

Unlawful Assembly

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As the 111th Congress was being sworn in on Tuesday, a seemingly endless line of figures dressed all in black with stark white masks slowly marched single-file around Capitol Hill. Each wore a placard bearing the name of someone who had died in the wars in Iraq, Afghanistan, and Palestine, their age, and the date of their death. This March of the Dead (video <http://afterdowningstreet.org/node/38740>) was intended to remind yet another Congress that we elected it to end aggressive wars, and to announce that the peace movement will be a presence on Capitol Hill until the wars are ended.

About an hour after the march ended, a group of the dead in masks and black clothes gathered in the indoor atrium of the Hart Senate Office Building. A few of us began reading aloud lists of those who have died in the wars, including U.S. soldiers. Five floors up, on the east side of the atrium, three large banners were dropped reading “Afghanistan” and “Iraq” and “Palestine.” Then on the west side an enormous banner unfurled reading “The Audacity of War Crimes.” That banner was quickly taken down by police. As we continued reading the names, another huge banner appeared on the south side of the atrium reading “We Will Not Be Silent.”

(I can't help noting in passing that Tuesday's activities and the “we will not be silent” shirts seen at peace rallies in recent years were both designed by Laurie Arbeiter, and as we were engaged in Tuesday's actions we learned that our friend Raed Jarrar had been awarded \$240,000 for having been thrown off an airplane for wearing one of the shirts with the message in Arabic.)

A half dozen of us continued reading the names of the dead aloud with a dozen figures in masks around us, and dozens of onlookers and members of the media around them. (The corporate media was very well represented at this event, so if it does not appear on your television you can blame a producer's editorial decision.) While we read the names, some of those who had skillfully unfurled and tied the banners were escorted out of the building by the Capitol Police — and thanked by spontaneous applause. Eventually, the police gave our group three warnings, encircled us, and began handcuffing us as we continued to read the names of the dead. While they were warning us, the police ordered us to “cease our criminal activity.” We were, of course, protesting the criminal activity of aggressive war, but what — I wondered — was OUR crime?

In the end we were charged with something called “unlawful assembly.” Assemble is, of course, a word that appears in our Constitution's first amendment: “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.”

One doesn't hear a lot about unlawful religion, unlawful speech, unlawful press, or unlawful petitioning. Such things could be construed as existing, of course, but seem marginal; the crimes involved are based in other offenses, not in the act of worshiping or speaking itself. Why is freedom of assembly different? Presumably because our right is only to "peaceably" assemble, not to assemble violently. And, in fact, "unlawful assembly" is deemed a type of "disturbance of the peace." But can the peace be disturbed even though we behave peaceably, without violence? That's not at all clear.

We were not loud enough on Tuesday to disturb any senators in their offices. We were less noisy, I'm sure, than typical groups of tourists. Is it possible that assemblies are deemed unlawful because of their political content, even though that would itself be blatantly illegal? Several sources I've checked define unlawful assembly as assembling with the intent to commit a crime. Thus assembling is termed a rout, and actually initiating the crime is termed a riot. Standing and reading a list of names aloud is not, at least, the typical definition of a riot. And we were not charged with any other crime apart from "unlawful assembly."

The Encyclopedia Britannica defines unlawful assembly as the "gathering of persons for the purpose of committing either a crime involving force or a noncriminal act in a manner likely to terrify the public." How much force should we suppose that Eve Tetaz, a 77-year-old woman reading a list of dead names, was planning to employ? Observers of our action looked solemn or amused, but in no cases that I saw terrified.

That doesn't mean that I don't think any crime was committed on Tuesday. The fourth amendment to our Constitution reads "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." Nonetheless, the Capitol Police knew in advance of our action in the Hart Building what we had planned, and they could only have known it by violating our rights.

When you go to jail, the police take all of your possessions and catalogue them. Laurie had a copy of the U.S. Constitution in her pocket. The police recorded it as "1 address book."

David Swanson is the author of the upcoming book "Daybreak: Undoing the Imperial Presidency and Forming a More Perfect Union" by Seven Stories Press and of the introduction to "The 35 Articles of Impeachment and the Case for Prosecuting George W. Bush" published by Feral House and available at Amazon.com. Swanson holds a master's degree in philosophy from the University of Virginia. He has worked as a newspaper reporter and as a communications director, with jobs including press secretary for Dennis Kucinich's 2004 presidential campaign, media coordinator for the International Labor Communications Association, and three years as communications coordinator for ACORN, the Association of Community Organizations for Reform Now. Swanson is Co-Founder of AfterDowningStreet.org, creator of ConvictBushCheney.org and Washington Director of Democrats.com, a board member of Progressive Democrats of America, the Backbone Campaign, and Voters for Peace, a member of the legislative working group of United for Peace and Justice, and convener of the accountability and prosecution working group of United for Peace and Justice.

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