FREE SPEECH THREAT ASSESSMENT # 7
Policing Protest in New York City

September 1, 2012 to December 31, 2012

The NYCLU “Free Speech Threat Assessment” reporting project documents risks to the right to protest as a result of heavy-handed NYPD policing and harassment of individuals engaged in First Amendment activity. These reports highlight incidents of often under-the-radar and unreported harassment and intimidation of protesters by law enforcement. Additional information about the project, and this and other reports are accessible online at http://www.nyclu.org/nycprotest.

The NYPD’s approach to public protest from September 1, 2012 to December 31, 2012 was characterized by the continuous selective enforcement of laws, harassment, unjustified arrests, including arrests of journalists, and restrictions of protesters’ movement.

The NYPD, with the aid and encouragement of Trinity Church employees, continued to engage in selective enforcement, overpolicing, and harassment of protesters encamped at the church, throwing away or confiscating their food, signs, and other belongings and frequently washing the sidewalk where protesters congregated even though the sidewalk was no dirtier than the average New York City sidewalk. On October 5, approximately a dozen officers were present at Trinity and arrested a young woman who was simply filming along with two people sitting by themselves on a grate on an otherwise empty area of sidewalk who, believing the officers’ orders to be illegal, refused to move. As of October 8, officers began forcing the protesters to relocate twice a day so that Trinity employees could hose down the sidewalk. Those who did not move quickly enough, attempted to protect their food or property, or who verbally objected too strongly were arrested.

In the month of October, Trinity protesters were regularly patrolled by officers in squad cars who used sirens and megaphones to awaken the protesters. On October 11, officers awoke several people at 5 a.m. to inform they that they all had to be awake by 7 a.m., and told a woman who was next to a crate of books that she had to hold them. Trinity Church also affixed lights to the scaffolding, which, in addition to the constant intrusions by the NYPD, made it difficult to sleep. On October 16, at 1 a.m., officers confiscated crates of informational fliers, voter registration forms, and a donation box, even though there was no apparent justification for the confiscation. On December 11, officers took one tarp and a group of protesters’ belongings. Many of those protesters did not have identification, which presented a problem because identification documents are required in order to collect vouchered property. As a result of this and other continued harassment, such as daily 7 a.m. wakeup calls followed by twice daily sweeping of the area, a fair number of long-time protesters left the site.
In late October, protesters set up another encampment, entitled Occupy Goldman Sachs, outside the home of Lloyd Blumenstein, the CEO of Goldman Sachs. Police and Parks officers periodically monitored and harassed this group, telling them that the sidewalk outside of Central Park was Parks property, that they could not be present past 1 a.m., and that they were not permitted to sleep on the sidewalk. On October 23, one person was reportedly arrested for lying down on the sidewalk while another was cited for leaving unattended property, which the arrestee had been watching. Officers also required protesters to move, on occasion, so that the sidewalk could be hosed, although the sidewalks were not dirtier than the average New York sidewalk. Officers also told protesters that signs and boxes of supplies were not permitted, and brought in a dump truck, threatening to throw out all of their belongings. On November 17, the camp was again evicted by 20 officers, so that the sidewalk could be power washed and one person was arrested. On December 12, activists reported that officers again took some of their possessions and informed them that they were not permitted to sleep in the vicinity.

In another instance of overpolicing, on New Year’s Eve, 100 officers were reportedly present at Zuccotti Park, despite the fact that there were only 50 protesters. The barricades that were ever-present around Zuccotti Park after OWS’s eviction in November 2011 made a reappearance on the weekend of OWS’s one year anniversary celebration (September 15-17). There were only two entrances whereby people could enter Zuccotti after passing through Brookfield security officers. Those who entered were not permitted to bring bulk food, large backpacks, or cases of water, among other items. A legal observer also witnessed a stop-and-frisk and could discern no basis for it. Later in the evening, legal observers noted that police set up spotlights to illuminate the entire park. On two occasions, dozens of officers in riot gear swept the park, each time intimidating protesters and prompting approximately half of those present to depart the park while enforcing Brookfield’s ad hoc rules, including collecting some drums and arresting and harassing small groups of people sitting or lying down. During this time, one officer assaulted City Council Member Jumaane Williams because he was standing on a stone bench.

Outside of Zuccotti Park, that weekend, police confiscated banners on several occasions, although there is no law against banners on public property. On the morning of September 17, officers charged protesters on bicycles with disorderly conduct, despite the fact that they had broken no law. Officers asked the bikers to give them their IDs, and arrested only those who handed them over.

