

Appendix: Arresting Speech: What Do You Do When Your Speech Can Get You Arrested?

Sometimes when you decide to become a part of a social protest, either as a speaker or as an attendee who chants and marches with others, you can be arrested. At the outset, you should know three things about getting arrested when pushing for social or political change. First, as an advocate or activist, knowing something about the history of struggles for social and political justice in your country, as well as the uses and abuses of state force, is helpful and instructive. Second, knowing your rights as a citizen and for legal protection in your country is crucial; in the United States, for example, a thorough understanding of the first amendment of the Constitution is absolutely necessary. Finally, learning from the experiences of others who have been involved in social and political movements in recent decades can give you needed wisdom.

Greg Gladden is someone from whom activists can certainly learn. A Texas-based attorney and activist affiliated with the American Civil Liberties Union, Gladden serves as co-chair of the Mass Defense Committee of the National Lawyers Guild and has decades of experience advising activists and advocacy groups such as ACT UP and members of the Occupy Wall Street movements. Gladden suggests that how one approaches and interacts with legal authorities depends on whether one is participating in a licensed protest or demonstration, or if one is protesting something like a days- or weeks-long convention, conference, or event (e.g., a political party convention, a conference of corporate investors, and so on). For momentary protests, issues of arrest may be resolved and negotiated in shorter amounts of time. If you are arrested for trespassing, public nuisance, resisting arrest, or similar charges at a longer event (like a week-long convention), the bail to spring you from jail could be set so high that you could be detained for longer periods—often until the protested event is over—so that you will not be arrested again.

Sometimes an advocacy group may plan to get arrested or predicts that arrests should occur. Other times, however, you may participate in a rally, protest, boycott, or strike and find yourself arrested without anticipating it. In either case, Gladden suggests that there are number of things to keep in mind.

What (Not) to Do When You Are Protesting or Arrested

How you respond to an arrest for activism really depends on the laws of the community, country, or state that you are in. Make no mistake about it: getting arrested is serious business and can entail profound legal, political, social, and economic consequences. Because much can be at

stake in an arrest—the most extreme being a jail sentence—it is important to protect yourself legally and consider all the things that will help someone who may eventually defend you in court. These suggestions apply to citizens of the United States; however, many of them apply to other democratic contexts as well. These suggestions do not apply to any social or political advocacy in countries for which there are no legal protections for free speech and assembly.

- **Do not consent to searches:** Either before or after one is officially arrested, authorities may request to search your body, belongings, or property. Not all searches require your consent; for example, the police can frisk a person they reasonably believe to be armed and dangerous. When you are detained, an authority may say something like, “If you have nothing to hide, why does it matter that we search you?” The question is certainly a reasonable one, but consenting to a search could give up one of your possible legal defenses in a court of law. Having a record of not consenting to a search of your person or property may be helpful for those defending you later. There may be circumstances in which you decide a search is fine—just know that when you consent there may be legal consequences that you did not anticipate. Gladden recommends that you memorize and repeat five crucial words when arrested or detained: “I don’t consent to searches.” If the search commences despite your refusal, do not physically interfere with the officers.
- **Know the Miranda rule:** Also known as the “Miranda warning” or as “Miranda rights,” the Miranda rule is a law that protects citizens who are arrested from saying something that can be used against them in legal proceedings. The warning is widely known because it is featured in fictional dramas on television and film, and begins, “You have the right to remain silent. Anything you say or do may be used against you in a court of law.” The rule was established by a Supreme Court ruling that deemed it necessary for those suspected or accused of a crime to enforce the fifth amendment, which protects U.S. citizens from compulsory, self-incriminating statements, and the sixth amendment, which provides for the accused to have legal representation. “Anything you say *will be used against you*,” warns Gladden, so more often than not your best legal option as an activist is to remain silent and, when asked, to request a lawyer.
- **Avoid speaking directly to law enforcement:** At rallies, protests, and marches, it is common for police to be present to help keep the peace and, hopefully, prevent violence. Law enforcement officials are human beings, and one should usually think of their presence as well-meaning and protective. Even so, you do not want to give anyone reason to believe you have motives other than your

advocacy, and so when participating in a demonstration or protest it is generally best not to speak directly to police officers. One can be polite or nod, but *speaking* or behaving in ways that are perceived as a direct address can be interpreted by law enforcement as “reasonable suspicion” to approach you, question you, or even search you. And of course, one should never touch an officer.

