

Legal Primer

A Basic Legal Resource for Activists



Knowledge Is Power.

Use this guide to help you understand what you are getting into before taking any action. If you are arrested, you are obligating yourself to the federal and/or state criminal legal system, which may have consequences that include a conviction, jail, and/or probation. Act accordingly. If you are not able to deal with the consequences of an arrest and stand in solidarity with your community against government repression, don't risk arrest. Activism can take many forms, so be honest with yourself about how you can be most effective in fighting for liberation.

****Please be aware that this primer is not legal advice and does not form an attorney-client relationship.****

Know Your Rights

Legal Rights Under the United States Constitution

“The law favors people who both know their rights and assert their rights.”

1st Amendment

“Congress shall make no law...abridging the **freedom of speech**...or the **right of the people peaceably to assemble**...”

4th Amendment

“The right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable searches and seizures**, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

5th Amendment

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a **Grand Jury**...**nor shall be compelled in any criminal case to be a witness against [themselves]**, nor be deprived of life, liberty, or property, without due process of law...”

1st Amendment:

Freedom of Speech and to Peaceably Assemble

“Freedom” Based on Forum

Speech is most protected in **traditional public forums**, although the State may still regulate with reasonable time, place, and manner restrictions.

Quasi-public forums may have higher restrictions, such as a permit process.

In **privately-owned forums**, the owner or person in charge may ask someone to leave; not doing so may be trespassing.

“Freedom” Based on Content

Re Incitement and Advocacy of Crime: “the mere abstract teaching of the moral propriety or even moral necessity for a resort to force and violence [protected] is not the same as preparing a group for violent action and steeling it to such action [not protected].”

Not Protected: defamation, obscenity, hate speech, fighting words, true threats, association for illegal activity

4th Amendment: Unreasonable Searches & Seizures

Cops aren’t supposed to conduct a search of you or your property UNLESS:

- You give **consent**. Your silence counts as consent, so it is important to vocally refuse to consent to any search. Say: “**I do not consent to a search.**”

In addition to refusing consent to a search, do not consent to cops entering your home, office, etc. – they can’t force entry without a warrant. Say: “I do not consent to you entering.**”

NOTE: Anyone who has or that cops may believe has common authority over a premises may consent to a search, even if you have previously refused consent but are no longer present.

- They have a **warrant**, which permits them to search the areas described in the warrant. Always look over a warrant for errors in the name, address, etc. that is listed. If the cops go outside the scope of the warrant while searching, take note of it and tell your attorney later. *Cops can get telephonic warrants through a phone call.*

- The situation creates an **exception to the warrant requirement.**

Exceptions to the Warrant “Requirement”

Exigent Circumstances: Cops are allowed to enter places without a warrant when in hot pursuit of a suspect or during an emergency, “but a warrantless search must be ‘strictly circumscribed by the exigencies which justify its initiation.’”

Community Caretaking: Cops may enter without a warrant when one’s immediate safety is in jeopardy.

Automobiles: Cops may search an automobile, including containers within it (even if they belong to a passenger), where they have probable cause to believe contraband or evidence is located.

Arrests: Cops may search a person and their “wingspan” incident to arrest, as well as do a protective sweep of the area.

Plain View Doctrine: Cops must 1) be lawfully present at the place where the evidence can be plainly viewed, 2) have a lawful right of access to the object, and 3) the incriminating character of the object must be “immediately apparent.”

Applies to all above exceptions as well.

5th Amendment:

Not Being a Witness Against Yourself [or others!]

...and Grand Juries

The 5th Amendment provides protection against being forced to incriminate yourself, both in regard to testifying at trial and supplying a statement during an investigation.

Grand juries are used as investigative tools, and so they are a tool that the State uses to both investigate and disrupt activist movements. If you receive a grand jury subpoena, contact a lawyer immediately.

The State has the ability to grant immunity to compel testimony, and attempts to use this tactic to compel activists to betray their activist community. If someone talks to the cops during an investigation or before a grand jury, the State will forever consider them to be a source of information and it is not safe to continue to allow the person to be a part of a resistance movement.

You have to invoke your 5th Amendment right in order to use it. Silence is not enough. You must say that you are exercising your 5th Amendment right to remain silent, and THEN REMAIN SILENT.

**Do not answer any questions, about yourself OR others.
No one can ever compel you to answer questions
except a judge in a courtroom.**

What to Do When Interacting with the Police

Basic Tips

- You are not allowed to lie to cops, but they are allowed to lie to you (and you should expect them to do so).
- Keep your hands visible and don't make quick movements.
- Don't go anywhere with a cop unless you are under arrest.
- Stay in well-lit areas and where witnesses are present.
- Assume that you are being recorded by the cop.
- If possible, record the cop or have someone else do so. It is legal to record cops in a public place if you inform them that you are recording and you aren't interfering with their business.
- Be polite but firm about asserting your rights.

