The Pre-emption of Resistance: Occupy Oakland and the Evolution of State Power

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Author
Behbehanian, Laleh

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The Pre-emption of Resistance:
Occupy Oakland and the Evolution of State Power

By

Laleh Behbehanian

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requirements for the degree of
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Committee in charge:

Professor Michael B. Burawoy, Chair
Professor Raka Ray
Professor Cihan Z. Tugal
Professor Michael J. Watts

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The Pre-emption of Resistance:
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by

Laleh Behbehanian
Abstract

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This dissertation aims to contribute to our understanding of the contemporary state strategies that target social movements by examining the case of Occupy Oakland. Emphasizing how state strategies, both tactical and discursive, dynamically evolve through their iterative relation to movement strategies, it presents a detailed empirical account that is disaggregated into three “moments”, each of which are characterized by the predominance of a distinct state strategic repertoire. The objective is to highlight an underlying transformation through which state’s strategies evolve from being highly reactive, indiscriminate and vulnerable to spectacularization to becoming increasingly pre-emptive, targeted and discursively buttressed.

The first “moment” commences with the movement’s occupation of Oscar Grant Plaza. Faced with Occupy Oakland’s highly disruptive tactics and its firm rejection of any forms of negotiation or cooperation with City officials, the state resorts to a strategy of Naked Coercion (reactive, indiscriminate violence that is highly vulnerable to spectacularization) which backfires and results in an internationally televised disaster on the evening of October 25th. This creates an extraordinary window of opportunity for the movement, dramatically increasing public support and enabling it to undertake the first general strike in the U.S. since 1946. This fuels a process of adaptation as the struggle proceeds into the second “moment”, and the state shifts to a strategy of Targeted Repression that is increasingly pro-active, targeted and discursively buttressed so as to diminish the danger of its spectacularization. The new strategy succeeds in permanently dislodging the occupation of Oscar Grant Plaza, as well as criminalizing the tactic of occupation and excising it from movement’s repertoire. Still unsatisfied with the repression it had achieved, in the third and final “moment” the state introduces a strategy of Pre-emptive Neutralization that is pre-emptively oriented, targeted at high “risk” populations and discursively buttressed by powerful spectacles of “risk”. This enables a thorough incapacitation of the movement – fully neutralizing its potential for collective action by rendering Occupiers a target population that could no longer even publicly assemble without inciting highly militarized police responses that were now pre-emptively justified by the risk of “violence” they collectively posed.
For my mother, Kali, and all those who seek to occupy a better world…
The Pre-emption of Resistance: 
*Occupy Oakland & the Evolution of State Power*

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This dissertation is the product of an enormous collective effort. While I bear full responsibility for any shortcomings of this research, it is my community that deserves credit for its completion.

While I may have been the one to sit and write this story, it belongs to the thousands of Occupiers who collectively made that history. I am enormously grateful to the countless comrades in Oakland with whom I occupied, and who have contributed in so many ways to this work. It is your courage, resilience, and unrelenting determination to struggle for a more just world that motivated and sustained this project. Long Live Occupy Oakland!

In particular, this dissertation would not have been possible without my Anti-Repression Crew (the Bay Area Anti-Repression Committee). It is through our years of work together that I came to truly understand the meaning of solidarity. I am also immensely grateful to Emily Brissette, Mike King, Marcel Paret and the many other graduate students who helped me survive trying to navigate between the worlds of academia and activism. As well as to Brooke Terpstra, who not only generously devoted his time to proofreading and providing feedback, but also served as a constant source of support and encouragement. He is just one of many comrades in Oakland who have contributed to this work and sustained me along the way.

This dissertation would not have been completed without the never-ending support and guidance of my advisor, Michael Burawoy. My academic journey turned out to be much longer and more difficult than I could have ever anticipated. Through it all, he stood by me, dragged me through it, and believed in my potential, even when I had lost faith in myself. I first went to him as a young graduate student who was in many ways highly critical of and resistant to academia. Without crushing that spirit of resistance, Michael taught me to see the enormous possibilities it held. Raka Ray also provided crucial support, particularly in the most difficult moments. Getting through a doctoral program can, at times, feel like a long hazing. In my most demoralized moments, it was Raka who sustained me. I feel enormously privileged to have been their student, and I hope to live up to all that they have taught me.

Finally, I am eternally indebted to my loved ones who have held me up throughout this long journey. My girl, Iris Montgomery has midwifed this project from its very conception, and cared for me every single day through its completion. And of course, without my mother, and the enormous sacrifices she has made, none of this would have been possible.
Preface: WHAT IS AT STAKE?

I think that radical sociologists differ from liberals in that, while they take the standpoint of the underdog, they apply it to the study of overdogs.¹

Alvin Gouldner (1968)

This dissertation requires the kind of preface that essentially amounts to an academic confession. The research presented here is the eventual outcome of what was initially a diversion from academia. In the fall of 2011, I was a graduate student living in Oakland, trying to write a dissertation on how the counter-terrorism strategies introduced by the US’ “War on Terror” had fueled a shift towards increasingly pre-emptive forms of policing. But after having spent several years working on this project, I made a decision that would soon completely derail it. I chose to put it aside and take some time off to occupy. For weeks, I had been following developments at Occupy Wall Street and watching in amazement as occupations quickly spread across the country. It was the first time I had ever witnessed a mass movement in the United States forwarding an explicitly class based politics. This was remarkable in a nation where any collective articulation of economic inequality had long been silenced by a “Cold War” and years of neoliberalization. For the first time in decades, there emerged a mass movement of Americans who rejected the extreme economic inequality of their society. Refusing to any longer perceive the hardships they collectively endured as the result of their individual failures, they called out the greed of the “1%” and the collusion of a corrupt state.

It was on October 10th, when an occupation was established in Oakland just a few blocks from my apartment, that my academic derailment began. How could I possibly remain sitting at my computer while one of the most extraordinary historical moments of my lifetime unfolded right outside my window? On that day, hundreds of people gathered to occupy the most central space in downtown Oakland, a public plaza at the foot of City Hall. That evening, they pitched their tents, held their first General Assembly, and renamed their new home “Oscar Grant Plaza” (in honor of a young Black man who was shot and killed by police in 2009 while lay handcuffed and face down on the ground). Occupy Oakland was born.

Over the course of the next few weeks, Occupiers radically transformed this reclaimed public space into an alternative world that embodied their hopes for the future they sought to create. In Oakland, occupation was most fundamentally a practice of prefiguration, the building of “a new world in the shell of the old.” Prefiguration is the merging of action and imagination; it is the enactment of an imagined world. To prefigure is to act in accordance with the world we hope for, rather than the one reality forces upon us. This understanding of prefigurative politics is essential for grasping the nature of occupation in Oakland (which was radically different than many other sites of the national movement). Occupying entailed much more than the pitching of tents – it was the prefiguring of a new world that provided an alternative to the impoverishment of capitalism and the violence of a police state. It was a form a direct action that no longer turned to the state for a solution, but instead sought to develop the collective capacity to directly provide for the needs of the community. Oakland’s occupation was not a protest to demand social justice. It was the enactment of a socially just world.

