Civil Disobedience Training

> "Those who profess to favor freedom, yet deprecate agitation, are men who want crops without plowing up the ground. They want rain without thunder and lightening. They want the ocean without the awful roar of its many waters. This struggle may be a moral one; or it may be a physical one; or it may be both moral and physical; but it must be a struggle. Power concedes nothing without a demand. It never did and it never will."
>
> -- Frederick Douglass, African-American abolitionist

The history of Civil Disobedience is a long and international one. ACT UP practices a form that comes from a variety of progressive movements. Below are several pages describing some of the history, theory, and practice of civil disobedience.

Many of these sections were taken (with love) from the **Handbook for Nonviolent Action** available from the *War Resister's League* in New York City.

ACT UP Direct Action Guidelines
History of Mass Nonviolent Action
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Legal Issues/Risking Arrest
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appendixes

The Demonstrator's Manual [crucial]

Marshal Training Manual

Getting Arrested: Why do we do it?

ACT UP Civil Disobedience Training

Direct Action Guidelines

These direct action guidelines describe limits required for us to set a minimum level of safety for ACT UP demonstrators:

1. ACT UP cannot guarantee the safety of participants at our demonstrators.

2. Yet, we try to protect each other at demonstrations by setting up a support and advocacy structure that can react quickly if problems should arise or if arrests occur. We recommend that all people considering civil disobedience go to a direct action CD training and that they join an affinity group.

3. At the demonstration, we ask that participants act according to the love and caring that we have built or each other. Individual or group actions that endanger the physical well-being of other demonstrators **should not be done**. Generally actions that might endanger the safety of others at the demonstration include:

    a) physical violence directed against others, including the police, spectators and other ACT UP members

    b) actions that cause panic such as running and throwing rocks

    c) bringing weapons or anything that can be construed as a weapon to the demonstration site; weapons include but are not limited to: guns, knives, nail files, mace, letter openers, scissors, etc.

    d) bringing recreational drugs to the demonstration

4. We ask that anyone or any group considering acts of property alteration (i.e. graffiti) commit such acts openly, taking responsibility for these acts, and taking care that these acts endanger no one. If secrecy is necessary, the action should not be part of this demonstration.

ACT UP Civil Disobedience Training

History of Mass Nonviolent Action

The use of nonviolence runs throughout history. There have been numerous instances of people courageously and nonviolently refusing cooperation with injustice. However, the fusion of organized mass struggle and nonviolence is relatively new. It originated largely with Mohandas Gandhi in 1906 at the onset of the South African campaign for Indian rights. Later, the Indian struggle for complete independence from the British Empire included a number of

spectacular nonviolent campaigns. Perhaps the most notable was the year-long Salt campaign in which 100,000 Indians were jailed for deliberately violating the Salt Laws.

The refusal to counter the violence of the repressive social system with more violence is a tactic that has also been used by other movements. The militant campaign for women's suffrage in Britain included a variety of nonviolent tactics such as boycotts, noncooperation, limited property destruction, civil disobedience, mass marches and demonstrations, filling the jails, and disruption of public ceremonies.

The Salvadoran people have used nonviolence as one powerful and necessary element of their struggle. Particularly during the 1960s and 70s, Christian based communities, labor unions, campesino organizations, and student groups held occupations and sit-ins at universities, government offices, and places of work such as factories and haciendas.

There is rich tradition of nonviolent protest in this country as well, including Harriet Tubman's underground railroad during the civil war and Henry David Thoreau's refusal to pay war taxes. Nonviolent civil disobedience was a critical factor in gaining women the right to vote in the United States, as well.

The U.S. labor movement has also used nonviolence with striking effectiveness in a number of instances, such as the Industrial Workers of the World (IWW) free speech confrontations, the Congress of Industrial Organizations (CIO) sitdown strikes from 1935-1937 in auto plants, and the UFW grape and lettuce boycotts.

Using mass nonviolent action, the civil rights movement changed the face of the South. The Congress of Racial Equality (CORE) initiated modern nonviolent action for civil rights with sit-ins and a freedom ride in the 1940s. The successful Montgomery bus boycott electrified the nation. Then, the early 1960s exploded with nonviolent actions: sit-ins at lunch counters and other facilities, organized by the Student Nonviolent Coordinating Committee (SNCC); Freedom Rides to the South organized by CORE; the nonviolent battles against segregation in Birmingham, Alabama, by the Southern Christian Leadership Conference (SCLC); and the 1963 March on Washington, which drew 250,000 participants.

Opponents of the Vietnam War employed the use of draft card burnings, draft file destruction, mass demonstrations (such as the 500,000 who turned out in 1969 in Washington, D.C.), sit-ins, blocking induction centers, draft and tax resistance, and the historic 1971 May Day traffic blocking in Washington, D.C. in which 13,000 people were arrested.

Since the mid-70s, we have seen increasing nonviolent activity against the nuclear arms race and nuclear power industry. Nonviolent civil disobedience actions have taken place at dozens of nuclear weapons research installations, storage areas, missile silos, test sites, military bases, corporate and government offices and nuclear power plants. In the late 1970s mass civil disobedience actions took place at nuclear power plants from Seabrook, New Hampshire to the Diablo Canyon reactor in California and most states in between in this country and in other countries around the world. In 1982, 1750 people were arrested at the U.N. missions of the five major nuclear powers. Mass actions took place at the Livermore Laboratories in

California and SAC bases in the Midwest. In the late 80s a series of actions took place at the Nevada test site. International disarmament actions changed world opinion about nuclear weapons.

In 1980 women who were concerned with the destruction of the Earth and who were interested in exploring the connections between feminism and nonviolence were coming together. In November of 1980 and 1981 the Women's Pentagon Actions, where hundreds of women came together to challenge patriarchy and militarism, took place. A movement grew that found ways to use direct action to put pressure on the military establishment and to show positive examples of life-affirming ways to live together. This movement spawned women's peace camps at military bases around the world from Greenham Common, England to Puget Sound Peace Camp in Washington State, with camps in Japan and Italy among others.

The anti-apartheid movement in the 80s has built upon the powerful and empowering use of civil disobedience by the civil rights movement in the 60s. In November of 1984, a campaign began that involved daily civil disobedience in front of the South African Embassy. People, including members of Congress, national labor and religious leaders, celebrities, students, community leaders, teachers, and others, risked arrest every weekday for over a year. In the end over 3,100 people were arrested protesting apartheid and U.S. corporate and government support. At the same time, support actions for this campaign were held in 26 major Cities, resulting in an additional 5,000 arrests.

We also saw civil disobedience being incorporated as a key tactic in the movement against intervention in Central America. Beginning in 1983, national actions at the White House and State Department as well as local actions began to spread. In November 1984, the Pledge of Resistance was formed. Since then, over 5,000 people have been arrested at military installations, congressional offices, federal buildings, and CIA offices. Many people have also broken the law by providing sanctuary for Central American refugees and through the Lenten Witness, major denomination representatives have participated in weekly nonviolent civil disobedience actions at the Capitol.

Student activists have incorporated civil disobedience in both their anti-apartheid and Central America work. Divestment became the campus slogan of the 80s. Students built shantytowns and staged sit-ins at Administrator's offices. Hundreds have been arrested resulting in the divestment of over 130 campuses and the subsequent withdrawal of over $4 billion from the South African economy. Central America student activists have carried out campaigns to protest CIA recruitment on campuses. Again, hundreds of students across the country have been arrested in this effort.

Nonviolent direct action has been an integral part of the renewed activism in the lesbian and gay community since 1987, when ACT UP (AIDS Coalition to Unleash Power) was formed. ACT UP and other groups have organized hundreds of civil disobedience actions across the country, focusing not only on AIDS but on the increasing climate of homophobia and attacks on lesbians and gay men. On October 13, 1987, the Supreme Court was the site of the first national lesbian and gay civil disobedience action, where nearly 600 people were arrested

protesting the decision in Hardwick vs. Bowers, which upheld sodomy laws. This was the largest mass arrest in D.C. since 1971.

Political Analysis

Power itself is not derived through violence, though in governmental form it is usually violent in nature. Governmental power is often maintained through oppression and the tacit compliance of the majority of the governed. Any significant withdrawal of that compliance will restrict or dissolve governmental control. Apathy in the face of injustice is a form of violence. Struggle and conflict are often necessary to correct injustice.

Our struggle is not easy, and we must not think of nonviolence as a "safe" way to fight oppression. The strength of nonviolence comes from our willingness to take personal risk without threatening other people.

It is essential that we separate the individual from the role she/he plays. The "enemy" is the system that casts people in oppressive roles.

ACT UP Civil Disobedience Training

Nonviolent Response to Personal Violence

Nonviolence focuses on communication:

1. Your objectives must be reasonable. You must believe you are fair and you must be able to communicate this to your opponent.

2. Maintain as much eye contact as possible.

3. Make no abrupt gestures. Move slowly. When practical, tell your opponent what you are going to do before you do it. Don't say anything threatening, critical, or hostile.

4. Don't be afraid of stating the obvious; say simply, "You're shouting at me," or "You're hurting my arm."

5. Someone in the process of committing an act of violence has strong expectations as to how his/ her victim will behave. If you manage to behave differently-in a nonthreatening manner you can interrupt the flow of events that would have culminated in an act of violence. You must create a scenario new to your opponent.

6. Seek to befriend your opponent's better nature; even the most brutal and brutalized among us have some spark of decency that the nonviolent defender can reach.

7. Don't shut down in response to physical violence; you have to play it by ear. The best rule is to resist as firmly as you can without escalating the anger or the violence. Try varying approaches and keep trying to alter your opponent's picture of the situation.

8. Get your opponent talking and listen to what s/he says. Encourage him/her to talk about what s/he believes, wishes, fears. Don't argue but at the same time don't give the impression you agree with assertions that are cruel or immoral. The listening is more important than what you say- keep the talk going and keep it calm.

-- Adapted from an article by Markley Morris

ACT UP Civil Disobedience Training

Practicing Nonviolence

"Without a direct action expression of it nonviolence
to my mind is meaningless " M K Gandhi

Practice is a key word in understanding nonviolence. A nonviolent approach assumes that people take active roles, making choices and commitments and building on their experience. It also presents a constant challenge: to weave together the diversity of individual experiences into an ever-changing vision. There is no fixed, static "definition" of nonviolence.

Nonviolence is active. Although to some the word nonviolence implies passivity, nonviolence is actually an active form of resistance. It analyzes the sources of institutional violence and intervenes on a philosophical and political level through direct and persistent actions.

