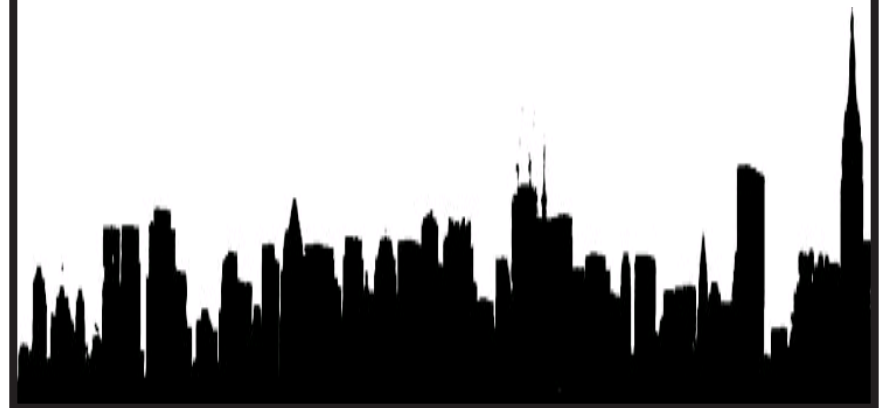


KNOW YOUR RIGHTS!

What You Need to Know

A part of the JustUs NYC Know Your Rights Series



KNOW YOUR RIGHTS!

What You Need to Know

A part of the JustUs NYC Know Your Rights Series

JustUs Legal Collective provides legal information and support for at-risk communities to address inequalities in the legal system and promote self-sustainable community development in the greater New York area.

Specifically, we provide Know Your Rights training, Jail Support, post-arrest criminal and civil procedural information and on-line legal resources.

PLEASE NOTE: We do not provide pro bono legal assistance, and cannot give specific legal advice. We are not lawyers. We do not directly provide legal observers or legal office support.

court at a certain date and time.

statute of limitations – the time in which formal court proceedings can be brought to court; ex: if a person is arrested and during the arrest the officers denied the person Constitutional rights, then a person must submit a notice of claim to the city within 90 days in New York State.

violation – (New York) Not a criminal offense; carries either a fine or no more than fifteen days imprisonment; usually what you are charged with when you receive a summons.

Key Players

ATF – the Bureau of Alcohol, Tobacco, and Firearms is the agency responsible for “preventing terrorism, reducing violent crime, and protecting our Nation.” (www.atf.org)

civil suit attorney – this attorney is hired by the plaintiff seeking damages against a defendant; claims may include violation or infringement of Civil Rights, unlawful arrest, negligence, and contract issues, to name a few.

criminal defense attorney – the attorney designated to represent an individual in a criminal proceeding; income levels may permit a court appointed attorney, such as Legal Aid, to represent an individual.

Department of Justice – the federal department responsible for conducting all suits in the Supreme Court; the Attorney General represents the United States government in legal matters before the Court. (www.usdoj.gov)

JTTF – Joint Terrorism Task Force is a local police and FBI hybrid task force established in the early 1980s; the task force quadrupled in size after September 11, 2001.

prosecutor – the attorney appointed by the District Attorney’s office to press charges against an individual or multiple individuals for an alleged crime.

plaintiff/defendant – the key players in civil suit; the plaintiff brings the complaint to the court against the named defendant(s) listed in the officially submitted complaint.

prosecution/defendant – the key players in criminal proceedings; prosecution is New York State because the accused has broken a law of the State.

KNOW YOUR RIGHTS!

What You Need to Know

A part of the JustUs NYC Know Your Rights Series

This workbook is designed to educate you, not make decisions for you regarding your own specific legal situations. When faced with a situation that requires you to call on this knowledge, trust your instincts and watch out for each other. The rights outlined in these guides are part of the federal Constitution and every state must protect these rights. States can create additional protections, but cannot further restrict these rights.

It is important to note that these rights relate to governments, not private entities. For instance, it can only be a First Amendment violation when a government prohibits speech, not when a corporation prevents a protest from occurring on its property.

For more information contact the JustUs NYC Legal Collective at info@justusnyc.org.

See what's inside....

SECTION 1: The First Amendment	9
What does the First Amendment say?	10
What does the First Amendment mean?	11
Electronic "Speech"	12
The SHAC7 Case	13
Try these out...	14
SECTION 2: The Fourth Amendment	19
What does the Fourth Amendment say?	20
What does the Fourth Amendment mean?	21
Searches	22
Warrants	23
Warrant for Arrest (Seizure of persons)	24
Warrant for Property (Seizure of property)	25
Requirements: What does a warrant say?	26
On the street	28
Cars	29
Try these out...	30
Highlights	31
SECTION 3: The Fifth Amendment	33
What does the Fifth Amendment say?	34
What does the Fifth Amendment mean?	35
"I wish to remain silent. I want to speak to my attorney."	36
But I'm smarter than this guy...	37
Grand Juries	38
Try these out...	40

warrant or warrant history, is on parole or probation, has a record of multiple arrests, cannot offer verifiable name and address, lives out of state (this may be at the discretion of the Desk Officer), is arrested for either a graffiti offense or threatening/menacing a police officer or public official.

felony – (New York) A criminal offense, carries no minimum sentence; you will be "put through the system," held overnight, and arraigned the following day; felony sentences vary, please consult a local attorney for more information; please also note that there are special categories of felonies with enhanced sentencing.

malicious prosecution – a claim made in a lawsuit if the plaintiff believes that the prosecution unnecessarily pursued the defendant without probable cause for the alleged crime; the defendant believes that the prosecution was baseless in their pursuit.

misdemeanor – (New York) A criminal offense, carries a maximum sentence of one year in jail; usually what you are charged with when you receive a Desk Appearance Ticket (DAT); you may also be "put through the system," held overnight, and arraigned the following day.

nolo contendere ("no contest" plea) – the Latin phrase literally means, "I will not contest it;" the plea does not admit guilt or innocence; a nolo contendere plea will stay in the person's criminal record.

notice of claim – this puts the city on notice that a person can or intends to file a lawsuit at a later date for the allegations listed on the notice; ex: an arrested person was held in police custody over 24 hours before seeing a judge or talking to their attorney. This violates the New York State policy that no person can be held in custody for over 24 hours without seeing a judge and talking to their attorney. The person can then file a notice of claim within 90 days of the arrest citing unlawful detention as a potential claim in the lawsuit (among other claims). The notice of claims varies from state to state.

perjury – a person willfully makes a false statement during a judicial proceeding; the statement must be relevant to the proceedings and the person must have an intent to deceive; perjury in New York State may be either a misdemeanor or a felony and may carry jail time.

summons – similar to a traffic ticket; issued within the discretion of the police officer for a minor offense, usually at or near the scene; directs you to appear in

Amendment 5

casual conversation – a conversation with a local, state, or Federal officer that may have nothing to do with an allegation of a crime; questions asked may include information about an organization, affiliations, likes or dislikes, eating habits, etc; it is best not to engage in casual conversation with an officer because this information may be collected, held and used against others in another casual conversation.

grand jury – a court proceeding with a panel of citizens in which the panel decides whether there is enough evidence to indict or formally charge someone suspected of a felony.

