

A TALE OF TWO (OCCUPIED) CITIES: POLICING STRATEGIES AT OCCUPY WALL STREET AND OCCUPY PHILADELPHIA

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I'm standing on the walkway of the Brooklyn Bridge, peering down and trying to get a better glimpse of the scene unfolding beneath me. Hundreds of people are gathered below. From each direction, lines of police advance. "They're going to mass arrest them," shout many of the hundreds watching from above. Helplessly, we gaze down as our fellow demonstrators are cuffed and carried away. The mood on the walkway is tense. Assessing our situation, it becomes obvious that we too are trapped. The cables of the bridge suddenly look a lot like a cage.



Figure 1: NYPD surround and mass arrest Occupy Wall Street protestors on the Brooklyn Bridge. Photo courtesy of Brennan Cavanaugh (Flickr Creative Commons Attribution Noncommercial License).

Eventually, a friend and I start walking toward the Brooklyn side of the bridge. The crowd thins considerably, and it looks like we will be allowed to leave. We meet up with a hundred other people in a Brooklyn park—a mere fraction of the thousands that had set off from Zuccotti Park hours before. It starts to rain. As more people trickle into the park, an impromptu general assembly is called to decide on next steps. In the fifteen minutes I sit listening, police begin encircling the area. My friend and I head back to Zuccotti to regroup and gather word

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about those arrested.

We soon learn that more than seven hundred people were arrested on the bridge. Articles and videos of the scene begin to circulate at high speed over the internet and by mobile phone. My friend and I return to Philadelphia the next day, where plans for a local occupation are soon underway. Over the next week, dozens—and then hundreds—of Occupy encampments and demonstrations emerge across the country. Each demands redress to the social and economic inequalities created by the 1%.

Philadelphia- November 18, 2011

Six weeks have passed since my experience on the Brooklyn Bridge, and I'm legal observing¹ for a demonstration involving civil disobedience taking place outside a major bank in Philadelphia. Approximately fifty Occupy Philly activists watch through the large bank windows as nine protestors sit down in the lobby after reading a statement indicting the bank for its role in the recent foreclosure crisis. It's a cold day, and my hands are freezing as I try to scribble notes. Several Civil Affairs² officers talk to the protestors inside, who indicate that they're not planning to leave. Outside, supporters use a megaphone to share negative experiences with the bank and its predatory lending practices.



Figures 2 & 3: Formation of Bicycle Police and Highway Patrolmen at an Occupy Philly bank demonstration. Photos courtesy of Dave Onion. Used with permission.

¹ Legal observers monitor law enforcement activities at rallies and marches to create a safer atmosphere for protestors to express their political views without unconstitutional disruption or interference by police. The program began in New York City in 1968, and the term "legal observer" has been copyrighted by the National Lawyers Guild. See *Legal Observer Program*, NATIONAL LAWYERS GUILD, <http://www.nlg.org/resources/legal-observing/> (last visited May 31, 2012).

² The Philadelphia Police Department's Civil Affairs Division is the branch of law enforcement that has primary responsibilities at any public assembly, demonstration, or labor dispute in the city. See Press Release, American Civil Liberties Union of Pennsylvania, ACLU Announces Settlement with Philadelphia Police Department over Arrest of Protestor (Jan. 12, 2009), available at <http://www.aclupa.org/pressroom/acluannouncessettlementwit.htm> (describing the settlement agreement for the arrest of protestor Marianne Bessey and the role of the Philadelphia Police Department's Civil Affairs Division). The ACLU of Pennsylvania reached a settlement with the Civil Affairs Division in 2009 that requires additional free speech and First Amendment training for its officers. See Mary Catherine Roper, *Bessey v. City of Philadelphia*, AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA, <http://www.aclupa.org/legal/legaldocket/protestorarrestedoutsideof> (last visited May 31, 2012) (describing the events that led to Marianne Bessey's arrest by two Philadelphia police officers).

Police reinforcements begin to arrive. A group of twenty bicycle cops form a barricade between the bank windows and the demonstrators outside. Next, a line of twenty highway patrol officers dressed in high boots and wielding batons form a line behind the bike cops. As has become standard, an officer inside videotapes the scene with a large camera.³ As I write this all down, another legal observer taps my shoulder and points behind us. Police begin forming a circle around the small group of activists outside. Squadrons of bike police are stationed at each entrance. Police cars line the street behind us. At least one hundred cops are in the plaza and more are stationed close by. We are surrounded.

Inside, the police slowly begin arresting the demonstrators and taking them to a back room where we can no longer see them. After forty-five minutes, the police push the outside protestors back and use their bikes to form a corridor from the bank to the street. At this point, a demonstrator suddenly falls to the ground, convulsing from a seizure. Cries for medics produce an activist from Occupy Philly Medics, who works with the police to stabilize the man. The entire plaza becomes eerily silent as we wait for an ambulance to arrive. As soon as the ambulance drives away, the arrests continue. Police bring out the protestors one by one, and the crowd cheers as each walks proudly from the door to the waiting police vans. When the arrests are over, the remaining protestors and legal observers walk down Market Street back to City Hall. Bicycle police and a Civil Affairs Unit escort us the whole way. After reaching the encampment, protestors begin preparing for jail solidarity while the remaining police return to their positions surrounding the plaza.

INTRODUCTION

When Occupy Wall Street (OWS) began in September 2011, it reignited popular protest in a way not seen in the United States since the anti-war and anti-globalization demonstrations of the early 2000's. However, unlike popular protests of the last decade, Occupy did not limit itself to a day or a week of action. Rather, occupations had a sense of permanency that posed new challenges for demonstrators, police, and city officials. Not surprisingly, local police departments and administrations responded to Occupy in different ways and used a combination of crowd control strategies. The vignettes provided above illustrate two such strategies. The mass arrests on the Brooklyn Bridge were in keeping with the rapid escalation of force used by the NYPD against non-violent Occupy protestors. By comparison, arrests in Philadelphia were far less frequent and interactions between occupiers, the city, and the police were (on the surface) fairly congenial.

These different strategies of protest control are referred to as *Escalated Force* and *Negotiated Management*.⁴ Participants in anti-globalization demonstrations in the United States since 1999 are well acquainted with Escalated Force, a policing model that relies on the kettling⁵

³ See Dave Lindorff, *No News Is Not Good News: If Cops Tape Protests and Journalists and No One Reports It, Is It Intimidation?*, THIS CAN'T BE HAPPENING (Nov. 19, 2010, 11:20 AM), <http://www.thiscantbehappening.net/node/306> (discussing the lack of media coverage about the use of cameras by Philadelphia Police officials during protests).

⁴ See KRISTIAN WILLIAMS, *OUR ENEMIES IN BLUE: POLICE AND POWER IN AMERICA* 183-84, 190 (South End Press 2007) (describing the crowd control strategies such as escalated force and negotiated management).

⁵ Kettling is a police tactic of corralling and trapping protestors into a closed area using nets and police cordons. The crowd is then usually mass arrested. See Julian Joyce, *Police "Kettle" Tactics Feel the Heat*, BBC NEWS

of protestors, mass arrests, violent dispersals of crowds, and the use of “non-lethal”⁶ weapons like tasers, projectiles, tear gas, and pepper spray. These tactics have been well documented by movement lawyers,⁷ activist intellectuals,⁸ and the independent media. Escalated Force has also been used to respond to Occupy in various parts of the country, most visibly in New York City and Oakland. However, it has thus far been more common for movement activists to encounter the conciliatory approach known by police strategists as Negotiated Management. In this model, police attempt to create a collaborative relationship with protestors in order to make demonstrations predictable and non-disruptive. Under the Negotiated Management model police and city officials work in close collaboration to manage protest through surveillance, permitting, constant contact with protestors, and infrequent but strategic arrests.⁹

Despite the apparent differences between Escalated Force and Negotiated Management, it is crucial to remember that both models share the goal of controlling dissent and thwarting efforts to produce social changes.¹⁰ With its focus on dialogue and cooperation, Negotiated Management may initially appear to benefit protest movements. However, when considered from the standpoint of movement development, public support, and legal defense, I argue that this policing strategy is in many ways more effective than Escalated Force in neutralizing social justice movements.