Gandhi's vision of nonviolence is translated as "clinging to truth" or sometimes "truth force", which includes both determination to speak out even when one's truth is unpopular, and willingness to hear the truth of other people's experience. He also defined two other components of nonviolence: the refusal to harm others and willingness to suffer for one's beliefs. Many activists who adopt nonviolent tactics are reluctant to accept these aspects philosophically, or to prescribe them to others. For example, Third World people in the U.S. and other countries are often pressed to use violent action to defend their lives. Some feminists point out that since our society pressures women to be self-sacrificing, the decision to accept suffering is often reinforcement of women's oppression rather than a free choice.

Jo Vellacott, in her essay "Women, Peace and Power", speaks of violence as "resourcelessness" -seeing few options, feeling like one's self or small group is alone against a hostile or at best indifferent universe. Many societal institutions and conventions, despite their original intention to benefit at least some people, perpetuate this violence by depriving people of their lives, health, self-respect or hope. Nonviolence then becomes resourcefulness -- seeing the possibilities for change in oneself and in others, and having the power to act on

those possibilities. Much of the task of becoming effectively nonviolent lies in removing the preconceptions that keep us from seeing those resources. Undoing the violence within us involves challenging myths that we are not good enough, not smart enough or not skilled enough to act. The best way to do this is to try it, working with friends or in small groups at first, and starting with roleplays or less intimidating activities like leafleting. As confidence in our own resourcefulness grows, we become more able to support each other in maintaining our nonviolent actions.

Anger and emotional violence

Getting rid of the patterns of violence that societal conditioning has placed in us is not always a polite process; it involves releasing despair, anger, and other emotions that haven't been allowed to surface before. The myth that emotions are destructive and unreliable prevents us from trusting our own experience and forces us to rely on rigid formulas and people we perceive as authorities for guidance. Most of us have been taught that expressing anger especially provokes disapproval, invalidation and physical attack, or else will hurt others and make us suffer guilt. This conditioning serves to make us both repress our own anger and also respond repressively to each other's anger.

Anger is a sign of life. It arises with recognition that injustice exists and contains the hope that things can be different. it is often hard to see this clearly because, as Barbara Deming says,

> "... our anger is in great part hidden -from others and even from ourselves -and when it is finally allowed to emerge into the open -- this pride -- it is shaking, unsure of itself, and so quick to be violent. For now it believes and yet it doesn't quite dare to believe that it can claim its rights at last."

To make room for a healthy expression of and response to this anger, it helps to create a general attitude of respect and support. Verbal violence -- snide or vicious tones, interrupting, shouting down or misrepresenting what people say -- is the antithesis of respect and communication. When people sense this happening, they should pause and consider their feelings and objectives. Clearing the air is especially important when people are feeling defensive or threatened; developing a sense of safety and acceptance of our anger with each other helps us concentrate all our emotional energies towards constructive, effective action.

"Non-violence is the constant awareness of the dignity and humanity of oneself and others; it seeks truth and justice; it renounces violence both in method and in attitude; it is a courageous acceptance of active love and goodwill as the instrument with which to overcome evil and transform both oneself and others. It is the willingness to undergo suffering rather than inflict it. It excludes retaliation and flight."

> -- Wally Nelson, conscientious objector, civil rights activist, and tax resister

ACT UP Civil Disobedience Training

Nonviolence Training

Historically, nonviolence training was used extensively during the civil rights movement, in Gandhi's campaigns in India against the British, and in recent years in the struggles against nuclear technology, against U.S. policy in Central America and Southern Africa and for the rights of farm workers, women and people with AIDS, to name a few.

The purpose of training is for participants to form a common understanding of the use of nonviolence. It gives a forum to share ideas about nonviolence, oppression, fears and feelings. It allows people to meet and build solidarity with each other and provides an opportunity to form affinity groups. It is often used as preparation for action and gives people a chance to learn about an action, its tone, and legal ramifications. It helps people to decide whether or not they will participate in an action. Through role playing, people learn what to expect from police, officials, other people in the action and themselves.

Nonviolence training can range from several hours to several months. Most typical in the United States are sessions that run up to eight hours and have 10-25 people with two trainers leading the discussion and roleplays. Areas covered in a session include:

· History and philosophy of nonviolence, including role plays on the use of nonviolence and nonviolent responses to violence.

· Roleplays and exercises in consensus decision making, conflict resolution, and quick decision making.

· A presentation of legal ramification of civil disobedience and discussion on noncooperation and bail solidarity.

· Exercises and discussion of the role of oppression in our society and the progressive movement.

· What is an affinity group and what are the roles within the group.

· A sharing of fears and feelings related to nonviolence and nonviolent action.

Dr. Martin Luther King, Jr. wrote that the philosophy and practice of nonviolence has six basic elements.

First, nonviolence is resistance to evil and oppression. It is a human way to fight.

Second, it does not seek to defeat or humiliate the opponent, but to win his/ her friendship and understanding.

Third, the nonviolent method is an attack on the forces of evil rather than against persons doing the evil. It seeks to defeat the evil and not the persons doing the evil and injustice.

Fourth, it is the willingness to accept suffering without retaliation.

Fifth, a nonviolent resister avoids both external physical and internal spiritual violence- not only refuses to shoot, but also to hate, an opponent. The ethic of real love is at the center of nonviolence.

Sixth, the believer in nonviolence has a deep faith in the future and the forces in the universe are seen to be on the side of justice.

ACT UP Civil Disobedience Training

Affinity Groups & Support

Affinity groups are self-sufficient support systems of about 5 to 15 people. A number of affinity groups may work together toward a common goal in a large action, or one affinity group might conceive of and carry out an action on its own. Sometimes, affinity groups remain together over a long period of time, existing as political support and/or study groups, and only occasionally participating in actions.

If you are planning to do civil disobedience, it is a good idea to either form an affinity group or join an already existing one. Affinity groups serve as a source of support and solidarity for their members. Feelings of being isolated or alienated from the movement, the crowd, or the world in general can be alleviated through the familiarity and trust, which develops when an affinity group works and acts together. By generating this familiarity, the affinity group structure reduces the possibility of infiltration by outside provocateurs. However, participants in an action should be prepared to be separated from their affinity group.

Affinity groups form the basic decision-making bodies of mass actions. As long as they remain within the nonviolence guidelines, affinity groups are generally encouraged to develop any form of participation they choose.

Every affinity group must decide for itself how it will make decisions and what it wants to do. This process starts when an affinity group forms. If a new person asks to join an affinity group, she/he should find out what the group believes in and what they plan to do, and decide if she/he can share it. Some groups ask that all members share a commitment to feminism, for example, or to nonviolence as a way of life. Others, which have specifically formed to do a particular action, might have less sweeping agreements.

A group cannot hope to reach consensus decisions without having some base of agreement. Once a base is agreed upon, working out the details of specific issues and actions is not as

difficult as one might expect, providing that there is a willingness to go along with a good idea, even if it is someone else's. If you find that you cannot work effectively with your group, it might be better to try to find another one.

Affinity groups for mass actions are often formed during nonviolence training sessions. It is a good idea to meet with your affinity group a few times before an action to get to know them if you are not already friends, and to discuss issues such as noncooperation and relationship to the legal system, the role your group will play (in a large action), etc. After an action, it is also helpful to meet with your group to evaluate and share experiences.

Roles Within the Affinity Group

These roles can be rotated:

· Facilitator(s), vibes-watchers.

· Spokesperson to convey affinity group (A.G.) decisions to core support and other A.G.'s in a mass action.

· Support person(s) once you take on this responsibility, you should see it through.

Support

The role of support in a civil disobedience action is crucial. Support people accept the responsibility of being a visible, involved contact to the outside once a member of the affinity group is arrested. They are the personal extension of the care and concern an affinity group shares among its members, an extension of the need all the participants have to see that individuals who participate in nonviolent direct action are not isolated, neglected, and overburdened because of their political statement.

It can be hard for you to decide whether to do civil disobedience or support. It is strongly encouraged that those considering doing support go through nonviolence training. In making the decision, you could consider how each role would affect your family, job, and other commitments, as well as your legal status (i.e. being on probation, not being a U.S. citizen, etc.). During and after a mass action, be sure to stay in touch with support people from other affinity groups, for information sharing and emotional support.

Before an Action:

Help the affinity group decide upon and initiate their action, provide physical and moral support, and share in the excitement and sense of determination.

· Know the people in your affinity group by name and description.

· Know where people who are arrested are likely to be taken.

· Make a confidential list with the following information:

Name of arrestee Name used for arrest

· Whether or not individual wants to bail out, and when.

· Who arrestee would like contacted and under what circumstances.

· Special medical information or other special needs info.

· Whether the individual plans to cooperate, and in what ways.

· Whether the person is a minor.

· Whether the person wants/needs a lawyer.

For a mass action:

· Know who the support coordinators are.

· Know the phone number of the action office.

· Be sure the group fibs out an affinity group check-in sheet.

· Be sure your name, phone number, where you can be reached, and how long you will be available to do support work are written on your affinity group's list.

During an Action:

· Know the boundaries of arrest and non-arrest areas, if applicable.

· In a mass action, give emergency info about yourself to another support person.

· Bring paper and pen, and lots of food for yourself and people doing civil disobedience (CDers).

· Hold ID, money, keys and any other belongings for CDers.

· Keep in touch with CDers for as long as possible, noting any changes in arrest strategies, etc.

· Once arrests begin, write down each individual's name, and the time and nature of the arrest, the activity of the person arrested, the treatment of the arresting officer (get the badge number, if possible), and who is noncooperating.

· At least one support person from your affinity group should stay at the place of arrest until all members of your group are arrested, and at least one should go to where those arrested are being taken as soon as the first member of your group is arrested.

At the Courthouse: (if that's where CDers are taken)

Be present during arraignments, and try to keep track of the following info for each person in your group. During a mass action, call this info into the office.

· Name of judge or magistrate.

· Name of CDer (Doe # if applicable).

· Charge

· Plea (Not Guilty, Nolo Contendre, Creative Plea, Guilty, etc.).

· If found guilty, sentence imposed.

· If not guilty:

· Amount of bail, if applicable.

· Whether the person pays bail or not.

· Date, time and place of trial.

· If there's a lawyer in the courtroom ask her/his name.

· Any other info that seems relevant.

-- Nancy Alach

ACT UP Civil Disobedience Training

Steps to making a Campaign

Most movement programs revolve around organizing single, unrelated events-demonstrations, forums, whatever. Were these activities strung together in an integrated fashion- building on one another -- the impact and potential for success would be magnified dramatically. Such is the advantage of campaign organizing.

The campaign provides an escalating series of actions over a period of time focused on a target in order to achieve specific goals. Persistence and a systematic approach are key ingredients of a campaign.

