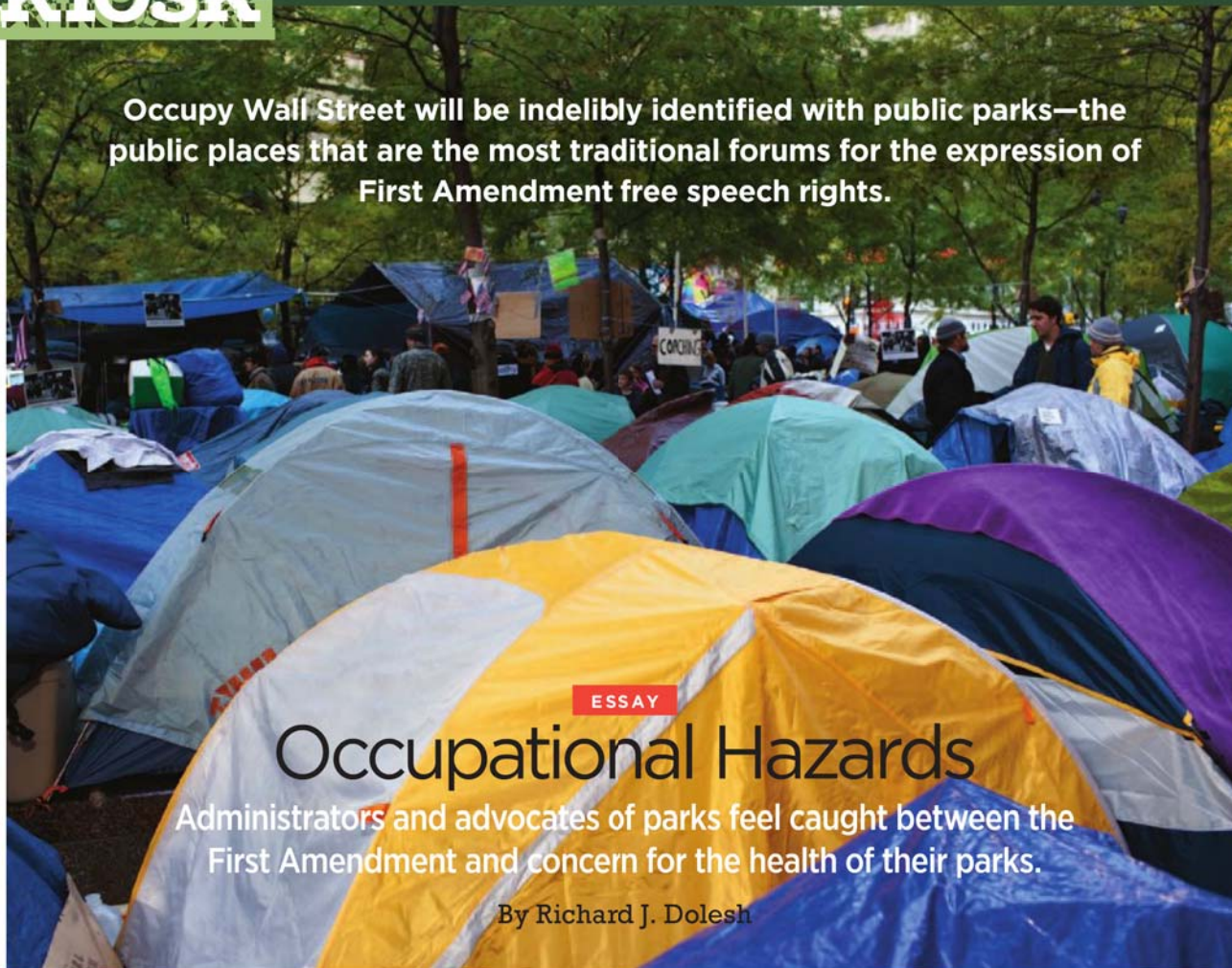


Occupy Wall Street will be indelibly identified with public parks—the public places that are the most traditional forums for the expression of First Amendment free speech rights.



