal to comply with the directives of the Courts and implement the reforms resulted in the Attica Rebellion fifteen months later. . . . had the provisions of the Federal Court mandates been complied with, and had other legitimate grievances brought to your attention by us prior to September 1971 been redressed, not one person would have died or been injured on September 9-13, 1971.” (citing *Sostre v. Rockefeller*, 312 F. Supp. 863 (S.D.N.Y. 1970) and *Sostre v. Otis*, 330 F. Supp. 941 (S.D.N.Y. 1971)); Ervin, *Prison Revolutionary*, *supra* note 7 (“The protest at Attica was put down with a bloody massacre by prison and political officials, but it opened the eyes of millions all over the world to American state violence and racism. . . . There is no doubt that the prior demands of Martin Sostre, in his writings and prisoner’s rights lawsuits, who had been imprisoned at Attica some years previous, played a role ideologically. Sostre’s struggle inside as a political prisoner was clearly bound up with what became the Attica Rebellion. Contrary to prison officials’ accounts which now claim that the so-called Attica prison ‘riot’ had taken place because of a ‘gang of criminals’ who took guards hostage for no good reason, the truth is New York State officials refused to listen to Sostre or even the federal courts which over the years had ordered an end to brutality, racism, and mistreatment of the men inside. The prisoners took matters into their own hands, demanding human rights and an end to racist abuse with the 1971 rebellion, which shook America and the entire world.”).

15. Sostre, *The New Prisoner*, *supra* note 12, at 253 (“Attica defrocked the vicious outlaw murderers who were passing themselves off as lawful authorities. It is now a historical fact that the upholders of ‘law and order’ are the mass murderers of 43 persons in the Attica Massacre. These are the murderers and torturers who are in charge of New York State and its prison camps.”); *but see* HEATHER ANN THOMPSON, *BLOOD IN THE WATER* (Vintage Books 2017) (presenting an exception to the typical omission of Sostre from accounts of the Attica Rebellion).

16. Sostre, *The New Prisoner*, *supra* note 12, at 247 (“The Attica Rebellion not only was the direct consequence of your systematic denial of our basic human rights, but of your adamant refusal to accord us the civilized treatment ordered by Federal Courts in *Sostre v. McGinnis*, *Sostre v. Rockefeller*, *Sostre v. Otis*, and in many other decisions. Despite this fact being common knowledge to thousands of lawyers, judges, legislators, administrators and ordinary ‘people’ familiar with the sweeping prison reforms ordered by Federal Courts in the *Sostre v. Rockefeller* and *Sostre v. Otis* decisions, and the millions of words written on the causes of Attica, why hasn’t this fact – the obdurate refusal of outlaw State officials to obey Federal Court orders – been exposed? It is due to the white racist conspiracy of silence inherent in

Today, Sostre's history is largely forgotten, ignored, or obscured,¹⁷ and historians often mistake the basic facts of his life.¹⁸ This collective repression of Sostre's story is not an accident; it is the state functioning as designed. The primary purpose of incarceration is to preserve state power by exerting control over one's body and psychosocial autonomy with the explicit intent to maintain social order and racial hierarchy above all else.¹⁹ As Ervin observed, the criminal justice system in the United States functions as a tool for upholding the power and authority of the state rather than as a means of promoting justice for the citizenry or protecting a free society.²⁰ Sostre challenged that power and the racial hierarchy it upholds and depends upon, which is why the system ultimately erased him.²¹

oppressive-racist America when the victims of white atrocities are Black." (citing *Sostre v. McGinnis*, 334 F.2d 906, 909 (2d Cir. 1964); *Sostre v. Rockefeller*, 312 F. Supp. 863 (S.D.N.Y. 1970); and *Sostre v. Otis*, 330 F. Supp. 941 (S.D.N.Y. 1971)).

17. McLaughlin, *supra* note 2, at 2.

18. For example, history professor Garrett Felber mistakenly labeled Sostre as a Korean War veteran instead of a World War II Tuskegee veteran and ignored his first conviction and incarceration inside of the Armed Forces in a 2016 article. Garrett Felber, *Martin Sostre and the Fight Against Solitary Confinement*, AFR. AM. INTELL. HIST. SOC'Y (May 16, 2016), <https://www.aaihs.org/martin-sostre-and-the-fight-against-solitary-confinement/> [<https://perma.cc/R2ES-UWDT>]. In another example, William C. Anderson describes Sostre as having "joined" the United States Army instead of being drafted, a key psychological difference considering the inherent de-individualization and complete institutional control over one's life that the Army entails, to which Sostre was not subjected by his own will. Anderson, *supra* note 2.

19. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 13 (The New Press 2012) ("Like Jim Crow (and slavery), mass incarceration operates as a tightly networked system of laws, policies, customs, and institutions that operate collectively to ensure the subordinate status of a group defined largely by race."); Anthony Paul Farley, *The Black Body as Fetish Object*, 76 OR. L. REV. 457, 487 (Jan. 1997) ("[P]ower is 'the name that one attributes to a complex strategical situation in a particular society.' There is nothing about 'race' which is separate from this 'complex strategical situation.'" (quoting 1 MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* 93 (Vintage Books 1990))).

20. Hutto, *supra* note 7, at 108 ("Ervin views the State itself, both in theory and in practice, as the root of all oppression within society when he says: 'But what is the State? It is a political abstraction, a hierarchical institution by which a privileged elite strives to dominate the vast majority of people. The State's mechanisms include a group of institutions containing legislative assemblies, the civil service bureaucracy, the military and police forces, the judiciary and prisons and the sub-central State apparatus. The purpose of this specific set of institutions which are the expressions of authority in capitalist societies . . . is the maintenance and extension of domination over the common people by a privileged class, the rich in Capitalist societies . . .'" (quoting LORENZO KOM'BOA ERVIN, *ANARCHISM AND THE BLACK REVOLUTION: THE IDEA OF BLACK AUTONOMY* 46 (P&L Press 2013))).

21. Anderson, *supra* note 2 ("What does it mean to live the life Martin Sostre did and have your work remain largely unnoticed? It exposes the naked truth of a society that disappears both people and the problems we face.").

Every piece, character, and dark detail of Sostre's story, when examined in its totality, illuminates the complex web of coordinated oppression that defines the American system of incarceration and its dehumanizing enforcement of racial hierarchy by means of institutional violence.²² From the moment Sostre was drafted into the U.S. Army at age 19, he was subjected to institutional systems of control and deliberate dehumanization, and yet, ironically, it was these very systems that created the Black radical that the state so feared in the first place.²³

This Article is an attempt not only to tell Sostre's story accurately, but to highlight his story as a source of powerful insight into the nature and purpose of the U.S. prison system. To do so, I will utilize and adapt a methodology developed by Kendall Thomas in his 1992 essay on Angelo Herndon, a Black communist who was charged with inciting insurrection in Georgia in 1932,²⁴ and whose legal challenge to those charges is regarded as "one of the great civil liberties decisions of the 1930s" and "one of the notable 'success stories' of the Supreme Court's First Amendment jurisprudence."²⁵

22. *Id.* ("The state as prison has been the lived experience for countless Black people throughout generations, but sometimes a myriad of lives can be crystallized into a single account exposing the oppressive realities in intimate detail. The life of the great intellectual, imprisoned litigator and revolutionary organizer Martin Sostre was just that.")

23. Sostre, *The New Prisoner*, *supra* note 12, at 243–44 ("Your widely-publicized prison reform programs—a smoke screen not only to cover up the greatest domestic massacre in a century [at Attica], but to conceal your current repressive pacification program consisting of the post-Attica multi-million dollar appropriation for guns, gas, chemical sprays, for training killers on their effective use, construction of additional gun towers and assault tunnels within your prison camps from which to shoot us down, building and reinforcing special treatment housing or maxi-maxi units [euphemisms for solitary confinement torture chambers], etc.— . . . your repressive prison pacification program . . . has already proven counter-productive in that it has set in motion dynamic revolutionary forces that will effect the overthrow of your racist-capitalist system.")

24. Kendall Thomas, *Rouge et Noir Reread: A Popular Constitutional History of the Angelo Herndon Case*, 65 S. CAL. L. REV. 2599–2600 (1992) ("In 1932, Eugene Angelo Braxton Herndon, a young Afro-American member of the Communist Party, U.S.A., was arrested in Atlanta and charged with an attempt to incite insurrection against that state's lawful authority.") (footnote omitted).

25. *Id.* at 2600–01 ("[I]n *Herndon v. Lowry* [301 U.S. 242 (1937)], Herndon filed a writ of habeas corpus asking the U.S. Supreme Court to consider the constitutionality of the Georgia statute under which he had been convicted. . . . [T]he Court, voting 5-4, declared the use of the Georgia political-crimes statute against him unconstitutional on the grounds that it deprived Herndon of his rights to freedom of speech and assembly and because the statute failed to furnish a reasonably ascertainable standard of guilt. *Herndon v. Lowry* is generally acknowledged as one of the great civil liberties decisions of the 1930s, one of the notable 'success stories' of the Supreme Court's First Amendment jurisprudence. It marked the first time the Supreme Court had mentioned the Holmes-Brandeis 'clear and present danger' formula in the ten years since its decision in *Whitney v.*

Thomas's project revolves around the cultivation of a "cultural history of the political events" driving the evolution of constitutional law in the U.S. through the subversive evocation of "popular memory."²⁶ Thomas attributes the origins of the phrase "popular memory" to Foucault, who describes it as the power to control the dynamics of social struggle.²⁷ Thomas characterizes the concept of "popular memory" or "countermemory" as the radical remembering of classes and communities that have been intentionally unwritten and overwritten by mainstream institutional history in a way that directly challenges mainstream history's monopoly over memory.²⁸

Channeling W. E. B. Du Bois, Thomas critiques mainstream institutional history as being told "from above" by those in power, to the exclusion of the oppressed, poor, and powerless who

California [274 U.S. 357, 374 (1957)]. It was also the first case in which the Supreme Court used the test to uphold the civil liberties claims of an individual against censorial state action, the first time the Supreme Court reviewed a sedition conviction from the South, and the first political-crimes conviction reviewed by the Court that involved an African-American defendant.") (footnotes omitted).

26. *Id.* at 2603 ("This Article . . . offers a 'remembrance' of the [Angelo Herndon] case in the form of a cultural history of the political events that led to the Court's first response to the case. I believe that the concept of a 'popular memory' can offer us great insight into constitutional history, both as object and as method . . . not simply at the level of accent and emphasis but in terms of epistemology and interpretation.") (footnotes omitted).

27. *Id.* at 2604 n.27 ("The phrase 'popular memory' appears to have originated with the French philosopher-historian Michel Foucault[:] . . . 'There's a real fight going on[] . . . [o]ver what we can roughly describe as popular memory. It's an actual fact that people—I'm talking about those who are barred from writing, from producing their books themselves, from drawing up their own historical accounts—that these people nevertheless do have a way of recording history, or remembering it, of keeping it fresh and using it. . . . Since memory is actually a very important factor in struggle (really, in fact, struggles develop in a kind of conscious moving forward of history), if one controls people's memory, one controls their dynamism. And one also controls their experience, their knowledge of previous struggles." (quoting Michel Foucault, *Film and Popular Memory*, in FOUCAULT LIVE 89, 91–92 (Sylvere Loitringer ed., John Johnston trans., 1989))).

28. *Id.* at 2604–06 ("[The value of] a historical literature devoted to the retrieval of 'popular memory[]' . . . lies not only in its concrete study of the history of 'subaltern' classes and communities but also in the powerful analytical terms and procedures it deploys to articulate a 'popular' historical record, or 'countermemory.' What has emerged is a way of thinking and writing about the historical process that challenges not only the premises but also the overall project of much mainstream historiography.") (footnotes omitted), 2664 ("A popular constitutional history is unwilling to impose a teleological framework on the raw material that constitutes its object of study. The source of this agnosticism is a realization that the progressivist vision of constitutional history is both an interpretive '[structure] of memory and remembering' and, at the same time, an ideological strategy of 'organized forgetting': What is forgotten is the lived experience of those whose stories disrupt the ordered image that the historical narrative of constitutional progress imposes on an unruly past.") (footnote omitted).

experience history “from below.”²⁹ Eliminating popular cultural history from the institutional history of constitutional law gives the institutional state exclusive analytical authority over legal interpretation, application, and enforcement.³⁰ It is the “doorkeeper” that stands forever “before the law.”³¹ In contrast, developing a popular historical record requires a new examination of the cultural perspectives of those who have experienced the American constitutional order “from below.”³² The creation of a popular historical record necessitates the inclusion of the perspectives of oppressed individuals whose speech has traditionally been barred from the mainstream historical record.³³ Accordingly, Thomas highlights the value of Herndon’s autobiographical account of legal events as “an instance of popular historical record”³⁴ and an important historical “index of American constitutionalism.”³⁵ Similarly, I will be using Sostre’s firsthand

29. *Id.* at 2604 (“Historians, wrote Du Bois, had for too long studied and written about the past solely through the eyes of those with power and position. . . . Blinded by the view from the lofty heights of professional history, practitioners had left untold the story of the nation’s powerless and poor. . . . Du Bois called for the close, careful study of American history ‘from below’; indeed, his own work may be taken as an exemplary intervention against the majestic myopia of historiography ‘from above.’”) (footnotes omitted).

30. *Id.* at 2606–07 (“American constitutional history remains one of the few disciplines in which the call for the rigorous reconstruction of our national past from the bottom up has for the most part been ignored. The historical treatment of constitutional law and politics in America is, in short, still largely an institutional history. We have yet to move beyond magisterial accounts of ‘great’ advocates arguing ‘great’ cases involving ‘great’ issues decided by ‘great’ judges sitting on ‘great’ courts. . . . American legal scholarship has paid insufficient attention to the cultural history of constitutionalism in America.”) (footnotes omitted).

31. FRANZ KAFKA, *Before the Law*, in THE COMPLETE STORIES 22–23 (Willa & Edwin Muir trans., Schocken Books, Inc. 1971).

32. Thomas, *supra* note 24, at 2607 (“The chief task of a cultural history of American constitutionalism is to identify and interpret the records left by those who have experienced the American constitutional order from its underside.”).

33. *Id.* at 2607 (“[A] cultural history of constitutionalism from the bottom up recognizes the right of ‘un- or misrepresented human groups to speak for and represent themselves in domains defined, politically and intellectually, as normally excluding them, usurping their signifying and representing functions, overriding their historical reality.’”) (footnote omitted).

34. *Id.* at 2604–05 n.27 (“One of the sources on which I shall rely is *Let Me Live*, the autobiography of Angelo Herndon. . . . Working from a more expansive understanding of the concept [of popular memory], I shall take Herndon’s account of his own experience itself as an instance of a popular historical record.” (citing ANGELO HERNDON, *LET ME LIVE* (Random House 1937))).

35. *Id.* at 2620 (“Nothing could be more elitist than to blithely dismiss Herndon’s narrative of his trial and conviction, whether the dismissal takes the form of a weak claim that *Let Me Live* is a layman’s legal history with which we need not be concerned, or whether it rests instead on a stronger assertion that the book is merely a piece of audacious Communist Party propaganda.”) (footnote omitted), 2666 (“Herndon’s account is valuable because it provides a perspective on the case from

accounts of significant legal events in his life as an instance of popular historical record in my analysis of those events and their significance to the constitutional history of American incarceration.³⁶

The reexamination of history “from below” in Thomas’s methodology does not simply add alternative versions of history to the existing institutional narrative; rather, it recasts the scope of historical possibility in a way that radically questions the logical and ideological basis of mainstream historical accounts.³⁷ Accordingly, Thomas’s “rereading” of the Angelo Herndon case seeks to expose the various hidden cultural, social, and political complexities of the events of the case for the purpose of rewriting those events into a popular historical record that paints a more complete picture of the 1930s as a significant episode in the broader history of American constitutionalism.³⁸ In fact, Thomas maintains that a full account or understanding of American constitutionalism

below—from the point of view of those for whom [h]istory is what hurts.’ . . . Herndon’s subaltern experience . . . is as fundamental and significant an index of American constitutionalism as that found in official legal texts.”) (footnote omitted).

36. See generally Sostre, *The New Prisoner*, *supra* note 12.

37. Thomas, *supra* note 24, at 2607 (“More is at stake[] . . . than ‘adding one part of a population, that which has been neglected, to another, that which has provided the traditional information base.’ Constitutional history from the bottom up also seeks to challenge the conceptual order or hierarchy that subtends the exclusion of the common run of human beings and their concerns from the historical study of constitutional law. This project, then, is not directed simply at reversing the longstanding bias against the record of the subaltern in American constitutional history. It also represents an effort ‘to broaden the basis of history, to enlarge its subject matter, make use of new raw materials and offer new maps of knowledge.’ One might anticipate that a popular memory of American constitutionalism will force us to rethink the very terms of constitutional history.”) (footnotes omitted), 2666 (“My insistence on reckoning the constitutional meanings into the cultural record left by the historically dispossessed is not merely an effort to replace the current hegemony of institutional history with that of a hegemonic popular memory. It is an attempt rather to retrieve the ‘buried’ and ‘subjugated knowledges’ bequeathed to us by Americans who lived out their lives at the bottom of our constitutional order.”) (footnote omitted).

38. *Id.* at 2607–08 (“The rereading offered here of the Angelo Herndon case should be taken as an illustration of the type of contribution that the quest for the recovery of a popular memory can make. It offers a case study of a period in our constitutional history of which we have important, but finally inadequate, institutional accounts: the turbulent decade of the 1930s, which has come to be known, significantly, as the ‘years of protest.’ As we shall see, even a cursory review of historical work on the Angelo Herndon case reveals the limitations of the notion—explicit or implicit in much of the literature—that the institutional ‘great case’ model permits us to fully grasp the complex, contradictory logic of the story of American constitutionalism.”) (footnotes omitted).

is not otherwise possible without such infusion of “popular memory” or “countermemory” into traditional accounts of legal history.³⁹

Through the intentional retrieval of a popular historical record via a conscious remembering and recording of the cultural, political, and social realities of the oppressed, Thomas goes beyond the elitist editing of mainstream institutional history and exposes a hidden underlying narrative of conflict between state institutions and subjugated individuals.⁴⁰ In applying this method to the history of constitutional law, Thomas’s project instigates a fundamental reconsideration of the traditional legal frameworks enforced as fundamental truths by the dominant political order against the underclass through institutional legal history, which he calls “great-case historiography.”⁴¹ The inclusion of popular cultural history implicitly vests power in the oppressed masses to author their own experience of American constitutionalism as dispensed by and through the institutional apparatus of the state.⁴²

Attorney, author, and scholar Michelle Alexander has asserted that:

[W]hile it is generally believed that the backlash against the Civil Rights Movement is defined primarily by the rollback of affirmative action and the undermining of federal civil rights legislation by a hostile judiciary, the seeds of the new system of

39. *Id.* at 2603 (“[A]n orthodox doctrinal treatment of the Angelo Herndon case[] . . . does not, indeed cannot, allow for more than a partial account of its larger historical meaning. Without a cultural anatomy of the Angelo Herndon case, one cannot hope to attain more than a skeletal picture of its significance as an episode in the history of American constitutionalism”), 2609 (“[I]t is only through the lens of popular memory that we can begin to reach a critical understanding of . . . the history of American constitutionalism.”).

40. *Id.* at 2609 (“The perspective of popular historical method permits us to see the extent to which the history of constitutionalism in America, viewed from its underside, can be plotted as a story of a body of law born of sustained struggle, the outcome of painful, passionate political and ideological contests between subordinate groups and dominant institutions. This is a story that the optic of institutional historiography is by definition unable to see, much less view empathetically.”) (footnote omitted).

41. *Id.* at 2608 (“Constitutional history in the institutional mode is hostile at all points to the type of thinking about historical research and interpretation suggested by work in popular memory. Perhaps the most significant threat that popular historical method represents for the dominant tradition of great-case historiography is its critical posture toward the notion that American constitutionalism is a story of the protracted but almost preordained emergence and progressive elaboration of the rules and principles that make up our fundamental law.”).