Navigating the System

Adjournment in Contemplation of Dismissal (ACD) – (New York) This is a plea offer that requires for you not to be arrested or ticketed for a certain time period, often six months or twelve months; you will not have to return to court again (unless you are subsequently

arrested or ticketed), but you will need to stay out of “the legal system” until the time period expires; you do not have to take an ACD, the prosecutor may offer it again but is not required to do so; violating an ACD will likely result in the reinstatement of the original charge.

arraignment – a legal proceeding in which a defendant is named and the list of offenses are officially brought against a person; at this time, the defendant can tell the court whether they plead not guilty, guilty, or nolo contendere; at this time, bail may be set for the defendant’s release; a person may or may not be released at this time.

conspiracy – a crime in which those who are involved in the planning but not the actual commission of the crime can be charged with that crime or conspiracy to commit that crime.; ex: one can be charged with burglary and conspiracy to commit burglary.

Desk Appearance Ticket (DAT) – (New York) Involves only minimal processing in which your information is recorded and you are given a date and time to appear in court; DATs can be issued for a violation and for some misdemeanors (and very rarely for low level felonies); An arrestee is ineligible for a DAT if he or she has an outstanding

SECTION 4: Other steps to protect yourself	45
Remember the basics	46
Cyber Rights	47
Know Your Rights During Demonstrations	48
Risk Groups	48
Information for Folks with Disabilities	48
Protesting and Medical Issues	49
Information for Queers, Transfolks, and Other Gender-Benders	49
Information for Minors	50
Information for Non-Citizens	50

SECTION 5: What to Expect if You are Arrested in New York	53
Navigating the System	54
Arraignment	55
Possible Offers and Pleadings at Arraignment	56
Pleading Innocent:	57
Pleading “No Contest” or Nolo Contendere:	57
Pleading Guilty:	57
Civil Suits	58
Before you go...	59

Glossary of Terms	60
Amendment 1	60
Amendment 4	60
Amendment 5	62
Navigating the System	62
Key Players	64

consent – a written, stated, or implied agreement to a given proposition; ex: an officer asks to view the contents of your bag at a subway station and you do not reply, but you do open your bag. The act of opening your bag for the officer is consent.

custodial search – a search of your person while in custody or detained at a police booking station; may involve emptying pockets and holding items in a separate room until you are processed.

plain view – evidence of criminal activity that can be seen without an arrest or search warrant; ex: during the execution of a search warrant of only a common area of an apartment, an open door leading to a roommate’s room shows a stockpiling of illegal guns. The officer can enter and seize contents in the room because evidence of criminal activity exists in plain view.

probable cause – information that would lead a reasonable and prudent person to believe that a crime has occurred or that some property was involved with a crime. Probable cause can permit an officer to stop and detain a person and conduct a search of the person’s pockets and bags or arrest them. Probable cause is necessary to obtain an arrest warrant or search warrant ex: A police officer comes

across a wall with fresh graffiti and also sees a person with paint on their index finger near the wall and walking away from the graffiti. Graffiti is considered a crime. An immediate crime is present, so probable cause exists to stop the person and conduct a search the person’s pockets, backpack, and any other items she or he may be holding.

reasonable suspicion – the amount of apparent facts available that would not lead to probable cause, but would lead a reasonable and prudent person to believe that a criminal activity is occurring or about to occur and that a person has some involvement with the activity; ex: police see two individuals facing a wall with a spray paint can. A crime is not immediately present, but there is reasonable suspicion to believe that a crime (painting the wall) is about to occur. The police have reasonable suspicion to stop the individuals and pat them down.

search warrant – a document indicating a court-authorized search to obtain contraband, stolen property, or other evidence of guilt that will be used by the prosecution in a case. Probable cause is necessary to obtain a search warrant.

seizure – taking of property from someone accused of criminal activity.

Glossary of Terms

Amendment 1

protected speech – expression that is guaranteed under the First Amendment; expression that is considered by the court to be obscene is not protected speech or expression; laws that regulate the content of speech must be narrowly tailored to achieve the desired goals.

time, place, manner restriction

– the courts are restricted from regulating most content of speech, but the courts can regulate the time, the place, and the manner in which First Amendment rights are used; to regulate or restrict First Amendment activity the State must show that the activity is content neutral, or that the restrictive measures in place do not rely on the content of the activity, ex: it is questionable if one

organization is denied a permit to rally on a given day at a specific time whereas another group is permitted to rally at the same time in the same area.

unprotected speech – expressions that are not protected as a First Amendment activity; may include some forms of pornography, pornography involving children, expression that specifically directs criminal activity (ex: directing people to immediately burn their draft or selective service cards in a lit fire), and expression that places the public in danger (ex: yelling “FIRE!” in a crowded movie theater).

Amendment 4

affidavit – voluntary testimony that affirms the given statements to be correct according to what you believe to be true; an affidavit is usually given before a notary public and may be under penalty of perjury (see Navigating the System, perjury).

arrest warrant – a court order to bring the person listed on the warrant before a judge or justice of the peace in relation to a criminal offense. Probable cause is necessary to obtain an arrest warrant.



SECTION 1: The First Amendment

What does the First Amendment say?

“**Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.**”

Before you go...

If you do not find the information you need here or online at www.justusnyc.org, please contact us. JustUs can work with your group to produce KYR materials if they are not currently available.

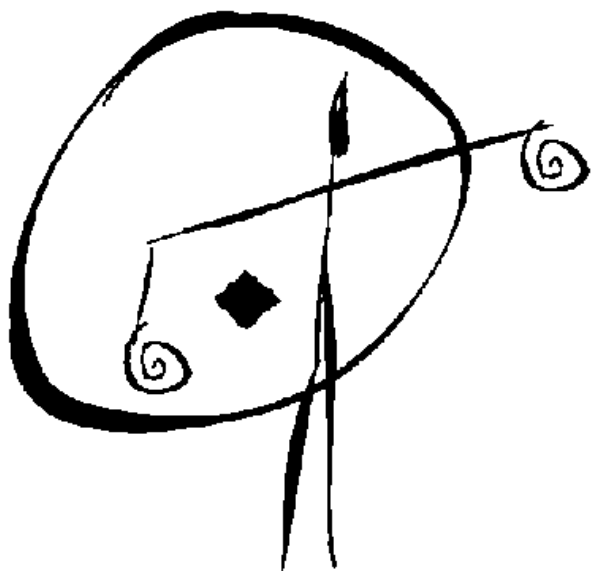
**Know your rights.
Each One Teach One.**

Civil Suits

If you believe you have a claim against New York City or the NYPD, you must file a notice of claim within 90 days of the incident. This preserves your ability to sue by putting the city on notice of your claim.

While statutes of limitation vary, you usually must file your lawsuit against a city or state government in New York within one year and 90 days from the incident.

You may have additional time to file a lawsuit if you are bringing a United States Constitutional civil rights claim, but you must still file a notice of claims for both federal and state civil suits.



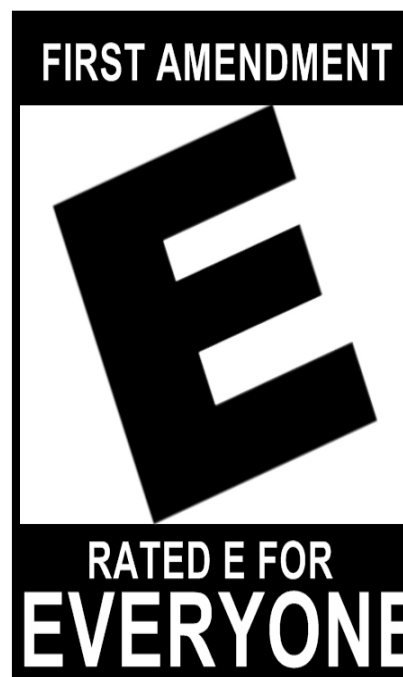
What does the First Amendment mean?

