

# Notes on Legal Issues and Jail Connected with Nonviolent Action

## Risking Arrest

Most nonviolent action seeks to put pressure on government or corporate authorities. Usually, the intention of the action is not to get arrested, but it may involve some activity that is considered illegal and hence subjects us to arrest.

### • Step-by-step through an arrest

#### • Police warning

- Police tell you are doing something illegal (though sometimes they don't)
- Decide to stay and face arrest or leave

#### • Arrest

- Decide to walk with officers or go limp — resisting in any way is illegal, even if the arrest is unlawful
- Officers often do illegal or obnoxious things (lie to you, use excessive force, prevent you from leaving after you are warned, and so on) — it is very difficult to prove anything without witnesses or videotapes and officers will often lie to protect each other
- Generally, best to refuse to answer all questions or to say anything that might give them information: “I don't want to answer your questions; I want to see my lawyer.”
- Stay calm; be aware of tendency toward paranoia if separated from others.

#### • Booking

- Either on-site or taken back to the police station
- Photographed, searched, fingerprinted, etc. — strip searches of females is allowed only by female officers
- Decide the amount of info you give about yourself — true name, creative name (Karen Silkwood, Oscar Romero), or nothing, address, etc. — if you give no name, then they have little record of you, but it is generally illegal (though they may not care if you stay in jail)
- Citation — summons to appear for arraignment later — they need your name and ID for this
  - Should you accept or refuse?
  - If accept, then you can continue to demonstrate or continue your life
  - If you all refuse, then you force the authorities to deal with you immediately as a group

#### • Arraignment

- You must be arraigned within 48 hours (not counting weekends)
- Pleas
  - Guilty — you are sentenced, often immediately
  - No contest — you don't admit guilt, but accept punishment — sentenced as if guilty
  - Not guilty — go to trial
  - Creative plea — “plea for the children” — recorded as not guilty
  - Often our lawyers work out a deal with the prosecutor for a sentence in advance — everything is flexible in the legal system
- Release
  - Bail — you pay a sum of money that is refunded to you when you show up for trial
  - Bond — a bail bondsman puts up bail for you in exchange for 10% of the money (you don't get it back)
  - Released on your own recognizance (O.R.) — you agree to show up and the judge believes you
  - Stay in custody (jail) — you can demand a speedy trial
  - Juveniles are often taken to juvenile hall and can only be released to a parent

#### • Trial

- Jury versus court trial — for some offenses you cannot have a jury
- Representative trial — sometimes a few people are tried on behalf of your entire group
- Legal aid
  - Court appointed lawyer if you are poor — they will defend you in a conventional way, not a political way
  - Hire a lawyer
  - Get a supportive group like the Lawyers' Guild to help you
  - Pro per (defend yourself)
- Defense of necessity — “Yes I broke the law, but I had to because of a higher good” — like breaking into a building to save someone from a fire

- **Sentencing**
  - Our lawyers often work out a deal with the prosecutor for sentencing
  - Jail
  - Fines
  - Probation — you must stay out of trouble for a certain length of time and may have to report to a probation officer periodically — you can't leave the country
  - Community service — you work for a social service agency, often in the community where you committed your crime
  - Most crimes are misdemeanors, but severe crimes are felonies
    - Maximum sentences for a misdemeanor are typically 6 months in jail and a \$500 fine, but typical sentences are: no jail time, "time served," or a few days
    - Conviction of a felony can bar you from some professions
    - Be prepared, no sentence is guaranteed — prepare for the worst and rejoice when it is less!
- **No rules are absolute** — legal system is flexible, depending on pressure, etc.
  - Sentences are often shorter or longer depending on community awareness and pressure
  - Almost everything is illegal and there is a rule they can use to do almost anything they want to you — you (or your lawyer) can force them to do things according to the rules if you have enough power
  - Large groups typically refuse to cite out (accept a citation), refuse to give their names so they cannot be released, or demand to serve time immediately as a way to exert pressure on the legal system — "fill the jails"

## Being in Jail

- **Jail is often lonely, boring, depressing, but can be a good experience too**
  - Stay calm, centered
  - Support each other — back rubs, workshops, etc.
  - It helps to have supporters on the outside to arrange your affairs, communicate with the community or your behalf, and so on
  - Be skeptical of rumors — jailers often lie, it's easy to be fooled when you have no other sources of info
  - Be respectful of other inmates — watch your race, class attitudes, etc.
  - Men are sometimes challenged or raped by other inmates — jailers typically look the other way
- **Jail Solidarity**
  - A way of maintaining power within jail system — if we act together we are not powerless — make our own (better) rules
  - Jailers may try to divide us — different treatment for different people or physically separate us
  - Some people cannot stay in solidarity with others — don't guilt trip them!
- **Typical issues:**
  - Refuse to accept bail
  - Refuse to accept a sentence of a fine
  - Refuse to allow anyone to be held separately
  - Demand that second-time offenders be given the same sentence as first-timers
- **Typical strategies:**
  - Refuse to go to arraignment
  - Encircle someone and refuse to allow them to be taken away
  - Refuse to answer to your name or give information about yourself or others
  - Refuse to eat or get dressed
  - Hold a prayer, mediation, or song vigil
  - Everyone pleads not guilty, demanding individual trials, and not waiving your right to a speedy trial (puts pressure on legal system)
  - Do time, then return to the action

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