The occupation rejected the impoverished logic of a capitalist market and supplanted it with the bounty of mutual aid. Nothing was bought or sold in the camp, but daily life there
revolved around the provision of basic needs. Like any other home, the heart of the camp was its kitchen, which operated 24-hours a day and offered an abundance of fresh, high quality (often even organic and locally grown) food. The Garden Committee planted flowers, vegetables and herbs throughout the Plaza, illustrating the possibilities for small scale food production even in the harshest urban environments. There was a “Free Store” where coats, shoes or practically anything else one might need were easily at hand, and a “Medic” tent where there were doctors and nurses equipped with supplies to provide basic care. There was the “Raheim Brown Free School and Library” and Occupiers collectively shared their wide range of skills and resources: they taught each other yoga, meditation or Marxism; gave each other massages and manicures; and trained each other in tenants’ rights and immigration law. Forms of collective childcare were developed in the “Children’s Village,” and kids were free to play and flourish within the love and safety of a larger community that now knew all of their names. And of course, there were tents, blankets and the warm promise of shelter and security for all those in need of it. This was Occupy Oakland, or “the Oakland Commune” as some would call it – the enactment of a new world where no one remained hungry or uncared for; where resources were shared and therefore bountiful; where lettuce grew between the cracks of urban concrete; and where no one was left to face poverty or violence alone. Occupiers had reclaimed their “commons” – seizing the collective space to feed, defend and care for each other. It was this practice of occupation that served as the foundation for Occupy Oakland’s enormous potential for collective action. Occupation is both a practice and a political community. The practice of occupation – the collective prefiguring of a new world through forms of direct action, mutual aid and solidarity – generated bonds of collectivity and birthed a new political community.
The occupation was a profoundly transformative experience. It politicized us in the deepest way – not by making us aware of what was wrong in the world (which most of us already had an acute sense of), but by suddenly making it seem that another world was actually possible. Our sense of possibility was radically expanded because we had enacted that possibility. And even though our occupation was violently dislodged and quickly destroyed, that experience of possibility would have a profound and lingering impact upon our political imaginations. It is that possibility which motivates this research. This dissertation, however, is not about Occupy Oakland; it is about the power that killed it. It is the story of how the state destroyed our occupation and extinguished the enormous potential for collective action we had generated through it. This is what is truly at stake for this research – it seeks to understand how such an extraordinary moment of possibility was crushed.

Although I had chosen to take a break from sociology in order to occupy, I nonetheless carried with me the vision of a sociologist. Strangely enough, I found that I was perceiving my experience in Occupy Oakland through the lens of the dissertation I had put aside. I began seeing parallels between the counter-terrorism strategies I had been researching and those that I now saw targeting the movement. More generally, I found myself drawn into work in the movement that directly overlapped with my work as a sociologist, which has always focused on state strategies of policing. This process began unintentionally, and for quite personal reasons – people that I cared about were being arrested and viciously prosecuted. As a result, I became involved in “anti-repression” work that focused on defending Occupiers from state targeting. I worked with the Anti-Repression Committee which organized different forms of jail and court support for Occupiers. We established a bail fund and worked closely with the National Lawyers Guild to provide legal representation for those being prosecuted. We raised money for
commissary and made jail visits. And we mobilized campaigns to increase media visibility and place public pressure on the District Attorney’s office. As I increasingly devoted myself to this anti-repression work, I came to spend most of my time around court rooms and county jails. I had found my niche in the occupation, one that stared directly into the face of the state.

Because of the nature of my participation in the movement, what I had intended to be a short sabbatical from academia ended up extending far longer than I had ever anticipated. It would be two years before I returned to the task of writing a dissertation. While the life span of movements may appear short, their demise is actually a quite drawn out process. There is a long period of aftermath when the consequences of the movement have to be endured and dealt with. And for some, those consequences can be quite severe. They may require withstanding long terrifying prosecutions or serving lengthy sentences. Even as I complete this dissertation almost five years later, one of our fellow Occupiers, Kali, remains incarcerated. Anti-repression work continues to be an urgent task long after the movement is considered dead and forgotten. And so my short sabbatical turned into an extended period of working with the Anti-Repression Committee to provide support for the dozens of targeted Occupiers who urgently needed it. In the process, I learned a great deal about the state’s strategies, particularly the prosecutorial ones I observed over endless hours of court proceedings. And the prosecution of those cases also unearthed enormous information about the strategies of police and other state agencies. Doing this kind of anti-repression work led me to all kinds of rich sociological data that revealed a great deal about the state’s strategies against Occupy Oakland. And when I finally returned to the realm of academia, this is what I wanted to capture sociologically. So I proceeded to gather all the data I could find: court transcripts; state issued documents; investigative reports; and news coverage. And once I had collected every relevant piece of information I could track down, I sat
and re-immersed myself in it as a sociologist. Although I had left sociology for the occupation, I now returned to it in order to make sense of that experience.

The answer to the age old sociological question of partisanship – “whose side are we on?” – appears obvious here. This research does not stand on the side of its subject – it seeks to objectify it. Sociologists have long debated the demands and criteria of “objectivity”. Traditional approaches demanded a rigorous “objectivity” that was uncontaminated by the researcher’s own political or ethical “values”. Of course, many have since rejected the notion that such “value free” research is even possible. Some argue that partisanship and “objectivity” are not mutually exclusive and that the political and ethical commitments of a sociologist can, and must, be put aside in their practice of research, which should abide by the scientific criteria of validity and reliability. Others have forwarded feminist and post-colonial critiques of “objectivity” as a disembodied and distanced “conquering gaze from nowhere”. They argue that claims of “objectivity” are denials, and indeed disguises, of the intrinsic relationship between power and knowledge.

Debates over the partisanship of scholarship (“whose side are we on?”) raise two major, interrelated, issues. Most often, the question is approached in the terms of “objectivity”, or of a “standpoint”. The question becomes: whose perspective or standpoint is taken? From whose lens is the world being perceived? Hence the traditional scientific assertion of nonpartisanship is perched upon its claim of “objectivity” – it sees above all sides. And the critiques that then emerge to (rightfully) challenge it remind us that the “above” of objectivity is also a side – the side or the “standpoint” of an all-encompassing “conquering gaze.” But the question of “whose

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side are we on?” is not only about standpoint or perspective. It also raises the issue of the outcomes and impacts of our scholarship. And perhaps this is the real underlying issue that gives significance to debates over perspective or standpoint in the first place. It is not claims or denials of perspective, but the actual impacts and repercussions of research that ultimately determine whose side it’s really on.

And thus, the question (“whose side are we on?”) is not as easily answerable as it first appears. Of course, we never fully control what happens to the research we produce. But if we take the question of whose side we are on seriously, this issue must concern us. We are forced to face the disheartening fact that the knowledge we produce so often comes to be useful and utilized in ways that directly undermine the political and ethical commitments that motivate our research in the first place. Decades of scholars with deep allegiances to social movements have produced a massive body of knowledge that lays those movements – their strategies, tactics and challenges – bare for the states that seek to crush them. This is not the intention of individual scholars, but the result of the development of a larger field of scholarship that is always materially shaped by the demands and desires of funders and institutions. There have been countless conferences and thousands of publications on the Occupy movement (some commissioned and completed before the movement even had a chance to develop). But the production of knowledge on the state and the strategies it used to annihilate that movement remains impoverished. “Standpoints” in the sense of the political and ethical commitments of scholars are transmogrified to produce the “standpoint” for an overarching, all-encompassing statist gaze. The social movements that are the intended subjects of this research become objects for an unintended audience. Thus, the question is not only: whose perspective does this research take? But also: whose gaze does it enable and expand? And what are the ultimate impacts and
repercussions of this? Perhaps we need a reformulation of our question and how we assess our responsibilities for our research. It is not simply “whose side are we on?” But “what is at stake?”

