

Activist Legal Support

There are three core aspects of Activist Legal Support: information, support and solidarity.

Legal information is best provided by lawyers or legal practitioners. Support is best provided by a well-organised legal support team. Other activists can only really provide solidarity. All three of these are crucial in good activist legal support.

1. It is vital that activists have access to accurate **legal information** about their rights and the consequences of their actions and activities. Providing clear and accurate legal information is best done by progressive lawyers but can be distributed by organisers or legal support teams.
2. This website hopes to **support** activists and also to provide resources for campaigners and legal support teams to help develop effective activist legal support.
3. **Solidarity** is looking after each other when facing the police or legal system. Legal solidarity describes a set of activist tactics to support and protect people when they are being held in police *custody*, in jail or facing court. Legal solidarity tactics have been used effectively for decades in the civil rights, peace, environmental and global justice movements in Australia.

Individual and collective tactics of non-cooperation can be used to protect targeted or vulnerable people in the campaign, meet demands and maintain the combined strength of activists after *arrests* occur.

Police & legal system

Too many activists are left traumatised by police action, in debt due to legal costs or isolated in long-running court actions when they are 'abandoned' by campaigns or activist groups. Resources have been drawn from around the world and from our own experience here in Australia to help activists, organisers and legal workers to better support activists facing the police and legal system.

However there are many things that we can do individually and collectively to better enable us to deal with the pressures involved in facing the police and the legal system.

Making empowered decisions

Following are 9 useful tips:

1. Know about the injustices you are fighting. Be clear about what your vision for social change looks like, and what strategies and tactics it involves.
2. Be clear about how you want to participate in a protest or action and what you hope to achieve.
3. Educate yourself about the risks involved in certain protest situations.
4. Be reflective of your own needs in such a situation and vulnerabilities which might be different to others (you have many child care responsibilities, you may not be an Australian citizen, you may be pursuing career or travel options that having a criminal record may foreclose).
5. Know your rights in protest situations.
6. Know what the potential consequences are arising out of a particular protest; what are the likely charges, penalties and other ramifications flowing from that.
7. Know your limits, barrier and respect them (and the limits and barriers of others)
8. Know what potential triggers may be for you and take action to avoid or minimise these (this may involve informing support people of these)
9. Own your actions and choices. Be prepared to take responsibility for your actions.

Avoiding trauma

Activists, all too often, seem to put themselves last when it comes to caring about people and planet. The macho attitude that "I'm fine" when they are clearly not or hassling over-worked people to do more work when they are trying to take some time for themselves is counter productive.

We need to take care of our selves and those around us if we are going to be able to keep on resisting and having a good time doing it. This is mental as well as physical health issue.

Legal information, support and solidarity is only one aspect of looking after each other when taking political action.

For useful information see the Activist Trauma Support website.

Affinity groups

Affinity groups, self-sufficient support systems of about 5 to 15 people, who work together in achieving a particular political objective is another way to minimise the risk of trauma and to support one another when taking political action.

For useful information on affinity groups, what they are and how to establish one see:

- Nancy Alach's article here Affinity Groups and Support
- Starhawk's article here Affinity Groups

Anti-oppression organising

Some activists in Australia experience higher levels of police violence and legal threats or may be less able to cope with legal repercussions. Activists who are Aboriginal, Muslim or from an Islamic country, activists who are gay, lesbian or queer, transsexual or transgendered or who are experiencing mental illness or homelessness or have a criminal history may be particularly targeted or vulnerable to police and legal repression. Racial profiling or racilaised policing, where police stop, question, target or search a person because of their race or (suspected) religious background has been documented in Australia and around the world.

See Community Law - Racial Profiling

Activist legal support needs to recognise that white, middle class or educated activists can be privileged in the legal system, and that others are particularly vulnerable to violence or discrimination. Support and solidarity across lines of difference and discrimination is crucial if all activists are able to withstand police and legal repression.

Most people in detention do not choose to be arrested, and incarceration is a tool of the powerful most frequently used against those who are poor, non-white, or illiterate. If we choose to be arrested as a direct action strategy we also must acknowledge this in our relations with other people who are in detention.

Mass *arrests* can also cause crowding in cells and this can make experiences of detention even harder for other inmates. This happened in Darwin at the height of the Jabiluka Blockade. Some Aboriginal women were transferred to prisons outside Darwin, which made it impossible for their families to visit. The women asked the Jabiluka arrestees to accept bail and thereby enable their return to Darwin prison.

It is also important to recognise that solidarity across lines of class, race and gender can often be paternalistic. Gary Foley (1999), for example, writes of the repeated problems of patronising attitudes and paternalism amongst white solidarity activists who support Aboriginal struggles. But he also writes of the principles for,

"successful cooperative action ... between Koori [south-eastern Aboriginal] community activists and non-Koori supporters"

which have also been in evidence in some local campaigns, but also since the 1972 Aboriginal Tent Embassy.

Solidarity activists in these campaigns,

"did not seek a say in how the protest was run ... [and] were more aware of the need for Koori people to be determining their own destiny politically, and they were prepared to stand with Koori activists when the crunch came".

Foley urges non-Koori supporters to make sure that they join a group that,

"genuinely supports Koori control of Koori affairs and is in some way affiliated with, or taking guidance from, the local Koori traditional owners and/or local Koori community".

Gary Foley, *'White and Blackness in the Koori Struggle for Self-Determination'* (1999) The Koori History Website, available <http://www.kooriweb.org>

Organisers, activists and legal support workers need to respond to political and social repression as core to activist legal support.

These are all things that activist campaigns must overcome if they are to involve more people in the campaign and support people who are already a part of it.

For useful resources to assist in thinking through how race class and gender intersect and workshop resources for thinking through

these issues with collective and affinity groups see Australian Student Environment Network.

Fear of the police

Fear of the police and legal system is one of the most effective social control systems that the government has. When facing any sort of police or legal *sanctions*, activist campaigns and movements must develop ways to help activists overcome fear of police and the risk of charges, jail and violence.

Julia Hernandez, former director of Tutela Legal, a Catholic Legal Support office in El Salvador, asserts that that most critical factor enabling people to overcome fear is their solidarity with others in their organisations. (Mahoney and Eguren, 1997)

Overcoming repression

It is important to distinguish between 'political repression' and the normal workings of the legal system.

In Australia, most activists who are arrested, charged and convicted are not targets of systematic political repression.

We just face the normal, everyday workings of a conservative and institutionalised legal system, a system of police, courts and judges that has trouble recognising civil disobedience and protest as legitimate. We get arrested and treated like anyone else who has broken the law. It's not nice, but it's not political repression.

Political repression, however, is the deliberate targeting of political dissidents designed to prevent, undermine or stop their actions. It can involve being recognised and monitored by sections of the police, security forces or government as a target, and includes a range of tactics designed to hamper our ability to continue our work as activists.

Political repression takes many forms but can often be exercised through the legal system. Political dissidents have always been the target of government surveillance and repression. It is important to take these attacks seriously and resist them.

It is important not to allow fear or the threat of repression to scare us away from political participation. Stories about vast conspiracies and elaborate surveillance technologies can create an atmosphere that discourages activism. This is part of the repression and is the first element that needs to be resisted.

Government harassment of political activists clearly exists today, violating our fundamental democratic rights and creating a climate of fear and distrust that undermines our efforts to create political change.

We have learnt from activists in highly repressive regimes that the goal of state terror is to isolate and separate social movements, and that in order to withstand such political harassment and violence, activists need to develop strong and resilient support networks.

It is valuable to learn from the attacks on social justice movements in the United States of America that came to light during the 1960s.

Largely hidden at the time was a vast government program to neutralise domestic political opposition through "covert action" (political repression carried out secretly or under the guise of legitimate law enforcement). The 1960s program, coordinated by the FBI under the code name "COINTELPRO," was exposed in the 1970s and supposedly stopped. Notwithstanding this exposure, there are concerns that such covert action persists.

For more information about COINTELPRO go to the Freedom Archives website.

In Australia, we have a different political framework and system of police and security forces. But the targeted surveillance and harassment of political activists does occur here.

Holly Hammond writes in *Spy vs Activist: Managing Security Risks* (2012)

'Recently it came to light that a minister in the Australian government, Martin Ferguson, has advocated for increased surveillance of anti-coal and other climate activists, and for stronger penalties for actions taken on energy infrastructure, after being approached by energy companies. While the direct link between industry targeted by activists, a government minister, and resulting surveillance of activists is noteworthy, it is nothing new for activists to be monitored by either police, ASIO or private companies.'

The 'open source intelligence' activities of NOSIC (the company contracted by the Australian Federal Police to monitor activists) appear to mostly be tracking online activities and social networks for example on Facebook. We must assume that this kind of monitoring has been going on for many years, as well as less frequent but more invasive practices such as phone-tapping, bugging, and infiltration of activist groups by undercover agents.

Also see

Political surveillance

Surveillance of activists

Dealing with surveillance

Developing strong 'security culture' practices will make you and the people you are organising with safer. The aim of 'security culture' protocols is to put measures in place to make you feel safer. Paranoia only immobilises people.

"Security is a process that protects you in some fashion, whether in the run up to, during or after the event(s) you are involved in. This means, that security is there to facilitate the smooth operation of your action, campaign, etc. and help keep everyone safe... There is no such thing as a 100% fail-safe system. There is always some risk; and security processes help reduce that risk to an acceptable level. It is up to you to define what the acceptable level of risk is and how best you can deal with it. Security is not a single thing; it is a process and a state of mind."

From a Practical Security Handbook for Activists and Campaigns (v 2.7), page 3, download from ActivistSecurity.org

Useful resources on activist security and creating a strong security culture:

- Rackus Society 'Security Culture for Activists'
- 'The Security Handbook' by the Activist Security Collective
- Surveillance Self-Defense (US based and specific, with useful generic information)

Responsibility

Most importantly, take responsibility for yourself and make it clear that all participants should do the same. Each person is responsible for their own life, experiences and behaviour. This extends to taking responsibility for one's participation at a demonstration, protest or rally.

This means taking on any legal ramifications for your actions, and making sure you have made yourself known to the legal support team if you have any concerns about getting involved in arrestable actions.

In an action, it can also mean informing others around you of any relevant medical details, pointing out any dangers, being sure that people *standing* with you have heard police warnings or are informed of any developments. Fundamentally it means owning your action and choices.

Respect others - ensure your actions are not going to harm, degrade or endanger other people taking part in actions, or innocent bystanders.

Don't forget to be aware of and respect the environment around you too.

And remember:

If you don't protest injustice when you can, you may find yourself unable to. Read about the S11 Legal Support Team and Activist case studies as a further resource.

Organising legal support

When planning any political action or protest, whether it is a full-scale blockade of a military base or a street stall, consider and plan for police or legal consequences.

Well planned and effective activist legal support can not only be crucial in helping a campaign withstand legal or political repression, but can also serve to open up greater political space for the wider movement and for activists in the future. Asserting and defending our rights in one campaign helps all activists in all campaigns.

Implications for a campaign or activist group

The law is intimidating. However it is essential that those organising protest actions come to grips with it early in the organisational process.

Positive group culture

The more activist groups and communities actively build a culture of providing legal information, support and solidarity the better prepared individual activists and groups or collective will be to *undertake* direct actions with may involve civil disobedience or breaking the law.

For example, if it becomes the norm that people know their legal rights, and know not to talk to the police or pass on information which might endanger themselves or other to the police, if groups or collective adopt strong 'security culture' protocols, if it becomes standard to write a legal phone number in permanent marker on their arm prior to a protest or if people attending a protest would be prepared to act as a legal observer the strong support and solidarity can be.

Case study:

In 2010 'Switch off Hazelwood, Switch on Renewables' organised a day of protest outside the Hazelwood coal-fired power station in Victoria's la Trobe Valley, A Legal Support Team co-ordinated various pre-protest events including direct action trainings and

legal briefing and organising a form on new laws targeting 'critical public infrastructure' increasing penalties for protests at coal fired power stations and attending police liaison meetings. On the day of the protests the Legal Support Team set up a stall, handed out legal information, made public announcements about legal information and were available to answer peoples' questions. In the end there were no *arrests* nor any police violence at the protest, and no ongoing need for legal support. However, many activists who attended stressed how glad they were that a legal support team was there and available because it made it feel more possible to take protest action, even though there was no tangible or immediate need for legal support. Having a legal support team present worked towards building a culture of distributing legal information, educating people about their rights and recognition of the need for legal support and for solidarity in activist movements.

Legal implications

Knowledge is power. Having knowledge of the legal system and the legal implications of particular causes of action can better equip campaigns.

It is crucial to remember however; that the fact particular protests options have legal implications should rule them out. Decisions about what actions to take or what political strategy to pursue should not be made (solely) based upon what is legal and what is not legal. There are many very important and *valid* reasons why campaigns and activist will choose to pursue strategies and causes of actions that are likely to have legal repercussions. There is a long and proud history of civil disobedience.

At times, activists and protest organiser may ask people providing legal support questions such as 'what are we allowed to do?' and more dangerously 'what actions should we take?' and 'what should we do?' For example the Legal Support Team working to support *Occupy Melbourne* were asked these sort of questions regarding where and how to camp to avoid police and Melbourne City Council harassment. It is important to remember and stress that decisions about how and where to protest are political, tactical and strategic decisions.

These are decisions that should be made by activists, however made with full knowledge of the legal implications of particular courses of actions. They are not decisions which should be made by lawyers supporting or acting in solidarity with the campaign, whose additional duties (to clients and to courts) may lead to them prioritising objectives which differ from the campaign objectives.

Planning support, solidarity

A protest or action should never be considered over until the court process is over for the last activist and the ramifications of that addressed; until the last fine is payed, the community work finished or in extreme situations, until people are released from *custody* or civil actions against authorities are concluded.

Be aware of the time frames that this may involve, the expertise this requires, the financial resources this would take and plan for this when planning a protest or action. For example, when planning a protest which involves mass disobedience, plan for the fact this is likely to involve significant number of people being charged, going to court and having to pay fines. As organisers, to prepare you may want to think about organising fundraisers for possible fines early in the planning.

Involving lawyers in the planning

Progressive lawyers and activist legal workers should be involved as an integral part of the planning process for protest actions and campaigns.

If there is a chance of community legal centres being utilised at a later date, it may be a good idea to meet with your local centre and inform them of the campaign or action.

Involve legal workers as early as possible, not only after people have been arrested and charged.

If possible, organise a lawyer to be guest speaker at an organisational meeting so that the group as a whole can ask questions. Or a legal training could be organised in the lead-up to the action. See Trainings for activists section. Don't expect lawyers to do this for free or as a matter of course, and even if they do, don't expect the advice to continue. However you may be able to negotiate an arrangement that will cost nothing for your group.

From this may arise interest from individual lawyers who may choose to help with the Legal Support Team. However if nothing else this will cover the introductions between the lawyers, legal centres and activists.

Educate yourself about the legal system

A basic knowledge of the legal system can be useful for planning campaigns and actions.

For more information see the DIY Legal Research section.

Seek legal advice

If you are not sure, a start with this website. When you seek legal advice, attempt to find answers to these questions:

- Whose *jurisdiction* is the protest site under?
- Will the State or Federal police be there?
- Which police command will be involved?

- Is the protest site on public or private land?
- If it is private who is the owner?
- Is the protest on Commonwealth land?
- What Acts or legislation are relevant to the action you are planning?
- Are there local *by-laws* that may impact?
- What potential charges could be applied to those involved in the action?
- What are the maximum and likely penalties for these charges?
- What is the history of these charges being laid by police at similar actions?
- What sort of civil *litigation* is the campaign or organisation vulnerable to?
- What sort of legal support can be arranged for activists involved?

Once you have all this information it is possible to plan for activist legal support.

Arrange a legal support team

Legal Support Teams are organised groups of activists, legal students, legal workers and lawyers who provide a range of activist legal support work before, during and after the action.

It is crucial for a Legal Support Team to define for themselves and be very clear about what their role is. Legal Support may involve numerous facets:

- Providing legal advice about action options.
- Running legal information sessions and legal trainings prior to an action (as part of pre-protest direct action trainings or as stand alone events).
- Operating a legal phone/email for activists to contact the legal support team with questions or if they are in police *custody*.
- Training, co-ordinating and debriefing Legal Observers to attend the protest.
- Collating photos/film footage from protests (primarily in order to identify improper police action).
- Media comments about legal issues arising out of a protest.
- Assistance with pro-active legal strategies to assist a group or movement (ie. Seeking *injunctions* to allow a protest to go ahead).
- Providing legal advice/information to activists in custody, potentially co-ordinating lawyers for bail applications if necessary.
- Providing legal representation for people arrested at a protest or providing appropriate referrals to supportive criminal law firms, Victoria Legal Aid or a community legal centre.
- Taking evidence (including statements) from people who experienced or witnessed inappropriate police behaviour at protests.
- Providing legal advice about possible options available to people if they experienced police violence or harassment, including potentially providing information, advice, referrals or representation in relation to civil actions.

The scope of what a Legal Support Team is able to do depends upon the *capacity* and the expertise of the group. The demand for legal support also varies depending on the scale of the action (both in terms of people and amount of time involved) and how complex or controversial it is. However, if the action is small and involves only a few people, good activist legal support and back up is still vital. Be clear about what the parameters of what you group can and can't do is, and make sure this is explained clearly to the individual activists, groups or movement you are providing support to. If the action you are planning is large then arrange for a Legal Support Team well in advance.

