

City of Sacramento criminalizes peaceful Occupy protest

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Sacramento—the state capital of California and the home of Democratic Governor Jerry Brown—has spearheaded efforts to criminalize the Occupy protests over the last month.

Just days after 700 anti-Wall Street protesters were trapped on the Brooklyn Bridge by the New York Police Department and arrested, officials in Sacramento, California quickly followed suit, initiating the first arrests of Occupy protesters on the West Coast.

On October 6, 20 occupy protesters—ranging in age from 19 to 70 years old—were arrested in the city’s Cesar Chavez Park. Protesters peacefully congregated in the park, holding signs, making public speeches, chanting and distributing political leaflets.

As early as 11:30 p.m., police sought to silence the protest by ordering everyone to leave the park. By midnight, a large contingent of armed officers led by a SWAT team carried out an operation which many of them referred to as “the game plan,” consisting of a number of intimidating verbal orders to end the protest and leave the area immediately.

When protesters lingered or deliberately asserted their right to gather and speak about political issues in public, they were quickly rounded up by four arrest teams. Offering no physical resistance, the protesters were hauled to jail for processing. Although police could have merely issued a citation or “booked and released” the protesters because they had been arrested without a warrant, most were forced to spend an entire night in jail.

Those arrested on October 6 were the first Occupy protesters to be prosecuted in California. They were all initially charged with the violation of California Penal Code section 409: refusal to disperse from a riot, rout or unlawful assembly. The charge is considered a

misdemeanor in California, but it carries a substantial punishment. If convicted, an Occupy protester can receive a punishment of up to 6 months in the county jail, thousands of dollars in fines and fees, and/or a grant of three years probation.

For the probationary period, California law allows the court to strip the convicted of a number of privacy rights, most importantly it typically exposes them to unwarranted search and seizure whenever and wherever local police feel it is necessary. Moreover, if an individual on probation is found to have broken any law or term of probation during the three year period, no matter how trivial, that person can be hauled back before the court and given more time in jail until they have served the maximum possible sentence, in this case, six months.

Heavy-handed police intimidation of the Occupy protests in Sacramento has persisted to date, involving nearly 100 people. All of them are guilty of nothing more than participating in an organized meeting intended to express disapproval with the current distribution of wealth, within a public park—long-accepted as a forum for speech and protest.

The shameless criminalization of a peaceful protest movement has provoked widespread shock and indignation among workers and students in Sacramento despite efforts of the local media outlets, including the *Sacramento Bee*, to suggest the protesters represent a danger to the community and deserve to be treated as criminals.

At a recent court date on November 3 the great majority of the accused protesters rejected a lenient offer because it would have required them to admit they engaged in criminal conduct. Instead, most of the accused protesters asserted that they were not guilty and demanded a jury trial within 45 days, as is required

by state law. If the court fails to accommodate these requests for jury trial within the time limit, Penal Code section 1382 requires that the charges be dismissed.

A state worker, 52 year old Darrell Parker, explained the decision to demand a jury trial, saying: “We’re presenting before the people who preside on these juries and saying, ‘We’ve committed no crime, we believed this is unjust...’”

Certain details of the on-going prosecution have reinforced the unfounded nature of the arrests. When the Occupy protesters arrived in court for their arraignment, they were informed the original charges had been changed. Instead of “refusal to disperse from a riot,” those arrested are currently being charged with a more malleable and rarely-used locally-drafted city code that prohibits loitering in the park after 11 p.m.

Attorneys for the protesters have since filed a challenge to the new charges, citing among other things that the statute’s vague wording violates the Constitution’s Sixth Amendment notice provisions, which require the accused be clearly informed of the charges. Moreover, the vague language has the tendency to chill free speech and assembly, by leaving one to guess just which form of speech is permitted and which will lead to arrest.

Moreover, attorneys for the protesters argue that the regulation lends itself to selective, politically-motivated enforcement by allowing the park director and police chief to make exceptions to the rule when they determine it “...will not be detrimental to the public safety or welfare,” without establishing any criteria. Of course, no such allowances were made for Sacramento’s peaceful opponents of social inequality. The motion will be heard in advance of the jury trial in late November.

Another interesting development at the first court appearance was that the district attorney, an elected official, had been replaced by City Attorney Eileen M. Teichert, who was appointed to her position by the city council and is thus immune from direct political accountability for her criminalization of protest activity.

This move reflects an awareness of the widespread public interest, and a legitimate fear of backlash among the political elite. A recent *New York Times*/CBS poll found that 43 percent of the population agrees with the basic aims of the Occupy Wall Street protests, while

two-thirds of the population say wealth is not distributed fairly.

Deputy City Attorney Gustavo Martinez explained the prosecutions: “We’re not looking at the content of their speech or what they’re protesting. ... We just know they’re there, and as prosecutors, we don’t have the luxury of selecting to determine who we prosecute or not...” This is simply a lie.

In 2009, a homeless encampment was likewise raided, leading to the arrest and prosecution of the 32 homeless campers. All 32 cases were dismissed when they demanded trials.

Meanwhile, several local newscasts have been fouling the jury pool against the protesters in advance of the trial by running segments to “educate” viewers about the charges against the protesters, while reading hostile viewer comments on air calling for protesters to be held accountable for breaking the law.

In tandem with the criminalization and politically-motivated prosecution of the Occupy protesters, protest leaders have made continued attempts to lobby the city council and Democratic Mayor Kevin Johnson to allow the protesters access to the park where they can assemble and speak without fear of arrest. Every such request has been denied. For his part, Johnson has done nothing to halt the criminalization of the protests, tacitly signaling his approval.

Not a single Democrat in the state legislature, located just blocks from the courthouse, much less Governor Brown, has come forward to condemn the prosecutions. Their silent approval of such methods is just more proof that the Democratic Party, led by the Obama administration, fully supports the repression of Occupy protests. It mouths support for the demonstrators, seeking to channel it back into the framework of bourgeois politics, while its party members in major cities across the country oversee its repression.



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