



# ETHICAL PROTESTING FOR LEGAL PROFESSIONALS

OCTOBER 27, 2022 - 07:00 PM



# OUTLINE

1. US Constitution 101
2. Nonviolent protest and freedom of assembly are essential individual liberties established by the First Amendment
3. Examples of the power of nonviolent protest
4. Examples of ways lawyers participate / roles
5. Difference between nonviolent protest and civil disobedience
6. Application to Lawyers
7. Movement Lawyering



A blurred photograph of a crowded staircase, likely in a public building or transit station. The image is overlaid with a red and blue color gradient. The text "1. US CONSTITUTION 101" is centered over the image.

# 1. US CONSTITUTION 101

---

“

*“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.”—First Amendment*





# US CONSTITUTION

1. Constitution ratified in 1788 without amendments
2. Bill of Rights ratified in 1791
3. First Amendment – Actual Text
4. Right to peaceably assemble is one of six rights within the First Amendment. Applies to everyone.
5. Right to peaceably assemble is juxtaposed against the government when there are traffic concerns or safety needs. *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1039 (9th Cir. 2006).



2.

NONVIOLENT PROTEST AND  
FREEDOM OF ASSEMBLY ARE  
ESSENTIAL INDIVIDUAL LIBERTIES  
ESTABLISHED BY THE 1ST AMENDMENT

---





## PROTEST & ASSEMBLY

1. The freedom to speak out on matters of public importance, even if the content of what we are saying is unpopular, and even if it's directly criticizing government decisions, is protected by the government.
2. Lawyers also have this right.
3. However, First Amendment rights are not limited and if you are a government lawyer, you are limited in speaking out about your workplace.

A large crowd of people is seen from a high angle, moving up and down a wide, multi-level staircase. The scene is overlaid with a semi-transparent red and blue gradient. The text '3. EXAMPLES OF NON-VIOLENT PROTESTS' is centered over the image in a white serif font. Below the text is a thick white horizontal line.

# 3. EXAMPLES OF NON-VIOLENT PROTESTS

---















# NON-VIOLENT PROTEST

1. Physical protests
2. Boycotts
3. Online campaigns
4. City Council and other agency meetings
5. Organizing associations
6. Bar Associations





# 4. EXAMPLES LAWYERS CAN PARTICIPATE

---



# EXAMPLES LAWYERS CAN PARTICIPATE

1. Legal counsel to organizations
2. Attending protests
  - a) Speaking at rallies
  - b) Deescalate tense situations
3. Legal observers
4. Representation of protesters in civil and criminal cases
5. First Amendment cases generally
6. Fourth Amendment cases







5.

# DIFFERENCE BETWEEN NONVIOLENT PROTEST AND CIVIL DISOBEDIENCE

---





# NONVIOLENT PROTESTS

1. Vast majority are peaceful (e.g., marches, rallies) and very low risk of arrest
2. Don't need a permit, but if streets will be blocked, then you'll want a permit
3. If there's a large crowd, and things get out of control, police can declare an unlawful assembly -- they're supposed to give loud notice and opportunity to exit -police are supposed to give warning
4. If/when people do get arrested, most typical charges are infractions or misdemeanors, and often never filed (or dismissed)
5. However, be cognizant of who you are around.



# CIVIL DISOBEDIENCE

1. There is also a tradition where people feel justified in breaking the law to protest an unjust law or situation, and often to bring attention to the situation.
2. Examples:
  1. People who had chained themselves to the front of a big company in protest of the company's destroying of rainforest
  2. Nuns and priests who chained themselves to nuclear facilities in protest of nuclear weapons and war
3. Punishment depends on situation. Often if it's really a moral cause and sympathetic client (and first-time offender), that might help with charges and sentencing.





# 6. APPLICATION TO LAWYERS

---



## APPLICATION TO LAWYERS

1. Lawyer oath to support Constitution.
2. Duty to speak out against injustice. *See* Cal. Rules of Professional Conduct Rule 8.4.
3. Lawyer as a witness. *See* Cal. Rules of Professional Conduct Rule 3.7.
4. When advancing First Amendment rights, ensuring claim is meritorious. *See* Cal. Rules of Professional Conduct Rule 3.1.
5. Lawyers are required to render advice considering referring to considerations other than the law, such as moral, economic, social and political factors that may be relevant to the client's situation. *See* Cal. Rules of Professional Conduct Rule 2.1.
6. Discipline? *See* Cal. Rules of Professional Conduct Rule 8.4.





## APPLICATION TO LAWYERS

1. Online statement. Be wary of online conduct.
2. Not protected under the First Amendment:
  - A. Incitement
  - B. Fighting words
  - C. True threats
  - D. Defamation
  - E. Obscenity
  - F. Hate speech
  - G. Privacy torts
3. Discipline? *See* Cal. Rules of Professional Conduct Rule 8.4.



# 7. MOVEMENT LAWYERING

---





## MOVEMENT LAWYERING

1. Movement Lawyering is defined as taking direction from directly impacted communities and from organizers, as opposed to imposing our leadership or expertise as legal advocates. It means building the power of the people, not the power of the law.
2. Movement lawyers must be moved by the needs of the community.
3. Movement lawyering is recognized in the Rules of Professional Conduct Rule 3.7.

“

*“First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end. The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought.”—Supreme Court Justice Anthony M. Kennedy, Ashcroft v. Free Speech Coalition (00-795) 198 F.3d 1083.*