See Set up a Legal Support Team

Arrange public forums

Forums can be a useful way to firstly educate participants about the legal issues relevant to a campaign. They can also work to build links with the legal community and other organisations and individuals who may be able to support your campaign. Additionally, they can be useful to raise awareness about any changes in the law affecting your right to protest and wider issues around freedom of assembly and civil liberties.

If one of the aims of your forum is to get other people involved think about where and when you hold it to make it most accessible. It may be useful to film sections and upload these to your website. If you are aiming to build links make sure you have sign up sheet available for volunteers or supporters to leave their contact details.

Case study: Switch of Hazelwood and Climate Camp

Prior to Climate Camp the Justice Tracks Collective held two forums titled 'Lawyers, Protests and the Front Line of Climate Change' with a lawyer from the Environmental Defender's Office and an activist from Newcastle. There was one in Sydney and one in Newcastle. The aim of these forums was primarily to build links with people in the legal community and build wider support for Climate Camp.

Prior to the Switch of Hazelwood protest the Legal Support team organised a forum 'A Stifling Climate' to talk about recent changes to the law which increased penalties for direct action at 'critical infrastructure' in order to deter protest at coal fired power stations. The forum was designed to discuss and demystify the legal changes and also to politicise the stifling of dissent they represented.

Arrange legal trainings

Hosting legal workshops or trainings prior to a protest or action is a useful way to empower activists. Such trainings can work well as a stand-alone event, or work well as part of a broader one-day or two-day direct action training.

Make sure your knowledge of the law is current and up-to-date. Never assume that the law hasn't changed and that old handouts or information are still current without confirming this is the case.

Make sure you have a clear and well-structured workshop outline. A workshop outline for legal trainings is available on this site [Legal training for activists](#). The outline is designed to be easily adaptable to focus on what are the most relevant aspects of a particular campaign.

When it comes to disseminating skills that allow activists to be safe, more effective, and make informed decisions, role-plays are a highly effective training method.

Good activist legal training includes a series of brief role-plays, where trainers take the role of police officers and participants play the role of the activist. Trainers, make sure you always encourage participants to 'shake off' the roles they have adopted for the role play. It can be useful to reflect upon how participant's felt taking on a particular role, what feelings they experienced and how their world view was shaped by the particular role they took on.

Each role-play is accompanied by a brief discussion, and a question and answer session, before moving on to the next role-play. The format keeps the audience's attention, and drives each lesson home.

A simple training can include 10 such role-plays in about two hours.

As a Legal Support Team or legal trainer you can expand your menu of role-plays to encompass an *arrest* at a protest, police attempts to intimidate activists into giving up their rights, and others. Police attempts to move a stall, police attempts to use bluff and threats when questioning an activist, police attempts to search an office or home.

It is important to work with activists and lawyers to make sure your information is authentic and accurate. The strength of activist legal trainings is that we can make a unique training for a group's specific needs without having to create an entirely new workshop.

Each group we train has different needs and experience levels so strive to tailor each training accordingly.

For various training role-play scenarios see [Training for activists](#) section.

Provide legal information

Provide written legal information to participants. In some cases this could be as simple as linking relevant sections of this website onto website or *Facebook* pages about the protest. Ideally, the relevant sections could also be printed and handed out or made available to people on the day of the protests. Don't assume that everyone will have Internet access!

In other cases it may require producing specific information relating to a particular protest. Again, make sure this information is available electronically and in hard copy on the day. There is a fine line between including enough information to facilitate people understanding the legal risks of their actions, and overwhelming people. Think about how much information is necessary to provide to empower people, and ways of presenting information that may work against your objectives.

Case study: Justice Tracks Collective and Climate Camp

Leading up to Climate Camp we put in a lot of work creating a zine, a small hand-photocopied booklet full of info about preparing for and taking direct action. It contained sections on 'why take direct action', common offences relating to protests, preparing for direct action, the *arrest* process, the court process, and a personal account from someone who had been arrested etc. They deliberately tried to avoid the text-heavy and 'boring' format of a lot of legal information, and focused on making the resource accessible, easy to digest and beautiful, by including diagrams and pictures, including a cartoon character P. Bear, as much as possible.

Legal observer team

Legal or human rights observers act as an independent third party, observing police behaviour in order to keep police accountable for their actions. Legal observers can write incident reports describing police violence and misbehaviour and compile reports after the event. As observers, they are more removed and thus better able to objectively and independently describe events.

It is vital that a Legal Observer Team has discussed and is clear about their role and mandate, especially about whether their role is to monitor the behaviour of police, of protesters of both or of others. A political philosophy to legal support will generally insist that the role of Legal Observers is to monitor the behaviour of the police and that their role is not to police or to monitor protester

behaviour in anyway.

It is arguably inappropriate for Legal Observer Teams who are committed to working in political support and solidarity with protesters to monitor and quasi-police the actions of protestors. The police and the apparatus of the state dedicate plenty of resources to the profiling, surveillance and criminalisation of individuals and movements that work towards progressive social change. Legal Observer Teams should aim to widen the political space to take protest action; by monitoring violence and harassment by police and other authorities and acting in a way that better enables movements to take the actions they want to take (whether those actions are inside or beyond the law).

Legal Observers are needed to provide handouts on legal information, provide protesters with phone numbers for legal support, track *arrests* and policing incidents and collate information for ongoing legal support and or arrestee solidarity.

Legal Observers should also encourage protest participants to write an appropriate legal support telephone number (this may be a mobile number activated by the legal Support team for this particular protest, or the number of a supportive criminal law firm or community legal centre). Even participants who do not intend to get arrested or feel they will not get arrested should be encouraged to do this. Firstly, police responses may be unpredictable and arbitrary and it is not uncommon for people who had no intention of being arrested (even bystanders who were not part of the protest) to be arrested. Secondly, if some participants have the number written on their hand and others don't it may cause police attention to be drawn to people with the number on their hand, on the assumption that they intend to engage in more militant or confrontational tactics.

Legal Observers are vital to create a feeling of safety, to allow people to make informed decisions about their actions and to observe police tactics and promote accountability.

It is useful for Legal Observers to identify themselves as such by wearing signs or distinctive clothing such as fleuro safety vests with 'Legal Observer' stencilled on the back. Make sure each Legal Observer is equipped with a clipboard, relevant arrest tracking sheets, blank paper and pens.

Make sure you have debriefing organised - the role can be very draining, as Legal Observer may be witnesses to police violence, but the role requires them to keep going. In such situations organising a group debrief to acknowledge how shocking and upsetting some of the things that were witnessed and observed may have been.

If a Legal Observer Team is not possible, arrange for people to video, record and take notes during the action.

Download and use the Arrest Watch Report Forms Located on this website under Support team resources

Also see the National Lawyers Guild 'Legal Observer Manual'

Liaise with authorities

When appropriate, liaise with authorities.

Many actions depend on high levels of secrecy for their success and prior liaison with police is not possible. If your action relies on secrecy be aware of issues around surveillance and infiltration by police.

Some activists have strong political standpoints about any sort of communication with police and cite how police liaison can be manipulated by police to control a protest.

Other activists say that prior police liaison can help to minimise the risk that police will overreact to an action and can be useful in reducing the risk of police violence. For some activists, prior *disclosure* is a strategy aimed at creating dilemma situations for the government.

Liaison can serve to present a respectable face to police, build trust to gain important information, gain negotiating time and space and allow negotiation on minor details of the action without disrupting the entire protest.

Many actions that are publicly promoted, such as marches and rallies, will not be secret and prior police liaison may be undertaken to negotiate details such as traffic control, sound systems or where arrested people may be taken.

If you do decide to liaise with police before an action, ensure that you meet the relevant 'Operations' commander and always make sure at least two people *undertake* the role of police liaison in order to minimise the risk of miscommunication and manipulation. It is not necessary to have a lawyer to do the police liaison but having a lawyer present can sometimes be helpful.

Before deciding to engage with police, it can be worth asking other activists about their experience. It can be worth taking notes during meetings covering any agreements that have been made. Make sure however that you are educated and knowledgeable about your rights prior to such a meeting.

Guidelines for police liaison

- All police liaison should have the authority and permission of the activist group.
- All police liaison should be done in pairs of people - never liaise with police alone.
- Liaison should be with the commanding officer and operational commander of the relevant police unit. This may take some research. Be aware of public relations officers who have no authority. Always ask for the operational commander who has direct control over the officers at the protest site.

- Be clear about how much authority you have to speak, negotiate or mediate on behalf of your group and don't overstep it.
- Prepare what you will say and what information you will or will not provide beforehand. Check with the activist group that all this is okay.
- Be courteous and respectful of police to gain trust. Also demonstrate that you deserve to be treated respectfully.
- Be aware of what you can negotiate about and what is non-negotiable (i.e. the position of the banner may be negotiable but the line of people blockading are committed to staying and this is not).
- Be aware that police may treat women, or people of colour, differently, and may defer to or listen only to men.
- Be aware of police promises, bluffs and threats. You may get coerced into abandoning all or part of the action. Check out what the police actually mean and clarify their points if you are unclear.
- Make sure all the information, including threats and promises, is communicated accurately and clearly back to the activists.
- Write down outcomes from liaison meetings, who was there, discussions. Especially if there are several police liaison meetings prior to a protest it is useful to know what was discussed, decided and agreed to at previous meetings.
- Do not be afraid to highlight inappropriate police behaviour, police violence or excessive force, you may be the only people who have access to the commanding officer.

See Complaints against the police

Media & documentation

Photo and video coverage of the action can help to deter police violence and provide valuable evidence later.

Remember that footage you record can be evidence that cuts both ways. If accurate, the footage will reflect the conduct of all participants at an action, e.g. police, activists, violent and nonviolent.

Be aware of what is and isn't appropriate to document through video or photo. For example, it is generally not appropriate to photograph a meeting between activists unless you have explicit *consent*. If activist are undertaking actions with which they do not necessarily want to be linked or identified it is likewise inappropriate to take photos.

Think about what the purposes of the photographs you are taking are. For example, if your aim is to document police violence or harassment (if there is any) make sure you focus on that. You may want to focus on taking photos of police attending the protest who are not wearing proper identification. Use them to: provide some deterrence to police brutality; take pictures of the licence plates that you want to record; take pictures of the police, both plain clothes and uniformed. Later witnesses may want to identify the officer; take pictures of those you only suspect are police. They may show up later in more interesting circumstances; take pictures of those who seem to be provocateurs; take pictures of any "incident", including *arrests*. These can be useful for media and in court; stand back and get shots of the whole area and general layout. This helps in court too.

Your photos of an action, especially when distributed strategically on the Internet and social media can provide a useful counterpoint representation of the protest to some of the biased reporting that is common in the mainstream press.

Also see

Surveillance of activists

Political surveillance

Social media

Cameras

You can take any person's picture without their permission. The camera just has to be visible. The camera is a powerful weapon. At rallies and demonstrations they are essential.

But note that police can act violently in order to seize cameras or tape. Violent assaults on photographers or independent media by police do happen.

Plan to prevent police from seizing your camera, disk or tape. If you have a useful image, keep it safe from police and make it available to those involved in the Legal Support Team.

However, when there are many cameras it is possible to get pictures of these "accidents" where cameras are destroyed or of the police officer posing his palm for a photograph.

Preserving the photographic evidence for the court is critical. The main problem is that of "continuity". In the court it is necessary to show a continuous chain of possession of the film, negatives and prints. This must be done to counter any suggestion that these items have been tampered with.

Independent media

It is useful to develop a relationship with people in independent media so that you can have access to the film if needed. Note that police may also have camera units present. Make sure people in the action know that they will be filmed so they don't mistake an

independent media person or legal observer for a police camera operator.

Note that you will generally have to call to court the person who took the image if you want to use it as evidence.

Facing police at protests

Police tactics and behaviour at a protest can have a significant impact on its outcome. Strategies that take into account police use of force, arrest and possible use of violence need to be developed when planning an action.

Well organised legal strategies and activist legal support structures are vital when planning any kind of action that may face a significant police response.

Some argue that the legal system is designed to break us down and dehumanise us. Organising for your affinity group or larger organised demonstration to have a Legal Support Team is another step towards empowering people to feel safe and sure about protesting.

It is vital to understand that police power operates in different ways depending on who is targeted.

Your race, gender, class, sexuality, ethnicity and disability can all be factors in how the police choose to behave towards you.

Because police are part of the machinery of the state, the power they exercise can often be arbitrary. Police will not always act as expected - that is, according to the law or their own regulations.

Police strategies can vary depending on the nature of your actions, the political climate, the media, etc. It may be possible that police exert force to control an action rather than simply arresting. Using force can sometimes be a more efficient strategy for the police than arresting people in large numbers.

As a result, it is important to know your rights and hold the police accountable for their behaviour.

SOME THINGS TO KEEP IN MIND

Remain calm as much as possible when dealing with police.

Behave as if you expect to be treated with respect. If you represent people at a mass action, insist on speaking with the senior officer present.

Be prepared to negotiate with police, but be firm and stick to the basics of your plan of action. Some compromise with police may not be detrimental to the action so long as it doesn't compromise the basic aims of the action.

Police may renege on agreements at times (because they are acting under orders or because their good faith with you is not a priority) and *arrest* may come unexpectedly. Be prepared.

Police officers have different ways of interacting with protestors. Some are insulting, others are quite friendly. In either case, a part of their job is to collect evidence against you. Don't let an insulting cop provoke you into a justification for your action or a friendly one draw you into a conversation about it.

Police power can be based on bluff, bullying and intimidation. Police insisting on your "cooperation" mean that they want your obedience. Knowing that police power can be challenged whilst retaining a basic human respect for police can be vital.

SAFETY TACTICS

When you have an unexpected encounter with the police or with any other law enforcement agents, you will be safer if you pay attention to your body language.

If you want to deescalate the situation below are some useful hints:

- Do not make any sudden movements.
- Keep your hands in view and open (so it's clear that you're not holding anything or making a fist). Do not reach into pockets or bags, unless instructed to do so. If the police ask to see identification, tell them where you keep it before you start to get it out.
- Never touch the police or their equipment (vehicles, weapons, radios, flashlights, animals, etc.)
- Breathe deeply, speak slowly, and relax your shoulders and knees. This will reduce the officer's fear that you may be about to attack or run away. Relaxing under these circumstances is harder than it sounds, because your body usually produces adrenalin when confronted by police. Adrenalin makes you breathe, move, and talk more quickly. You have to concentrate to slow down, because you're probably going a bit faster than you realise.
- Make eye contact, to indicate sincerity and maintain a respectful facial expression and speak politely. Again, this is harder than it sounds, because most of us feel angry and/or scared when we're dealing with police. If you're perceived as displaying "attitude," the officer will usually try to humble you - then you'll get angrier and so will the officer, a vicious cycle. Your best bet is to control your expression and tone of voice from the outset.
- However, be aware that other protesters may seek to adopt more confrontation tactics and place less priority on deescalating situations. Ideally questions of diversity of tactics, communication between groups, safety and solidarity would be been discussed between participants or affinity groups during the organising process.

KEEPING RECORDS

If there is even a slight possibility of any ongoing legal action, either as a result of arrests or to use in an action against police misconduct, it is of great importance to keep records. These may include seeking medical attention immediately, taking photographs of injuries and making a personal and detailed written record of what happened.

You should include any conflicts you have with arresting officials, the time and date of the incident, how many arrests took place and names of police officers involved where possible.

Also record names and contact details of all other activists involved and any independent witnesses. Where possible, have witnesses also make a personal and detailed record of what they saw.

If there is a court case, these records may become admissible as evidence. Make the notes within minutes of the events, including the time the note or tape was made. If possible, get someone else to verify the time in writing or on the tape. Do not notify the police that you have made this record.

Try to record details of the incident in objective or value neutral language. Do not use highly subjective or value laden language. This may be important in court when assessing the credibility of your observations and recollections.

Police liaison on site is also important. Have two people to liaise with police when they arrive to ensure that they do not over react to a situation. Ask for the Forward Commander. Good liaison can reduce the risk of police violence and serve to find out what police intend to do and where arrestees will be taken.

If you do not plan for any police liaison on site, consider what will happen as police talk to anyone at the action or target perceived 'leaders' for liaison.

If people are 'locked on', up tree platforms, tripods or blockading, some form of police liaison is important for safety reasons.

Make sure there are clear lines of communication between the Legal Support Team and police liaison people. See Legal Support Team - Information Coordinator

Police liaison on-site

Police liaison on site is also important. Have two people to liaise with police when they arrive to ensure that they do not over react to a situation. Ask for the Forward Commander. Good liaison can reduce the risk of police violence and serve to find out what police intend to do and where arrestees will be taken.

If you do not plan for any police liaison on site, consider what will happen as police talk to anyone at the action or target perceived 'leaders' for liaison.

If people are 'locked on', up tree platforms, tripods or blockading, some form of police liaison is important for safety reasons.

Make sure there are clear lines of communication between the Legal Support Team and police liaison people.

See Legal Support Team - Information Coordinator

Monitoring arrests

If anyone is arrested at the action, the Legal Support Team should be carefully taking notes of their *arrest* and monitoring their location and well being at all times. It is vital that everybody is accounted for.

Download Arrestee Tracking Sheet on this site at Support team resources.