Philadelphia is one of the larger cities in which police and city officials responded to Occupy using a Negotiated Management approach.¹¹ Based on my experience as a National Lawyers Guild¹² coordinator, I offer a first-hand account of how Occupy Philadelphia (OP) emerged. I also describe how police and city administrators orchestrated the eventual eviction of protestors from the Occupy Philly encampment at City Hall. Here, it becomes clear that—even in cities like Philadelphia, where the reactions of police and city officials were considered

(Apr. 16, 2009, 2:12 PM), http://news.bbc.co.uk/2/hi/uk_news/8000641.stm.

⁶ Calling these weapons non-lethal is misleading; projectiles in particular can cause serious injury or even death.

⁷ See HEIDI BOGHOSIAN, NATIONAL LAWYERS GUILD, PUNISHING PROTEST: GOVERNMENT TACTICS THAT SUPPRESS FREE SPEECH i (2007), available at http://www.nationallawyersguild.org/NLG_Punishing_Protest_2007.pdf (“[S]ince the 1999 World Trade Organization protests in Seattle, law enforcement has aggressively used a range of tactics to intimidate protestors and to silence lawful expressions of dissent in the United States.”).

⁸ See generally DAVID GRAEBER, DIRECT ACTION: AN ETHNOGRAPHY (AK Press 2009) (providing an ethnographic study of the global social justice movement, including the use of police tactics during various public protests).

⁹ See WILLIAMS, *supra* note 4, at 190.

¹⁰ See WILLIAMS, *supra* note 4, at 191 (“Negotiated Management was an innovation in the means of crowd control, but the basic aim remained unchanged. Both Negotiated Management and Escalated Force represent a defense of the status quo.”).

¹¹ Many other cities also employed Negotiated Management techniques, including Los Angeles, Toronto, and most of the towns and smaller cities where Occupy encampments emerged. This observation is based on my experience organizing legal support for Occupy in smaller towns in Pennsylvania, New Jersey, and Delaware as well as conversations with other Guild attorneys and legal workers across the country.

¹² The National Lawyers Guild is a progressive legal organization founded in 1937. The Guild unites lawyers, law students, and legal workers in order to use the law to advance social justice and support progressive movements. See NATIONAL LAWYERS GUILD, <http://www.nlg.org> (last visited Apr. 18, 2012); See also Arun Gupta & Michelle Fawcett, *Occupy Fights the Law: Will the Law Win?* SALON (Feb. 14, 2012, 1:00 PM), http://www.salon.com/topic/national_lawyers_guild/ (describing the role of the National Lawyers Guild in regard to Occupy).

cooperative—the constant *implicit* threat of police violence and strict demands around permitting and code violations created an environment that stifled dissent, slowed movement growth, and deflected attention away from economic inequalities.

What follows is a comparative ethnographic analysis of the strategies of protest control used by police and government officials at Occupy Wall Street and Occupy Philly. My analysis is historically grounded and situates contemporary developments within the shifting strategies of protest policing developed and refined over the past century. At the same time, much of my account remains descriptive to allow the reader to see how these models play out on the ground.¹³ In conclusion, I suggest how radical lawyers and legal workers might help protestors better navigate the traps of Negotiated Management as they also support activists confronting Escalated Force strategies.

I. HISTORY OF PROTEST POLICING STRATEGIES

Understanding Occupy requires that we situate the movement within the larger context of America's history of police repression and criminalization of dissent. Over the past century, police strategists have created various crowd control models to suppress protests, strikes, and demonstrations. Here I focus on the broad shifts that have occurred in police strategies for preventing, dispersing, and controlling demonstrations. Outlining transformations in protest policing over the past 150 years, Kristian Williams highlights four overlapping approaches of *Maximum Force*, *Show of Force*, *Escalated Force*, and *Negotiated Management*.¹⁴ Although all of these models still find expression in the tactics used against contemporary social movements, Escalated Force and Negotiated Management have been the two most common strategies for the past seventy years.

Prior to WWI, the dominant approach to neutralizing protests was based on the doctrine referred to by Williams as “Maximum Force.”¹⁵ As the name indicates, this model relied on local militia and the state to violently disperse demonstrations—preferably before a large crowd could gather. A later variation on this model suggested that the mere show of force could be enough to quell potential strikes and uprisings.¹⁶ Police thus began staging impressive and even theatrical displays of numbers and weaponry, assuming that the threat of extreme violence would suffice to keep people in order. This theory proved false when crowds became even more incensed by the blatant displays of police aggression. The “Show of Force” model was therefore generally abandoned as police returned to Maximum Force tactics.¹⁷

¹³ These observations were collected primarily through my legal defense work with the National Lawyers Guild of Philadelphia, which required that I pay constant attention to the ways that police and government monitored, intervened, or disrupted people engaging in protected First Amendment activities. Additionally, the first-hand accounts in this article are based on my engagement with Occupy Wall Street and Occupy Philly, including attending meetings and demonstrations, reading listserv conversations, and spending time at the encampments. When possible, my observations are supported by official statements, mainstream and independent media sources, and documents produced by the City of Philadelphia and Occupy Philly. When no other source is indicated, the information comes directly from my observations and notes.

¹⁴ See WILLIAMS, *supra* note 4, at 183, 189-90 (discussing the use of these techniques across time).

¹⁵ See WILLIAMS, *supra* note 4, at 180 (discussing the use of the “Maximum Force” strategy during the late 19th century).

¹⁶ See WILLIAMS, *supra* note 4, at 181 (discussing the “Show of Force” strategy).

¹⁷ See WILLIAMS, *supra* note 4, at 181-84 (discussing how the presumption that a large police presence did

In the early twentieth century, protest policing slowly began to shift to a more flexible model known as “Escalated Force.”¹⁸ Also referred to as “Sequence of Force” or “Flexible Response,” this approach called for police to constantly assess the potential threat of the crowd and escalate their level of violence accordingly. The model has seven steps of escalation and incorporates aspects of both the Maximum Force and Show of Force doctrines. The Escalated Force continuum includes the following steps: 1) Police presence, 2) Display of power, 3) Commands, 4) Arrests, 5) Batons, 6) Less-lethal munitions, and finally 7) Firearms.¹⁹

Escalated Force depends on a disciplined and militarized police force capable of adapting to quickly changing situations and maintaining order within their own ranks. In practice, this approach has generally resulted in preemptive violence against demonstrators and a quick escalation of force that has done little to restore order. By the 1970s, these shortcomings were becoming increasingly clear. In response, several commissions were convened to draft recommendations to address police violence at anti-war demonstrations during the 1960s. The three major commissions (Kerner, Eisenhower, and Scranton) all found that the escalation of police violence against demonstrators only increased civil disorder and provoked further dissent.²⁰ From their recommendations, the strategy of “Negotiated Management” emerged. Throughout the ‘70s, ‘80s, and ‘90s, it became the preferred method of controlling protests. Negotiated Management shifts the focus from dispersing demonstrations to containing and controlling them through a variety of tactics, including permitting, delimiting free speech “zones,” and convincing demonstrators to cooperate with police in planning marches and gatherings.²¹ This more “liberal” approach to managing dissent relies on a positive approach to First Amendment rights, increased police tolerance for disruption and civil disobedience, communication and cooperation between protestors and police, selective and strategic arrests, and minimal physical force.²²

Uprisings against the neoliberal economic policies of international monetary organizations at the beginning of the twenty-first century witnessed a return to escalated and preemptive force.²³ Beginning in Seattle in 1999 and continuing today, anti-summit demonstrators have increasingly been subjected to pre-emptive raids and attacks with “less-lethal” munitions like pepper spray, rubber bullets, bean bag rounds, tasers, tear gas, and batons.²⁴ The model for controlling anti-globalization protests was implemented at the Republican National Convention in 2000 in Philadelphia where, under Commissioner John Timoney, state and local police infiltrated activist groups, raided convergence centers and the puppet warehouse, and

not prevent confrontation but was provocative).