This research is for, not about, Occupy Oakland. While it takes the “standpoint” of the movement in the sense of looking up at the state that crushed it, it applies the “objectivity” of sociology in doing so – it seeks to objectify the state. The state is not the subject of this research, but rather its object. It reverts the objective gaze back upon the state – making the state its object and social movements its audience. In other words, this is intended as a work of public sociology. If we stand opposed to the possibility of our research unintentionally feeding a “conquering” statist gaze, then we must be intentional about our chosen audience. For scholars with commitments to social movements, the knowledge we seek to produce must be shaped by a sense of responsibility to those movements and in direct response to the needs they themselves articulate. What kinds of knowledge do they need? When I finally made my return to academia, I made the decision to discard the dissertation I had spent years working on and write this one instead. I made this choice because I felt an urgent need within my own political community to make sense of what we had just experienced, and to understand how that extraordinary moment of possibility that we collectively generated had been destroyed. My hope is that this research contributes to that understanding. And most importantly, that it proves useful to those who seek to develop new strategies for collectively generating and defending those moments of extraordinary possibility. If knowledge is power, then we must always approach it strategically.
Introduction: THE “VIOLENCE” OF RESISTANCE

The Spectacular Backlash of Repression

Oakland – 4:50 am, October 25th 2011

In the darkness before dawn, 600 officers in riot gear assemble around the perimeter of Oscar Grant Plaza, the home of Occupy Oakland. Standing shoulder to shoulder, they create a physical barricade around the perimeter of the camp, blocking any access by observers or media. Tasked with clearing the Plaza, the police lines begin to march forward, slowly advancing on the camp. Minutes later explosions and tear gas fill the air. Utilizing a range of “less lethal” munitions like “flash bang” explosives and “beanbag” rounds, supplemented with the more traditional force of hundreds of baton swinging officers, the encampment is cleared and “contained” within just 15 minutes. By the time the morning commute begins to filter into the surrounding downtown area, the police operation is complete, 79 people have been arrested, and all remnants of the camp have been destroyed and flattened in what one local paper describes as resembling a “refugee camp that had been struck by a hurricane.”

The seeming success of this eviction operation, however, is short-lived. Later that evening, over 2000 Occupiers and their supporters return to reclaim their camp in a bold and defiant re-occupation effort that would render the brutality of the Oakland Police Department an internationally televised spectacle. Over the course of the next few hours, OPD’s attempt to prevent a re-occupation devolves into a shockingly violent police operation entailing the indiscriminate deployment of various “less lethal” weapons against the large unarmed crowd. Amidst teargas and blinding “flash bang” explosions, officers deploy “beanbag” rounds and rubber bullets into the fleeing crowd, causing numerous injuries, including the critical wounding of veteran Scott Olson who is shot in the head at close range. As a small crowd gathers around him to provide aid, they too are targeted with a “flash bang” that explodes in their midst.

As this police operation unfolds, it is broadcast live by both Occupy’s live-streamers and the mainstream media. Video footage of Scott Olsen, alongside dozens of other ghastly images go viral. The scenes are profoundly shocking: police in full riot gear, their guns drawn and pointed at unarmed protestors; eerie shots of clouds of teargas blanketing downtown streets; injured and scared protestors running in every direction as “less lethal” munitions explode in their midst. The nation is appalled at the violent and militarized character of the police operations they are watching live on their television screens.
Before the teargas has even settled, Oakland is front page news and Occupy Oakland is propelled into national, and even international attention. The backlash of outrage is so intense that the next day, thousands of people return to successfully reclaim the Plaza and re-establish Occupy Oakland’s camp. Well over 3,000 people participate that night in what would be OO’s largest General Assembly ever. By a virtually unanimous consensus, they decide to call for a city wide General Strike the following week, to be accompanied by a shutdown of the Port of Oakland. On November 2\textsuperscript{nd}, they undertake the first General Strike in the US in over 60 years, drawing what is estimated to be up to 100,000 people into the streets, as well as effectively shutting down the fifth largest port in the US.

The events of October 25\textsuperscript{th} in Oakland have become legendary, both within the movement and scholarship – serving as an epitomizing example of the power of the potential “backlash of repression.” Virtually every account of the rise of the Occupy movement invokes this important lesson about the “whip of the counter-revolution.”\textsuperscript{7} Scholars emphasize the central role that spectacles of repression played in fueling the movement: garnering media attention; dramatically expanding public sympathy and support; and exponentially increasing the numbers of people flocking to the occupations. The moral of this story is clear – spectacles of state repression served as a massive boom for the movement.

This dynamic characterized even the movement’s earliest development at the original Occupy Wall Street (OWS) encampment at Liberty (Zuccotti) Park. While OWS suffered what many have referred to as a “media blackout” in the early days of its establishment, it was the viral images of two young White women being pepper sprayed by NYPD officer Tony Bologna on September 24\textsuperscript{th} that broke through that media silence and captured public attention. The incident occurred on the one week anniversary of OWS during an unpermitted march that was heavily attended by college students. The NYPD utilized its, now infamous, orange netting, proceeding to kettle the crowd, along with bystanders and reporters, and arresting 80 people on charges of blocking traffic.\textsuperscript{8} That evening Occupy Wall Street was front page news.\textsuperscript{9} The video of Chelsea Elliot and Jeanne Mansfield being pepper sprayed at point blank range by Officer Bologna, while they are already clearly trapped in the orange netting, goes immediately viral. Just one of the many online versions of the video received 750,000 viewings.\textsuperscript{10} Mainstream media flooded Liberty Park, all looking for the “pepper spray girls.”\textsuperscript{11} As Nathan Schneider recalls, “the presence of TV vans all around seemed like guardian angels, ensuring that the occupation would survive until morning.”\textsuperscript{12} And indeed, the occupation not only survived, but thrived. It had now fully captured public and media attention, and the population at Liberty Park doubled overnight.\textsuperscript{13}

The momentum of this dynamic of repressive backlash further intensified one week later when an OWS march across the Brooklyn Bridge resulted in a mass arrest of 732 people.\textsuperscript{14} As countless scholars have illustrated, this “police overkill” provided an extraordinary boost to the movement, further intensifying media coverage and public support, and swelling the numbers subsequently flocking to OWS marches into crowds of tens of
thousands – not to mention fueling the spread of occupations to hundreds of other cities across the nation.\textsuperscript{15}

And this dynamic was by no means limited to New York and Oakland. Countless images of police violence and injured protestors went viral in the coming weeks. On November 9\textsuperscript{th} police at the University of California, Berkeley evicted the burgeoning occupation on that campus by using 36 inch batons as “battering rams” to clear students from the area. Numerous people were injured, including two students who suffered broken ribs.\textsuperscript{16} Once again the footage went immediately viral and what had already been a substantial “Occupy Cal” movement now expanded and flourished dramatically. Less than ten days later, on November 18\textsuperscript{th} a similar spectacle surfaced at the University of California, Davis where police responded to a sit-in by firing military grade pepper spray directly into students’ faces.\textsuperscript{17} As these videos and images spread like wildfire, student led occupations expanded to hundreds of campuses across the nation.

These are just a few of the spectacles of police violence that helped catapult Occupy into the largest social movement to emerge in the US in decades. And if there is one thing that everyone seems to agree upon, whether activists or scholars, it is that these spectacles served as a powerful force in propelling, strengthening and expanding the movement. Todd Gitlin summarizes this sentiment: “[e]ach time their secret weapons were the most violent police. Each pepper-spraying, tear-gassing, and billy-clubbing by men in uniform whipped around the world via cell-phone cameras and became a recruiting poster…The police kept coming to Occupy’s rescue.”\textsuperscript{18} In other words, it was the spectacular “backlash of repression” that served as a boom for the movement.

