

Political Persecution

Free Speech in Amerikkka

Myth or Reality?

Presented By:

Pelican Bay

Human Rights
Movement

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re JAMES CRAWFORD,
on Habeas Corpus.

A131276

(Del Norte County Super. Ct.
No. HCPB 10-5298)

Petitioner James Crawford, an inmate housed at Pelican Bay State Prison and a validated gang member, attempted to send a letter through the prison mail system. The letter was addressed to a newspaper and argued that certain California inmates (including petitioner) should be recognized as political prisoners. Prison officials confiscated the letter after concluding it threatened prison security because in it petitioner refers to himself as a "New Afrikan Nationalist Revolutionary Man" and because it could contain hidden messages promoting gang activity.

There is no evidence in the record supporting the contention that the letter promotes gang activity, contains coded messages, or otherwise poses a threat to prison security. We therefore conclude that confiscation of the letter violates petitioner's First Amendment right to free speech, grant the petition for writ of habeas corpus, and order that petitioner's confiscated letter be sent to the addressee.

This landmark, precedent-setting decision won by MutopeDuguina (s/n James Crawford) from the Pelican Bay SHU recognizes the First Amendment rights of prisoners – even those condemned to solitary confinement torture.

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Thus, today prison officials and the prison intelligence unit have attempted to create a fallacious narrative in order to suppress our creative thought and our ability to collectively develop solutions for the many social ills afflicting our communities, particularly speaking of New Afrikans.

They have gone so far as to boldly proclaim that the term New Afrikan was created by the (BGF) and that those who identify as or use the term are declaring their allegiance to the BGF, which has been declared a prison gang. They have sought to suppress its usage by validating (i.e. designating as a gang member or associate) anyone who uses the term or who dares mention the name George Jackson.

In *Harrison v. IGI*, 2010 WL 653137 (N.D.Cal., Feb. 22, 2010), they argued, “Black August, New Afrikan Revolutionary Nationalism, The New Afrikan Collective Think Tank (NCTT), George Jackson University (GJU), and the New Afrikan Institute of Criminology 101 all promote the BGF.” They offered no proof of their outrageous allegations, and Judge Susan Illston found the defendants take a very expansive view of what might “promote” a prison gang’s illicit activities and apply it with gusto, when the First Amendment requires a more nuanced approach (*Harrison*, *supra*, 2010 WL 653137, at p. 6).

Judge Illston further found that it appeared that prison officials had taken a race-based approach and banned all things Afrikan-American under the guise of controlling the BGF.

Even still, the silence as it relates to the First Amendment continued. The prison intelligence unit continued its quest to criminalize ideological thought, and courts continued engaging in fallacious reasoning in order to uphold a blatant perversion of the First Amendment.

Judge Illston further found that it appeared that prison officials had taken a race-based approach and banned all things Afrikan-American under the guise of controlling the BGF.

That is, until the ruling in *BrothaDuguma's case In Re Crawford*, filed June 4, 2012, and certified for publication June 13. In a brilliant piece of judicial reasoning, a panel of justices in a 3-0 decision finally reaffirmed a prisoner's First Amendment right to free speech and expression, stating: "Freedom of speech is first among the rights which form the foundation of our free society. 'The First Amendment embodies our choice as a nation that, when it comes to such speech, the guiding principle is freedom – the unfettered interchange of ideas – not whatever the State may view as fair.' (Arizona Free Enterprise Club v. Bennett (2011) 131 S.Ct. 2806). 'The protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people ... All ideas having even the slightest redeeming social importance – unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion – have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests.' (Roth v. United States (1957) 354 U.S. 476, 484.)"

"Freedom of speech is first among the rights which form the foundation of our free society."

The programs embodied in the New Afrikan Collective Think Tank, New Afrikan Institute of Criminology 101, the George Jackson University and the New Afrikan ideology itself are inclusive programs emphasizing a solution-based approach to carnage in the poverty stricken slums from where many of us come. The CDCR Prison Intelligence Units (PIU) have sought to suppress these initiatives simply because they do not like the message. They have marched into court after court with one standard line: New Afrikan means BGF and these initiatives are promoting the BGF.

"As recently noted by Chief Justice Roberts," the ruling in *In re Crawford* continues, "[t]he First Amendment reflects 'a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.' [Citation.] That is because 'speech concerning public affairs is more than self-expression; it is the essence of self-government.' [Citation.] Accordingly, 'speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.'" (*Snyder v. Phelps* (2011) 562 U.S. __ [131 S.Ct. 1207, 1215]."