¹⁸ See WILLIAMS, *supra* note 4, at 182-83.

¹⁹ See WILLIAMS, *supra* note 4, at 182-84 (discussing the “Escalated Force” progressive display of force).

²⁰ See WILLIAMS, *supra* note 4, at 189-91.

²¹ Clark McPhail et al., *Policing Protest in the United States: 1960-1995*, in *POLICING PROTEST: THE CONTROL OF MASS DEMONSTRATIONS IN WESTERN DEMOCRACIES* 55-57 (Donatella Della Porta & Herbert Reiter eds., 1998).

²² *Id.* at 53.

²³ The Seattle protests against the International Monetary Fund and World Bank in 1999 were notable for both the large numbers of people involved and the increased use of militant and direct action tactics, which led to a more repressive response from police and government officials. Increased use of Escalated Force tactics corresponded to the increasing militarization of police departments in the United States, a trend that accelerated after 9/11. See generally CHRISTIAN PARENTI, *LOCKDOWN AMERICA: POLICE AND PRISONS IN THE AGE OF CRISIS* (Verso Press 2008) (discussing the militarization of American police departments).

²⁴ BOGHOSIAN, *supra* note 7, at i.

violently attacked protestors, arresting 420 in total.²⁵ In 2002, Timoney became police chief of Miami and went on to preside over even more violent attacks on protestors that took place at demonstrations against the Free Trade Area of the Americas summit in 2003.²⁶ Along with the increased use of military style weapons against demonstrators, Timoney's Escalated Force tactics included pre-emptive raids and arrests.²⁷ Known as the "Miami Model,"²⁸ this repertoire of repression is still very evident at anti-summit protests today. While the Miami Model may seem like a new development after decades of negotiated management policies, these strategies actually represent a return to tactics that have long been used to control political protests in the United States.



Figure 4: Initial Occupy Wall Street poster circulated throughout the summer of 2011. Courtesy of Adbusters.

I have provided this historical outline in order to elucidate the ways in which each of these models find expression today. Aspects of all four general models are used against contemporary protestors, with Show of Force reintegrated as the first stage of Escalated Force, and Maximum Force still a very real possibility. While I have described these as four different frameworks for the purposes of conceptual clarity, they are in fact all part of the toolbox of tactics used to police protests. Escalated Force and Negotiated Management can also be used in tandem to create a more systematic version of the good cop/bad cop dynamic. In the case of a national movement like Occupy, local police did not even need to threaten violence against protestors, since evidence of police brutality in other cities already provided the necessary intimidation to coerce many protestors into playing by the rules.

II. OCCUPY WALL STREET

Occupy Wall Street began September 17, 2011, following a call by the Canadian media group Adbusters

²⁵ The events and arrests of the 2000 Republican National Convention in Philadelphia have been documented by the R2K Legal Collective. See *Defend the RNC 420: Breaking News Archive*, R2K LEGAL COLLECTIVE, <http://r2klegal.protestarchive.org/r2klegal/stats.html> (last visited Apr. 20, 2012).

²⁶ Today, Timoney continues to spread his model of Escalated Force to respond to protests, most recently in Bahrain. See Ryan Devereaux, *John Timoney: The notorious police chief sent to reform forces in Bahrain*, THE GUARDIAN (Feb. 16, 2012, 5:23 PM), <http://www.guardian.co.uk/world/2012/feb/16/john-timoney-police-chief-bahrain-protests?newsfeed=true> (discussing John Timoney's "reputation for cracking down on protests as police chief in Miami and Philadelphia").

²⁷ Jeremy Scahill, *The Miami Model: Paramilitaries, Embedded Journalists, and Illegal Protests. Think this is Iraq? It's your Country*, INFORMATION CLEARING HOUSE, (Nov. 24, 2003), <http://www.informationclearinghouse.info/article5286.htm>.

²⁸ The term "Miami model" was first used by Miami Mayor Manny Diaz, who referred to the police response to the protests during the Free Trade Area of the Americas Miami meeting in 2003 as a "model for homeland security." *Id.*

earlier that summer.²⁹ Originally planning to occupy 1 Chase Plaza, organizers were deterred when police showed up ahead of time to fence off the area. In response, activists chose Zuccotti Park, a private park nearby, as the occupation site.³⁰ It became the epicenter of the Occupy movement.

My engagement with Occupy Wall Street began the weekend of the arrests on the Brooklyn Bridge, when I traveled to Manhattan to witness this quickly growing phenomenon and ended up watching the mass arrest of Occupy Wall Street demonstrators. Mass arrests are a standard part of the policing strategy that relies on Escalated Force. They are designed to neutralize a large portion of the protest, present a threatening spectacle for those watching and recording nearby, criminalize acts of dissent, and remind demonstrators of the risks associated with taking part in protests that challenge the social and economic structures of this country. Mass arrests are not a new tactic for the NYPD; they have been used for years as a way to shut down NYC protests, as seen during the Republican National Convention in 2004³¹ and the Critical Mass bike rides.³²



Figure 5: NYPD arrest protestor after kettling off a section of the sidewalk in New York City. Photo courtesy of Paul Weiskel (Flickr CC).

In the case of Occupy Wall Street, this strategy backfired. Combined with other emerging evidence of police brutality against Occupy Wall Street protestors, the highly visible mass arrests of a peaceful demonstration only served to galvanize and expand the movement. The first few weeks of the occupation of Zuccotti Park had been largely ignored by the mainstream

²⁹ Justin Elliott, *The Origins of Occupy Wall Street Explained*, SALON (Oct. 4, 2012, 2:50 PM), http://www.salon.com/2011/10/04/adbusters_occupy_wall_st/ (“In July Adbusters, a Vancouver-based publication . . . included a poster in that month’s magazine that read simply: #OCCUPYWALLSTREET September17th. Bring Tent...”).

³⁰ WRITERS FOR THE 99%, *OCCUPYING WALL STREET: THE INSIDE STORY OF AN ACTION THAT CHANGED AMERICA*, 12-13 (Haymarket Books 2012) (describing the events lower Manhattan leading up to the September 17th, 2011 occupation of Zuccotti Park).

³¹ Over 1,800 people were mass arrested during the Republican National Convention in 2004. Hundreds were also arrested at a Critical Mass ride the previous week, an attempt to intimidate protestors planning to take part in the RNC2004 demonstrations. NEW YORK CIVIL LIBERTIES UNION, REPORT: RIGHTS AND WRONGS AT THE RNC 1 (2005), available at <http://www.nyclu.org/node/1039>.

³² BOGHOSIAN, *supra* note 7, at 65 (Providing a further discussion of mass arrests in relation to protests and Critical Mass); see also Alex Vitale, *NYPD and OWS: A Clash of Styles*, in *OCCUPY!: SCENES FROM OCCUPIED AMERICA* 74-81 (Carla Blumenkranz et al. eds., Verso 2011) (analyzing the tactics of the NYPD).

media.³³ However, when the NYPD began to take extreme measures against protestors, it brought attention to the protest and provoked outrage across the country. On September 24th, more than 80 people were arrested during a peaceful march to Union Square.³⁴ Many were forcibly detained while standing and walking on sidewalks.³⁵ When NYPD Deputy Inspector Anthony Bologna pepper sprayed four young women who had been kettled, the video went viral and led to shock and indignation.³⁶ The day before the Brooklyn Bridge arrests, I joined thousands of others on a march to the NYPD headquarters to demand the resignation of NYPD Police Commissioner Ray Kelly. Later that week, another planned march in the Financial District led to more than two hundred arrests. Footage of police hitting protestors and journalists, destroying cameras, and arbitrarily arresting demonstrators was posted to YouTube and quickly shared via Facebook, Twitter, independent media websites, and listservs. Soon, even corporate media outlets began covering the events.