On September 17, the NYPD frequently impeded protesters’ movement. Throughout the day and evening, police shooed protesters and onlookers off the sidewalks surrounding Zuccotti Park, and, on several occasions, declared that sidewalks and one entrance were closed to pedestrian traffic. When a legal observer asked a security guard why the southern entrance was closed, the guard said that she wasn’t allowed to talk about it and that “the NYPD’s in charge of the park.” The entirety of the area surrounding the New York Stock Exchange was barricaded and guarded by officers on horses. Those who did not have IDs indicating that they worked in the area were not permitted access. In addition to the usual TARU officers afoot to surveil activity, the NYPD deployed what experts believe to be a surveillance truck, which included transmitters that, according to a blog post from PrivacySOS, were “capable of transmitting large quantities of video and audio data from IP networked surveillance cameras.”
That day, legal observers noted that police officers often cut marches in half, declaring a sidewalk closed and turning the march around, shoving people, and otherwise re-routing marchers at random. Sometimes this was done so that officers could more easily arrest people on the sidewalk, but, at other times, including during a march of approximately 20 people, a legal observer could not gauge any legitimate reason for the march’s rerouting and subsequent arrests. An officer yelled, “keep moving, you gotta keep moving,” while the crowd, befuddled, continued walking at an average speed. Several individuals closest to the officers were arrested. Police also prevented legal observers from standing on the steps of the National Museum of the American Indian to watch those assembled below. An officer informed a legal observer that the steps were closed because they were federal property, despite the fact that the museum was open at the time. Police similarly restricted protesters’ movement during a December 15 protest outside of Mayor Bloomberg’s home, where protesters were required to stand in a pen, and later told protesters that the sidewalk was closed, while they pushed a couple dozen people down and across the street to a darkened section of Central Park. One person was arrested on the sidewalk while another prominent activist was targeted for arrest while crossing a street, following police orders to clear the sidewalk.

Protesters, journalists, and legal observers alike noted the seemingly arbitrary and sometimes illegal nature of arrests September 15-17. There were accounts of approximately ten prominent activists being arrested without cause before September 17, particularly those who appeared to be leading demonstrations. Approximately 50 people were arrested that weekend, sometimes violently or at random while standing on the sidewalk, including a photographer and a NYCLU legal observer who was arrested in the course of assisting police officers in de-escalating some more rambunctious protesters. There are also numerous accounts of undue force exercised by police officers against peaceful and often law-abiding protesters, who were pushed, shoved to the ground, and punched in the face.

On September 17, aside from arrests of people engaged in civil disobedience, the vast majority of protesters were arrested while standing on the sidewalk when officers plunged into crowds at random. This was especially problematic where crowds grew thick and the NYPD’s constant blockading and rerouting those attempting to comply with orders made it impossible to move. At one point, while arrests were occurring in an area particularly thick with journalists, an officer shouted, “It’s all over folks.” When legal observers and journalists attempted to get arrestees’ names, take pictures, and observe the scene, they were aggressively shoved. A supervising officer even told a group of journalists, including those with NYPD-issued credentials, “You can’t stand and take more pictures. That’s over with.” Officers also used batons to shove those journalists north on Broadway while officers continued to permit other pedestrians access to the area. Another journalist with NYPD credentials was refused entry to the stock exchange and told by an officer, “The stock exchange is not accepting media today.”

Numerous journalists were arrested and harassed while performing their jobs on September 17. One tweeted, “Was arrested despite screaming over and over that I’m a journalist.” A photojournalist was arrested even though she was wearing National Press Photographers Association badge. The supervisory officer who viewed her badge simply stated, “they’re not ours, so I’m not interested.” That same photojournalist had been threatened by the
Precinct Captain two days prior when she was photographing arrests. He told her, “You’re next.” A journalist and illustrator as well as an independent journalist were also arrested. When taking one journalist’s press identification, a supervisory officer stated, “This is some bullshit, right? I mean, what, you make this yourself?” Some individuals documenting arrests were handled violently, including one photographer who was pushed to the ground by a supervisory officer. Another journalist, who had been pushed to the ground by officers, escaped the fate of his arrested comrades because he had a NYPD-issued press pass. He was told, “Next time an officer tells you to move, you move.” The officer then pushed him away from the crowd, stating, “Get out of here.”

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People who observe law enforcement officers intimidating, harassing or otherwise infringing on the right of people to protest are encouraged to share their stories with the NYCLU by emailing protest@nyclu.org.