In 45 words, this amendment provides 5 Constitutional guarantees. According to the First Amendment, Congress cannot make any law that could prohibit the exercise of a religion, abridge expression, limit the press, prohibit assembly, or prohibit people from filing a lawsuit because of government wrong doing.

These rights are not absolute and the government may create time, place, and manner restrictions on the exercise of these rights.

While federal courts have held that there is a division between speech that is protected and speech that is not protected, the Department of Justice is attempting to rewrite this standard in order to stifle effective activism.

Cases from the anti-Vietnam War Cera-protests made it clear that promoting immediate illegal action, like telling people to run across the street and smash a Starbucks window, was prohibited. But talking about a time or times that windows at Starbucks were smashed or how others have smashed these windows was not prohibited. (This section of law is currently being tested. See the SHAC7 section for more information.)



Electronic “Speech”

A awesome photos or videos from protests might implicate someone else. Don't rush to publish the documents on websites like the IMC or your own blog. It may be important to get the news out on what is happening on the streets, but talk to an attorney or someone that can get you in touch with an attorney who can view it before you put it online.

Working with an attorney prior to distributing your photos and video footage could benefit your cause as well as protect the identities of those in the photos and video who do not wish to be broadcast on YouTube, Blip, Myspace, Google Video, or any other online distribution services.

Pleading Innocent:

This plea is can be given at the first appearance of criminal proceedings. This plea may gives the defense time to investigate, find extenuating circumstances, develop reasons why punishment should be lenient, bargain with the District Attorney, and let the memories of witnesses fade.

Pleading “No Contest” or Nolo Contendere:

Pleading no contest is an agreement to accept the punishment without admitting or denying responsibility for the crime alleged. Pleading no contest does not require you to make any statements on the court's record Pleading no contest may have the same sentencing as a guilty plea and your record will reflect the charge and plea.

Pleading Guilty:

If you are charged with a misdemeanor and a violation and have no record, you may be offered to plead guilty to the violation with time served, or possibly some community service hours.



If charged with a violation and you plead guilty, you will have a violation record but not a criminal record and will have to pay a surcharge of approximately \$60.

In other situations, you may not be offered a deal at arraignment or may be offered other sorts of deals. You may still be offered a deal at another court date.

Talk to your lawyer about your best options in your particular situation.

Possible Offers and Pleadings at Arraignment

The following information may be useful as you discuss your case with your attorney at your arraignment and any time thereafter.

If you are charged with a violation and have no record, it is likely that you will be offered an Adjournment in Contemplation of Dismissal (ACD):

- » This is a plea offer that requires for you to not be arrested or ticketed for a certain time period, often six months or twelve months
- » You won't have to return to court again (unless you are subsequently arrested or ticketed), but you will need to stay out of "the legal system" until the time period expires
- » You do not have to take an ACD. The prosecutor may offer it again but is not required to
- » Violating an ACD will reinstate the original charge

The SHAC7 Case

The SHAC7 is comprised of six activists and a corporation, Stop Huntingdon Animal Cruelty USA Inc., that were found guilty of multiple federal felonies. They were convicted for their alleged role in simply campaigning to close down the notorious animal testing lab Huntingdon Life Sciences. Five of the individuals are currently in federal prison. The sixth, Darius Fullmer, has been released, after completing his one year sentence. They are not accused of actually smashing windows, liberating animals or even attending demonstrations; rather, they were convicted of reporting on and encouraging others to engage in legal demonstrations and supporting the ideology of direct action. (Adapted from: <http://www.shac7.com/>)

The SHAC7 case is important to note. In this case, the government argued that publishing a website and newsletter and speaking out in support of both legal and illegal actions taken on behalf of the animals inside HLS was conspiring with the individuals who took illegal actions such as liberating animals. Six activists and the organization SHAC USA were convicted, not for taking illegal actions, but for publicizing these actions. This is a MAJOR shift in constitutional law. This case is currently being appealed.



Try these out...

The guarantee of free expression can be tricky. Over the years, many cases have tested the limits of the Constitutional guarantee to the right to speak. Try these ten examples out to see if they are included in the First Amendment guarantee. Write down your answers and see how you do!

Freedom to Establish and Practice a Religion

1 A friend wants to start a religion that involves picking flowers regularly and feeding them to local animals. Is this protected under the freedom to establish and practice a religion?

1 You can think up and practice any religion you want, but it cannot involve harm. This means, if the food you want to feed the animals could be harmful to them, then you cannot practice that part of your religion.

Freedom of Speech

2 A friend wants to carry a sign at a protest with language that might not be appropriate for children under 13. Is that protected under freedom of speech?

2 Including language on a protest sign that may be unsuitable for young readers is guaranteed by the First Amendment. If, however, you include images that are "obscene" (like bestiality, child porn, etc.), then your expression is not protected by the First Amendment.

3 At a protest, you want to urge people to destroy their military

3 It might seem like the best media opportunity to burn a draft card,

Arraignment

Go to the courtroom noted on your DAT or summons at the set time. Get there early as everyone entering the courthouse must go through security. You will be searched so do not bring any knives, sharp objects, or glass bottles.

Court starts at either 9:30 AM or 2:00 PM. Get to the courthouse at least 45 minutes before this time so that you can get through security and talk to your attorney. Be prepared to spend a lot of time at the courthouse as there will be a lot of cases to call. This is not your trial; this is when charges are formally presented against you and you will enter your plea. You can bring your own attorney with you or one will be assigned to you.

If you miss your arraignment, the judge may issue a bench warrant for your arrest.

Navigating the System

The legal process can be slow and time-consuming. You aren't the first or the last to go through this process and there are resources to help you. This section will explain to you some of the legal processes you can expect to go through, as well as some tips in building your case.

In New York, you can be charged with a violation, misdemeanor, or felony. You may receive a summons to appear in court, a Desk Appearance Ticket, or be held overnight and arraigned the following day. In each instance, you have the right to remain silent unless you waive it. It must be a knowing, voluntary, and intelligent waiver of your right to remain silent. JustUs Legal Collective recommends that you invoke your right to remain silent and your right to an attorney by stating, "I wish to remain silent and I want to speak to my attorney."

On Immigration Status: Please note that if you are not a United States citizen, your rights may be substantially different. A single arrest or a plea to a misdemeanor may affect your ability to leave and reenter the United States or bar you from becoming a citizen. Please consult an immigration attorney with your specific situation and do not rely on your criminal defense attorney's knowledge of immigration law when discussing possible deals.

draft cards in front of the media cameras. Is that protected under freedom of expression?

4 At a protest, there is a flag burning symbolically. Is that protected under freedom of expression?

5 In a crowded place, you want to get through. You decide that the best way to get through the mass of people is to yell, "FIRE!" Is that protected under freedom of speech?

6 At a demonstration a speaker decides to direct people towards a nearby Starbucks where bricks are being thrown through windows. Is that protected under freedom of speech and assembly?

or something like it in front of media cameras. If you did, however, you may be arrested. In this example, the draft cards are actually government property. If you were arrested, you may be arrested for destruction of government property rather than the content of your expression.

4 Specifically, flag burning is currently protected as a form of expression. The case that helped to establish that also helped to establish the legal concept of symbolic expression. There may be some issue with the fire itself, however, the act of burning a flag is a First Amendment guarantee.

5 This is an example of how speech that can cause harm is not protected as a First Amendment guarantee. Yelling "FIRE!" in a crowded place can cause panic and people can get hurt. Because the words create the potential for immediate danger through the false claim of a fire, the speech is not protected.