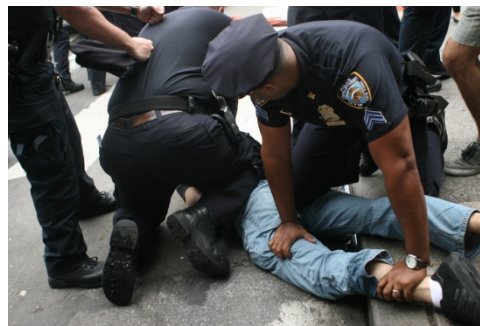


Figure 6: Police hold down and arrest protestor pulled from the crowd. Photo courtesy of Paul Weiskel (Flickr CC).

It may seem obvious that blatant displays of police brutality against a movement for economic justice would be met with nationwide interest. However, those taking part in mass demonstrations in the U.S. know how often protestors are met with police violence. In many cases, lack of mainstream coverage obscures the movement and its message. Occupy is therefore somewhat unique in having produced strong and rapidly growing national and international support. As noted above, the widespread use of social media like Twitter, Facebook, and YouTube quickly spread videos and images to people who otherwise may not have taken notice.

³³ The lack of attention resulted in only a few thousand people coming out on September 17th, despite Adbuster's call for 20,000 to descend on Wall Street. See Adbusters, *#OCCUPYWALLSTREET: A Shift in Revolutionary Tactics*, ADBUSTERS BLOG (July 13, 2011), <http://www.adbusters.org/blogs/adbusters-blog/occupywallstreet.html> (calling for 20,000 people to "flood into lower Manhattan, set up tents, kitchens, peaceful barricades and occupy Wall Street for a few months.").

³⁴ Colin Moynihan, *80 Arrested as Financial District Protest Moves North*, N.Y. TIMES (Sept. 24, 2011, 8:31 PM), <http://cityroom.blogs.nytimes.com/2011/09/24/80-arrested-as-financial-district-protest-moves-north/> ("Protest organizers estimated that about 85 people were arrested and that about five were struck with pepper spray.").

³⁵ *Occupy Wall Street Union Square March and Arrests Photos September 24, 2011*, PUBLIC INTELLIGENCE, (Sept. 26, 2011), <http://publicintelligence.net/occupy-wall-street-union-square-march-and-arrests-photos-september-24-2011/>.

³⁶ *NYPD Anthony Bologna Pepper Sprays Occupy Wall Street Protesters*, YOUTUBE (Sept. 27, 2011), <http://www.youtube.com/watch?v=bRc7t6gRkhE>.

While the corporate media characterized the movement as lacking a coherent message, Occupy's analysis of banking practices, corporate greed, rising debt, and the ineffectiveness of electoral politics resonated with many Americans frustrated by declining economic conditions and by President Obama's inability to follow through on campaign promises. Finally, the movement's mythic quality (celebrated and promoted by groups like Adbusters and Anonymous)³⁷ cannot be underestimated when seeking to explain why people rallied when police attacked peaceful demonstrators. The vibrant park occupation in the heart of the financial district, the concept of a 99% united to hold the 1% accountable, and the use of participatory practices like the General Assembly³⁸ and the "people's mic" all helped to create a romantic and inspiring picture of resistance that was quickly adapted elsewhere.³⁹

As a result of the well-documented movement in NYC, new occupations began to emerge daily. All were united by their critique of extreme economic inequality, their horizontal structure based on directly democratic decision-making, and their reliance on social media to spread the word and connect to other locations. Occupy Wall Street became the movement's keystone, leading by example and holding Zuccotti Park (renamed Liberty Plaza) as a model for other occupation sites.⁴⁰ Although the encampment remained peaceful, the police became a constant presence, with uniformed and undercover officers constantly monitoring the park and its inhabitants. In addition to the mass arrests and police violence that took place during marches, Occupiers were subjected to constant surveillance and daily harassment at the park itself.⁴¹ Tensions between protestors, the city, and police came to a head on November 15th when hundreds of riot cops raided the encampment in the middle of the night. They arrested more than two hundred people⁴² and destroyed everything in the park—right down to the carefully assembled People's Library.⁴³ Citing health and safety concerns, Mayor Bloomberg defended the eviction of the camp: "From the beginning, I have said that the city has two principal goals: guaranteeing public health and safety, and guaranteeing the protesters' First Amendment rights," he said. "But when those two goals clash, the health and safety of the public and our first

³⁷ Anonymous is a loose coalition of "hactivists" who support Occupy Wall Street and other social justice movements. See *Anonymous – Occupy Wall Street*, YOUTUBE (Sept. 10, 2011), <http://www.youtube.com/watch?v=l6jdkpQjueo> (displaying an Anonymous video calling for the occupation of Wall Street).

³⁸ The General Assembly is the participatory consensus-based public meeting the Occupy movement uses as its main decision-making body. General Assemblies differ from place to place, but generally are held daily or several times a week to share working groups reports and debate issues central to the movement. See WRITERS FOR THE 99%, *supra* note 30, at 25-32.

³⁹ For more on the Occupy Wall Street encampment and practices, see generally WRITERS FOR THE 99%, *supra* note 30, (providing first hand accounts of the occupation and maps of the organization of Zuccotti Park).

⁴⁰ The physical space of the park was divided into areas for food, sign making, a library, media, sleeping, and meetings. Daily General Assemblies were held in the evening and working groups met throughout the day to discuss process, direct action, legal, outreach, and more.

⁴¹ For numerous examples of police interference and surveillance at Occupy Wall Street, see OCCUPY!: SCENES FROM OCCUPIED AMERICA, *supra* note 32.

⁴² Colleen Long & Verena Dobnik, *Zuccotti Park Eviction: Police Arrest 200 Occupy Wall Street Protestors*, HUFFINGTON POST (Nov. 15, 2011, 5:04 AM), http://www.huffingtonpost.com/2011/11/15/zuccotti-park-eviction-po_n_1094306.html ("Police Commissioner Ray Kelly said around 200 people were arrested.").

⁴³ The NYPD seized almost 4,000 books during the eviction. Karen McVeigh, *Destruction of Occupy Wall Street 'People's Library' draws ire*, THE GUARDIAN (Nov. 23, 2012), <http://www.guardian.co.uk/world/blog/2011/nov/23/occupy-wall-street-peoples-library>.

responders must be the priority.”⁴⁴ In this case, it becomes clear that even when Escalated Force is the preferred method of police and city officials, the language of negotiated management can be effectively mobilized.



Figure 7: Protestor being arrested. The National Lawyers Guild arrest hotline is written on her body, a common practice enabling demonstrators to access legal assistance when arrested. Photo courtesy of Paul Weiskel (Flickr CC).

The recourse to health and safety violations became a common pretext for the often-violent evictions of Occupy all over the country. However, the use of permit and code violations to explain the need for escalated force is nothing new. Police, city officials, and code inspectors have a long history of working together to use breaches in fire, safety, and health codes to justify violently dispersing occupations, squats, organizing spaces, and convergences centers.⁴⁵ Police were successful in shutting down the occupation at Liberty Plaza; however, by that time, the Occupy movement could not be contained to a park in Manhattan. Occupy Wall Street had captured the imaginations of people across the country and around the world, and occupations were growing rapidly by the day.⁴⁶ In each case, occupiers had to contend with different reactions from local city officials and police. As was the case with many other locations, Occupy Philly faced no blatant police violence. However, even in the absence of force, more insidious tactics were used to contain the movement and ensure that grievances regarding economic and social inequality went unaddressed.

III. OCCUPY PHILLY

A. *From Wall Street to Market Street*

Planning was already underway for an occupation in Philadelphia the week after the Occupy Wall Street arrests on the Brooklyn Bridge. After two well-attended planning meetings,

⁴⁴ Long & Dobnik, *supra* note 42.

⁴⁵ AK THOMPSON, BLACK BLOC, WHITE RIOT: ANTI-GLOBALIZATION AND THE GENEALOGY OF DISSENT 68 (AK Press 2010) (addressing the use of codes to regulate protestor occupations).

