

LEGAL CONSEQUENCES FOR ACTIVISTS

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Outline of Mr. Kremer's discussion on rights and conduct for activists presented on August 5, 2023 at Ground Zero Center for Nonviolent Action

The legal consequences for activists who take stands of conscience to bring attention to illegal and immoral weapons have and can be very serious. Anyone concerned about this should understand how critical the process of pre-action discernment is.

SENTENCES FOR ACTIONS CAN BE LONG

Many of us who have friends or associates who have been arrested for activism are familiar with convictions that do not result in consequences that seriously impact their lives. But some of us know activists who have been jailed for months, even years. These activists who have experienced longer imprisonments have typically had prior convictions that increased their sentencing range. Still, it is not reasonable for an activist to assume that the result of peaceful activism would be a less impactful sentence. One of my greatest concerns for these people of conscience is the risk of unintended actions and unexpected consequences.

My background is in criminal defense. For decades I have represented people charged with serious crimes. My experience ranges from cases as common as DUI, to death penalty defense. I litigated one of Washington State's last death penalty cases resulting in a two-month jury trial. In most of the cases I have worked on, the defendants had little or no experience with being questioned and arrested, and had almost no understanding of their constitutional rights while they were being questioned and arrested. Few of my clients had any idea in advance of how the events of the day of their arrest would unfold, and how those events would end.

I have been working with activists for many years, taking cases to trial in both state and federal jurisdictions. I have worked on activist cases where the focus of the activism ranged from nuclear weapons to environmentally destructive installations to economic concerns. I have worked with groups not currently facing charges to discuss and practice constitutional rights. As I work with these groups, I think about the unexpected and unforeseen events that my criminal defense clients have experienced. While the activists I represent are typically well-educated people who exercise control and care in their lives, they often have surprisingly similar backgrounds and life experiences as many of the criminal defendants I represent. One commonality we all share is that unexpected stressors and unexpected events can suddenly change all our plans and can dramatically change the actions we normally take.

UNEXPECTED ACTORS AND CONSEQUENCES

I saw this during the 2020 Seattle Capitol Hill protest. The Capitol Hill Autonomous Zone (CHAZ), originally Free Capitol Hill and occasionally called the Capitol Hill Occupied Protest (CHOP), was a protest that I assume many reading this are familiar with. During that protest I was contacted for representation by several activists who had engaged in "de-arresting" procedures. These activists had attended a speech at the CHOP where the speaker had discussed the appropriateness of physically pulling an arrested activist from police custody during an action. The speaker allegedly described this as a legally defensible "de-arresting"

procedure.

Those who attempted or practiced “de-arresting” had a strong belief and understanding that what they were doing was legally justified. The police, however, saw this as a crime. Third-degree assault is defined in our state as a Class C felony involving contact with a firefighter, law enforcement officer, or another specific public servant. A judge can sentence a person to up to five years in prison and up to \$20,000 in fines for this felony. A more serious charge could result from a “de-arrest” depending on what injuries a policeman reports experiencing, regardless of whether the injury was the unintended consequence of pulling an activist away from a police officer. De-arresting is not a valid legal principle and not a legal defense. Anyone practicing de-arresting should expect to be charged with third-degree assault and possibly more significant charges, with a high probability of conviction.

CONSEQUENCES OF PEOPLE BELIEVING THEY ARE EXERCISING THEIR RIGHTS

More than two years after rioters stormed the U.S. Capitol, prosecutors have now charged more than 1,000 people in relation to the Jan. 6, 2021 attack, and many have been convicted and given serious, impactful sentences. I assume that every one of these insurrectionists felt their presence at the U.S. Capitol was as legitimate and necessary as any person of conscience could have. The seriousness and consequences of those convicted make almost daily fodder for our news. People preparing for an act of conscience such as crossing the line at a military base might be surprised to learn that others standing with them might have received training or might have read an article about de-arresting or some other theory of law and rights that propelled the January 6th actors.

You might find you are standing next to someone at a protest who believes they are rightful and educated as they escalate the protest to levels others do not anticipate. Their actions could easily lead to higher consequences for everyone at the action.

I write above about “de-arresting” and January 6th because I want to start a discussion with you about unexpected consequences of the actions of activists you stand with. I don’t bring this up because I believe actions of Ground Zero participants have been equivalent to January 6th rioters or “de-arresters” – I don’t. I do this because I want you to think about what you could be facing when you show up for an action.

DISCERNMENT

One of the best things that I have experienced in my representation of Plowshares Activists is the education I have received from Plowshares. When I represented the Disarm Now Plowshares, it was my first experience with really disciplined, focused, strong courageous individuals who put themselves at risk for their beliefs. I learned that one of the themes these people had adopted for their action was to transform others through speaking the truth. And they were absolutely successful. If no one else, they transformed me. I learned about their strength, and how it came in part from their communication with each other, and their trust of each other.