42. *Id.* at 2609–10 (“The method of popular constitutional history does not just re-create a legal case; it recalls a larger, largely forgotten political culture. It permits us to see Angelo Herndon not simply as an issue or problem for constitutional discourse but as a conscious agent in shaping this discourse. In short, popular constitutional historiography refuses to view constitutionalism in American culture as the exclusive preserve of elites and institutions.”) (footnote omitted).

control—mass incarceration—were planted during the Civil Rights Movement itself, when it became clear that the old caste system was crumbling and a new one would have to take its place.⁴³

The life, activism, and incarceration of Martin Sostre profoundly demonstrates this intentionally hidden reality.

I. From the Army to Attica

[O]nce mental chains are broken there is no return to the status quo ante.

Martin Sostre⁴⁴

Sostre entered the U.S. Army on February 2, 1942.⁴⁵ He was trained as an aircraft mechanic and was stationed at the air base in Tuskegee, Alabama.⁴⁶ Two years later, Sostre was charged with “cruelty and maltreatment” under Article 93 of the Uniform Code of Military Justice⁴⁷ after a fight broke out between two companies, including Sostre’s.⁴⁸ He was convicted on April 28, 1944, and sentenced to three years in prison, leading to his first period of incarceration.⁴⁹ Although many of the facts surrounding the events leading to Sostre’s military conviction are unknown, staged fights between Black and white companies for which only the Black companies were blamed or punished was a common tactic used to discriminate against Tuskegee Airmen during this period, and a documented pattern of similar incidents helps to corroborate Sostre’s account of these events.⁵⁰ Sostre would not be released from

43. ALEXANDER, *supra* note 19, at 27–28.

44. Sostre, *The New Prisoner*, *supra* note 12, at 254 (emphasis omitted).

45. McLaughlin, *supra* note 2, at 4; Shapiro, *supra* note 2; FRAME UP!, *supra* note 2.

46. FRAME UP!, *supra* note 2.

47. *Id.*; Uniform Code of Military Justice art. 93, 10 U.S.C. § 893 (1951).

48. Symonds, *supra* note 2 (“[Sostre] was drafted into the Army in 1942 but was dishonorably discharged in 1946 after being involved, by his account, in a fight between rival companies.”); Shapiro, *supra* note 2.

49. FRAME UP!, *supra* note 2.

50. See generally Tanja B. Spitzer, *St. Louis, July 12, 1973: A Disaster with Long-Lasting Repercussions*, NAT’L WWII MUSEUM (July 12, 2020), <https://www.nationalww2museum.org/war/articles/st-louis-national-records-fire-july-12-1973> [https://perma.cc/9MJJP-JG33] (describing a “devastating” fire at the National Personnel Records Center, which resulted in the destruction of millions of personnel files covering the period when Sostre would have served in the military); Michael Hankins, *A Pattern of Resistance: The Tuskegee Airmen on Trial, Part 1*, SMITHSONIAN NAT’L AIR & SPACE MUSEUM (June 9, 2020), <https://airandspace.si.edu/stories/editorial/pattern-resistance-tuskegee-airmen-trial-part-1> [https://perma.cc/7U9J-DHM8]; Michael Hankins, *Mutiny at Freeman*

the custody of the Army until 1948, well after he was dishonorably discharged from the Army on August 28, 1946.⁵¹

After leaving the Army, Sostre returned to Harlem.⁵² His dishonorable discharge status left him without the benefits entitled to other veterans and severely restricted his employment opportunities.⁵³ Backed into a corner, Sostre became, in his own words, a “street dude, a hustler.”⁵⁴ His first civilian arrest was in 1952 for possession and sale of narcotics.⁵⁵ After briefly fleeing the state, Sostre was captured on October 31, convicted, and sentenced to twelve years in prison.⁵⁶ Sostre spent eleven days at Sing Sing Correctional Facility before he was transferred to Attica on December 23, 1952.⁵⁷

While in Attica, Sostre began reading the Quran and came to embrace the Nation of Islam,⁵⁸ following a similar political trajectory to many other Black revolutionaries and anarchists of his time.⁵⁹ He also studied Indian scriptures, yoga, and other Eastern

Field: The Tuskegee Airmen on Trial, Part 2, SMITHSONIAN NAT'L AIR & SPACE MUSEUM (June 9, 2020), <https://airandspace.si.edu/stories/editorial/mutiny-freeman-field-tuskegee-airmen-trial-part-2> [<https://perma.cc/2FYB-3HWC>].

51. FRAME UP!, *supra* note 2; Anderson, *supra* note 2; *Subversive Influences in Riots, Looting, and Burning (Buffalo, N.Y.): Hearing Before a Subcomm. of the H. Comm. on Un-American Activities (HUAC)*, 98th Cong. (1968) (statement of Frank N. Felicetta, Comm'r, Buffalo Police Department).

52. McLaughlin, *supra* note 2, at 4.

53. Shapiro, *supra* note 2 (“He came back to Harlem in 1946 with no job skills.”); 38 C.F.R. § 2.1064(a) (1946) (“To be entitled to compensation or pension . . . the period of active service upon which claim is based must have been terminated by discharge or release under conditions other than dishonorable. In other words benefits . . . are barred where the person was discharged under dishonorable conditions.”).

54. *Id.*

55. FRAME UP!, *supra* note 2 (explaining that Sostre was arrested in New York City on Mar. 3, 1952, for sale and possession of narcotics, and in San Diego on Aug. 29, 1952, for possession of narcotics (stemming from the New York charge) and unlawful flight from federal authorities).

56. FRAME UP!, *supra* note 2; Anderson, *supra* note 2; McLaughlin, *supra* note 2, at 4 (“In 1952, aged 29, [Sostre] was caught, tried, convicted, and sentenced to a six-to-twelve-year term in Attica Prison.”) (footnote omitted).

57. FRAME UP!, *supra* note 2; Anderson, *supra* note 2; Symonds, *supra* note 2 (“After a short stint at Sing Sing, [Sostre] was transferred to the Attica Correctional Facility and later to Clinton State Prison.”).

58. Symonds, *supra* note 2 (“[Sostre] became involved in the Nation of Islam after borrowing a copy of the Quran from a fellow inmate.”).

59. Anderson, *supra* note 2; Ervin, *Prison Revolutionary*, *supra* note 7 (“[Sostre] had served a sentence in Attica, New York, during the early 1960’s and went through a political metamorphosis from a Black Muslim ([Nation of Islam]), Black nationalist, and later an Anarchist.”); Williams, *supra* note 4, at 688 (“[M]any Black anarchists had comparable experiences of incarceration, which in some cases created favorable opportunities for political transformation. Due to government suppression (particularly the FBI’s CointelPro), former Panthers faced uniquely high incarceration rates among 1960s’ movement activists. This was particularly true for

philosophy, developing a deep and complex spirituality.⁶⁰ It was this spirituality that Sostre credited with giving him the strength to endure various forms of extreme physical, psychological, and spiritual violence, including solitary confinement, throughout his incarceration.⁶¹ During this initial period of spiritual self-transformation, Sostre developed a deeper understanding of the U.S. government's organization of power and racial hierarchy through the violently oppressive, even genocidal design of the state prison system. Consequently, he began to emerge as a leading activist and central figure of the prison organizing movement of the 1950s, '60s, and '70s.⁶²

The ideology Sostre came to embrace through the Nation of Islam informed and even demanded resistance to the expression of white supremacy through state violence.⁶³ For Sostre, revolutionary

those in the most militant wings of the Black freedom struggle. The geographic and spatial distance from outside movements and extra time to reassess previous strategies may have played a key role for the creation of Black anarchism Prison-based transformation is not unique to the Black anarchists. Malcolm X famously converted to the Nation of Islam while in prison, which was one of Malcolm's many 'reinventions[.]' Prison activist and BPP member George Jackson originally was politicized once in prison. . . . Word-of-mouth was a key pathway to the adoption of anarchism for these Black activists.") (citations omitted); McLaughlin, *supra* note 2, at 3 ("[P]rison activism flourished in the 1960s and 1970s largely in tandem with the burgeoning of movements for minority rights across the United States. Activists fought for shared goals inside prison as well as outside: for recognition of their claim upon the rights of citizenship, to assert their humanity, to construct a sense of community, and to define new political identities. Sostre was an important example of such activism.") (footnotes omitted), 4 ("In the 1950s, Attica was one of many prisons where the Nation of Islam flourished and Sostre soon joined.").

60. McLaughlin, *supra* note 2, at 10; Warren L. Schaich & Diane S. Hope, *The Prison Letters of Martin Sostre: Documents of Resistance*, 7 J. BLACK STUD. 281, 290–91 (1977) ("Spiritual enlightenment began for Sostre while 'reading and studying of Indian scriptures' in Attica in the 1950s. It was during his first of four consecutive years in solitary (1960-1964) that Sostre developed his spiritual powers more fully.") (citation omitted).

61. McLaughlin, *supra* note 2, at 10; Schaich & Hope, *supra* note 60, at 290 ("[Sostre] attributed his efforts to 'endure' and 'defeat' the 'physical torture inflicted by the state' to his 'spiritual powers.' He perceived 'the inability of the oppressive state to prevail over the spirituality of one man' as a political victory for him and for all liberating forces.") (citations omitted).

62. Reggie Gardner, *Martin Sostre: A Victim of American Justice*, 1 BLACK VIEW 8, 8 (1973) ("Like many other Black revolutionaries Martin Sostre's road to Black activism began while he was in prison. . . . While there, Sostre became a Muslim Soon afterward he became involved in prison reform. When he became eligible for parole Sostre challenged the all-white composition of the parole board. In subsequent years he instituted federal suits against jailers which U. S. District Judge Constance Motley stated resulted in the 'elimination of some of the more inhumane aspects of solitary confinement in state prison.'").

63. Schaich & Hope, *supra* note 60, at 290 ("For Sostre . . . [n]ot to act against agencies of oppression was an unpardonable sin of omission. 'We must turn a good

resistance to inhumane treatment by prison officials was itself a religious act that connected oneself to the world.⁶⁴ Collective education was a central dogmatic pillar of Sostre's newly adopted theology, a theology explicitly based in the emancipation of Black Americans.⁶⁵ Moreover, in studying the law for the purposes of *pro se* litigation and helping other incarcerated persons access and strategically utilize the legal system to challenge their own incarceration, Sostre was fulfilling a religious duty. Thus, access to not only the Quran, but all literature and correspondence by prison employees, was an exercise of religious expression for Sostre and the fulfillment of what he saw as a religious obligation.

During this time, Sostre requested access to the Quran and the ability to gather with fellow Muslims to worship.⁶⁶ Seeking to make an example of him and show what happens when prisoners undertake any form of self-organization, prison officials responded harshly and swiftly⁶⁷—not only were Sostre's requests denied outright, but he was branded a dangerous insurrectionist and accused of preaching racial hatred.⁶⁸ Considering Sostre's view that helping his fellow prisoners was a religious obligation, it can be argued that the prison's censorship of not just the Quran, but all literature and written correspondence directly prevented Sostre

portion of ourselves over to spirituality,' said Sostre, 'but it is equally crucial that we retain enough to act outward with willed action against powers of domination in the physical world.'").

64. *Id.* at 290 ("For Sostre, 'the struggle [against the state] is a spiritual one' Crucial to Sostre's personal ideology was the spiritual dimension supporting his larger theme of resistance.") (citation omitted), 291–92 ("Sostre struggled to 'direct spiritual physical energies toward' further revolutionary resistance. Sostre's spiritual growth was a result of his struggle. His spiritual quest did not cast him out of the polis or impede his will for political activity; instead it provided a rationale and ground swell of further self-immersion in personal resistance as the ultimate political act. As a spiritualist, Sostre maintained that action imprints one's inner self on to the external world, translating the duality of being and action into one political posture.") (citation omitted).

65. Garrett Felber, "*Shades of Mississippi: The Nation of Islam's Prison Organizing, the Carceral State, and the Black Freedom Struggle*," 105 *J. AM. HIST.* 71, 72 (2018) ("[T]he Nation of Islam's prison organizing—and black nationalism more broadly . . . should be seen as a central current of the postwar struggle for black freedom. Its political strategies and conceptual legacies expand our understandings of the midcentury black freedom struggle, the prisoners' rights movement, and the development of the punitive state.").

66. Shapiro, *supra* note 2; *Sostre v. McGinnis*, 334 F.2d 906, 907 (2d Cir. 1964).

67. McLaughlin, *supra* note 2, at 4 ("[Joining the Nation of Islam] was a fateful decision that placed [Sostre] at odds with the prison authorities, who viewed the Nation as a threat to discipline rather than as a legitimate religion. He soon earned a reputation as a troublemaker. State Commissioner of Corrections Paul McGinnis described him as 'a very difficult problem case' who 'continuously failed to abide by the rules' of the prison.").

68. Shapiro, *supra* note 2.

from engaging in religious expression. In the legal action Sostre brought to address this treatment, the judge agreed with the sentiment of prison officials that the Nation of Islam was a hate group.⁶⁹

Sostre was also beaten by prison guards and thrown in solitary confinement.⁷⁰ Alone in the timeless darkness of solitary confinement under conditions of torture, Sostre began to teach himself constitutional law.⁷¹ During his imprisonment, he would use those skills to bring groundbreaking religious persecution claims⁷² in *Pierce v. LaVallee* (1961)⁷³ and *Sostre v. McGinnis* (1964).⁷⁴

II. The *Pro Se* Prisoner

Do you not see that we've converted your prison camps into revolutionary training camps for cadres of the Black liberation struggle? More important, your prisons have become ideological crucibles and battle grounds. Soon you shall reap the harvest.

Martin Sostre⁷⁵

The first religious persecution claim Sostre brought as a *pro se* plaintiff following mistreatment while incarcerated at a state prison established federal district courts as proper venues for

69. *Sostre v. McGinnis*, 334 F.2d. at 909 (“I don’t know any other religion that teaches racial hatred as an essential part of the faith of the religion. There are many religions which have practiced racial hatred at various times, but this movement [Nation of Islam] is the only movement that I know of which makes it a tenet of the faith that all white people should be hated.” (quoting *Fulwood v. Clemmer*, 206 F. Supp. 370, 373 (D.D.C. 1962))).

70. *Pierce v. LaVallee*, 293 F.2d 233, 234 (2d Cir. 1961).

71. Schaich & Hope, *supra* note 60, at 282–84 (“There is perhaps no image as tortuously inactive as that of solitary confinement. ‘The box,’ ‘the hole,’ embodies society’s most telling vision of punishment: caged isolation. Against this scene of forced passivity where all human interaction must be imaginary, Sostre engaged himself in powerful actions of resistance as have only a few others While serving time in Attica, Sostre became a student of constitutional, international, and New York State law.”); Anderson, *supra* note 2 (“When prison authorities tried to stifle his right to express his beliefs, placing Sostre in solitary confinement after accusing him of trying to arouse dissent, he became a self-taught student of law and took part in a successful lawsuit challenging the authorities’ suppression of his beliefs.”).

72. McLaughlin, *supra* note 2, at 4 (“[Sostre] challenged the regime openly after studying law.”); Schwartz, *supra* note 12, at 775–76 (“During his first prison stay . . . [Sostre] was a plaintiff in two of the first important prisoners’ rights cases in New York, *Sostre v. McGinnis* and *Pierce v. LaVallee*, which gave prisoners certain limited rights.”) (citations omitted).

73. 293 F.2d. at 233.

74. 334 F.2d at 906.

75. Sostre, *The New Prisoner*, *supra* note 12, at 244.

constitutional challenges.⁷⁶ In 1958, Sostre and two other Black Muslim plaintiffs incarcerated in Attica State Prison sought relief under the Civil Rights Act, claiming religious persecution and interference by prison officials with their practice of religion.⁷⁷ The District Court judge entered judgment for the defendants regarding the religious persecution claim and dismissed the rest of the complaint.⁷⁸ The plaintiffs appealed to the U.S. Courts of Appeals

76. *Pierce*, 293 F.2d at 234 (“In these three actions, plaintiffs seek relief under the Civil Rights Act, 28 U.S.C. § 1343, 42 U.S.C. § 1983, for religious persecution alleged to have been practiced upon them while they were inmates of Clinton State Prison at Dannemora, New York.”), 235–36 (“[P]resent cases involve no unresolved question of state law, solution of which might render a decision on the constitutional issue unnecessary. Either the plaintiffs were punished solely because of their religious beliefs or they were not. If they were, the defendant’s conduct violates both the state statute and the United States Constitution. If the plaintiffs were punished for legitimate reasons, neither law is violated. We find, therefore, that *this is not a case where federal courts should abstain from decision* because the issue is within state cognizance.”) (emphasis added). The court went on to admonish the defense for having “failed to give any reason why a trial in the state court is more desirable than a consideration by the federal court on the merits” and reversed and remanded the case “for consideration of the claims that plaintiffs were disciplined solely because of their religious beliefs.” *Id.* at 236.

77. *Sostre v. McGinnis*, 334 F.2d at 907 (“This is an action brought under 28 U.S.C. § 1343 and 42 U.S.C. § 1983 by the appellants ‘in [sic] behalf of themselves and all others similarly situated.’ . . . Plaintiffs allege that they are ‘members’ of the Islamic religion, known as Muslims, and followers of the sect led by the Honorable Elijah Muhammad. They complain that they have been denied certain rights with respect to the practice of their religion, including the right ‘to attend together congregational worship,’ the right to communicate with ministers of their faith and to have such ministers visit the prison and the right to have various religious publications and to carry these publications outside their cells. The relief [sought] includes an order to the defendants to provide congregational religious services and an injunction against ‘making, promulgating, maintaining and enforcing any and all rules, regulations or practices which prohibit, prevent or impede Plaintiffs and other Muslim inmates of Attica Prison’ from holding or attending congregational services, communicating and conferring with ministers of their religion, receiving religious literature and ‘carrying, displaying, discussing or otherwise using’ such literature. The plaintiffs also ask that defendants be enjoined ‘from making, promulgating, maintaining or enforcing any and all rules, regulations or practices which inflict any punishment or loss of good time or other penalty on Plaintiffs or other Muslim inmates of Attica Prison solely because of the exercise of their freedom of worship in accordance with their faith.”); *Sostre, The New Prisoner*, *supra* note 12, at 251 (“*Sostre v. McGinnis* was the result of a six-year spiritual, physical and legal struggle led by three determined prisoners. The struggle commenced in Clinton Prison during 1958 when we first sued in Plattsburgh Supreme Court via writ of *mandamus* seeking the exercise of religious freedom It took six years of suffering and litigation to get the *Sostre v. McGinnis* ruling in 1964. I personally spent five years in solitary confinement struggling.”); McLaughlin, *supra* note 2, at 4 (“[A]s plaintiff in the landmark case *Sostre v. McGinnis* (1964), [Sostre] argued that the recent Civil Rights Act should guarantee freedom of worship in prison – a major contribution to the Nation of Islam’s struggle for recognition and to the emerging prisoners’ rights movement.”); Schaich & Hope, *supra* note 60, at 284–85.

78. *Sostre v. McGinnis*, 334 F.2d at 907 (“The district court entered judgment for the defendants ‘on the claim of religious persecution’ and otherwise dismissed the

for the Second Circuit, where Judge Paul R. Hays reversed and remanded the case, expressing general agreement with the district court's ruling and stressing that state authorities "must be given an opportunity to propose workable rules for the administration of the rights claimed by these plaintiffs."⁷⁹ The Court of Appeals also directed that the District Court should retain jurisdiction over the matter for one year in case there was "any unreasonable delay on the part of the state" in promulgating such rules.⁸⁰

Judge Hays's religious prejudice became clear through his reluctance to grant that the plaintiffs were practicing something that can even be characterized as a religion.⁸¹ Even after conceding this seemingly basic point, his discomfort was evident.⁸² He repeatedly went out of his way to clarify, distinguish, and undermine.⁸³ Judge Hays seemed distressed over calling Islam a religion at all and wanted to make clear that his hands were tied by judicial deference.⁸⁴ He wrote that even if the Nation of Islam was a religious sect, it surely did not merit equal treatment to Catholicism, Protestantism, Judaism, or even Islam as it is practiced outside of the United States.⁸⁵ Hays even went so far as to denounce the Nation of Islam as an anti-white hate group that "makes it a tenet of faith that all white people should be hated."⁸⁶ He characterized Elijah Muhammad as a vengeful cult leader who demonized all white people as "evil," insisted on segregation of

complaint on the ground that decision should be withheld while the New York courts were 'given an opportunity to act to safeguard and define the plaintiffs' rights under New York law within the framework of New York's legitimate policies governing penal institutions.'").