⁴⁶ *Occupy Directory*, OCCUPY TOGETHER, <http://directory.occupy.net/> (last visited May 8, 2011) (providing a directory listing all occupations related to this movement).

demonstrators decided to occupy Dilworth Plaza, a rather bleak square on the west side of City Hall in Center City.⁴⁷ The police and city took immediate action. The day after the location and date were set, the NLG and ACLU received an invitation to attend a meeting with Mayor Michael Nutter, who had indicated that he would like to meet with lawyers and legal workers involved with Occupy Philly. The Mayor and his staff⁴⁸ had numerous questions about Occupy Philly, which revealed many of the points of contention that would emerge over the next two months. What did Occupy want? What were its targets? How was it organized? Who were the leaders? How would they communicate with the city and the police? Were they planning to get a permit? What would they do when they arrived at City Hall? How would they control the crowd that showed up? What if violence or property destruction occurred? What if groups who already had grievances about the Mayor and his policies took advantage of the movement to press him politically? Where would they go to the bathroom? Would they be using electricity? Would they damage the plaza? How would they organize daily meals? When would they leave? What would they do when the city began planned construction on Dilworth Plaza that winter?



Figure 8: Close to 1000 people gather at the Arch Street Methodist Church for the second planning meeting of Occupy Philly. Courtesy of Occupy Philly Media.



Figure 9: "From Wall Street to Market Street": Poster created and circulated in the early days of Occupy Philly. Courtesy of Occupy Philly Media.

We were unable to answer all of their questions, both because we did not want to speak on behalf of Occupy and because we didn't know exactly what was going to happen when the occupation began. It was uncertain from the outcome of the meeting whether the city would respond aggressively if the organizers refused to apply for a permit or if the encampment attracted enough attention to be deemed a threat. We left the Mayor's office to begin setting up the legal defense infrastructure we would need in case there were immediate arrests. In order to do so, we

⁴⁷ See Matthew Dineen, *More Than A Symbolic Gesture: Occupy Wall Street and the Rise of the American Autumn*, TOWARDS FREEDOM (Oct. 13, 2011, 4:17 PM), <http://www.towardfreedom.com/activism/2579-more-than-a-symbolic-gesture-occupy-wall-street-and-the-rise-of-the-american-autumn> (providing a fuller account of the emergence of Occupy Philly).

⁴⁸ In addition to the Mayor, the room included the Captain of Civil Affairs William Fisher, Police Commissioner Charles Ramsey, Managing Director Richard Negrin, the Mayor's Press Secretary, the city's permit supervisor, and a group of aides.

had to contend with many questions of our own. What *would* the police do when the protestors showed up at the widely advertised date and time? How could we set up legal support for a permanent occupation in less than forty-eight hours? How could we prepare for immediate arrests if the occupation got forcibly dispersed? We got to work and spent the next two days assembling legal observers, planning legal observer and Know Your Rights (KYR) trainings, gathering KYR materials to give to demonstrators, and creating a referral list of attorneys who agreed to represent Occupy protestors if they got arrested. No one knew what to expect.

B. Occupation: Day 1

On October 6th, the occupation of City Hall began at 9:00 a.m. Protestors showed up by the hundreds, and numbers swelled to over 1,000 for the first General Assembly at noon. The police also showed up in force. Large gates and groups of police shut off all openings to the center of City Hall, a public area and subway entrance. Bike cops gathered in clusters or rode the perimeter. Civil Affairs officers in plainclothes wearing bright orange armbands circled the plaza and concentrated on the front steps facing the street, where people waved handcrafted signs to the enthusiastic honking of passing cars. Police created a central command site several blocks away, and police officers and city officials approached protestors with questions and concerns throughout the day. Soon, a handful of people agreed to act as liaisons between Occupy Philly and the police and city.⁴⁹



Figure 10: National Lawyers Guild lawyer Sarah Coburn legal observing at the first OP General Assembly. Courtesy of Occupy Philly Media.

The assembled crowd was excited and slightly uncertain. As more people arrived throughout the morning, organizers began slowly setting up areas for food, childcare, sign-making, and tents. The first General Assembly introduced the new working groups and made announcements about plans for the coming days. The conversation turned to an extended discussion of permitting as demonstrators considered the city's request (fielded by the ACLU) that Occupy Philly apply for a permit for Dilworth Plaza. In an apparent gesture of goodwill, the city had offered to waive the filing and insurance fees that normally accompany such applications.

⁴⁹ The question of who would speak to the city on behalf of Occupy was a question the movement had to address early. The initial police liaisons became an OP working group, which was soon disbanded by the General Assembly. The Occupy Philadelphia Legal Collective (composed of legal activists, lawyers, and law students) was assigned the role of communicating with police and city officials for the remainder of the occupation.

They also allowed Occupy Philly to apply for a permit without a specific ending date. Opinions at the General Assembly differed. While many felt committed to the idea of an occupation that did not seek permission, others were willing to take the city's offer for the sake of expediency.

Like many subsequent conversations about requests from the city and police, the permit question was not resolved in one meeting. In what follows, I outline the evolving relationship between Occupy, the City of Philadelphia, and the Philadelphia Police Department during the two months of the occupation. The approach of the Mayor's Office and the PPD was a textbook application of Negotiated Management techniques. However, this did not prevent the perceived threat of violence from influencing protestors' decisions and actions. Nor did the city and police's congenial overtures save the encampment from eventual eviction when the moment was politically expedient.

C. "Part of the 99%": City and Police Responses to Occupy Philly

Despite fears of an immediate police crackdown, the early days of Occupy Philly were marked mainly by cooperation between occupiers, the city, and the police. As early as the first meeting with legal, Mayor Nutter began referring to himself as "part of the 99%"—a claim that many found dubious and suspiciously timed to coincide with his mayoral re-election campaign. On one of the first nights of the occupation, the Mayor toured the camp in the late evening to shake hands and pose for pictures with those who had set up tents. While many were skeptical of these sound bites and photo-ops, others were genuinely pleased to have such a positive response from Philadelphia's top city official.

The police were also on their best behavior. The Civil Affairs Division communicated and coordinated marches with Occupy Philadelphia direct action organizers. They blocked streets to allow protestors to pass and had frequent and polite discussions with occupiers about their plans. At the request of Commissioner Ramsey, the First Amendment was read at roll call at the beginning of each police shift, and the official stance of the city and police was that protestors' civil rights would not be violated.⁵⁰ As days went by and no arrests or attacks from police took place, many people began to relax. Others, especially long-time activists who still remembered the brutality of Philly police during the Republican National Convention in 2000, warned occupiers not to become complacent. A group put together a pamphlet entitled "The Mayor and the Police Are Not Our Friends: A Letter to Occupy Philly" that reminded people that, despite the polite face, Mayor Nutter and his higher police officials had a long history of protecting the 1%.⁵¹ Incidents with undercover cops at the encampment and suspicions of police infiltration also contributed to organizers' concerns. Nevertheless, many Philadelphians congratulated the city and police's gestures of goodwill.

D. "We Don't Need a Permit for an Occupation!": Permitting and Safety Codes

During the first planning meeting of Occupy Philadelphia, the question of permits came

⁵⁰ *Talk of the Nation: Shifts in Police Tactics to Handle Crowds*, NATIONAL PUBLIC RADIO (Nov. 29, 2011), <http://www.npr.org/2011/11/29/142903638/shifts-in-police-tactics-to-handle-crowds> (describing, in an interview with Philadelphia police commissioner Charles Ramsey, the evolution of crowd control tactics and the approaches that city officials and police took towards Occupy Philadelphia).

⁵¹ *The Mayor and the Police Are Not Our Friends: A Letter to Occupy Philly*, available at http://multi.lectical.net/content/mayor_and_police_are_not_our_friends_letter_occupy_philly (last visited May 8, 2012).

up almost immediately. After a very brief discussion, one young man raised his hand and said, “We don’t need a permit for an occupation!” Cheering in agreement, the assembled crowd moved on to consider plans for setting up an occupation encampment. The permit issue returned almost immediately, due to the City’s continued insistence that Occupy Philadelphia apply for a permit. In return, the City promised to offer electricity, to not prohibit occupiers from setting up tents and staying overnight, and to indefinitely reserve the plaza for Occupy Philadelphia in case other groups, such as the Tea Party, applied to do an event.