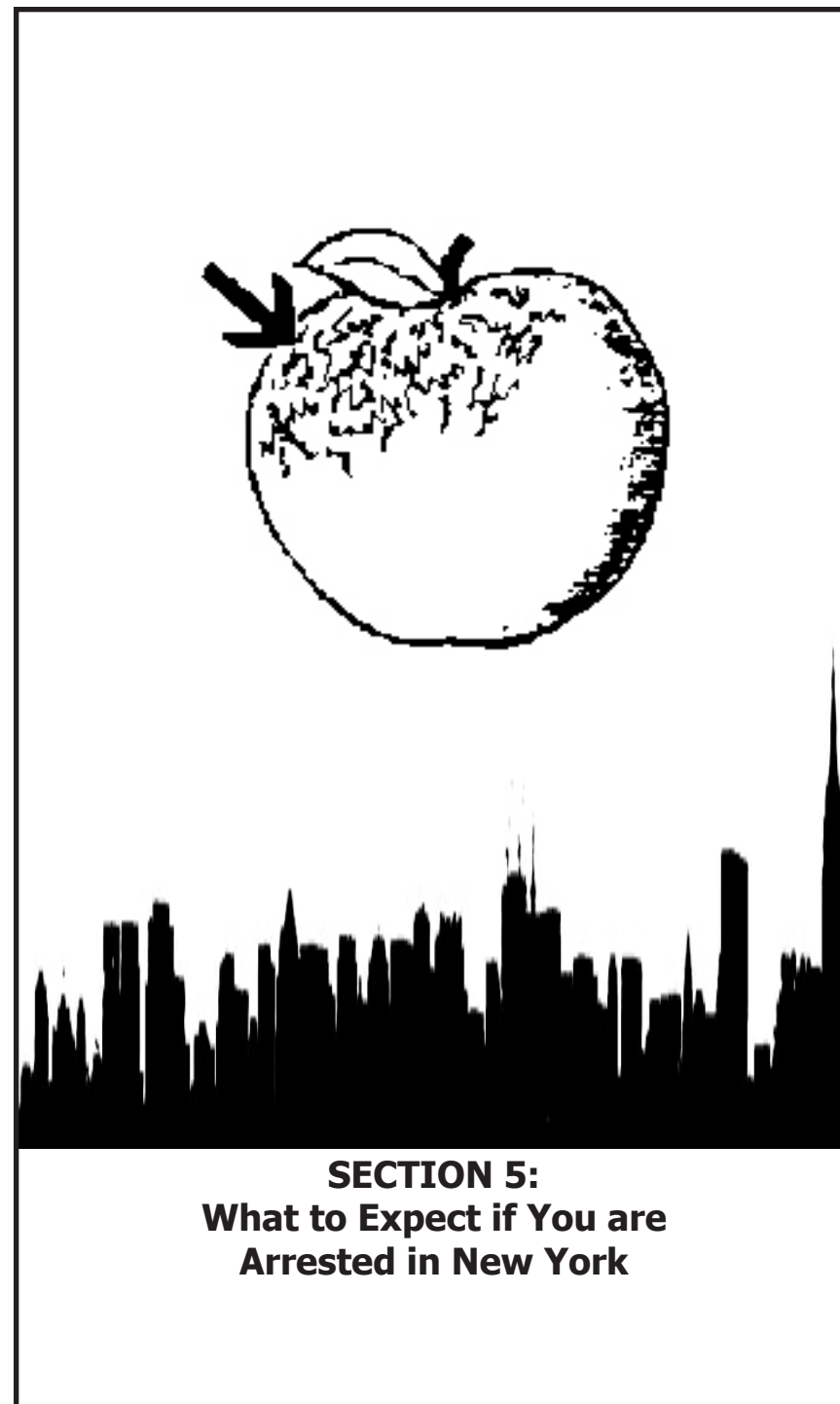
6 A speaker at a demonstration cannot instruct people to "riot." The law considers a riot "A disturbance of the peace by several persons, assembled and acting with a common intent in executing a lawful or unlawful enterprise in a violent and turbulent manner." This means a speaker cannot direct a group toward a place where unlawful activity (like property destruction) is

taking place and encourage you to take part. A speaker can talk about things in the past that have been effective, such as sit-ins during the Civil Rights Movement. This section of law is starting to shift. See the chapter on the SHAC7 for more information.

Freedom of the Press

7You have a zine and want publish negative information about a local advocate's personal life. Is that protected under freedom of the press?

7The private information released about an advocate may not be protected as a part of freedom of the press. There is a lot to take apart when it comes to printing private information about private citizens, including advocates. Generally, public figures (elected officials, household name celebrities, individuals who are pervasively in the in the public sphere, etc) are not as protected from defamatory remarks as private individuals who are not frequently in the public eye. In between these two groups is a group that includes advocates called "limited purpose public figure." This may include advocates who choose to be in the media for their cause. They have less protection than private individuals, but more than public figures. One other group, "involuntary public figures" receive more protection than limited purpose public figures and less than a private individuals. These are individuals who may have experienced an injustice and went to the media about it.



strategy worked out to protect undocumented persons and other non-citizens.

If you are being held on suspicion of criminal activity or on criminal charges, you have the same rights as citizens in this situation. If you are being held on suspicion of having violated immigration laws, your rights are slightly different. You should speak to an immigration attorney.

Freedom Peaceably to Assemble

8After a war was launched, a group wants to march to City Hall to dissent from the war declaration by the President. No one has a permit. Is that protected under the freedom to assemble?

8In this example, the events that provoked the decision to protest went beyond a reasonable expectation to get a permit. While there is no guarantee that you will not be arrested, you do have a Constitutional guarantee to assemble. However, some states and cities are attempting the limit public assembly by passing laws such as parade permitting schemes.

Freedom to Petition the Government for a Redress of Grievances

9At a protest you are arrested. An officer tells you that you have no chance to appeal your arrest, no matter what the outcome is. Is he right?

9Even if you are convicted following your arrest, if you feel there was foul play, you have a Constitutional guarantee to petition the government for a redress of grievances. The petition is usually in the form of a lawsuit and the redress may include both damages to compensate you and punish the police for their illegal acts. While in custody, an officer is allowed to lie to and try to intimidate you. Don't let them! Know your rights!

10Even though you did nothing to provoke an arrest, an officer tells you that he can make the process smoother if you "just cooperate." He says that it is the only way to do things now that you are arrested. Is he right?

10While in custody prior to arraignment, you do not have to speak to an officer except to say, "I wish to remain silent. I want to speak to my attorney." You can almost always appeal your case through the appellate process and the First Amendment provides you with the right to petition the government for wrong-doing.

parents' or guardian's contact info to their legal support person before the action. Providing the parents' or guardian's contact info upon arrest to the legal team or to a trusted lawyer can help accelerate the release process, when accelerated release is desired. Please be advised that minors are not usually released except into the custody of an adult.

Information for Non-Citizens



Do not speak to any police officers, members of law enforcement agencies (FBI, CIA, DEA) or any Secret Service officers. If any of those persons asks about your immigration status, tell them you would like to speak to your attorney. Always stay with another person in case the police officer does not give you the chance to make the phone call immediately. Select a friend you trust to handle your documents and be your contact with lawyers in the event that you are arrested. Give that person the number of the legal team or a lawyer to call. Your friend should tell the legal team or lawyer your full name as it appears on your passport, where you were arrested, any identification information of the arresting officer, including badge number, and what police station or jail you are being taken to if the officer will tell you. Your friend should also have a copy of your passport page with your picture and birth date on it, as well as a copy of your visa if you have one. This information will be invaluable in locating you while you are being detained and processed.