79. *Id.*

80. *Id.* at 913.

81. *Id.* at 907–08 ("We accept, as we must, since it is not clearly erroneous, the finding of the district court that the beliefs of the organization with which plaintiffs associate themselves constitute a 'religion.'").

82. *Id.* at 908 ("[I]t is obvious from the evidence in the record that the activities of the group are not exclusively religious.").

83. *Id.*

84. *See supra* notes 81–83.

85. *Sostre v. McGinnis*, 334 F.2d at 908–09 ("To concede that we are dealing here with a group which has some characteristics of a religious sect is separated by an enormous gap from the conclusion which the plaintiffs press upon us, the conclusion that since it is a religion this sect is subject to the same rules and regulations and must be treated in the same way as are Catholics, Protestants and Jews. . . . The differences between the beliefs of the Muslims, who, like the plaintiffs, are followers of Elijah Muhammad, and the beliefs of other religions, including . . . the orthodox Islam of several hundred millions of Asians and Africans, are far more striking than the similarities.").

86. *Id.* at 909.

white and Black people, and instigated outrage, agitation, and resentment toward white Christians.⁸⁷

To demonstrate that the perceived threat of this type of anti-Christian violence breaking out was real and imminent, Hays cited several examples from other prisons, including observance of Ramadan and some direct actions that were inspired by Sostre.⁸⁸ He then used threats of violent insurrection as a seemingly self-evident justification for harsh and swift suppression at the slightest hint of self-organization amongst Muslim prisoners.⁸⁹ This was how

87. *Id.* (“Basic to the problem of prison discipline is the fact that the teachings of Elijah Muhammad include condemnation of the entire white race as wholly ‘evil,’ composed of devils, murderers, thieves, robbers, scientists at tricks, world snoopers, meddlers and liars. Presenting almost, equal difficulty is the Muslims’ demand for total segregation between whites and blacks. These Muslims also adopt the position that the Christian religion is loathsome and despicable. When these doctrines are preached openly in the presence of white fellow-prisoners, most of whom are Christians, the result is outrage, resentment and attempts at reprisal. It is for this reason that plaintiffs were not permitted to carry certain Muslim literature from their cells and display or distribute it to others.”).

88. *Id.* at 910 (“Riots, prompted by disputes over religiously unacceptable prison food, proselytizing in the exercise yard, and refusals by individual Muslims to obey white guards have occurred in a number of prisons.’ At Attica Prison the authorities were fortunately able to nip in the bud a sit-down strike of Muslim inmates in protest against punishment of Sostre. . . . At Lorton Reformatory, a District of Columbia penal institution, riots occurred in which Muslims armed with sticks, stones and pickaxes, ran from building to building breaking plate glass windows and causing damage estimated at between seven and twelve thousand dollars. They were demanding ‘a proper respect for their religion’ and a separate dormitory. On another occasion the Muslims at Lorton insisted on being served meals before sunup and after sundown during Ramadan.”).

89. *Id.* at 911 (“Once the imminence of danger is apprehended and proved, it would seem preferable to give the warden the discretion his competence warrants, and uphold all disciplinary measures reasonably necessary to meet the threatening situation. It is conceivable that finding that a religious group presents a ‘clear and present danger’ would not ipso facto lead to a proscription of all their activities. Normally, the most private and contemplative of religious activities is the reading of one’s bible. The Black Muslim Koran, however, is the source of the anti-white doctrine that prompts many of the disciplinary problems, and Black Muslim services almost invariably involve stirring expositions of the implications of the black supremacy doctrine – words that may well pervade the behavior of those who attended for the rest of the day. . . . Thus, upon clear demonstration of the imminent and grave disciplinary threat of the Black Muslims as a group in a particular prison, proscription by prison officials of their activities seems constitutionally permissible.”); Felber, *supra* note 65, (“[T]he ‘dialectics of discipline’—paradoxically helped develop the protest strategies and legal framework for the prisoners’ rights movement while fortifying and accelerating the expansion of the carceral state through new modes of punishment and surveillance. These dialectics took two major forms during this period in New York prisons. The first was the relationship between state methods of control such as prison transfers, confiscation of religious literature, solitary confinement, and loss of ‘good time’ (sentence time reduction for good conduct) and the responses by Muslim prisoners through hunger strikes, writ writing, and take-overs of solitary confinement. The second was the interaction between Muslim religious practices and prison surveillance. An emerging web of

ensorship of Muslim religious literature was upheld by Hays as a necessary measure to protect white Christians against a domestic terrorist group determined to go to war against white people—or, at the very least, a necessary tool to maintain prison discipline.⁹⁰

The right to freely exercise one's religion is constitutionally protected, even in prison.⁹¹ However, this protected right is “subject to extensive limitations which would not be applicable were the plaintiffs not prisoners.”⁹² The orderly maintenance of prison discipline supersedes the right to religious freedom in prison, such that religious practice is only protected if it does not interfere with “the necessary disciplinary regime established by the prison officials.”⁹³ This is a crucial point, one that hearkens to the crux of incarceration—the suppression and destruction of individual psychosocial autonomy. Black Muslims, in their self-organizing and religious activities, evinced an ideology of autonomous self-determination that threatened the symbolic order of power, violence, subjugation, and submission by which ‘discipline’ is maintained in the institution of the prison.⁹⁴

Personal autonomy is not something that prisoners have an unlimited fundamental right to; rather, they are only allowed to exist within the pre-prescribed boundaries and limits of a given prison's disciplinary regime, which is continually rewritten and reinforced onto the bodies of prisoners through sanctions,

state surveillance monitored Muslim rituals and attempted to construct a religioracial formation to justify the suppression of Islam in prisons.”).

90. *Sostre v. McGinnis*, 334 F.2d 906, 911 (2d Cir. 1964) (“The particular characteristics of the Muslims obviously require that whatever rights may be granted because of the religious content of their practices must be carefully circumscribed by rules and regulations which will permit the authorities to maintain discipline in the prison.”).

91. *Id.* at 908.

92. *Id.*

93. *Id.* (“[T]he practice of any religion, however orthodox its beliefs and however accepted its practices, is subject to strict supervision and extensive limitations in a prison. . . . No romantic or sentimental view of constitutional rights or of religion should induce a court to interfere with the necessary disciplinary regime established by the prison officials. . . . A prisoner has only such rights as can be exercised without impairing the requirements of prison discipline.”).

94. *Id.* at 910 (“The so-called Muslim Brotherhood, an ‘adjunct of the Islamic faith,’ is a semi-secret organization which was formed by these plaintiffs and others as a kind of government within the prison. Of this organization Judge Brennan said in *Pierce v. Lavalley*, 212 F. Supp. 865, 869 (1963): ‘Admittedly there existed at Clinton Prison an organization of inmates with inmate leadership dedicated to the formation of secret plans, strategy and policies and further dedicated to the extension of objectives of said organization throughout the state prison system.’ . . . The Brotherhood had a constitution which, among other things, provided for kangaroo courts to punish erring members. We have held that the Brotherhood had ‘overtone[s] of secrecy and intrigue[.]’”) (citations omitted).

punishment, and acts of violence designed to degrade and dehumanize.⁹⁵ Supplanting another's natural autonomy with forced compliance with an institutional disciplinary regime is only possible through the force of violence, both as an event occurring against Black bodies in prison and as a perpetual threat superimposed onto the body, mind, and soul of the prisoner through a never-ending barrage of humiliation, deprivation, and cruelty.⁹⁶

Ultimately, Judge Hays gave New York State keys to every possible back door by which to escape from a court mandate forcing prison officials to respect Sostre's religious practice or grant his fundamental right to engage in it.⁹⁷ In the end, Judge Hays tossed the ball back to the state, claiming improper federal jurisdiction over state administrative issues.⁹⁸

III. The Buffalo Bookstores

Today's lynching is a felony charge. Today's lynching is incarceration. Today's lynch mobs are professionals. They have a badge; they have a law degree. A felony is a modern way of saying, 'I'm going to hang you up and burn you.' Once you get that F, you're on fire.

Michelle Alexander⁹⁹

On October 18, 1964, Sostre, who was then age 41, completed his twelve-year sentence, four years of which he spent in solitary

95. Sostre, *The New Prisoner*, *supra* note 12, at 251 ("The spiritual and physical aspect of the struggle involved years of torture in solitary confinement, beatings, tear gassings while locked in cages, bread and water diets, and many other barbarities inflicted by the State to break our spirit, health and resoluteness, and coerce other prisoners from joining our ranks.").

96. Farley, *supra* note 19, at 507 ("Th[e] inculcation of immorality in black bodies served to justify, to those who inhabited bodies marked as white, the social facts of white mastery and black slavery. Slave immorality served to display the slaves as children of a lesser god, as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations.").

97. *Sostre v. McGinnis*, 334 F.2d 906, 912–13 (2d Cir. 1964) ("The problem presented by the Muslim group is not whether they should be permitted to have congregational services, a minister, religious literature, but rather, under what limitations protective of prison discipline they should be permitted these rights. . . . In other words the nub of this whole situation is not to be found in the existence of theoretical rights, but in the very practical limitations on those rights which are made necessary by the requirements of prison discipline.").

98. *Id.* at 911–12 ("It is not the business of the Federal Courts to work out a set of rules and regulations to govern the practices of religion in the state prisons. Surely this is a task for the state authorities to undertake.").

99. Alexander, *supra* note 19, at 205.

confinement.¹⁰⁰ In the months that followed, Sostre broke with the Nation of Islam, moved to Buffalo, New York, and took a job at the Bethlehem Steel plant.¹⁰¹ During this period, Sostre began to openly embrace explicit anti-capitalist, anti-imperial, and later anarchist beliefs.¹⁰²

In 1966, Martin opened a radical Afro-centric book and record store on Buffalo's East side.¹⁰³ Sostre was inspired by the radical Harlem bookstores of his youth, which had a profound effect on him and gave him an early education in Black culture and radical Black theory.¹⁰⁴ Sostre's Afro-Asian Bookstore sold jazz records, African

100. *Sostre v. Rockefeller*, 312 F. Supp. 863, 866 (S.D.N.Y. 1970); Shapiro, *supra* note 2; FRAME UP!, *supra* note 2; Schaich & Hope, *supra* note 60, at 285; McLaughlin, *supra* note 2, at 2, 4.

101. Shapiro, *supra* note 2; Gardner, *supra* note 62, at 8; McLaughlin, *supra* note 2, at 2 (“By the time [Sostre] settled in Buffalo, he had broken with the Nation [of Islam] but it served as a departure point for his intellectual journey.”), 4 (“Sostre . . . left the Nation of Islam behind but not its austere ethos of self-discipline nor, crucially, its black nationalism.”).

102. FRAME UP!, *supra* note 2; Anderson, *supra* note 2 (“Sostre was a fierce critic of leadership, authority and imperialism. He was opposed to empire and identified with the anti-imperialist efforts. . . . He consistently connects the global struggle against US imperialism to the struggle for Black liberation.”); McLaughlin, *supra* note 2, at 2 (“Guided by feelings of solidarity with peoples of color around the world, Sostre became absorbed by the revolutionary struggles of Cuba, China, and Vietnam.”), 10–11 (“Above all, Sostre’s view of the world came into focus through the politics of anti-imperialism. . . . He read the writings of Nkrumah, Che Guevara, Mao, and Ho Chi Mihn [sic] and it was through the lens of anti-imperialism that he looked at the world, at America, and at Buffalo. . . . [T]he Vietnam War crystallized those ideas. . . . Crucially, anti-imperialism and opposition to the war served to connect the politics of black liberation with socialist and radical liberal movements, YAWF [Youth Against War and Fascism] included. Sostre came to see the importance of an alliance between black militants and white radicals, which the peace movement could cement. . . . Sostre came to see the Viet Cong as heroic resistance fighters and he became convinced that he was engaged in the same struggle – on one front, as he saw it, of a global campaign.”) (footnotes omitted).

103. FRAME UP!, *supra* note 2; Schwartz, *supra* note 12, at 775; Anderson, *supra* note 2; Ervin, *Prison Revolutionary*, *supra* note 7 ; McLaughlin, *supra* note 2, at 2 (“When [Sostre] rented a storefront in the Black community and opened for business with a handful of radical books arranged on homemade shelves, the name he chose reflected both his black nationalist roots and his emerging internationalism: the Afro-Asian Bookshop.”); Gardner, *supra* note 62, at 8 (“Every penny he could save was set aside towards Sostre’s compelling dream: an Afro-American bookstore in the Buffalo ghetto. Finally after months of back-breaking labor Sostre was able to open the store, with the purpose of educating and politicizing the youth. Sostre worked lengthy hours in the store, fifteen hours a day, seven days a week.”).

104. Schaich & Hope, *supra* note 60, at 285; McLaughlin, *supra* note 2, at 4 (“[Sostre] dropped out of high school at an early age, learning his lessons on the Avenue instead of in the classroom, and consequently spending his youth in and out of trouble. It was during that time, however, that he first became aware of the National Memorial African Bookstore at 7th Avenue and 126th Street – Lewis Michaux’s celebrated ‘House of Common Sense and Home of Proper Propaganda.’”); Anderson, *supra* note 2 (“[Sostre] was inspired early on by Black speakers, thinkers

carvings, Black Nationalist and anti-war literature.¹⁰⁵ The bookstore quickly became a center for radical socialist, communist, anarchist, and Black Nationalist thought and a popular social spot in Buffalo's "Black ghetto" that over time became a "beacon of black liberation culture"¹⁰⁶ and a "mecca"¹⁰⁷ for local radical youth and other political dissidents.¹⁰⁸ For Sostre, the true mission and purpose of the bookstore was not profit, but educating, politicizing, and radicalizing young people.¹⁰⁹ Sostre's successful bookstore

and activists around the African National Memorial Bookstore on 125th street [sic.]").

105. Anderson, *supra* note 2 ("[Sostre's] bookstore would become a place where he cultivated resistance for an entire community. He sold radical books covering topics like Black nationalism and communism."); FRAME UP!, *supra* note 2 (local Buffalo resident remarking that Sostre's store was the only Black bookstore with anti-war literature); McLaughlin, *supra* note 2, at 1 ("[Sostre's] store was the place to find the writings of Douglass, DuBois, J. A. Rogers, and the autobiography of Malcolm X, but also the sort of publications that other local booksellers considered too subversive to sell. He boasted his was the only store in the region to hold the works of Castro, Che Guevara, Mao, Ho Chi Mihn [sic], and Robert F. Williams. His bookshop was, he claimed, a 'power base of revolutionary political philosophy.' . . . Tapping interests that flourished during the Black Power years, he also sold African-inspired jewelry, lithographs, and carved wooden artworks. And, with a feel for youth fashion, he laid out boxes of hip soul records, and played music to tempt people inside. When customers came looking for Sam and Dave's 'Hold on I'm Coming' or asking about the African statuettes in the window, Sostre talked with them about Malcolm X's message of black pride, and handed out antiwar pamphlets."), 10 ("[Sostre's] store became a local resource for antiwar activism and he stocked protest literature, including YAWF's magazine, *The Partisan*.") (footnote omitted).

106. McLaughlin, *supra* note 2, at 1.

107. Gardner, *supra* note 62, at 8 ("Slowly but surely [Sostre's] store became a mecca for the politically minded local youths who not only patronized it but actively attended the educational activities it sponsored.")

108. FRAME UP!, *supra* note 2; Ervin, *Prison Revolutionary*, *supra* note 7 ("Sostre's bookstore became a center of radical thought and political education in [Buffalo]."); Schaich & Hope, *supra* note 61, at 285 ("[Sostre] encouraged Black youth to gather and read, listen, or congregate for spiritual renewal and sustenance. The bookstore served as a symbol for the political and cultural aspirations of the Black community. From there, 'revolutionary seeds could be planted in the consciousness of the youth.' The bookstore functioned as a political and educational center.") (citation omitted); McLaughlin, *supra* note 2, at 11 ("[Sostre's] rhetoric enabled him to build a sense of cohesion around his store. He could appeal to students and to local youths alike and that enabled him to achieve something valuable and, in itself, remarkable: he brought those disparate groups together under one roof and around a common set of causes.")

109. Gardner, *supra* note 62, at 8 ("Though the store only grossed about sixty dollars a week, to Brother Sostre this was secondary. What was really important was that its patrons were gaining concrete knowledge of themselves and their precarious position[] in American society."); Schaich & Hope, *supra* note 60, at 285 ("It was Malcolm X whom Sostre found most appealing to the audience of Black youths. As the bookstore was a unifying symbol in Sostre's search for an active community, books were tools for the politically naïve—providing a way to act for the inert, and identity for the oppressed. His purpose was to create 'freedom fighters.'") (citations omitted); McLaughlin, *supra* note 2, at 8–9 ("[T]he real breakthrough came when he

business expanded rapidly, and he opened two more Buffalo locations by the summer of 1967.¹¹⁰

Martin's bookstore business was part of an emerging insurgent entrepreneurial trend of radical Black bookstores during the 1960s Black Power movement.¹¹¹ This trend among Black radicals and their ability to utilize a capitalist business model to facilitate education, radicalization, and Black community-building was particularly threatening to the socio-economic status quo, which relied heavily on poverty and non-ownership as delivery

saw youths gathered at a neighboring record store which played music through speakers. Sostre realized the potential He bought a record player and a clutch of records, and '[t]he reaction was instantaneous.' When the music played, 'heads turned toward the shop,' and more customers came by. Sostre quit his job at Bethlehem Steel and began working full-time at the store, 16 hours a day, seven days a week. When youths came looking for records, Sostre engaged them in political conversation. Sometimes he sold a book but, often, he let customers borrow copies or sit on the floor and read. . . . Sostre had a talent for talking with young people in a street-smart manner. He usually began by talking about Malcolm X. . . . Copies of his autobiography, and pamphlets and recordings of his speeches were Sostre's best sellers. Having hooked them with Malcolm X, Sostre would move on to Robert F. Williams, Kwame Nkrumah, or Mao. It all hinged on context, on creating what Sostre called 'soul atmosphere' by relating politics to black culture and 'careful blending of revolutionary literature, protest novels, traditional Negro histories, paintings by local artists, African carvings, tikis and lithographs, jazz and rhythm and blues records' Sostre's success rested on the free play of ideas that his store embodied. His was a populist approach that reflected an undogmatic intellectual eclecticism. His student visitors, for example, were impressed by his broad knowledge and command of current affairs, black and Asian literature, history, politics, and philosophy. It was the atmosphere of leftist intellectual permissiveness that provided Sostre with the opportunity to create a space for political dissent which local black youths and student radicals could both share.") (footnotes omitted), 12 ("Sostre wanted the Afro-Asian Bookshop to serve as a center for political action.").

110. Anderson, *supra* note 2; McLaughlin, *supra* note 2, at 1 ("At the height of his success, [Sostre] could be found at the store late into the night, playing records, deep in discussion.") (footnote omitted).