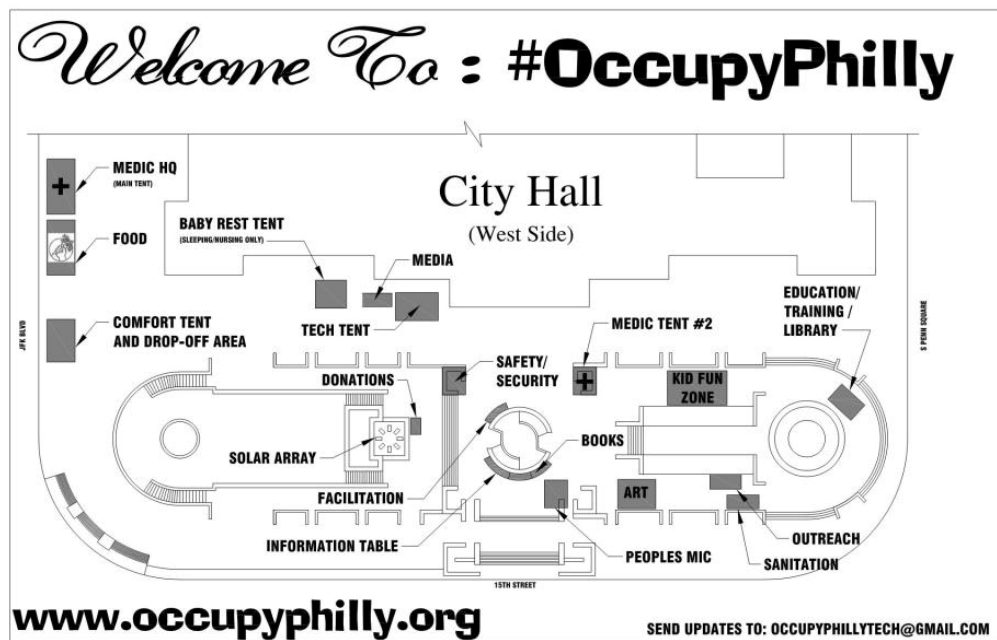


Figure 11: Map of Occupy Philly encampment at Dilworth Plaza. Image courtesy of Occupy Philly Media.

Because of its directly democratic nature, the Occupy General Assembly devoted several meetings to discussing how to respond to the city. After several days, the group voted to sign a permit with no expiration date.⁵² As soon as the permit issue was resolved, however, a new set of demands came from the city. These took the form of a letter from the office of Managing Director Richard Negrin dated October 11th—a mere six days into the occupation.⁵³ The letter

⁵² See Jazelle Jones, Managing Director’s Office, City of Philadelphia, Pa., Permit Authorizing the Daily Occupation of Dilworth Plaza (Oct. 11, 2011), available at <http://www.scribd.com/doc/68947908/Occupy-Philly-Permit> (showing that when the city returned the completed permit, the end date read “Start of Dilworth Plaza Construction-TBD”).

⁵³ See Letter from Richard Negrin, Managing Dir., City of Philadelphia, Pa. to Jodi Dodd, Occupy Philly (Oct. 11, 2011), available at <https://www.facebook.com/photo.php?fbid=246546462060092&set=a.245914445456627.52268.244736802241058&type=1&theater> (displaying the letter, which was posted to the OP Legal Collective Facebook page for all to read).

began on a laudatory note, invoking Philadelphia's history as the birthplace of free speech. For Negrin, it was therefore significant that "the relationship between organizers and the city is being heralded as a national model on how to celebrate free speech in an effective manner."⁵⁴ However, the next paragraph told Occupy Philadelphia that a team of inspectors from the Department of License and Inspections toured the camp the previous day and had a series of safety "concerns" for Occupy Philadelphia to address, including:

Removal of all combustibles near the building (specifically a pallet structure built for the homeless against the wall of City Hall)

Removal of items from stairs, landings, and walkways (including all signs and banners)

Remove any tent fixtures attached to trees and rails⁵⁵

Additional covering for the tech tent

Procurement of portable toilets

The letter also claimed that Occupy Philadelphia was causing problems with public urination, litter, and minor graffiti. It warned against the use of generators, requested that Occupy Philadelphia schedule weekly meetings with the city, and reminded the group that they would be asked to vacate the plaza for planned construction in November. The tone returned to congenial at the close and even went so far as to suggest setting up a collaborative Mural Arts Program or Community Service Project.

The letter caused instant controversy in Occupy Philadelphia, and the multiple points it insisted needed to be addressed led to many General Assembly discussions about how to respond. The warning about vacating in November also sparked new discussions about whether to move or wait to be evicted. On October 30th, after several weeks of intense discussions, Occupy Philadelphia produced a response to the city emphasizing the social and economic grievances Occupy Philadelphia had been addressing, requesting that the City reduce the number of police monitoring the encampment, suggesting ways that Occupy Philadelphia would handle security and sanitation issues, and condemning the \$50 million development plan for Dilworth Plaza.⁵⁶ However, difficulties with the City did not end there.

E. "Who Do You Serve? Who Do You Protect?"⁵⁷: Demonstrations and Arrests

While Occupy Philadelphia was negotiating terms with the City, they continued to hold

⁵⁴ *Id.*

⁵⁵ The city's emphasis on not damaging the plaza's trees, rails, fixtures, and other structures seemed odd to Occupy Philadelphia participants given the fact the city planned to raze the plaza and everything on it as soon as they left.

⁵⁶ See Occupy Philly, @OccupyPhilly Letter to City of Philadelphia (Oct. 30, 2011, 11:59 PM), available at https://www.facebook.com/note.php?note_id=133631820073027 (displaying the full text of the OP letter, which was made available at the Occupy Philadelphia Community Facebook page).

⁵⁷ This is a common chant directed at police when they interfere with protests.

frequent marches, demonstrations, and direct actions, which targeted banks, corporations, and policies that perpetuated inequality. In the beginning, the police did not initiate any arrests. Instead, they worked with organizers to plan demonstrations. They blocked streets for marches and even allowed protestors to change routes mid-march. The first arrests did not take place until more than two weeks into Occupy Philadelphia, when a group of fifteen demonstrators staged a sit-in in front of Philadelphia Police Headquarters (known as the Roundhouse) for the National Day of Protest Against Police Brutality.⁵⁸ Although the police gave several dispersal orders, the protestors refused to move until the police and the City responded to their list of demands, which included apologies for those who were victims of police violence and redress for policies such as stop and frisk. Rather than arresting the demonstrators, police allowed them to sit in the street all night long, and waited until late the next morning to detain and charge them.⁵⁹ The action received only lukewarm support from Occupy Philadelphia; targeting the police for the first act of civil disobedience confused many occupiers, especially since Philly police had been so cooperative up until that point.



Figure 12: Philadelphia police and protestors at a demonstration against Comcast that took place during a solidarity march with Occupy Oakland on November 2, 2011. Photo courtesy of Dave Onion. Used with permission.



Figure 13: Police surround protestors staging a sit-in on the Market Street Bridge. Photo courtesy of Occupy Philly Media.

More arrests occurred in the following weeks. Occupy Philadelphia-planned actions involving civil disobedience took place at the Comcast Building,⁶⁰ Wells Fargo,⁶¹ and on the Market Street Bridge.⁶² The response of police to these actions followed the same pattern:

⁵⁸ See Randy LoBasso, *Occupy Philly Protesters Acquitted of Obstructing Highway*, PHILLY NOW (Feb. 23, 2012), <http://blogs.philadelphiaweekly.com/phillynow/2012/02/23/occupy-philly-protesters-acquitted-of-obstructing-highway/>.

⁵⁹ See Suzy Subways, *We're Sitting-In at Police HQ: Words from the Street*, OCCUPY PHILLY MEDIA (Oct. 23, 2011, 5:23 AM), <http://occupyphillymedia.org/content/why-were-sitting-police-hq-words-street> (providing a full account of the incident, as described by a local activist).

