

## Civil Disobedience - Extra Reading

The follow material is taken from the Civil Disobedience Manual prepared by ACT UP/New York.

- Affinity groups & consensus
- Affinity group support
- At the action
- The legal process
- “You are under arrest”
- CD in Washington, DC

### 1. AFFINITY GROUPS & CONSENSUS

#### **Affinity groups**

If you are planning to do civil disobedience, it's 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.

Affinity groups for mass actions are often formed during CD training sessions. It's 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 non-cooperation with the police and courts, the role

your group will play in a large action, etc. After an action, it's also helpful to meet with your group to evaluate and share experiences.

## **Consensus**

Affinity groups are strongly urged to use consensus as their method of making decisions. Consensus is a process by which a group of people engage in discussion to come to a unanimous agreement. It does not mean that everyone thinks the decision made is necessarily the best one, or even that it will work. What it does mean is that in reaching that decision, no one felt that her position on the matter was misunderstood or that it wasn't given a proper hearing. With consensus, people can and should work through their differences to arrive at a mutually satisfactory position. The ability to work through and resolve group conflicts is essential in the CD process.

Consensus can take more time, but it can create:

- Greater commitment to the final decision, since everyone feels that their input was included.
- Greater trust among members, since they learned how everyone else felt during the discussion.
- Greater creativity in solving problems, since more ideas are being put forward.

During discussion, a proposal 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 make alternative suggestions. In consensus, everyone has the right to express themselves in their own words and of their own will, but they also have the responsibility to make sure everyone else has the same right.

When a proposal seems to be well understood by everyone, and there are no new changes asked for, the facilitator 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 appears to have been reached, it helps to have someone repeat the decision so everyone in the group is clear on what has been decided.

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

- Acquiescence: “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 acquiescence or reservations, or stand aside or leave the group, it may not be a viable decision even if no one directly blocks it.

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.

## **2. AFFINITY GROUP SUPPORT**

Whenever arrests are expected, the affinity group should appoint a person or persons to monitor the arrests. The support team should keep track of the members being arrested both during and after the action. They should keep the arrestees’ valuables, make sure they have proper identification, and follow them to the police precinct and stay until they are released. The support team should also record any police misconduct in the arrests.

These are the functions of the support members:

### **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;
  - Who arrestee would like contacted and under what circumstances;
  - Special medical information or other special needs info;
  - Whether the individual plans to cooperate or not, and in what ways;
  - Whether the person is a minor.
- Know who the action organizers are, and how to contact them during the action.

**At an action:**

- Bring paper, pen, and camera to record the action, and snacks for yourself and others.
- On arrival at the action site, have everyone in your affinity group sign a check-in sheet.
- Hold keys, wallets, cell phones, medication, and any other valuables for those getting arrested.
- Make sure that those getting arrested are carrying a government-issued photo ID.
- Know the boundaries of the arrest area at the action, so that you can avoid arrest yourself.
- Keep in touch with the CDers for as long as possible, noting any changes in arrest strategies, etc.
- Once the arrests begin, write down:
  - Each individual's name
  - The time and nature of the arrest
  - The activity of the person arrested

- Whether the person is cooperating or not (going limp, for example)
- The treatment of the arresting officer (get the badge number, if possible)

#### **After the arrests:**

- One support person should stay at the action site until all members of your group are arrested.
- One support person should go to the precinct station as soon as the first member is arrested.
- One support person should stay at the precinct station until the last member is released.
- Find out whether arrestees are being moved from one facility to another while in custody.
- Bring any necessary medication for arrestees, and try to see that they get it.

### **3. AT THE ACTION**

#### **Nonviolence**

Actions by individuals or groups that will or might endanger the safety of other demonstrators, spectators, or the police should not be done. In general, this includes:

- Physical violence directed against anyone
- Actions that cause panic, such as running and throwing rocks
- bringing weapons or anything that can be construed as a weapon to the demonstration site (including, but not limited to, guns, knives, nail files, mace, letter openers, scissors, etc. )
- bringing recreational drugs to the demonstration

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.

## **Proper I.D.**

Individuals planning on being arrested should have identification that's acceptable to the police. After arrest, the demonstrator will probably be released as long as her identification gives the police reasonable assurance that they know who the person is and where she lives. The best identification is a government-issued photo I.D. The purpose of learning the address is that, in the event that the demonstrator does not appear in court after being release, the authorities could find her if they tried.

## **Dealing with the police:**

If an action has been publicized before it occurs (if the CD is part of a larger protest, for example), the police will generally be in place at the action site before demonstrators arrive. If the action has not been publicized, it may take a while for the police to show up. The police will respond to an outdoor action more quickly to an indoor action, in which they must be called by individuals responsible for the property.