ESSAY

Occupational Hazards

Administrators and advocates of parks feel caught between the First Amendment and concern for the health of their parks.

By Richard J. Dolesh

For the past several months the news has been dominated by daily coverage of the continuing protests of the Occupy Wall Street movement. Inspired by a campaign devised by a Canadian-based protest group, the Adbusters Media Foundation, Occupy Wall Street (OWS) has spread like a prairie fire and now claims encampments in 2,500 cities and communities worldwide.

Identified by the slogan "We are the 99 percent" to express opposition to growing economic and social inequality, the movement appeared to spontaneously adopt one highly visible and provocative tactic upon forming—camping in public parks. Originally of concern only to parks administrators, Occupy encampments have now attracted worldwide media attention and could even become a catalyst

that topples some elected officials. The movement has confounded pundits and Sunday-show talking heads because of its leaderless and apparently disorganized approach. Yet the protests have had robust public support and show little sign of diminishing even as winter approaches.

Far from novelty status, OWS has shown resilience and creativity. In many cities, local elected officials in exasperation have called on protestors to elect a leader or identify someone with whom the political and law enforcement structure can negotiate. But in Denver, Occupy protestors elected Shelby, a 3-year old border collie as their leader because she "exhibits heart, warmth and an appreciation for the group over personal ambition that Occupy Denver members feel are sorely lacking in the leaders some of them have voted for."

Regardless of the politics of OWS, it has been fascinating to see how public parks became the instant and identifiable gathering place for the expression of First Amendment free speech rights. Virtually overnight, dozens if not hundreds of public parks were "occupied" by protestors across America.

The long and rich history and legal precedent for public parks as "traditional public forums," has been identified and protected by the U.S. Supreme Court for the expression of First Amendment rights. In fact, this may be one reason so much deference has been accorded OWS protestors in allowing them to continue their occupation of parks. Many elected officials and mayors have publicly expressed support for the free speech rights of OWS protestors and exerted considerable effort to appear supportive

of their right to assemble and demonstrate for their principles.

From the outset, though, numerous cities willingly or benignly overlooked that such encampments violated city and park regulations. Their failure to require protesters to adhere to the law and regulations has led to criticism of favoritism and unequal treatment, and will make eventual resolution of these unauthorized encampments that much more difficult.

Most Occupy encampments were established in public parks and squares

in central urban locations ill-suited for camping and for which overnight permits are not issued. Some cities, such as Des Moines, Oklahoma City, Nashville, and El Paso, early on granted temporary, limited permits and have accommodated protesters. Other cities, such as Portland, Atlanta, Chicago, and Oakland, have had a rocky relationship with Occupy protests and revoked permits, citing public health and safety concerns, which have grown in a number of cities. Although they have moved protesters from the parks,

dismantled their tents and structures, and arrested some, these cities have still allowed protesters to assemble in parks during hours open to the public. Otherwise, there have been surprisingly few arrests nationally, although that is changing as the patience of city officials wears thin and more mayors direct law enforcement agencies to disperse encampments and prevent their re-formation.

No matter how the cities have responded, the Occupy encampments have become a vexing problem for city officials

INTERVIEW

Portland Parks Commissioner Nick Fish balances freedom of assembly with park stewardship

Seldom are those who theorize about the role of the public square in democratic societies also charged with caring for public squares. Portland Parks and Recreation Commissioner Nick Fish is one of those people. In an open letter he wrote in October to the Occupy Portland protesters encamped in the city's historic Chapman and Lownsdale squares (excerpted in accompanying article), Fish identifies himself as "someone who spent a legal career fighting for the civil rights of others."

And indeed he has—in his professional life, Fish has represented health care workers and labor unions; and as a volunteer he has worked to create affordable housing in New York City for people with HIV/AIDS, and formerly homeless individuals.