The programs embodied in the New Afrikan Collective Think Tank, New Afrikan Institute of Criminology 101, the George Jackson University and the New Afrikan ideology itself are inclusive programs emphasizing a solution-based approach to carnage in the poverty stricken slums from where many of us come. The CDCR Prison Intelligence Units have marched into court after court with one standard line: New Afrikan means BGF and these initiatives are promoting the BGF.

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In re Crawford is a very important ruling because the justices said these protections apply to prisoners as well. Now contrast this with the ruling in Ellis v. Cambra, 2010 U.S. Dist. Ct. Lexis 110956, WL 4137150 (E. Dist. Cal., Oct. 19, 2010). There the court permitted this writer to be punished based on his speech that offended prison officials. They were permitted to use the gang validation procedures to shield their retaliatory conduct, essentially justifying the punishment for legitimate First Amendment activity, even though the case did not challenge a gang validation.

The court there said this writer did not have a right to keep his own thoughts, and that this writer was properly held liable "for writing with admiration about a prison gang founder, George Jackson," and that any notion of PIU being motivated by their hatred of George Jackson was all in this writer's head.

It is judges like these who engage in fallacious reasoning and pervert the law, who bend over backwards to make excuses for prison officials who routinely violate the First Amendment. It is judges like these who we must hold accountable by exposing their fallacious rulings and disrespect for constitutional principles to the public, so the people can see the arbitrary nature of their system of justice and perhaps get a glimpse at what makes so many of us believe that the Constitution should have been written on toilet paper.

Because up until the ruling in In Re Crawford, 206 Cal.App.4th 1259 (2012), justice truly had been blind, refusing to recognize the First Amendment rights of prisoners despite Pell and the Martinez Supreme Court rulings. See In re Furnace (2010) 185 Cal.App.4th 649, 659.

Here a hostile Fifth Appellate District Court of Appeals permitted Mr. Furnace to be validated because of his listening to audio tapes of George Jackson, which he had been permitted to purchase from his prison cell, approved by prison staff.



The hard and courageous work of jailhouse lawyers like Mutope, Sondai and Sitawa will enable the promise of "Equal justice under the law," etched into the wall of the U.S. Supreme Court, to break through prison walls.

While the court appointed counsel to represent Mr. Furnace, counsel neglected to employ an expert witness to debunk the fallacious opinion of the PIU and to put forth that the political thought of George Jackson does not promote criminal gang activity.

The PIU have put forth a narrative that George Jackson's books are "must read" for members of the BGF and members of the BGF often quote from George's books. This is exactly why

prisoners need our professors, intellectuals and historians to step up to stop this assault on legitimate historical content.

People from all walks of life who embark upon a study of history come across many books that are characterized as “must read.” Does this alone qualify as gang activity? In *Hawkins v. Russell* (E.Dist.Cal. 2011, 2011 WL 1299939), the PIU admitted that there were many legitimate reasons why a prisoner would want to read George Jackson’s books.

Unfortunately for Mr. Furnace, he suffered the same fate as this writer, being in the hostile Fifth Appellate District where the Constitution is as good as a two-ply piece of toilet paper!

The three-judge panel ruled in *Mutope’s* case: “Indeed, the measure of our resolve as a society to protect free expression must be our willingness to tolerate unpleasant speech by those speaking from the margins of political opinion. As Justice Kennedy has pointed out, ‘[t]he First Amendment is often inconvenient, but that is beside the point. Inconvenience does not absolve the government of its obligation to tolerate speech’ (*International Soc. for Krishna Consciousness, Inc. v. Lee* (1992) 505 U.S. 672, 701 (concurring opinion of Kennedy, J.)) ... ‘[T]he government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.’ (*Texas v. Johnson* (1989) 491 U.S. 397, 414.)”

Contrast that with *Hawkins v. Russell* (E.Dist.Cal. 2011) 2011 WL 1299939. There the court permitted the confiscation of George Jackson’s book “*Blood in My Eye*,” again accepting any excuse prison officials could conjure up. Even when their excuses proved to be false, the court simply gave them another bite at the apple to come up with a better excuse.

The three-judge panel ruled in *Mutope’s* case: “Indeed, the measure of our resolve as a society to protect free expression must be our willingness to tolerate unpleasant speech by those speaking from the margins of political opinion.”

Any information prison officials find objectionable is automatically attributed to the BGF for validation purposes, the *Hawkins* court ruled. It was alleged that the book “*Blood in My Eye*” and two other documents were BGF material. The court accepted this at face value. The court asked few questions and didn’t require an answer! And in a twisted opinion, summary judgment was awarded to the state – another fallacious opinion, dooming Brotha *Hawkins* for his possessing any political thought the state finds objectionable.