All this is not to say demonstrations should not be organized on individual dates like Hiroshima Day (August 6), International Women's Day (March 8), Martin Luther King Day, and so forth. But, when possible, actions that are part of campaigns can make a stronger statement.

Planning a Campaign

While a demonstration takes a good deal of careful planning, a campaign requires considerably more attention.

The first step is to do the basic groundwork of self-education on the issues and problems to be combated. This can be accomplished through research, study groups, workshops, and conferences.

The next step is to decide where to focus our initial efforts. What you need to find are weak points in the opponent's "armor," which will provide levers or handles to focus criticism and action.

During one phase of the Indian campaign for independence from Britain, Gandhi selected the British monopoly on salt as the focus for a campaign. At first this appeared to be an insignificant issue to worry about, compared with independence itself. But because salt affected everyone on this rather hot subcontinent, because its cost was a hardship on the masses, and because it was relatively easy to manufacture (and thereby violated the salt laws), it became an ideal symbol of why independence was being sought. The British viewed the Salt Campaign as "nothing less than to cause a complete paralysis of the administrative machinery." In retrospect, the year-long campaign was the most spectacular effort in the 28-year struggle for independence.

The United Farm Workers grape boycott is another example of a well chosen campaign in the struggle to win union recognition and better conditions for farm workers.

One of the most important steps in a campaign, after determining the target or focus, is to choose the short range goals. Long range goals are easy, e.g., world peace or an end to sexism. But sometimes if short range goals are not clearly defined, then the campaign could be stalled. Short range goals should be winnable within the near future (providing a boost and the encouragement needed to keep your group moving toward the longer range goals), measurable (you ought to be able to tell when you have accomplished them), set on a timetable to allow for periods of evaluation, be a significant step towards the long range goal(s).

For example, in opposing the establishment of a Junior ROTC unit in a local high school, your medium (or short) range goal might be to prevent the unit from setting up. A short range goal could be getting the local paper (or student body) to come out against the unit. An example of

something that is not a short range goal would be the holding of a forum or having a picket. These represent vehicles toward your goals, rather than goals themselves. Saying that a short range goal is "to educate the student body" has little value as a goal unless it is measurable (e.g., a poll or vote).

In setting goals, you might consider establishing a bottom line on what is acceptable, to guard against being co-opted into ending the campaign without making any fundamental change.

Analysis

After the goals have been set, an analysis should be made to see who the participants in the campaign are and how they can aid the campaign. Who do you need to participate if the campaign is likely to succeed? Who is on your side now? How are those people reached? Write, call, or visit the community groups which are likely to be sympathetic: cooperatives, clinics, some veterans groups, women's groups, Third World groups, student groups, religious organizations, women's groups, and so forth.

Who are the opponents? How can they or their supporters be won over or neutralized. In the example above, the opponents might be the school board or principal. The supporters of the opponents might be the community, PTA, local paper, or clergy.

After this analysis, a plan of action set on a timetable is needed. This plan of action should be in a step-by step escalation. Escalation is necessary if the pressure on opponents needs to be increased. This does not necessarily mean the previous level of activity is abandoned, but simply that an escalated stage of activity is added to the previous stages. For example, education should be a constant and complementary component of every campaign- never being abandoned. In the campaign above, the first level of action is to approach the school board and ask them to turn down the JROTC application. Should that fail, set up study commissions to analyze the value of a JROTC unit; solicit outside opinions; hold, public forums; write letters to the editor; etc.

Should an escalation be necessary, picketing, leafleting, or boycotts might be next. Beyond that, demonstrations, marches, and rallies could be organized. Then, perhaps, a student strike, and maybe carefully chosen civil disobedience actions.

Organizers should not lightly go from one level of a campaign to the next. Each stage should be evaluated and considered seriously. Remember, shifting to the next stage does not mean activities at earlier levels should always be forgotten (e.g., going from picketing to a sit-in does not necessarily mean picketing should be discontinued).

Step by Step Escalation in a Nonviolent Campaign

Investigation and Research

Checking facts and allegations; building an airtight case against opponents and preparing for countercharges

Negotiation and arbitration

Meeting with opponents to settle conflict before going public; ultimatum issued before moving to next level

Public forums, letters to editor, etc.

Basic public education on issues

Picketing, leafleting, etc.

Public contact with opponents

Demonstrations, rallies, marches

Show of strength by maximizing numbers

Limited strike

Involving those immediately affected

Boycott

Against company or product in question, if appropriate

Limited noncooperation

By those most immediately affected

Massive illegal actions

Noncooperation, civil disobedience, direct action

General strike

Establishing a parallel government

Analyzing a Campaign

This outline is an expansion of an outline used by Joan Bondurant in her analysis of Gandhian campaigns. It can be used either in evaluation of a campaign or in preparation for a campaign.

1. Dates of the Campaign

2. Goals

Long range
What were the ultimate goals being sought?

Short range
What goals were set?

Were they achievable?

Were they measurable? Can you tell if they've been accomplished? Would reaching them have brought the campaign measurably closer to the long range goals?

Timetable
Was a timetable set to allow for periodic measurement of progress of the campaign? What was it?

Bottom line
Were there any minimum acceptable goals set in advance, so as to avoid being compromised or co-opted?

3. Participants

Who was on "our side" at the beginning?

Who was needed if the campaign was likely to succeed?

How could those people we needed have been reached?

Was there a core of people organized and prepared to stay with a sustained campaign so as to provide continuity?

4. Opponents

Who were the opponents? Who was calling the shots in opposition to the campaign?

Was it necessary to win over or neutralize supporters of the opponents in order for the campaign to succeed?

How were supporters of the opposition won over or neutralized?

5. Organization and Constructive Work

What was the organizational structure to carry out the campaign?

How were decisions made?

How was the campaign funded?

Were there parallel institutions to replace those being opposed or any constructive work done during the campaign?

6. Preparation for Action

What research and investigation was done?

Education? Public forums? Mass media?

Training for the main actions?

Was there adequate preparation for anticipated repression (jail, levies, violence)?

7. Preliminary Action

Were approaches made to opponents? Negotiation and arbitration? Petitions or letters?

Was an ultimatum issued? If so, what was the response?

8. Action

What forms of action were used: picketing, leafleting, marches, etc.? Was it necessary to escalate to a higher level of struggle?

Why and when? Were there strikes, boycotts, or limited noncooperation?

Did the campaign escalate to civil disobedience, mass noncooperation or some form of mass direct action? Why?

Why did the action end when and where it did?

9. Reaction of opponents

Were participants jailed? Beaten? Repressed?

Property seized?

Lies spread? Media blackout? Intimidation? Ridicule?

Concessions or co-opting attempted? Was campaign basically ignored?

10. Results

Were the short range goals achieved?

Any progress made towards the long range goals?

What happened to jailed or injured people?

Was property returned? Amnesty? Did any of the opponents lose support?

Any property destruction by participants?

11. Analysis

Were appropriate tactics used at appropriate times?

Was the best target chosen?

Was the timetable realistic?

Did the campaign meet the timetable? If not, why not?

Was consciousness raised among the general public?

Did the actions clearly communicate the myths, secrets, and realities of the issues and society?

If short range goals were not achieved, why not?

How could the campaign have been improved?

If there was property destruction, did it help or hinder the campaign? Was the organizational structure adequate to conduct the campaign? Was the decision making responsive to participants?

Were there problems in making decisions or lack of decisiveness? Who had the initiative during the campaign?

Were there any surprises that hurt or helped the campaign?

ACT UP Civil Disobedience Training

Consensus Decision Making

What is consensus?

Consensus is a process for group decision-making. It is a method by which an entire group of people can come to an agreement. The input and ideas of all participants are gathered and synthesized to arrive at a final decision acceptable to all. Through consensus, we are not only working to achieve better solutions, but also to promote the growth of community and trust.

Consensus vs. voting

Voting is a means by which we choose one alternative from several. Consensus, on the other hand, is a process of synthesizing many diverse elements together.

Voting is a win or lose model, in which people are more often concerned with the numbers it takes to "win" than with the issue itself. Voting does not take into account individual feelings or needs. In essence, it is a quantitative, rather than qualitative, method of decision-making.

With consensus people can and should work through differences and reach a mutually satisfactory position. It is possible for one person's insights or strongly held beliefs to sway the whole group. No ideas are lost, each member's input is valued as part of the solution.

A group committed to consensus may utilize other forms of decision making (individual, compromise, majority rules) when appropriate; however, a group that has adopted a consensus model will use that process for any item that brings up a lot of emotions, is something that concerns people's ethics, politics, morals or other areas where there is much investment.

What does consensus mean?

Consensus does not mean that everyone thinks that the decision made is necessarily the best one possible, or even that they are sure it will work. What it does mean is that in coming to that decision, no one felt that her/his position on the matter was misunderstood or that it wasn't given a proper hearing. Hopefully, everyone will think it is the best decision; this often happens because, when it works, collective intelligence does come up with better solutions than could individuals.

Consensus takes more time and member skill, but uses lots of resources before a decision is made, creates commitment to the decision and often facilitates creative decision. It gives everyone some experience with new processes of interaction and conflict resolution, which is basic but important skill-building. For consensus to be a positive experience, it is best if the group has 1) common values, 2) some skill in group process and conflict resolution, or a commitment to let these be facilitated, 3) commitment and responsibility to the group by its members and 4) sufficient time for everyone to participate in the process.

Forming the consensus proposals

During discussion a proposal for resolution is put forward. It is amended and modified through more discussion, or withdrawn if it seems to be a dead end. During this discussion period it is

important to articulate differences clearly. It is the responsibility of those who are having trouble with a proposal to put forth alternative suggestions.

The fundamental right of consensus is for all people to be able to express themselves in their own words and of their own will. The fundamental responsibility of consensus is to assure others of their right to speak and be heard. Coercion and trade-offs are replaced with creative alternatives, and compromise with synthesis.

When a proposal seems to be well understood by everyone, and there are no new changes asked for, the facilitator(s) can ask if there are any objections or reservations to it. If there are no objections, there can be a call for consensus. If there are still no objections, then after a moment of silence you have your decision. Once consensus does appear to have been reached, it really helps to have someone repeat the decision to the group so everyone is clear on what has been decided.

Difficulties in reaching consensus

If a decision has been reached, or is on the verge of being reached that you cannot support, there are several ways to express your objections:

Non-support ("I don't see the need for this, but I'll go along.")

Reservations ('I think this may be a mistake but I can live with it.")

Standing aside ("I personally can't do this, but I won't stop others from doing it. ")

Blocking ("I cannot support this or allow the group to support this. It is immoral." If a final decision violates someone's fundamental moral values they are obligated to block consensus.)

