

QUESTIONS AND ANSWERS **ABOUT CIVIL DISOBEDIENCE AND THE LEGAL PROCESS**

Please take a look at the “legal steps and choices chart” on page 13 of this document. It's a road map to the applicable legal process and will make all these explanations much clearer.

What crimes could we be charged with?

Protestors are usually charged with infractions (crimes not punishable by jail time) or misdemeanors (crimes punishable by a year in jail or less). Typical infractions include traffic offenses and some municipal code violations. Typical misdemeanors include unlawful assembly, failure to disburse, trespassing, minor property damage/destruction, and resisting an officer. Sometimes activists are arrested or charged with felonies (crimes punishable by over a year in jail), such as committing conspiracy or major property destruction. However, in many cases, these felony charges are often dropped. Police or prosecutors simply use them as scare tactics, or bargaining tools. In the same fashion, prosecutors will often pile up misdemeanor charges in order to be able to say, “We're charging the defendants with damaging property, resisting an officer, and trespassing, but we'll drop the first two charges, if they'll plead guilty to trespassing.”

If you bring any weapons (even your trusty pocket knife) or illegal drugs to the action, you are likely to get additional charges – maybe very serious ones. So double check your pockets and bags. It creates hassles for everyone, and puts a major strain on solidarity, if you get busted for drugs or weapons.

What are the differences between tribal, state and federal charges?

There are three court systems: tribal, state and federal. Laws and procedures differ somewhat among them. Normally people are prosecuted in the court of whichever entity controls the land where the protest took place. That is, if you are arrested on state land, you're prosecuted in state court, while if you're arrested on federal land, you're prosecuted in federal court. Sometimes there is overlapping jurisdiction, and the various prosecutors get to decide where the case will be prosecuted. Occasionally, one set of activists is prosecuted in state court, while another is prosecuted in federal court during the same campaign.

What if I'm currently on probation or have an outstanding warrant?

If you're on probation, parole or have a warrant out for your arrest, you should inform your affinity group before engaging in civil disobedience. Obviously, if you want to take the risk of violating the conditions of your probation or parole, or of being kept in custody because of a warrant, that's your choice. But that means you're likely to be treated differently from everyone else – *i.e.*, kept in jail. So you need to discuss with the group.

It makes sense to pay off traffic tickets which have gone to warrant before participating in the action.

How do I handle disabilities so I can participate fully in the action?

Make sure your affinity group members know about any access issues you face. For example, if you use a wheelchair and will require assistance with non-accessible bathrooms, your affinity group needs to know so its members can arrange to have people available to act as attendants. If you have a hidden disability, your affinity group needs to know that, too. For example, if you have dyslexia or a seizure condition, your affinity group members need to know how and when they can help you.

How do I handle medical needs so I can participate fully in the action?

If you have a potentially dangerous medical condition, wear a “medic-alert bracelet.” You should be able to get them at most drug stores. People with asthma, diabetes, seizures, etc. should wear bracelets while they participate in the action. This will make the police and jail staff take you much more seriously if you start to have difficulties.

The only way to ensure that you will receive medication while in jail is to bring a recently-dated doctor's letter explaining your requirements. Make four copies of the doctor's letter. Keep two copies of this letter on your person (one to keep and one to give to the jail medical staff), leave the third copy with your affinity group supporters, and leave the fourth copy with your attorney or other jail supporters. (The point of distributing all these copies is to facilitate your supporters' efforts to help you if the jail staff takes your letters away and loses them.)

If you use prescription medicine, bring it with you in its original container, the pharmacy's label intact. The police or jail staff will probably still take away your medication at some point, but at least you'll have it until then. Once you're in jail, its medical staff should supply you with your regular prescription medications. Usually the jail staff dispenses only medications from its infirmary, since it won't trust that what you brought in is the real thing. Sometimes its practitioners try to substitute a similar medication for what you normally use. If this is a problem, have your doctor specify “no substitutions” in his or her letter. A significant difficulty is the delayed delivery of medication. Often there is a big lag – of 24 hours or more – between getting arrested and first receiving regular doses of medication. Try to plan for this by taking your medication just before arrest, and by keeping your next dose somewhere safe and handy. Also, don't take all your medication to the action – leave some at home. The police and jail should eventually give back any medications they have taken from you, but sometimes they lose them or delay their return. Remember that there is no assurance that jail personnel will be responsive to your medical condition.