On the ground Legal Observers should feel comfortable approaching people being arrested or arrested by police. Take down their details. Ask whether they are underage, a non-Australian citizen, Aboriginal or Torres Strait Islander or whether they have any particular medical/custody needs. Confirm whether arrestees have been subjected to physical or verbal violence or harassment from the police (if possible).

In protest situations where it is likely that a large number of people may be arrested be prepared for this and find an appropriate way to manage this information. Large white boards to record details of arrestees and where they have been taken, which layers are seeing them and if they have been released is a good idea especially because it means everyone in the legal Support Office will have access to an overview of the arrest situation. Similarly, setting up a spreadsheet or a database is useful, as it allows you to systematically record this information, search fields and will be useful as an ongoing record of arrests which can be updated with new information as you support arrestees through the court process.

Legal Support should repeatedly contact the police to monitor the situation, until the person is released.

If a lawyer is available to do this monitoring police are sometimes more cautious, but any Legal Support person can effectively monitor the arrestee.

Preferably, the lawyer should attend the police station, so that any "interview" with the arrested person can also be monitored. However a lawyer's phone contact with police on behalf of the arrested person is also valuable, and any police refusal to allow a

lawyer access to their client may be used in evidence later on.

Let police know the arrested person has friends and Legal Support who will constantly monitor that person's situation (even if this may irritate police) until the person is released.

This contact will make police more careful in several ways: more careful about violence in the cells, more careful about concocting evidence, and more anxious to get rid of their embarrassing prisoner.

Case study:

On Friday 21 October 2011 police moved to violently and brutally evict approximately 200 people in City Square as part of Occupy Melbourne. Over the course of the day the Legal Observers sought to monitor and record police violence and track arrests. As over 90 people were arrested over the course of the day, some immediately released and other retained in *custody* for hours, and most released without charge, tracking, monitoring all these arrests became impossible for the legal support team. While always attempting to have details of arrestees, the Legal Observers focused on knowing to which police station people were being taken so that lawyers could subsequently ring or attend those stations to make sure that everyone taken into custody was also released before evening.

Over the following weeks the Legal Support Team sought to identify who had been arrested, especially given there were serious (and at the time of writing of this manual still unresolved) questions around the legality of the arrests. Also, the Legal Support Team was concerned that many people who had been arrested had also been exposed to and experienced police violence.

Therefore, the Legal Support Team circulated the following request on OM websites and social media, in order to facilitate a 'retrospective' tracking of arrests on the day.

Arrests or police violence

People should write a detailed statement about exactly what happened while it's still fresh in their minds.

Include the following where possible:

- Times
- What happened in chronological order
- Where you were
- What direction you were approached from
- What police officers were wearing
- Where you were taken
- What police said before/after any incidents
- When/whether you were told you were under arrest
- Whether you were allowed to call a lawyer or a friend
- How long you were held for
- Whether you have seen a doctor
- Whether you tweeted/updated facebook when you got home
- Whether there were any witnesses or video footage taken
- Trawl through the online newspapers, flickr and youtube for footage of yourself being arrested or assaulted
- Email all of this to us with your NAME in the subject line. Include your phone number and date of birth

Monitoring police behaviour

As discussed about Legal Observers play a crucial role in monitoring police behaviour at protests. This can involve documenting (with photos or video evidence) police who attend without wearing proper identification, capturing evidence of instances of police brutality or violence.

Given the wide ownership of digital cameras and internet connected telephones, basically every protest attendee (and spectator) now plays the role of observer. Footage from protest incidents can be taken and uploaded to youtube or other file sharing or social media sites almost instantaneously.

These technological changes shift the role of Legal Observers - it has become less crucial to personally document and record all incidents. The role becomes more about finding, collating and putting into a manageable format all the pictures and videos which are circulating in cyberspace.

This proliferation of protest footage on the internet raises a number of related issues, especially in relation to activist privacy. Be aware that police will go through and monitor photos and footage on the internet in order to investigate any illegal actions at protests and to more broadly profile protest movements. Similarly, there are questions around the use of such footage in court, especially if the original producer of the footage can't be tracked down to authenticate it. Therefore the Legal Support Team downloads footage to use as evidence in court, also seek to make best efforts to track down the producer of the footage.

Monitoring police violence will also involve collecting the personal details and contact details of people who have experienced police violence and harassments and of any witnesses and of witnesses who may have recorded the incident. Ideally, the Legal Observers would be able to collect an immediate statement from people affected or witnesses about the event. Testimony which is taken immediately is generally seen as more credible in court. However, in some situations given the level of violence and chaos it may not be possible to do this. Then it might be appropriate to refer people needing to make statements to the legal Support Office if there are people available there to take statements or to simply collect details, so that the Legal Support Team can get in touch with them later.

Case study: Occupy Melbourne eviction

During the *eviction* of Occupy Melbourne from City Square large numbers of protesters were assaulted and harassed by police. It quickly became clear that it was impossible for the Legal Observer to document all these incidents or even get in contact with everyone who had been assaulted.

The Legal Observers attempted to get in touch with people who had experienced police violence, and in many cases referred them to the Legal Support Office where other volunteers were able to state initial statements. In other cases the Legal Observers took down people's details.

In the aftermath of the eviction the Legal Support Team organised evening legal clinics to take statements from people who witnessed or experienced police violence or *arrest*. The people whose names had been taken by Legal Observers were all contacted by email or phone and encouraged to make an appointment to make a statement. The clinics were however advertised more broadly on website, social media etc so that other people who had experienced or witnessed police violence or arrest and hadn't had previous contact with the Legal Support Team could also make appointments to come along. The Legal Clinics operated almost every night for the first week, then three times a week for a period and until they decreased in frequency and stopped.

Responding to arrests

Activist campaigns in Australia have generally three options when facing the consequences of *arrests* and charges as a result of the campaign:

1. **"Abandon"** those arrested to organise their own defence. Although very common, this approach, to some extent, represents a betrayal of those willing to risk arrest. In organising an action in which people may be arrested the organising body does take on some responsibility. Even where the "organising body" is diffuse, autonomous or network based, people involved see their actions as part of a wider political struggle. Abandoning activists who have a different political perspective, got arrested for the "wrong" reasons or because they were "too militant" is also common.
2. **"Passing off"** the responsibility for the defence of those involved to another organisation such as community legal centres. The prospect of taking on large numbers of arrestees, with little or no reward, is not particularly attractive for under funded community legal centres. While an informal network of sympathetic legal workers may provide services in the case of relatively small numbers of arrestees, in larger scale actions or campaigns a coordinating body is required.
3. **Take on responsibility for the legal defence of those arrested** and invest the resources of the organisation in their support. For organisations with limited resources this is difficult but possible. Some may argue that providing legal and court support would be diverting resources from the "real" campaign goals. Well-organised activist legal support can help strengthen campaign goals and help create more sustainable and radical campaigns.

In Australia, a mixture of the above practices has been evident. If direct action is to remain an effective option in political issues then abandoning activists to face the legal consequences of political action is not a realistic option, despite how easy it at first appears.

Support for arrestees

When we take action against an unjust system, we often find ourselves facing the possibility of *arrest*.

At times, risking arrest may be a planned part of our action: in other situations we may deeply desire to avoid it. Nevertheless, activists get arrested. Planning, preparation, support and solidarity can help us protect each other and continue to build our movement.

Solidarity strategy

Solidarity refers to how you act together in the face of oppression to strengthen and build your movement.

Some jail solidarity strategies and court solidarity strategies involve using the strength of numbers to pressure the system into assuring equal treatment for all, and into accepting demands that they reduce or drop charges. Activists have employed a variety of tactics to ensure that the police keep them in jail, where they cost the system the most money and trouble. Activists arrested in certain actions have also all pleaded not guilty so as to clog the court system.

These strategies require planning, preparation, and the commitment that arises from the group's decision making process. They work well in situations where there is some social restraint on police brutality, and when people's differing needs and life

circumstances are respected.

Guilt free solidarity can empower the people who take part in it: but it is also exercised at a cost. Even in the US and Canada, political prisoners have been brutalised, tortured and even killed. Regular prisoners face these dangers every day.

In countries and situations where there is less restraint on the police, where people are being severely beaten, brutalised, or potentially murdered in jail, solidarity may best be exercised by putting pressure on the system from outside.

Plan for possible arrest

Ideally, have a legal support team in place, with lawyers and legal workers trained to understand the principles of solidarity. At the very least, know some lawyers you can call on for emergency help.

Inform people. Trainings and preparations should include basic legal and jail information. Legal briefings can be offered before the action. Handouts with basic information and phone numbers can be available at the action.

Know what your solidarity strategy is, and include information about it in trainings and preparations.

Know who your political allies are that you can call on for support. Unions, NGOs, sympathetic politicians, Green Party members, religious groups and progressive mayors may not be willing to go out on the streets with you, but are often willing to help get people out of jail, or to pressure authorities to provide decent treatment. Progressive journalists, and civil liberties groups and legal associations are often your best 'safety net' in terms of generating immediate public debate and support for your cause.

You need to be aware of how your actions and strategies can be used against you by authorities and the media. If your group can be painted as being 'extreme', then it may make it less likely that you can generate support and solidarity. It can also provide authorities with the opportunity to increase repression of your group. In the Post 9/11 environment, use of emotionally laden tags like 'terrorist' and 'extremist' can be used by authorities and commentators in order to drive a wedge between specific activists and the general public. In taking on specific actions or protest activity it is always worth considering how that action could 'play out' in the media or whether it might alienate potential supporters.

Practical support structure

Before going to an action where *arrest* is a possibility, each person, or each affinity group, should arrange a home support person who expects a call at an agreed time. If that call is not made, they will assume their action buddy has been arrested, and will begin to mobilise support. They should have full information on each person they're supporting, including passport numbers or driver's licence numbers, health issues, legal issues, etc. This is a great way to involve people who cannot do an action due to home commitments, age, physical challenges, or simply fear. Have that number memorised. It might also be good to have a second, fallback number.

Have a general support number that people can call to report information about who has been arrested, how people are being treated, etc. Ideally, have two. Make them separate from the number for the lawyers themselves - this phone needs to be kept free as much as possible in case people call from jail. Memorise the general support number or write it on your arm in indelible ink before the action.

Ideally, have another number that friends and relatives outside of jail can call for information. Make sure support people have it and are also in contact with each other.

As soon as you are arrested, begin to extend your network of support to those who did not plan on arrest. On the bus, in holding cells, in jail itself, offer moral support, practical support, and basic information on legal rights and on strategy.

In jail, collect as much information as you can about who has been arrested. If you are allowed to make phone calls, the first person who calls should convey as much of that information to those outside as they possibly can. Remember, calls can be cut off at any time. And expect all calls to be monitored by the authorities.

It's generally easiest to reach your personal support people from jail and give them the information to pass on to the Legal Support Team, which may be busy or even blocked. But have both.

Types of support

Make the authorities aware that they are being scrutinised!

Call or appear in person to demand information about specific prisoners. Knowing that someone will do this for you will help you avoid panic and despair.

Mobilise political support: This is your best protection in jail! Call, write letters, send faxes and emails to jail authorities, police authorities, politicians, etc. Mobilise others to do the same. Start close to home; with the politicians' own constituencies. Through the Internet, it's easy to mobilise international pressure. Be sure the phone and fax numbers and emails you provide work internationally.

Conduct a vigil at the jail itself. Inform the media. Call a press conference, give interviews, talk on the radio, arrange interviews of released prisoners, write letters to the editor. If the general media won't cover the issue, contact Indymedia.

Organise support demonstrations at home, at embassies abroad, at government offices, etc.

Contact people who might have influence with the authorities. Is your aunt's second cousin a government minister? Call on your political allies and enlist their help and support. Contact international organisations such as Amnesty International.

Mount legal challenges.

Support for prisoners

Providing supporting for the needs of prisoners may include the following:

- Arranging legal defence and raising money
- Calling a prisoner's family, friends, job, school, etc.
- Feeding cats, walking dogs, caring for children
- Paying overdue bills, etc.
- Arranging for visits by chaplains or for religious services. (In jail even the most hard-core atheist will welcome these as a diversion!)
- If prisoners are in for a long time, supporters may visit, write letters or post money in prisoners' jail accounts so they can buy supplies at the commissary as the situation allows.
- Being there to pick them up, greet them, feed them and provide comfort when they get out.
- Arranging medical care if needed.
- Providing emotional support, counselling, and help in debriefing afterwards.
- Remembering to support people who have been unexpectedly arrested.

This section has been reprinted with permission from the author and adapted to the Australian context.

The original version appeared on the Starhawk website, *copyright* 2002 Starhawk

Support for arrestees

For those arrested, charged or injured by police, the consequences of participation in the action may extend well beyond the action itself. If activists are arrested and charged as a result of this action, then activist legal support may need to continue for months if not years after the action.

One of the most difficult features of the legal process is the time it takes to reach a decision. A not-guilty plea in magistrates' courts will generally take many months before a decision is reached. However if the case goes to *appeal*, even minor matters can take years before they are resolved. The presence of on going legal/organisational support is essential.

The responses to criminal charges may also affect the aims of the action itself. Will it build or undermine support for the campaign? Will a plea of guilty or a court loss create a *precedent* for future actions? How will this court case affect the campaign strategy?

Because court cases can be a long, intimidating and isolating experience for activists, support and solidarity is vital. It may be important to plan:

- Legal support and representation, arranging for pro-bono legal representation and finding the best barrister for the cases
- An Arrestees Support Group to keep everyone on charges together to plan and support each other
- Spaces for arrestee to meet each other, share experiences and discuss how they are coping with and feeling about the charges and the legal process
- Benefits and fundraisers to raise legal costs. (these can also raise awareness about the campaign)
- Organising forums (issues surrounding the criminalisation of dissent, etc)
- Use of the media around the court appearances to highlight the issues, media conferences outside the court; protests outside the court
- Attending court with arrestee to provide support, solidarity and take notes
- Discussing legal strategies or planning collective legal approaches
- Celebration and debriefing for the activists after the court case, whatever the outcome
- Support before, during and after court order (community based orders, suspended sentences) or a jail term for some or all of the activists

Case study:

The G20 Arrestee Solidarity Network (GASM) was came together after Victoria Police proceeded to *arrest* approximately 30 people (including minors) on charges including riot, affray, assault police and criminal damage in the weeks after the protests against the economic leaders meeting.

As many of the arrestee did not know each other prior to the protests or prior to their arrests, the solidarity group provided an important space to meet other arrestees facing similar charges. It took over two years from the time of the protest until all the court matters were finalised, and longer still until all the arrestee had completed their sentences which included community based orders, *suspended sentences* and time in *custody*. It was clear to GASM from the beginning that solidarity required a long term commitment.

Over this period of time GASM organised several benefits gigs and established a bank account to raise funds for legal support. This money was used primarily to support arrestees from interstate to travel to and from court appearances in Melbourne and to help finance an appeal against sentence for one of the arrestees. The group produced t-shirts to publically express support with the arrestees ('I didn't do it but I dug it' and 'I *heart* arterial bloc') and badges, which also helped raise additional funds.

GASM also organised several public forums about the criminalisation of dissent at which defence lawyers, arrestees and members of the solidarity collective spoke. Members of the group wrote articles to raise awareness about the extreme police and legal response to the protest which were printed in *Arena*, *Chain Reaction* and student newspapers.

Members of GASM attended numerous court hearing with the arrestees, to provide support and solidarity. At times GASM organised protests outside the courthouse, took detailed notes of proceedings in court and put out media release about the court dates.

Some of the clear challenges faced by GASM were that not all arrestees wanted to be involved or have contact with the group. The fact that different defence lawyers advocated different legal strategies and that various arrestees chose to pursue different legal strategies also caused a lot of tensions in the group. This demonstrates the clear challenges involved in respecting that arrestees may make different decisions regarding how best to approach the legal system, ensuring that different strategies do not undermine other arrestees, but showing support and solidarity for these decisions.

Thanks to David Mossop and his article: **Legal Organisation and Nonviolent Action** published in **Nonviolence Today**

No. 16, August/ September, 1990

Legal campaign tools

There are a number of legal remedies that may be appropriate tools to assist to achieve the aims of a campaign.

Some legal processes are simple and can be carried out with limited assistance from lawyers, whereas other options are more complicated and may require significant legal expertise and financial resources.

Following in this section are some suggested processes for enabling your campaign to achieve its goal.

Complaint mechanisms

Lodging a complaint with the Equal Opportunity Commission or the Human Rights and Equal Opportunity Commission is a relatively easy and cheap means of addressing an issue of discrimination.

One common, and low cost option, for resolving complaints about media reporting of activists or protests is to go to the Australian Press Council. While this can be effective, and require the media outlet involved to publish a retraction or clarification, it is worth bearing in mind that almost half of the membership of the 22 members of the Council are *nominees* of media organisations which are "constituent bodies" of the Council. While a 'balance' of views are often represented in the panels considering each complaint, this does not necessarily make them entirely impartial in all circumstances.

In June 2004, a formal complaint against the *Sydney Morning Herald* was upheld (by the Australian Press Council) for its use of the terms 'illegal immigrants' and 'illegal entrants' to describe asylum-seekers. The complaint was initially against the *Sydney Morning Herald*, but the Australian Press Council has also agreed to formulate general guidelines for Australian press against the use of these terms for asylum-seekers and refugees.