Withdrawing from the group. Obviously, if many people express non-support or reservations or stand aside or leave the group, it may not be a viable decision even if no one directly blocks it. This is what is known as a "lukewarm" consensus and it is just as desirable as a lukewarm beer or a lukewarm bath.

If consensus is blocked and no new consensus can be reached, the group stays with whatever the previous decision was on the subject, or does nothing if that is applicable. Major philosophical or moral questions that will come up with each affinity group will have to be worked through as soon as the group forms.

Roles in a consensus meeting

There are several roles that, if filled, can help consensus decision making run smoothly. The facilitator(s) aids the group in defining decisions that need to be made, helps them through the stages of reaching an agreement, keeps the meeting moving, focuses discussion to the point-at hand; makes sure everyone has the opportunity to participate, and formulates and tests to see if consensus has been reached. Facilitators help to direct the process of the meeting, not

its content. They never make decisions for the group. If a facilitator feels too emotionally involved in an issue or discussion and cannot remain neutral in behavior, if not in attitude, then s/he should ask someone to take over the task of facilitation for that agenda item.

A vibes-watcher is someone besides the facilitator who watches and comments on individual and group feelings and patterns of participation. Vibes-watchers need to be especially tuned in to the sexism of group dynamics.

A recorder can take notes on the meeting, especially of decisions made and means of implementation and a time-keeper keeps things going on schedule so that each agenda item can be covered in the time allotted for it (if discussion runs over the time for an item, the group may or may not decide to contract for more time to finish up).

Even though individuals take on these roles, all participants in a meeting should be aware of and involved in the issues, process, and feelings of the group, and should share their individual expertise in helping the group run smoothly and reach a decision. This is especially true when it comes to finding compromise agreements to seemingly contradictory positions.

ACT UP Civil Disobedience Training

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. Courts, jails or other external forces cannot break solidarity. 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.

Nonviolent action draws its strength from open confrontation and noncooperation, 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 fleeing 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 are 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 message 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 identifies. 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.

ACT UP Civil Disobedience Training

Legal Flow Chart

The Legal Process

The legal system's terms and mystique create an impression of complexity and inapproachability. But, with a little study and thought, the legal process can become manageable and less intimidating and isolating.

Throughout the legal process, we have the right of choice. This is very important. When we understand the steps, the choice, and the effects of those choices, then we are in a position to make decisions as to what we want to get involved in, and what we want to avoid. there are many levels of commitment possible; we must individually choose our involvement according to our own situation.

The material below shows the legal process schematically. As mentioned above, there are certain steps involved, and choices that can be made at each of these steps. let us now go through the steps and briefly talk about the choices.

Warning

Usually, but not always, immediately prior to arrest a warning will be given by the police to demonstrators, They will saw which law(s) is (are) being broken and will say that anyone remaining will be arrested. The charges may include: disorderly conduct, trespass, resisting arrest, and obstruction of government property.

Choices

To stay and be arrested or to leave

Arrest

You will be taken to transportation vehicles (may be handcuffed, frisked, walked with escort, carried on a stretcher, dragged/carried)

Choices

To cooperate and walk or to non-cooperate and go limp so that you have to be carried. Or to flee if left unguarded and unidentified.

Processing and Booking

Placed in a holding area (don't expect meals, phone calls, bathrooms). Sometimes cells have pay phone, so you may want to bring quarters. Photographed. Fingerprinted. Pockets emptied. Strip searched (unlikely but a possibility). Asked for information. You are only required to give name, address, and ID. You don't have to give Social Security number, but many people do anyway since it's easy for this to be found out.

You may be given a summons, Desk appearance Ticket (DAT) that gives you the charges and court date and then released. Or you may be held till you are arraigned be a judge

Choices

To be willingly fingerprinted, etc. How much personal information you give. ACT UP usually tries to decide this collectively in advance, particularly so that no one is singled out for being too queer, HIV positive, etc.

Arraignment

Appear before a judge and answer to charges (guilty, not guilty, nolo contendere, mute). You can request that charges be dropped. If you plead guilty it might be for a fine of an Adjournment in Contemplation of Dismissal (ACD) where there's little or no punishment so long as you don't get busted in a certain time period. Or, schedule another court date/trial.

Choices

To answer charges, respect authority, or to get through the process as quickly as possible.

Trial

same as above

Note: You don't need a lawyer for this, but it is always helpful to have a legal aid or sympathetic lawyer to guide you through the process. For major actions, plan in advance to have legal aid on site of action and with you through the arrest, etc.

Advantages/Disadvantages to Disclosing Your Status when Arrested

When a person is arrested, if s/he informs the authorities that s/he has an infectious disease such as tuberculosis or an active HIV-related infection, s/he is separated and will not be placed in a cell with other arrested people. If the defendant is physically handicapped, s/he will not be placed in a cell with other arrested people

Advantages/Disadvantages to Disclosing Your Status: If you are on HIV meds, the only way that you are going to be able continue your doses is if you notify officers when you get to the Police Precinct or Central Booking. As the process can take some time, you should do this as soon as possible. Remember that the arrest to arraignment process can take up to 24 hours, which is several potentially missed doses of medication, so you should seriously consider speaking up so as to stay on your medication regimen. The disadvantages of disclosing your status include the possibility of harassment from officers or other inmates if the officers disclose the information.

At the precinct or Central Booking: If you have your meds in your possession they will be taken from you and "vouchered." An officer will fill out a voucher form, and it will include contact information for your doctor and pharmacy. You should be asked if you need to take your meds at the precinct or Central Booking, but know whether or not they ask you should let them know. If you ask to take your meds, the police will call EMS. An EMT will do an assessment and transport you (and the voucher form if you filled it out) to a hospital (usually the closest HHC emergency room) for evaluation by a doctor. You will not be permitted to take the meds that you had with you. If you can get in touch with friends or family who can bring medical information (doctor and pharmacy) to the precinct or Central Booking, they should do so. It is not a good idea for them to bring meds at this point.

At the hospital: A doctor will assess your condition. He or she might contact your doctor, or might just go ahead and write a prescription for the meds that you say you are taking. Either way, the doctor should write you a prescription for enough meds to last you through to the end of the arraignment process (24 hours). The prescription will be filled at the hospital pharmacy. If the hospital pharmacy does not have the meds, then the contact information on the voucher form will be used to contact your pharmacy. At this point, you might have to speak up and push to have someone make the call, either the doctor, the EMT, a social worker, a family member, or whomever you can get.

Potential Problems: At the precinct or Central Booking, the officers might discourage you from going to the hospital. They might tell you that it will delay the arraignment process and you will be there "for days". This is not true. Going to the hospital to get your essential medications will not delay the process or keep you in the system any longer. The arrest to arraignment time of 24 hours is the same, and it is very important that anyone on medications not miss doses.

Advocacy: If you have a problem in New York City, you or a family member can call the Legal Aid Society, Special Litigation Unit at 212-577-3419. You can also call the AIDS/HIV Hotline for

Prisoners at 718-378-7022. The Hotline operates Tuesday, Wednesday and Thursday from 3-8 PM and accepts collect phone calls

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ACT UP Civil Disobedience Training

Pleas in Court: What They Mean

Almost immediately after arrest a defendant will be brought into court for an arraignment. At the arraignment the defendant is read her rights and is informed of the charges against her. At that time she will be asked how she pleads to those charges. She can make several responses:

1. **GUILTY**: By entering a plea of guilty, a defendant is admitting her guilt, thereby forfeiting her right to a trial. In such cases the judge will simply sentence a defendant, though she may have to return to court at a later date for sentencing.

Demonstrators engaged in civil disobedience sometimes feel that this is the proper plea to enter at the arraignment. By pleading guilty they are saying, "Yes I committed the act of which you accuse me. I don't deny it; in fact, I am proud of it. I feel I did the right thing by violating this particular law; I am guilty as charged." Mahatma Gandhi is one example of a civil disobedient who always pled guilty in court as a matter of principle.

2. **NOT GUILTY**. If a defendant pleads not guilty, she must be tried and convicted before she can be sentenced. The burden of showing guilt lies with the state; you are presumed innocent unless the sate can prove your guilt beyond the shadow of a doubt. A defendant need not actually believe that she is not guilty in order to enter this plea.

Civil disobedients often believe that this is the proper plea to enter at arraignment. By pleading not guilty they are saying; "Guilt implies wrong-doing. I feel I have done no wrong. I may have violated some specific laws, but I am guilty of doing no wrong. I therefore plead not guilty." Since this places the burden of proof on the state, the government may drop charges before the case is tried. In rare cases a defendant may be acquitted (found not guilty) during the trial.

3. **NOLO CONTENDERE**: Nolo contendere is Latin for "no contest." If a person plead "nolo contendere: she forfeits her right to a trial and (as with a guilty plea) simply comes before the judge for sentencing. Some people feel that a nolo plea is a compromise between pleading guilty and not guilty. While not contesting the charges one is also not admitting guilt.

4. **Standing Mute**. Some people will not answer at all when they asked by a judge how they plead. They are usually civil disobedients who refuse cooperation with other aspects of arrest and courtroom procedures. In such cases a plea of not guilty will usually be entered for the defendant by the judge.

Such defendants fell that they should not have been arrested, do not belong in court, and only dignify the illegitimate proceedings by participating in them. Others may feel that the courts in this country, by their very nature, are oppressive institutions whose only legitimacy comes from the cooperation given them by the defendants; they therefore feel compelled to noncooperate with the proceedings. Serious consequences can result from noncooperation, including physical abuse by the police and additional jail time from the judge.

5. **Creative pleas**. Some defendants in political cases enter "creative pleas." for instance, when asked by the judge how she pleads, a defendant might respond: "I plead for an end to the arms race" (for a peace demonstration), or " I plead for an end to the laws making it illegal to be lesbian and gay" (for a queer civil rights action). In such cases a plea of not guilty will usually be entered for the defendant by the judge.

ACT UP Civil Disobedience Training

Jail Solidarity

Jail solidarity may be defined as complete unity of purpose of those incarcerated or imprisoned. The ultimate objective of that unity is for everyone committing the same act to be treated equally and fairly in jail and in sentencing. Refusing citations, bail, fines, community service or probation keeps us together as a community with the potential for collective bargaining to meet that objective.

For jail solidarity to be most effective, the issues surrounding it must be addressed and resolved to the greatest extent possible before reaching jail. Jail authorities are not going to patiently wait for us to reach consensus on solidarity agreements before they start employing "divide and conquer" tactics to weaken our bargaining power.

One divisive tactic used by the prison/legal system is different treatment for certain individuals or groups. These people risking harsher treatment usually include noncooperators, repeat offenders, known organizers, people of color, lesbians and gay men. Discussions of solidarity should always include the issue of how to give these people the extra protection they need.

