

Thursday, September 20, 2007

Drumming is protected speech.

When Gulf War I started, I more frequently escaped the yellow ribbon atmosphere at my law firm during lunchtime, to experience the ongoing peace protests at Lafayette Park, two blocks from my office and across the street from the White House. Early on, I met my good friend and mentor Jun Yasuda, who drummed and prayed aloud for peace while fasting on green tea for thirty days. On her pre-planned break fast day, Bush I announced the end of the war. Above is my friend and mentor Takako Ichikawa, drumming and praying the same prayer for peace, the Odaimoku, in Lafayette Park. Today's blogpost underlines that my past blogposts about music do indeed have a strong relationship to my criminal and Constitutional defense law practice. In 1992, a three-judge federal panel unanimously ruled that drumming is protected protest speech, and reversed a conviction of an antiwar protester (during Gulf War I) for drumming across the White House at a sound level exceeding the noise limitation applying even to Yellowstone and other parklands that are far from any politicians' offices. The case is U.S. v. Jane Doe, a/k/a Diane Nomad, 968 F.2d 86 (D.C. Cir. 1992), and provides an excellent analytical overview of the First Amendment caselaw applying to demonstrating activities. U.S. v. Jane Doe holds substantial significance to me both for my law practice and in my non-lawyer capacity. As a lawyer, I defend not only criminal defendants, but also the First Amendment, because government tyranny is not limited to the criminal justice system, and because the First Amendment often is implicated in criminal prosecutions, including prosecutions of protestors, disorderly conduct defendants, obscenity defendants, and child pornography defendants. On a personal level, I experienced deep benefits from the drumming in Lafayette Park across the White House during the days leading up to and into 1991's Gulf War I. One Saturday morning, as the Senate debated whether to authorize Bush I to start Gulf War I, a Capitol police officer threatened me and my co-demonstrator (after I proudly displayed my homemade protest poster) with arrest for demonstrating without a permit. The situation became even more ludicrous when the Capitol police permitting office would only offer a demonstration permit space far to the east of the Capitol building and far away from every Senate member and the national Mall. When I asked why we could not get a permit closer to the peace demonstrators with a premium spot near the Capitol's western steps, the response was that such a closer spot was only available by applying further in advance. I said that our demonstration was spontaneous, in response to a radio news report that same Saturday morning that the debate was in progress, so there was no way for me to know in advance of my desire to demonstrate on that particular day. My argument fell on deaf ears, other than being told we could ask the other demonstrators if we could join them. The other peace demonstrators told us of a more substantial peace demonstration about to start at Lafayette Park across the White House. We went there, where a stronger antiwar message was sent by a few hundred people, and where I started feeling less isolated about my antiwar views and learned that plenty of mainstream people also opposed war at that time. Throughout the demonstration, there was drumming, typically on the bottom of huge plastic drum containers suitable for restaurants to store cooking oil; they were inexpensive converted percussion instruments, made their noisy point, and held good harmony with the other drums. When Gulf War I started, I more frequently escaped the yellow ribbon atmosphere at my then-law firm during lunchtime, to experience the ongoing peace protests at Lafayette Park, two blocks from my office. Early on, I met my good friend and mentor Jun Yasuda, who drummed and chanted the odaimoku (Na Mu Myo Ho Ren Ge Kyo, which is now an acronym on my license plate, and which adorns the wall next to my desk, to help me be more peaceful during potentially tense phone conversations with opponents) peace prayer while fasting on green tea for thirty days. On Jun-san's pre-planned break fast day, Bush I announced the end of the war. I first noticed Jun-san through her drumming and chanting, which are hallmarks of her Nipponzan Myohoji Buddhist order, whose monks carry their drums everywhere. At the time, I was seriously out of harmony with my life in numerous ways, including being very upset about Gulf War I, being very dissatisfied with my job, and seeking greater peace, fulfillment, and enjoyment in life. Jun-san has been one of the very positive influences and catalysts to get me closer to harmony and peacefulness than I have ever been. Six months later, I became a full-time people's lawyer, joining the Maryland Public Defender's Office. Three years after that, I came closer to a harmonious life, by attending the National Criminal Defense College's two-week Trial Practice Institute, followed by taking up t'ai chi practice followed later by a t'ai chi way of life. One year after that, I attended the four-week Trial Lawyers College in the Middle of Nowhere (at least at first blush), Wyoming. One year after that, I returned to private practice, still as a people's lawyer, and two years after that, I finally realized my longtime dream of being my own boss while fighting for justice. The drums' message, then, hit right home with me. I wonder if Bush II hears the drums; at least the White House lawn and driveway cannot be soundproofed. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:10