Mira Wroblewski, a refugee advocate, who proceeded with the complaint said:

"The term 'illegal' is used by the Government to vilify these people and to justify their treatment. It is one of a number of fear tactics being used to keep this government in power. I believe that the media should use the more accurate and respectful terms 'asylum-seekers' or 'refugees' to describe people who come to seek our help. They are not criminals. This has been supported by the Press Council decision."

Complaint mechanisms exist to cover many government departments, such as the Australian Broadcasting Authority, Australian Competition and Consumer Commission and the police. Private industry has set up similar schemes such as the private utility and Banking Ombudsman offices.

These mechanisms are easy to use and usually free. Although complaints may need to be lodged by individuals, a large number of complaints can force a rethink of common practices and thereby achieve systemic change.

Administrative law remedies in areas such as planning and environmental law, *tenancy* and social security may also be worth

exploring where a government decision is involved.

Freedom of Information

Freedom of information (FOI) applications are becoming increasingly useful in gathering information about government practices. Information on how to lodge an FOI claim is available on the Victorian Government's Freedom of information website.

FOIs are cheap to initiate (the submission fee is less than \$30 and you can ask for the fee to be waived - see note below). However you should be aware that you may be charged for printing and search costs if the documentation generated through your request is substantial.

It is standard practise for the FOI department to give you an estimate of costs before proceeding with your request, which gives you the chance to either opt out of the request or else 'refine' your request to a smaller set of documents.

In the case of the Victorian situation, there are claims that the FOI process is becoming increasingly politicised, and hence less useful for accessing documents.

See *The Age* article by Farrah Tomazin - 'New watchdog to guard public right to information'

Note: The FOI fee can be waived if you can prove 'financial hardship'; generally a photocopy of a current healthcare card suffices to prove this. Be aware that otherwise FOI costs can grow as you are charged per document for the 'access' fee in addition to the one-off processing fee.

Civil proceedings

Civil legal proceedings against individuals, governments or companies may be appropriate in some circumstances. Consider lodging a complaint in the Magistrates' Court where a relatively simple decision is required quickly.

Suing police has emerged as an important means of making the Victoria Police accountable and as a means for people who have been harmed by police misconduct to obtain significant redress for injuries, physical and psychological, that they have suffered. An increasing number of actions against the Victoria Police have been successful in recent times. A person who has been assaulted, wrongly detained or otherwise wronged by police may wish to take legal action. Make sure you seek legal advice about your prospects of success and especially about any costs implications before considering this course of action.

For information on this see Ian Freckelton and Tamar Hopkins 'Legal Action Against the Police' The Law Handbook online

Injunctions

The law can also be used proactively to open up greater space for progressive causes and for activist movements. Injunctions. Injunctions can also be sought in order to achieve the goals of activist movements. For example a successful *injunction* was granted to prevent logging at Brown Mountain in East Gippsland after Environment East Gippsland successfully won an injunction against VicForest in the Supreme Court.

Case study:

Following the violent *eviction* of Occupy Melbourne from City Square and persist Victoria Police and Melbourne City Council harassment of the relocated occupation in Treasury Garden a legal action was initiated in the Federal Court. The action sought an injunction on the enforcement of the Melbourne City Council Local Activities Laws which prohibited 'camping' and the 'possession of things' in relation to the Occupy Melbourne Camp. The *defendant* argued that such an interpretation of the *by-laws* and their enforcement breach the freedom of political communication protections in the Constitution and also rights relating to free speech and assembly in the Victorian Charter of Human Rights and Responsibilities.

The matter has not been adjudicated at the time of writing! However, the process of taking an injunction to support OM right to camp as a form of protest demonstrates tensions which can arise when using the law as a proactive rather than as a *retrospective* tool. For example:

- **Responsibility to whom?** - The lawyer on the record acting in such an injunctions primary responsibilities need to be the court and to their client. There are no formal responsibilities to the politics or the movement or the movement more generally. This can create tensions when a more conservative legal argument may be more 'win-able' and therefore adopted in the legal proceedings, however, other members of the protest may see these arguments as too conservative and misrepresentative of the goals of the movement. Whilst there are clearly important legal, strategic and cost motivations for doing this, it is important to bear in mind that legal cases will often receive media interest and defendants may be positioned by the media as broader movement spokes people. Therefore, open communications between lawyers and defendants taking such test cases and the rest of the movement is essential, to the extent that *confidentiality* requirements from court allow.
- **Injunction against whom?** - Injunctions sought will often come with conditions, for example, OM sought an injunction which permitted them to protest in specified ways, to put up specified structures etc. Be aware therefore that injunctions risk becoming a double edged sword – the conditions placed upon them can end up restricting and limiting what movements feel they are able to do. Make sure there are public, political and strategic discussions about how to engage with this.
- **Looking after defendants** - putting up your hand to be a defendant in a test case is a scary process. It requires a massive

commitment of time in preparing legal documents and attending court as well as commonly media interest. It means exposing yourself to media and public scrutiny and having some of your personal details made public. In addition, it means carrying and bearing the risk of adverse cost orders, which may be made against people taking legal action. It means taking on the responsibility of instructing lawyers about how to proceed in the matter, and it also may mean exposing yourself to public criticism (including from other activists) about how you have chosen to run the case. Therefore it is essential to extend legal support to defendant taking this sort of action, consider how we can as a movement support them in decision making and fundraising around such test cases.

Law reform

Law reform processes such as public inquiries occur at all levels of government, and provide an opportunity to present arguments and stories about issues of public importance.

Repressive tactics response

Activists also risk being subjected to SLAPP suits. Strategic Litigation Against Public Participation (SLAPP) are legal suits taken against activists which are designed to intimidate the individuals involved, but also intimidate the campaign and the movement more broadly. It is an attempt by corporations to use the law as a weapon to *enforce* silence onto their critics. The suit launched by Tasmanian Forestry Giant Gunns Ltd against 20 (initial) *defendants* took years to resolve and even though Gunns ultimately lost the case, the proceeding nonetheless managed to tie many activists up in the court system for years and had a stifling effect on the movement.

For further information see Legal threats silencing activists

For information on the Gunns 20 case see The Gunns 20 case study.

Legal solidarity

What is legal solidarity?

Legal Solidarity is a strategy that uses group decision-making and action to protect people when they are being held in the legal system.

Jails and courts are designed to make people feel powerless. By using solidarity tactics - making legal decisions as a group, acting in unity with each other, and committing yourselves to safeguarding every arrestee's interests - you can gain more control over what happens to you in the jails and courts. Legal Solidarity has been used effectively for decades in the civil rights, peace, environmental, and global justice movements, among others.

Understanding the theory and tools of Legal Solidarity - its practical objectives, using tactics and demands, and distinguishing between Jail and Court Solidarity - is crucial to using these tools effectively.

Objectives of legal solidarity

If you are considering using Legal Solidarity, it's important to know what your specific goals are and which tactics will help you achieve those goals. Specific goals should be under the more general goal of taking care of each other.

People should be ready to use solidarity to take care of everyone, but should be especially on the lookout for people who may be more likely to suffer discrimination: women, minors, people on temporary protection *visas*, Aboriginal people who are seen as leaders; people who go limp or use more militant tactics, transgender or queer people, people who dress punk or who wear all black, people on *probation* or *parole* and people with prior *arrests* or convictions.

Tactics & demands

A tactic is something you do (e.g. chant incessantly). A demand is something you want (some water). You use tactics to get demands met ("We're going to chant incessantly unless you bring us some water.")

Matching tactics to demands is one key to successful Legal Solidarity. A group using solidarity should come up with a set of demands and corresponding tactics. It's crucial to make sure the authority (police, guard, judge, prosecutor, etc.) you are making a demand to can meet that demand and is affected by your tactic. If not, you are unlikely to accomplish anything.

Another key to successful Legal Solidarity is clear communication of your tactics and demands to authorities. For example, if a cell-full of people starts screaming without both telling a guard their reason and making a demand, the guard won't understand why they are shouting and what to do to make them stop. The group needs to get the guard's attention and then have one or two elected spokespersons clearly communicate specific demands.

Finally, when using tactics and demands, it's important to follow through on your promises. If you don't, you establish a lack of trust that jeopardises all future negotiations.

Below are lists of common demands and tactics that have been used in police *custody* and courts.

Some demands in police custody:

- Give an injured or ill person immediate medical attention
- Bring some water
- Return a person who has been separated
- Allow group visits with the legal team/lawyer

Some solidarity/non-cooperation tactics that have been used include:

- Not bringing ID and refusing to give name or address
- Refusing to sign bail
- Chanting, singing or dancing incessantly
- Refusing to follow orders
- Going limp
- Stripping

Groups should talk in advance about which demands and which types of tactics they want to use.

It's not necessary for everyone in the group to participate in a given tactic in order for it to work. However, you need enough people participating in a given tactic for it to be effective. Creativity and flexibility are the keys to successful tactics.

Jail solidarity

Generally speaking, you are engaging in Jail Solidarity when you are in *custody* of police or jail guards and are using the Jail Solidarity non-cooperation tactics like those described above (going limp, etc.). Your actions in Jail Solidarity directly affect the police, jail guards, and jail administration.

Though one of the most visible and potentially empowering aspects of Legal Solidarity is physical noncooperation in custody, non-cooperation is not done for its own sake. **Always use non-cooperation or acts of resistance to take care of each other.**

Brutality at the hands of police and guards has occurred and is dangerous. By using non-cooperation tactics, you risk aggravating police and guards. Activists can really get hurt. In addition, physical noncooperation (e.g. going limp) could result in charges of resisting an officer.

Non-cooperation need not be just physical. One tactic typically associated with Jail Solidarity is withholding your names upon *arrest*. The police usually won't release people who they can't find again.

Some activist groups that have been in jail and nameless have found that they: stay together; clog the jails; can keep known organisers and legally vulnerable people from being targeted for mistreatment or more severe charges; make the paperwork hard; and appear to the jails, prosecutor and media as one unified group. Keeping a committed group in the jails until demands are met is central to the tactics of Jail Solidarity.

Court solidarity

Using the Court Solidarity tactics listed above directly affects the prosecutor and the courts. This is important to remember because the prosecutor has the power to negotiate or even drop charges. A court also has the power to consider the extent to which you cooperated with authorities during the course of the investigation and the extent of your remorse (if any) for the crime committed.

Court Solidarity involves people working together to fight their legal battles in court. Some activists have found that strength of numbers before the court has been successful in:

- Getting everyone's charges dismissed, or negotiating a reduction or alteration to charges that is agreed to by everyone, will cover everyone and will not have a harsher impact on targeted individuals, or
- vigorously fighting individual cases and working as a group to help everyone mount a strong defence.

Legal solidarity

Jail and Court Solidarity use different tactics but with the same end goal in mind - taking care of each other. They can be used separately but are most effective when used together. A typical Legal Solidarity timeline looks like this:

A group of activists gets arrested. They begin using Jail Solidarity by refusing to give their names and by using physical non-cooperation to keep people together and safe.

The activists begin using Court Solidarity by having the legal team communicate the proposed demands and the Court Solidarity tactics (pleading not guilty, demanding a *jury* trial, etc.) to the prosecutor.

The prosecutor agrees to negotiate - OR -

After a few days, it becomes clear that Jail Solidarity isn't being effective, or people are unable to stay in jail any longer. The activists decide to give their names and leave jail as a strong group rather than a weak trickle. Jail Solidarity is now over and all efforts are focused on Court Solidarity.

Support

Legal Solidarity is not only carried out by the people in jail or facing trial, but also by supporters.

Support is critical for the success of Legal Solidarity. Helping with support is a good way for people who had to negotiate charges individually, had to leave jail, or couldn't get arrested to maintain their connection with the rest of the group. Activists have used various methods to organise jail and court support.

Decisions

The use of Legal Solidarity tactics should not keep anyone from participating in the action. Not everyone can stay in jail. Not everyone can go to court. Give support to those who cannot take part. The strength of solidarity comes from the voluntary agreement of everyone who takes part in it. Just because someone needs to leave jail does *not* mean that they have "broken" solidarity.

Solidarity is based on consensus and it's easier to reach consensus on tactics and demands if you listen closely to all points of view before launching proposals. This is especially important when working in a group with diverse races, classes, sexual orientations, politics, etc.

You may wish to resist pressure from the police, jail authorities or any lawyers to make rushed decisions. If you're being rushed, bargain for more time. After all, sometimes it has been simpler for the authorities to give another fifteen minutes to come to consensus than for them to carry a bus-full or room-full of limp bodies. (It's a good idea to agree on using such tactics *before* there is a crisis.)

One problem activists face is that information provided by the police and even lawyers regarding the conduct of other activists is inaccurate. These may include information that all your friends have gone home and you're the only one still in jail, or that it is illegal to refuse to answer questions.

Make sure you base your decisions on reliable information received from someone you trust. When you get separated in jail, you feel really alone and it becomes very easy to believe what they're telling you. This is normal, but stick with whatever decision you made with the group and trust that everyone else is doing the same.

Fasting

Fasting in jail can be a powerful tactic, but it's *very* dangerous and should be used only as a last resort and when well researched. People with current or chronic medical conditions should not fast. Previous or current heavy drug or alcohol users also should not fast. You should clearly understand the medical implications of fasting. When in doubt, *do not fast*.

Some activists have reported that the effects of fasting can be felt in less than 12 hours. Effects reportedly include headache, dizziness, confusion, coating on the tongue, chills, lethargy, mood swings and weight loss. Hunger pangs can be intense for a period of time but disappear for most people after several days. Expect to be mentally slow, cloudy, and moody. In light of these effects a few people could refrain from fasting so they can act as caretakers and facilitators.

Your body goes through an intense detoxification process during a fast. Here are suggestions by activists to minimise harmful effects and discomfort:

Drink plenty of water. Remember; keep your pee pale in jail. If your urine turns dark, stop fasting. Shower as often as possible. Brush your skin with a rough towel to help remove toxins. Your tongue also excretes toxins, so brush it and your teeth often. Try to keep yourself warm at all times. If possible, sneak extra sets of clothes, towels or sheets to hide under your jail uniform. Slow down! Be clear before you start your fast. You will not think as clearly after. Develop a system ahead of time that allows you to stop someone's fast without undermining them (e.g. after someone passes out twice, they have to stop fasting).

Even when only one person is fasting in jail, it has worked well when decided through consensus with your affinity or legal support group. If demands are attached to the fast, question whether the demands can be met in the time you are willing to fast.

Fasts also work best when done within a well-organised, supported and publicised framework. There are many things supporters can do to help, such as publicising the fast or fasting themselves outside the jail. The public can become involved and sometimes even guards become concerned.

Much of this section is based on *materials* written or compiled by Katya Komisark from the Midnight Special Law Collective.

Also see Strategies for court

Inside jail

Organising in jail

The prison system controls us, among other ways, by controlling the space we inhabit, the way our time is structured, and the information we can send and receive. We can take by organising, as much as possible, our own space, time and information.

Information and communications:

- Find out who has been arrested, which affinity groups are in jail, who if anyone is missing or has been isolated. Consolidate the information so that in one or two phone calls it can be communicated to our legal team and support people.
- Organise our own system of lines or lists to use telephones. Transmit messages for others.
- Use legal team to communicate with others of our groups held in other locations.
- Liaison people can find out jail schedule and post it.
- Remember, information from the guards, however nice they may seem, is not necessarily accurate. **DON'T SPREAD RUMOURS!** Verify information.
- Share information and stories about the action among ourselves.

Space:

When possible, organise our own space in jail: a meeting corner, a quiet corner, a healing space, a workshop space etc.

Use the time:

The time we spend together in jail can be enriching. We can organise workshops, classes, nonviolence trainings, political discussions, strategy and theory sessions, games, rituals, exercise sessions, music, talent shows, quiet times and of course, meetings. Remember not to become obsessed by meetings.

Don't become panicked by their timetable. We can take the time we need to do what we have to do.

Suggested jail orientation:

When you have the opportunity to meet:

- Collect information on who has been arrested, who is isolated, everyone's medical needs, etc
- Develop strategy for getting that info out to supporters
- Update on information on the action, legal issues, and negotiations
- Roles and responsibilities in the group - caretakers, liaisons, etc
- Clustering - make sure everyone has an affinity group or buddy
- Feeling sharing - perhaps a round on how we each deal with powerlessness

Jail culture:

- Who are the guards?
- The other prisoners?
- General population - an opportunity to learn and organise, not a fate worse than death!

Strategies of the guards and police:

- Intimidation - fear and pain
- Divide and conquer
- Isolation
- Singling out leaders, instigators
- Good cop/bad cop
- Lies and disinformation
- Veneer - looking good in public, stacked negotiations

Legal system review: stages of the process, what to expect next:

- Process review: consensus, etc.
- Jail tales: share previous experiences (with great caution, remembering conversations are probably monitored)
- Questions, feeling, fears.
- Evaluation/closing.

This page has been adapted to the Australian context. The original version is *copyright* 2002 Starhawk

Also see Jail solidarity

Coming out of jail stronger

(This section is *copyright* Starhawk)

In the many times I've been to jail, here are some of the overwhelming responses I've noticed in myself and which you might be experiencing:

Rage: Jail is simply the distilled form of the larger violence around us. Anger is a sane and healthy response, but you may find it deflected onto your friends and families instead of directed to the systems of oppression we're fighting. Warn your friends and coworkers to tread gently and not order you around for a while. Be prepared for flashes of rage, and try to remember whom we're really angry at.