⁶⁰ See Reity O'Brien, *Ten Arrested in Occupy Protest at Comcast Center*, PHILLY.COM (November 2, 2011), http://articles.philly.com/2011-11-02/news/30350636_1_protest-comcast-tower-comcast-corp.

⁶¹ See David Henry, *More Occupy Arrests at Wells Fargo Bank*, 6ABC.COM (Nov. 18, 2011), <http://abclocal.go.com/wpvi/story?section=news/local&id=8437703>.

⁶² See Alexandra Wigglesworth, *Twenty-Four Arrests Made at Occupy Philly Market Street Bridge Sit-In*, METRO (Nov. 17, 2011, 7:37 PM), <http://www.metro.us/philadelphia/local/article/1027808--24-arrests-made-at-occupy->

surround the civil disobedience protestors and separate them from the rest of the demonstration, bring in large numbers of reinforcements to outnumber protestors,⁶³ give a series of dispersal orders to the protestors risking arrest, and then slowly and theatrically arrest the demonstrators one by one, cuffing them and escorting them to waiting police vans. The entire process could take hours, even when fewer than a dozen were arrested. After the arrests were complete and the vans left the site, Occupy Philadelphia demonstrators generally returned to the encampment without incident.

During Occupy Wall Street, police abuse led to increased interest and participation in the movement. In Philadelphia, police were scrupulous in avoiding actions that might be perceived as extreme or controversial. Nevertheless, events at other occupations often acted as catalysts for Occupy Philadelphia actions. The Comcast demonstration, for example, was a direct response to the extreme violence against Occupy Oakland that had taken place the previous day.⁶⁴ Images of nonviolent protestors being shot, tear gassed, pepper sprayed, and forcibly evicted in NYC, Oakland, Portland, Denver, Boston, and other cities reminded Occupy Philadelphia that police violence was also a very real possibility in Philadelphia. Without a local police crackdown, protestors and police entered a tense standoff. Tensions became exacerbated as November arrived and the threat of eviction became an increasing possibility.

F. “You Can’t Evict an Idea Whose Time Has Come!”⁶⁵: Occupy Philadelphia Eviction and Aftermath

Concerns about the fate of the encampment multiplied at the beginning of November when the city began to insist that Occupy Philadelphia leave Dilworth Plaza and apply for a permit for Thomas Paine Plaza across the street. A series of Occupy evictions across the country—and especially the violent removal of Occupy Wall Street from Zuccotti Park on November 15th—added to the air of fear and uncertainty. Articles circulating on the Internet suggesting a conspiracy of mayors coordinating a nationwide crackdown on the movement did little to assuage the increasing anxieties of Occupy Philadelphia participants.⁶⁶ Despite worries about eviction, Occupy Philadelphia decided (after many weeks of General Assemblies, discussions, votes, and listserv exchanges) to hold Dilworth Plaza.

philly-market-street-bridge-sit-in.

⁶³ The sheer amount of officers deployed to arrest small groups of peaceful protestors and the constant monitoring of the encampment by police meant the city was spending an enormous amount of money each day to pay officers, a fact they did not hesitate to remind the public through the media. See, e.g., Bob Warner, *Occupy Philadelphia Costs City \$400,000 in Police Surveillance*, PHILLY.COM (Oct. 12, 2011), http://articles.philly.com/2011-10-12/news/30271358_1_demonstration-protest-police-costs.

⁶⁴ The violent police raid at Occupy Oakland used tear gas and projectile weapons to fire on protestors, leaving an Iraq War veteran with a fractured skull and prompting the Oakland General Assembly to call for a general strike, which brought over 30,000 people into the streets. See *Oakland Police Critically Injure Scott Olsen, Iraq War Vet, During ‘Occupy’ March*, HUFFINGTON POST (Oct. 26, 2011, 5:21 PM), http://www.huffingtonpost.com/2011/10/26/oakland-police-critically_n_1033430.html.

⁶⁵ This phrase was first used during the Occupy Wall Street eviction, and became a rallying cry at occupations across the country.

⁶⁶ See Naomi Wolf, *The Shocking Truth About the Crackdown on Occupy*, THE GUARDIAN (Nov. 25, 2011, 12:25 PM), <http://www.guardian.co.uk/commentisfree/cifamerica/2011/nov/25/shocking-truth-about-crackdown-occupy> (arguing that the “crackdown on protesters” in different cities was coordinated).

Following his easy re-election on November 8th,⁶⁷ Mayor Nutter began to issue a series of letters and press releases condemning Occupy Philadelphia for not attending to the City's growing list of demands, requests, and concerns.⁶⁸ Drawing on the language of labor solidarity, he also accused Occupy Philadelphia of blocking workers with contracts for the construction project—now referred to as “a project built by the 99% for the 99%.”⁶⁹ At this point, a small group united by their disagreement about the General Assembly's vote to hold Dilworth Plaza and calling themselves Reasonable Solutions split off from Occupy Philadelphia. This group arranged a private meeting with city and police officials, who were happy to find Occupy Philadelphia participants with whom they could negotiate. Under external and internal pressure to re-locate, Occupy Philadelphia decided at one spirited General Assembly to move the camp immediately to Thomas Paine Plaza, and worked in groups to carry materials and tents across the street. They were turned back almost immediately by police threatening arrests if the move continued. After a long discussion, demonstrators returned to Dilworth Plaza. When the General Assembly decided to apply for a permit for Thomas Paine shortly thereafter, the city responded with a restrictive permit that denied overnight camping and permanent structures. Occupy Philadelphia refused, and settled in for the seemingly inevitable eviction.



Figure 14: Notice to vacate Dilworth Plaza posted by the City of Philadelphia. Photo by author.

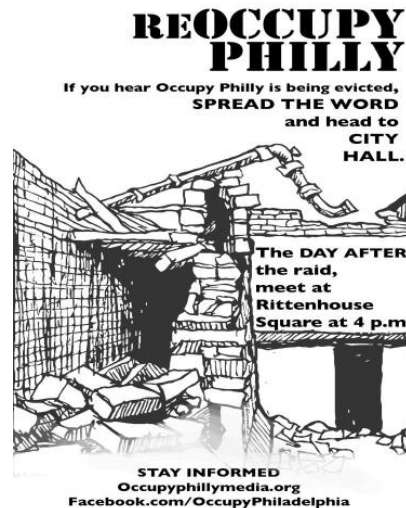


Figure 15: “Reoccupy Philly” poster circulated in the days leading up to the eviction. Photo courtesy of Occupy Philly Media.

⁶⁷ See *Elections 2011*, NBC10 PHILADELPHIA (Nov. 9, 2011, 4:37 PM), <http://www.nbcphiladelphia.com/news/elections/2011/races/race-results/> (reporting the victory of Michael Nutter for the November 2011 Philadelphia mayoral race with 75% of the votes).

⁶⁸ See *Mayor Nutter Raises Public Health and Safety Concerns Related to Occupy Philly, Increases Police Protection*, CITY OF PHILADELPHIA (Nov. 14, 2011, 8:56 AM), <http://cityofphiladelphia.wordpress.com/2011/11/14/mayor-nutter-raises-public-health-and-safety-concerns-related-to-occupy-philly-increases-police-protection/> (displaying Mayor Nutter's press release of November 13, 2011, relating to public health and safety concerns regarding the Occupy Philadelphia site on Dilworth Plaza).

⁶⁹ Kia Gregory, *Mayor: Occupy Philly Must Move By Sunday*, PHILLY.COM (Nov. 25, 2011), http://articles.philly.com/2011-11-25/news/30441377_1_mayor-nutter-relocation-activists.