What would they do with minors (people under 18)?

Those who are obviously minors are almost always separated from the adults upon arrest. Often times, in order to be released, minors must rely on a parent or guardian to pick them up. Therefore, minors considering arrest should take into account whether a parent or guardian will be available to help them.

What could happen to people who aren't U.S. citizens?

Those activists who are not native or naturalized U.S. citizens face a very real risk. Even if you are a resident alien, an arrest (let alone a conviction) could result in deportation, despite your having lived in the U.S. for most of your life. If you are merely here on a temporary visa, your risk is higher. And if you are undocumented, your risk is extremely high. People in these categories should not participate in civil disobedience actions without first seeking advice from a knowledgeable immigration lawyer.

What exactly is resisting an officer?

Generally, physical rather than verbal acts are considered resisting an officer. Struggling with the police an obvious example of resisting (and can result in other more serious charges, like “battery on a peace officer”). Even passive physical resistance, such as going limp, is legally considered resisting an officer. However, in most cases, refusing to answer questions is not resisting. Refusal to obey lawful orders of law enforcement can result in arrest for interfering with a police officer. Simply asking a police officer questions – such as “Why are you arresting him?” – have landed some people in jail. Remember, the police often will make false and unlawful arrests.

What happens if I damage property?

Property damage which has occurred in previous mass civil disobedience actions has included things like cutting fences, painting messages, and taking up train tracks. The penalties for property damage can include fines and restitution, as well as the following maximum periods of incarceration:

State: damage up to \$400 = up to 1 year, \$1000 fine (misdemeanor)
 damage \$400-\$10,000 = up to 1 year, \$10,000 fine (felony)
 damage over \$10,000 = up to 1 year, \$50,000 fine (felony)

In most situations where a fine is imposed, the court also adds on various mandatory “assessments” which can more than double the amount you actually are required to pay.

Is it really a felony to merely touch a police officer?

Yes. Simply reaching over and touching an officer with your fingers is considered “battery upon a peace officer.” Obviously an officer can lay hands on you, but you should

not initiate contact with any part of your body or belongings. In one recent case, a line of officers stood right in front of a crowd of protesters. The crowd moved forward a little and a protester at the front lost his balance. He set his hand on the forearm of one of the officers to keep from falling down, and was charged with battery. It's best to be very careful to avoid unnecessary contact.

What should I say to the police, the sheriffs, the federal marshals or the FBI?

Whenever law enforcement officials ask you for information beyond your name and address, it's legally safest to say these magic words: "I don't want to answer questions; I want a lawyer." These phrases invoke the constitutional rights which protect you from police interrogation.¹ Once you say these words, the authorities are supposed to stop questioning you. If they don't stop, just keep repeating the magic words, like a kind of legal mantra.

Remember, anything you say to the authorities can and will be used against you and your friends in court. There's no way to predict what or how the police might try to use it. Plus, the police might misquote you or altogether lie about what you said. So, it's good to make a habit of saying only the magic words and notifying everyone that this is your policy.

Be aware that the authorities are legally allowed to lie when they're investigating! So they may tell you that you need to answer their questions or bring them some documents, in order to "clear" yourself or your friends. Insist upon verifying this with your friends or with a defense lawyer who can prove she or he has had direct contact with your friends.

Sometimes the authorities tell you that it's okay to answer their questions because you're not under suspicion, but "just a witness." It's awfully easy to go from being a witness to being a suspect once you start answering questions. Just say the magic words: "I don't want to answer questions; I want a lawyer."

What if the police don't read me my rights?

They don't actually have to unless (1) you've been arrested and (2) the police want to ask you questions other than what your name and address are. The police are not likely to question you if you were engaged in a mass action. They might try to question you if you were part of a smaller action. Anytime the police ask you questions, whether or not

¹ Under the Fifth Amendment to the U.S. Constitution, you have the right to not be forced to say things which would incriminate you (help prove you guilty). You also have the right, under the Sixth Amendment to the U.S. Constitution, to have a lawyer present when the police are questioning you. So, if you invoke either of these rights, the police are required to stop questioning you.

you've been arrested, and whether or not they've read you your rights, it's best to say the magic words: "I don't want to answer questions; I want a lawyer." Even when the police fail to read you your rights in violation of the law, your answers can still be used to cross-examine you if you testify at trial.