Self-Blame: You've been in a system designed on every level to make you feel bad, wrong, inadequate and powerless. The men and women who run it are experts in psychological manipulation and intimidation. They spend a lifetime developing their techniques—you had at most a few hours training in how to resist them.

When you're in jail, you're constantly faced with decisions to be made with inadequate information under conditions of fear and exhaustion. You may make mistakes. You may end up complying when you later wish you'd resisted, or failing to act when you think you should have. You may make decisions you later regret.

Try not to blame yourselves. One of the ways the system functions is to keep us focused on what we, individually, did or didn't do instead of on the violence of the system itself. Self blame is the way we take the violence of the system in, and beat ourselves up instead of making the guards and police do their own dirty work. And it rapidly turns into blame of each other, becoming a force to divide us and cut us off from the very support we need.

Difficult Re-entry: It's hard to go back to regular life after the intensity of an action. It's hard to go home to a lonely apartment after the strong community we've felt in the action and in jail. It's hard to go back to a school, a job, or to any institution that suddenly seems like a softer-edged version of the jail. And everything suddenly does look like a version of jail—a system of punishment and control.

You may find yourselves tired, depressed, unable to take pleasure in things you usually enjoy, vicariously experiencing the sufferings of all the oppressed and dispossessed. Food may seem tasteless, work or studies meaningless. You may lose things, get confused, and have difficulty functioning.

These are common human responses to loss, trauma and stress. They are not a sign of your personal weakness or inadequacy. Here are a few things that can help:

Talk About It: Ideally with the others who were with you, with your affinity group or with someone else who has been through a similar experience. If that's not possible, find a friend who is willing to lend a sympathetic ear, or a counselor. You need to tell your story, sometimes over and over and over again.

Rest: We've all put out a phenomenal amount of energy. Sleep. Take yourself out into a natural environment with trees and green plants. Lie on the ground. Restore your energy.

Cleanse: Do something physical and symbolic to release the energies of the jail. Take a shower and scrub with epsom salts, bathe in the ocean or a running stream, wash your clothes. Do it with the conscious intention of letting go of the jail energy, of emerging renewed.

Renew: If you have a spiritual practice, now is the time to intensify it. If you don't resonate with spirituality, take time for what does inspire you and feed you, whether it's the forests, music, or the company of friends.

Learn: You've just received a priceless educational experience. You now know more about the underlying workings of the system we are fighting. You've had a small taste of the violence and repression experienced every day by the poor, by people of color, by those who end up in jail without the support of an action and a media team. You will never be the same person you were before this action.

Honor yourself: And all of us—for the courage, strength, and commitment we've shown in taking action, for the movement we are building together, for the ways we've listened to one another and struggled with our differences and already changed the world. I'm deeply, deeply proud to have been part of this action, and to be in a movement that contains such brave, committed and caring people.

Carry it On: Rage can be an energizing force. So can love. As hard as a jail experience can be, it can also be empowering. We can come out of it stronger than we went in. What we've learned from this action can move us into the next phase as we build the movement that will transform the world.

Strategies for court

There is no one correct strategy when approaching the court, but activists need to give thought to approaching the court and the legal system.

Some activists choose to ignore the court completely or simply treat it as a nuisance getting in the way of the campaign activism.

Other activists see court as an integral part of action and which can be planned as a politically useful and effective part of the campaign.

However you see court - if you are facing court it is worth putting effort and planning into your approach.

NO Jurisdiction?

We live on stolen land. Indigenous sovereignty has never been ceded. As activists it is crucial to educate ourselves. Important resources are:

- Treaty Republic
- 'The Black GST' This short documentary about contemporary and historical indigenous issues is narrated by two of the leaders of the Black GST movement, Robbie and Marg Thorpe, available <http://www.treatypublic.net/content/black-gst>.
- Gary Foley 'For Aboriginal Sovereignty' (1988) The Koori History Website, available at <http://www.kooriweb.org/foley/essays/speech1.html>
- Pratt, Angela M, "Indigenous sovereignty-never ceded": sovereignty, nationhood and whiteness in Australia, PhD thesis, Faculty of Arts, University of Wollongong, 2003. <http://treatypublic.net/content/indigenous-sovereignty-never-ceded-sovereignty-nationhood-and-whiteness-australia>

The struggle to recognise Indigenous sovereignty over the lands and waters of Australia and realise a treaty is a *political* struggle. It is not (solely) a *legal* struggle, nor one that can be won (solely) in the courts. It is an urgent imperative and one which requires transformative political change.

However, court cases may present opportunities to highlight and raise awareness about the continuing and illegal occupation of Indigenous lands. Asking the courts to do something they ultimately never can - to justify and legitimate their *jurisdiction* - may serve as an opportunity to highlight the limitations of the Australian judicial/political system and present media opportunities for making these arguments to a wider public.

As such some activists have chosen to enter a plea of 'no jurisdiction' in the court. As discussed above this is an argument which is extremely unlikely to legally succeed in any proceedings, however making this argument may assist in further other *political* objectives activists may have.

Although the court was not asked to and did not question the established position that British sovereignty was acquired through 'settlement', the decision of the High Court in *Mabo No.2* encouraged further challenges to jurisdiction of Australian courts, and particularly to their ability to prosecute Indigenous peoples.

Blokland and Flynn argue that the court's rejection of the terra nullius and acceptance that Aboriginal people had their own system of laws 'raise the spectre of the classification of Australia as a settled colony being reviewed.' The authors acknowledge both that '[t]here is no indication in *Mabo* that the High Court is prepared to recognise Aboriginal sovereignty' and that the High Court is unable to inquire into the actual acquisition of sovereignty. Nevertheless, the authors note that the court may be able to review the manner of acquisition:

'Two alternatives present themselves. First, it might be accepted that Aboriginal sovereignty survived "settlement" and co-exists with Crown sovereignty. This approach prevailed in relation to the indigenous people of the United States who are said to enjoy an inherent or dependent sovereignty ... Secondly, Australia might be re-classified as a "conquered" colony ...it could be argued that Aboriginal people, in so far as they adhere to Aboriginal law, are not subject to the received criminal law.'

However, all attempts to challenge Australian court's jurisdiction to hear criminal matters have failed. For example in *Walker v NSW* (1994) 126 ALR 321 at 322 the Chief Justice of the High Court said:

'there is nothing in the recent decision of *Mabo v Queensland (No. 2)* to support the notion that the parliaments of the Commonwealth and New South Wales lack legislative competence to regulate or affect the rights of Aboriginal people, or the notion that that the application of Commonwealth or State laws to Aboriginal people is in any way subject to their acceptance, adoption, request or *consent*. Such notions amount to the contention that a new source of sovereignty resides in the Aboriginal people. Indeed, *Mabo (No. 2)* rejected that suggestion.'

However, for many activists facing charges for protests, especially where the objectives of the protest was to be part of or to act in solidarity with Indigenous struggles, pleading 'no jurisdiction' is an important political and ethical choice. In choosing to plea 'no jurisdiction' they seek to continuously highlight the need for political and legal recognition of Indigenous sovereignty.

For a discussion of case in which it was argued (unsuccessfully) that the Australian criminal law does not apply to Indigenous peoples see Jonathan Kenna 'Mabo the Native Title Revolution: Some Ramifications of the Decision for the Criminal Law' at <http://www.mabonativetitle.com/info/ramificationsCriminalLaw.htm>

Case study:

In 2009 a group of activists claimed no jurisdiction in the Magistrates Court after being arrested within the grounds of Barrick Golds Lake Cowal Gold Mine, and charged with Enter inclosed lands without lawful excuse.

The basis of our argument was that Australia was colonised illegally and therefore the court (an institution of Commonwealth law) lacked the jurisdiction to adjudicate the matter. Our argument was based largely on the findings of the Mabo case and certain cases and premises of international law. The main points of our argument were:

- During the colonial period the conduct of colonial powers was bound by the Law of Nations
- Under the Law of Nations in 1788 the British Crown had three options open to it: Cession, Conquest or Settlement (commonly referred to as occupation)
- Despite historical evidence of resistance to the British, the continent was never declared conquered
- Instead of declaring the continent conquered (and there are no treaties to suggest that it was ceded), the British declared it a settlement on the basis of terra nullius: the Law of Nations required that settled or occupied territories be terra nullius.

In 1992, the High Court overturned the principle of terra nullius in Mabo v Queensland. However, the concept of “settlement,” the legal analogue of terra nullius at *common law*, was never overturned

It follows from this that either:

- Terra nullius still exists through the common law concept of settlement OR
- The British Crown no longer has any legal claim to sovereignty in Australia

According to international law at the time, the British could not have settled a land that was not empty, therefore Australia was not settled according to the principles of international law in effect at that time.

We represented ourselves on the basis that it would be a contradiction to claim that the courts do not have jurisdiction and then be represented by a lawyer, technically an officer of the court. One mistake was handing our argument on paper to the Magistrate before we presented it – allowing the Magistrate to cut me off half way through presenting the argument on behalf of the group, claiming to have read the rest, and ruling that the court indeed had jurisdiction. The Magistrate gave no substantial reasons to justify his finding, relying on the requirement for us to show lawful excuse under the NSW Inclosed Lands Protection Act, under which we were charged. This was despite the procedural convention, otherwise observed in our legal proceedings, that the question of whether the court has jurisdiction been addressed prior to any discussion of the facts of the case.

Once the Magistrate had found that the court had jurisdiction and the court proceeded to the facts of the case, we disengaged from the rest of the proceedings, refusing to enter any argument in our defence as it had not been shown that the court had jurisdiction.

A significant problem in our case was that there were two groups being heard on the same day. The original group of arrestees had split into a group with legal representation making a different jurisdictional argument that fell within accepted legal parameters; and our group, unrepresented and making a novel argument. Inadvertently, this led to our argument not being genuinely tested. As the individuals in the two groups had all been charged for exactly the same reasons, all arguments and facts of the case had to be heard before a ruling could be made, to avoid a discrepancy in the final decision which may result in a discrepancy of justice. This meant that despite our requesting otherwise, our case could not be considered separately from the arguments put forward by the lawyer for the other group.

Both groups were found guilty on the grounds that we could not prove lawful excuse. However, the parity required of the ruling was not extended to sentencing. The represented received fines of \$300 plus court costs (aside from those with prior offences), as compared with \$400 plus costs for the unrepresented claiming no jurisdiction. Both groups were convicted.

A smaller group had their sentences (including convictions) dismissed under Section 10(1)(a) Crimes Sentencing Procedure) Act 1999, on *appeal* to the NSW District Court. The appeal only challenged sentence severity, and as such did not re-open the question of jurisdiction. Its importance perhaps lies in the main argument made by our lawyer: that had we entered a plea of guilty from the outset we would have undoubtedly qualified for a Section 10 (given the nature of our actions), and therefore we should not be penalised for testing the law. This provides a *precedent* for others making this argument at the level of the Magistrates Court.

Thanks to Nectaria

Pleading guilty or not guilty

The plea that you enter can be a difficult political choice. It should be considered in the context of the aims of the action and your ability to conduct a court case and deal with the range of possible penalties.

Pleading guilty

Many, if not most, activists tend to plead guilty because it can be easier, involves little or no organisation and need not involve legally trained people. This is the dominant reason why people plead guilty to *summary offence* charges arising out of nonviolent actions.

Entering a guilty plea at your *mention date* means that the case will be heard and determined quickly and hence you will not be burdened with a drawn out court case. If you feel that you can achieve more by investing energy elsewhere there is a strong case for a pragmatic plea of guilty.

It is important to note that a plea of guilty will (in the absence of various other factors) ensure a criminal record.

By cooperating with a system which operates on the basis of a large proportion of guilty pleas it might be reasonable to expect a lighter sentence, although this depends largely on the magistrate who hears the case and the charge faced.

Despite the relative ease of pleading guilty, some degree of legal support is still required if people are to minimise the penalties imposed and enter pleas in *mitigation* of sentence. If at all possible those charged should be present and represented at their hearing.

The courts operate on the basis that most people will plead guilty to the charge/s laid against them. Some activists say that pleading guilty supports the system and allows police, on occasion, to get away with the most outrageous charges simply because they were never forced to prove them.

Other activists say that pleading guilty to a charge, by its very nature, recognises the validity of the law and the system of criminal justice.

At a personal level a plea of guilty can be seen as an acceptance that what was done was indeed criminal and worthy of punishment by the state. That is, of course, unless you do not recognise the legitimacy of the state. If this were the case then the most logical course would appear to be the entry of no plea.

Diversion

For minor offences (for example - trespass) diversion may be available to activists who do not have any previous court matters. Diversion provides a chance to avoid a criminal record.

In order to be eligible the offence with which you were charged needs to be triable summarily and not be subject to a minimum or fixed sentence penalty.

In order to be eligible for diversion you need to accept responsibility for the offence. For many activists this raises similar issues as discussed above in the 'pleading guilty' section (ie. supporting the system, allowing police to get away with outrageous charges, recognises the validity of the law, accepting that what was done was criminal).

Additionally, to be eligible for diversion the *prosecution* (the police officer who arrested you) needs to recommend you for diversion. Sometimes it is useful for a lawyer to contact the police officer by letter or phone to put forward arguments why diversion would be appropriate in your case.

If the police officer recommends you for diversion a magistrate or judicial registrar still needs to find you fit for diversion before it can proceed.

You will therefore be required to attend court and present to the Diversion Co-ordinator. You are asked to fill out a questionnaire relating to your 'offending' and your attitude towards it. Again, for many activists balancing political and pragmatic objective can sometimes be a difficult process. On one hand, many activists would not feel comfortable saying they 'regret' the actions they took and they would never do the same thing again, while on the other hand, many magistrates would be very uncomfortable with you writing you are proud of and celebrate your actions, that history will record them in heroic terms and that you are prepared to do the same and encourage others to do the same tomorrow! As always, discussions with lawyers, legal support team and other activists are useful to develop an approach towards the court process that you find ethical, political strategic and pragmatic.

The benefits of diversion are that you do not receive a criminal record, which has advantage when applying for visas for some countries, applying for jobs or for (potential) future court matters.

There are generally conditions attached to a diversion order. Common conditions include:

- a contribution to a fund (sometimes the court fund, other times to a particular charity - in some cases to Friends of the Earth or other NGOs, but in other's to the police association's Blue Ribbon fund!)
- a condition to be of good behaviour for a set period of time (generally ranging between 3 - 6 months)
- writing a letter of apology

For further information see the Magistrates Court 'Criminal Justice Diversion Program'

Pleading not guilty

Many activists feel that by pleading not guilty they can question the validity of laws that they are *alleged* to have broken.

At a political level a plea of not guilty is effective in two ways. The first is that the police have the onus to prove the offence with which they have charged you. In mass actions this requirement alone may seriously overburden the court system. The successful defence of a small number of those charged may also be successful in forcing the *prosecution* to drop charges against other arrestees which cannot be successfully prosecuted.

The second advantage of a not guilty plea can be publicity. If one of the aims of the action was to gain publicity for an issue then

the successful defence of those involved will gain further favourable publicity for the issue. The defence in such cases can be seen as the second half of the symbolic victory of the action.

A not guilty plea is only useful if the case can be won. If people intend to plead not guilty there is little point in doing so unless sufficient effort is put into their defence to give it a good chance of success. The risk of the not guilty plea is that of higher penalties and the imposition of costs on those found guilty. This is the disadvantage of pleading not guilty, it requires organisation if it is to be successful.

No plea

The entry of no plea by a *defendant* will be considered by the court as a not guilty plea.

Refusing to enter a plea or remaining silent when asked is an extension of non-cooperation with the legal system. If you also refused to cooperate with the police when you were arrested this may be a consistent approach. This could be effective at both a personal and on a broader political level.

However, the entry of no plea by a defendant who refuses to recognise the validity of the system of justice will almost inevitably lead to a finding of guilt because (presumably) the only evidence presented will be that of the *prosecution*.

Making political statements in court

In court, there is often an opportunity for individuals to make their own statements about why they chose to be arrested.

The conventional legal wisdom is that the court hears only one limited matter - the charge before it - and does not enter into social or political debate, but carefully constructed defences can often be heard even if they have limited chance of success.

Though the court purports to be neutral, judges and magistrates may conduct proceedings and apply the law in slightly different ways. There are no guaranteed outcomes and often, depending on the magistrate, results will be very different. Someone charged with the same offence as you may get a very different outcome.

Some judges and magistrates are more likely to be sympathetic to your cause and hear your argument than others. The court can be a forum for airing your political opposition, but it can also silence your motivations. It's important not to put too much expectation on the outcome of a court case and to ensure it is not the only strategy you are putting energy into as a campaign.

Alternatively, you may have decided that the court case has wider implications, and you want to use it as another platform for your activism. In some situations this will be successful, in others it will backfire and you will receive a heavier penalty.

Lawyers, focusing on what they believe will influence the magistrate or judge the most, generally minimise what they see as political content. Make sure you have a clear understanding with your lawyer about what is important to you during the court process.

Statements in mitigation

Many activists do this by pleading guilty and making a speech when asked for comment in *mitigation* before sentence is passed. In this case the choice to plead guilty is tactical rather than philosophical. Arrestees may take the same approach but plead not guilty and make their statements from the *witness* stand.

Pleading guilty explicitly recognises that a crime has been committed according to the law.

By pleading not guilty activists stress that they believe they have committed no moral wrong.