Coming to agreements about solidarity goals and tactics is a powerful but difficult process. To reach true solidarity with the greatest number of participants, people must have enough information and time to make wise decisions. Solidarity tactics that are employed successfully are empowering. Iii-considered, unfocused uses of solidarity tactics are less successful and drain our energies.

Some of the issues that cause the most controversy around solidarity include interpretation of the nonviolence guidelines, and under what circumstances, if any, we will keep solidarity with those who have previous records, are on probation or have not followed the nonviolence guidelines for that action.

People's motivations for participating in CD will affect their attitudes toward the police and jail guards. Some people are motivated to CD as a protest against the multiple structures in society, which work together to create a weapons industry. The prison/judicial system is seen as one of these structures.

The effect of this political viewpoint on behavior in jail can be very dramatic. Often people refuse to cooperate with the authorities at all. Some ways they do this are by going limp during arrest, not abiding by prison regulations, and refusing to participate in arraignment. Some of these acts serve personal moral goals; others are initiated as levers to make the legal system mete out equal and fair sentences to all.

Another group may reflect a different set of motivations and approaches. For some people for example, their fundamental reason for CD stems from an awareness of the destructive power of nuclear weaponry. Their fear and outrage over these weapons may be their only motivation to do civil disobedience. Often these people will stress more of the need to communicate with the human beings behind the helmets, uniforms and roles. They will talk to the police, perhaps befriend the prison guards, and try to use persuasion and dialogue to raise questions about these roles.

The differences between these two approaches will frequently lead to conflict. The stress of the jail experience tends to intensify conflict but by discussing differences beforehand their effect on jail solidarity can be minimized. Conflicts that arise in jail must be acknowledged and deal with at the time or they may become divisive. Conflict is an expression of opposing viewpoints and should not be confused with violence.

Often it is not possible for everyone to agree to stay in jail for solidarity purposes. Sometimes there are people who question the need to struggle inside the jails when the action's primary goal is something else. Some people, because of out.. side responsibilities, cannot afford the time jail solidarity may demand. Others find jail conditions physically or emotionally intolerable. And still others take the political stand that we're more effective back on the streets encouraging other people to take a stand. Whatever the reason for not participating in jail solidarity individuals should make this information known beforehand since it may affect decisions of the group.

Those who must leave jail are not betraying the group -- there are many ways they can continue supporting those inside: by speaking to the media, to the movement and the public about conditions inside by fulfilling responsibilities for those inside, by carrying messages to family, friends, and employers.

Jail solidarity must never become coercive. In jail, solidarity is our strength and the strength of our solidarity comes from the free agreement of all who take part in it.

ACT UP Demonstrator's Manual

The following pages have been taken from the Mass Defense Committee (NYC chapter of the National Lawyer's Guild).

More information and case record can be found at the NLG website: www.nlg.org

Demonstrations have played an important part of this country's history. Even before there was a United States there were demonstrations. While the tradition of protest is supported by the constitution, the law also says that the police have the right to regulate demonstrations to maintain public order. **Due to the conflicting rights of the demonstrator and the police, it is not always clear what is legal and what is not legal**. However, this manual gives you many **general** rules and considerations to help you make the best possible decisions in demonstrating.

* **Planning the Demonstration**

* **At the Demonstration**

* **You Are Under Arrest**

* **In Court**

Please keep in mind that the specific laws and procedures cited are from New York State -- if you do not live in New York the laws will vary. For the best possible information for your particular situation and locale, contact an attorney.

Planning the Demonstration

Most groups do at least some planning prior to their demonstration. In addition to deciding the choreography of the demonstration, your group should plan whether to obtain a police permit, whether and how to include a "civil disobedience", and other practical matters. If you are unsure about your rights it's a good idea to discuss your plans with an attorney. (An attorney from the Mass Defense Committee is usually available to do this.)

Topics Below

* Deciding whether to obtain a permit

* Bring identification, not contraband

* Civil disobedience and who should avoid it

* Usual civil disobedience charges and release from precinct

* Be aware of "going through the system"

* Designate a civil disobedience monitor

Deciding whether to obtain a permit

Permits should be obtained if the demonstration is going to involve a bullhorn or any other electronically amplified sound. A permit should be considered for any demonstration that will be large (more than 100 persons or so) or will move from one place to another. If a permit is not obtained, the police, who will inevitably appear, may drastically curtail the action or prohibit it altogether.

Obviously the issuance of a permit alerts the police to the demonstration and guarantees their presence and usually their advance placement of wooden barricades at the demonstration site (where the police want them). However, even if a permit is not obtained, the police will appear anyway and although they may allow the demonstration to continue, they may be more intolerant than they would otherwise have been.

If a permit is denied, we recommend that the group call an attorney. She or he may be able to obtain the permit either by re-requesting it at the precinct or by going to court.

Bring identification, not contraband

Persons planning on being arrested should have police-acceptable identification. After the arrest the police transport the arrestee to a police precinct for processing. Unless the charge is a felony, the demonstrator will probably be released as long as her or his identification gives the police reasonable assurance that they know who the person is and where she or he lives. The best identification is a picture driver's license, but most official-looking identifications issued by an agency, organization or company will usually do. The purpose of learning the address is that, in the event that the demonstrator does not appear in court on the scheduled court date, the authorities could find him or her if they tried (which they would probably never do for a demonstration arrest).

Persons planning on being arrested will be at least superficially searched. If the police discover illegal drugs or anything else illegal they will probably not release the person and will add on additional charges.

Civil disobedience and who should avoid it

Originally civil disobedience meant disobeying laws one felt were fundamentally wrong; it has come to mean disobeying any law in protest of something. In planning a civil disobedience it is most important that those planning to be arrested be made aware of the legal and practical consequences of arrest (see below). They should learn the probable arrest charges the police will give and the probable outcomes they will receive in court. Potential arrestees should also be taught how to minimize the risks of extended police custody by avoiding certain charges, carrying reliable identification and having support at the police precinct.

Persons with outstanding warrants are advised not to get arrested because the warrant may cause the police not to release them from the police precinct. Also, arrest presents risks to non-citizens. While the police do not yet specifically screen arrested persons for immigration

issues or automatically communicate with the Immigration and Naturalization Service, non-citizens are required to explain arrests (not just convictions) on many INS applications. Similarly, persons who later may want to apply for jobs involving the government, security or child care may be investigated or asked about arrests, not just convictions, and therefore should weigh participation in a CD very carefully.

Usual civil disobedience charges and release from the precinct

The most common charges against demonstrators are Disorderly Conduct and Trespass. Basically Disorderly Conduct means about what it sounds like it means -- acting in a manner the police find disorderly -- and Trespass means being present on property without the permission of the rightful custodian of the property. These charges are both "violations" meaning they are not crimes and are about as serious as a moving traffic violation. For these offenses the arrestee is almost always released from the police precinct after being given a ticket informing him or her where and when to go to court.

The next most common charge is Resisting Arrest, which means that the arrestee allegedly exerted force to prevent the police from effecting arrest. (A demonstrator might be given this charge if a police officer uses unreasonable force since the officer wants to establish an excuse for using force.) This offense is a crime, an "A" misdemeanor (and therefore affords the demonstrator to the right to a jury trial). A person is usually released from the precinct with this charge but has a greater chance of being held until court than the above charges.

The courts do not agree on whether or not "going limp" and forcing police to pick up a demonstrator constitutes resisting arrest. Therefore, while persons who go limp risk a Resisting Arrest conviction, there is also legal authority that it is not sufficient conduct to prove Resisting Arrest.

The next most common charge is Riot in the second degree, which relates to urging 4 or more persons to cause property damage or personal injury, or participating in the damage or injury. If there are more than 10 persons involved and there is an injury (including injury to the a police person) or damage, the charge will be a felony - Riot in the first degree - and the arrestee will not be released from the precinct.

Be aware of "going through the system"

Those arrested persons not released at the precinct go "through the system", meaning that they remain in police custody up to the time 24 to 72 hours later when they see a judge in court. The journey involves at least one police precinct, a place called Central Booking (a pre-court clearing house for all the county's arrestees), a mass pen in the court building, and finally a court "pen" where the arrestee will be allowed to speak to an attorney. (All persons are assigned an attorney unless they already have one.) The judge decides whether to release or detain the arrestee until the next court date; most demonstrator defendants are released. The through-the-system experience is one to be avoided. (For example, see Tom Wolfe's only slightly exaggerated description in the novel Bonfire of the Vanities.)

For additional information about the post-arrest process, read **"You're Under Arrest"** by Ronald Kuby and William Kunstler.

Designate a civil disobedience monitor

Whenever arrests are expected, the demonstration group should appoint a person to monitor the arrests. This person should make sure the arrestees have good identification, keep of list of the persons arrested and, if possible, go to the police precinct to make sure things go well there. The monitor should bring paper and pencil to the demonstration and be prepared to make notes. If there is police brutality, the monitor should record the incidents, the names of witnesses and the names of the officers involved. A camera is also helpful for such events.

At the Demonstration

Topics Below

* Demonstrator Rights, Police Rights
* New York Demonstrations
* Civil Disobedience and Arrest

Demonstrator Rights, Police Rights

The First Amendment permits speech, however controversial, in "public forums" (streets, sidewalks, parks, plazas and, in contemporary times, shopping malls). The protected expression includes "symbolic speech" such as wearing masks, candlelight vigils, and, of course, flag-burning. *[masks are increasingly problematic in many places, these days.]*

While the government and the police may not restrict the content of the speech (including, for example, vulgarities directed at the police), they may impose reasonable "time, place and manner" restrictions on speech. Thus, for example, the police may control the demonstration to keep it from endangering public safety or order. And in New York City there are ordinances against demonstrations too close to churches, consulates, hospital and certain other buildings.

Generally a speaker cannot be prevented from provoking or exciting a crowd. However, if a speaker provokes a crowd to the point of causing property damage or personal injury (Incitement to Riot) or of another violation of the law, she or he can and certainly will be stopped by the police.

Potential demonstrators often ask "can the police do this...." referring to a particular type of restriction on demonstrating. The correct legal answer often boils down to whether or not the restriction is a reasonable time, place or manner restriction under the circumstances -- something a judge might have to decide later on if there happens to be a trial on the matter. However, the practical answer to the potential demonstrator's hypothetical is that if the police feel like it, they can and will do what they want and worry about the legal consequences later.