Amidst the many images of pepper sprayings and baton beatings, none have come to epitomize this important lesson like those that emerged in Oakland on October 25\textsuperscript{th}. But October 25\textsuperscript{th} is not the only spectacle surfacing out of Oakland that has achieved notoriety. Months later, on January 28\textsuperscript{th} another OPD operation would descend into brutal violence, once again entailing the indiscriminate deployment of “less lethals,” but this time also concluding with the mass arrest of almost 400 people. But in stark contrast to October 25\textsuperscript{th}, the spectacle of January 28\textsuperscript{th} would come to take on profoundly different meanings and have drastically different impacts. While October 25\textsuperscript{th} epitomizes a period of boom for the movement, January 28\textsuperscript{th} has come to represent precisely the opposite: a spectacle of its decline.

**The Spectacle of Occupier “Violence”**

**Oakland – January 28\textsuperscript{th}, 2012**

*From the early morning hours, hundreds of officers, many in riot gear, are stationed around the downtown area. These police operations are the City’s response to Occupy Oakland’s planned occupation. Amidst the nation-wide displacement of Occupy camps following a long series of eviction operations, Occupy Oakland (OO) is undertaking a new occupation effort, now targeting a vacant, City held convention center which it*
plans to convert into a social center providing shelter and services for the public. After weeks of planning, OO commences its “Move-In Day” with a massive march to the intended site of its new occupation. Given the current climate of zero tolerance for the tactic of occupation, it is not surprising that the Oakland Police Department is responding with the most unprecedentedly aggressive operations in Occupy Oakland’s history.

As the march commences, it is immediately surrounded by police lines that attempt to block routes with numerous barricades. It is completely prevented from even nearing the site of its intended occupation by a massive riot-clad police barricade that very soon deploys the day’s first round of tear gas. As marchers attempt to flee the area, they continue to be aggressively surrounded by police lines. OPD repeatedly attempts to kettle the march, while officers simultaneously deploy tear gas and “beanbag” rounds into the crowd. Numerous individuals on the peripheries of the march are randomly targeted for arrest, and a number are beaten and severely injured. After hours of being chased and targeted with these munitions, the march is finally successfully kettled by police in a secluded area that is quickly cordoned off and closed to media access and public view. Within minutes of securing an airtight kettle, OPD officers fire “flash bang” explosives, tear gas, and “beanbag” rounds into the trapped crowd. Video footage captured at the scene shows frantic Occupiers attempting to flee the area, only to be targeted by baton swinging officers. The crowd is finally able to escape, but only once hundreds of people collectively tear down a massive fence, slipping through OPD’s kettle back onto the main streets. This escape, however, is only momentary. Shortly after, police are able to successfully re-kettle the crowd a few blocks away. They proceed to arrest 390 people (including all journalists on the scene), who are then transported to county jails where many will spend several nights before being eventually released without charge.

The events of January 28th also came to take on a spectacular quality, once again receiving extensive media attention. But the media’s account of the day’s events, which relied almost exclusively on statements by OPD and city officials, bore little resemblance to the reality of what actually happened. Police Chief Jordan insisted that the hundreds of arrestees had been given multiple dispersal orders, provided exit routes, and that only those that stubbornly refused to leave had been arrested. Other officials echoed these claims, offering no suggestion that the march had actually been ferociously chased down for hours, before being trapped in an airtight kettle with no escape, not to mention being targeted with countless rounds of “less lethal” munitions. There were highly exaggerated accusations that Occupiers had thrown bottles and rocks at police, with Mayor Quan lamenting that there was “a lot of violence toward them,” while there was silence about the numerous severe police inflicted injuries being reported by organizations like the National Lawyers Guild. But most egregious of all were the claims that Occupiers had attempted to “break in” to the YMCA, as well as City Hall (both of which were later disproven through extensive civil litigation). All of these misrepresentations and outright fabrications served to present police operations that day as a necessary response to the alleged “violence” of Occupiers which, as one City Councilmember asserted, now amounted to “domestic
terrorism.” Although media coverage of Occupy Oakland had long ceased to be celebratory as it was in the early period, it now took an abrupt nose-dive. And public sentiment soon followed. A survey poll undertaken during this period found that public support for Occupy Oakland plummeted from 57% to 26% after January 28th. It appeared evident – Occupy Oakland was on the decline. And January 28th came to signify the reason for that decline, illustrating how the movement had been dangerously diverted to “violence.”

How is it that two similar incidences of extreme police violence like October 25th and January 28th can come to take on such different meanings and result in such different outcomes? And while it is unsurprising that the state would weave such a fabricated story out of the events of January 28th, much more distressing is the fact that this narrative appears to have taken hold within much of academic scholarship as well, not to mention among many Occupiers and liberal supporters. While October 25th served as spectacle of police violence that unified and strengthened the movement, January 28th became a spectacle that warned of the movement’s own devolution into “violence.” It powerfully divided the movement, setting off raging debates nationwide over the relative merits of strategies of “non-violence” versus “violence”. It incited fervent calls for the movement to denounce the “violence” of Occupy Oakland and re-confirm its commitment to a strategy of “non-violence”. These same debates continue to permeate the academic scholarship on Occupy. The fact that not only debates within the movement, but even so much of the historical record now being written by academics is framed within the terms of the state’s fabricated allegations of “violence” against Occupy Oakland should give us serious pause.

Before further unpacking these issues, it is necessary to set the factual record straight regarding the events of January 28th. It would be an understatement to say that the police violence unleashed on Occupiers on January 28th was equivalent to that of October 25th. In fact, it far exceeded it in many ways. They both entailed hours of indiscriminate deployment of “less lethals” like teargas and blinding flashbangs, as well as impact munitions like rubber bullets and “beanbag” rounds. But in the case of January 28th, these munitions were targeted at crowds who were trapped in kettles with no means of escape. Unlike the night of October 25th, January 28th also witnessed numerous cases of Occupiers being severely beaten by officers, in some cases resulting in civil cases that obtained tens of thousands of dollars in settlements from the City. Furthermore, while only five individuals were arrested during the police operations on the night of October 25th, January 28th concluded with the mass arrest of 409 people without any legal basis (a civil class action case later cleared all arrestees of charges and won a settlement of over $1 million from the City). And most of the January 28th arrestees remained detained in jail for days, many suffering physical and sexual abuse (the focus of yet another civil class action lawsuit) or denied urgently needed medical attention. How is it that such brutal state violence was so effectively obscured, and even transformed into a spectacle of Occupier “violence” – one that until this day serves to epitomize the dangers that so many warn led to the decline of the movement?
Occupy Oakland’s Diversion from “Non-Violence”

Those critical of Occupy Oakland suggest that the different outcomes of October 25th and January 28th result from the difference in the movement’s own tactics and strategy. David Graber and others argue that Occupy maintained a “Gandhian nonviolence” during incidences like October 25th, serving to emphasize the violence of the state against “nonviolent” protestors. In contrast, many scholars perceive January 28th as a dangerous diversion away from this strategy of “nonviolence”. Todd Gitlin, who coincidentally spent the day after January 28th at OWS making an “appeal for absolute nonviolence,”20 calls that day the “most graphic exception” to the Occupy movement’s commitment to “nonviolence”.