111. McLaughlin, *supra* note 2, at 3 ("Partly, what makes Sostre's story particularly compelling is its broader resonance. His political thinking and activism emerged from an intriguing confluence of older traditions of ghetto struggle and the emerging political concerns of the 1960s. His bookshop was inspired by earlier forms of nationalism, militant self-help, and business enterprise. It embodied Sostre's attempt to absorb, combine, and re-combine those established influences and to assimilate new ideas and ways of conceptualizing the relationship between black America and the world, racism and imperialism, and culture and politics. Part of Sostre's importance lies in the way he successfully fused Malcolm X and soul music, for example, or Mao Zedong and African lithographs, into a meaningful political message for a new generation. He was not alone in doing so, but his work in Buffalo offers us an insight into the roots of Black Power culture and the African-American search for self-definition during the 1960s."), 7-8 ("Sostre's business was part of a peculiar insurgent strand of black enterprise: the black bookshop movement. Bookshops were a key part of the Black Power movement. During the 1960s-70s, they helped disseminate new ideas and served as important local centers of debate and activism.") (footnotes omitted).

systems for racial oppression.¹¹² Buffalo, like cities around the country, was determined to clamp down on both the Black Power movement and communism, seeing these movements as the greatest political threat to the inherited ruling power of the rich white elite that was now being questioned on a mass scale in the 1960s.¹¹³ After Sostre moved to Buffalo, the city had become increasingly aggressive with targeting, surveillance, and suppression of Black radicals, suspected communists, and anti-war activists.¹¹⁴

During the last weekend of June 1967, a series of race riots occurred in Buffalo¹¹⁵ “in response to the many manifestations of institutional racism like unemployment, housing discrimination

112. *Id.* at 7 (“Enterprise need not necessarily prioritize profit and self-interest at the expense of (or above) other social and cultural objectives. . . . Sostre’s business strategy put him in line with an emerging trend. Floyd McKissick of the Congress of Racial Equality (CORE), for example, believed entrepreneurialism would be the driving force behind a political transformation, too: he envisaged the construction of a black-owned model community, Soul City, and hoped black corporations could ultimately ‘reclaim’ ghetto businesses and form the basis of political power.”) (footnote omitted), 9 (“Sostre believed he had struck upon a vital form of political activism: ‘militant Black leaders must organize, in their totality, all of the indigenous cultural forces that have meaning for and give substance to the[ir] outlook.’ For other aspiring political entrepreneurs, he estimated a similar operation could be established using his method for as little as \$600.”) (footnote omitted).

113. *Id.* at 8 (“Sostre’s was not the only store to suffer repression: police officers firebombed, smashed, and flooded Vaughn’s bookstore during the Detroit uprising of 1967; FBI surveillance forced Drum and Spear to fold in a climate of intimidation.”) (footnote omitted).

114. *Id.* at 3 (“During the 1960s, newly reinvigorated police ‘red squads’ and the FBI mobilized against black militancy and antiwar activism.”), 13 (“The growth of antiwar protest and black militancy in the 1960s vexed the conservative political establishment of Buffalo, a city that . . . ‘has never been kind to radicals.’ . . . In 1964, the year Sostre arrived, Buffalo was undergoing one of its periodic anticommunist drives as HUAC scheduled a visit to root out the Maoist Progressive Labor Movement. It was also the year of the first ‘long, hot summer’ of urban unrest in the North when riots struck Harlem, Bedford-Stuyvesant, and elsewhere – including Rochester. FBI Director J. Edgar Hoover reacted by demanding expanded FBI surveillance and closer liaison with police departments. It signaled renewed surveillance across America and, locally, Buffalo’s sentinels stirred.”) (footnotes omitted).

115. Schwartz, *supra* note 12, at 775; Schaich & Hope, *supra* note 60, at 283; McLaughlin, *supra* note 2, at 12 (“The situation flew out of control on 27 June after police officers confronted a group of youths. The officers lost their tempers and discipline crumbled. They set about clearing the streets and, as residents put it, became ‘stick happy.’ Angry youths responded by bombarding the police with rocks, bottles, and Molotov cocktails. The police replied with batons, buckshot, and a choking fog of tear gas. . . . Street-fighting continued and looters moved in on smashed-open stores. Disorder broke out the next day, and the next, and the next, and the pattern of window-breaking, looting, fire-setting, and clashes was repeated. Remarkably, no one was killed, but dozens of people were left injured.”) (footnotes omitted).

and police brutality.”¹¹⁶ During the riots, “[Sostre’s] bookstore became safe haven for people to escape tear gas and police batons.”¹¹⁷ Sostre was not only blamed for the riots but actively framed for them.¹¹⁸ Police saw the riots as an opportunity to scapegoat Sostre and punish him for distributing radical books and spreading revolutionary ideas at his bookshop.¹¹⁹

116. Anderson, *supra* note 2.

117. *Id.* (“When revolt hit Buffalo, Sostre was there doing the work he knew best: teaching, distributing radical literature to the Black community — especially young people — and providing context to the situation at hand. Sostre organized through education and supported the uprising using the methods he had learned from the orators, teachers and street-level militants during his youth in Harlem. . . . He would give out lessons and liberation literature to the people hanging out in his store, which the authorities perceived as a threat. It remained open and packed well into the night as people rebelled against police forces.”); McLaughlin, *supra* note 2, at 6 (“Sostre’s ambition was to establish his store as a center for ghetto youths, and that holds the key to understanding his activist strategy. . . . Sostre addressed himself to that younger generation and presented himself as their spokesman. He derided efforts by community leaders to calm the riot with offers of employment: young people wanted more than ‘those hot and dirty, low-paying jobs,’ he argued; they wanted ‘justice’ and a fair share. He saw youths as tinder for a revolutionary fire. The key question of the moment, he wrote, was therefore how ‘to command the allegiance of the militant Black youth.’ His answer was the Afro-Asian Bookshop.”) (footnote omitted), 12 (“It was during the tense period leading to the riot that Sostre noticed a growing interest in his store. . . . [I]n the week of the riot, Sostre remained open through the early hours, providing ‘refuge [...] for many passers-by’ and ‘freedom fighters’ — meaning rioters. As street battles raged, he held forth, ‘made political hay in denouncing [...] police brutality,’ and pointed out the relevance of his books. . . . It was the perfect circumstance to sell radical publications. . . . Simultaneously, he added, he ‘create[d] several new freedom fighters.’”) (footnotes omitted).

118. Ervin, *Prison Revolutionary*, *supra* note 7 (“A Black ‘riot’ against police brutality of a Black youth broke out . . . and Sostre was blamed for this rebellion since many youth visited his bookstore.”); McLaughlin, *supra* note 2, at 12 (“While his prison correspondence was (perhaps cautiously) ambiguous, his claim that he had created ‘freedom fighters’ during the uprising could well be taken to imply that he had exhorted youths to join in. The police claimed he went even further. According to a police witness, a 15-year-old boy, Sostre prepared Molotov cocktails in his basement and urged youths to ‘get out there and start these fires.’ He allegedly said, ‘don’t mess with none of the soul brothers and sisters;’ they should target white-owned businesses. At Sostre’s behest, allegedly, they firebombed the Woodlawn Tavern, opposite the bookstore, the Florida Food Market, and (unsuccessfully) the Pine Grill. Such evidence must be treated with extreme skepticism for the young witness would likely have confessed to anything while in the intimidating surroundings of a police station.”).

119. FRAME UP!, *supra* note 2; McLaughlin, *supra* note 2, at 14 (“After the June riot, officers took the opportunity for retribution when a fire broke out at a tavern next to the Afro-Asian Bookshop. As the blaze came under control, they smashed the windows of Sostre’s store and had the firemen turn the hoses on his shelves inside, destroying the books. Gerald Gross gathered donated books and restocked while Sostre put plywood over the windows and pasted up radical articles, cartoons, photographs of the Buffalo uprising, and antiwar publicity. Naturally, it did nothing to mollify the police. People came by the store at night to tear his posters down.”); Anderson, *supra* note 2 (“[Sostre] grew to be recognized as an educator among community members who used his shop as a space for learning and fellowship. This

On July 14, Sostre and his coworker Geraldine Robinson were arrested on riot and drug charges when the FBI and Buffalo Police Department raided Sostre's bookstore.¹²⁰ At his arraignment hearing, Sostre was charged with possession and sale of narcotics, assaulting two policemen, inciting a riot, and arson.¹²¹ His charges were amended the following day to heroin possession and sale based on police informant testimony that the witness later recanted and trumped-up police testimony that turned out to be physically impossible.¹²² In 1974, Pacific Street Film Collective would debut a

was at odds with the Buffalo Police Department who threatened Sostre for his actions. He was politicizing Black youth at a time when the state was increasingly concerned and surveilling proponents of anti-capitalist, Black empowerment across the United States."); Gardner, *supra* note 62, at 18 ("The influence and importance of [Sostre's] shop was not taken lightly by the reactionary white citizenry of Buffalo. It soon became the target of investigations. FBI agents visited the store and questioned Sostre on his motive for selling revolutionary literature. A short time later two city detectives . . . interrogated Sostre about his store. During the summer of 1967[,] the Buffalo Black community erupted in rebellion. During these days Sostre allowed the store to be used as a haven for those fleeing tear gas and bullets. *This was apparently the culminating incident which stamped Sostre as an enemy to be destroyed, in the eyes of the police.*") (emphasis added).

120. Ervin, *Prison Revolutionary*, *supra* note 7 ("The city cops and white political establishment chafed at Sostre's organizing and political education, and decided to shut him down. They arrested him on July 14, 1967, along with a bookstore coworker, and charged them with 'sale of narcotics, riot, arson, and assault.' These were totally frame-up charges."); Anderson, *supra* note 2 ("Eventually, authorities resolved to deal with the defiant Sostre by attacking and ransacking his store. He and Geraldine Robinson (his co-defendant) were imprisoned on narcotics and riot charges."); Gardner, *supra* note 62, at 8; McLaughlin, *supra* note 2, at 2 ("When rioting erupted in Buffalo's Black community in the summer of 1967, Sostre could not resist the temptation to get involved. The authorities, who had long viewed his store with suspicion, moved against him. In one of the era's many now-notorious counterintelligence operations, a combined force of FBI and police officers raided the bookstore, planted heroin on the premises, arrested Sostre, and charged him with dealing narcotics – and, almost as if it were an afterthought, with arson and incitement to riot."), 13 ("It was the last [Sostre] would see of the Afro-Asian Bookshop."), 14 ("Sostre had been at liberty for less than three years by the time of his arrest.").

121. Schaich & Hope, *supra* note 60, at 281; Hess, *supra* note 2; Gardner, *supra* note 62, at 8.

122. Sostre, *The New Prisoner*, *supra* note 12, at 242–43 ("[Sostre's] conviction was based on the most spurious of evidence: the testimony of a convicted drug dealer, who subsequently submitted an affidavit indicating that he had perjured himself at the request of the District Attorney and a conveniently 'missing' motion picture film that was allegedly taken through a window that turned out to be boarded up at the time."); Gardner, *supra* note 62, at 18 ("Several facts were uncovered during and after the trial which indicate that Martin Sostre was framed. At the time of the supposed filming of a heroin transaction, plywood panels completely covered the front of the store. A professional filmmaker testified that even with a high quality zoom lens he could only see about a foot in the store if shooting from the cite where the police took the picture. The alleged drug transaction however took place twenty-five feet within the store."). Affidavits filed by police regarding the details of the transaction were wildly inconsistent, including conflicting accounts of whether an

documentary on Sostre called *Frame Up! The Imprisonment of Martin Sostre*, which was released when Sostre was still in prison and included an interview with Arto Williams, the police informant and star prosecution witness whose testimony was used to convict Sostre in 1968.¹²³ During the interview, Williams would describe in detail how Sostre was framed by Buffalo police for possession and sale of narcotics and the part Williams played in the set-up.¹²⁴ After this information came to light, “Sostre’s lawyers immediately filed a motion for a new trial, [but] this motion was denied.”¹²⁵ While the charges of arson and inciting a riot were ultimately dropped,¹²⁶ Sostre was indicted on drug and assault charges on August 9, 1967.¹²⁷

Shortly after Sostre was arrested, Buffalo police commissioner Frank N. Felicetta went to Washington, D.C. to testify at a Senate Internal Security Subcommittee, where he referred to Sostre as “Martin X,” labeled Sostre “a prominent figure in the recent disorders of our city,”¹²⁸ and lied about Sostre having been “arrested for possession of and dealing in illegal narcotics” while serving in

officer had witnessed a “glassine envelope” being passed between hands in a drug deal. The officer who claimed to have been conducting surveillance on Sostre’s bookstore when the alleged transaction took place had no film in his camera at the time, so he had no photographic evidence of the transaction occurring. Additionally, although the officer was stationed about eighty feet away from the store while conducting this surveillance, he claimed that he could see the bookstore clearly through his camera lens. FRAME UP!, *supra* note 2.

123. FRAME UP!, *supra* note 2 (describing that Arto Williams filed a 1971 affidavit recanting his original testimony given at Sostre’s trial that assisted the Buffalo police in deliberately framing Sostre); McLaughlin, *supra* note 2, at 17.

124. Anderson, *supra* note 2 (“In 1971 the primary ‘witness’ against Sostre recanted his testimony and admitted he had helped frame Sostre so he himself could be released from jail.”).

125. Gardner, *supra* note 62, at 18; Hess, *supra* note 2; Schwartz, *supra* note 12, at 775; McLaughlin, *supra* note 2, at 17 (“In May 1973, Arto Williams exposed the police conspiracy and, although Sostre’s sentence was not reversed, it was revealed as a miscarriage of justice.”); Schaich & Hope, *supra* note 60, at 281–82 (“The only witness for the state, Arto Williams, a known drug addict, testified that he bought the heroin from Sostre. But in May of 1973, Williams admitted perjuring his original testimony, claiming a deal was made with police for his own release. His second testimony was ruled ‘unworthy of belief’ and dismissed. Judge J. Curtin stated ‘there was no reason not to believe the police officers[.]’”) (citation omitted); FRAME UP!, *supra* note 2 at 23:46–24:00 (“The state produced a series of legal precedents indicating even if [the informant] lied [at trial and] the police and prosecution were not aware of that fact at the time of the trial, then the conviction should not necessarily be overturned.”).

126. Hess, *supra* note 2; Anderson, *supra* note 2; Gardner, *supra* note 62, at 8; McLaughlin, *supra* note 2, at 2; Schaich & Hope, *supra* note 60, at 281; FRAME UP!, *supra* note 2.

127. FRAME UP!, *supra* note 2.

128. *Id.*

the Army.¹²⁹ Local newspapers, including the Buffalo Evening News and the Courier Express, characterized Sostre as a “dangerous black militant and white-hater,” “a leader of the ghetto rebellion,” and numerous other defamatory portrayals.¹³⁰

Because Sostre could not afford the bail that was set,¹³¹ he was forced to remain imprisoned for eight months before his trial began.¹³² While representing himself at trial, Sostre was found in contempt of court¹³³ and gagged because his zealous defense of himself was too “confrontational.”¹³⁴ In March 1968, Sostre was

129. *HUAC Hearing*, *supra* note 51; McLaughlin, *supra* note 2, at 13 (“So far as the city’s Police Commissioner Frank Felicetta was concerned, the impetus for protest was obvious: ‘joining the issues of civil rights and the war in Vietnam,’ he told the House Un-American Activities Committee (HUAC) in 1968, ‘is standard Communist practice.’ Such demagoguery was a staple of police officers eager . . . to ‘strike in dramatic ways at the radical or ghetto enemy and to play the role of savior.’ In Buffalo’s local press (and HUAC), Felicetta found an eager audience.”) (footnote omitted).

130. *FRAME UP!*, *supra* note 2; Gardner, *supra* note 62, at 18 (“During this time of his imprisonment the police department and Buffalo News repeatedly proclaimed Sostre’s guilt and whipped up a racist hysteria among Buffalo’s white citizenry.”); Schaich & Hope, *supra* note 60, at 283–84 (“After Sostre’s arrest, Buffalo newspapers quoted police officials who portrayed Sostre as a major instigator of the riots. The media created image of a black man connected to both riots and drugs clearly emerged early in the case with the July 16 headline: ‘Police Tie Sostre to Dope Sales/Suspect Linked to Disorders’ (Courier Express, July 16, 1967[]). Among many unsubstantiated accusations was Police Chief Michael Amico’s charge that ‘Sostre conducted a \$15,000 weekly business in illegal narcotics traffic’ (Courier Express, July 16, 1967[]). Sostre’s past was described as ‘deeply rooted in violence,’ with loaded images of Muslim Black Power, Black Nationalism, subversion, arson, and looting (Buffalo Evening News, July 15, 1967[]; July 18[]; August 4[]; August 5[]; August 8[]; Courier Express, July 15, 1967[]; July 16[]; July 18[]). Police Commissioner Felicetta’s Senate testimony was quoted: ‘Martin X [Sostre] planned to use the fires to force white owners to sell out to him cheap’ (Buffalo Evening News, August 5, 1967[]). Furthermore, Felicetta claimed that ‘Mr. X’ taught 13 to 16 year old boys in a ‘school’ to ‘make Molotov cocktails’ (Buffalo Evening News, August 5, 1967[]; August 4[]). The Commissioner reported unconfirmed stories about Sostre’s ‘plans . . . to loot and burn and assault any white persons . . . Mr. X said he hated all whites and colored police’ (Buffalo Evening News, August 5, 1967[]; August 4[]). Sostre was publicly stigmatized by a negative and sinister image. The image passed from police to the public through the media.”).

131. *FRAME UP!*, *supra* note 2.

132. McLaughlin, *supra* note 2, at 14; Schaich & Hope, *supra* note 60, at 281 (“Unable to raise \$50,000 in bail (later reduced to \$25,000), Sostre remained locked in the County Jail until his trial.”); Gardner, *supra* note 62, at 8.

133. Schwartz, *supra* note 12, at 775 (“Sostre served as his own defense counsel and drew a 30-day contempt sentence because of his exchanges with the court.”).

134. McLaughlin, *supra* note 2, at 14 (“[Sostre] refused to cooperate with the trial and instead used the court to proselytize. ‘You might as well get the rope and hang this nigger,’ he told the judge; ‘this is what this is, a regular lynching.’ He called the judge a fascist, a Hitler; he called the police ‘Gestapo.’ During one hearing, the judge gagged Sostre as he railed against the establishment: ‘You are going to get another Vietnam right here!’ and ‘racist Buffalo is going to burn!’ It was to be his swansong.”) (footnotes omitted); Anderson, *supra* note 2 (“Sostre was gagged in court but was

convicted by an all-white jury in less than an hour and sentenced to serve “thirty to forty years for selling narcotics, followed by thirty days further imprisonment for contempt of court.”¹³⁵ In 1971, Sostre’s arrest and prosecution was shown to be orchestrated under COINTELPRO, of which Sostre was a target.¹³⁶

IV. The Motley Cases

I cannot submit to injustices, even minor ones. Once one starts submitting to minor injustices and rationalizes them away, their accumulation creates a major oppression. That’s how entire people fell into slavery.

Martin Sostre¹³⁷

Sostre spent the first night of his sentence alone on an empty cell block in Attica Prison.¹³⁸ Sostre immediately tried to file an application for a certificate of reasonable doubt, which he had already prepared in anticipation of his fraudulent conviction, but an Attica guard refused to mail it.¹³⁹ The very next day, Sostre was transferred to Green Haven Prison and placed in solitary confinement.¹⁴⁰ After several days in solitary, Sostre was briefly admitted into the general population and allowed to mail his

unfazed by what he described as a ‘foolish’ attempt to silence him. He later wrote that he was demonstrating ‘the weakness of this fascist beast’ in the courtroom and encouraged Black people to look at what he was doing to the oppressor. Sostre promised to be consistently confrontational, and from prison, he encouraged Black people to ‘Defy white authority!’ setting an example through his actions.”)

135. Sostre v. McGinnis, 442 F.2d 178, 181 (2d Cir. 1971); Ward Churchill & Jim Vander Wall, *AGENTS OF REPRESSION: THE FBI’S SECRET WARS AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* 61 (South End Press 1990); Hess, *supra* note 2; McLaughlin, *supra* note 2, at 2, 14; Ervin, *Prison Revolutionary*, *supra* note 7; FRAME UP!, *supra* note 2; Schwartz, *supra* note 12, at 775; Gardner, *supra* note 62, at 18 (“Sostre had a speedy trial lasting only three days. [H]e was . . . convicted of sale and possession of narcotics and given a sentence of 30 to 41 years. Despite the fact that Buffalo has a substantial Black citizenry, the jury was all white.”); Schaich & Hope, *supra* note 60, at 281 (“[Sostre] was convicted by an all-white jury for selling \$15 worth of heroin and sentenced to prison for 31 to 41 years.”).

136. Churchill & Wall, *supra* note 135, at 61 (“Some of the worst examples of FBI-engineered convictions are: black anarchist Martin Sostre, imprisoned for thirty to forty-one years for selling narcotics from his radical bookstore/meeting place in Buffalo, New York (Sostre was head of a community anti-drug campaign)[.]”); McLaughlin, *supra* note 2, at 17 (“In 1975, the Church Senate investigation shone light on the Bureau’s counterintelligence operations and, after that, it became harder to justify keeping prisoners like Sostre locked away.”) (footnote omitted).