If a demonstrator believes her or his speech rights are being violated by a police officer, the matter should be brought to the attention of the legal observer, if there is one, or the demonstration organizer. If those options are not available, it may help to politely but firmly request to speak to the officer in charge. Often, however, that is the officer who ordered the action in the first place. Arguing with the particular police officer will rarely change the officer's mind. Refusing to obey the officer will usually result in an arrest.

New York Demonstrations

There is no right or wrong way to demonstrate -- the demo should be conducted in a way to best highlight the political issues involved. However, in New York City the police appear to be increasingly permitting less variety and spontaneity in demonstrations. If the demonstration is on a city sidewalk the police will usually construct a pen with barricades within which they will confine stationary demonstrators. Often these pens are a block or more from the actual site being protested. Demonstrators that march will be required to stay on the sidewalk and not completely block the sidewalk. The courts will uphold most partial restrictions on the right to demonstrate in the name of serving the public's right to such things such as the free flow of pedestrian and vehicular traffic, and safety.

Most demonstrations are stationary, within the police barricades. Demonstrators may hold signs, but in New York City the police prohibit signs on wooden sticks, requiring that cardboard tubes hold up the signs. Sound devices are generally allowed only with a sound permit. Chanting is permitted but if the demonstration is close to a hospital, consulate or government building the police will probably move it away so the occupants are not disturbed.

Civil Disobedience and Arrest

The usual civil disobedience features members of the demonstration blocking building entrances or traffic and being arrested. Typically, shortly after the CD begins, the police officer in charge will stand in front of the demonstrators and give a warning to cease the action while the other officers, brandishing handcuffs, encircle the demonstrators. When the demonstrators persist, the arrests begin and the arrestees are taken to police vans for transport to a precinct.

A member of the group should monitor the arrests, maintain a list of the persons arrested, take note of any unreasonable force by the police, and be prepared to go to the police precinct to ensure the arrestees' release.

In transport to, and at the precinct, arrestees should refrain from discussing the demonstration with the police. While persons arrested should be cooperative about giving their name, address, job, and like information for the purpose of securing their release, there is nothing to be gained from discussing the incident. If you do it, as they say on TV, everything you say can and will be used against you in court. (See **"You're Under Arrest"** by Ronald Kuby and William Kunstler.)

At the precinct the arrestees are written up and usually released. If a person is charged with resisting arrests, fingerprints may be taken, which slows the process considerably since it

takes approximately three hours for the results of the fingerprint search to be returned to the precinct. An arrestee may or may not be given a phone call. If there are any felony charges, the demonstrator will not be released. Persons released receive either a "Summons" (which looks like a parking ticket) or a "DAT" (Desk Appearance Ticket) which state the date and place of the court appearance for the charge. In New York the charges cannot be resolved at the precinct.

You are Under Arrest

by Ronald Kuby and William Kunstler

You are standing on Avenue A shouting "No Housing, No Peace." Suddenly, some huge ex-football player from Suffolk County jumps you from behind and slams your face into the concrete. He is wearing a blue outfit, a gun, and is putting handcuffs on you. What has happened? You are under arrest!

You are under arrest when the police, by their words (Halt or I'll shoot!) or their conduct (grabbing your arms and hurling you into a paddy wagon) make it clear that you are not free to leave. If you have any doubt as to whether you are under arrest, ask! (Assuming your mouth is not full of blood and teeth.)

The police do not have to pronounce any magic words for you to be under arrest. And get this--contrary to the teaching of a generation of TV--the police do not have to "read you your rights." Most people (and many criminals) still believe that a police failure to recite the Miranda warnings means the case has to be thrown out. Not true. There is nothing sadder than the look on the face of an otherwise hardened killer when you break this news to him. (Well, almost nothing sadder.)

A brief digression: (Like many myths, the "he did not read me my rights so I go free" is one that can trace its origins to something in objective reality. Back in 1966, the Supreme Court held that the failure of the police to tell a suspect that he had the right to remain silent, and to a free lawyer before being questioned, meant that nothing the suspect said could be used against him. So the Court put a crimp in the time-honored police practice of beating a confession out of a suspect. Many suspects had to be released because the only evidence against them was a confession extracted through torture. Eventually, many police learned how to get evidence without hitting people (although they still beat suspects just for fun). This other evidence--eyewitness statements that you pulled the trigger, your blood-stained clothing, the recently fired gun, etc.--has nothing to do with you making a statement and nothing to do with whether you were read your rights.)

Ok. So you are in the squad car, going to the police station. As a general rule, the best policy is for you to keep your mouth shut. Do try to avoid saying dumb things like "I didn't mean to do it; everyone else was doing it" and "I just meant to rob the guy, I didn't know that Joe would

shoot him." Do not try to talk yourself out of the arrest. The only thing that you can influence at this point is whether you go "through the system".

If you are charged with an E felony or lower (including misdemeanors) the police get to decide whether they will issue you a Summons / Desk Appearance Ticket (DAT) and release you, or whether to put you through the system, forcing you to spend at least 24 and perhaps as many as 72 hours in various dirty holding cells as you wend your way through the intestines of the booking system, only to be dumped, looking and smelling like a turd, into a courtroom.

Your chances of getting a Summons/DAT are increased if you:

1) Cooperate with arresting officers by providing them with background information and valid identification. This is the only time when it is useful to talk with the cops. If you cannot prove your identity and residence, you will be fingerprinted and placed through the system. Homeless people are regularly put through the system, even for the most minor offenses. Homeless people should give arresting officers some real, verifiable address, even the name of a friend who will confirm that they stay there.

2) Arrive "clean". After an arrest, you will be searched. Possession of weapons or drugs will result in your being put through the system.

3) Commit a relatively minor infraction. Sitting down in the street and refusing to move, blocking the entrance to a building, and related conduct generally is treated by a summons. Resisting arrest by going limp is usually treated by a DAT. Assault and property destruction will normally result in your being put through the system.

4) Have no outstanding warrants. That court date you missed six months ago (Oh shit! That arrest?) has grown into a bench warrant and will result in your being put through the system.

Lying to the police by showing them false identification is stupid and illegal. It is a crime more serious than the one you are trying to get out of. If they take your fingerprints and you have been printed before under another name, you're in trouble.

Sometimes, a lawyer or responsible adult calling or showing up at the precinct can influence the police to release you rather than put you through the system. (That is why your lawyers usually do not stand there during demonstrations and call the police "fucking pigs.")

If the police use summons procedures, you will be taken to a precinct house. On the Lower East Side, it will be the Seventh Precinct at 26 Pitt Street or the Ninth Precinct at 321 E. 5th Street. A police officer will ask you background questions. You will then be issued a pink slip of paper with a court date, usually a month from the arrest date, and place, usually at 346 Broadway. Save this paper. You will then be released. If you do not show up within 30 days after your date, a warrant will be issued for your arrest. Persons arrested at the same time may be given different court dates--a tactic often used to prevent mass demonstrations at the courthouse. Because off the 30-day rule, you have some flexibility in scheduling your court appearance. Like everything else, going to court is more fun with your friends.

DAT procedure is similar, except that you are often fingerprinted at the station and the prints are faxed off for a warrant check. This usually takes about 3 hours. You are given an 8 1/2 x 11 sheet of paper with a court date and a room number, usually at 100 Centre Street. Unlike the summons, if you do not show up on the date given, a warrant will be issued for your arrest.

If the police put you through the system, you will first go to the precinct for a few hours. From there, you will be taken to Central Booking, at 1 Police Plaza, and you will be photographed (mug shot) and fingerprinted. You have no right to refuse these procedures, and you will not be released until they are completed. You will also be interviewed by a representative from "pretrial services". The result of this interview will be used by the judge in determining whether you should be released on your own promise to appear (release on own recognizance, or ROR). It is important to give them the name and telephone number of someone who can verify the information that you provide. Following this process, which may take up to five hours, you will be taken to one of the precincts in Manhattan and held in a small cell for as long as forty-eight hours. They will take your belt and shoelaces away (really!) while you are in the holding cell. Finally, you will be brought to court at 100 Centre Street, where you will wait in the basement in another cell, as long as overnight. You will be brought "upstairs" to yet another cell, where you will wait a bit longer before getting to see a judge. Just before you see the judge, you will see an attorney, either Legal Aid or from your defense committee.

A trip through the system is no fun, but you can do it. Bring cigarettes, even if you do not smoke. They are the jail system equivalent of barter. A toothbrush is also a handy and useful item of personal hygiene to bring with you.

Once you are in the system, the only way out is to wait until you get to see a judge. Be prepared for the wait. No magazines are furnished. Make sure that your personal matters are taken of. The jail guards do not care about your pets, children, or you. Persons who require daily doses of medication will have their medication confiscated and will not be able to persuade anyone to return it.

Yes, there is a court decision requiring you to be produced before a judge within 24 hours or released. No, it does not help you. In fact, it hurts you because the remedy for the delay is release. The serious felonies are processed first, to prevent them from being released. Since you are getting out anyway, unless you shot the President, you often go to the end of the line. The Catch-22 for you is that a judge will order you released after 24 hours but it can take 72 hours to see the judge.

MIDTOWN COMMUNITY COURT

The City of New York

POLICE DEPARTMENT
NEW YORK, N.Y. 10038

PCT.	SERIAL NO.	ARREST NO.
018	45	

THE PEOPLE OF THE STATE OF NEW YORK VS.

DEFENDANT'S NAME	ADDRESS	AGE	DATE OF BIRTH
		37	4-2-57

You are hereby summoned to appear in the Criminal Court of the City of New York, to answer a criminal charge made against you.

OFFENSE CHARGED: 140.05 TRESPASS - 205.30 Resisting ARREST

COUNTY	PART	ADDRESS/LOCATION	TIME	DATE MO./DAY/YR.
NY	AR6	MIDTOWN COM. CT. 314 W 54 ST NYNY	~~9:30 A.M.~~ 9:00 A.M.	4/25/95

INSTRUCTIONS FOR DEFENDANT

YOU MUST APPEAR AT THE TIME AND DATE INDICATED ABOVE AND PRESENT THIS FORM TO THE COURT CLERK

Should you fail to appear for the offense charged above, in addition to a warrant being issued for your arrest, you may be charged with an additional violation of the Penal Law which upon conviction may subject you to a fine, imprisonment or both. Additionally, if you fail to comply with the directions of this Desk Appearance Ticket, any bail paid will be subject to forfeiture.

ADDITIONAL INSTRUCTIONS

CODEFENDANTS — IF YES, NAMES

☐ YES ☐ NO

ACKNOWLEDGEMENT OF DEFENDANT:

I, the undersigned, do hereby acknowledge receipt of the above DESK APPEARANCE TICKET, personally served upon me, and do agree to appear as indicated.