Nathan Schneider, who similarly reports “extolling the need for nonviolent discipline”22 during that period, suggests that OO’s actions on January 28th may have even had a dangerous contaminating impact on Occupy Wall Street. He recalls how a solidarity march for Oakland the following day in New York descended into “marchers rag[ing] through Greenwich Village at night, throwing bottles at police and turning on one another.”23 In a similar vein, social movement historian, Barbara Epstein warns against the “highly confrontational politics”24 characterizing January 28th, going so far as to suggest that the occupation may have been intentionally “planned to fail, so that there would be a clash with the police.”25

These sentiments echo accusations that were lodged against Occupy Oakland at the time, both from outside and within the movement. This further solidified OO’s position as the “black sheep” of the national Occupy movement. From early on, it was criticized for “diverting” the larger movement away from its proper economic focus by insisting on emphasizing issues of police repression and constantly “fighting with the police.” It was continuously criticized for its radicalness, which many warned would alienate a broader mass base of support. It was criticized for its provocative tactics, and particularly for “provoking the police.” But the most scathing criticisms now came with the accusation that it had descended into “violence,” and therefore posed the danger of diverting the national movement away from its commitment to a strategy of “nonviolence”.

Let us unpack these criticisms, explore the underlying meanings and discursive origins of these accusations of “violence” and calls for “nonviolence”, and consider their strategic implications. There is virtual agreement about the power of repressive backlash and the advantage it can potentially provide for the movement. This is the underlying assumption upon which the strategy of “nonviolence” hinges. At the heart of criticisms of Occupy Oakland is the accusation that by adopting “violent” tactics, it undermined the potential advantage of this repressive backlash, and therefore undermined the larger movement’s strategy of “nonviolence”. The results of which – negative media coverage, loss of public support, the intensification of police repression, and as some even argue, the loss of “moral authority”26 – all led to the movement’s decline. Given that so much of our strategy is based upon these (often unspoken) assumptions about “violence”, “nonviolence”, and the potential power of repressive backlash, it is worthy excavating their underlying meanings, discursive origins and strategic implications.
The Statist Accusation of “Violence”

Before proceeding, it is crucial to emphasize that this research does not approach “violence” as if it refers to some clearly defined and empirically identifiable form of action, but rather as a politically contested term that is subject to discursive struggle. In other words, instead of taking a position on what should or should not be called “violence”, my objective is to undertake an analysis that explores the discursive process through which that designation occurs. What gets defined as “violence”? What does not? And who holds the power of definition?

What does the “violence” that is so heavily invoked in criticisms of Occupy Oakland actually refer to? As numerous scholars have argued, it most often serves as a euphemism for property destruction. Clearly, this is the intended meaning when the state routinely defends its brutal police operations as necessary responses to the “violence” of broken windows or smashed ATMs. Within the terms of this discourse, it is property, rather than human beings, that must be defended from “violence”. Emily Brissette refers to the pervasiveness of this notion as a neoliberal “common sense” that reflects “the capitalist sanctification of property and its concomitant dehumanization of people[.]” She argues that we need to delink property destruction from “violence” which she defines as that which causes harm to living beings.

Brissette and King highlight the contradictions and tensions within this dominant neoliberal “common sense” by considering the vigilantism that so often accompanies it. They offer a number of examples of zealous advocates of “nonviolence” morphing into a kind of “peace police” that either threaten or actually engage in violence (meaning bodily harm) against fellow Occupiers who undertake acts of property destruction like graffiti. The fact that such individuals see no irony in their violent defense of “nonviolence” reflects the power of this “common sense.” One of the most glaring examples of this occurred during OO’s General Strike when a small group of protestors spray painted the words “STRIKE!” on a Whole Foods store and (unsuccessfully) attempted to break one of its windows. Brissette and King describe what then followed: “In the midst of this, some within the march morphed into agents, seeking to vigorously defend the sanctity of corporate property (they would say they were protecting the movement) by tackling, brandishing chairs and sticks at, or unmasking and photographing those thought to be involved in the graffiti and property destruction.”

This neoliberal “common sense” permeates not only the movement itself, but scholarship as well. To offer just one example, Gitlin refers to the incident at Whole Foods as being one of the few exceptions to the larger movement’s commitment to a strategy of “nonviolence”. However the exceptional “violence” he speaks of is that which was suffered by the store’s window, not the human beings who were subsequently physically assaulted. He refers to them as a minority that “broke from a largely nonviolent demonstration while many among the large majority tried to stop them.” In Gitlin’s rendition, those spraying graffiti or attempting to break a window are engaged in “violence” while those who “tried to stop them” (he never bothers to explain exactly how) are rendered the “non-violent” defenders of the movement.
While scholars like Gitlin and Epstein generally conflate “violence” with property destruction, there are of course many others who recognize the problematic nature of doing so. However, even many of these more critical scholars dismiss this as a “semantic” issue. Nathan Schneider, for example, argues that he is “not especially interested in debating definitions” because “how society views it is a much more important factor [...]”31 While that is in fact the case, what he dismisses as a semantic issue actually reflects an important discursive operation; meaning, how “violence” comes to be defined – and who holds the power to define it – is precisely what shapes how society views it. Dismissing this as a semantic issue implies that “violence” and property destruction are interchangeable in their invocation. But there are various acts of property destruction that occur all the time that are not, and definitely not so fervently, labelled as “violence”. In fact this nation was founded upon an act of property destruction that is never spoken of as “violence”, but rather as a “tea party.” Occupy Oakland too was founded upon an act of property destruction that also never gets mentioned as such. The only way that OO was able to reestablish its occupation the day after October 25th, and then proceed to have a General Assembly of thousands of people that is now referenced as a model of “direct democracy,” was to tear down a giant six-foot chain link fence that had been erected around the entire perimeter of the Plaza. And a similar fence toppling occurred on January 28th – one of the very few acts of property destruction that day – one that enabled hundreds of people to escape being targeted by “less lethal” munitions while trapped inside a police kettle.

These inconsistencies in the framing of property destruction as “violence” reflect an irony that characterizes the historical revisionism around January 28th. Despite all the accusations, the day’s action was in fact distinguished by the absence of property destruction. It was one of the very few times in Occupy Oakland’s history where Occupiers intentionally refrained from engaging in acts of property destruction, which often did occur during OO’s marches (including the highly celebrated day of the General Strike). By January there was a general understanding within the movement that the tactic was being exploited as “violence” by the state and media, and that this could undermine the new occupation effort. In stark contrast to previous actions, there is no documentation of a single incidence of property damage during the entire day of January 28th, until the very end of the night once OPD’s operations and the mass arrest had already been concluded. After hours of being chased, kettled and targeted with military grade munitions, the vast majority of what was left of the march had been arrested. However, a small group that eluded the kettle marched back to City Hall where several people went inside, did minimal property damage that involved toppling a display case and breaking a window, and took an American flag outside, which they then unsuccessfully attempted to burn. This is the entirety of the property destruction that Occupiers engaged in on January 28th.

But January 28th went down in history as a spectacle of Occupier “violence” because the state presented it as such. City officials made countless fabricated accusations about such “violence”, even holding a press conference the morning after to give reporters a guided tour of the property damage in City Hall (at the very moment when hundreds of Occupiers were injured and cramped in holding cells in county jails on charges that would never be filed). They presented the previous day’s police operations as a necessary response to Occupy Oakland’s “violence” – as clearly illustrated by the damage in City Hall. But of course they elided over the fact that those police operations were concluded by the time
that damage was even done, and that otherwise, there wasn’t even a single broken window in the city of Oakland. The fact that scholars today hold up January 28th as an example of OO’s descent into “violence” speaks volumes about the power of this state discourse. And invoking the term “violence” in this manner is not merely a semantic issue – it is the invocation of a statist authority that monopolizes the definition of this term, and whose power operates precisely through doing so.