137. Schaich & Hope, *supra* note 60, at 288.

138. Sostre v. Rockefeller, 312 F. Supp. 863, 866 (S.D.N.Y. 1970); McLaughlin, *supra* note 2, at 14.

139. Sostre v. Rockefeller, 312 F. Supp. at 867.

140. *Id.*

application before he was sent back to solitary confinement for “having dust on his cell bars.”¹⁴¹ He remained there for more than a year.¹⁴² Sostre “lost 124 1/3 days of ‘good time’ credit,” which can potentially benefit parole and release decisions as a result of a prison policy that precluded prisoners from earning such credit while in “punitive segregation,” another term for solitary confinement.¹⁴³

In 1969, Sostre sued Governor Nelson A. Rockefeller, state corrections commissioner Paul D. McGinnis, and two prison officials in *Sostre v. Rockefeller* (1969).¹⁴⁴ In his handwritten complaint, Sostre alleged First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment violations.¹⁴⁵ These violations stemmed from censorship of his mail and legal correspondence, suppression of his political speech and expression, denial of an opportunity to earn “good time” credits without notice or a hearing, and the reasons, conditions, and length of his solitary confinement.¹⁴⁶ This case and its follow-up, *Sostre v. Rockefeller* (1970),¹⁴⁷ came before the Honorable Constance Baker Motley,¹⁴⁸ who was the first Black

141. *Id.* at 869 (“The day after plaintiff’s court-ordered release from segregation, July 3, 1969, he was again disciplined. This time he was charged with having dust on his cell bars. The punishment was to confine him to his cell for several days . . . This court finds that this charge and punishment were imposed upon Sostre in retaliation for his legal success.”); Schwartz, *supra* note 12, at 778 (“On the day he was released from segregation, he was punished by being confined in his cell for several days, ‘ostensibly because “dust” was found on his cell bars.’”) (footnote omitted).

142. *Sostre v. Rockefeller*, 309 F. Supp. 611, 612 (S.D.N.Y. 1969); *Sostre v. Rockefeller*, 312 F. Supp. at 867 (“On June 25, 1968, Sostre was back in solitary confinement . . . He remained in such confinement until July 2, 1969, when he was returned to the general population pursuant to a temporary restraining order issued by this court in the present action, followed by a preliminary injunction.”) (citations omitted).

143. *Sostre v. Rockefeller*, 312 F. Supp. at 868, 872 (“As a result of his confinement, plaintiff lost 124 1/3 days of good time which might otherwise have been applied both to hasten consideration of his eligibility for parole and in mandating his release on parole.”) (citations omitted); Schwartz, *supra* note 12, at 778.

144. *Sostre v. Rockefeller*, 309 F. Supp. at 611.

145. *Sostre v. McGinnis*, 442 F.2d 178, 181 (2d Cir. 1971).

146. *Sostre v. Rockefeller*, 309 F. Supp. at 611; *Sostre v. Rockefeller*, 312 F. Supp. at 863; McLaughlin, *supra* note 2, at 16 (“[Sostre] filed his handwritten complaint—under the 1871 Civil Rights Act[]—and challenged the warden’s decision to send him into solitary confinement and the confiscation of his legal books and political texts.”).

147. *Sostre v. Rockefeller*, 312 F. Supp. at 863.

148. *Sostre v. Rockefeller*, 309 F. Supp. at 612; *Sostre v. Rockefeller*, 312 F. Supp. at 866.

woman to serve as a federal judge.¹⁴⁹ These cases were part of a larger trend of federal cases examining state prison practices.¹⁵⁰

The facts of the *Rockefeller* cases were focused around an interview of Sostre by Green Haven Prison Warden Harold Follette in his office.¹⁵¹ In the interview, Follette accused Sostre of providing legal assistance to other incarcerated individuals without a license, confronted him about a letter Sostre had written to his sister in which he referenced the Republic of New Africa (RNA) organization—which Follette deemed suspicious—and refused to mail Sostre’s legal correspondence to his attorney.¹⁵² Sostre refused to answer Follette’s questions regarding the RNA.¹⁵³ Follette cited

149. Anderson, *supra* note 2; *Constance Baker Motley: Judiciary’s Unsung Rights Hero*, U.S. COURTS (Feb. 20, 2020), <https://www.uscourts.gov/news/2020/02/20/constance-baker-motley-judiciary-unsung-rights-hero> [https://perma.cc/5463-TMSB] (“[F]rom the late 1940s through the early 1960s, Motley played a pivotal role in the fight to end racial segregation, putting her own safety at risk in one racial powder keg after another. She was the first African American woman to argue a case before the Supreme Court, and the first to serve as a federal judge. For all her achievements, Motley’s legacy has receded with time—at least outside the federal Judiciary, where she is revered by the many judges and clerks she mentored. During Black History Month, she is celebrated far less often than Thurgood Marshall, whom she served as a key lieutenant, and Martin Luther King, Jr., whom Motley represented at critical moments As a front-line lawyer for the NAACP Legal Defense and Educational Fund, Motley personally led the litigation that integrated the Universities of Georgia, Alabama, and Mississippi among others—overcoming Southern governors who literally barred the door to African American students. She opened up schools and parks to African Americans, and successfully championed the rights of minorities to protest peacefully Along the way, she experienced countless courtroom delays and indignities. Motley kept her cool, even as some judges turned their backs when she spoke Those who remember Motley best have varied explanations of how she found the courage and tenacity to dismantle Southern race laws. But they agree that Motley exhibited supreme calm and confidence throughout her career Even as Motley prepared her autobiography, she stayed characteristically humble about her legacy”).

150. Schwartz, *supra* note 12, at 776 (“Led to some extent by Federal District Judge Constance Baker Motley’s opinion in *Sostre v. Rockefeller* [312 F. Supp. 863 (2d Cir. 1970)] in May, 1970 . . . federal judges in New York and elsewhere had begun to look critically at numerous prison practices. At the same time, federal and state judges began to protest the ‘tidal wave’ of Civil Rights Act cases brought by prisoners and others.”) (citations omitted).

151. *Sostre v. Rockefeller*, 312 F. Supp. at 867 (“[Sostre] was called to the office of defendant Follette, Warden of Green Haven Prison, who had the papers on his desk. The Warden asked Sostre whether he had a license to practice law, to which he replied in the negative. The Warden admittedly denied Sostre the right to prepare legal papers for his codefendant, since he was not a licensed attorney, and flatly refused to mail out the motion papers.”) (citation omitted).

152. *Id.*

153. *Id.* (“Warden Follette questioned Sostre about a reference in his letter to his attorney about an organization known as R.N.A. (Republic of New Africa) ‘because defendant Follette was concerned about a statement in plaintiff’s May 19, 1968 letter to his sister.’ This statement reads: ‘As for me, there is no doubt in my mind whatsoever that I will be out soon, either by having my appeal reversed in the courts

Sostre's refusal to cooperate and answer questions, the content of the letter to his sister, his jailhouse lawyering activities, his sharing of law books with other prisoners, and supposed evidence of a plan by Sostre to break out of prison as justification for his decision to place Sostre in solitary confinement.¹⁵⁴

Sostre was punished for trying to mail out a motion for his codefendant, who was also incarcerated and did not have her own lawyer.¹⁵⁵ Follette cited precedent from a New York Court of Appeals decision¹⁵⁶—which held that prisoners can only write to their attorneys about legal matters relating specifically to their own case or their own treatment while incarcerated—as justification for his refusal to mail the legal document and his subsequent punishment of Sostre.¹⁵⁷ Sostre contended that the warden's refusal

or by being liberated by the Universal Forces of Liberation. The fact that the militarists of this country are being defeated in Viet Nam and are already engaged with an escalating rebellion in this country by the oppressed Afro-American people and their white allies are sure signs that the power structure is on its way out. They are now in their last days and soon they won't be able to oppress anybody because they themselves will be before the People's courts to be punished for their crimes against humanity as were the German war criminals at Nuremberg.”) (citation omitted).

154. *Sostre v. Rockefeller*, 309 F. Supp. at 612 (“Plaintiff was placed in the segregation unit of the prison on June 25, 1968, because of disciplinary infractions. These infractions consisted of ‘threats and boasts that he would escape from the custody of correctional authorities; the presence of contraband material in his cell, consisting of two large pieces of emery board, adaptable for the fashioning of a key or lock picking tool; and disposing of his personal law books to other prisoners in violation of (prison) regulations;’ as well as refusing to answer ‘questions put to him by prison authorities regarding his alleged recruitment of other prisoners for an organization suspected to be fomenting insurrection within (the) institution;’ ‘engaging in unlawful correspondence by mail with unknown persons;’ and ‘preparing legal papers on behalf of one Geraldine Robinson.”) (citation omitted); *Sostre v. Rockefeller*, 312 F. Supp. at 867–68; Gardner, *supra* note 62, at 8 (“[Sostre] was put in solitary confinement for: 1) practicing law without a license (Sostre prepared a motion for changing venue of his co-defendant and shared law books with fellow inmates); 2) refusal to answer questions about the separatist Republic of New Africa; 3) telling his sister that he would be out soon, either by having his appeal reversed in the courts or being liberated by the ‘Universal Forces of Liberation.”).

155. McLaughlin, *supra* note 2, at 15 (“Soon after arriving at Green Haven prison, Sostre attempted to take a hand in his own legal defense and to offer help to Geraldine Robinson, who had no lawyer of her own. The prison authorities stood in his way. When he drafted an application for a stay of trial for Geraldine and sent it, with two other documents, to his lawyer Joan Franklin, the Warden intercepted his mail and held it back. He summoned Sostre to his office, warned him that he was ‘practicing law without a law degree,’ refused to let him have a letter Franklin had sent to him, confiscated his legal books, and sent him into solitary confinement.”) (footnote omitted).

156. *Brabson v. Wilkins*, 227 N.E.2d 383 (2d Cir. 1967).

157. *Sostre v. Rockefeller*, 312 F. Supp. at 870 (“The Warden claims he relied upon the decision of the New York Court of Appeals in *Brabson v. Wilkins* in denying plaintiff the right to prepare and mail out a motion for his codefendant and in

to mail his legal correspondence was arbitrary and capricious and violated his rights under the Fourteenth Amendment as well as his Sixth Amendment right to effective assistance of counsel.¹⁵⁸ Motley agreed with the dissent that the level of discretion afforded to the warden in limiting prisoners' legal communications "unnecessarily interfere[s] with and endanger[s] this prisoner's right to communicate with his attorney and governmental officials having either jurisdiction over the penal system or the power and authority to correct conditions existing therein."¹⁵⁹ Additionally, Motley held that the right of prisoners to seek relief from courts or government officials for grievances or abuses while incarcerated is so significant that it outweighs the risk of prison rules being broken as a result of prisoners' legal communications.¹⁶⁰ Moreover, there are certain rights that are inalienable even while incarcerated, and the right to petition the courts is one of them.¹⁶¹

Follette claimed to be authorized under state law to sentence Sostre to solitary confinement.¹⁶² Motley saw through this hubristic defense, pointing out that "[t]here is nothing in this statute which authorized Follette to punish [the] plaintiff for exercising his constitutional rights."¹⁶³ Despite the compromised status of prisoners' constitutional protections, she wrote, there is no administrative or disciplinary need great enough to justify a total

punishing him for this act."), 873 ("In support of his position, the Warden relies upon *Brabson v. Wilkins*, which upheld the right of the prior Warden at Attica Prison to intercept and withhold from a prisoner communications to and from an attorney dealing with matters other than 'legality of detention and treatment received.'" (citation omitted).

158. *Id.* at 873.

159. *Id.*

160. *Id.* at 874 ("[T]he right of a prisoner to unexpurgated communications with his attorney is so significant that it outweighs the danger of frustration of prison rules regarding outside activities in the rare case where an attorney—an officer of the court—would assist a prisoner in avoiding legitimate prison regulations.").

161. *Id.* at 873 ("There is no question that defendants cannot unreasonably restrict the right of plaintiff to apply to the state court for relief . . . ' (A) right of access to the courts is one of the rights a prisoner clearly retains. It is a precious right, and its administratively unfettered exercise may be of incalculable importance in the protection of rights even more precious.'" (citations omitted), 874 ("[P]risoners do retain certain constitutional rights in prison: The right of an individual to seek relief from illegal treatment or to complain about unlawful conduct does not end when the doors of a prison close behind him. True it is that a person sentenced to a period of confinement in a penal institution is necessarily deprived of many personal liberties Among the rights of which he may not be deprived is the right to communicate, without interference, with officers of the court and governmental officials; with those persons capable of responding to calls for assistance.").

162. *Id.* at 888.

163. *Sostre v. Rockefeller*, 312 F. Supp. at 888–89.

denial of prisoners' due process rights.¹⁶⁴ Motley went on to outline what it would take to make the state statute cited by Follette constitutional, including a fifteen-day maximum for solitary confinement that could "be imposed only for serious infractions" after providing the minimum procedural due process safeguards which all prisoners are constitutionally entitled to receive.¹⁶⁵

Sostre claimed that his punishment of solitary confinement and subsequent loss of "good time" credits violated his procedural due process rights under the Fourth and Fifth Amendments in that he received no notice of the charges against him, was not given an opportunity to be heard, and was denied the option of legal representation, among other reasons.¹⁶⁶ The minimum due process procedural safeguards that Sostre was entitled to before being sentenced to punitive segregation included: (1) written notice; (2) a hearing; (3) a written record; and (4) retaining counsel.¹⁶⁷ Because

164. *Id.* at 872-73 ("A prisoner carries with him to prison his right to procedural due process which applies to charges for which he may receive punitive segregation or any other punishment for which earned good time credit may be revoked or the opportunity to earn good time credit is denied . . . [B]asic constitutional rights cannot be sacrificed, even in the case of prisoners, 'in the interest of administrative efficiency.'") (citations omitted).

165. *Id.* at 868 ("This court finds that punitive segregation under the conditions to which plaintiff was subjected at Green Haven is physically harsh, destructive of morale, dehumanizing in the sense that it is needlessly degrading, and dangerous to the maintenance of sanity when continued for more than a short period of time which should certainly not exceed 15 days."), 871 ("In order to be constitutional, punitive segregation as practiced in Green Haven must be limited to no more than fifteen days and may be imposed only for serious infractions of the rules."), 889 (citing AM. CORR. ASS'N, MANUAL OF CORRECTIONAL STANDARDS 414-15 (3d ed. 1966)).

166. *Id.* at 871-72 ("Plaintiff claims that his confinement to segregation for more than a year was effected in violation of his right not to be deprived of his liberty without due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Federal Constitution, in that: 1) he was sentenced to such confinement for offenses which under the rules of the prison did not constitute offenses; 2) with respect to the charge involving the emery paper there was no proof that he had such paper in his possession; 3) he did not receive advance written notice of the charges; 4) he was denied the right to assistance of counsel or a counsel substitute; 5) he was denied the right to call witnesses in rebuttal of the charges; 6) he was denied the right to confront or cross-examine witnesses; 7) there were no written records of the disciplinary proceedings against him other than a notation of the charges, plaintiff's plea, and defendants' summary determination of guilt; [and] 8) the right to appeal and the ability to make a meaningful appeal were denied as a result of the omission of his right to counsel, to call and cross-examine witnesses, and to have a written record.").

167. *Id.* at 872 ("Before plaintiff could have been constitutionally 'sentenced' to punitive segregation, he was entitled to: 1) written notice of the charges against him (in advance of a hearing) which designated the prison rule violated; 2) a hearing before an impartial official at which he had the right to cross-examine his accusers and call witnesses in rebuttal; 3) a written record of the hearing, decision, reasons therefor and evidence relied upon; and 4) retain counsel or a counsel substitute.").

he received none of those things, the court held that Sostre was wrongly denied the minimum level of required due process protection regarding his extreme punishment.¹⁶⁸

On the issue of cruel and unusual punishment, the court held that Sostre's punishment was grossly disproportionate to his offense.¹⁶⁹ Moreover, there was no sign whatsoever indicating a coming release from solitary confinement—indicating that were it not for Sostre's legal claim, he would probably still be there.¹⁷⁰ Motley simply did not buy Follette's story concerning Sostre's attitude of obstinate insubordination and went further to say that, even if it were true, the punishment that was imposed was still wildly disproportionate.¹⁷¹ In addition, the court found no valid justification for Follette's refusal to mail Sostre's letter.¹⁷² Rather, the court found, under the totality of the circumstances, that:

Sostre was sent to punitive segregation and kept there until released by court order not because of any serious infraction of the rules of prison discipline, or even for any minor infraction, but because Sostre was being punished specially by the Warden because of his legal and Black Muslim activities during his 1952-1964 incarceration, because of his threat to file a law suit against the Warden to secure his right to unrestricted correspondence with his attorney and to aid his codefendant

168. *Id.* (“This court holds that plaintiff was, in effect, ‘sentenced’ to more than a year in punitive segregation without the minimal procedural safeguards required for the imposition of such drastic punishment upon a prisoner. This punishment not only caused plaintiff physical deprivation, needless degradation, loss of work, training and self improvement opportunities, and mental suffering, but materially affected the length of time he must serve under his courtimposed [sic] sentence.”).

169. *Id.* at 871 (“The conditions which undeniably existed in punitive segregation at Green Haven, this court finds, ‘could only serve to destroy completely the spirit and undermine the sanity of the prisoner,’ when imposed for more than fifteen days. Subjecting a prisoner to the demonstrated risk of the loss of his sanity as punishment for any offense in prison is plainly cruel and unusual punishment as judged by present standards of decency.”) (citations omitted); *Sostre v. Rockefeller*, 309 F. Supp. 611, 613 (S.D.N.Y. 1969).

170. *Sostre v. Rockefeller*, 312 F. Supp. at 889.

171. *Id.* at 871 (“The Warden claimed that he assigned Sostre to punitive segregation because Sostre refused to answer ‘fully and truthfully’ questions put to him by the Warden about the meaning of the letters R.N.A. The court disbelieves that ambiguous claim. But even if this were true, assignment to punitive segregation for an indefinite period of time for this infraction of the rules is likewise so disproportionate to the charge, as to be clearly barred by the Eighth Amendment’s prohibition against disproportionate punishment.”) (citations omitted); Schwartz, *supra* note 12, at 790 (“[Motley’s] opinion . . . offers hope that the inmate’s side of the story will not automatically be disbelieved.”).

172. *Sostre v. Rockefeller*, 312 F. Supp. at 874 (“No valid reason, other than the shibboleth of prison discipline, has been advanced for the denial of this right in the case before us. I believe that *courts should look behind inappropriate slogans so often offered up as excuses for ignoring or abridging the constitutional rights of our citizens.*”) (emphasis added).

and because he is, unquestionably, a black militant who persists in writing and expressing his militant and radical ideas in prison.¹⁷³

The court ultimately held that Sostre's First Amendment right to freedom of political expression was violated on all counts.¹⁷⁴ Judge Motley found the defense's arguments to be unpersuasive and the defendant's actions to be in bad faith:

Even if the defense of 'good faith' were available to defendants . . . the court finds that they had none. Sostre was, in fact, subjected to cruel and unusual punishment because he insisted upon exercising his constitutional rights. The multiplicity of charges against him was a pretext for his long punishment.¹⁷⁵

Motley accordingly affirmed Sostre's claim that both the length and conditions of his confinement amounted to cruel and unusual punishment under the Eighth and Fourteenth Amendments.¹⁷⁶ In dicta, Judge Motley reminded us that, like all constitutional protections, the scope, interpretation, and application of the Eighth Amendment changes and evolves over time, and it is only by this continual reimagining of traditional legal norms that we are able to become a more just society: "[T]he words of the Amendment are not precise, and . . . their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."¹⁷⁷ Thus, finding Sostre's punishment to be cruel and unusual was not a besmirchment of constitutional precedent, but rather a revelatory recognition of an emerging constitutional threat—mass incarceration.¹⁷⁸

173. *Id.* at 869–70 (citations omitted); Schwartz, *supra* note 12, at 777–78 ("Follette sentenced Sostre to punitive segregation. Although Follette claimed to have based his decision on . . . alleged infractions, Judge Motley found that the punishment was really in retaliation for Sostre's political and legal activism, his threat to sue Follette for interfering with Sostre's mail, and for certain activities found by Judge Motley to be constitutionally protected.")