SIGNATURE OF DEFENDANT	TIME	DATE
X	12:12	3/24/95

FINGERPRINTED	PHOTOGRAPHED BY	TIME	DATE
X YES ☐ NO			

RANK/NAME	ARRESTING OFFICER	TAX REG. NO.	SHIELD	SQUAD	COMMAND/AGENCY
P.O.	Cosgriff	901372	13315	3	MSTF

ADDRESS OF AGENCY IF OTHER THAN POLICE DEPT.

☐ **CASH BAIL ACCEPTED** (If applicable) **AMOUNT $**

RANK/SIGNATURE OF ARRESTING OFFICER	DATE	DESK OFFICER'S SIGNATURE
P.O. John Cosgriff	3/24/95	

DESK APPEARANCE TICKET

DEFENDENTS COPY

DISCLAIMER: The advice given here is meant as a general statement of the law, and should not substitute your spending a pile of money on a real flesh and blood lawyer

In Court

In New York demonstrator arrests end up in one of three courts: 346 Broadway (summons cases), 100 Centre St. (all felony and most DAT cases) or the Midtown Community Court (minor arrests concerning demonstrations in the Times Square area).

Topics Below

* 346 Broadway (at Leonard St.), also known as the Summons Part

* 100 Centre St. (at Leonard St.)

* Midtown Community Court (314 W. 54th St.)

The following are the main in-court events demonstrators need to know about.

* Motions to dismiss

* The ACD

* Trials

* Guilty Pleas

* Sentence

* Sealing

* Summary of the Judicial Process

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346 Broadway (at Leonard St.), also known as the Summons Part

This court gives assembly line service to Manhattan's minor offenders. At their first appearance defendants turn in their summonses at the clerk's office and directed to a courtroom in which to wait for the judge. The courtroom is run, rather strictly, by court officers. There is no prosecutor present (but the judge is often prosecution oriented).

Defendants in the Summons Part are asked whether they wish to plead guilty or go to trial. (See below concerning court strategy). Those wishing to go to trial are given a new court date. (The arresting police officers are not notified to appear until after the arrestee appears in court on the next date and repeats his or her desire to go to trial.) Persons pleading guilty are fined a minimum of $45 (the "mandatory" surcharge) and given time to pay if necessary. The arrestee should try obtain a dismissal or an ACD.

100 Centre St. (at Leonard St.)

This is the main Manhattan criminal courthouse that means, among other things, that all visitors go through a long metal detector line before entering the building. The DAT part is currently on the south end of the 1st floor. Upon checking in the defendant will be informed whether or not the charges are "ready"; if they are not, the defendant is told to go home and wait for a notice in the mail. If the charges are ready, the arrestee will be instructed to wait in the courtroom. If she or he has an attorney the attorney will obtain the written charges; if not, a court-appointed attorney will eventually introduce him or herself as the attorney. At the first appearance one should request a dismissal or an ACD, and then decide whether to plead guilty or to proceed towards a trial (pleading not-guilty). Proceeding towards trial does not necessarily mean there will be a trial -- for example, a dismissal, an ACD or a better plea offer may become available on a later court date. See below for details regarding court strategy.

Midtown Community Court (314 W. 54th St.)

This new courtroom was partially funded by the Times Square businesses in the hope that it could accelerate the judicial process against those who are perceived as a blight on the area (i.e. unlicensed vendors, urinators, etc.) Recently someone decided that demonstrators fit the category. However, despite the intentions, cases which are not resolved at the first appearance are simply transferred to 100 Centre St. and end up taking at least as long as any other case. As advised above, when the case is called, the defendant should try for a dismissal or an ACD, failing which he or she will decide between a plea offer or the path towards trial ("not-guilty").

Motions to dismiss

A dismissal is the termination of the defendant's charges without any finding a guilt.

One primary basis for requesting the dismissal of the charges is that the charging document is defective. In the Summons Part, this most often involves the police officer's failure to sign the summons or, on a disorderly conduct summons, to allege the defendant's intention to block pedestrians or vehicular traffic. (see People v. Tarka) In non-Summons Part cases, motions to dismiss based on a defective complaint usually involve facial insufficiency, or the prosecutor's failure to allege sufficient facts to satisfy the elements of the offense charged. In the summons part the judge should inspect the summons for sufficiency, in the DAT parts the attorney should do so.

The second primary basis for a dismissal is justification--which the purpose of the arrestee's act was to prevent a greater harm. This defense is part of the New York State Law Penal Law (Section 35.05).

A third, related, ground is "the interests of justice"--that the issue related to the demonstration or some other fact related to the case (sometimes the police officer's brutality in the arrest) demands that the case be dismissed. See sample of written motion to dismiss in the interests of justice.

While motions to dismiss may not often be granted, they should be made if there is a grounds.

The ACD

ACD stands for Adjournment in Contemplation of Dismissal. An agreement to an ACD is almost as good as an outright dismissal. The case is adjourned for six months, after which it is dismissed and sealed. There is no admission of guilt or finding of any guilt, and the defendant does not have to appear in court on the 6-months date.

Technically a judge can vacate an ACD during the 6-month period if the ACD "no longer serves the interests of justice". However this rarely happens. What happens if the demonstrator is arrested again during the six-month period? Almost always, nothing. The main reason for this is that the judge in the subsequent arrest case will not be aware of the ACD (unless the demonstrator was fingerprinted for both arrests, in which case the judge will have a current record which will the prior case; this would be unusual for demonstration arrests). Secondly, even if the judge does know about the ACD case, he or she would be unlikely to reopen it because of another arrest (why make more work for the court system?). Instead the judge probably just will not agree to another ACD. And even in the extremely unlikely event that a judge did revoke an ACD, the demonstrator would only be in the same position she or he was in when the ACD was granted, which is that there has been no guilty plea and there can then be a plea negotiation or the case can proceed to trial. In short, very little is risked with an ACD.

Increasingly prosecutors will agree to an ACD only if it is conditioned on the defendant serving "community service" (i.e. cleaning up litter for the Parks Department), usually for 1 or 2 days. Agreeing to this condition is not an admission of guilt but it is obviously inconvenient.

There is one situation in which an ACD should not be agreed to and that is when the defendant intends to bring a civil rights lawsuit based on "malicious prosecution" or "false arrest". Appellate courts have held that the defendant's agreement to an ACD gives sufficient legitimacy to the prosecution to bar a subsequent suit charging malicious prosecution, and have implied the same may be true with respect to false arrest. If you are considering a lawsuit on these grounds you should consult with an attorney before agreeing to an ACD. An ACD does not preclude other civil suit claims such as assault.

Trials

If a motion to dismiss has been denied, and a request for an ACD has also been denied, the case will proceed towards a guilty plea or a trial. All persons have the right to a trial. In the Summons Part that trial will usually take place, if the officer chooses to appear, on the second or third appearance; in other courts it will take even longer.

The right to a trial includes the rights to a speedy trial, to make motions for necessary discovery material, to raise all appropriate defenses, to call witnesses and other rights. Since it is not possible to discuss these rights in this writing, an arrestee who wishes to fully exercise all rights should consult with an attorney or request one from the court.

The basic structure of a trial is that the police witness(es) testifies first, and the defendant, if he or she chooses to testify, and his or her witnesses, if any, testify second. The length of a trial varies depending on which court it is in, the number of witnesses there are, and the complexity of the case. Most trials in the Summons Part take only the time it takes a police officer and the demonstrator to tell the judge what happened -- usually a matter of minutes. The average non-Summons Part case takes one or two days but a complicated case can take much longer.

The demonstrator defendant, as any other defendant, has a right to a trial by jury for any felony charge or a Class A misdemeanor, such as Resisting Arrest. Since most demonstrators are charged with minor charges, their cases are tried before a judge, not a jury. The judge will usually not be very interested in the reason for the demonstration (but see the Refuse & Resist Homepage concerning producing a political trial) and will be under pressure from her superiors to rush through all cases as quickly as possible.

Often the demonstrator defendant will not be permitted to raise the political issues involved in the demonstration at the trial. While the issues might be relevant if there is a "necessity" or "interests of justice" defense, if not, the judge will limit the issues to whether or not the defendant was disorderly or trespassed, etc.

In all trials, the relevant legal standard for guilt or non-guilt is whether the charges against the defendant have been proven beyond a reasonable doubt. If the trier of fact (as stated above, usually a judge) finds the charges have not been proved, the charges will be dismissed and sealed. If the judge finds the charges proven, he or she must sentence the defendant.

Since most demonstration cases do not go to trial there is no typical demonstration trial. What can be anticipated about trials however is that a police officer will testify that the demonstrators trespassed or were disorderly and failed to desist when the police asked them to. At that point in the trial, unless a demonstrator has strong evidence that the officer is lying or an even stronger justification or other defense, a judge is likely to find the demonstrator guilty. For one thing, nearly anything can be considered disorderly conduct; for another thing, judges are reluctant to decide that a police officer has lied, especially when the officer is standing in front of the judge in court. Thus, success at trial may depend on the ability of the defendant, or the defendant's attorney to overcome or avoid these two judicial tendencies.

Guilt after trial subjects the arrestee to the potential penalties mentioned below (Sentence). Demonstrators who decide to go to trial and are found guilty generally receive lenient sentences (i.e. a conditional discharge) but at minimum are assessed the "Mandatory Surcharge" ($45).

Guilty pleas

If the judge has denied a motion to dismiss and is not inclined to grant an ACD in the case, the demonstrator defendant will have to decide whether to plead guilty or proceed towards trial. If the defendant is leaning towards pleading guilty, the defendant or the defendant's lawyer should always try to find out from the judge what consideration the court will give the defendant for pleading guilty. Since the defendant will be giving up the constitutional right of forcing the

prosecution or police to prove guilt beyond a reasonable doubt (which takes up the judge's time), the defendant will be in a position to get a break for giving the court a break. If the defendant is charged with a misdemeanor, usually the judge (and the prosecutor if one is present) will permit the charges to be reduced to a violation (normally disorderly conduct) and offer a favorable sentence to encourage a plea of guilty. As is stated above, a finding of guilt to a violation is a non-criminal adjudication, and is about as serious as a moving traffic violation. If the charge is already only a violation, there is no lower charge, so the court should offer a low fine or no fine (other than the mandatory surcharge).

If the defendant understands the court's offer and wants to accept it, he or she can plead guilty. This is usually accomplished by simply communicating that fact to the judge. Sometimes, the judge may ask the defendant to explain what she or he did for which she or he is pleading guilty.

Sentence

After a finding of guilt, whether after trial or plea, the court must set a sentence. The judge's options include incarceration, probation, conditional discharge, unconditional discharge, a fine, or a combination of these options. There is a mandatory court fee of $45 against all persons found guilty of anything, unless the defendant is determined to be indigent.