Political messages as evidence

You may be able to give direct evidence relating to the charge against you whilst incorporating your own political statements in a form that makes them relevant to the issues of your defence. You can ask your lawyer about arguments that may allow you to use international law as a moral defence, call other activists or even scientists and others as 'expert witnesses', or use information about your protest as evidence.

Melbourne lawyer Len Linden argued before the Court of Appeal of the Northern Territory an *appeal* which arose out of an *alleged trespass* at the Joint Defence Space Research Facility near Alice Springs (commonly known as "Pine Gap"). In defence to the charge, he raised the alleged illegality of nuclear weapons by international law. He suggested that the Facility was tainted with that illegality. The defence, however, was rejected.

The Nuremberg defence

In the Nuremberg trials the Nazi leaders defended their actions on the grounds that they were following orders. This defence was rejected by the *tribunal*. It was found that men and women, whether military or civilian, have a duty to resist orders from above if those orders require them to commit crimes against humanity.

Another activist defence case involved the use of literature on the Nuremberg trials, which states that any person who,

"with actual knowledge that a crime against humanity (or war crime or crime against peace) is being committed,

and having such knowledge, was in a position to 'shape or influence' the policy that brings about initiation or 'continuation' of the crime to the extent of his ability . . . will be responsible if he could have influenced such policy and failed to do so".

Martin J., *Limbo v. Little* 65 NTR 19 at 45, quoting from Frank Lawrence, "The Nuremberg Defence", 40 *Hastings L. J.* (1989).

From this "Nuremberg defence", Len Linden claimed that international law places a personal responsibility upon him as an individual, to do everything possible to prevent such crime not only if he knows that such a crime is being committed or planned, but also if he suspects that such circumstances exist.

Necessity or lawful excuse defence

The *common law* recognises the defence of 'necessity' in criminal matters. The essence of the defence is that there was a threat or 'sudden emergency' which compels the person to commit a criminal offence. That is, the defence involves situations where a *defendant* is presented with a choice of harms – having to choose between committing a criminal offence which will avoid the peril or of allowing the peril to occur.

As such, this defence can be invoked either pragmatically or more strategically by activists. In some cases activists may seek to present evidence of the 'greater harm' (ie. nuclear disaster, climate change, war) they were trying to avoid by their actions to actually seek to have the charges against them dismissed. In other cases activists may seek to make this defence publically in court in order to use the court room as an additional platform to talk about (and received media coverage for) the issues they are campaigning around.

Case study: Kingsnorth Six

In 2008 6 Greenpeace activists were cleared of causing criminal damage at a coal-fired power station. The activists relied on a 'necessity' defence before the *jury*. They argued that they were legally justified in shutting down the coal-fired power station and writing the word 'Gordon' on the chimney, because their actions were trying to prevent climate change causing greater damage to property around the world. As part of the "Kingsnorth 6" defence case prominent witnesses gave evidence about the threat climate change posed including Prof James Hansen, one of the world's leading climate scientists, David Cameron's environment adviser, millionaire environmentalist Zac Goldsmith, and an Inuit leader from Greenland. Not only this 'necessity' or 'lawful excuse' defence allow the activists to be acquitted to the charges they faced, it also allowed them to turn the court room into a further media platform to put forward their message.

See article - John Vital 'Kingsnorth Trial: Coal Protesters Cleared of Criminal Damage to Chimney,' *The Guardian*, 10 September 2008

Case study: Pine Gap Four

In 2005 4 Christian anti-war activists entered Pine Gap's 'Prohibited Area' to conduct a Citizens' Inspection, disrupt the machinery of war and to draw Australia's attention to the missile guidance system. They were charged with *trespass* offences under the Defence (Special Undertakings) Act. During their 11 day jury trial presented evidence Pine Gap's role in the war in Iraq which resulted in civilian deaths and suffering. Although the defence was not successful and they were found guilty, all the activists received light sentences. Additionally, raising this defence allowed them to present moral and political arguments to the court. As one of the activists, Ms Mulhearn said:

'What's moral is not always legal, and what is immoral is not always illegal. If there is a minor law that has to be broken in the pursuit of moral faith then I will break it. I thought it was the least I could do given the magnitude of the crime I was trying to prevent. I was trying to fulfil the promise I had made to the people of Iraq to do something to stop the war.'

See Media release - 'No Jail for Pine Gap Four' *Pace e Bene*, 20 June 2007

Public statements outside the court

Political statements can be repeated effectively outside court, through public speaking or media conferences on the steps of the courthouse, for instance. This needs to be well-organised in order to get maximum media attention. But you also need to consider the impact upon the court case itself.

It is well worth consulting with your legal representatives. Magistrates have no real power of contempt outside their own court rooms and contempt actions have generally only been laid after public comments very close to a *jury* trial.

Public comments about the political issues surrounding a protest action, or about police behaviour at that action, can still be made. The fear of getting charged with contempt can deter important public comment.

Contempt of court

The laws of contempt are designed to protect the principle of the right to a fair trial. In general the law of contempt prevents the publication of *material* that is prejudicial about matters that will be or are currently before the courts. In popular parlance the purpose of contempt law is to minimise the likelihood of 'trial by media'. Types of information which are considered prejudicial

include: details of prior convictions; the creation of an adverse impression of the accused; statements about guilt or innocence of the accused; and in cases where identification of the accused is in issue, the naming of the accused or the provision of other means by which the accused may be identified.

There is a limited form of defence of 'public concern'. However, the closer the comment is directed to the actual subject matter of the trial the less likely it is that this defence will be available. The defence is intended more to protect the publication of material in the context of ongoing public debate about the broader issues, where the risk of prejudice to a trial is incidental and unintended, rather than discussion of the specifics of any particular trial.

Contempt law is against any public comment on an issue that is before the courts and is to be decided by the courts. Notice, though, that the issue to be decided is often a narrow one (did a person commit a particular offence), and does not prevent public discussion of the background or wider context of the events concerned.

So for instance, the charging of a demonstrator at an environmental action does not prevent others from criticising police operations at that demonstration, or from talking about what the action was all about. However, some lawyers advise against public comment that in any way relates to a court case.

People are not prosecuted for proclaiming their innocence of a charge, which is their right.

Total non-cooperation

This has been used as a strategy for dealing with the courts as a way of protesting against the unjustness of state institutions. It has been based on either a political/moral refusal to work with the system or a pragmatic choice to try and make the state pay.

Refusal can include refusing to attend court at all. You can then either wait to be arrested and taken to jail or present yourselves to a police station after a *warrant* has been issued for your *arrest* and volunteer to be locked up on that particular day.

You need to consider the fact that this approach will almost certainly result in you forfeiting bail as well as having to pay any fines issued against you (or serve the equivalent amount of time in prison).

A different form of refusal can be to refuse to speak or refuse to enter a plea (used by Greenham Common women in the United Kingdom). This means that you refuse to say whether you plead guilty or not guilty. The court will basically treat you as having pleaded not guilty.

One group of activists, arrested at Nurrungar military base in 1991, refused to attend court but handed themselves to police in a group to serve their sentence at a convenient time. In this way they were able to maintain control over when and how they dealt with the legal system.

Court as protest

Court rooms have been used by activists as a protest site throughout history.

Protest has been brought into the courtroom in countless creative ways. Activists have dressed up in costumes, unfurled banners, stood and turned their back to the court, worn blindfolds or refused to address the court when asked, gone limp when moved or just shouted out the injustice for all to hear.

When considering any sort of protest in a court room it is vital that you consider that:

- You may face contempt charges.
- The penalties you receive are likely to be more severe than they otherwise would be.
- You may affect the case of other activists on similar charges or from the same group.

Fishing expeditions

The court has sometimes been used as a way of getting information that is otherwise unavailable, by cross-examining officials or calling for documents. This approach was successfully used in the McLibel case against McDonalds in the UK.

However this can be time consuming and expensive, so it's useful to consider other ways of accessing information (eg, Freedom of Information, etc).

Court can also be a way of getting alternative information into court and onto the public record, particularly if good media is used.

It may be possible to call for documents or witnesses dealing with the subject of the original action or to read them into the court record yourself. For example, in explaining why they felt they had to *trespass* at Nurrungar, some activists spoke in court about the functions of the base and its role in US war fighting strategies.

Also see Freedom of information

Learning

Court can be an opportunity to learn: activists can work individually or (more powerfully) together to find out about how the courts

operate and what the applicable law is. However without appropriate preparation, support and strategy, it can be a harsh lesson.

Dealing with surveillance

Organisations involved in controversial issues, particularly those who encourage or assist members to commit civil disobedience or direct action, should be alert to the possibility of surveillance and disruption by police or federal agencies.

Surveillance is the art of monitoring the activities of persons or groups without them knowing they are being monitored. Surveillance has been an intrinsic part of human history but modern electronic and computer technology have given surveillance a whole new means of operation. No longer must it be practised by agents, it can be automated using computers. No longer do people have to be watched – their own activities create records that describe their activities.

In Australia many individuals and organisations have been spied upon, wiretapped, their personal lives disrupted and their organisations infiltrated, in an effort to undermine or draw them away from their political work.

Good organisers should be acquainted with the history of political surveillance and infiltration in Australia, and with the signs that may indicate their group is the target of an investigation.

Do not let paranoia immobilise you

Overreaction to evidence of surveillance can be just as disruptive to an organisation as an actual infiltrator or disruption campaign. You are not paranoid - assume that they *are* watching you. Just stay calm about it.

Also see the Surveillance of activists section under Legal context.

Suspicion of surveillance

The following information is a brief outline of what to look for - and what to do if you think your group is the subject of an investigation. This is meant to suggest possible actions, and is not intended to provide legal advice.

Look for:

Visits by police or federal agents to politically involved individuals, landlords, employers, family members, or business associates. These visits may be to ask for information, to encourage or create the possibility of *eviction* or termination of employment, or to create pressure for the person to stop his or her political involvement.

Uniformed or plainclothes officers taking pictures of people entering your office or participating in your activities. Just before and during demonstrations and other public events, check the area including windows and rooftops for photographers. (Credentialing press can help to separate the media from the spies.)

People who seem out of place. If they come to your office or attend your events, greet them as potential members. Try to determine if they are really interested in your issues - or just your members.

People writing down licence plate numbers of cars and other vehicles in the vicinity of your meetings and rallies.

Telephone problems:

Electronic surveillance equipment is now so sophisticated that you should not be able to tell if your telephone conversations are being monitored. Clicks, whirrs, and other noises probably indicate a problem in the telephone line or other equipment.

For example, the United States National Security Agency has the technology to monitor microwave communications traffic, and to isolate all calls to or from a particular line, or to listen for key words that activate a tape recording device. Laser beams and "spike" microphones can detect sound waves hitting walls and windowpanes, and then transmit those waves for recording. In these cases, there is little chance that the subject would be able to find out about the surveillance.

Among the possible signs you may find are:

- Hearing a tape recording of a conversation you, or someone else in your home or office, have recently held
- Hearing people talking about your activities when you try to use the telephone
- Losing service several days before major events

Evidence of surveillance

Hold a meeting to discuss spying and harassment.

Determine if any of your members have experienced any harassment or noticed any surveillance activities that appear to be directed at the organisation's activities. Carefully record all the details of these and see if any patterns develop.

Review past suspicious activities or difficulties in your group. Has one person, or several people, been involved in many of these events? List other possible "evidence" of infiltration.

Develop internal policy on how the group should respond to any possible surveillance or suspicious actions. Decide who should be

the contact person(s), what information should be recorded, what process to follow during any event or demonstration if disruption tactics are used.

Consider holding a public meeting to discuss spying in your community and around the country. Schedule a speaker or film discussing political surveillance.

Make sure to protect important documents or computer disks, by keeping a second copy in a separate, secret location. Use fireproof, locked cabinets if possible.

Implement a sign-in policy for your office and/or meetings. This is helpful for your organising, developing a mailing list, and can provide evidence that an infiltrator or informer was at your meeting.

Appoint a contact for spying concerns

This contact person or committee should implement the policy developed above and should be given authority to act, to get others to respond should any problems occur.

The contact should:

- Seek someone familiar with surveillance history and law, such as Liberty Victoria, or a community legal centre. Brief them about your evidence and suspicions. They will be able to make suggestions about actions to take, as well as organising and legal contacts.
- Maintain a file of all suspected or confirmed experiences of surveillance and disruption. Include: date, place, time, who was present, a complete description of everything that happened, and any comments explaining the context of the event or showing what impact the event had on the individual or organisation. If this is put in a Statutory Declaration and signed, it can be used as evidence in court.
- Under the *Freedom of Information Act* and the *Privacy Act*, request any files on the organisation from Commonwealth agencies and departments. File similar requests with state police, if your state Freedom of Information Act applies.

Prepare for demos

Plan ahead; brief your legal workers on appropriate state and federal *statutes* on police and federal officials spying. Discuss whether photographing with still or video cameras is anticipated and decide if you want to challenge it.

If you anticipate surveillance, brief reporters who are expected to cover the event, and provide them with *materials* about surveillance by your state police in the past, and/or against other activists throughout the country.

Tell the participants when surveillance is anticipated and discuss what the group's response will be. Also, decide how to handle provocateurs, police violence, etc. and incorporate this into any affinity group, marshal or other training.

During the event

Carefully monitor the crowd, looking for surveillance or possible disruption tactics. Photograph any suspicious or questionable activities.

Approach police officer(s) seen engaging in questionable activities. Consider having a legal worker and/or media person monitor their actions.

Also see Information Coordinator - Support team roles

Suspected infiltrator

If you suspect someone is an infiltrator try to obtain information about their background:

- Where they attended high school and college
- Place of employment, and other pieces of history. Attempt to verify this information. Check public records which include employment; this can include voter registration, *mortgages* or other debt filings, etc
- Check listings of Australian police academy graduates, if available

Once you obtain evidence that someone is an infiltrator

Making accusations about someone may constitute *defamation* if the accusations are unfounded. Making unfounded accusations may also have the effect of isolating someone who may have been highly committed to your campaign. Get your facts straight and consider these issues carefully.

- Confront him or her in a protected setting, such as a small meeting with several other key members of your group (and an attorney if available)
- Present the evidence and ask for the person's response
- You should plan how to inform your members about the infiltration, gathering information about what the person did while a

part of the group and determining any additional impact they may have had

- You should consider contacting the press with evidence of the infiltration

If you can only gather circumstantial evidence, but are concerned that the person is disrupting the group:

- Hold a strategy session with key leadership as to how to handle the troublesome person
- Confront the troublemaker, and lay out why the person is disrupting the organisation. Set guidelines for further involvement and carefully monitor the person's activities. If the problems continue, consider asking the person to leave the organisation

If sufficient evidence is then gathered which indicates they are an infiltrator, confront the person with the information in front of witnesses and carefully watch reactions.

Reporting surveillance

Report telephone difficulties to your telephone company. Ask for a check on the lines to assure that the equipment is working properly. Ask them to do a sweep/check to see if any wiretap equipment is attached. (Sometimes repair staff can be very helpful in this way.) If you can afford it, request a sweep of your phone and office or home from a private security firm. Remember this will only be good at the time that the sweep is done.

File a formal complaint with Australia Post, specifying the problems you have been experiencing, specific dates, and other details. If mail has failed to arrive, ask the Post Office to trace the envelope or package.

Request a formal inquiry by the police, if you have been the subject of surveillance or infiltration. Describe any offending actions by police officers and ask a variety of questions. If an activity was photographed, ask what will be done with the pictures. Set a time when you expect a reply from the police commissioner. Inform your local member of parliament and the media of your request.

If you are not pleased with the results of the police reply, file a complaint with the Police Ombudsman. See Complaints against the police section.

Demand a full investigation. Work with investigators to insure that all witnesses are contacted. Monitor the investigation and respond publicly to the conclusions.

Initiate a lawsuit

You should consider getting legal advice about the potential to bring civil proceedings. Before embarking on a lawsuit, remember that most suits take many years to complete and require a tremendous amount of organisation and legal workers' energy and money.

Always notify the media

Keep interested reporters updated on any new developments. They may be aware of other police abuses, or be able to obtain further evidence of police practices.

Media coverage of spying activities is very important, because publicity conscious politicians and police commissioners will be held accountable for questionable practices.

This section has been adapted to the Australian context from an article by Linda Lotz of the American Friends Service Committee.

Set-up support team

This information has been developed to help organisers form an effective Legal Support Team for a large action.

It is a general overview of places to begin discussion and work. Read Legal Support Team roles for a look at the details and logistics of a legal support team.

It is worth using the International Covenant of Civil and Political Rights (ICCPR) as the basis of the Legal Support Team's mandate.

Questions to consider

- How will the legal team make decisions?
- How will the legal team be accountable to the larger group?
- What are the goals of the legal team? What assumptions are implicit that need to be made explicit?
- Who are you committing to provide legal support for? (e.g. anyone arrested in conjunction with the action, only those participating in legal solidarity, only those whose tactics or charges fall inside the "action guidelines", etc.)
- What are likely police tactics (e.g. police picking people up in small groups after the action, rather than in mass during the action)? What are possible strategies to deal with these tactics?
- Are there proactive legal or political steps you can take to thwart police or government harassment and repression? (e.g. *intervention orders*, putting the police on notice, media blitz, human rights observers etc.)