174. *Sostre v. Rockefeller*, 312 F. Supp. at 876.

175. *Id.* at 888 (citations omitted).

176. *Id.* at 863, 871 ("The court . . . holds that the totality of the circumstances to which Sostre was subjected for more than a year was cruel and unusual punishment when tested against 'the evolving standards of decency that mark the progress of a maturing society.'" (quoting *Trop v. Dulles*, 356 U.S. at 101)).

177. *Sostre v. Rockefeller*, 309 F. Supp. 611, 613 (S.D.N.Y. 1969) (citing *Trop v. Dulles*, 356 U.S. 86, 100–01 (1958)).

178. Alexander, *supra* note 19, at 234 ("The nature of the criminal justice system has changed. It is no longer concerned primarily with the prevention and punishment of crime, but rather with the management and control of the dispossessed.")

Motley granted a long list of injunctive relief, including enjoining prison officials from placing Sostre in solitary confinement again for the same reasons, granting Sostre the “good time” credits he did not have an opportunity to earn while in punitive segregation, enjoining prison officials from refusing to mail Sostre’s legal correspondence, and enjoining prison officials from censoring Sostre’s religious or political literature.¹⁷⁹ Further, Motley enjoined prison officials from punishing Sostre for sharing legal materials for as long as the prison failed to provide prisoners with alternative means of access to legal materials and assistance and required the prison administration to submit proposed prison rules and regulations governing the control and censorship of literature to the court for approval.¹⁸⁰ Motley also awarded compensatory and punitive damages.¹⁸¹ The court retained jurisdiction pending judicial review and approval of the proposed prison rules and mandated that Sostre be given an opportunity to provide feedback.¹⁸²

Though the Motley decision was seen as a groundbreaking advance in prisoner’s rights, there were significant limitations to the decision in the real world, including the fact that prison administrators often have no intention of implementing court directives through regulatory reform and typically face no real consequences if they do not.¹⁸³ Another limiting force on Motley’s

179. *Sostre v. Rockefeller*, 309 F. Supp. at 614; *Sostre v. Rockefeller*, 312 F. Supp. at 885; Schwartz, *supra* note 12, at 778–79 (footnote omitted).

180. *Sostre v. Rockefeller*, 309 F. Supp. at 614; *Sostre v. Rockefeller*, 312 F. Supp. at 885; Anderson, *supra* note 2; Gardner, *supra* note 62, at 18; Schwartz, *supra* note 12, at 778–79.

181. *Sostre v. Rockefeller*, 312 F. Supp. at 885–86 (“The court finds that such cruel and unusual punishment over the long period of time involved here resulted in injury to plaintiff as follows: 1) severe physical deprivations, i.e., loss of energy-giving food and loss of exercise, 2) needless degradation, 3) loss of work opportunities of a rehabilitative nature, 4) loss of money which might have been earned by working, 5) loss of schooling and training opportunities, 6) loss of self-improvement through reading books of one’s own choice, and 7) great mental anguish. Therefore, the court awards plaintiff \$25.00 per day for every day spent in punitive segregation (372 days), or a total of \$9,300 compensatory damages against defendants Follette and McGinnis The bad faith and malice toward Sostre (based in large part upon political disagreement with him) that motivated Follette to put plaintiff in punitive segregation and, in effect, to ‘throw the key away,’ and McGinnis’ failure to act after being notified of Sostre’s confinement as early as July 1968, are quite reprehensible; an award of exemplary damages is in order Otherwise, these malicious acts . . . might recur in the future. The court, therefore, awards the additional sum of \$10.00 per day, or a total of \$3,720 in punitive damages against defendants Follette and McGinnis.”) (citations omitted); Gardner, *supra* note 62, at 18.

182. *Id.* at 889.

183. Schwartz, *supra* note 12, at 777 (“The decision was hailed as a new bill of rights for prisoners and the New York Times headlined its page 1 story with ‘Court

sweeping decision was the decisions of other courts¹⁸⁴ and, in particular, its equally sweeping appeal in *Sostre v. McGinnis* (1971).¹⁸⁵

On appeal, Circuit Judge Irving R. Kaufman generally disagreed with Judge Motley's conclusions and systematically whittled away most of Motley's holdings.¹⁸⁶ While tactfully conceding the limitations of his own counterargument, Kaufman undermined the validity of Motley's reasoning and gaslit her conclusions just enough to nullify the practical impact of Motley's decision.¹⁸⁷

In general, censorship of prisoners' mail is dehumanizing and counterproductive to the touted goal of prisoner rehabilitation.¹⁸⁸ In particular, censorship of prisoners' mail that is intended for their attorney, courts, or public officials concerning a legal issue that relates to their conviction or treatment while incarcerated is

Extends Convicts' Rights.' Analysis of what the court did, rather than what it occasionally said, discloses a rather different result. Indeed, the decision definitively settled very few issues and much of what it did decide would not, by the court's own admission, do much to improve prison conditions.") (footnotes omitted).

184. *Id.* at 776 ("In December 1970, Judge Clarence Herlihy, Presiding Justice of the Appellate Division, Third Department, castigated the federal courts for interfering in state prison administration, focusing particularly on Judge Motley's opinion in *Sostre* and on Judge Morris Lasker's release of Angela Davis from solitary confinement . . .") (citation omitted).

185. 442 F.2d 178 (2d Cir. 1971).

186. *Id.* at 185; Schwartz, *supra* note 12, at 779 ("The court of appeals reversed almost every part of Judge Motley's order except for the return of the 124 1/3 days good time, the propriety of the award of compensatory damages against Follette (who had since died), and the right to possess political literature, subjecting that right, however, to 'reasonable regulation.'").

187. *See, e.g.*, *Sostre v. McGinnis*, 442 F.2d at 190 ("We respect the outrage, given form and content by scholarly research and reflection, that underlay the expert testimony at trial of Sol Rubin . . . [who] testified that *Sostre's* segregated environment was degrading, dehumanizing, conducive to mental derangement, and for these reasons 'a gross departure' from enlightened and progressive contemporary standards for the proper treatment of prison inmates."), 191 ("For a federal court, however, to place a punishment beyond the power of a state to impose on an inmate is a drastic interference with the state's free political and administrative processes Accordingly, we have in the past declined to find an Eighth Amendment violation unless the punishment can properly be termed 'barbarous' or 'shocking to the conscience.'").

188. *Id.* at 199 ("The harm censorship does to rehabilitation cannot be gainsaid. Inmates lose contact with the outside world and become wary of placing intimate thoughts or criticisms of the prison in letters. The artificial increase of alienation from society is ill advised. The values commonly associated with free expression—an open, democratic marketplace of ideas, the self-development of individuals through self-expression, the alleviation of tensions by their release in harsh words rather than hurled objects—these values that we esteem in a free society do not turn to cross in an unfree one.").

downright unconstitutional.¹⁸⁹ Warden Follette routinely censored and redacted Sostre's legal correspondence based exclusively on his own discretion.¹⁹⁰ Judge Kaufman agreed with Motley that Follette's redaction of and refusal to mail Sostre's written correspondence with his attorney violated Sostre's constitutional rights and that allowing unlimited censorship of prisoner correspondence based exclusively on the unfettered discretion of prison officials would have a "chilling" effect on prisoner's willingness and ability to seek redress for abuses suffered at the hands of those same prison officials.¹⁹¹ Still, Kaufman reserved room for prison administrators to regulate exceptions to this

189. *Id.* at 189, 200–01 ("Sui generis in both logic and the case law[] are letters addressed to courts, public officials, or an attorney when a prisoner challenges the legality of either his criminal conviction or the conditions of his incarceration It would be inappropriate on constitutional grounds, ironic, and irrational to permit drastic curtailment of constitutional rights in the name of punishment and rehabilitation, while denying prisoners a full opportunity to pursue their appeals and postconviction remedies [I]f a communication is properly intended to advance a prisoner's effort to secure redress for alleged abuses, no interest would justify deleting material thought by prison authorities to be irrelevant to the prisoner's complaint. The danger that an official will improperly substitute his judgment for that of the correspondent's then preponderates. For similar reasons, prison officials may not withhold, refuse to mail, or delete material from otherwise protected communications merely because they believe the allegations to be repetitious, false, or malicious.") (citations omitted); Schwartz, *supra* note 12, at 786 ("Without . . . sealed letters [between an inmate and their lawyer], confidential communication is virtually impossible. Partly because of the practice of building prisons in forsaken areas of the countryside, miles from any large cities, it is very difficult to visit inmate clients more than infrequently; telephone calls are not permitted; and censorship itself often consumes many days, as letters lie waiting for the censor to get around to them. The rich defendant can, of course, pay his lawyer to visit often, but the poor man cannot, and most prisoners are very poor.").

190. *Sostre v. Rockefeller*, 312 F. Supp. 863, 869 (S.D.N.Y. 1970) ("All of plaintiff's letters to and from his attorney, Joan Franklin, were censored by the Warden. He excised therefrom everything which he believed was not directly related to Sostre's immediate case."); *Sostre v. McGinnis*, 442 F.2d at 187 ("Defendant Follette censored Sostre's correspondence with Joan Franklin of the NAACP, the attorney of record representing Sostre on appeal from his conviction. Follette regularly excised from letters passing between Sostre and Miss Franklin 'objectionable' material—anything which 'in his judgment was not relevant to Sostre's appeal.' In accordance with Rule 47 of the Inmate Rule Book which restricts inmates' correspondence to persons on an approved mailing list, Warden Follette in late September, 1968, refused to forward a letter from Sostre to the United States Post Office Inspector, in which Sostre complained of Green Haven's practice of not returning to prisoners receipts for certified mail."); Schwartz, *supra* note 12, at 778.

191. *Sostre v. McGinnis*, 442 F.2d at 200–01 ("The generous scope of discretion accorded prison authorities also heightens the importance of permitting free and uninhibited access by prisoners to both administrative and judicial forums for the purpose of seeking redress of grievances against state officers. The importance of these rights of access suggests the need for guidelines both generous and specific enough to afford protection against the reality or the chilling threat of administrative infringement.").

general rule against discretionary censorship that allow for “nonarbitrary restraint of communication”¹⁹² in “special circumstances.”¹⁹³

Notwithstanding the constitutional limitations imposed on prisoners’ rights,¹⁹⁴ they still retain certain fundamental rights that are inalienable to all persons, including the right to freedom from punishment for one’s internal thoughts and beliefs.¹⁹⁵ Even after Sostre was released from solitary confinement, his political literature, personal writings and legal resources continued to be heavily censored; further, he continued to be punished for the materials he managed to keep, which included magazines and newspapers, personal writings, Black Panther Party and New Republic of Africa literature, poetry,¹⁹⁶ and Harvard Law Review

192. *Id.* at 203 (“The refusal to mail Sostre’s letter to the Post Office Inspector, complaining of prison practices, clearly infringed Sostre’s Fourteenth Amendment rights. We also affirm Judge Motley’s order insofar as it enjoins defendants Follette and McGinnis, their employees, agents, successors, and all persons in active concert and participation with them, from deleting material from, refusing to mail or refusing to give to Sostre: (1) Any communication between Sostre and the following—(a) any court; (b) any public official or agency; or (c) any lawyer—with respect to either his criminal conviction or any complaint he may have concerning the administration of the prison where he is incarcerated. We reverse, however, insofar as Judge Motley enjoined nonarbitrary restraint of communication between Sostre and his co-defendant in the criminal matter pending against him.”).

193. *Id.* at 201 (“[W]e agree with Judge Motley that it was improper for Warden Follette to delete material from correspondence between Sostre and his attorney merely because Follette thought the material irrelevant to Sostre’s appeal of his conviction. We believe it was also improper for Follette to refuse to mail a letter of complaint to the Postal Inspector. We leave a more precise delineation of the boundaries of this protection for future cases. We need only add that when we say there may be cases which will present special circumstances that would justify deleting material from, withholding, or refusing to mail communications with courts, attorneys, and public officials, we necessarily rule that prison officials may open and read all outgoing and incoming correspondence to and from prisoners.”).

194. *Id.* at 188–89 (“It is clear that in many respects the constitutionally protected freedoms enjoyed by citizens-at-large may be withdrawn or constricted as to state prisoners . . .”).

195. *Id.* at 189 (“Among those rights not taken from Sostre when he entered Attica, either ‘expressly or by necessary implication,’ is freedom from discriminatory punishment inflicted solely because of his beliefs, whether religious or secular.”) (citations omitted).

196. *Id.* at 187 (“[A] month after his release from segregation, Sostre was deprived of the use of the prison exercise yard and the privilege of attending movies because he possessed ‘inflammatory racist literature’ in his cell. The literature consisted of articles written by Sostre himself on paper properly in his possession. Most of the articles consisted of extracts from magazines and newspapers which Sostre was also permitted to have and read in his cell. The extracts included quotations from Mao Tse Tung, poetry written by a prison inmate, the names of the officers, the party program, and rules of conduct of the Black Panther Party; the officers and oath of allegiance of the Republic of New Africa; a ‘program’ for Black Student Unions; and the poem ‘If We Must Die,’ by Claude McKay. In addition, guards found in Sostre’s

articles, which he was lending out to other prisoners.¹⁹⁷ Again, Kaufman agreed with Motley that punishing Sostre for possession of such materials, which he was otherwise allowed to have, would have a chilling effect on a “wide range of prisoner expression.”¹⁹⁸ And again, he noted the mitigating effect of regulatory guidelines on the chilling threat of arbitrary and discriminatory punishment.¹⁹⁹

Kaufman therefore affirmed Motley’s holding that prison officials are constitutionally precluded from punishing Sostre for his political expression, possession of political literature, and efforts to seek redress of grievances in court (unless, of course, such discipline is for the purpose of preventing Sostre from “inciting disturbances” or “to protect the security and order of New York prisons”).²⁰⁰ Thus,

cell an article which he had written himself, entitled ‘Revolutionary [sic] Thoughts.’ The district court found that Sostre’s punishment for possessing this material constituted another infringement of his freedom of expression.” (footnote omitted); *Sostre v. Rockefeller*, 312 F. Supp. 863, 869 (S.D.N.Y. 1970); Schwartz, *supra* note 12, at 778 (“After Judge Motley ordered his release from segregation on a preliminary injunction in July 1968, he was again punished, this time for having ‘inflammatory racist literature’ in his cell, including some of his own writings, and extracts from newspapers and magazines which he had been permitted to have.”) (footnote omitted).

197. *Sostre v. Rockefeller*, 312 F. Supp. at 869 (“On June 25, 1968, search of Sostre’s cell also revealed that he was lending his law books to other inmates, after removing therefrom a stamp identifying these books (which turned out to be copies of the Harvard Law Review) as belonging to Sostre.”).

198. *Sostre v. McGinnis*, 442 F.2d at 202 (“Whatever doubts we might have as to the wisdom of seizing an inmate’s political writings, we would not lightly overturn a warden’s judgment that possession of the writings might subvert prison discipline if there existed the risk of their circulation among other prisoners. However, Sostre was punished simply for putting his thoughts on paper, with no prior warning and no hint that he intended to spirit the writings outside his cell. To sanction such punishment, even though in the judgment of prison officials the writings were ‘inflammatory’ and ‘racist,’ as in the instant case, would permit prison authorities to manipulate and crush thoughts under the guise of regulation. The intimidating threat of future similar punishment would chill a wide range of prisoner expression, not limited to that expression which Follette might in fact deem dangerous enough to discipline.”).

199. *Id.* at 202–03 (“The danger of undetected discriminatory punishment of ideas is particularly acute in the absence of statutory standards to guide the exercise of Follette’s discretion.”).

200. *Id.* at 204 (“We have held that Sostre was improperly punished for possession of constitutionally protected literature. We perceive no reason, however, to set political speech apart from other kinds of constitutionally protected speech. We therefore modify the district court order so as to enjoin defendants Follette and McGinnis, their employees, agents, successors, and all persons in active concert and participation with them, from punishing Sostre for having literature in his possession and for setting forth his views orally or in writing, except for violation of reasonable regulations. We do not hereby enjoin officials from taking reasonable measures to prevent prisoners from inciting disturbances and otherwise to protect the security and order of New York prisons, consistent with prisoners’ rights to

placing Sostre in solitary confinement was a violation of due process of law if Follette did so in retaliation for Sostre's political speech or legal activities.²⁰¹ Because Kaufman could not show anything from the record that clearly absolved Follette from having retaliated against Sostre, the court was forced to show deference to Judge Motley's finding of unlawful retaliation.²⁰² In contrast, Kaufman rejected Motley's findings regarding other defendants, including McGinnis, stating that he could not find a reason in the record to support the claim that McGinnis was acting under similarly misguided or improper motivations, thereby letting McGinnis off the constitutional hook for his part in Sostre's punishment.²⁰³ Kaufman went on to say that even if Motley's finding that Follette acted unconstitutionally was granted as true, he was also off the hook because he passed away before the trial began; and with no currently employed prison officials left on the hook, there was no reason not to reverse the order enjoining them from throwing Sostre right back into solitary confinement for previous charges.²⁰⁴ Similarly, Kaufman reversed Motley's award of damages because there was no one left on the hook who could be asked to pay up.²⁰⁵

freedom of expression.”).

201. *Id.* at 189 (“Accordingly, Sostre’s lengthy confinement to segregation violated due process of law if, as the district court found, Warden Follette inflicted the punishment either because of Sostre’s militant political ideas or his litigation, past or threatened, against Follette or other state officials.”).

202. *Id.*

203. *Id.* at 189–90 (“The record is barren of any justification for attributing to . . . [McGinnis], in sanctioning Sostre’s continued confinement, any more sinister motive than appropriate deference to the judgment of Warden Follette. McGinnis on the record before us, had no reason to suspect Follette of other than proper motivation.”).

204. *Sostre v. McGinnis*, 442 F.2d at 204 (“We have refused to set aside Judge Motley’s findings that Warden Follette unlawfully committed Sostre to segregated confinement because of his legal activities and beliefs. Warden Follette, however, is deceased and we perceive no threat that others will duplicate his improper conduct. Accordingly, we vacate that portion of the district court order which enjoined defendants and others from returning Sostre to punitive segregation for charges previously preferred against him.”).

205. *Id.* at 204–05 (“Section 1983, authorizes recovery of compensatory, and, in an appropriate case, punitive damages against an individual for the unjustifiable violation of constitutional rights ‘under color’ of state law. This liability, however, is entirely personal in nature intended to be satisfied out of the individual’s own pocket. Moreover, the doctrine of sovereign immunity, as codified by the Eleventh Amendment, bars the exaction of a fine from a state treasury without the state’s consent, at least on account of tortious actions committed by its agents under the circumstances of this case. It follows from these principles that although Sostre was entitled to compensatory damages against Warden Follette, Follette’s successor as warden, who had no part whatsoever in Follette’s wrongful conduct against Sostre, incurred no personal money responsibility upon Follette’s death Accordingly, there is no party before us against whom appropriately to award damages. In any

Kaufman acknowledged that incarcerated persons are entitled to some measure of due process before they are punished for violating prison policy.²⁰⁶ Here, Kaufman repeated the tried-and-true hymn of prison order and discipline as the highest of priorities to justify regulatory exceptions to the constitutional prohibition of discretionary punishment of prisoners.²⁰⁷ He further unraveled the constitutional net by falling back on the familiar federalist catch-all of improper federal jurisdiction:

Most important, we think it inadvisable for a federal court to pass judgment one way or another as to the truly decisive consideration, whether formal due process requirements would be likely to help or to hinder in the state's endeavor to preserve order and discipline in its prisons and to return a rehabilitated individual to society We would not presume to fashion a constitutional harness of nothing more than our guesses. It would be mere speculation for us to decree that the effect of equipping prisoners with more elaborate constitutional weapons against the administration of discipline by prison authorities would be more soothing to the prison atmosphere and rehabilitative of the prisoner or, on the other hand, more disquieting and destructive of remedial ends. This is a judgment entrusted to state officials, not federal judges.²⁰⁸

It is telling that Kaufman here described the basic constitutional rights of prisoners as “elaborate constitutional weapons” that Motley’s decision would effectively “equip[] prisoners with” against the “administration of discipline by prison authorities.”²⁰⁹ Even when he presumed to defer judgment of the situation to prison administrators, he portrayed prisoners as dangerous, criminal militants, and the state as the noble facilitator of rehabilitation.²¹⁰ Ultimately, Kaufman concluded that regulatory

event, we are persuaded to reverse the award of punitive damages. Warden Follette’s improper conduct in segregating Sostre so far as appears reflected no pattern of such behavior by himself or by other officials. The deterrent impact of a punitive award would be of minimal use.”) (citations omitted).