What happens during booking, and how much do I have to cooperate?

Booking is the process in which the police take your photograph, fingerprints and information such as name and address. They usually take your property, too, and are supposed to give you a receipt for it.

Field booking happens at the scene of the arrest, is sometimes not too thorough, and is usually followed by citation release. By contrast, booking at jail is usually pretty thorough and often involves a body search. If you're not making bail right away, the jail authorities take your clothes and other belongings and issue you a uniform.

Refusing to give information at booking can be a crime if you are arrested for a felony. One appeals court in California holds that a person who refuses to give his name when being booked on felony charges is resisting arrest. People being booked on misdemeanor charges are not resisting arrest if they refuse to give their names. And refusing to give information other than your name is not considered resisting arrest and not a crime. It's perfectly legal to withhold any or all information because you have the right to remain silent. You can just say the magic words: "I don't want to answer questions. I want a lawyer." Remember that giving false information is illegal and has occasionally resulted in extra charges. Physical non-cooperation is also illegal.

At the risk of pointing out the obvious, if you decline to give the police any information, but leave your wallet in your pocket, your plans will be foiled.

What are the alternatives to jail sentences?

Instead of, or in addition to, jail sentences, judges frequently impose fines, community service, probation and/or diversion. It's important for affinity groups to discuss in advance what types of sentences people are willing to accept and whether they would want to negotiate a plea rather than go to trial. It helps immensely if those risking arrest tell their supporters and attorneys what their bottom line is in advance. The following definitions may be helpful.

Credit for time served: You get credit for any day (or part of a day) which you spend in custody. This is applied to your sentence. Sometimes you can negotiate a plea bargain in which the sentence is just the time already spent in custody, with no other penalties. In legalese, such a bargaining position would be, "We want credit for time served. No fines. No probation."

Diversion: This is a program in which you do community service and pay an administrative fee. Once you complete the requirements, the charges against you are dismissed – so you don't get a conviction on your record. Usually, you can only get diversion once, for a first offense.

Probation: There are two kinds of probation: formal and summary. If you're on formal probation, you have a probation officer who makes rules about whom you can see, where you can go, how often you get drug-tested, etc. If you're on summary probation (also called “court probation,”) you don't have anybody supervising you; nothing happens unless you get arrested for something new (like another protest, for example). If you are accused of having violated the conditions of your probation, you will receive only a rather streamlined hearing, and not a full trial. If the judge decides that you did violate, the judge may sentence you to jail. Sometimes at the point when you're put on probation the judge announces a “suspended sentence” (the sentence which the judge will impose if you later violate probation). Obviously, being on probation will interfere with your ability to participate in other civil disobedience actions.

Restitution: If you are being sentenced for having damaged property or stolen something, the judge will often try to make you pay the victim money as restitution. Restitution orders are generally in effect for many years, so if you have more money later, the court could take it (by, for example, garnishing your wages or seizing your tax return). It's particularly dangerous to agree to a plea bargain in which you'll pay restitution, without knowing exactly how much money is involved.

How does plea bargaining work and who determines the actual sentence?

Plea bargaining is the negotiation process you and your attorney engage in with the prosecutor and judge to resolve the case. For example, the prosecutor charges you with the misdemeanor of unlawful assembly. You offer to pled guilty to an infraction and pay a fine. The prosecutor may accept this deal because he or she does not believe that the case is very serious and wants to spend time on more serious cases.

In some mass arrest situations, the activists decide to use solidarity tactics to secure the same plea bargain for everyone. In other words, a key element of any plea bargain in a mass action can be the demand that everyone who acted within the nonviolence guidelines gets the same deal. This can be hard for prosecutors and judges to understand, because they think that if two defendants committed different acts – one walked when arrested and the other went limp and was charged with resisting – then the non-cooperative defendant must necessarily receive a harsher sentence. Similarly, prosecutors and judges feel entitled to deal more harshly with defendants who have prior convictions, to “teach those repeat offenders a lesson.” Ultimately, each person who is arrested needs to decide what approach he or she will take. If anyone in a group expects that others will use solidarity tactics, it is very important that it be discussed with the group as a whole. Some participants may have different objectives and not be in a position to do anything other

than protect his or her interests.