International legal support groups

MISSION STATEMENTS OF INTERNATIONAL LEGAL SUPPORT GROUPS

In developing a operating philosophy for your group, it may be useful to draw on the articulations of other established groups committed to activist legal support

Green and Black Cross (UK)

We believe in and support the kind of democratic change that comes from below. We see in history a narrative of progressive change when people come together in the face of dominant powers to confront problems and take their fate into their own hands. Through a diversity of tactics we see change occurring in this way from the fight for the five day working week, the movements for women's suffrage to the Poll Tax rebellion. For us, as the chant goes, this is what democracy looks like!

At the same time in these histories we find repression and abuse of social struggles by concentrated power -be that state, big business or 'revolutionary' Political Parties. For this reason we share a tradition and commitment to non-hierarchy and collective decision making.

Green and Black Cross has not been set up to direct a movement. Instead our role is one of support and developing the strength of movements through the practice of non hierarchy and mutual aid.

Die Rote Hilfe ('Red Aid') (Germany)

The Rote Hilfe is a solidarity organization that supports individuals from the left who are politically persecuted. It focuses on political refugees from the Federal Republic of Germany, but also works to support those persecuted by forces from other countries. We support all those who because of their left political activity lose their jobs, have to go before the court or are sentenced. Similarly, we support those who are persecuted in another state and who are denied political *asylum* here.

1. We provide both political and *material* assistance

- We prepare together with the *defendants* before the trial and make known his/her political background, especially in public.
- We take care of solidarity events, fundraisers and grants to ensure that the financial burden borne by many together. We aim to cover legal and court costs partially or completely, but also payments for living expenses will be paid if heavy fines are incurred, people face job loss or imprisonment or the victims or their families are in trouble.
- With political prisoners, we maintain personal contact and advocate that the prison conditions improved, especially solitary confinement is lifted, and we demand their release.

2. The Rote Hilfe is not charity

Supporting individuals facing repression is simultaneously a contribution to strengthening the movement. Each and every one participating in the campaign should be able to do so in the knowledge that afterwards, if they face criminal proceedings are will not be left alone. One of the main purposes of government persecution is to isolate individuals who have taken to the streets together, by picking out individuals, imposing exemplary punishments as deterrents. Against this, Red Aid promotes the principle of solidarity in order to encourage the continuation of the resistance.

Besides the direct support for those affected by state repression, the Rote Hilfe aims to generally defend against political persecution. For example, we work before demonstrations to make sure that the participants are equipped and prepared to protect themselves and other from injuries, *arrest* and state violence. We are committed to campaigning against the strengthening of criminal *sanction* or repressive laws, against the weakening of the rights of the criminal defense and defendant, against isolation punishments, and against further restrictions on the freedom of speech and assembly.

Legal connections

It's crucial to establish good relationships with the local legal community.

Connect with progressive legal organisations, as well as public defenders. Also, if you don't already have ties in the local legal community, ask local activists which lawyers might be interested and who can help the legal team network.

Arrange a group meeting with all the lawyers who are interested and all members of the legal support team.

Lawyers are usually busy, so the earlier you can let them know what kind of help you will need, the better.

Make sure everyone's commitments are clear so that you know what to expect and they don't feel put out. Don't expect lawyers to come to every meeting or training, but let them know what is happening and that they are welcome to come.

Communication is key. Be friendly and respectful and make them a part of your team.

Issues to flag

Make sure legal team members and volunteers don't always get stuck doing the same mundane tasks. This is especially true with the Away Team (the people who go out into the streets, jails, and courts), which can be fun and exciting, versus the Office Team

(the people who take all of the calls and process all of the information), which can be frustrating and stressful.

The legal team can only be effective if everyone has good information. Share information effectively between Away Teams and the office as well as within the office.

Most lawyers are used to working hierarchically. There are sometimes issues with control and power dynamics between activists and lawyers. This can be a big problem when it comes to decision-making and information sharing. Be sure to identify and deal with any issues before the action.

Team safety

Ensure the safety of the Legal Support Team, especially if you are holding sensitive photos, footage or other evidence of protests, or if Legal Support Team spokespeople are making media comment about sensitive issues (such as inappropriate police behaviour at protests), as they may themselves experience harassment or intimidation from authorities.

It is important to prepare for such possibilities and but measures in place to look after the safety of legal support team members, media spokes people and the information you have collected.

Basic 'security culture' measures are important ways to protect the safety of the legal support team.

- Turn off phones/take batteries out/put them in another room during meetings.
- Think about what information is distributed via email or other electronic communication.
- If members of the group are feeling unsafe, support each other, some support tactics include daily telephone check ins, making sure people are not alone at night if they don't feel safe in that situation etc.
- Providing Activist Legal Support can be exhausting, time-consuming and extremely stressful. Be aware of your own limitations, and be aware of burn out. Identify it early and make sure to rotate tasks if possible to minimise these risks.

Even though the role of the Legal Support Team is to support the movement - make sure the team has appropriate support as well!

Information security

Ensure the safety of information, The Legal Support Team is likely to have access to information - such as statements about police violence, footage of police behaviour - which may be controversial and needs to be properly protected. Protecting this information requires making sure that information is subject to legal professional privilege as well as taking *material* steps to ensure its safety - such as keeping information in locked spaces, having duplicates or backups of important files etc. Much of this is common sense - don't leave delicate information unprotected or lying around!

Establish processes from the beginning about how the Legal Support Team will protect information collected. Consider having a support law firm or community legal centre state that they are the lawyers on the record for any issues arising out of the protest (whether criminal or civil) and thus that they consider all protesters as potential client, and all material collected by the Legal Support Team or Legal Observers as privileged and protected as part of their client's case.

If you are taking statements from protesters, attempt to establish a lawyer/client relationship as soon as possible (that is ask them to sign a retainer, authority to act or both) so that any statements taken or material collected is subject to legal professional privilege. Again, approach supportive legal firms or community legal centre to request whether they are happy to enter into such relationship with protesters.

Also see Activist security resources

Volunteers, students, paralegals

Volunteers are critical for the success of your Legal Support Team.

Here are some tips:

Think about how you plan to train volunteers and incorporate them into the office. Do recruitment and get them involved early on so that you'll have enough people. Coordination/scheduling of volunteers is difficult, and should be done as much in advance as possible. The legal support office or tent can be hell, and people can get burned out quickly. Show your appreciation, let people take breaks, and vary their tasks.

A key part of protecting the safety of the Legal Support Team, the information retained by the Legal Support Team and the activists and movement you are supporting is making sure that all volunteers are clear about *confidentiality* and privacy issues. Make sure volunteers are clear about what information from meetings or other interactions is confidential and cannot be shared further and are aware of their responsibilities around this. It may help to ask volunteers to sign a volunteer agreement specifying their objections in relation to confidentiality and privacy. Again, supportive community legal centres may be prepared to consider volunteers with the legal Support Team as volunteers for their service and then using their volunteer privacy and confidentiality agreements for this purpose would be appropriate.

Trainings

Be prepared to give trainings on Know Your Rights, Legal System 101, Legal and Video Observing, and Legal Solidarity (if you're using it).

Also see Training for activists

Support team office

It is important to have a well - organised and co-ordinated office to run complex legal support. These ideas and suggestions are based on the S11 Legal Support Team and also from large global justice actions in the USA.

Your Activist Legal Support Office may well be in a tent or vehicle if the action is taking place outdoors or in an isolated area. The same ideas and principles apply.

Research

Information on courts, jails, police stations including phone numbers, addresses, hours/days open, and person to speak to or ask for when calling and if they're friendly or helpful. Also get directions for both public transportation and driving.

Action contact information: convergence centre, medical team, communications team, etc. Medical contact information: phone numbers and addresses of local hospitals and free clinics Information on what streets will be closed, what detours are available, etc.

Office layout

It's a good idea to think about how you would like the office set up before you do it. Some things to think about:

Where to put wall charts so that all volunteers answering phones can see them How to arrange multiple desks with multiple phone lines that enable all people answering phones to talk without bothering and hear without being bothered.

Finding a quieter space for the computer that's not too removed from the rest of the office

Wall charts

The legal office can use wall charts as part of the information sharing system. The update charts should be on the wall and accessible, so the info coordinator can update them. If your office doesn't have much wall space, you can make small charts for the contact info and tape them to each desk. Here are the charts you'll need to have before the action starts.

- Street and jail update charts
- Legal team update
- Government contact numbers - phone, fax, addresses, email and websites, if available of jails, courts, judges, mayor, police, police commissioner, prominent state and city officials, influential private citizens
- Legal contacts - Liberty - the Victorian Council for Civil Liberties, community legal centres, any other civil liberty organisations
- Legal team contact numbers (note which numbers should not be given out)
- Action contact numbers - convergence, safety team, communications team, medical team etc.
- Medical contact information - local hospitals, free clinics, street medic centre
- Fundraising information - where people can send money for the legal team
- Where is everyone? Have a chart of courts and jails and post it with the names of lawyers and legal team members that can be moved to show where they are.

Call logs

Make sure you have lots of notebooks on hand - at least two for each volunteer and legal team member. On the inside cover, write a sample entry to remind volunteers of the information that is absolutely necessary. On the back cover, write a key for highlighted categories. Find a safe place to keep the notebooks.

Maps

It's helpful to have a very large map on the wall with location of blockades, one-way streets, detours, locations of jails and courts, etc. marked clearly. Have lots of regular street maps (preferably marked as well) to send with legal teams and runners who need to navigate the city.

Contact lists

There are some contact lists that shouldn't be posted on the wall, but to which members of the legal team should have easy access. The information might be in a database, but it's helpful to have it printed out, too, particularly since whomever needs them will often have to call down the list. These lists include:

- Volunteer contact information
- Lawyer contact information

- Legal observer contact information.

Office supplies

20-30 notebooks, pens, highlighters, markers, butcher paper or 3' X 5' pads, printer paper, file folders, file cabinet, masking tape, push pins, paper clips, binder clips, stapler and staples, post-it notes, phones, clocks.

Photocopies

Training *materials* documents.

Documents

All documents should be copied electronically on disk, on the hard drive, and on a USB disk if possible. Hard copies should be produced and copied according to the particular need for each document.

Arrestee / Injured Person Instruction form

(have hundreds available; each desk/phone should have a stack)

Arrestee Tracking Sheets

(numbers depend on how many people are arrested; most should be sent with the legal team member going to do outtake at the jail but some should remain at the legal office for people who we might miss).

Printed reports from databases

(each desk should have at least one copy of arrestee database, which will have to be printed each time it is updated; each desk should have at least one copy of the legal support person database.

Copies of any media releases

(one or two copies of this will be adequate, one for the flak and other legal team members working on media).

See Support team resources for above mentioned pro-formas.

Databases

Secure and well-maintained databases can be crucial for keeping track of mass *arrests*, injuries or police complaints.

Database for arrestees:

- Name/nickname
- Affinity group
- Legal support person with contact info
- Arrest time
- Arrest location
- Where detained
- Booking number
- Gender
- Date and time of first and subsequent contacts with legal team
- Asked to see legal team/lawyer? How many times? When?
- Medical info
- Notes

Lawyer database:

- Contact numbers for attorneys
- Each attorney's availability/schedule
- Time and date dispatched
- Location dispatched to
- Activist dispatched with

Legal observer database:

- Legal observer name
- Contact info

- Availability/schedule

Legal support person database:

- Affinity group
- Legal support person name
- LSP contact number

Volunteers & responsibilities

Volunteer responsibilities

- Sign a non-disclosure agreement
- Work no more than an 8 hour shift
- No sleeping at the office (except if you're working a graveyard phone shift)
- If you're in the office, you are working
- Know security protocol and follow it
- Let people know what you'd like to do, what you don't mind doing, what you need from them
- Let people know if you're tired, discouraged, stressed, or burnt-out
- Let people know when you need information or help accomplishing a task.

Legal team responsibilities to volunteers

Maintain a healthy office environment Make sure volunteers aren't stuck doing work they hate Keep volunteers informed about office procedure and what's happening in the streets Check in to see how volunteers are feeling and how office procedure can be improved Do an exit interview when volunteers leave to see how they felt about their experience and what they would change about office procedures.

Support team roles

A well organised Support Team, with clearly designated roles, is important to the success of an action.

A legal Support Team ideally has members in an office base which include an information coordinator and media management person amongst others; members on the streets; and representatives able to visit activists in jail if *arrests* occur.

The Support Team can coordinate, liaise, build trust and facilitate communications, as well as acting as witnesses and providing updates on the status of protests and actions.

Office based roles

The Legal Support Team Office can also be a tent or vehicle if the action is outdoor or isolated.

Information Coordinator

The job of the IC is one of the most challenging. It involves:

- Having a good overall sense of what's happening both in the streets and in the office
- Knowing how the office systems are set up, how they are working or not working, and changing them in order to make them more effective
- Determining what info has been sufficiently corroborated and should be put on the Street Updates wall chart
- Coordinating volunteers
- Handling difficult situations, possibly including but not limited to: irate callers, person shortages, reticent lawyers, needy arrestees, and confused, sleep-deprived, or slacking volunteers

Also, in large, complex actions:

- Communicating between the Legal Observer Team and the legal support team office
- Calling and dispatching lawyers with a legal team member (Away Teams)
- Taking calls from the Legal Team (if there is a designated line for them to call)
- Deciding what information needs to be conveyed to lawyers
- Prioritising lawyer visits (to where, to whom).

One of the hardest things to do efficiently is to get important information from the phones to the update charts. Whatever you as the IC decide, the most important thing is that you communicate with the volunteers about what they should be doing to help you

facilitate the flow of information. In large actions, it is helpful to have at least two ICs, with at least one in the office at all times.

Other information systems you may want to think about:

- How and where to compile arrestee questions, requests and messages 1) for lawyers and 2) for others
- How to make sure important information gets communicated between lawyers and the legal team
- Where to keep Police Complaint Reports and other sensitive information
- How to make sure the AG legal support person information is being updated.

Office support

It is important to keep people alive and healthy. This often gets overlooked. The Office Support makes sure:

- People are eating and sleeping
- There is food in the office and meals prepared
- The office is a relatively sane, calm and orderly space ?? The office rules are followed.

Media management

In a mass action scenario, the legal office will receive a lot of media calls. Because whatever we say to the media can be used against us and against those arrested, the legal team must be very careful when talking with the media. Volunteers should refer all media calls to the flak or an available legal team member.

All members of the legal team should:

- Reach agreement about what information should be communicated when and by whom
- Go to a media training
- Feel comfortable with referring calls to the media team for the action or asking journalists to call back at a later time (especially when the office is busy).

On the streets

It's important to have legal support team members or representatives on the streets in order to:

- Build trust and confidence in the legal support team
- Troubleshoot - go to places where civil disobedience and/or mass *arrest* is occurring in order to act as a police liaison (*only* if there isn't one already), take notes, and be reliable witnesses
- Pass out stickers and other legal info
- Give updates to activists on numbers of arrests, and activity in courts
- Call legal office with updates from streets!

*Note: It's nice to have lawyers on the street with legal support team members, but it is not crucial and should be the lowest priority in assigning lawyers to tasks. Also, lawyers sometimes get worried about becoming witnesses to cases they may work on later.

Jail visits

Depending on the city and the circumstances you are in, activist legal team members may or may not be able to do jail visits with lawyers. If they can, they will be able to:

- Get pertinent but legally sensitive info from arrestees
- Give arrestees emotional and moral support
- Build trust and confidence in the legal team and in each other
- Share information from other arrestees
- Share information about action on the streets, about activity in the courts
- Call legal office with updates from jails!

If arrestees are using Jail Solidarity, legal pairs can:

- Arrange group meetings
- Arrange group negotiations
- Facilitate communication amongst all arrestees about strategies, tactics, demands, and negotiating positions
- Call legal office with updates from jails!

If activists cannot go into jails with lawyers, there are other options. The legal team might choose to send a member down to the

jail to meet with the lawyer before and after the visit. They might also choose to get people in to do jail visits one-on-one. The purpose of these would not be to discuss their case or specific situation, but to give moral and emotional support to the arrestee.

Jail releases

Give emotional and moral support to activists being released from jail by:

- Building trust and confidence in the legal team and in each other
- Having everyone released fill out detainee forms
- Having everyone fill out police misconduct reports
- Photograph/videotape and document injuries
- Take statements on tape recorder
- Help people find a ride home

Give people being released information about:

- Free clinics
- Continuing contact details for the legal team

Call the legal office with updates on their release and help organise a jail vigil for those remaining.

Courthouse/bail hearings/mentions

Get as much information about *defendants* as possible including:

- Name
- Case number
- Charge
- Plea
- Arraignment, mention or other hearing date
- Conditions of release
- Bail
- Judge
- Prosecutor
- Courtroom number

Also:

- Give emotional and moral support to defendants and their friends
- Help build trust and confidence in the legal support team
- Network with lawyers
- Call legal office with updates from courts

Negotiation

If practicing Jail or Court Solidarity, a legal team member might be needed to help with negotiations. As a member of the negotiation team, they would:

- Help convey to the prosecutor the positions of the activists
- Make sure lawyers are accurately representing the positions of the activists
- Help convey the strength of solidarity and the trust and confidence the arrestees have in each other
- Call legal office with updates!

Information sharing

Information sharing is one of the most difficult things to do effectively in a legal support team.

Information sharing is challenging within the office and also between the legal away teams and the legal office. Having office systems set up in advance and well-trained volunteers will greatly help internal information sharing. Daily meetings, good mobile phones, and designated check-in times are ways that might facilitate information flow between away and office teams.