The first formal eviction notice came on November 15th in the form of a bright yellow flier posted all around the Occupy Philadelphia encampment. Announcing that the planned construction was “imminent,” it advised occupiers to “take the opportunity to vacate Dilworth Plaza and remove all personal belongings immediately.” This notice was quickly followed by an official press release from the Mayor ordering Occupy Philadelphia to leave the plaza.⁷⁰ When the eviction notice appeared, organizers created and disseminated a flier outlining plans to “Reoccupy Philly” in case of a police raid and advising participants to reassemble the following day at Rittenhouse Park.⁷¹ A rapid-response Twitter account was also created to alert participants about eviction news. However, because no date was given for the eviction, the days dragged on and everyone waited in nervous anticipation for the inevitable confrontation. On November 25th, the Mayor finally gave Occupy Philadelphia the deadline of 5:00 p.m. on Sunday November 27th to leave the plaza.⁷² Protestors rallied to City Hall on Sunday afternoon and, by 5:00 p.m., thousands were gathered to defend the encampment. Roughly one hundred demonstrators sat on the front steps of the plaza, determined to stay there until the last dispersal order was given. When I finally turned over my legal observing hat to the next shift seven hours later, no police had shown up. As the hour grew late, the crowd thinned. There were only a few dozen people on the steps the next morning.



Figure 16: Protestors gathered to defend the plaza at the announced eviction time. Hundreds assembled that night, while only a fraction remained the following morning. Photo courtesy of Dave Onion. Used with permission.

⁷⁰ See Mayor Nutter Raises Public Health and Safety Concerns Related to Occupy Philly, Increases Police Protection, *supra* note 68.

⁷¹ Rittenhouse is a large park in the heart of Center City’s shopping, restaurant, and tourist district. The park was chosen as a location for the occupation for its symbolic value as a place for the 1%.

⁷² See LaIntellegentsia, *Mayor’s Press Release Requesting Protesters Vacate Dilworth Plaza*, OCCUPY PHILLY MEDIA, (Nov. 16, 2011, 5:48 PM), <http://occupyphillymedia.org/content/mayors-press-release-requesting-protesters-vacate-dilworth-plaza> (containing the full text of the eviction press release).

Although many people remained at the plaza day and night to be prepared for the eviction, Monday and Tuesday passed with no incidents. When the police did move in at 1:00 a.m. on the cold and rainy night of Wednesday November 30th, they were met with an exhausted gathering that was much smaller than the boisterous crowd that had assembled on Sunday. The night of the eviction, police tactics were far more aggressive than they had been previously. Hundred of cops in riot gear encircled the plaza, using batons, bicycles, horses, helicopters, and the spectacle of empty city buses (presumably to be filled with those arrested) to create a threatening display for any demonstrators who were thinking about defying the eviction. After removing everyone from the plaza, police allowed protestors to march through the mostly empty streets for the next few hours. Eventually, they shut down the impromptu demonstration by surrounding and mass arresting an arbitrary group of fifty-five protestors.



Figure 17: Police in riot gear were transported to City Hall on buses on the night of the eviction. Photo courtesy of Dave Onion. Used with permission.

The next day, occupiers attending the meeting at Rittenhouse Square were met by approximately one hundred police officers, who surrounded the park as well as several other possible “re-location” options. The few hundred demonstrators who gathered were allowed to enter the park, hold a General Assembly, and then march to the Roundhouse for jail solidarity. However, any plans to re-occupy another space that day never came to fruition. But while the Occupy encampment was over, Occupy Philadelphia is not. As in other cities, participants moved indoors for the winter to plan for a spring offensive, which included a nation-wide General Strike on May 1st, protests against the NATO summit in Chicago in May, and an Occupy National Gathering in Philadelphia in early July. Lawyers and legal workers need to learn from the mistakes of the occupations to help protestors navigate the next round of the struggle.

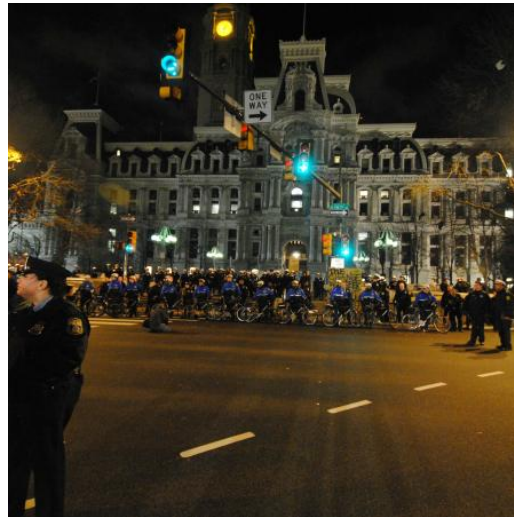


Figure 18: Hundreds of police surrounded City Hall after removing protestors, who assembled across the street to watch as remaining tents and other materials were destroyed and cleared from the plaza. Photo courtesy of Occupy Philly Media.

IV. CONCLUSIONS

While more conciliatory and less violent than police reactions in locations like New York and Oakland, the Negotiated Management tactics of the City of Philadelphia and the Philadelphia Police Department often succeeded in hindering the growth and effectiveness of the movement. While an open and direct display of force would have likely increased participation in the movement, the City's emphasis on permit issues, code violations, and bureaucratic procedures—combined with a well-executed media strategy of slowly discrediting demonstrators—caused serious problems for the local movement in terms of growth, public support, and legal defense.

Delaying and distracting protestors with permits and code violations, tightly managing each demonstration, taking advantage of dissent in the Occupy Philadelphia ranks, using the construction plans as a way to re-fashion Occupy Philadelphia into a less threatening entity, presenting negative portrayals of the encampment and its organizers, and drawing out the eviction until protestors were literally exhausted all worked to ensure that there was very little backlash when the City and police finally evicted the camp. Negative press initiated by the Mayor's office prior to the eviction depicted the encampment as unsanitary and unsafe, and accused organizers of not following through on their end of negotiations with the City and police. As a result, public support gradually dwindled. Though many remained sympathetic to the goals of Occupy Philadelphia, very few were willing to defend the encampment or take another space. By the time of the eviction, many participants had faded away from the movement confused and irritated by the endless General Assembly discussions about how to deal with the City. Meanwhile, organizers who had spent countless hours working to build and defend the encampment burned out from stress and lack of rest. Cold weather, illness, and growing internal disagreements also contributed to the movement's decline.

On the legal front, the City and police actions did not allow supportive lawyers from the NLG and ACLU much room to maneuver. While attorneys in other cities were successful in attaining preliminary injunctions and temporary restraining orders to stave off evictions, in Philadelphia the previously planned construction and the City's offer of Thomas Paine Plaza as an alternative site made it difficult to turn staying at Dilworth into a First Amendment case. Consequently, the work of movement support lawyers, legal workers, and law students focused on helping protestors with permitting issues, sending legal observers to demonstrations, and providing attorneys for those arrested.

What lessons can lawyers and legal workers learn from these case studies? In hindsight, it becomes obvious that both Occupy Philadelphia organizers and the lawyers and legal workers coordinating legal defense were far more prepared for an Escalated Force response. This is not surprising, given the memories of the last large protest in Philly (the 2000 Republican National Convention) and the evidence of extreme force used against Occupy Wall Street in New York. As a result, our legal infrastructure prioritized setting up an arrest hotline and support office, having legal observers constantly present to monitor police interactions with protestors, training more legal observers for expected confrontations, assembling a list of defense attorneys willing to represent arrested protestors, and preparing and conducting Know Your Rights workshops for occupiers. All of these tasks were necessary precautions. However, in the end, we did not find ourselves dealing with mass arrests and numerous explicit civil rights violations. Unfortunately, we did not spend nearly enough time or effort advising protestors how to handle the more complicated tactics inherent in the Negotiated Management approach.

An important lesson moving forward is to remember that legal experts are well placed to constantly assess the tactics of government officials and police and to have explicit conversations about what combination of strategies are being deployed and how to deal with them most effectively. We cannot assume how local officials will respond to protest. Instead legal activists must anticipate the use of escalated force, negotiated management, a combination of the two approaches, or new tactics of which we are not currently aware. Activists and legal support need to work together to ensure that the conversation stays on the issues that define the movement instead of becoming bogged down in bureaucratic negotiations with City and police officials. We need to use our expertise in the law and police strategy to help protestors navigate the hurdles of permits, code violations, mass arrests, and government bureaucracy without losing sight of the ultimate objective—to further the struggle for economic and social justice.