While those who invoke the term “violence” generally do so in a manner that conflates it with property destruction, there are other meanings that sometimes get articulated as well. In some cases, usage of the term “violence” slips into meaning provocation of police. In other words, a tactic is “violent” if it is likely to provoke the violence of the state. This surfaces recurrently in many of the criticisms of Occupy Oakland, particularly in relation to January 28th. The, often implicit, assumption is that it was the “violent” (meaning provocative) tactics of the movement that served to lure out the kind of extreme police violence that characterized January 28th. And sometimes the term “violence” is used in a manner that just refers to acts of disruption. For example, this is precisely what was being articulated by Mayor Quan when she referred to OO’s port shutdowns as acts of “violence”. The tactic of blockading freeways that was popularized by the Black Lives Matter movement was incessantly characterized as “violent” by media and state officials. In those accusations, it is the simple act of disruption that is being characterized as “violence”.

Property destruction, provocative tactics, disruption…these are the various meanings invoked with the term “violence”. What do they all have in common? They are statist accusations. It is the state that labels property destruction like windows broken by protestors as “violence”, a label it never applies to corporate bankers who intentionally destroy billions of dollars in home property values for their own profit. It is the state that labels Black youth protesting on freeways as “violent”, while obscuring the violence of the police who murder them. And it is the state that refers to the disruptive tactic of a port blockade as “economic terrorism.” It is hardly a semantic issue when all of our invocations of “violence” echo the very accusations the state forwards to legitimize its repression.

Perhaps the clearest indication that the state’s voice has dominated our debates and haunted our scholarship is the very fact that so much attention has been given to this problem of “violence” within the movement when there is actually so little to speak of. No one within the Occupy movement, not even in the most clandestine, radical direct action meetings, was suggesting the use of violence as a tactic. No one is really proposing violence as a feasible strategy – it’s just the state’s discourse that says so. Even if we reduce the meaning of “violence” down to property destruction, the example of January 28th illustrates that it is not the act itself which determines it’s designation, but rather the power which designates it. In contrast to the intentional refraining from property destruction on January 28th, Occupy Oakland’s May Day actions a few months later witnessed quite extensive property damage. And yet in that case, rather than exaggeration, the City was silent about it, minimizing this reality as part of an effort to present OPD’s reformed operations as being so successful that they were now effectively “deterring” this kind of “violence”. And if we consider the movement more generally, while property destruction was a common tactic in Oakland, it barely surfaced at all in other Occupy sites.
David Graeber reminds us that out of over 500 occupations nationwide, the “violence” attributed to Occupy amounted to not much more than a handful of broken windows. He, and a number of others, point out that the only case of property destruction at Occupy Wall Street occurred when police smashed an OWS medic’s head into a window.

Despite the fact that the danger of Occupy adopting violent tactics (even if “violence” is conflated with property destruction) was non-existent, this concern came to both monopolize the scholarship and divide the movement. Debates over this raged for months within the movement, fueling division among Occupiers. And thousands upon thousands of pages have been published on this issue with countless scholars issuing calls for “nonviolence”. Just as the verbosity around sexuality in the 18th century was indicative for Foucault, we should similarly pay attention to all this incessant chatter about the “violence” of resistance. We too are witnessing a “veritable discursive explosion” around the alleged danger of this “violence”. And just as the “discursive ferment” in the 19th century lead to the constitution of subjects like the “homosexual” that became the targets of disciplinary power, contemporary scholars who partake in this “incitement to discourse” assist in the constitution of targeted subjects like the “violent” protestors, now often even characterized as a “domestic terrorist.” As Foucault reminds us, these discourses do not “multiply apart from or against power, but in the very space and as the means of its exercise.”

The Boogeyman of “the Black Bloc”

The most glaring example of this kind of “discursive ferment” around what is actually a non-issue is the extensive attention that has been given to the purported danger of “the Black Bloc.” In its accurate usage, black bloc refers to a particular tactic that involves groups that dress in black and mask their individual identities in order for participants to undertake direct action while being disguised within the larger amorphous “bloc”. While the tactic was popularized in Europe, and particularly Germany, it has very rarely surfaced within the US. In the entire history of the national Occupy movement, there was only ever one case where black bloc tactics were adopted – the infamous incident of graffiti and attempted property damage targeting Whole Foods during the day of Occupy Oakland’s General Strike. The individuals who undertook this property destruction emerged out of a larger bloc of black clothed and masked protestors (hence the efforts of defenders of “nonviolence” to unmask, photograph and identify them, presumably for targeting by police). Despite the fact that this incident represented the only time that this tactic was adopted within the entire history of the Occupy movement, resulting in damage that amounted to no more than some graffiti and a failed effort to break a window, it nonetheless became the subject of extensive debate. State officials and the mainstream media droned on and on about the dangers of “the Black Bloc,” and these concerns quickly permeated the movement itself. “The Black Bloc” became a discursive boogeyman that soon gained traction, particularly after January 28th – despite the fact that black bloc tactics were never used that day.
These debates around the dangers of “the Black Bloc” were especially fueled by the publication of Chris Hedges’ article “The Cancer in Occupy” just one week after January 28th. Hedges warned of the danger of what he calls “Black Bloc anarchists” within the Occupy movement, particularly in Oakland, whom he presents as a “cancer” that must be excised for the movement’s own sake.36 The article served as the spark that fueled raging debates over “the Black Bloc,” “violence,” and “non-violence within the movement. Mark Bray notes that the “violence/non-violence” debate wasn’t really discussed at Occupy Wall Street until Hedges’ article was published after January 28th.37 Nathan Schneider recalls how after its publication, every OWS meeting seemed to revolve around Hedges and debates over “violence” and “nonviolence”.38 And this was by no means limited to New York. Fierce debates raged across the national movement between those calling for a renunciation of “the Black Bloc” and “violence” more generally (some even demanding a movement wide “peace pledge”39) and those arguing for a “Diversity of Tactics” position that allowed for the adoption of diverse tactics (including targeted property destruction or black bloc) as long as they were adequately coordinated to maintain necessary separation of time and space. While some interpreted Hedges’ article as a dangerous denunciation of Occupy Oakland and anarchists within the movement, it also “resonated with a lot of people in the movement, who echoed his denunciations to their comrades.”40 Ethnographic accounts of this period illustrate how it was experienced as a “witch hunt” by many anarchists within the movement, who were being increasingly associated, even by fellow Occupiers, with “violence”. The OWS organizers who Nathan Schneider interviews relay “a kind of hysteria” during this period targeting anarchists (as well as more radical Occupiers generally), and resulting in their increasing marginalization from the movement.41

