Defending Protesters Facing Criminal Charges – An Overview

Lee Rowland, Senior Staff Attorney
Speech, Privacy, & Technology Project
lrowland@aclu.org
(212) 549-2606

Jeffery Robinson, Director
Trone Center for Justice and Equality
jrobinson@aclu.org
(212) 284-7348
Protesting as Informed Choice

• **Before protest:**
  - Assess client’s tolerance (or desire!) for arrest
  - Civil disobedience or constitutionally-protected protest?

• **After arrest:**
  - Plead or fight the charges?
  - Constitutional claims
  - *Alford* pleas
Protest Rights are Property Rights.
the "public forum"
stretes and parks...have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.”

—Hague v. C.I.O.
Supreme Court, 1939
streets
Walking while black: punishable by death without trial
Black lives matter
Black skin is not a weapon
I can't breathe
All lives matter
Stop killing
...and other government properties
OUR JEWISH FAMILY STANDS WITH MUSLIM REFUGEES AND MUSLIM AMERICANS
gov’t meetings
Protest Rights are Property Rights!
When in public spaces where you are lawfully present, you have the right to photograph anything that is in plain view.
constitutional issue spotting
constitutional issue spotting:

• **First Amendment violations**
  • Facial (ACLU)
  • As applied (defense counsel)

• **Due Process violations**
  • Actual notice and opportunity (failure to disperse)
  • Individual proof/mens rea (rioting, property damage)
  • Vagueness

• **Fourth Amendment violations**
  • Seizure of video or cell phone evidence without warrant

• **Excessive Force**
ACLU

Dissent is patriotic