Examples of demands which have been met in past plea bargains include the following:

Each of us does 5 hours of community service at an organization or event of our choice. We each tell our attorney when we have fulfilled our obligation, he or she then relays this to the court, whereupon all charges are dropped.

Each of us gets diversion, and we each do 8 hours of community service at an organization or event of our choice, with no “administrative fees.”

We each plead guilty to an infraction and each of us is sentenced to a fine.

Three of four individuals arrested agree to pled guilty to the offense in exchange for dismissal of the charges against a fourth person who has a special reason to avoid a conviction.

What are: “citing out,” “release on your own recognizance,” and “bond and bail” ?

These are all procedures for getting out of jail while your case is in process.

Citing Out is a type of release from custody in which you sign a promise, the “citation” (usually a form which looks like a traffic ticket,) to appear in court. It's up to the police whether or not to offer you citation release, and if they do, it usually will happen around the time you're arrested. The police can cite you with or without booking you (taking information, photo, fingerprints). In large actions, the police often desperately want everyone to cite out, because the authorities do not have the resources to keep everyone in custody. At some demonstrations, police have even released people who wouldn't give their names – the police ended up writing citations to John or Jane Doe and dropping them at the feet of the protestors who, of course, did not sign them. If everyone has decided to cite out, check whether there are people who are “at risk,” whom the authorities might try to keep in custody because of warrants, immigration status, extra charges, etc. Make sure that these people get cited out first.

Bail, bond and release on your own recognizance are other forms of release. It's up to the judge whether or not to offer you these types of release, and if so, it usually happens around the time you first get to court (having meanwhile been in jail).

Bail is money that you pay to the court to be forfeited if you don't appear at scheduled hearings. If you comply, you get it back when the case is all over. You can either put up all the bail money yourself, or have a bail bonds person put up the money for you. Usually, you also have to put up collateral to be forfeited if you don't appear at scheduled hearings. You have to give the bonds person 10% of the total bail, which she or he keeps as payment. Often, there is a pre-set bail for misdemeanors which you can

pay at the jail, without waiting to go before a judge. A typical misdemeanor bail is \$1,000.

Release on your own recognizance (“OR”) is simply your promise to come to court for scheduled hearings. The judge relies on your word, without your having to put up money or collateral. Usually, you will only be released on your own recognizance if you can prove that you: (1) don't have a record of failures to appear, and (2) have ties to the community, like a home, job, school, family, etc.

When do I go to court for the first time, and what do I do when I get there?

If you're in custody, the authorities are legally required to bring you to court within two business days or “as soon as it is reasonably possible.”

If you've been released, your first court date should be written on your citation or release form. Sometimes the authorities try to release people without specifying a date, saying they'll send a notice with the date later. This makes it easy for the authorities to process everyone and/or to prosecute some but not others. Regardless of whether you are being released on citation or otherwise, demand to be given the same court date as everyone else.

At the first court appearance, we usually deal with release issues: bail, bond, OR (see above). You also usually say whether you're going to represent yourself or have an attorney already, or want the court to appoint one. You also find out what the charges are and enter a plea. Sometimes these three processes happen at separate hearings, called respectively a “bail hearing,” “appointment of counsel,” and “arraignment.” Sometimes they all happen at the first hearing.

Remember that you're only entitled to have the court give you a free lawyer if (1) you're indigent, and (2) you're charged with a crime for which you could be sent to jail. Indigent means low-income, and to qualify, you have to show that your necessary expenses eat up all your income. Crimes for which you could be sent to jail are most misdemeanors and all felonies. Infractions do not require jail time.

Be aware that the charges which the police write down when they arrest you are not necessarily those which the prosecutor will use. The police's charges are just suggestions. It's the prosecutor who decides the real charges, and he or she can change them up until we actually start trial.

In state court, in order to enter a plea, you first have to decide whether there is enough information in the “complaint,” (the document from the prosecutor which lists your charges) for you to make a decision. If there isn't, then you make a “demurrer” (pronounced demur). A demurrer is generally just an opening move. You'd want to talk to a lawyer to see whether there's a valid legal or strategic reason to make one. Once you've past the stage of demurrer, you need to enter a plea.

