

ADDING CIVIL DISOBEDIENCE DEFENSE TO YOUR PRACTICE

An Interview with Charles J. DiMare by Eleanor Southers



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I recently had the privilege of interviewing a prominent civil rights and civil disobedience defense attorney, Charles J. DiMare. I was anxious to learn what I could about the possibilities of adding this type of law to an existing practice. He had all the answers.

“Chuck,” as he likes to be called, hails from Massachusetts and has been providing education, advice, mentoring, and teaching at the University of Massachusetts for more than 36 years. He built his practice, which includes civil rights, malpractice, personal injury, labor and employment law, and higher education law, in part on his pro bono work. He told me that his practice has always been nurtured by his experience and involvement in civil rights cases.

First, I asked him how he would define civil disobedience as a practice. He sees it as

representing one individual or sometimes thousands of clients who refuse to obey laws to highlight their dissatisfaction with an issue or a cause. The cases range from simple sit-ins to destruction of property and even injury. Therefore, the attorney needs a wide range of knowledge of different types of law to properly provide legal advice or representation of these individuals. Also, logistically it is almost impossible to defend hundreds of people at one time. Thus, it is usually necessary to join with other experienced attorneys in this process.

Attorneys who practice in other areas of law (in which you have limited experience) are absolutely necessary to include in the proper defense of a client. For example, an international student at a university could face not only criminal charges and university sanctions but also could be in danger of immigration problems because

conviction (or even arrest) can cancel immigration status and result in deportation. If you don’t know enough about all the idiosyncrasies of immigration law, consultation or co-counseling with an immigration attorney would be highly advised when building your team.

Similarly, you may find yourself named in a legal malpractice claim if you proceed without fully understanding the complex law surrounding police misconduct, particularly as it applies when police overstep the civil rights of demonstrators. Chuck gave the example of a student protester calling an officer a “pig,” which incenses the officer and results in the student’s being injured during his arrest. The lawyer gets the student off with a \$10 fine, and the student is happy. However, there may also be civil liability here because the client could have civilly sued the police for injuring him

just based on being called a name. If the attorney is unaware of this and doesn't alert the student to his rights or at least refer him to a qualified attorney, malpractice can rear its ugly head.

Often it is necessary to know relatively obscure laws regarding interactions with the police. For example, there are recent state and federal cases involving the constitutionality of filming police officers. An understanding of this law by you or by someone on your team is critical because many of those engaged in civil disobedience/direct action desire (or their supporters and press desire) to film police officers when involved in these protest actions. There have been many false arrests supported by films of police officers and some very successful civil rights cases against law enforcement officers for such arrests.

And there are still other landmines to avoid. Take, for instance, the fact that a prospective employer may look at your client's social media record and see her participating in a disturbance and shouting ugly things. Perhaps she will not appear to be the best employee to hire. Just holding a sign and walking quietly might be a little different story, unless it is for a cause that the employer does not support.

I had always thought that a civil disobedience lawyer would need a strong background in criminal law. It would seem after talking with Chuck that although it is important to have significant experience or understand the basis of valid arrests and the defenses, there are many other factors to consider when defending this type of case. Becoming competent in or at least being able to identify the tangential possible liabilities is the basis of this type of practice.

Now let's talk about getting paid. Chuck's advice here is "Only add this to your practice if you understand you won't get fees." You are undertaking this primarily as a pro bono venture. You will be able to reap indirect awards from this field, but

this should not be the main reason for venturing into it. Chuck strongly advocates that you need to feel passionate about the cause you are defending and the clients who may be breaking the law.

On occasion, you may be able to collect attorney fees if you sue civilly. Such suits may arise from police misconduct or your client's being injured by the government or other liable entity. You can expect many, many hours of work. Chuck was part of an attorney defense team that represented Amy Carter and Abbie Hoffman, and he said that you could easily spend hundreds of hours (or more than a thousand hours) on a big case. In the Abbie and Amy case, for example, it took two weeks to defend the criminal case against them and 60 students who took over a building at the University of Massachusetts in the mid-1980s. So, the obvious requirement is that you need the ability to weather a long period of time without immediate profits.

On the upside, this is a red-hot area to get heavy publicity. You will appear in the media, and the advertising is free. And, as noted above, there will be the opportunity to cross-refer with other lawyers. These attorneys may then refer other paying cases to you when they see your expertise and competency, just as you will to them. Pro bono awards are also often conferred after a win.

Chuck related a very interesting story about how he got into this area of law. When he was a late teen, he was held in "preventive detention" (along with 13,000 to 14,000 other protesters) following the famous 1971 May Day protest in Washington, D.C., against the Vietnam War. The American Civil Liberties Union (ACLU) then sued the federal government for false arrest in a class action and recovered \$14 million (almost all of this award in punitive damages), which would have given each of the "detainees" \$10,000. Unfortunately, on appeal the damage award

was reversed based on the reasoning that recovery against the federal government for punitive damages is impermissible, and thus each detainee was only awarded \$1 in nominal damages. Notwithstanding the meager payout, this experience piqued his interest in civil disobedience cases. One of his first civil rights cases involved Native American clients who often had their rights violated because of their involvement in political action.

I ended my interview by asking Chuck if there were some way for lawyers to ease into this area of practice. Chuck suggested taking one easy case where the client is cooperative (not asking you to do the impossible) and doesn't have any collateral issues.

Also, an important element of this practice is giving educational seminars and workshops. Frequently, this will be to students, faculty, and staff of universities who may be involved in civil disobedience. Chuck gives hour-long presentations that include what kind of action might end in arrest. This knowledge could mean the difference between a peaceful march to a blockade versus throwing bricks and stones.

Chuck can then alert the participants to the little-known possibilities of liabilities they might encounter—which leads to being seen as an expert in the field.

So, what do you think? Do you want to add this area to your practice? If you are already a criminal attorney, an immigration attorney, or an employment attorney, can you risk the time needed to practice this very valuable area of law? Chuck suggests attorneys in these fields to ease into this practice by collaborating with an established civil rights/civil disobedience defense attorney. Co-counseling can be very successful.

And you can always run your thoughts by Chuck, who is a true mentor and guru for civil disobedience/direct action defense. ■



Owner of Professional Legal Coaching, **Eleanor Southers** (southerslegalcoach.com) coaches attorneys across the United States at all stages of their development who want greater success and fulfillment in their careers. She is the author of *Be a Better Lawyer: A Short Guide to a Long Career* (ABA, 2014) and is an American Bar Foundation Fellow. **Charles J. DiMare** (dimare@antonio-dimare-law.com) has 40 years of litigation, counseling, and training experience involving gender discrimination, sexual misconduct, civil rights, race and disability discrimination, personal injury, higher education law, labor and employment law, criminal law, law enforcement liability, government and corporate liability, and professional liability. He is "Attorney Emeritus" at the University of Massachusetts Amherst.