The police interfere with people's rights in three distinct ways: Conversation, Detention, and Arrest. Identify your situation so you know your rights, and note that if a cop gives you a warning or an order and you disregard it, you may be arrested. *Anything you say can and will be used against you, so stay calm and in control.*

Level I: Conversation

Police officers have the right to approach and ask you questions, but absent any reasonable suspicion that you are involved in criminal activity, an officer cannot detain you. **You do not have to answer any questions.** You do not have to provide identification to an officer at this level unless you are in a motor vehicle; this includes non-US citizens. Minors (under 18 years of age) do not have to answer any questions by police unless a parent or attorney is present. Determine if you are in a Level I situation by asking if you are free to leave. **If you are free to leave, leave.**

Level II: Detention

If an officer reasonably suspects you have been involved in a crime, they may detain you for questioning. You must provide identification upon request at this level (name, address, D.O.B.). Giving false information is a crime. Do not consent to a search, but if the police have probable cause or a warrant (which you should ask to see), they do not need your consent. But never verbally consent. Repeat: **“I do not consent to this search.”** Police may pat down your clothing if they have a reasonable suspicion that you are carrying a concealed weapon; do not physically resist but make it clear that you do not consent to any further search. **Do not talk to the police. Say: “I invoke my Fifth Amendment Right to remain silent. I want a lawyer.”** Police are allowed to lie to you, and anything you say (as well as complete silence) could be used against you and provide the police with probable cause to arrest you. Don’t run away even if you believe what is happening to you is unlawful; this may lead to your arrest and injury. **Remember officers names and badge numbers and write down everything about the incident as soon as possible.**

Level III: Arrest

Ask for an attorney immediately upon being taken into custody. Repeat this demand as often as necessary. You have the right to remain silent—wait for your attorney before saying anything. In most circumstances, if you refuse to provide a name and address while in custody, you will not be eligible for release or a court-appointed attorney. Within a reasonable time, the police must allow you to make a phone call to your attorney and may not legally listen to that call (but assume they will!). Do not talk to fellow arrestees regarding the circumstances of the arrest; you never know who might be listening/recording or if you’re actually talking to an informant or undercover officer. You must be provided adequate medical care while in custody. **If you are on medication, inform the jail of that fact immediately and repeatedly, in writing if possible.** If you have dietary restrictions for health or religious reasons, the jail may be required to provide you with alternative meals. **Inform the jail of your dietary needs as soon as you arrive.** If the jail fails to accommodate those needs, begin the grievance process immediately. Transgendered people have the right to be safe while in custody. Inform jail staff of issues of concern.

What Happens Next?

Either while in custody, or shortly upon your release, you will be required to appear in court for an arraignment hearing. **Plead NOT GUILTY to all charges.** Apply for a court-appointed attorney if you so choose. You will receive a future court date to appear. **Make contact with your attorney as soon as possible.** It is your responsibility to remain in contact with your attorney; this may be frustrating, but will be essential to your defense! If you choose to go to trial, it may be your responsibility to locate and secure witnesses on your behalf. If you are found guilty at trial, or elect to later plead guilty, you are allowed to delay sentencing at least 48 hours. At the sentencing hearing, you may be ordered to serve jail time, so be prepared to report to jail immediately.

Security Culture Basics

Don't Brag

You're engaged in activism to protect the planet from further destruction, not to get cool points. Bragging about actions—past, present, or future—puts you and your community at risk. The government may use bragging to gather information about you, your comrades, and actions, and it may also decide to target you for getting more information. This applies to “real life” as well as electronically. Government agencies closely monitor email, Facebook and other websites, cell phones, and all electronic communications.

Don't Gossip

Like bragging, gossiping creates a weak link through which the government can gather information about a community to use against it. Additionally, gossip opens up opportunities for the government to exploit or even create disagreements and tensions between activists. Even if the government doesn't use your gossip to do damage, you may do that anyway; gossip can easily lead to good activists dropping out of movements. Online gossip can be especially damaging to individuals and communities, and most issues that arise within activist communities don't need to be broadcast to the public and the government.

Operate on a “Need to Know” Basis

Only share information with others that **NEEDS** to be known, and only share the information with the people who **NEED** to know it. Any further sharing creates the unnecessary risks of information getting shared with informants, people who will

snitch, and people who did not want the responsibility of knowing information. Furthermore, when you are sharing sensitive information with select individuals, be aware of who—and what—is around you. Don't share information in the presence of anyone who does not need to know it, or in the presence of any electronic devices, security cameras, places that could be wired, etc.

Not Who You Think They Are

Infiltrator: one who enters into a group or territory with hostile intent, usually with backing from a government agency or corporation.

Informant: one who provides information about an individual or a community to a government agency or corporation.

Provocateur: one who is employed by a government agency or corporation to create problems in a community and/or to encourage a community or individual members to engage in violent actions.

Snitch: one who turns their back on their community and takes on one or more of the above roles.

What to Do

Assume that infiltrators, informants, and provocateurs are within any given activist community and respond accordingly. Be on the lookout for suspicious behavior from others, and adhere to security culture practices to help reduce the damage that these unwelcome parties can cause. If someone seems to have come out of nowhere, asks too many questions, stirs up unnecessary dissent, creates harmful gossip, pressures others to engage in violent activities, or behaves in other ways which suggest that they do not care about what is best for the cause, other activists, and the community—don't trust them. They may be working for the government or a corporation that is eager to gather information about activists and to try to make effective groups fall apart.

In addition to being cautious about the danger posed by people who've been paid to work their way into activist communities, you should be careful about trusting people who may one day snitch. If for any reason you think that someone would not be able to withstand pressure from the police, FBI, or other government agency—or you think that someone would be tempted by offers of reduced sentences or money for turning on their comrades—don't freely share information with them.

Demand of Rights

- **I will not talk to you or anyone about anything.**
- **I demand to have an attorney present before I speak to you or anyone.**
- **I will not answer any questions, or reply to any charges, without my attorney present.**
- **I do not agree to perform any test, consent to any searches, or participate in any line-ups.**
 - **I will not sign anything unless my attorney agrees I should do so.**
- **I will not waive any of my constitutional rights.**