In federal court you don't get to make demurrers. Instead, you plead to the "information" (the name, in federal court, for the document which lists your charges).

If you've negotiated an adequate deal through plea bargaining, you plead out. You can enter a plea of guilty or *nolo contendere*. *Nolo contendere* is a Latin phrase meaning, "I don't contest the charges."

If you haven't negotiated a deal you can accept, or you feel like litigating, you plead not guilty and go to trial. You can also stand mute, that is, refuse to answer when the judge asks how you plead. Judges are required to take silence as a plea of not guilty. Some people make creative pleas by saying something like, "I plead guilty on behalf of the U.S. government..." or "I plead for the earth..." Judges usually end up interpreting these creative pleas as not guilty. They may talk with you to try to get you to plead in the conventional way. They may also consider such statements contemptuous and take a hardline position against you in the future.

Once you plead not guilty, you're on your way to trial. You have one more important decision to make at the arraignment hearing. You must indicate whether you want a constitutionally guaranteed speedy trial. If so, you get a trial within 30 45 days (depending on whether you're state or federal court, and in or out of custody). If there have been many arrests, demanding a speedy trial may overburden the courts, giving you leverage in plea bargaining. On the other hand, it wouldn't give your lawyers much time to write motions and do other legal maneuvers. This is a decision to be discussed with the attorneys. Most attorneys tell their clients to waive the right to a speedy trial, since they usually want plenty of time to file motions and prepare for trial; however, this may not be strategically prudent move when there are many arrestees. It may be better to go for a speedy trial and jam the prosecution.

Even though you start out going to trial, you're not committed actually to doing so. You can change your plea from not guilty to guilty at any time (but you can't change the other way, from guilty to not guilty). You can also change, in either direction, whether you want a speedy trial. There is normally a great deal of plea bargaining between arraignment and trial. Pleading not guilty is generally just an opening move to start the bargaining process.

If you haven't yet got a negotiated deal, and you're not staying in jail, there will be a process for keeping everybody informed of what's going on. It's up to each activist to make sure she or he is on the right mailing and phone lists so that everyone is kept up to date.

How can I plead not guilty, when I deliberately put myself in a situation in which I could be arrested?

Well, do you feel guilty and ashamed of what you did, or are you proud of your

action? Gandhi, who put a lot of thought into this issue, pled not guilty when he was brought to trial. Remember, in this country there is a constitutional presumption of innocence. The government has the burden to prove you guilty; you have no obligation to help the government convict you.

When does the trial happen and what do I do at it?

If you didn't waive time, the trial happens in 30 or 45 days. If you did waive time, trial might not happen for months. There may be many hearings and motions (legal arguments) made before trial actually begins.

At the trial itself, you're entitled to testify if you so desire. The judge may try to forbid you from talking about anything political, on the grounds that it would be irrelevant. However, when enough people are involved, this could become a matter for negotiation. Clever lawyers may also be able to get around the judge's prohibitions, but there's considerable precedent (the published analysis of other trials on which judges rely) to support the notion that judges can forbid discussion of political matters at trial. You should be able to put on witnesses who saw what happened at your arrest. You might be able to put on witnesses to testify about your good character and reputation for honesty. You might be able to put on expert witnesses to talk about toxic waste, ecology, etc., but the judge would probably attempt to repress this testimony, on the grounds that it would be political and irrelevant. You also have the right to cross-examine the witnesses against you, who would probably be police officers. And you get to make opening and closing arguments. Of course, if you were represented by a lawyer, he or she would handle witnesses and make the opening and closing arguments, etc. – you would just get to testify. Sometimes judges allow defendants to represent themselves (“pro se”) while having a lawyer as co-counsel. This way the defendant could talk when he or she liked, but have the lawyer take over if necessary. Judges generally don't like this arrangement, but of course it could become a matter for negotiation if there were enough people.

You're not necessarily entitled to a jury trial. You might just get a “bench trial” (a judge trial). At a bench trial, the judge decides the verdict, as well as what testimony and evidence will be allowed. To have a jury trial, you must be charged with a misdemeanor or felony (not an infraction). And in federal court it must be a misdemeanor with a maximum sentence of more than six months.