Despite the fact that black bloc tactics were only ever utilized on one occasion within the entire history of the Occupy movement, and amounted to no more “violence” than the targeting of one window, “the Black Bloc” became a discursive boogeyman around which the national movement became increasingly divided. This same disproportionate discursive uproar also characterizes the scholarship on Occupy. Most scholars include some reference to black bloc in their accounts, with many allocating entire sections of their books to the subject. Furthermore, many of these accounts are factually incorrect, with scholars identifying black bloc actions that never actually occurred. For example Mark Bray (as well as numerous others) refers to a purported black bloc action on January 28th, for which there is no evidence whatsoever.42 He goes so far as to assert that the “various black bloc actions [that] were carried out on the West Coast” resulted in the increasing tendency of media to present the Occupy movement as having been hijacked by anarchists and other “extremists”.43 It remains unclear what “various” black bloc actions Bray is referring to, a problem that characterizes many scholarly accounts. Rebecca Solnit offers a purported example of what she argues is an appropriate usage of the tactic during OO’s reoccupation of Oscar Grant Plaza on October 26th when the chain link fence surrounding its perimeter was toppled by Occupiers. In a highly praising account of what she calls “people power,” she asserts that in this case “the Black Bloc kids were reportedly part of the whole; they dismantled the cyclone fencing panels and stacked them up neatly.”44 Schneider similarly offers an example of what he perceives as the proper use of black bloc tactics by referencing an OO action on November 19th where Occupiers once again tore down a fence erected by the city in order to access a targeted occupation site. He claims that a black clad
group at the head of the march broke through it, enabling the larger crowd to pour in and proceed to set up its new occupation. The problem with these accounts is that there were no black blocs on either of those occasions. In both cases, while there were indeed some individuals who were masked up engaging in these fence topplings, there were many others participating who were not. And in neither case was there any kind of collectively organized bloc that intended to undertake those actions – they were spontaneous responses to the state’s containment strategy of erecting fencing which involved large crowds, among whom there happened to be individuals who were masked up or dressed in black.

Scholars are identifying black blocs in all kinds of places where the tactic isn’t actually being utilized. Part of the underlying problem is that their approaches are conflating black blocs with the common practice of masking up, or more generally disguising oneself from identification by the state. Black bloc tactics involve collective organization among a group that coordinates some kind of planned action – rather than applying every time individuals who happen to be wearing black or masks participate in actions. In the contemporary period, it is a highly common practice for protestors to mask their identities in various ways. Not only during the Occupy movement, but even in the more recent Black Lives Matter protests in Ferguson or Baltimore, the image of masked protestors has become a common one. It is not that all of these people are looking to join a black bloc, but rather that they have an acute understanding of the role of surveillance in contemporary state strategies of repression. Countless individuals have been prosecuted on the basis of photographs, videos or other forms of surveillance without which they would never have been targeted for prosecution. And it is impossible to even begin to account for the other forms of targeting (beyond prosecution) that are enabled by state surveillance practices.

Awareness of surveillance has fueled iterative resistances that seek to elude it. And this is precisely what makes “the Black Bloc” so threatening to the state – it has become a euphemism that actually refers to a much more general and increasingly common tactic of disguising individual identities from the state. It undermines state surveillance capacity by denying it the power to disaggregate the crowd and identify individuals within it. Insofar as state repressive strategies hinge upon the individuation and identification that surveillance enables, it is unsurprising that the boogeyman of “the Black Bloc” has gained such discursive traction. It represents the worst nightmare of the state – resistance forwarded by a unified and amorphous bloc that eludes disaggregation and identification. Scholarship on these discursive strategies is sorely needed. The questions that need to be asked are: why is there such a discursive explosion around the dangers of “the Black Bloc” despite the highly limited adoption of this tactic within the movement? What exactly is being labelled as “black bloc”? And what is the underlying threat this poses to the state? This is the direction that critical scholarship should move towards, rather than misidentifying “the Black Bloc” where it doesn’t exist and fervently warning of its dangers. With the latter approach, scholars descend into assisting in the consolidation of a statist discourse, and thus collaborating in constituting targets for the state.

While many scholars have wholeheartedly participated in this “witch hunt” to excise black bloc tactics and those associated with them from the Occupy movement, there are some that are much more critical of these discourses. The logic of their critiques usually focuses upon the fallacy of conflating black bloc tactics with an identifiable group, “the Black
Bloc.” Bray offers one of the clearest articulations of this position: “[a]lthough commentators routinely speak about the black bloc as if it were a discernible entity unto itself, it makes as much sense to speak of the black bloc as a specific group called ‘the black bloc’ as it does to speak of ‘the petition-signers’ or ‘the sign-holders’.”46 Although Bray gets at the manner in which dominant discourse tends to conflate what is actually a tactic with an allegedly identifiable group (“the Black Bloc anarchists” that Hedges and others warn of), what eludes this critique is that state repressive strategies operate through this very conflation. It entirely misses the most crucial point, by once again dismissing it as a semantic issue – that “the Black Bloc” is indeed being constituted by the state as an identifiable group. Statist accusations regarding “the Black Bloc” have evolved to the point of criminal prosecution and even the establishment of judicial precedent.

Shortly before Occupy undertook a nationwide day of actions for May Day, five individuals associated with Occupy Cleveland were arrested on terrorism charges (in a case that was later revealed to have involved extensive entrapment by federal agents). When announcing the state’s prosecution of the case, officials repeatedly referred to the defendants as “Black Bloc anarchists,” despite the fact that there is no evidence whatsoever indicating that any of them ever partook in a black bloc action.47 There are numerous other cases of prosecution where accusations of membership in “the Black Bloc” surfaced, and there have even been attempts at setting judicial precedent to establish “the Black Bloc” as a criminal organization similar to the statist classification of “gangs”. While scholars like Bray are correct in emphasizing the danger of conflating this tactic with an identifiable group, they fail to recognize that this conflation is precisely how state power operates. In other words, the crucial difference between “petition signers” or “sign holders” and “the Black Bloc” is that the latter is in fact currently being constituted as an identifiable target population by the state’s strategies. No one is being prosecuted for sign holding or petition signing. And no one is calling sign holders or petition signers a “cancer” that must be excised from the Occupy movement.

Finally, let us consider the impacts of these discourses on “the Black Bloc.” The most crucial impact has been that they have assisted in constituting a new state target population that is being increasingly subjected to police targeting and prosecution. More generally, they support a larger state strategy of criminalizing any forms of resistance that seek to undermine its surveillance capacity. Approached in this manner, scholars demanding that black bloc tactics be denounced are implicitly demanding that those who engage in resistance identify themselves to the state (since after all good “nonviolent” protestors have nothing to hide). The “discursive ferment” around “the Black Bloc” effectively marginalized, and even exiled, some of the most radical communities within the Occupy movement. Not only anarchists, but all of those who support the use of radical tactics, became increasingly targeted with accusations of undermining the movement. This served to marginalize political communities that were central to the founding of the occupations and which many scholars have characterized as the movement’s radical “core”. These are some of the implications of adopting statist discourse around “the Black Bloc” – assisting in constituting targetable populations of Occupiers, discouraging resistance to state surveillance, and excising the more radical elements of the movement. All of which directly mirror the state’s strategies against Occupy.
It is this dynamic that should most concern us – the fact that internal debates within the movement, as well as our scholarship, so thoroughly replicate the state’s own discursive strategies. George Ciccariello-Maher provides one of the clearest articulations of this problem by arguing that contemporary state strategies hinge upon a distinction between “good” and “bad” protestors. “[C]ontemporary policing is not simply rooted in brute force but instead in the more subtle and selective deployment of force against the ‘bad’.”48 Referring to the danger of Hedges’ position, he argues “[b]y parroting the fundamental division between ‘good’ and ‘bad’ protesters, and by suggesting the surgical removal of the latter, Hedges literally marks the boundary that divides his liberal tolerance from that which is beyond the pale. The implications of this position are not abstract.”49 This criticism applies not only to Hedges but to all scholars who contribute to state strategies by identifying various forms of “bad” protestors, whether “the Black Bloc,” or “violent Occupiers.”