If you are picked up by the Department of Homeland Security-Office of Immigration and Customs and Enforcement (DHS-ICE), formerly INS, after being released from police custody or on the streets, demand to talk to your lawyer. Remember the INS is under no obligation to provide a lawyer for you (unlike criminal detention).

If you are picked up by ICE, do not answer ANY questions. **DO NOT SIGN ANYTHING** without talking to a trusted immigration attorney! ICE often tries to get people to sign voluntary deportation orders, which can have consequences for your ability to re-enter the US at a later date.

Remember, unity is an invaluable means of protecting each other. Let your affinity group know about your status beforehand and have a

What does the Fourth Amendment say?

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

Information for Folks with Disabilities



The Americans with Disabilities Act and the 504 Rehabilitation Act make it illegal for anyone, including law enforcement, to discriminate against persons with disabilities. However, it is certainly not unheard of for people with disabilities to be singled out and targeted

by the police when in custody or upon arrest. It is important for people to let their collectives, groups, posses, and friends know of any disabilities before the action and how to support them in the event that their disabilities may make their situation worse during or after arrest. The group should have a discussion about this before the action and come up with strategies to deal with situations where the person with a disability is arrested/ targeted.

Protesting and Medical Issues



In situations where you need medication, you may take out a few days' worth of the medication with an original copy of the prescription (to avoid possible charges for possession of controlled substances, and as proof to police that the medication is necessary) and then leave the remainder of the medication in the original container, along with the prescribing doctor's phone number, with the support person. You should let officers at the scene and at the precinct know that you have

a medical condition. In case your medication is confiscated, let a lawyer or legal support person (or witnesses) at the site of your arrest know that you have a medical issue that needs attention. Also let the legal team or lawyer know how to contact your support person so they can get a lawyer to try and get the medication to you while you are detained and possibly unable to call a lawyer. Though it is up to the discretion of each officer whether you receive your medication, it is more likely that they will give it to you if you have the prescription bottle and copy of the prescription or doctor's note. However, if they do not allow you to take your medication and your support person does not have your medication in a prescription

Know Your Rights During Demonstrations High Risk Groups

Some folks are more likely to be picked out on the street, separated in jail, prosecuted more harshly in court, or face other challenges during a demonstration. Non-U.S. citizens, people of color, people who are seen as leaders, minors, transgendered or queer people, people with visible and non-visible disabilities, people who dress punk or who wear all black clothing (especially the often-demonized “black-clad anarchists”), people on probation or parole, and people with prior arrests or convictions are a few examples of vulnerable people. Even if you do not consider yourself a member of one of these high-risk groups, it is still good to know what people in these groups might face so that you can be more aware of others’ needs. The following info is not comprehensive. You may want to talk to your doctor, your friends, or a lawyer about these issues before attending a demonstration.

What does the Fourth Amendment mean?

The Fourth Amendment protects us from unreasonable searches and seizures of our property, person, and life without due process of law. As activists, this amendment protects us from unreasonable searches of our houses, cars, and bags as well as seizure of any property or our person, that is, arrests.



Searches

Warrants are needed for many, but not all, searches. There are a few basic practices that you can implement to help guide your process when faced with a potential search warrant situation.

You can consent to a search without a warrant, but this is rarely, if ever, advisable. As an example, you are stopped by an officer under the suspicion of possessing marijuana. If guilty of possession, you may be guilty of a misdemeanor and receive a fine and sentencing. You confess to the officer that you have marijuana in your pocket. The officer requests that you comply with a search, and you take out the bag of marijuana. Because you took the marijuana out of your pocket and into the open, you are then potentially guilty of a higher misdemeanor offense that carries more severe consequences.



Cyber Rights

Computers, online activity, etc, have a protocol for recording transfers, bits of files, emails, and other similar data. It is important to be conscious of the files you keep on your computer or in your email and always maintain your hard drives and backup drives in a responsible way.

Email: Emails are especially susceptible to interception because they are basically like a postcard – there is no envelope preventing anyone from reading them.

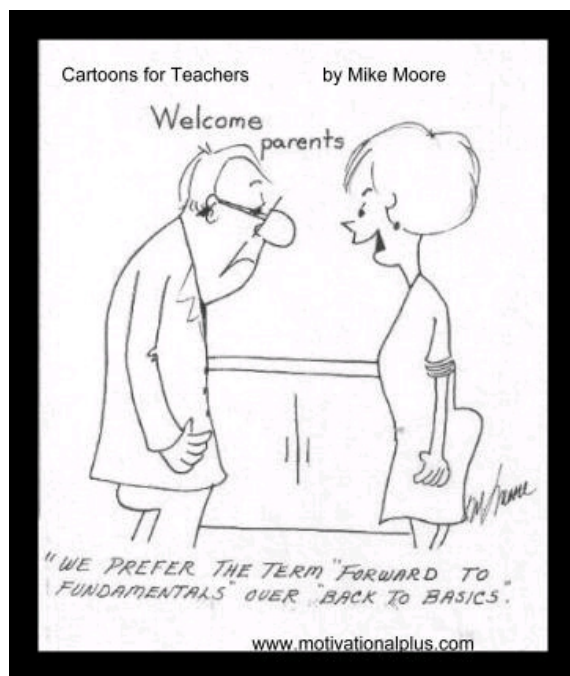
Attachments and physical security of your computer: police, as well as criminal organizations, are increasingly using your own computer to spy on you.

Cell phones use signals that can be intercepted by anyone the same way that emails can be intercepted. For this reason, there is no warrant necessary to listen to your cell phone conversations. The batteries in cell phones also act as receiving devices, so conversations can be intercepted without making a call. Landlines, however, require a warrant for federal officials to listen to your conversations.



Remember the basics

Know your rights. Educate others. The limits of the law are constantly tested. It's important that once you know your rights, you continue to keep up to date on any changes in law that current cases may initiate. Some of these changes may include cyber law. This is an extremely new section of law that has very little case precedent to guide it. Below are some tips to guide you to knowing your rights!

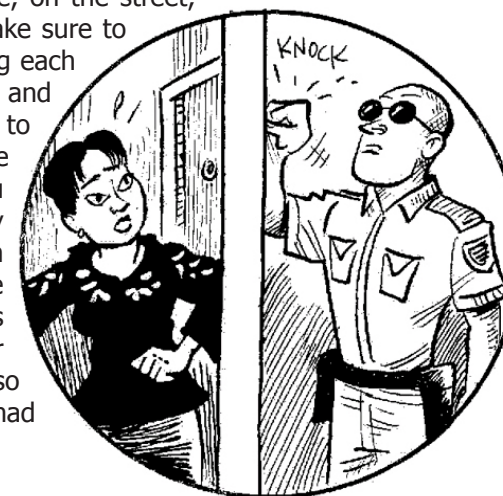


Warrants

The 4th amendment protects our due process rights by requiring that a warrant be issued for either a search or an arrest. Arrest warrants must state the name of the person, but do not need to include their home address, as they can be issued to arrest someone anywhere the police find that person. Search warrants must state the address, the items to be seized, the place to be searched, and should be issued on or around the day the search is conducted.

However, there are exceptions to the warrant requirement. No warrant is necessary for an arrest on the street or in a public place immediately after a crime has occurred if the crime is committed in front of the police officer or a witness. And after an arrest, the police do not need a search warrant to conduct a search of your pockets or anything you can reach. A search of your bag at the police station will also be conducted without a warrant as an administrative search necessary to catalog anything you have with you when you are arrested.