At the end of the trial is the verdict: guilty, not guilty, or a hung jury (if you were tried by a jury who could not arrive at a verdict). If you've been found not guilty, you celebrate. If you've gotten a hung jury, the prosecutor gets to decide whether to retry you, dismiss the case, or offer you a deal. Prosecutors often just give up at this point. And, of course, if you're found guilty, the judge then sentences you. The judge can either sentence you immediately after the guilty verdict, or set a separate hearing just for sentencing.

When do I actually have to go court, instead of having a lawyer appear for me?

In general you must be in court for the arraignment. The judge needs to hear from you personally whether you're pleading guilty or not guilty. Sometimes people accept a deal at their first arraignment. Thus, it is possible that arraignment could be both your first and last court appearance.

If you miss a scheduled hearing, the judge can issue a bench warrant for your arrest. Then later, if you got stopped for a traffic violation, for example, the police could take you to jail because of that bench warrant. Excuses which judges might accept for not appearing are things like funerals or medical emergencies, but not school or work.

If you start out not guilty, but plea bargain to an acceptable deal, you usually have to come in to court to change your plea. However, you might include in your original deal the condition that if you changed your plea, you can do so in writing or through an attorney.

In many cases, you can arrange to have a lawyer appear for you. This requires a specific agreement between you and an attorney. It is possible for an attorney to handle every aspect of some cases without any court appearances by the person arrested. However, this usually involves more work for the attorney, and attorneys often want there clients available for court appearances.

Naturally, if you do have a trial, you have to be in court for every day of it. If you go all the way through trial and lose, you might have to come back for a sentencing hearing (unless the judge sentences you immediately).

Will getting arrested for civil disobedience prevent me from getting jobs or getting into college?

If you meet the qualifications of the job or school, a civil disobedience arrest is not likely to stand in your way. For one thing, you may not even be convicted (and most employers and schools only ask about convictions). And secondly, many institutions are actually interested in people who have consciences. Besides, you should ask yourself: would I really be happy in a job or school that was so conservative that it would exclude me for having engaged in principled civil disobedience?

Could we lose our professional licenses?

Many teachers, lawyers and health care professionals have engaged in misdemeanor-level civil disobedience. We are not aware of any who have actually lost their licenses, although some have been hassled by their respective bureaucracies. Most licensing administrations will tolerate "acts of conscience." However, felony convictions, as opposed to misdemeanor convictions, could well result in temporary or permanent suspensions of professional licenses.

What if the police or FBI comes to me with an arrest warrant or a search warrant?

If police come to the door with an arrest warrant, step outside and lock the door. Police are allowed to search any room you go into – so don't go back into your home to get your wallet or use the bathroom. If they do have an arrest warrant, hiding inside isn't likely to help, so you might as well go without letting them in to search.

Do not consent when the police ask to enter your home without a search warrant. Don't let them “invite themselves in.” Make sure to say, “You do not have my consent to enter or search this house.” If police say they do have a search warrant, take it and read it to see whether it's real. Check to verify that it's signed, has your correct address and a recent date. If the warrant is no good, tell them to get another. (The police may threaten to tear your home apart if they have to get another warrant, but the search would be destructive anyway, even if you let the police in immediately.)

There are several exceptions which allow police to search a home or vehicle without a warrant. And, of course, they will tell you they don't need a warrant. Nevertheless, you should say, “I don't consent to your search.” It can't hurt, and the police might be wrong about their right to search, in which case any evidence they find might be suppressed. But if you cave in and consent to let them search, then they definitely don't need a warrant.

Is it true that police and FBI agents are allowed to lie, if you ask whether they're law enforcement officers?

It's sad but true that there is no foolproof test to tell whether you're dealing with law enforcement personnel. It does no good to ask, “Are you a cop?” Police are allowed to lie about being police.

Not only that, but the police and FBI often use informants. Informants are usually people who have criminal charges pending against them, and the authorities promise to let them off the hook if they'll snitch. Informants can be very deceptive, since they usually don't look or talk like cops. It is often a good idea to nonviolence guidelines. An agent provocateur can't push you into doing something which is contrary to the guidelines.