206. *Id.* at 196.

207. *Id.* at 199–200 (“Whatever wisdom there might be in such reflection, we cannot say with requisite certitude that the traditional and common practice of prisons in imposing many kinds of controls on the correspondence of inmates, lacks support in any rational and constitutionally acceptable concept of a prison system Discipline and prison order are sufficient interests to justify such regulation incidental to the content of prisoners’ speech.”).

208. *Id.* at 197 (citations omitted).

209. *Id.*

210. *Id.*; Farley, *supra* note 19, at 516 (“The sociologist, no less than the lawmaker and the law enforcer, sings the system’s endless hymn of self-praise. For the desiring white bodies, this is a joyful noise made possible only by the promise of race-pleasure. This race-pleasure is produced by the sociological thematization of black bodies as minstrels and as criminals all.”) (footnote omitted).

safeguards would sufficiently protect prisoners against arbitrary and unconstitutional punishment such that all of the minimal procedural due process requirements laid out by Motley are only required sometimes.²¹¹ Kaufman's inexplicable trust that prison regulators would act reasonably and with respect for the constitutional rights of prisoners led him to forego any measure of oversight of the very people who were in charge of and failed to protect the rights of Martin Sostre and reverse Judge Motley's order that prison administrators submit new disciplinary regulations to the district court for approval.²¹²

Judge Kaufman cited Supreme Court precedent to uphold a prison policy requiring incarcerated persons to seek the warden's approval before assisting other incarcerated persons in preparing legal materials or committing other acts of "jailhouse lawyer[ing]."²¹³ The policy stipulated that prisoners could prepare legal papers for themselves and non-inmate codefendants but not fellow inmates absent explicit permission from the warden.²¹⁴ Accordingly, a prisoner's constitutional rights were only violated if such permission was denied.²¹⁵ The policy thereby created a condition that the prisoner must opt into at their own peril before they could be given the privilege of exercising their constitutional

211. *Sostre v. McGinnis*, 442 F.2d at 203 ("All of the elements of due process recited by the district court are not necessary to the constitutionality of every disciplinary action taken against a prisoner. In light of this, we reverse the district court insofar as it enjoined defendants and others from so disciplining Sostre that he loses accrued good time credit or is unable to earn good time credit without full compliance with all the procedural steps set forth in Judge Motley's injunction.")

212. *Id.* at 203–04 ("[A]s consideration of Sostre's case does not properly raise any question whether New York prisons regularly or systematically ignore minimal due process requirements, we must reverse the order of the district court that defendants submit for its approval, proposed rules and regulations governing future disciplinary actions . . . [W]e do not believe that there is any need for the extraordinary procedure requiring defendants to submit rules and regulations governing the receipt, distribution, discussion and writing of political literature for the approval of the district court. We have no reason to conclude that New York prison officials will not abide by the constitutional rights of prisoners as we define them today.")

213. *Id.* at 201 (citing *Johnson v. Avery*, 393 U.S. 483 (1969)); *see also Sostre v. Rockefeller*, 312 F. Supp. 863, 870 (S.D.N.Y. 1970) ("Prisoners at Green Haven may prepare legal papers for themselves. There is no rule of the prison which prohibits inmates from preparing legal papers for their non-inmate codefendants. However, the rules do bar inmates, except upon approval of the Warden, from assisting 'other inmates in the preparation of legal papers.'") (citation omitted) *and Schwartz, supra* note 12, at 790 ("Sostre was punished for trying to help other inmates with their legal affairs. The court denied him relief because it found that he had not obeyed the prison regulation requiring him to seek permission to provide such help.")

214. *Sostre v. Rockefeller*, 312 F. Supp. at 870.

215. *Sostre v. McGinnis*, 442 F.2d at 201 ("There would be a violation of Johnson only if the Warden denied permission, or if the conditions on which he granted it were unreasonable.")

rights. Thus, because Sostre did not ask Follette's permission to assist other incarcerated persons in legal matters, there was no constitutional violation and no need for a legal remedy like an injunction.²¹⁶

Judge Kaufman was naively optimistic about the reasonableness and feasibility of following the *Johnson* rule or other Green Haven Prison policies, which required initiating an interaction with prison officials that would almost certainly be unsuccessful and end in violence.²¹⁷ At the same time, he suspected that prisoners had sinister, ulterior motives behind helping each other pursue legal remedies, as if mutual aid between them was not possible or getting free was not motivation enough.²¹⁸

The undisputed conditions of Sostre's solitary confinement were as follows: Sostre was not allowed second portions of food or any desserts;²¹⁹ only allowed one hot shower and shave per week;²²⁰ confined to his cell twenty-four hours a day because he refused to submit to a daily "strip frisk" and "rectal examination," which was the mandatory condition for him to be able to leave his cell for one hour of recreation each day;²²¹ prevented from participating in a prison work program, which deprived him entirely of the little

216. *Id.* at 204 ("Johnson v. Avery permitted reasonable rules regulating the conduct of inmates in assisting other inmates in legal proceedings. Sostre has not proved that the rules regulating his right to assist other prisoners in their legal affairs were unreasonable and that his punishment was for violating such rules. Therefore, we must reverse the district court insofar as it enjoined interference with Sostre's translation of letters of fellow-inmates since he had failed to comply with the rule requiring that he seek permission of the warden. For the same reason, we reverse the injunction against punishing Sostre for sharing with other inmates his law books, law reviews, and other legal materials, and from refusing to permit Sostre to assist any other inmate in any legal matter."); Schwartz, *supra* note 12, at 790.

217. *Sostre v. McGinnis*, 442 F.2d at 201–02 ("We assume that permission would be granted as a matter of course, subject only to reasonable conditions. Nor can we consider unreasonable the Green Haven rule forbidding prisoners from sharing their personal law books with one another. This regulation would not prohibit Sostre, for example, from recommending legal source material to other inmates. We do not see how they would be unduly burdened by being required to acquire the books through prison officials rather than directly from Sostre.")

218. *Id.* at 202 ("We cannot ignore the concern of prison officials that strong-willed inmates might exact hidden and perhaps non-monetary fees in return for nominally free privileges at the inmates' private lending library."); Schwartz, *supra* note 12, at 790.

219. *Sostre v. Rockefeller*, 312 F. Supp. at 868; *Sostre v. McGinnis*, 442 F.2d at 186.

220. *Sostre v. Rockefeller*, 309 F. Supp. 611, 612 (S.D.N.Y. 1969); *Sostre v. Rockefeller*, 312 F. Supp. at 868; *Sostre v. McGinnis*, 442 F.2d 186 ("Sostre remained in his cell at all times except for a brief period once each week to shave and shower.")

221. *Sostre v. Rockefeller*, 309 F. Supp. at 613; *Sostre v. Rockefeller*, 312 F. Supp. at 868; *Sostre v. McGinnis*, 442 F.2d at 186.

earning power he had while incarcerated;²²² prevented from attending school or training programs;²²³ not allowed access to the prison library, newspapers, magazines, television, or movies;²²⁴ woken up at half-hour intervals throughout the night by a patrolling guard;²²⁵ and confined to a cell with no windows or natural daylight and only one lightbulb that could not be turned on or off from inside the cell.²²⁶ The only furnishings Sostre had in his cell were law books, a toothbrush, and some toothpaste.²²⁷ Another prisoner placed under similar conditions in a separate cell nearby died by suicide while Sostre was in solitary confinement.²²⁸

Kaufman's disagreement with Motley's conclusions concerning the constitutional limits of solitary confinement (called "segregated confinement" in the case) was in part based on its widespread and regular use in other states and on the federal level.²²⁹ Kaufman also minimized Motley's contention that the conditions of Sostre's punitive segregation were cruel or unreasonable.²³⁰ In Kaufman's

222. *Sostre v. Rockefeller*, 309 F. Supp. at 612; *Sostre v. Rockefeller*, 312 F. Supp. at 868.

223. *Sostre v. Rockefeller*, 312 F. Supp. at 868.

224. *Sostre v. Rockefeller*, 309 F. Supp. at 612; *Sostre v. Rockefeller*, 312 F. Supp. at 868.

225. *Sostre v. Rockefeller*, 309 F. Supp. at 613.

226. *Id.*

227. FRAME UP!, *supra* note 2 (Sostre interview).

228. *Sostre v. Rockefeller*, 312 F. Supp. at 868 (citation omitted); *Sostre v. McGinnis*, 442 F.2d 178, 185 (2d Cir. 1971).

229. *Sostre v. McGinnis*, 442 F.2d at 192–93 ("It is undisputed on this appeal that segregated confinement does not itself violate the Constitution Indeed, we learn that a similar form of confinement is probably used in almost every jurisdiction in this country and has been described as one of 'the main traditional disciplinary tools' of our prison systems. . . . In several states . . . incarceration in segregated cells seems to be for an indefinite period, as it is in New York. The federal practice appears to be that prisoners shall be retained in solitary 'for as long as necessary to achieve the purposes intended,' sometimes 'indefinitely.' Furthermore, 'willful refusal to obey an order or demonstrated defiance of personnel acting in line of duty may constitute sufficient basis for placing an inmate in segregation.' Such analogous practices do not impel us to the conclusion that the Eighth Amendment forbids indefinite confinement under the conditions endured by Sostre for all the reasons asserted by Warden Follette until such time as the prisoner agrees to abide by prison rules—however counter-productive as a correctional measure or however personally abhorrent the practice may seem to some of us."); Schwartz, *supra* note 12, at 778.

230. *Sostre v. McGinnis*, 442 F.2d at 186 ("It can hardly be questioned that his life in segregation was harsher than it would have been in the general population, but neither was it clearly unendurable or subhuman or cruel and inhuman in a constitutional sense."), 193–94 ("In arriving at this conclusion, we have considered Sostre's diet, the availability in his cell of at least rudimentary implements of personal hygiene, the opportunity for exercise and for participation in group therapy, the provision of at least some general reading matter from the prison library and of unlimited numbers of law books, and the constant possibility of communication with other segregated prisoners. These factors in combination raised the quality of

view, the isolation was not so isolated—he could talk to at least one other person, as evidenced by the fact that he was able to dictate a legal letter for another prisoner while in punitive segregation.²³¹ The lack of anything to do was not so lacking either—he had at least one thing to do, considering he could request any law book he wanted to read by the light of a single dim bulb that he could not turn on or off.²³² Sostre’s cell was not so small, as it was not any smaller than other “normal-sized”²³³ cells, and there was even a toilet so he did not have to literally lie in his own filth, besides what accumulated between weekly showers without access to deodorant.²³⁴ Sostre could even go outside if he wanted to—all it would take was getting a rectal examination, which Sostre said was “symbolic of being sodomized.”²³⁵

Sostre was confined indefinitely until “submissiveness,” to be determined at the sole discretion of the warden.²³⁶ Judge Kaufman effectively blamed Sostre for the length of his solitary confinement because Sostre refused to jump through hoops of humiliation which could have led to his release, which included group therapy and strip searches.²³⁷ Kaufman further justified Sostre’s punishment as

Sostre’s segregated environment several notches above those truly barbarous and inhumane conditions heretofore condemned by ourselves and by other courts as ‘cruel and unusual.’”) (citations omitted).

231. *Id.* at 185.

232. *Sostre v. Rockefeller*, 309 F. Supp. 611, 613 (S.D.N.Y. 1969); *Sostre v. McGinnis*, 442 F.2d at 186.

233. *Sostre v. McGinnis*, 442 F.2d at 186. There is nothing normal about a human being existing exclusively within 48 square feet of space.

234. *Id.* at 186.

235. FRAME UP!, *supra* note 2. Sostre described his experience in solitary confinement in an interview featured in the documentary FRAME UP!: “[T]hey require that every time you leave your cell, the solitary confinement building, to go let’s say to the hospital, inside the prison, or to go to the visitor’s room to see your attorney, or to see your private visit, that you strip down, naked, you bend over, and spread your cheeks. Now they know you don’t have anything in your rectum. They just do this to dehumanize you. Because once a man bends over and spreads his cheeks, two or three hacks leering at you, that’s a sign not only of submission, but is symbolic of being sodomized. And a lot of prisoners submit to that, but I’m not gonna submit.” Farley, *supra* note 19, at 473 (“Race, like rape, is, among other things, a crime of humiliation. To be thematized as black is a form of humiliation in and of itself.”), 500 (“Acts of racial categorization separate black people from their humanity. They are both expressions of disgust and invitations to self-loathing.”).

236. *Sostre v. McGinnis*, 442 F.2d at 187 (“Pursuant to the usual practice at Green Haven, Sostre was sentenced to ‘solitary’ confinement for an indefinite period ‘[S]ubmissiveness’ was to be the touchstone for his release.”); *Sostre v. Rockefeller*, 312 F. Supp. 863, 868 (S.D.N.Y. 1970) (“Release from segregation is wholly within the discretion of the Warden.”); Farley, *supra* note 19, at 514 (“Learning to live in a subaltern body often involves learning to submit and stop asking questions.”).

237. Schwartz, *supra* note 12, at 778 (“Sostre was sentenced to segregation for an indefinite period until he agreed to abide by the rules of the institution or until he

“an entirely constitutional means” to respond to a “credible threat to the security of the prison[,]” citing Sostre’s refusal to answer the questions or obey the orders of prison officials, including the order to regularly submit to rectal exams.²³⁸ Kaufman ultimately concluded that Sostre’s indefinite solitary confinement was not cruel and unusual and overturned Motley’s fifteen-day maximum limit.²³⁹ However, Kaufman agreed with Motley that Sostre be given the “good time” credits that he was precluded from earning while in solitary confinement.²⁴⁰

Judge Kaufman referred to the “new penology” that was emerging at the time, which posited that the purpose of our penal system is correctional rather than penal.²⁴¹ He contrasted this theory with the realities of the criminal justice system, which he described as promoting the opposite goals in a harmful and counterproductive way.²⁴² Though Judge Kaufman apologetically claimed that he “respect[s] the outrage” of those who criticize inhumane prison practices and disclaimed “any intent by this decision to condone, ignore, or discount the deplorable and counterproductive conditions of many of this country’s jails and prisons,” he neatly backpedaled on all of the progress Motley would have made toward addressing or changing those conditions, making his words ring hollow.²⁴³ The crux of Kaufman’s overturning of Motley’s

participated successfully in group therapy.”); *Sostre v. Rockefeller*, 309 F. Supp. at 612 (“Prisoners placed in segregation are required to participate in group counseling, but plaintiff has continually refused.”); *Sostre v. McGinnis*, 442 F.2d at 185–87 (“[S]ostre aggravated his isolation by refusing to participate in a ‘group therapy’ program offered each inmate in segregation Follette testified that Sostre could have returned to the general population either by successful participation in group therapy or by agreeing to live by the rules of the prison. Sostre’s contention is that he refused to agree to obey rules that he considered an infringement of his constitutional rights.”).

238. *Sostre v. McGinnis*, 442 F.2d at 194; Farley, *supra* note 19, at 472.

239. *Sostre v. McGinnis*, 442 F.2d at 192–93; Schwartz, *supra* note 12, at 783.

240. *Sostre v. McGinnis*, 442 F.2d at 204.

241. *Id.* at 190 (citation omitted).

242. *Id.* at 191 (“Anathema to this perspective are perhaps more traditional practices which subject prisoners to deprivation, degradation, subservience, and isolation, in an attempt to ‘break’ them and make them see the error of their ways. It is suggested by many observers that such techniques are counter-productive, tending only to instill in most prisoners attitudes hostile to rehabilitation, summarized by one author as ‘doubt, guilt, inadequacy, diffusion, self-absorption, apathy (and) despair.’”).

243. *Id.* at 190, 205; Schwartz, *supra* note 12, at 791 (“[Judge Kaufman’s opinion is] a cautious opinion, full of good intentions and dubious rulings, leaving many of the most important issues ‘for another day’; above all, an opinion fearful of judicial intrusion at this time into a strange and volatile area. Indeed, the opinion closes with something of an apologia for how little it does to advance the cause of humane prison conditions: ‘It is appropriate, lest our action today be misunderstood, that we

decision was that it is not the place of federal courts to tell states how to administrate their prisons.²⁴⁴

Conclusion – Sostre’s Living Legacy

Little did you imagine that the very dungeons used to torture us, where you forced us to sleep naked on the cold concrete floor with windows opened to give us pneumonia, on bread and water diet, and with a five gallon paint bucket for a toilet, would become the crucibles from which evolved the new hardened prisoner and the Vanguard revolutionary ideology which has now spread throughout New York State prison and into the ghettos . . . We, the new politically aware prisoner, will soon galvanize the revolutionary struggle in America to its new phase that will hasten the overthrow of your exploitative racist society, recover the product of our stolen slave labor which you now enjoy, and obtain revolutionary justice for all oppressed people.

Martin Sostre²⁴⁵

In December 1972, Sostre was transferred to Clinton Prison, where he was again placed in solitary confinement for refusing to shave his beard and for refusing to submit to a rectal exam.²⁴⁶ On

disclaim any intent by this decision to condone, ignore, or discount the deplorable and counter-productive conditions of many of this country’s jails and prisons. We strongly suspect that many traditional and still widespread penal practices, including some which we have touched on in this case, take an enormous toll, not just of the prisoner who must tolerate them at whatever price to his humanity and prospects for a normal future life, but also of this society where prisoners return angry and resentful.’ But it ends on a ringing affirmation of judicial impotence: ‘We do not doubt the magnitude of the job ahead before our correctional systems become acceptable and effective from a correctional, social and humane viewpoint, but the proper tools for the job do not lie with a remote federal court. The sensitivity to local nuance, opportunity for daily perseverance, and the human and monetary resources required lie rather with legislators, executives, and citizens in their communities.’” (quoting *Sostre v. McGinnis*, 442 F.2d at 205)).

244. *Sostre v. McGinnis*, 442 F.2d at 190-91 (“We respect the outrage, given form and content by scholarly research and reflection, that underlay the expert testimony at trial . . . that Sostre’s segregated environment was degrading, dehumanizing, conducive to mental derangement, and for these reasons ‘a gross departure’ from enlightened and progressive contemporary standards for the proper treatment of prison inmates. . . . For a federal court, however, to place a punishment beyond the power of a state to impose on an inmate is a drastic interference with the state’s free political and administrative processes. It is not only that we, trained as judges, lack expertise in prison administration. Even a lifetime of study in prison administration and several advanced degrees in the field would not qualify us as a federal court to command state officials to shun a policy that they have decided is suitable because to us the choice may seem unsound or personally repugnant.”).

245. Sostre, *The New Prisoner*, *supra* note 12, at 253–54 (written by Sostre while in solitary confinement at Auburn Prison for refusing to shave his beard).