In demonstration cases the sentence most often imposed is a conditional discharge with a fine of $55 ($45 of which is for the mandatory surcharge) or so. A conditional discharge is a one-year period during which the case is not sealed and, during which, theoretically, a future violation of the law could constitute the grounds for a resentencing (but almost never does). Conditional discharges are sometimes called an unsupervised probation.

Defendants can agree (but cannot be forced) to perform community service as an alternative to other sentences, and increasingly judges and prosecutors are asking for that agreement. Usually the service involves 1 or 2 days of picking up litter for the Parks Department or the Transit Authority, but the judge and the prosecutor will occasionally agree to service with charitable organizations such as the Gay Men's Health Crisis.

Sealing

After all dispositions of a case, which are “favorable to the defendant”, the case will be sealed. "Favorable to the defendant" includes dismissal and, importantly, non-criminal findings of guilt (i.e. violations such as disorderly conduct and simple trespass). Sealing involves the physical and electronic elimination of the case. The court papers are physically stapled shut and stored in a designated area. The New York State computer entry for the case, if there is one (there is one if the defendant was fingerprinted upon arrest), is eliminated, and the defendant's original fingerprint card, if there is one, is returned to the defendant (the copies of the card are destroyed).

When the court orders a conditional discharge as the sentence, the sealing takes place after the one-year period. When a fine is ordered, and on other occasions, the judge may postpone sealing for short period of time.

Sealing, like any other bureaucratic process, is subject to the mistakes of those who participate in the process. If the sealing is sufficiently important, defendants (or their attorneys) should investigate whether the sealing took effect. Several months after the sealing was supposed to have occurred, the defendant can go to police headquarter (in Manhattan, at One Police Plaza, on Chambers St., east of Centre St.), and have a fingerprint run done. If the sealing was properly done, the fingerprint search will not "discover" the arrest in question.

Sealing does not hide the particular arrest from everyone. Government employers and certain private employers, such as foster care agencies, have access to sealed records.

Summary of the Judicial Process

For non-felony charges the defendant should attempt to have the case dismissed, then attempt to get an ACD and, failing these, determine whether or not to go to trial. If a plea is given the defendant should drive a hard bargain. If a trial is had, even if is lost, most demonstrators will not be harshly sentenced.

If there are felony charges (such as Assault on a Police Officer or Riot), the court will always assign an attorney and the charges must be taken seriously.

ACT UP Marshall Training

MARSHAL TRAINING TIPS

This information is provided as a reference and cannot replace a Marshal Training.

1. THE ROLE OF MARSHALS AT AN ACTION

To facilitate the action as planned;

To act as an information source between planners and demonstrators;

To help demonstrators be safe while and feel good about demonstrating;

To act as a buffer between police, hecklers and bystanders.

2. WHAT MARSHALS DO ON A PICKET

Set up the moving picket; determine picket perimeters;

Keep the picket moving and intact;

Watch the perimeters; be aware of police and others' movements;

Lead chants; intervene on behalf of picketers (If the picket is barricaded there MUST be a way for people to enter and exit. This is your legal right.);

Show legal area limits, should civil disobedience occur;

Stay calm; Keep people around aware of what's happening;

Wear an armband distinguishing yourself as a Marshall.

Avoid carrying signs.

Be responsible for negotiating with the police for First Amendment rights.

3. WHAT MARSHALS DO ON A MARCH

Front Marshals: lead at a slow pace, keep march moving steadily, watch for obstructions, help facilitate civil disobedience, if any occurs;

Side Marshals: block traffic at intersections (facing cars), watch perimeters, help facilitate civil disobedience, if any occurs;

Back Marshals: bring up the rear, set the pace, make sure no one gets left behind.

What to do at street intersections:

Marshalls block traffic by forming a line across intersecting street;

(Many times the police will block traffic for us, but even if the police do this, then line up between the cops and the marchers).

Groups of marshalls need to get to the intersection first (leap frog other Marshall lines to get to intersection).

Groups of 4 or 5 wait for the red light (when cars have stopped) and quickly slide out, holding hands, and **FACE THE CARS**.

When the march has gone by, don't dissolve until there is another red light to protect marshalls.

When you're rushing to get to the next intersection, try to make it seem as if you're not panicking or creating a riot.

4. WHAT MARSHALS DON'T DO

Don't panic, ever.

Don't do the police's job, ever.

5. THE ROLE OF THE POLICE AT AN ACTION

To protect property from damage;

To contain demonstrators, keep us from making a commotion.

6. WHAT YOU NEED TO KNOW:

DEALING WITH THE POLICE AND OTHER PROBLEMS

What's Legal at An Action:

A moving picket on a public sidewalk with signs and chanting;

A sidewalk march with signs and chanting;

Handing out leaflets to passersby without blocking way.

What A Permit Is Needed For:

Sound amplification devices: The worst charge for using a sound device is a summons -- equivalent to a parking ticket -- police can also confiscate device)

Marching in the streets/street closure. (Usually ACT UP does not get a permit because the police ask too many questions about what we are doing, know too much about the action, and have too much control over us.)

Police: Bluff and Stall*; Stop, stand and wait; Stop and sit.

*Bluff and Stall:

Tell the cop it's legal (whatever it is you're up to); Ask what law you're breaking, ask how you're breaking it (Remember that the police will not necessarily be truthful);

Demand to see their superior officer; send them to see their superior officer;

Keep insisting on your right to do what you're doing.

Remember that the cops are bluffing and stalling as well. The police don't necessarily want to arrest people unless you push them or threaten their dignity. If there is an injunction, ask for copies of it. The injunctions must show if there were any specific time and place restrictions.

If the march is large and well organized, it is difficult for the police to start arresting people.

Hecklers: Face trouble; Isolate; Converse if possible, while march goes past.

In case of violence: isolate, separate.

Bring vocal attention to violent, harassing cops (i.e. get crowd to shout "shame, shame" while pointing at cop).

In case of a medical emergency: one marshal remains with injured person, another gets police.

NEVER touch a police officer.

Try to be calm during a confrontation with a cop.

If the entire crowd is in danger or panicking, tell everyone to **SIT DOWN.**

This keeps people safer and more non-threatening; it takes control of the street space and allows you to regroup and regain composure.

While it's counter-intuitive, horses will not step on a person sitting down.

The animals are more careful than the riders to look for firm ground.

Also - Wear sturdy shoes and clothes!

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www.actupny.org

Why We Get Arrested

I have an arrest record for civil disobedience that spans 23 years and covers seven states, the District of Columbia, and one foreign country. However, I never go to a demonstration to get arrested; I go to demonstrations to bring about change, and am willing to risk arrest to produce that desired change.

Any group that wishes to use civil disobedience or direct action to achieve change must:

1) make absolutely clear what change is desired, usually by listing specific demands;

2) target a group or individual with the power to bring about the desired change;

3) design actions so that the cost of resisting change is perceived by the person/group in power to be greater than the cost of giving in.

The classic type of civil disobedience advocated by Gandhi and Martin Luther King, Jr., is one in which an unjust law is deliberately and openly violated. Most of the demands of AIDS activists do not lend themselves to the classic Gandhi/King style of civil disobedience. Nevertheless, the same basic principles apply: Make it more costly for those in power to resist than to give in.

This is done in one of two ways:

1) create problems for those in power that will not go away until they give in (for example, occupy their offices or zap their phone lines), and/or

2) educate the public in ways that both cause embarrassment to those in power and cause them to be fearful that the popular movement for change may grow strong enough to threaten their power (for example, interrupt news broadcasts or hang banners).

We should be thinking and talking about what we do much more carefully. For example, when we sat down and blockaded the entrance to the New York State Senate last year in Albany, we were very clear about what we were doing. We did not say we were there to get arrested. We said we had a set of demands and that if Ralph Marino (the Senate Majority Leader) and Governor Cuomo would agree to our demands, we would go home because we were there to pursue a specific set of demands, those demands were picked up and publicized by the media covering the arrests. That helped to educate people, embarrassed Cuomo and Marino, and contributed to the building of our movement and the achievement of change. Other ACT UP members who were in Albany that same day apparently told a local newspaper reporter that they were "going to get arrested. "That reporter then wrote a column that described people who were intent on getting arrested, as if getting arrested were an end in itself. There was no mention in this column of the specific issues that drove people to commit civil disobedience.

If these individuals had 'instead told the reporter that they were willing to risk arrest in order to bring about X, Y and Z, the action might have been more powerful. My point is simply this: When we engage in civil disobedience, we do so to achieve change, not to get arrested. Getting arrested is of little significance in and of itself. We're not out to accumulate arrests like merit badges. Arrests result from our commitment to achieve change; they are the means to an end, not the end in themselves.

– Aldyn Mckean (d. 1994)

Grand Central seemed to me a good point to reflect on this. It seems to me that the police know our tactics well, and if they wait long enough, we'll just leave the scene. Which we did. And only to go block off a useless intersection in the cold. I was told we avoided Times Square (a much more logical intersection to mess up, in my mind) because some cops stopped the crowd. Don't people have freedom of passage in this city anymore? Can they identify and selectively prevent certain people from moving where they want to? Why is the situation with the police so symbiotic these days? I feel we're a little too predictable. The arrests were a useless anticlimax to a powerful demo at Grand Central. We need to be more persevering if we want to accomplish a goal with arrests, and not, as it seemed to me, provide an opportunity for newer, younger activists who seem to need to be arrested as initiation rite. We waste everyone's time in that case.

– Howie Pope

During my first C.D. (civil disobedience) training with ACT UP, one of the questions each person was asked to answer was "Why do you want to get arrested?" My reply was 'I don't want to get arrested. I want to make my point and I'm willing to get arrested if that is necessary in order to accomplish my goals. Frankly, I'd rather make my point and not get arrested. "I still have the same positions for a lot of reasons.

First, there are people in jail who never wanted to be there and I feel, myself, that voluntarily going to jail often seems cavalier.

Second, I think different actions can accomplish their goals without arrest being the final end point. In Albany, we managed to get onto the floor of the Senate chamber, deliver our message, and walk out without arrest. I didn't participate in the Day of Desperation but I was someone who watched coverage on T.V. as it happened. The point was gotten without the arrests and, in fact, since I didn't watch the 11o'clock news, I didn't even know people got arrested on the street. A much smaller number of people did the actions the evening before and during the day and, although some did get arrested, their numbers were small and were not, in my view. the most important part of those actions.

Third, I think the goal of getting arrested puts the cops in control in many situations. The F.D.A. action was a case in point where the cops set the terms of arrest (sitting down in front of the building) and people spent the entire day trying to do something to "get arrested. "Many didn't