

Legal Issues / Risking Arrest

The decisions that we make are political, not legal. The reaction of the government to what we are doing, to what we stand for, will also be political. We can have quite an impact on what happens to us in jail, in court and during processing, if we are prepared. It can be as important a part of our nonviolent opposition as anything that comes before the arrest.

In a large demonstration, the police may separate us from each other, breaking up affinity groups and possibly isolating individuals. In order to maintain our spirits and effectiveness, we must develop an ability to deal with the legal system, while trusting in the solidarity of other demonstrators. Solidarity is, in reality, more a state of mind that unites us through a long struggle than a specific course of action that everyone follows. Solidarity does not demand that everyone make the same choice in every situation. It is an internal force within each of us and among us as a group. It is our commitment to one another and to our common cause; it is our dedication to support one another and to pursue our common goals at all times, in every situation, to the best of our ability. Solidarity cannot be broken by courts, jails or other external forces. If we hold fast to it, it is ours.

Our approach to the legal system is up to us. We retain as much power as we refuse to relinquish to the government — city, state or federal.

The criminal "justice" system functions to alienate and isolate the accused individual, to destroy one's power and purposefulness and to weave a web of confusion and mystification around any legal proceedings. If we are well prepared for our contact with this system, we can limit the effect it has upon us, both personally and politically. It is extremely important that we be firmly rooted in our own spirit and purposes, our commitment to one another and history and tradition of social struggle of which we are a part. We should try to maintain our nonviolent attitude of honesty and directness while dealing with law enforcement officers and the courts.

Legal System Flowchart

STEPS	DESCRIPTION OF WHAT HAPPENS	CHOICES
Warning or Command	Officer may give warning to leave or command to stop doing something.	<ul style="list-style-type: none"> • Stay or leave • Don't do or stop doing actions.
Arrest	Officer physically grabs you, takes you to police wagon or squad car. May say you are under arrest. Pat search, sometimes handcuffs. Taken to holding area.	<ul style="list-style-type: none"> • Walk • Go limp • Flee (if left unguarded)
Processing and Booking	Police question arrestees concerning information for arrest reports (name/address/occupation/social security number/financial); may try to get additional information for intelligence. Possible photographing/fingerprinting/property and clothes may be taken.	<ul style="list-style-type: none"> • Decide what, if any, information to give police; e.g. false, correct or no name. • Refuse to post bond • Demand no cash bonds or equal bonds for all (bail & jail solidarity)
Charging	Prosecutor decides what charges to pursue	
First Court Date	Appear in court alone, or most likely with other arrestees. Attempt to dispose of case by plea or trial, or continue case for bench or jury trial or plea negotiations later. Prosecutor not always ready for trial.	<ul style="list-style-type: none"> • Lawyers or Pro Se - Plea - Bench Trial - Demand Jury trial in future
Trial	Trials can vary from: — a few minute bench trial with or without a lawyer — to a full jury trial with expert witnesses lasting a week or more, — or any place in between.	<ul style="list-style-type: none"> • Defense based on noncommission of acts and/or necessity of actions • Small or large resources of time and money
Verdict	Judge or Jury decides — Acquittal (not guilty) — Guilty	
Sentencing	Hearing on appropriate sentence	<ul style="list-style-type: none"> • Can testify why actions were justified, necessary, etc., and your background. Sentencing statement is powerful opportunity to bring out political and moral issues, show non-recalcitrance. Remain silent



Nonviolent action draws its strength from open confrontation and non-cooperation, not from evasion or subterfuge. Bail solidarity, noncooperation and other forms of resistance can be used to reaffirm our position that we are not criminals and that we are taking positive steps towards freeing the world from oppression.

Discuss the issues raised in this legal section with your affinity group — particularly noncooperation and your attitude toward trials. Think out various hypothetical situations and try to understand how you will respond to these situations.

Some demonstrators refuse to cooperate partially or wholly with court procedures; they refuse to enter a plea, to retain or accept a lawyer, to stand up in court, to speak to the judge as a symbol of court authority (but rather speak to him or her as a fellow human being), to take the stand or question witnesses. They may make a speech to those assembled in the courtroom or simply lie or sit on the floor if they are carried in, or attempt to leave if not forcibly restrained. The penalties for such noncooperation can be severe, because many judges take such action to be a personal affront as well as an insult to the court. Some judges, on the other hand, overlook such conduct, or attempt to communicate with the demonstrators.

Physical noncooperation may be sustained through the booking process and through court appearances; it may continue through the entire time of one's detention. This might involve a refusal to walk, to eat, to clean oneself and one's surroundings. It may even lead prison officials to force-feed and diaper the inmate.

Another form of noncooperation is fasting — taking no food and no liquid except water, or perhaps fruit juice. While abstaining from food can be uncomfortable and eventually risky, abstaining from all food and liquid can be extremely dangerous almost immediately. Five or six days is probably the longest a human can go without liquid before incurring brain damage and serious dehydration. Usually authorities watch persons who are "water fasting" closely

and take steps to hospitalize them before serious consequences occur, but no demonstrator can ever count on such attention and should therefore be prepared to give up the fast or perhaps be allowed to die, as did several Irish freedom fighters during the H-Block hunger strike in 1981.

There are other forms noncooperation may take and other reasons for it to occur. The refusal to give one's name undoubtedly springs from a desire to resist and confound a system that assigns criminal records to people, that categorizes and spies upon them and that punishes organizers and repeat offenders more strenuously. It relays a mes-

sage that none of us should be singled out: we'll be doing this again and again.

Many nonviolent activists, however, acting with the openness and confidence that characterizes and strengthens nonviolent action, do not choose to hide their identities. They may still noncooperate, however, by refusing to reveal an address, or by refusing to promise to return for trial, increasing the burden on the courts to quickly deal with the demonstrators and enhancing their solidarity and strength as people working together, filling the jails.

Representing Yourself

The Constitution gives you the right to represent yourself. The right is founded in the understanding that someone else may not say quite what you want said in your behalf, or may not say it in the way you want it said. You therefore cannot be forced to let someone speak for you.

Trials and hearings resulting from civil disobedience are particularly suited to unearthing the reasons behind, and the possibilities for, self-representation. Perhaps the CDer can better explain his or her own motivation. Why water down a deeply political and personal act of civil disobedience with a lot of legalistic jargon? Why let the application of the energizing ideas contained in the philosophy of non-violent civil disobedience stop with the arrests? If you choose to participate in action, it will be a result of much thought and consideration. Why not con-

tinue to involve yourself fully all the way through the trial? A lawyer must adhere to the legal restrictions of the courtroom and translate everything into the proper categories. You as a *pro se* litigant have much greater leeway. If you don't understand something don't hesitate to ask questions about what is happening during the trial.

Representation by an attorney may be the best route, if you desire an acquittal at any cost. In a group trial, the option of having some but not all defendants represented by counsel is often available. You should speak to people who have represented themselves. The most important thing is to remember that you have choices. The system teaches us to think that there is only one way of doing anything, but because we question that we choose to do civil disobedience in the first place.

From the **Handbook for Nonviolent Action**, co-published by War Resisters League and Donnelly-Colt, available at <https://www.warresisters.org/store>.

36 pages, including these additional sections on Legal issues: Noncooperation, Jail Solidarity, Serving Time in Jail, plus Affinity Group and Consensus Decision Making which are available as handouts.

Additional Legal resources include the printable bustcard: <https://www.aclu.org/know-your-rights/what-do-if-your-rights-are-violated-demonstration-or-protest>

The National Lawyers Guild provides Legal Observer Training, find their chapters and lawyers at www.nlg.org.