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 flag-burning.

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.

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 can and certainly will be stopped by the police.

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 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 speech rights are being violated by a police officer, the matter should be brought to the attention of the legal observers or the demonstration organizers. 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.

### **The arrest process:**

- **Warning:** Typically, the police officer in charge will stand in front of the demonstrators and give a warning, stating which law or laws are being broken, and that anyone who does not move or leave will be arrested. Other officers, brandishing handcuffs, will encircle the demonstrators.
- **Arrest:** Demonstrators who remain will be arrested. Most likely, you'll be handcuffed. You'll then be taken to a police van for transport to a precinct station. If you agree to go to the van, you'll be walked with an escort. If you refuse to get up, you may be dragged or carried.

In transport to and at the precinct, arrestees should refrain from discussing the demonstration with the police. While CDers 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, everything you say can and will be used against you.

Support members should monitor the arrests, maintain a list of the persons arrested, take note of any unreasonable force by the police, and go to the police precinct to ensure the arrestees' release.

- **Processing and booking:** At the precinct station, you'll be placed in a holding area (don't count on meals, phone calls, or bathroom visits; maybe you'll get them, maybe not). Sometimes cells have pay phone, so you may want to bring quarters. You'll be photographed. Fingerprinted. Pockets emptied. Strip searched (unlikely, but a possibility). Asked for information. You are only required to give name and address, and to provide an acceptable photo ID. You don't have to give your Social Security number, but many people do anyway since it's easy for this to be found out.
- **Quick release:** If you have no prior legal complications—and this includes most demonstrators, especially newbies—you'll generally be released the day of the action (though it might be very late). You'll be given a paper that will list the charge(s) against you, and that will tell you when and where you have to appear in court for later arraignment. (In

New York City, the paper will be either a summons or a desk appearance ticket, known as a DAT.)

- Slow release (“going through the system”): If you have prior legal complications, such as an outstanding warrant, you’ll be “put through the system”—held by the police until you can be brought before a judge for arraignment. Generally, this means that you’ll spend the night in police custody and appear for arraignment the next day. (You’ll probably be transported to different locations at different stages of the process. Your support group members will need to keep track of where you are.)

The rule is that individuals who are being held for arraignment must appear before a judge within 48 hours (72, if it’s a three-day weekend). This means that if you’re arrested at an action that takes place on the weekend, arraignment may not take place until the next business day if the court is closed (which may happen in smaller cities) or a judge is not available (which may happen if a large number of people are arrested at the action). If you’re arrested at the start of a three-day weekend, you could conceivably be held for three nights.

At arraignment, a judge will decide whether to release you or detain you until the next court date. Most demonstrator defendants are released.

- Arraignment: If you’ve been released with a summons or DAT, you’ll go to court later. You’ll appear before a judge and answer the charges against you (plead guilty, not guilty, nolo contendere, mute). You can try to get charges dropped, either by making a motion to dismiss, or by accepting a delayed-dismissal agreement if it’s made by the prosecution. (In New York City this is known as an Adjournment in Contemplation of Dismissal, or ACD. This comes with little or no punishment so long as you don’t get busted in a certain time period.

### **Cooperation vs. non-cooperation**

Throughout the legal process, we have the right of choice. This is very important. When we understand the steps, the choices, 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.

At each one of the following points, you have the option of making things easier for the police and the courts, or making things harder. Note, however, that you will also be making things easier or harder for yourself.

- Warning: To stay and be arrested, or to leave.
- Arrest: To cooperate and walk, or to refuse to cooperate and go limp so that you have to be carried. Or to flee if left unguarded and unidentified.
- Processing and booking: To willingly be fingerprinted, give personal information, etc. Your affinity group should try to decide these issues collectively in advance, so that no one is singled out by the police for special treatment.
- Arraignment: To answer the charges and try to get through the process as quickly as possible. Or not.
- Trial: same as above.

#### 4. THE LEGAL PROCESS

##### Charges

- Disorderly Conduct and Trespass are the most common CD charges. Basically, Disorderly Conduct means what it sounds like it means—acting in a manner the police find disorderly—while Trespass means being present on property without the permission of the rightful custodian of the property. Legally speaking, these charges are both violations, meaning they are not crimes, and are about as serious as a traffic ticket. For these offenses the arrestee is almost always released from the police precinct after being given a summons or other paper that tells her when and where to appear in court.
- Resisting arrest is the next most common charge. It 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 charged with resisting arrest has a greater chance of being put through the system.