Brotha *Mutope* in *In re Crawford*, 206 Cal.App.4th, 1259 (2012), has broken through the code of silence that was permitting an entire class of New Afrikan Black prisoners to be punished simply for possessing a thought about their/our struggles in this society, country and world and for daring to speak about it. And the courts remained silent refusing to even entertain a First Amendment argument, instead opting to accept the notion put forth by the Prison Intelligence Unit that New Afrikan equals BGF, thereby criminalizing an entire body of history under the guise of gang activity.

George Jackson cannot be removed from the fabric of the people's struggles in this society any more than Malcolm X can or Medger Evers or Dr. Martin Luther King, Jr. or Harriett Tubman or Sojourner Truth or Ida B. Wells, Rosa Parks or Frederick Douglass, or the countless others who've fought and struggled for a brighter future for generations to come.

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What CDCR and its Prison Intelligence Unit are trying to do is make an end run around the First Amendment by shielding its suppression activity under the guise of gang activity, just as they tried to do historically, which gave rise to *Procunier v. Martinez* (1974) 416 U.S. 396, 413.

In *In re Crawford*, CDCR argued for an exception to the *Martinez* test for validated gang members. The court declined to make such an exception, holding: "Gang related correspondence is not within the exception to the First Amendment test for censorship of outgoing inmate mail."

The fact that they even argued for such an exception shows their mindset, their intentions to suppress that which they believe to be repugnant, offensive and that which they believe a prisoner ought not be thinking! Because we in their minds have no right to think or possess ideas, concepts or vision beyond that which they believe we should possess.

Until *In Re Crawford*, these highly educated judges were sanctioning this nonsense with twisted, perverted rulings permitting a newspaper article or magazine layout or book to be used against a prisoner for validation purposes. They issued twisted rulings like those in *Ellis v. Cambra* or *Hawkins v. Russell* and *In Re Furnace*, where this writer was told he has no right to his thoughts and the First Amendment only protects a prisoner's right to file a 602.

These kinds of fallacious rulings ought to be publicized so as to show the skillful manipulation of the law by those sworn to uphold it. *In Re Crawford* reestablishes that First Amendment protections apply to prisoners and that we too enjoy a measure of free speech and expression and that we ought not be punished with fabricated notions of gang activity for merely a thought!

However, if we are to continue to meet with success, we need our professors, historians and intellectuals to step up and provide declarations that we can use in our litigation, defending our right to read, write and study all aspects of a people's history, like Professor James T. Campbell did in *In Re Crawford*. This is the only way a prisoner can challenge the opinion of a prison official.

Until now, the Prison Intelligence Unit has been falsely claiming that the term New Afrikan and the ideology New Afrikan Revolutionary Nationalism (NARN) was the creation of the BGF and any prisoner or person who uses the term is showing his allegiance to the BGF. This standard line has been their position in every validation involving the usage of these terms.

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In Re Crawford reestablishes that First Amendment protections apply to prisoners and that we too enjoy a measure of free speech and expression and that we ought not be punished with fabricated notions of gang activity for merely a thought!

Well, Professor Campbell provided expert testimony in In re Crawford, showing that the terms are ubiquitous in Black urban life and have no particular connections to prison gangs. "Oh what a tangled web we weave, when first we practice to deceive."

In Harrison v. IGI, at the evidentiary hearing in Del Norte Superior Court, the Prison Intelligence Unit's correctional specialist Devin Hawks represented to the court that George Jackson University was really a drop box for the BGF but couldn't produce a single piece of evidence to prove this outrageous claim. That prompted the judge to say how angry he was; it had been represented to him that this was a drop box, he said, and we get here today and there's no drop box.

These kinds of exaggerations are common and they're usually able to shield themselves using confidentiality. The PIU have given at least three different excuses to try and place George Jackson in the sphere of being a gang founder, and I'm sure other prisoners have received other excuses. All are relevant and important.

Their latest narrative, used in Hawkins v. Russell, is that George Jackson founded the BGF in 1966. This information comes from a document written in the 1990s by a SHU prisoner who was preparing to debrief. He was permitted to pass around copies of these deceptive documents in the SHU. I personally spoke to some of the elders about these documents and was told that the information in them was flawed and that the connections it attempted to make simply do not jibe with recorded history. This is all I'll say about this for now.

But it appears that the PIU has gotten so desperate to now try and put forth a flawed narrative that the court accepted without question in Hawkins, even after CDCR admitted there that George's books did not pose a security threat to California prisons and that there were many legitimate reasons why a prisoner may want to read those books.

At a minimum, if a court is going to accept an infringement upon First Amendment freedoms it ought to at least do what the court in In re Crawford did and appoint counsel who can secure expert testimony so that a court's decision can be well informed and not simply some rote process of exclusion because of whatever contempt a court might have for the prisoner.

