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Volunteer attorneys steer Occupy protesters through the legal system

McClatchy Newspapers

Published Friday, Dec. 02, 2011

WASHINGTON — As copycat Occupy Wall Street encampments around the country confront the inevitable legal tangles that come with a nationwide sit-in style protest, a growing army of First Amendment-loving lawyers is shepherding the demonstrators through the legal system at no charge.

Growing numbers of protesters are being arrested for trespassing, failure to disperse and disobeying a lawful order, as city after city confronts the question of whether individual rights to free speech and assembly include the right to camp out on public property.

The resulting legal skirmishes have spurred the largest mobilization of pro bono protest attorneys since the anti-war movement of the 1960s and '70s.

"It's probably bigger than the anti-war movement, because there are so many simultaneous demonstrations. I've never seen anything like it," said Carol Sobel, co-chair of the Mass Defense Committee of the National Lawyers Guild.

Some of the volunteer lawyers draft and file motions or simply monitor the protests as legal observers. Some advise the activists on how to negotiate with city leaders. Others show up in court — usually on short notice — to represent jailed protesters at their initial court appearances.

Just last week, Los Angeles police tried to disperse Occupy Los Angeles protesters who put up tents at a street corner along the motorcade route of President Barack Obama, who was in town for a series of fundraisers. After an observer called Sobel, she told the group to stay put, arguing that they were being singled out for unfair treatment since the street wasn't being shut down, no businesses were asked to close and other pedestrians weren't being searched or removed.

"They stood their ground, the president came and went and there was no problem. But there's always that constant pushback," Sobel said. "That's why the lawyers are so critical, because they can give information to the protesters and vigorously arm them with the law. And the law's on their side."

Many of the volunteer barristers are members of the guild, a liberal group that has defended the First Amendment rights of thousands of protesters and controversial figures since 1937.

However, attorneys with no guild affiliation or history of protest involvement are also coming forward to help in the estimated 200 U.S. cities where "occupy" protests have sprung up to oppose economic inequality and corporate greed.

Criminal defense attorney Daphne Pattison Silverman of Houston was watching a television

interview with a guild lawyer for the Wall Street protesters when she decided she wanted to help.

"I just felt completely energized and I could just tell this was an organization that was worth looking into," she said.

In addition to starting a local guild chapter in Houston, Silverman has recruited 10 other lawyers to assist the Occupy Houston protesters.

A former attorney in the Navy's Judge Advocate General's Corps, Silverman chafes at any perceived contradiction involving her past military service and her current work on behalf of government protesters.

"To me, the same oath I took in the military to support and defend the Constitution is the same oath I take as a criminal lawyer, and now as a budding First Amendment lawyer," she said, adding that her work sometimes requires "telling the government that they've made a mistake."

With Silverman's counsel, Occupy Houston demonstrators negotiated an agreement with city leaders that allows them to use sleeping bags — but not tents — during overnight stays on public property. Silverman said she won't negotiate directly for the protesters.

"There are plenty of very educated (protesters) who are highly capable of doing their own negotiations. They just need a little encouragement and a little knowledge of what their rights are and where they need to ask for exceptions," she said.

Colorado public defender Eric Sims represents an Occupy Denver protester accused of disobeying a lawful order during a mass arrest by Denver police on Oct 15.

Sims was one of about two dozen attorneys who attended a Colorado Criminal Defense Bar meeting that sought volunteer help for the jailed protesters. He said some 25 other attorneys also volunteered but did not attend.

"I totally sympathize with (the protesters)," Sims said. "And I thought they were courageous because, Lord knows, I'm not going to get arrested (while demonstrating) and risk my law license."

While his heart is with the protesters, Sims said his support for free speech and freedom of assembly crosses ideological lines.

"Even if it was the other end of the spectrum with the tea baggers, if they had gotten arrested the way these kids did, I'd represent them, too," Sims said.

Before he could take the protester's case, Sims had to get permission from his office. He won't be allowed to use work equipment, resources or time for the protester's case. And any court appearances Sims makes for his client will be done on his vacation time.

In Cincinnati, attorney Jennifer Kinsley needs a computer spreadsheet to keep track of the estimated 200 Occupy Cincinnati protesters she's representing pro bono. On Monday, she filed not-guilty pleas for more than 40 who were charged with criminal trespassing.

Since Oct. 9, Kinsley said, Cincinnati police have issued more than 270 criminal citations to the protesters — mainly for being in a city park after hours.

Kinsley isn't a guild lawyer, but she's no stranger to civil rights cases. In recent years she has sued to protect homeless people facing removal from a makeshift encampment and juvenile offenders housed in substandard prison conditions. She even championed the free speech rights of exotic dancers.

"I can't stay away from a civil rights case in this city," Kinsley said. "My heart will not let me."

... Cincinnati has a very storied history of trampling on people's rights and there is much, much work for me in this town."

In a federal civil rights lawsuit filed a week ago, Kinsley and fellow volunteer attorney J. Robert Linneman argued that a city park board rule that closes parks from 10 p.m. to 6 a.m. is unconstitutional.

"Basically during those hours there's no public forum where free speech can occur," Kinsley said. "So our defense in the criminal cases will be similar to the constitutional issues that we've raised in the federal case."

The same issue has created tension with police in cities such as Denver, Atlanta, and most recently in Oakland, Calif., where more than 100 Occupy Oakland protesters were arrested Tuesday in a heated predawn clash with police for failing to leave a downtown plaza after it closed for the night.

Guild attorney Rachel Lederman, who's representing the Oakland protesters, said the police action was "illegal and unconstitutional" and violated "almost every term" of the department's crowd-control policy. "It was just complete overkill to come in with a huge assault force," Lederman said. Oakland police said the arrests were necessary to address public health and safety concerns.

Kinsley's lawsuit argues that the First Amendment right to free assembly doesn't "turn off" at a certain time. Local governments can place restrictions on those rights, but they have to meet a constitutional test, Kinsley said. Their suit argues that denying protesters a permit to stay after hours and closing city parks from 10 p.m. to 6 a.m. violates the protesters' rights to free expression, speech, assembly and association.

But Peter Scheer, director of the First Amendment Coalition in San Raphael, Calif., said he thinks the lawsuit faces an uphill battle.

"It's hard to find in the history of the First Amendment anything that speaks to camping out as an aspect of assembly," Scheer said. "... In other words, you really can't win a lawsuit on the basis of defective (permit-granting) procedures if perfect procedures would still not let you do what you wish to do. That's what I see as a vulnerability in their claim."

Kinsley isn't deterred.

"What if we had shut the civil rights movement off after three days?" she asked. "Would we have had the Civil Rights Act? Would we have had Martin Luther King Jr.? Would we have had progress? No."

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