Moreover, Fish's personal history is marked by "privileged relationships with great parks systems," as he

describes it. He recounts growing up a block from New York's Central Park, years in Washington, D.C. enjoying the National Mall, and time as a Northeastern University law student exploring the necklace of historic Olmsted parks in the Boston area. And, when he moved to Portland, Fish delighted in the Olmsted origins of its parks system.

Now, even as he and his staff assess the tens of thousands of dollars of damage done to two of those historic city parks, Fish does not dwell on particulars of worn turf, compromised tree roots, and trashed restroom facilities. Instead, he grapples with larger questions about the functions—and limits—of public parks in preserving freedom of speech and assembly.

"The key question," he posits, "is how do we encourage constitutionally protected activity while protecting our parks?" Even in an age rich with social media outlets and connections, he continues, "the

public square remains an important element for coming together. ... The problem is, our traditional parks are simply not designed for camping."

The first week into the occupation, Fish wrote his letter as an appeal to the protesters to cooperate with parks and recreation professionals. His appeal met with mixed reactions, including criticism from many in the city and a polite reply (but little cooperation) from the protesters. The letter, he says, was part of his effort to strike an appropriate balance between protecting protesters' rights and protecting the parks. "I concluded early on that the balance had tipped, and that these parks were being hurt."


While Lownsdale and Chapman squares were finally cleared by police nearly a month later on November 13, Fish states proudly that "we did avoid confrontations like the one in Oakland—and we kept it all relatively peaceful." He believes the peaceful

and elected leaders due to intense media attention, increasing pressure applied by some business and civic leaders, and growing health and public safety problems resulting from the encampments.

Parks administrators in cities with Occupy encampments been placed in difficult positions. While trying to remain respectful of the right to free speech and protest, many directors have expressed increasing concern about the damage being done to infrastructure and natural resources as well as the loss of public use of the

occupied parks. Some Occupy encampments have made efforts to not harm park resources but in others damage has been significant. Los Angeles, for example, estimates damage in excess of \$200,000.

OWS will inevitably take its place in the history of American protest movements, much as the Bonus Army protest by unemployed WW I veterans in the 1930s. Whether OWS accomplishes its yet-to-be articulated goals remains to be seen. Perhaps more than any other protest movement in U.S. history, however,

OWS will be indelibly identified with public parks—those public places that are the most traditional forums for the expression of First Amendment free speech rights. We in parks and recreation proudly defend the right of free speech in the public square—but we also work tirelessly to ensure it is not at the expense of the public's right to use and enjoy its parks. 

RICHARD J. DOLESH is NRPA's Vice-President for Parks and Conservation.


Excerpts from Nick Fish's Letter to Occupy Portland

[I]t is my responsibility to express my growing concern with the impact your occupation is having on Chapman and Lownsdale Squares. These historic downtown parks in the heart of the city serve all Portlanders.

Chapman and Lownsdale Squares are part of a complex and fragile urban ecosystem—an ecosystem now threatened by your continued occupation. The parks were not designed to support encampments.

The cost to restore the damage to our parks will not be borne by Wall Street bankers but by Portland taxpayers. These are the very people Occupy Portland is attempting to engage and represent.

In the battle for civil rights a generation ago, the Freedom Riders took their civil disobedience directly to the core of injustice, including segregated buses and lunch counters. In Portland, parks are in no way related to your demands for justice. Damaging [them] is frankly inconsistent with your stated goals of renewing our democracy and restoring power to ordinary people.

"Portland," Fish says, "has a tradition of great acceptance and tolerance of the speech of all individuals.... Our parks, though, belong to the 100 percent. And that has to be considered." 

—Maureen Hannan

approach Portland's leaders took to the protest is, in part, why donations are now flowing in to the Portland Parks Foundation. Donations, he says, that are coming from both Occupy Portland supporters and residents who simply want to see the parks restored.