Part of that communication and trust came from a process they went through prior to the action, which they referred to as discernment. During this process they discussed and shared

their beliefs and concerns. They discussed their methodology. I learned that they had discussed and thought about subjects as distinct as how it would impact young marines if the marines were startled by the surreptitious activities of these activists, and if these marines had shot and killed the activists. I learned that this was an important part of the discernment discussion: discussing how it would affect the life of a young marine if they had to live their lives thinking about how they had shot an activist.

I realized that because of working carefully through this discernment process, the Disarm Now Plowshares knew well who each other were, how they thought and what each other would plan on doing all through their action.

When I know that activists are heading to an action together, I know that some of these activists have known each other for years. They have a strong sense of what each are capable of doing because of this experience. But this is not always the case. Often activists have little experience with each other and rely heavily on the belief that each are committed to the same cause, without knowing much more about each other. Often activists have discussions prior to an action. But I wonder if those discussions are thorough enough to explore whether each activist has the same expectations regarding whether or not to, for example, “de-arrest.” Whether or not to escalate or de-escalate interactions with government agents. What if a police officer shows up with a bad attitude and hopes to provoke an activist? What methodology will the activists take before the action to address this possible unexpected turn of events?

WORST CASE SCENARIOS

As a lawyer, I find myself often contemplating worst-case scenarios. When clients come to my office for advice, as they often do, I do this process of imaging worst-case scenarios for a living. So forgive me for this terrible description that follows. What if you are at an action, and you and all your colleagues have been peaceful and compliant. What if one of your fellow activists – someone you truly love, someone you would sacrifice for unhesitantly – is thrown on the ground and handcuffed. And as you stand near them you hear the unmistakable sound of their bones breaking as a government agent kneels on their back and twists their arms. You see the terrible pain in your loved one’s face as they scream and beg for help. Will you stand motionless? Will you take even one step towards your loved one in their defense?

Even one step forward in this situation could dramatically escalate what happens next. Do you know you could stop yourself from taking that step? Perhaps more importantly, do you know the others in your action well enough to know they would not take that step, or the step after that? Do you know what each and every other person in your action has concealed inside their clothes, what defensive object they might suddenly pull out? Do you know the mental health and legal history of each person you stand with, and what they have done in far less stressful situations in the recent past?

These are the nightmarish thoughts I have swirling in my head each time I know activists are planning for an action. I mostly keep these thoughts to myself, because I know that worst-case scenarios like this don’t often happen, and I believe that the activists I work with have certain expectations that I agree with. And I appreciate that most activists have some type of discernment that they engage in. But I also know that we are all human, and even the level of discernment practiced by the Disarm Now Plowshares could never fully plan for every

unexpected circumstance.

LAWS THAT CAN BE EMPLOYED AGAINST YOU BASED ON OTHERS' CONDUCT

An accomplice is defined as a person who knowingly, voluntarily, or intentionally gives assistance to another in (or in some cases fails to prevent another from) the commission of a crime. An accomplice is criminally liable to the same extent as the principal. Showing up at an action might be enough "assistance" to make every activist present just as liable as one of the team who takes an unexpected step. If someone physically contacts a police officer per the assault -three statute, everyone could be looking at five years under a prosecutorial theory of accomplice liability. If someone gets shot, everyone could be looking at a murder charge. These are the nightmares that swirl in my overactive imagination.

Another statute police and prosecutors have used to try to punish others for the acts of a different person is the "Rendering Criminal Assistance" statute. Rendering Assistance is when a person, with intent, prevents, hinders, or delays the apprehension or prosecution of another person who he or she knows has committed a crime, or is being sought by law enforcement officials for the commission of a crime. Just warning or concealing such a person is enough to make the actor guilty of Rendering.

Under the "Accessory after the fact" statute, an actor can be guilty of a crime if they know someone who has committed an illegal act and they merely "comfort" or "assist" that person.

CONCLUSION

When asked to write this article, I was asked about legal consequences of showing up at an action. In a federal case, an activist is typically charged with trespass. Many defendants that I have worked with are looking at a maximum of six months and a thousand dollar fine, in addition to supervisory probation. Most defendants who are first-time offenders get no jail and a small fine. People from out of state should be prepared to travel to the jurisdiction of the charge for subsequent hearings. People who are not US citizens should be prepared to lose their right to enter the US. People who have anxiety issues or mental health disabilities should probably not participate in an action and should instead take on a support role.

The paragraph above discusses common minor penalties and issues. What are the possible legal consequences? The possible consequences are nightmarish.