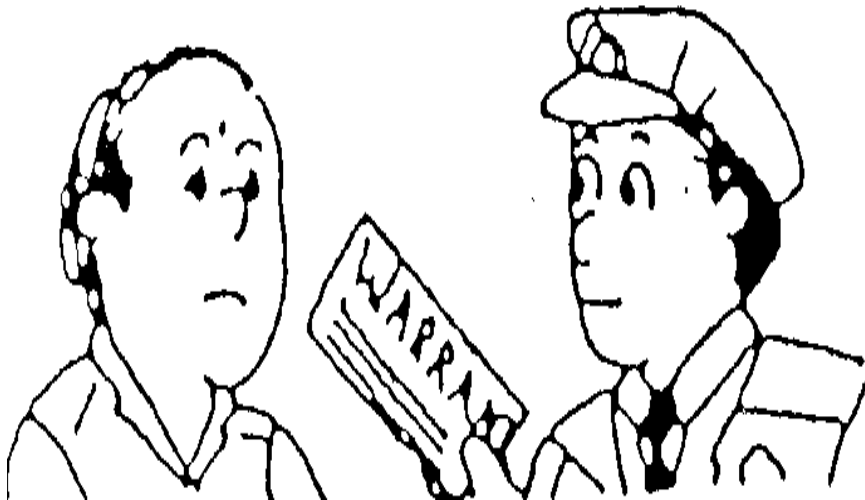
If items are seized, at home, on the street, or at the police station, make sure to ask for a written receipt listing each item. If you are arrested and processed, you will be asked to sign a form that indicates the property taken from you. You can sign this form directly underneath the last item listed. This prevents the police from including additional items that you did not have in your possession. You should also make sure that all items you had are listed on this receipt.



Warrant for Arrest (Seizure of persons)

A warrant is required to arrest someone in his or her own home unless the arrest is made in immediate flight from a crime. Ask the police to slide the warrant under the door and review it to ensure it has the necessary information. The person may go outside and close the door behind them to prevent police from searching the house. An arrest warrant does not mean that you must consent to a home search.

If arrested, the police can search your person (your body) and anything in your wingspan. This is both for their safety and to see if you tossed anything away.



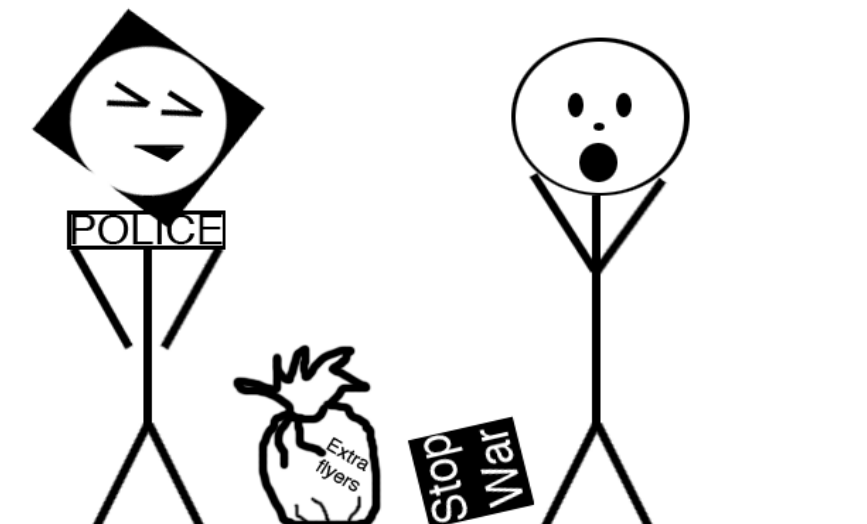
JustUs Legal Collective | justusnyc.org

We do not provide pro bono legal assistance, and cannot give specific legal advice. We are not lawyers. We do not directly provide legal observers or legal office support.



SECTION 4: Other steps to protect yourself

"You are under arrest!"



If necessary, Jo can state clearly:

- ⇒ I wish to remain silent. I want to speak to my attorney.
- ⇒ You can't arrest me! I'm not the organizer. I was told I had to flyer to be a member! It's not my fault! I didn't do anything!

Answer Grid:

Comic 1 - NA; Comic 2 - First and third responses;
Comic 3 - First and second responses; Comic 4 - First response

JustUs Legal Collective | justusnyc.org

We do not provide pro bono legal assistance, and cannot give specific legal advice.
We are not lawyers. We do not directly provide legal observers or legal office support.

Warrant for Property (Seizure of property)

If police come to your door with a warrant, you may ask them to slide it under the door rather than opening the door for them. Review it to make sure that it lists the necessary information. If it does not, you may tell the police that their search is not legal, but do not try to physically prevent them from entering. You may say, "I do not consent to this search," call your lawyer, and find witnesses.

It is a good idea to try to monitor the police and videotape them while they search your apartment or house. It is best that if you have a lawyer, contact him or her when the police arrive and ask that he or she come over to monitor the search. You can also ask other individuals to witness the search. If you are unable to take notes during the search, write down everything you remember as soon after as you can.

If you live with a parent, they can consent to the search of your room unless you have a lock on your door and they do not have a key. They cannot consent to a search of anything in your room that is locked, such as a desk drawer or footlocker. If you live with roommates, they can consent to the search of only common areas but not your own bedroom. It is a good idea to prepare for what to do in the event of a search with your entire household if you live in a collective environment.

If an officer sees contraband in plain view, they can seize it. They may then use that evidence to obtain a search warrant. If they see the item while knocking on your door or standing outside of your property, they can also use that information to obtain a search warrant. If police find contraband while searching in a location listed on the warrant, they can seize it, even if the item is not listed.

Remember, the search warrant must state the items to be seized and the places to search for these items. If they are looking for a large item, the cops cannot poke around in your desk drawers. Although officers will not always follow proper procedure, you can record or make note of these incidents.

JustUs Legal Collective | justusnyc.org

We do not provide pro bono legal assistance, and cannot give specific legal advice.
We are not lawyers. We do not directly provide legal observers or legal office support.

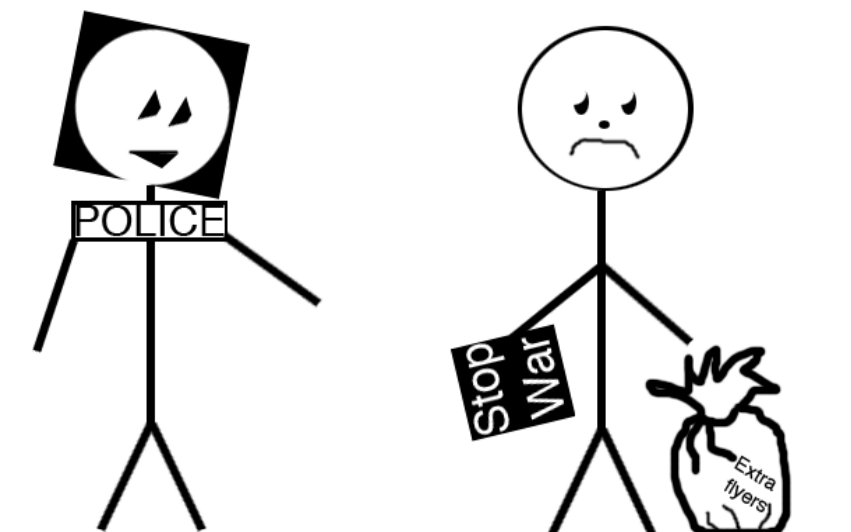
Requirements: What does a warrant say?

We think of this amendment as protecting us from unreasonable searches and seizures. Seizures relates to the arrest of an individual while searches relate to the taking of things from individuals.