Mutope's victory in *In re Crawford*, 206 Cal.App.4th, 1259 (2012), is significant. It reaffirms our right to speak, it gives value to our ideas and opinions and, more importantly, it breaks the code of silence that had swept through the courts about prisoners and the First Amendment. "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable" (Texas v. Johnson, 491 U.S. 397, 414; *In re Crawford*, 206 Cal.App.4th 1259 (2012) ("these protections apply to prisoners as well")).

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Much work remains to be done, like stopping the bogus validations based on legitimate First Amendment material. We know that many individuals are falsely validated simply for reading George's books or a newspaper article, for observing Black August or for simply trying to get in touch with one's cultural identity.

Mutope's victory in *In re Crawford* reaffirms our right to speak, it gives value to our ideas and opinions and, more importantly, it breaks the code of silence that had swept through the courts about prisoners and the First Amendment.

These legitimate expressions should carry no penalty at all. You're not doing anything wrong, and a lot of brothas who've been validated simply shouldn't be. Nor should folks be frightened away from reading or studying any aspect of history simply because the state doesn't like its content. And judges who issue fallacious opinions permitting prisoners to be punished for reading a George Jackson book or researching your history should be exposed.

Literary content and cultural and historical materials are not the activities of a gang; they are political and social activities that we have a right to express, according to the unanimous decision in *In re Crawford*.

The First Amendment campaign continues to forge ahead, although we still don't have a lawyer. The campaign still exists, and we anticipate even greater successes in the future.

Much work remains to be done, like stopping the bogus validations based on legitimate First Amendment material. We know that many individuals are falsely validated simply for reading George's books or a newspaper article, for observing Black August or for simply trying to get in touch with one's cultural identity.

We can't be intimidated into silence by unfounded accusations of gang activity. We believe the First Amendment ought to live up to what it says it is. We believe it is important to be able to participate fully in the marketplace of ideas, because we agree that "the First Amendment reflects a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open" (Justice Roberts [*Roth v. United States*] (1957) 354 U.S. 476).

Pelican Bay state Prison Political Prisoners

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The below New Afrikan Freedom Fighters have spent the last ten (10) to thirty Two (32) years in solitary Confinement. They are worthy of your support. Send our Brothas Some Love & Light:

MUTOPE Duguma
S/N James Crawford
D1'117 / D05996
P.BSP-SHU, P.O. BOX-7500
Crescent City, CA. 95532

ABdul olugbala SHAKUR
S/N James Harvey
D1'119 C48884
P.BSP-SHU, P.O. BOX-7500
Crescent City, CA. 95532

ABASI Ganda
S/N Clyde Jackson
D2.107, C 33559
P.BSP-SHU P.O. BOX-7500
Crescent City, CA. 95532

MUTawally KamBon
S/N Michael Cooperwood
D1. 214, C 46411
P.BSP-SHU, P.O. BOX-7500
Crescent City, CA. 95532

Sitawa nantambu Jamaa
S/N R.N. DEWBerry
D1'117 / C 35671
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Sondai Kamdibe
S/N Randall Ellis
D1'223 C 68764
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Baridi Yero
S/N James williamson
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K'Uana Tashiri Askari
S/N Marcus Harrison
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Ellis v. Brandon, et al., C-10-2952-THE (PR), the case reported in our last First Amendment campaign update, was settled in March 2012 for far less than what it was worth. But among other things, the major influence in my decision to settle the case was my inability to secure an expert witness declaration, which is the only way I felt we could be successful in summary judgment, so it cannot be stressed enough about our intellectuals, professors and historians being available to give their expert opinion on historical matters.

Literary content and cultural and historical materials are not the activities of a gang; they are political and social activities that we have a right to express, according to the unanimous decision in *In re Crawford*.

Many thanks to Professor James T. Campbell for providing his learned, expert opinion and historical analysis as it relates to Afrikan-Amerikan history that the PIU had been successfully criminalizing. And a clenched fist salute to BrothaMutopeDuguma for his fine work in breaking the code of silence. Finally, we'd be remiss if we didn't thank his legal team for its excellent work.

We've cracked one layer of a thick wall. Now all prisoners should take advantage of this brilliant ruling and reassert your rights to study your heritage, Black, White or Brown.

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Zine Distro
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Foot Note:

Read the following cases:
MARCUS HARRISON V. INSTITUTIONAL GANG INVESTIGATORS
NO. 07-3824 (SI) AKA: TASHIRI ASKARI
JAMES HARVEY V. R. DROWN (IGI) NO. 10-4891 (RS)
AKA ABDUL SHAKUR