Support person info

There are a lot of roles the legal support person can fill. Below are some examples. Don't feel like you're disqualified if you can't do them all. Just let your affinity (or wider) group know your limits so they can plan ahead and maybe someone else can help be the legal support person with you.

The *Legal support person info sheet* may be useful too - you can print it out and use it for each person in your group. Please keep these forms confidential and return them to the individual or hand them on to their lawyer if they request.

Download *Legal support person info sheet* pro-forma at Support team resources

Before the action

If people are going into a known arrestable situation, know as much of people's info as they're comfortable giving - including real full name, *arrest* history (not just activism related), outstanding *warrants*, responsibilities they need covered if arrested, emergency contacts. If people are unsure whether they may be putting themselves in an arrestable situation, ask them to consider these things beforehand anyway and make it clear that they should get this information to a legal support person as soon as possible.

Arrange ahead of time, *and let ALL of your affinity group members know*, a local number that accepts collect calls from jail where you can be reached, or that you will be checking regularly and frequently.

Know or find out people's medical info: do they suffer from asthma, heart problems, allergies; do they require prescription medications; and record their doctor's name and phone number.

Have access to people's IDs, bail money (or sources of bail money - friends, parents, etc.).

During the action

DON'T GET ARRESTED. Your role as a legal support person is vital for those who are arrested and you are much more use outside than in!

When people are arrested ask the senior police officer on site to let you know where they will be taken to be processed and also what charges they may be facing. Inform them (if you have been told to) of any medical issues arrestees may have. They may split up the arrestees or may take them to a distant police station for processing, so be ready to travel.

Taking notes

You must anticipate, because once the action starts you will not necessarily have time to get enough down. As soon as possible after an incident or *arrest* (whether your own arrest or someone else's), sit down and write out everything you remember about the incident - particularly details like times, locations, movements, statements or conversations, etc. You will be surprised how quickly you can forget details, and the trial may not be for another year or two.

Download pro-formas for *Arrestee/injured Instruction Sheet* and *Arrest Watch* at Support team resources

Observation paper and pen - use them to:

- Write names of arrested persons and their phone numbers, their friends' phone numbers, their condition before they disappeared from the scene, the words spoken by police during their arrest, their words, the number of the car or wagon they are put into, etc.,
- Write down police badge numbers and or descriptions of police involved in the arrest (of those that are aggressive, those who make arrests or are just on the scene, since sometimes there may be testimony from police who were not in fact at the scene at all. Of course, photographs and sound recordings are also useful;
- Record significant conversations;
- Record licence plates of vehicles (and/or squad car numbers if police vehicles) and the description and location of vehicles.

If you are witnessing the arrests yourself, take detailed notes of who has been arrested, the numbers or identifying information of arresting officers, times, and any excess force used in the course of the arrest. Be sure to write this out later as a *statutory declaration* if necessary.

After an action

- If you are working with lawyers, please inform them of any *arrests* and provide all details of where the arrestees have been taken, what charges they may face, etc.
- Keep security and *confidentiality* at the forefront of your mind. Remind people calling that phones may be tapped (the jail's and/or yours).
- Get (and keep track of) arrested people's booking and arrest numbers and upcoming court dates.
- If and when you hear from your friends in jail, contact the rest of your affinity group and others the arrested folks want

informed of the situation. Update those people regularly, even if nothing's changed.

- Be able to arrange travel home for your arrested friends. This can mean arranging a friend with a car, collecting money for public transport, or providing their own transport outside the police station following the arrest.
- Be available until everyone in your affinity group is out of jail.
- Be able to get messages from the outside world to your arrested friends. This is a HUGE morale booster.
- Start a call-in or write-in campaign. Call your local member of parliament; the police commissioner, and radio talk back lines to explain what has gone on and to let people know how many people have been arrested. Write a letter to the editor of papers like the Age, the Herald Sun or local press highlighting any issues that came about because of the arrests, including denouncing police harassment, misconduct, unlawful arrests, and/or the attempt to oppress and silence people.

Post-jail releases

- Copy (and keep track of) everyone's paperwork from the police (arrest reports, etc.), jail (booking info, property reports) and court (hearing dates, info on charges, etc.).
- Remind people about their upcoming court dates by calling, mailing and emailing them.
- Have extra Police Complaint forms for your affinity group members to fill out at the action, or after. They also lay the groundwork for suing the police.
- Get your complaint reports to the legal team (sometimes they need to be hand delivered).

Adapted from *material* developed by the Midnight Special Law Collective

Training for activists

This section contains a sample agenda for a short activist legal training and links to other training resources throughout the site. Use other handouts on this site as required.

Designing a legal Training

Each activist group has different needs and experience levels so strive to tailor each training accordingly.

It is important to work with the activists and any lawyers involved to make sure your information is relevant, authentic and accurate. The strength of activist legal trainings is that we can tailor a training for a group's specific needs without having to create an entirely new workshop.

It is important that trainings be more than just quick listings of possible charges and likely fines. These can sometimes deter activists rather than empower them.

When it comes to disseminating skills which allow activists to be safe, more effective, and make informed decisions, role-plays are a highly effective training method.

Good activist legal training includes a series of brief role-plays, where trainers take the role of police officers and participants play the role of the activist.

Each role-play is accompanied by a brief discussion, and a question and answer session, before moving on to the next role-play. The format keeps the audience's attention, and drives each lesson home.

A simple training can include 10 such role-plays in about two hours.

As a Legal Support Team or legal trainer you can expand your menu of role-plays to encompass an *arrest* at a protest, police attempts to intimidate activists into giving up their rights, and others. Police attempts to move a stall, police attempts to use bluff and threats when questioning an activist, police attempts to search an office or home.

Training role-play #1 - Booking

Booking role-play (20 minutes prior to start time)

As people enter the space for the workshop, have two volunteer police 'question' and 'book' the participants as they come in the door.

Police should use 'bluff' and state that they will be arrested if they go inside. Police should attempt to get participant's names, IDs and searching them, etc.

This should be as realistic as possible (perhaps costumes, notebooks, etc.).

Training role-play #2 - Introduction & go-around

Introduction and go-round (10-20 minutes)

Have participants introduce themselves, debrief the role-play, and describe what they would like to get out of the workshop.

Training role-play #3 - Info, solidarity & support

Information, solidarity and support (10 minutes)

Facilitators to briefly introduce and describe three core principles of activist legal support:

- Legal Information needs to be accurate, comprehensive, accessible and useful.
- Activist legal support should be well-planned, capable and effective to meet the level of legal or political repression that we face.
- Solidarity involves a broad range of behaviours and tactics to take care of each other and support one another.

We have more power when we act together than when we act alone. Solidarity is the way we protect each other in our struggles, share the consequences and mitigate the suffering we encounter when confronting oppressive power. The purpose of solidarity is to build our movement, and to embody our mutual care and concern for justice .

Starhawk, Solidarity: A Rough Guide.

Training role-play #4 - Rights & freedoms to protest

Rights and freedoms to protest (10-20 minutes)

Group to brainstorm human, civil, political, *common law* rights that they are aware of. Trainers to highlight others. Discuss or distribute summaries of the ICCPR.

Facilitator to begin discussion:

Obviously, there is a difference between our rights in theory and our rights in practice it is up to you decide when and how you wish to assert and exercise your rights.

In general, when interacting with police or other agents of the state, it can be useful to assert your rights when you feel they are being violated, but fighting or arguing with them is often pointless and may make you the target of greater repression.

Discuss ways of asserting civil and political rights: doing the protest or rally, using legal or human rights observers, via police liaison, inform media when rights infringed, fighting the violations of rights afterwards in the courtroom, or in the court of public opinion'.

Also see: Our rights to protest section of this website.

Training role-play #5 - Activist legal support

Activist legal support (30 minutes)

Ask group to brainstorm on paper or split into small groups to develop activist legal support needs for each of the headings below: It may be valuable to use current campaign or action to focus discussion.

Before *arrest* prepare with your affinity group to have a legal support person who will be in contact with the legal team, inform yourselves about the law, plan for the possibility of arrest and consequences, and any non-compliance tactics you may want to use (e.g. response to arrest, leaving ID with the support person).

During arrest focus outwards notice who is witnessing the arrest, what are the circumstances, think of ways to support the people being arrested, stay calm and maintain dignity.

After arrest Get in touch with the legal team, report the arrest, write down information (times, badge numbers, etc.) as soon as possible.

Before detention think about the things you may need in detention (medicine, etc.), the people who should be contacted (family, work...) or things that should be done (feeding pets...).

During detention communicate with the people who you are detained with and support each other, identify vulnerable members of the group and try to find ways to protect them from oppression. Use group decision-making to decide if you want to engage in non-compliance (e.g., refusing to identify, passive resistance, refusal to wear clothes, hunger strikes, etc...) or other tactics, and what the goals of such tactics are. Don't pressure others into using non-compliance tactics. For people on the outside, this means not forgetting about people on the inside, and letting them know we are there for them, even if they are in for a while.

After detention don't be afraid to talk about your experiences detention can be traumatic, and you may not feel the effects right away. Be there to support others when they leave detention.

Court solidarity the trial can be a long and isolating process, especially if you plead not guilty, and you will need to support each other throughout both inside and outside of court. This will also involve helping to raise funds for defence, and helping to keep

track of everyone as they go through the system. There is nothing more depressing than being the one person in a large group who happened to get charged with a political "crime", and finding yourself alone during your court appearances. Be there to support your friends, comrades, fellow activists.

Training role-play #6 - Interaction with the police

Interaction with the police (15 minutes)

Use a short role-play to start off discussion of police powers and your rights. Roleplay: interacting with police police officer approaches activist and tries to get information, ID and search bag, pockets. Let group suggest what the activist's rights are. Speaking to police Points to make:

In general, you are under no obligation to speak to police officers or to answer their questions (certain exceptions, such as when driving...).

Ask if you are under *arrest*, if not, make it clear you wish to leave, try to walk away.

Right not to be arbitrarily detained or imprisoned.

Right to remain silent.

Remember: it is probably better to say nothing than to lie to the police lying can lead to charges of obstruction. The police are trained professionals and have many techniques for gathering information that may not be obvious to you. Any information you give them can and will be used against you (both in court and outside of court), even seemingly unimportant comments help them to make connections between people and groups in our movements, or to become more familiar with our modes of communication.

Even if, for whatever reason, you decide to talk to the police, do not talk to the police about others let other people decide if they want to share information about themselves with the police.

Training role-play #7 - Identification

Identification (10 minutes)

There is no obligation to carry or show identification in Australia, EXCEPT:

- if you are driving a motor vehicle you must show licence, insurance, registration passengers do not need to identify themselves.
- if you have committed an offence, you are under obligation to identify yourself refusal can lead to charges of obstruction and/or failure to identify and you can be arrested or detained until you identify yourself.
- if you are in a location not accessible to minors (bar, restricted movie, etc.) you may have to show proof of age.

Police officers are under the obligation to identify themselves, at least by giving you their name, station and badge number. Don't hesitate to ask them to identify themselves, and write down the number (or memorise it).

Training role-play #8 - Search & seizure

Search and seizure (15-20 minutes)

Police search role play:

Two or more police arrive at the front door of your office for a noise complaint.

Go out onto the sidewalk, speak to them on public property they have no right to come onto private property without *consent* unless:

- they have reasonable grounds to believe a crime is in progress
- they are in hot pursuit of a suspect/escapee, or
- they have a search *warrant*.

If they have a search warrant, ask to see it as well as their identification write down names and badge numbers, and call your lawyer as soon as possible. Make it clear that you do not consent to the search, but do not interfere with the search (you could be charged with obstruction). Keep a list of anything they take with them or damage.

The police do not have the right to search you or take your stuff unless:

- you are under arrest
- they have a search warrant, or
- they have reasonable grounds to believe you have an illegal weapon or narcotics in your possession (the way you look, talk or dress and the company you keep are NOT reasonable grounds for a search).

Always refuse to give consent to a search make it clear to the police and to any witnesses that you are refusing. If the police believe they have the right to search you, they will do it anyway, but your refusal may make anything they find *inadmissible* and may allow you to pursue *sanctions* against the officers for illegal search and seizure.

Although you should always refuse a search (even if you think it might be lawful), it is rarely a good idea to physically resist a search. You technically have the right to defend yourself against unlawful searches, but police have the right to use necessary force to make you comply with a search if they have reasonable grounds to believe it is lawful. It is usually safer to let the police search you and then fight about this in court.

In particular when it comes strip searches, you have the right to be searched by an officer of the same sex, and in relative privacy. Strip searches should not be used as a form of intimidation or punishment.

Training role-play #9 - Arrest & detention

Arrest and detention (10-20 minutes)

The police can *arrest* you if:

- they have a *warrant* for your arrest or are aware that a warrant for your arrest is outstanding, or
- they have "reasonable grounds to believe" that you have committed an *indictable offence*.

Everyone has the right on arrest or detention:

- to be informed promptly of the reasons for their arrest;
- to retain and instruct a lawyer without delay and to be informed of that right; and
- to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Training role-play #10 - Right to silence

Right to silence (10 minutes)

Trainers to discuss and reiterate the following points:

1. The police are trained professionals who have many little tricks to try to make you talk. You have to insist that you do not wish to discuss anything about the charges. Moreover you will be unwise to get into discussions about other things. Don't assume that casual discussions are not a way to gather information about you or the charges. In the cells do not discuss your case with anyone.
2. You should remain silent. And request to speak to your lawyer immediately. Do not waiver. Do not sign any declarations. Do not discuss anything about your case. Do not even discuss an *alibi*.
3. Choosing to exercise your right to remain silent will NOT be held against you by the court, although the police might try to convince you otherwise.
4. Also, don't ask other people about their cases, and remind them not to talk if they start to tell you things you don't need to know.

You might decide not to identify yourself. Or you may decide to identify yourself but not to provide your home or work place address. There can be very practical reasons why you would not wish the police to have this information. If you refuse to provide this type of information then you will likely be held for a bail hearing in the court.

Training role-play #11 - Bail & bail resistance

Bail and bail resistance (10-20 minutes)

Discuss the purpose of bail. Clarify the difference between 'own recognisance' and 'monetary bail'.

Explain the common police strategy of placing special conditions on bail. And discuss the tactic of bail resistance, the collective refusal to sign bail till a certain demand is met, such as the removal of a bail condition.

See Release on bail and print and distribute copies of section Police powers and your rights

Training role-play #12 - Should I get arrested?

Should I get arrested? (20-40minutes)

Print sections on Impact of criminal record and Police powers and your rights then handout.

In small groups or in pairs ask participants to discuss their fears and concerns about the possibility of getting arrested and charged.

Facilitate discussion:

- Some activists choose to disobey or break a law as an act of civil disobedience: the deliberate, open and peaceful violation of particular laws, regulations or instructions which are believed to be morally objectionable or unreasonable.
- Other activists go to great lengths to avoid *arrest* or see arrest as an unfortunate consequence of taking part in an action. Arrest can effectively remove you from the action, make you vulnerable to police abuse, and tie you up for months in court action.
- Whatever your views on getting arrested, before participating in any political action that involves the risk of arrest, two questions are worth considering.
- Will getting arrested at this action help to achieve the campaign's strategic aims?
- And are you willing and able to withstand the personal consequences of arrest and possible charges and convictions that may result? This question can only be answered by reference to your own conscience. And this may require considerable deliberation on the consequences and impacts.
- Also highlight the length of the process: if you plead not guilty, your trial and *appeals* could last for years (literally!) many people plead guilty just to save themselves the hassle.

Training role-play #13 - Common charges

Common charges (20-40 minutes)

Ask group to brainstorm offences and charges that they have heard of or heard other activists have received.

List on board the most common offences or charges and offences relating to this particular campaign or action.

Distribute handout on Common charges and offences. Also distribute handout on Possible penalties.

Training role-play #14 - Being a legal support person

Being a legal support person (20 Minutes)

- Distribute the handout: Legal support person info sheet (available at Support team resources)
- Discuss the roles of a legal support person and highlight current campaign legal support structures such as the Legal Support Team, *arrest* support, access to lawyers etc.
- Discuss importance of solidarity strategies and support structures.

Training role-play #15 - Legal Support Team contacts

Legal Support Team contacts (5 minutes)

Distribute appropriate numbers; and also suggest having the legal support number in permanent marker somewhere on your body.

See pro-formas at Support team resources

Training role-play #16 - What to leave behind

What to leave behind (10 minutes)

Trainer to ask group: What would the police really like to find on you if they could? Highlight importance of:

- leaving any illegal drugs behind;
- remembering what might be construed to be a weapon ;
- making your decision on what I.D. to leave behind (if not all);
- leaving behind your address books and any other papers that you don't want the police to see.

Training role-play #17 - Evaluate & close

Evaluate and close (10-20 minutes)

Evaluate training workshop by a quick go-around asking the group for,

'One thing you learnt that you didn't know previously' then thank the participants.

This agenda has been adapted from the Libertas Legal Collective (their site is currently unavailable).

Support team resources

Activist Legal Rights - Short guide (PDF)

[Arrest and police basics info sheet \(PDF\)](#)

[Arrestee / injured instruction sheet \(PDF\)](#)

[Arrest watch form \(PDF\)](#)

[Arrest tracking sheet \(PDF\)](#)

[Legal support person info sheet \(PDF\)](#)

[Roving legal checklist \(PDF\)](#)