Arrest warrants must state the name of the person to be arrested and can be executed anywhere.

Search warrants must state the address, the items to be seized, the place to be searched, and should be issued on or around the day the search is conducted. See the example on the following page.

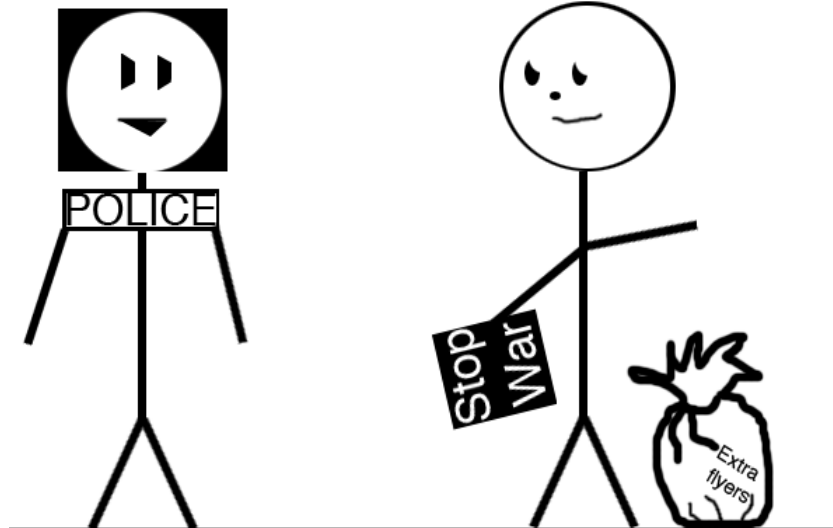
The officer continues with Jo:
 "What's in your bag?
 I'm going to take a look for public safety reasons.
 You don't mind."



Jo might respond with:

- ⇒ I do not consent to this search.
- ⇒ Am I being detained? Am I free to go?
- ⇒ It's right there. I mean, I don't really know what's in it besides flyers. I haven't really looked around in it cause I just got out here and the bag was just given to me when I was leaving our collective space.
- ⇒ If I tell you what's in the bag before I give it to you, will I still get in trouble?
- ⇒ Sir? I really don't know what you are looking for. I'm really sorry. I think I'm not the person you want to talk to. I mean, there are a couple of organizers that I can show you. I think they would be in a better position to know the information you are looking for. I am really no one. There are lots of other people who know a ton more than me, I swear. Just don't arrest me! I'm too young to go to jail!

An officer approaches Jo and says:
 "Who are you? Who are you here with?
 What do you have there? Who said you could be here?"



Jo might respond with:

- ⇒ Am I being detained? Am I free to go?
- ⇒ It's a flyer. I am a part of this group that meets on Wednesdays in a community center. It's really open to everyone. It's very non-hierarchical. We support independent autonomous action, but we are not a real cohesive group with much of a membership aside from the listservs and website.
- ⇒ The man in the orange shirt has our permit; please speak with him.
- ⇒ Listen, I just got out of jail. This is a joke. There is no way you guys can be harassing me again. Look. I'm flyer-ing. That's not a crime. This isn't sedition. It's a flyer. That's it. Now bugger off. I really don't want to go through all this again.
- ⇒ My name is Earl. I'm here with Anti-War, Inc. I have a stack of flyers to distribute today. We do not have a permit to be here.

UNITED STATES DISTRICT COURT	
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION	
<p><i>In the Matter of the Search of</i> <small>(Name, address or brief description of person or property to be searched)</small></p> <p>ONE BLUE AND GRAY I-MAC COMPUTER AT [REDACTED] OHIO</p>	<p>SEARCH WARRANT</p> <p>CASE NUMBER: 1:08-[REDACTED]</p>
<p>TO: <u>Special Agents of Federal Bureau of Investigation</u> and any Authorized Officer of the United States</p>	
<p>Affidavit(s) having been made before me by <u>Special Agent [REDACTED]</u> who has reason to believe that <u> </u> on the person of or <u>X</u> on the premises known as <small>(name, description and/or location)</small></p>	
<p>ONE BLUE AND GRAY I-MAC COMPUTER AT [REDACTED] OHIO</p>	
<p><i>in the Southern District of Ohio, there is now concealed a certain person or property, namely</i> <small>(describe the person or property)</small></p>	
<p>See Attachment A</p>	
<p><i>I am satisfied that the affidavits(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.</i></p>	
<p>YOU ARE HEREBY COMMANDED to search on or before [REDACTED] <small>(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to the Honorable Ellen S. Carmody, U.S. Magistrate Judge, as required by law.</small></p>	
<p>[REDACTED] <small>Date/Time Issued</small></p>	<p>at <u>Grand Rapids, Michigan</u> [REDACTED] <u>U.S. Magistrate Judge</u> <small>Signature of Judicial Officer</small></p>
<p><u>Honorable [REDACTED]</u> <small>Magistrate Judge</small></p>	

On the street

If police approach you on the street, you can ask if you are being detained or if you are free to go. If you are free to go, you may try to leave carefully. If you are not free to go, the police have stopped you and may ask for your name and ID. Although in most states you don't have to give this information unless you are being accused of a crime, they may try to arrest you if you do not give this information.

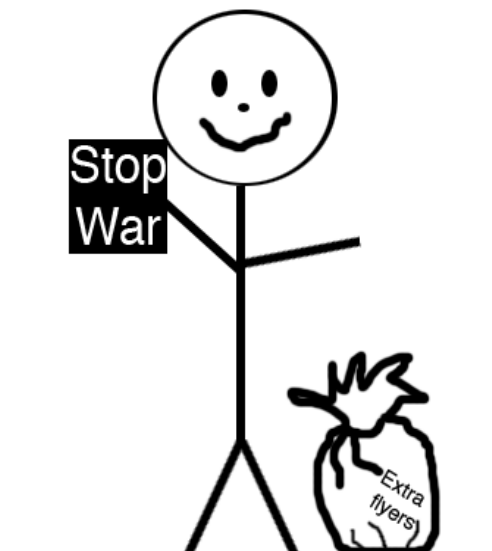
Police need a "reasonable articulable suspicion" that you have committed, are committing, or are about to commit a crime to stop you on the street. They can then do a pat-down of your outer clothing but may not search bags or pockets unless you consent to the search. However, if, during the pat-down, they feel an object that they believe is a weapon, they may search that pocket or location and seize the object.

The police do not have to inform you that you do not have to consent to a search. This is why it is important to know your rights so that you can use them. Oftentimes, not asserting your rights waives them. Sometimes you can imply consent without stating it, such as if you open your bag for police.

If you do not want to consent to a search but the police threaten you with arrest and you feel unsafe, say in a loud voice "I DO NOT CONSENT TO THIS SEARCH" if they force a search of your person or property. While it sounds corny, by drawing attention to yourself and the police, you gain witnesses to the search, which can help later if you find yourself in court. It is helpful to get contact information for witnesses if you can, or have a friend do so if you cannot.

If you have just been arrested, your consent is not needed to search your pockets and bags or anything you can reach.

This is Jo. Jo is at a demonstration and is distributing materials about the demonstration.





Try these out...

This comic tells the story of a person distributing fliers at a protest. An officer approaches the person and begins to ask questions. The demonstrator is given several ways to respond under the picture. Choose the answer or answers that might you might want to use to respond to the officer. (Answers follow the comic.)

Cars

Automobile searches are complicated and since we live in NYC, we aren't going to get into those specifics. However, you should know that if you are arrested while in your car, you car will be searched, the items found in your car will be cataloged and most likely seized, and your car will be impounded.