246. FRAME UP!, *supra* note 2.

March 15, 1974, his appeal was denied.²⁴⁷ Sostre was paroled on the narcotics-related count in December 1975 but remained in prison to serve the rest of a sentence from a charge of assaulting Clinton Prison guards.²⁴⁸ This alleged incident was the result of a brutal attack of Sostre by seven guards after his repeated refusal to submit to sexual assault via a nonconsensual rectal examination.²⁴⁹ This scene highlights the ways in which Black resistance against institutional violence operates on the level of the symbolic.²⁵⁰ This scene also reveals the way that sexual violence is utilized intentionally in prisons as a tool of dehumanization and

247. *Id.*

248. Hess, *supra* note 2.

249. Farley, *supra* note 19, at 472 (“Race and rape are similar performances in that the pleasure of power that race brings its perpetrators is comparable to the pleasure of power that rape brings its perpetrators. Indeed, both pleasures work a similar pain into the identities of their victims.”); Schaich & Hope, *supra* note 60, at 288 (“Sostre believed every person’s body was sacred, and its violation a ‘profanation.’ ‘I refuse to submit to rectal examination,’ said Sostre, ‘on the grounds that it’s unlawful, dehumanizing and degrading.’ Retaliation for his defiance came in 1974 when he claimed he was assaulted by seven guards after refusing a rectal search for the sixth consecutive time. ‘[I] was subdued . . . lifted off the floor and spread eagle while my face was toward the floor.’ In a choking armlock, one ‘sadist continued to squeeze totally preventing me from breathing.’ As the rectal search was performed, Sostre claimed he was ‘suffocated’ into ‘unconsciousness.’ As a result of this incident, Sostre was charged and convicted of second degree assault. Sostre’s reluctance to compromise and refusal to cooperate were expressed in his unwillingness to exchange a plea of guilty, at the trial judge’s request, for a suspended sentence. ‘I can’t plead guilty, Your Honor, I never hit those guards.’”); McLaughlin, *supra* note 2, at 15 (“By the time he appeared in court in New York in October 1969, he had spent 373 consecutive days in solitary and had rarely even stepped outside into the yard because it meant submitting to humiliating internal examinations before leaving and returning to his cell. The mistreatment went on for years. At one court hearing in 1973, he reportedly appeared ‘weak and visibly bruised’ from the latest beating. On that occasion, he had been taken out of his cell in the solitary confinement building and instructed to submit to a rectal examination. When he refused, he wrote, ‘a seven-guard goon squad’ surrounded him. He told them that ‘the rectal search was a violation of my constitutional right to privacy and human dignity’—and so they knocked him to the ground and forced him to submit.”) (footnotes omitted) (citations omitted); Hess, *supra* note 2 (“[Sostre’s] resistance to rectal searches, required by prison procedures, led to his spending most of his term in solitary confinement and finally resulted in his conviction for assaulting a group of guards at Clinton Prison. On a petition supported by other inmates, charging that his safety was threatened by personnel there, he was transferred to the Federal New York City Correctional Center . . .”).

250. Thomas, *supra* note 24, at 2614 (“The strategic manipulation and reversal of the dominant culture’s political symbols is, and has long been, a central feature of African-American resistance movements, in both their reformist and their radical incarnations . . . African-Americans have lived by and fought through symbols: We cannot hope to comprehend the history of their collective encounter with the ideology and institutions of American constitutionalism unless we carefully attend to its symbolic aspects, conceived as both an arena and an arsenal of struggle.”) (footnotes omitted).

degradation, a pleasurable nobodying of the Other that reaffirms a phantasy of white supremacy over the Black criminal body.²⁵¹

Sostre's case garnered national and international interest and an outpouring of support.²⁵² Numerous defense committees

251. Farley, *supra* note 19, at 479 ("In each form of nobodying the Other, the manipulation of the Other's reality is itself an erotic experience of pleasure-in-humiliating . . ."), 507.

252. See Hess, *supra* note 2; see also Ervin, *Prison Revolutionary*, *supra* note 7; Robert D. McFadden, *Sostre, Inmate Activist, Is Seized as a Fugitive*, N.Y. TIMES (May 24, 1986), <https://www.nytimes.com/1986/05/24/nyregion/sostre-inmate-activist-is-seized-as-a-fugitive.html> [<https://perma.cc/4PQD-NLW8>] ("A campaign to free Mr. Sostre gained national attention and drew support from Andrei Sakharov, the Soviet physicist and dissident[,] Jean-Paul Sartre, and a number of figures in the civil rights movement."); McLaughlin, *supra* note 2, at 3 ("Sostre's case was taken up by radicals of various stripes because of the larger cause it represented . . . [T]he 'core reality' of the antiwar movement during those years was that it provided a place where 'the scattered remnants, hunkered-down ideological currents, underground traditions, and new outgrowths of American radicalism regrouped.' Much the same could be said about the prisoner release campaigns, in which civil libertarians and intellectuals joined with black and white radicals. At the decade's end, campaigns for the release of incarcerated activists seized national and international attention." (quoting Van Gosse, *A Movement of Movements: The Definition and Periodization of the New Left*, in COMPANION TO POST-1945 AMERICA (eds. Jean-Christophe Agnew & Ray Rosenzweig, Blackwell 2002))), 16–17 ("After Sostre's arrest, the students of YAWF organized a movement and started to build his reputation . . . The Black Panther Party, itself facing an FBI onslaught, embraced Sostre's cause. Don Cox, then a field organizer for the party, went as far as to equate the cause with that of the Panthers' leaders: 'when we demand the freedom of Huey Newton, [and] Bobby Seale,' he told *The Activist*, 'we must also talk about the freedom of Martin Sostre.' . . . When YAWF organized "Free Martin Sostre Week" in October 1969 to coincide with a court appearance, they received the endorsement of a dazzling array of groups, from SDS to Asian-Americans for Action, the Movement for Puerto Rican Independence and the Young Lords, and from groups based in Cleveland, Ohio, which were fighting for the freedom of another black militant, Ahmed Evans. On the morning of 29 October, protesters descended on Foley Square, rallied outside the Federal Court Building, and then took up seats for the hearing. Inspired by their presence, Sostre lectured the judge, pointing to his supporters: they were 'the universal forces of liberation,' he told the court; if the law would not free him then, one day, they surely would . . . Dick Gregory, entertainer, activist, and candidate for President for the Peace and Freedom Party in 1968, appeared at Sostre's trial to denounce the case as typical of a worrying trend: 'police look for a scapegoat in every city in the country where there has been rioting,' he said. Many others agreed. William Worthy took up Sostre's cause and gave it national exposure in some of the best-known black publications in America, including the *Afro-American*, and *Ebony*. As Sostre's name entered the mainstream, *Jet* also came to his defense with an article placing him alongside many of his heroes, including Malcolm X, Robert F. Williams, and Kwame Nkrumah. East coast newspapers picked the story up, too. In the *Boston Globe*, Sostre's case was compared with the persecution of 'several other black liberation fighters and anti-war activists,' including 'Huey Newton, Robert F. Williams (in exile), Herman Ferguson, Arthur Harris, Edward Oquenado and many other unnamed heroes.' By 1970, Sostre was embedded in the political discourse surrounding civil liberties in America. Writing in the *New York Times* in the wake of Kent State, Paul Cowan argued that the release of 'political prisoners like Huey Newton, Bobby Seale, and Martin Sostre,' was a necessary precondition for achieving social peace. The same year, also in the *New York Times*, Arthur Miller (who knew

dedicated to Sostre's cause sprang up across New York and around the world, including the Martin Sostre Defense Committee, the Committee to Free Martin Sostre, and others, each of which worked to publicize Sostre's case and petition Governor Hugh Carey for his release.²⁵³ In December 1973, Amnesty International put Sostre on its "prisoner of conscience" list, stating, "We became convinced that Martin Sostre has been the victim of an international miscarriage of justice because of his political beliefs . . . not for his crimes."²⁵⁴ Russian Nobel Peace Laureate Andrei Sakharov added his name to Sostre's clemency appeal on December 7, 1975.²⁵⁵ On December 19, the Buffalo Evening News continued its nearly decade-old smear campaign of Sostre when it published an editorial urging the Governor not to grant Sostre clemency and warning that Sostre had been "ragingly defiant of the entire law enforcement, judicial, and penal system."²⁵⁶

On Christmas Eve, 1975, Governor Carey granted clemency to Sostre, and he was released from prison for the last time in February 1976 at the age of fifty-two.²⁵⁷ He had served twenty years

something about political witch-hunts) shoehorned Sostre onto his list of writers who were prisoners of conscience: he 'has difficulty in writing his own appeals because the prison rations paper and pencils,' Miller explained. From a protest movement organized by a small band of local activists, the outcry against Sostre's incarceration spread . . .") (footnotes omitted).

253. See Hess, *supra* note 2 ("The Governor had received appeals for his release from . . . a committee of Americans including Ramsey Clark, Philip and Daniel Berrigan, the Rev. Ralph D. Abernathy, Julian Bond and Angela Davis."); see also FRAME UP!, *supra* note 2; McFadden, *supra* note 252; Anderson, *supra* note 2; Schwartz, *supra* note 12, at 775 ("A book has been written about [Sostre's] trial and a defense committee has been formed; in Buffalo, 'free Martin Sostre' has become a widespread rallying cry for protesting students and others.")

254. *Amnesty International Newsletter*, AMNESTY INT'L (Feb. 1, 1976), <https://www.amnesty.org/en/documents/nws21/002/1976/en/> [<https://perma.cc/UQW3-8WMV>]; Hess, *supra* note 2; McLaughlin, *supra* note 2, at 17 ("Amnesty International listed him as a prisoner of conscience, and the case gained added publicity from a 1974 radical Pacific Street film documentary, *Frame Up!*" (citing FRAME UP!, *supra* note 2)); Ervin, *Prison Revolutionary*, *supra* note 8 ("At one point, [Sostre] became the best known political prisoner in the world, and his case became adopted by Amnesty International, the prisoner of conscience organization, in 1973. This was a first for U.S. political prisoners and put tremendous pressure on the state of New York and the U.S. government."); Schaich & Hope, *supra* note 60, at 286.

255. See McFadden, *supra* note 252; see also Hess, *supra* note 2.

256. Schaich & Hope, *supra* note 60, at 284.

257. *Amnesty International*, *supra* note 254; Anderson, *supra* note 2; McFadden, *supra* note 252; Schaich & Hope, *supra* note 60, at 282; Hess, *supra* note 2 ("Governor Carey granted Christmas Clemency yesterday to Martin Sostre, a black Puerto Rican militant . . . [T]he Governor's statement yesterday observed [that] Mr. Sostre filed 'numerous lawsuits which have clarified the legal rights of prisoners.'"); McLaughlin, *supra* note 2, at 2 ("Eventually, Sostre won his freedom . . . His case became an embarrassment. He was finally pardoned in December 1975."), 17-18 ("The prospects

of his life in prison and nearly seven years in solitary confinement.²⁵⁸ Sostre returned to Manhattan, where he worked as a tenants' rights organizer²⁵⁹ and political aide to a local Assemblymember.²⁶⁰ He finally settled in New Jersey with his wife Elizabeth and his sons Mark and Vincent, where he would live out the rest of his life.²⁶¹ Sostre passed away on August 12, 2015, at the age of ninety-two.²⁶²

In November 2017, the Frank E. Merriweather Jr. Library hosted *To and From 1967: A Rebellion with Martin Sostre*, an event commemorating the fiftieth anniversary of the Black rebellion on Buffalo's east side.²⁶³ The event included an installation created by a local east side artist called *Reviving Sostre*, consisting of three painted bookshelves placed in the lobby of the library, which was built on the site where one of Sostre's bookstores used to stand.²⁶⁴

In March 2022, there were 31,262 people incarcerated in New York State prisons.²⁶⁵ According to New York State Department of

for Sostre's freedom had never been so good. Activists stepped up their campaign with a sit-in protest at New York Governor Carey's Albany offices and he was deluged with letters appealing for clemency from Angela Davis, Julian Bond, soviet dissident Andrei Sakharov, and former Attorney General Ramsey Clark, among others. He seemed to have little choice but to grant Sostre a Christmas pardon in 1975."); Ervin, *Prison Revolutionary*, *supra* note 7 ("Finally, [Sostre's] worldwide defense organization pressured the New York state governor to grant Sostre an executive clemency, and he was released in 1976.")

258. Schaich & Hope, *supra* note 60, at 282 ("Sostre was imprisoned from 1952 to 1964, and from 1967 to . . . 1975, a total of 20 [years] By the age of 52, Sostre lived almost seven years in solitary confinement.")

259. McLaughlin, *supra* note 2, at 18 ("[I]n the years after his release, [Sostre] devoted himself to tenants' rights campaigns and community activism in New York and New Jersey. As he told a New York Times reporter, a week after his release, his fight for justice was not over. All that has happened is that the 'battlefield has changed from the dungeons, the prisons, to the street,' he said. 'This is just one continuous struggle.'") (footnote omitted).

260. Hess, *supra* note 2; McFadden, *supra* note 252; McLaughlin, *supra* note 2, at 18 ("The conditions of [Sostre's] release dictated that he must be employed and so Marie Runyon, a Harlem tenant activist who had been elected to the state legislature (and who had joined the sit-in at Carey's offices [to release Sostre]), hired him as an aide, promising to pay his wages out of her own salary. There, in that moment, was a victory that went further than Sostre's personal deliverance from prison and reflected a dramatic change in American political culture: Sostre, denounced in Senate hearings as a subversive threat to the United States in 1968 and persecuted by the FBI, was officially employed by a representative in the state legislature—herself a Harlem activist—seven years later[.]") (footnote omitted).

261. See Symonds, *supra* note 2.

262. *Id.*

263. *To and From 1967: A Rebellion with Martin Sostre*, JUST BUFFALO LITERARY CTR. (Nov. 18, 2017), <https://www.justbuffalo.org/event/1967-rebellion-martin-sostre-20171118/> [<https://perma.cc/NHD6-FBCY>].

264. *Id.*

265. *New York's Prison Population Continues Decline, But Share of Older Adults*

Corrections and Community Supervision data, solitary confinement is still in widespread use in New York State, despite the passage of the HALT Solitary Confinement Act in 2021 banning its use beyond fifteen consecutive days.²⁶⁶ Private prisons remain one of the most reliable and profitable industries to invest in.²⁶⁷ Inside and outside prison walls, police continue to brutalize, criminalize, terrorize, frame, and murder Black people.²⁶⁸

Ruth Wilson Gilmore reminds us that “prison abolition is not just about closing prisons. It’s a theory of change.”²⁶⁹ This is the defining moral imperative of our time—one that requires the ideological disentangling of our conceptions of ‘crime’ and ‘punishment’ and the unraveling of the social, economic, and political assumptions that support our reliance on the modern prison to maintain social order—and Martin Sostre has set the example for future generations about how to fight back against,

Keeps Rising, OFF. N.Y. STATE COMPTROLLER (Jan. 13, 2022), <https://www.osc.state.ny.us/press/releases/2022/01/new-yorks-prison-population-continues-decline-share-older-adults-keeps-rising> [<https://perma.cc/8QEK-4XVG>].

266. Matt Katz, *Data Shows New York is Violating a New Law Banning Solitary Confinement*, GOTHAMIST (Sept. 8, 2022), <https://gothamist.com/news/data-shows-new-york-is-violating-a-new-law-banning-solitary-confinement> [<https://perma.cc/8KNP-7KBU>] (“The HALT Solitary Act, signed by former Gov. Andrew Cuomo in 2021, went into effect in March [of 2022]. It prohibited the placement of any incarcerated person in solitary confinement, known as ‘segregated confinement,’ for more than 15 days in a row, and more than 20 nonconsecutive days in a 60-day period. Yet the practice remains widespread in New York prisons, according to newly released data from the state Department of Corrections and Community Supervision, which operates [New York’s] vast state prison system. The latest statistics show that as of Aug. 1, 228 people were held for longer than 15 days, including 50 locked in for between 31 and 90 days. Of all 490 people held in the solitary units known as segregated housing, the average length of stay was 16.1 days. Once inside, incarcerated people are required to have four hours out of their cell daily — two for recreation, and two for therapeutic programming.”).

267. See Kara Gotsch & Vinay Basti, *Capitalizing on Mass Incarceration: U.S. Growth in Private Prisons*, SENT’G PROJ., (Aug. 2, 2018) <https://www.sentencingproject.org/publications/capitalizing-on-mass-incarceration-u-s-growth-in-private-prisons/> [<https://perma.cc/JPF9-37DN>].

268. Williams C. Itheme, *Systemic Racism, Police Brutality of Black People, and the Use of Violence in Quelling Peaceful Protests in America*, 15 AGE HUM. RTS. J. 224, 228 (2020) (citations omitted) (“[T]he culture of hate against Black people in America was not recently developed, instead the heightened use of smart phones in the 21st century has helped to create more awareness, consciousness, and exposure of the cruelty and brutality by the American police for centuries. This claim is embellished by the video records showing the level of mastery with which the brutality is usually carried out, the perfect use of deadly tactics in tackling down, handcuffing, and skillfully choking Black people to death even in broad daylight, amidst a global spectacle.”).

269. (Rachel Kushner, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, N.Y. TIMES (Apr. 17, 2019), <https://www.nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html> [<https://perma.cc/CZ92-9WP3>].

while refusing to accept the dehumanization of the U.S. system of racial oppression and institutionalized dehumanization known as mass incarceration.²⁷⁰ Sostre's story reveals the true purpose of the U.S. prison system—to subjugate, silence, and erase any person who challenges the supreme authority of the state and threatens to expose its true core: white supremacy and racial violence.

Throughout his life, Sostre never stopped fighting for the autonomy and human dignity that the carceral state was designed to deny him.²⁷¹ Yet that very state, in its determination to eradicate any perceived threat or challenge to its status quo of racial subjugation, created an anarchist revolutionary whose experience made him uniquely equipped to challenge said system and whose legacy lives on to inspire and instruct new generations of anarchists, radical theorists, revolutionaries, movement lawyers, jailhouse lawyers, and prison abolitionists to come.²⁷² As Sostre

270. ANGELA DAVIS, ARE PRISONS OBSOLETE? 20–21 (Seven Stories Press 2003) (“Effective alternatives [to punitive justice] involve both transformation of the techniques for addressing ‘crime’ and of the social and economic conditions that track so many children from poor communities, and especially communities of color, into the juvenile system and then on to prison. The most difficult and urgent challenge today is that of creatively exploring new terrains of justice, where the prison no longer serves as our major anchor.”); Schaich & Hope, *supra* note 60, at 286 (“From [Sostre’s] perspective, to cooperate with the courts, the guards, or the warden was to assist in his own destruction . . .”), 288 (“Sostre chose to resist even the smallest acts of humiliation. Any cooperation with the state’s attempts to dictate the terms of one’s human rights was rejected as an argument for apostasy.”); Anderson, *supra* note 2 (“We celebrate the hard-won battles of Sostre while still in the trenches of an unwon war. He did not waver in his dedication at times when many would have chosen to do otherwise. He lived a life where he worked to take parts of the prison system down, even while in a cage himself. We will all die some way or the other, but we should hope to take a piece of the state with us as we go until it is completely undone. *Martin Sostre showed us the way.*”) (emphasis added).

271. Anderson, *supra* note 2 (“While being imprisoned, [Sostre] was *still* doing the political education work that he previously did in the community. He claimed several victories in court for the rights of those in prison, from political and religious freedoms to restricting the use of solitary confinement. He himself had been subjected to the torture of solitary confinement, had his mail tampered with and was subjected to intimidation—all because of his work. But Sostre remained true to his cause.”).

272. Sostre, *The New Prisoner*, *supra* note 12, at 244 (“Every one of your prison camps has now become a revolutionary training camp feeding trained revolutionary cadres to each revolutionary foco in the ghetto. The recruits are the thousands of Black militants and revolutionaries framed and kidnapped from the ghettos in your desperate effort to put down the spreading Black Rebellion. While on the surface it appears you’ve cooled the ghettos, all you’ve done was remove the dynamic elements, dumped us in your prison camps where our diverse ideologies and experiences cross-fertilized, hardened and embittered us in your dehumanizing cages by abuse, breaking up our families, etc., to then return us to the ghettos as fully-hardened revolutionary cadres. Your oppressive mentality blinds you to these clear facts.”); Symonds, *supra* note 2 (“[Sostre’s son] Vinny said his father would have wanted ‘to be remembered the same way he lived, which is to inspire people to fight against

wrote from solitary confinement, "Revolutionary spirit conquers all obstacles[,]”²⁷³ but praxis is only truly possible as an enemy of the state.

injustice.”); Anderson, *supra* note 2 (“[In Martin Sostre’s own words,] ‘[t]he burden of a long sentence would be lightened by the satisfaction of knowing that the mission set out for me, that of helping my people free themselves from the oppressor, is being accomplished’”); Ervin, *Prison Revolutionary*, *supra* note 7 (“We don’t have [Sostre] here today in the flesh, but we can at least honor his memory and never let it die!”).

273. Sostre, *The New Prisoner*, *supra* note 12, at 244.