- **What you can say to law enforcement:** If you are merely questioned or detained by law enforcement, you are under no obligation to say a word (you have a right to remain silent). Even so, volunteering some information can be helpful, especially if you are arrested. Information about your basic identity will be needed for a court to set conditions for your release, including bond, which is a legal agreement for monies to be paid by you or others for your release from custody. In this case, you are obligated to answer three questions:
 1. What is your name?
 2. What is your date of birth?
 3. What is the address of your residence?

Anticipating an Arrest: The Whys, Hows, and Dangers

Throughout the history of Western countries, social and political protests and demonstrations that result in the arrest of activists have led to social change, either because of the *hardship* caused to those with the power to effect change (e.g., blockades or “human chains” barring the entrance to a building), the *visibility* created by a demonstration in the mass media, or both. It is sometimes the case that a social advocacy or political group deliberately anticipates or plans for protesters to be arrested. In the early 1960s, for example, civil rights activists called the Freedom Riders rode interstate buses across state lines into Southern states that were not enforcing federal laws prohibiting segregation. The Freedom Riders provoked anger and violence in many areas, and local authorities arrested many of the activists for trespassing and other local laws that violated settled federal mandates. Through arrests and breaking local and state laws that were, ultimately, illegal themselves, the Freedom Riders brought national media attention to those states in violation of federal law, helping to garner support for the civil rights movement for racial equality. In short, getting arrested can be an act of social and political advocacy.

Regardless, if you anticipate arrest is possible or plan for it as an activist strategy, *it should never be about you*. Self-aggrandizing or promotion is typically unhelpful to any form of social or political advocacy and detracts from the larger cause for which you are seeking attention. When planning for possible arrests, very clear goals for the reason for doing so should be established: will the arrest invite media attention

and possibly publicize your issue or cause? Will it further galvanize your group's goals and help to promote social change? Much thought and care should be taken before engaging in speech or behavior that results in drawing the attention of law enforcement, and some consideration of the possible consequences—especially violence—must be considered.

Based on his years of experience advising and defending activists, Gladden also suggests a number of things to keep in mind if you anticipate an arrest or the use of police force at a protest, rally, or demonstration:

- **Talk to a defense attorney sympathetic to social movements:** It is always a good idea to consult with an attorney, either local or perhaps part of a legal organization that advises activists and public advocates, about your plans. Although federal laws and rights apply to everyone within a country, local, community, and state laws may exist that complicate your aims or goals. Have the contact information for legal counsel—such as a phone number—with you or memorized. Many activist groups who actively pursue arrests will have a lawyer on call and ready to assist them in the event of an arrest if protestors are taken into custody.
- **Secure financial resources:** If you know you or your group members will likely be arrested, you must consider how to finance the expense of engaging the legal justice system. Arrests almost always entail a bond, and you will be expected to pay—or have someone pay—the bond to release you from custody. Although there is no way to predict how high bond can be set, you can research the amount typically set for similar arrests in the past.
- **Plan to have some people not get arrested:** Always have at least one or two members of your advocacy group “on the sidelines,” perhaps even not participating in a rally, protest, or march, who have important information about the active protestors with them. These individuals should have the names and contact information for *all* of the people in the group that you anticipate may be arrested.
- **Don't have illegal or objectionable things on your person:** This tip may seem obvious, but some folks still need to hear the obvious: don't give the authorities a reason to search you or charge you with a crime. For example, even though you are participating in a rally or protest in support of the right to openly carry guns on your person, make sure you are in compliance with all permits and other gun laws as they exist, not as you would like them to be. If you are at a rally in support of the legalization of marijuana, don't have a bag of pot in your pocket. Like, duh!

- **Prepare for the use of force:** Even if a demonstration is peaceful, it may be perceived by local authorities as potentially dangerous or prone to violence (e.g., rioting). To disperse protestors and assembled activists, sometimes authorities use painfully discomforting irritants such as pepper spray and tear gas. Wear long sleeves, long pants, hoods, even goggles and a bandana or face mask, to cover as much of your skin as possible and counteract these irritants.
- **Prepare for sitting and boredom:** Wear comfortable clothes and shoes, as you may end up in jail or a detention center for longer than you anticipated. Because when you are arrested your personal belongings may be confiscated, what you have on your immediate body may be all you have until you are released from custody. You should also be prepared for having nothing to do, perhaps even no one to talk to while passing your time in waiting. Mentally prepare yourself for long wait times and isolation.

History has taught us that getting arrested is often an important if not central component to social change on many issues, and unfortunately, so is violence. Readers desiring more information and recommendations about protesting, your rights as citizens, and preparing for a possible arrest can learn more from the nonprofit legal advice organization Flex Your Rights, or FLEX. Search for “flex your rights.”