Try these out...

Note one or two things that you can learn about the demonstrator, the protest, the organization or group the demonstrator was with, or similar information during the conversation with the cop.

COP: It's hot out today.

DEM: Yeah. Not as hot as it was in New York in 2004. There was no end to that heat. At least in Miami it was November, so it wasn't as bad.

COP: I can imagine. Although, we should be thankful the RNC isn't in the winter here. It's brutal.

DEM: No kidding. I came out here for an animal rights demonstration in the fall last year and it was already snowing. I couldn't believe it. It was worse than New York.

COP: You must travel a lot, then. I wouldn't come here in fall or winter if I didn't know what it was going to be like.

DEM: Yeah, I guess you can say that. I mean, I go out of the country more than I travel the U.S.

COP: Is that right?

DEM: Well, it seems like activism is dead here. We try, but it feels like it never makes much of a difference. I

Grand juries often function as fishing expeditions for the state. If you are called to testify, you will not have your lawyer with you in the courtroom and may not refuse to answer questions. You may be offered immunity from prosecution to get you to testify. If you still refuse to answer questions, you can be found in contempt of court and imprisoned for the duration of the grand jury (normally 18 months, but the grand jury can be continued). If your attorney can prove that imprisonment will not compel you to testify, you may be released early. Deciding not to testify protects your community and prevents the state from gaining information, but you should prepare for your appearance and likely imprisonment if you choose to use this tactic. Research and plan ahead to ensure you make the best decisions for yourself and have all possible options to advocate for your release. Get support from your community to advocate for you on the outside and protest grand jury harassment.

Grand Juries

Grand Juries are a complicated area of law and not normally discussed in detail during a know your rights training. We suggest that you attend a specific training or research this area of constitutional law for more information. If you are called to testify before a grand jury, contact a lawyer IMMEDIATELY. Reach out to your community for support and make sure others are aware that you are being subpoenaed.

Activists called to grand juries typically invoke their 1st Amendment right to association and their 5th Amendment right not to incriminate themselves. The 1st Amendment right guarantees the freedom of association—for example, it is not a crime to associate with a group that defines itself by race, politics, or philosophy. The 5th Amendment right, however, only protects you and does not protect you from answering questions about others. In the case of a grand jury subpoena, the 1st Amendment will protect your association, but the attorneys may ask detailed questions about others in a group. These questions are not protected by the 1st or 5th Amendments.



"My client would like to plead the Fifth Amendment, Your Honor, and any other Amendment that you feel might be appropriate."

am going to a demo tomorrow and I will bet that even though it's the RNC that there will only be about 50 people there.

COP: That hardly seems worth it to go.

DEM: If it wasn't for the fact that it was KFC, I wouldn't. KFC is terrible.

COP: I bet you are vegetarian.

DEM: Of course I am. I bet most out here are. They might be anti-war activists, but I've seen some of them at animal rights stuff.

COP: Yeah, my daughter is a vegetarian. My wife and I are trying to understand where she is coming from, but we are more concerned for her health than anything else. She's 15. How is she going to get her protein or iron or stuff like that. The kid has to grow.

DEM: That's what a lot of people say. But really, there are meat alternatives. There are a bunch of websites that can show you how to eat healthily, even for a 15 year old. It's possible.

COP: I don't know about that. My wife and I would have to make separate meals for her and that's a pain, too.

DEM: To be honest, you and your whole family should consider going vegan—or at least vegetarian. It's not just about the animals. There's a lot at stake right now. We consume far too much to be sustainable.

Highlights

» **Most folks at the demonstration are vegetarian or vegan.** News stories have confirmed the idea that police or federal agencies develop a profile of activists. Confirming, denying, or introducing a new profile only helps them to potentially harass and arrest your membership or organization.

» **Demo tomorrow for animal rights.** It may or may not be true that the police and federal agents are aware of a great deal of political activity. Whatever the reality is, there is no need to assist their efforts to harass a group by letting them know where the next protest might be. It may be innocuous if the police or federal officers know, but there is no need to notify them of another venue where they may be able to gather additional profile information on individuals and groups.

» **Demonstrator travels internationally for activist causes.** International travel for political purposes has come under particular scrutiny since 9/11. Again, it may be completely innocuous for anyone to know, but is there an assured positive outcome if the police or federal officers know who travels for political reasons? Probably not.

» **Disclosing information on who organizers of a protest might be.** One of the reasons why it is important to invoke your right to silence and request an attorney is that lawyers can speak to city officials with a known set of legal definitions that reduces the chances of misinterpretation. What you might consider to be the duties of an organizer may not be what the police and federal officials consider the duties and responsibilities of an organizer. Their set of definitions may differ considerably from the ways in which activists communicate ideas. For example, if the police consider organizers to be initiators of illegal activity, then pointing out who an organizer might be may endanger that person. It's just better not to engage in casual conversation altogether.

» **Creating misleading information about activist connections.** Police are always seeking to connect individuals to causes, events, and other individuals. Offering information about activist at a demonstration gives them cause to target individuals or charge them with conspiracy.

But I'm smarter than this guy...

When being questioned at a police station or in a police car, it is likely that everything you say is being recorded. The same may apply on the street. No matter how clever you think you are, casual talk can be used to implicate you or others; don't engage in casual conversations with police or other individuals while in custody.

There is no such thing as "friendly conversation" with an officer. Everything you say can be used against you. Although it may not seem like a formal interrogation, cops may question you while in custody.

A criminal defense attorney pointed out that people often think they can outsmart cops and he always tells them why that is a bad idea. We liked his suggestions so much that we added them into our training. While we want you to remember to say, "I wish to remain silent, I want to speak to my lawyer," we also want you to remember these three things:

If you speak to cops or try to outsmart them, you are giving up your constitutional right to the Fifth Amendment. If you don't use this right by remaining silent, you lose it. If you start talking to the police after you have invoked your right to remain silent and demanded to speak to your lawyer, you are waiving your right to remain silent and must invoke it again.

Even the most innocuous answers are all local police or federal agents need because they will use this information to figure out associations and connections between activists and then charge all of you with conspiracy.

They actually want you to give a false answer because it is a crime to lie to the police.

Remember, cops can lie to you. Never think you can outsmart the police.

**"I wish to remain silent.
I want to speak to my attorney."**

The right to remain silent is your right to not incriminate yourself. If you are arrested, regardless of whether or not there was an arrest warrant, you have the right to remain silent. Once arrested, you do not have to speak to the police or answer their questions.

If you choose to remain silent, we suggest you also invoke the right to speak to a lawyer. To do this, state "I wish to remain silent. I wish to speak to a lawyer." It does not matter if you have not hired a lawyer – the state must provide you with one, or you can contact one as soon as possible. Only both statements will terminate questioning. It is a good idea to assert these rights every time the police try to question you, especially if it is different officers or they are asking you about a different protest or alleged crime.

Remember, cops can lie to you. It is a crime, usually a felony, to lie to any law enforcement officer.

We suggest you do not sign anything without a lawyer present.



"I learned in school today that you can't take
the Fifth Amendment on a spelling test."

JustUs Legal Collective | justusnyc.org

We do not provide pro bono legal assistance, and cannot give specific legal advice.
We are not lawyers. We do not directly provide legal observers or legal office support.



**SECTION 3:
The Fifth Amendment**

What does the Fifth Amendment say?

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.”

What does the Fifth Amendments mean?

The Fifth Amendment contains your right to remain silent; the right to a grand jury indictment for all felony crimes; and the right to speak to a lawyer.