The courts do not agree on whether or not “going limp” and forcing police to pick up a demonstrator constitutes resisting arrest.

- Riot in the second degree is a charge that alleges that 4 or more persons urged property damage or personal injury, or participated 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 riot in the first degree, a felony.

## **Pleas**

At arraignment, the defendant appears in court for the first time. She's read her rights and informed of the charges against her. At that time she will be asked how she pleads.

- **Guilty:** By entering a plea of guilty, a defendant is admitting her guilt, thereby forfeiting her right to a trial. In such cases a defendant will simply be sentenced by the judge, 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 Ghandi is one example of a civil disobedient who always pled guilty in court as a matter of principle.

- **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 to be innocent unless the state 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.

CDers often believe that this is the proper plea to enter at arraignment. By pleading not guilty they are saying; "Guilt implies wrongdoing. I may have violated some specific laws, but I feel I have done no wrong. I therefore plead not guilty."

- **Nolo contendere:** Latin for "no contest." If a person pleads nolo, 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.
- **Standing mute:** Some people will not answer at all when they asked by a judge how they plead. They are usually CDers 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 felt that they should not have been arrested, do not belong in court, and only dignify the illegitimate proceedings by participating in them. Serious consequences can result from non-cooperation.

- 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.

## 5. YOU ARE UNDER ARREST

*By Ronald Kuby and William Kunstler (New York City civil rights lawyers)*

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 the police do not have to “read you your rights.”

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 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 or 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 the booking system.

### **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.

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 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.

If the police use summons procedures, you will be taken to a precinct house. 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. 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 of 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. 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.

## **In Court**

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

- Motions to dismiss
- The ACD
- Trials
- Guilty Pleas
- Sentence
- Sealing

## **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—that 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 re-sentencing (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.

## **6. CD IN WASHINGTON, D.C.**

*By Jay Carmona*

What would normally be a basic arrest situation can be a little tricky in DC, because a lot of variables can change with the action’s location. Depending on where you are, it could be either DC property or federal property, and it’s not always an intuitive distinction. For example, Dupont Circle proper is actually federal property, whereas the hallways of Congressional office buildings can be DC property. It’s safest to research beforehand and know exactly where you’ll be, what laws apply there, and who will be arresting you.

In most federal buildings, at least in areas the public has easy access to, the arresting officers may be Capitol Police, but they will usually be DC Metro PD. Additionally, no matter who does

the arresting and what the charges are, you'll usually be run through the DC Superior Court system. It's the most convenient venue for dealing with DC protesters (of which there are an unusually large number) without clogging up too many federal resources.

The main difference between getting arrested on DC property and federal property is the laws getting broken. Even if you're on federal ground, the charges may still come from DC laws, again because the local court system is better equipped to handle these situations. Federal charges can attach for several reasons, including entering a federal office (crossing the threshold from hallway to the actual office), damaging federal property, blocking exits, or even the way the officers and prosecutors are feeling that day or feeling about the group. Especially when dealing with potential federal charges, it's never a bad idea to treat the people arresting you with respect, not giving them an excuse to charge you with more than is necessary (also a good reason to have Legal Observers with you).

There are a number of stations in the DC area, even several around the federal buildings most actions happen at. If there are a large number of people arrested, chances are good that they'll take them all to a maintenance garage near the Capitol and do the intake there, but if it's a smaller number, they may just take the arrestees straight to whichever nearby facility has space and available personnel.

As with most big cities, the "Cite-Out" style of charging is preferred (so long as the arrestee is willing to provide your name and address), but you really never know. Also, if the arrestee refuses to sign the citation, they won't be released. In a "Post-and-Forfeit" scenario, the arrestee can pay a set amount of money (usually about \$50), forfeiting the right to have it refunded, and never have to return to court (essentially the same as a guilty plea, without the black mark on their record). Finally, if the arrestee is booked, they'll be interviewed to determine whether they can be released on their personal recognizance, without having to pay bail. The officers will assess whether the arrestee poses a risk of fleeing or harming someone if let go. If this happens, they police will need the phone number of someone who can verify the information provided (name, address, local contact, etc.). If they don't release the arrestee, they're required to bring him/her before a judge within 48 hours (on 3-day weekends, this may be longer). Though they usually don't, the DC police are authorized to hold people for up to 48 hours if they're from out of town, especially if they have some reason to suspect that they won't come back for their court date. The safest course of action is always not to give them that reason.

After a nightmare lawsuit a few years ago, DC police also have to follow special rules for transgender arrestees, including respecting chosen name/pronoun, providing separate transportation, protective custody, and allowing the person to choose the gender of the officer who does any searches.