A (Re)Vision of “Nonviolence”

Having explored the underlying meanings and discursive origins of these accusations of “violence” in relation to the Occupy movement, let us now consider the calls for a strategy of “nonviolence” that accompany these criticisms. When countless people, from state officials to scholars to Occupiers themselves, make calls for “nonviolence”, what exactly is meant? Numerous scholars have written extensively on this subject, with many like Graeber, Gitlin, and Schneider claiming that Occupy was a fundamentally “nonviolent” movement.50 Gitlin takes the most extreme position here, claiming that “nonviolence” was “Occupy’s fundamental tradition, not an incidental feature but a force in itself,” and going so far as to argue that it was central to what he calls the very “spirit” of the movement.51

While some advocates of “nonviolence” forward morally based arguments (categorically opposing the use of “violence” as immoral or unethical), most arguments are couched in strategic terms that assert it to be the most effective strategy. For example, Gitlin asserts that it has been so “central and definitional to the movement” because it is clearly the most “rational” strategy.52 Numerous scholars, in fact, identify “nonviolent” strategy as being a major factor in the success of the Occupy movement. In many cases, these claims are supported through historical references, particularly to the social movements of the 1960s. Gitlin goes into extensive detail on the purported “nonviolence” of the Civil Rights and Anti-War movements of the 1960s, contrasting their efficacy in relation to examples like the Watts Riots and the Black Panther Party which he characterizes as “violent”. There is extensive scholarship that challenges these claims, illustrating, for example, the massive state welfare programs established in response to the Watts Riots53 (which can hardly be interpreted as ineffective) or problematizing the presentation of the Black Panthers as “violent” (critiquing, once again, the adoption of statist accusations). Nonetheless, scholars like Gitlin forward this kind of historical revisionism as proof of the obvious superiority of “nonviolent” strategy. As Rebecca Solnit asserts “in fact, the powerful and effective movements of the past sixty years have been almost entirely nonviolent.”54 [Emphasis is mine.]
What this kind of historical revisionism obscures is the actual fact that these very movements being currently praised for their “nonviolence” were presented as “violent” during their own period of struggle. Emily Brissette highlights this by offering an example from the Anti-Vietnam War movement. She relates the story of Catholic Pacifists who raided draft board offices and burned draft files as an act of resistance against the war, reminding us that this was construed as “violence” at the time. These religious activists self-identified as principled pacifists, and in no way perceived their actions as “violent”, but rather as part of a moral obligation to resist the violence of war. Brissette’s point is that these accusations of engaging in “violence” were targeted at the very moments that we today hold up as models of “nonviolent” strategy. Tactics like civil disobedience, disruption, and Provocation of the police – all of which were central to the movements of the 1960s – elicited the same accusations of “violence” that we hear today. In the contemporary period, Black youth who engage in disruptive tactics like blockading freeways are characterized as “violent”, but so too were their ancestors who organized disruptive sit-ins in segregated Jim Crow businesses. The contemporary denial of this historical reality reflects a failure to recognize a crucial component of the state’s power – it always involves the deployment of discursive strategies. Resistance has long been rendered as “violence”. At least, until that resistance has been extinguished – than it is sometimes revisioned as “nonviolence”.

The historical revisionism of movements as “nonviolent” even extends up into much more recent periods. Gitlin asserts that the Arab Spring uprisings in Tunisia and Egypt serve as the most recent examples of the power and efficacy of “nonviolence”. But such assertions about the purportedly “nonviolent” or “peaceful” character of the Egyptian revolution are directly challenged by Egyptian activists themselves. In the immediate aftermath of October 25th, activists in Tahrir Square (calling themselves “Your Comrades in Cairo”) issued a solidarity statement for Occupiers, which included the following warning:

Those who said that the Egyptian revolution was peaceful did not see the horrors that police visited upon us, nor did they see the resistance and even force that revolutionaries used against the police to defend their tentative occupations and spaces: by the government's own admission, 99 police stations were put to the torch, thousands of police cars were destroyed and all of the ruling party's offices around Egypt were burned down. Barricades were erected, officers were beaten back and pelted with rocks even as they fired tear gas and live ammunition on us. But at the end of the day on 28 January they retreated, and we had won our cities.

It is not our desire to participate in violence, but it is even less our desire to lose. If we do not resist, actively, when they come to take what we have won back, then we will surely lose. Do not confuse the tactics that we used when we shouted "peaceful" with fetishising nonviolence; if the state had given up immediately we would have been overjoyed, but as they sought to abuse us, beat us, kill us, we knew that there was no other option than to fight back. Had we laid
down and allowed ourselves to be arrested, tortured and martyred to "make a point", we would be no less bloodied, beaten and dead.57

These Egyptian activists not only challenge what they call the “fetishisation” of “nonviolence”, they also raise the underlying question of its efficacy, arguing that they “would be no less bloodied, beaten and dead” had they adopted such a strategy “to make a point[.]” If we dismiss all the fetishizing and take these calls for “nonviolence” seriously, the crucial question becomes: what exactly is the underlying strategy being forwarded?

**Strategies of “Nonviolence”: Non-Provocation or Gandhian Spectacularization**

Calls for “nonviolence” can be generally classified as ascribing to two major strategic orientations. The less common articulation is to frame “nonviolence” as a strategy that seeks to avoid provocation of police violence. In this approach, demands that the movement commit to “nonviolence” actually translate into demands that it avoid provoking the violence of the state. It is the provocation of a violent response from the state that designates the “violence” of movement strategy. The common characterization of Occupy Oakland as the “violent” fringe of the movement serves as an example. Why is OO considered particularly “violent”? Not necessarily because of any “violence” it engaged in, but because it so often, and so extremely, lured out the violence of the state. This is precisely why January 28th came to be perceived as a spectacle of Occupy’s descent into “violence” – it was accused of having eschewed “nonviolence” by virtue of provoking such a massively violent police response. These kinds of calls for “nonviolence” essentially translate into demands to denounce provocative tactics. Barbara Epstein provides one of the most explicit articulations of this position. In discussing the raging debates over “violence” and “nonviolence” that divided the Occupy movement, she laments that there was inadequate discussion over the most important strategic issue, the problem of “provocative behavior.” She argues that strategy should be shaped by considering the “implications of provoking police violence for attempts to build a mass movement,” claiming that “tactics that are certain to lead to clashes with the police cannot be described as a part of a nonviolent politics.” She concludes by arguing that provocative tactics “should be excluded from the repertoire of the left.”

What are the implications of such a strategy? And what kinds of assumptions does it hinge upon? If calls for “nonviolence” are really just demands to eschew forms of action or tactics that may provoke a response of police violence, what kind of political action is left to engage in? If every action that involves any kind of real threat to the status quo is likely to result in a violent state response, how can strategy seek to avoid provoking such an outcome while still aiming to act in ways that have real political impact? Epstein’s criticism of provocative strategy fails to account for the wide variation of tactics that have proven to elicit violent responses from the state – not just property destruction, but efforts at occupation, forms of civil disobedience, and a wide range of disruptive tactics. If we are to adopt this kind of “nonviolent” strategy emptied of any power of disruption, what remains of the tactical “repertoire of the left”?
At the heart of this approach is an assumption that this kind of “nonviolent” strategy can somehow avoid, or at the very least minimize, the state violence that will be targeted at a movement. Graeber argues that “disciplined nonviolence” is the best strategy, in part, because it “minimizes ‘collateral damage’.”60 Clearly, it is undeniable that adopting violent tactics like those of the Weather Underground, for example, will result in intensifying the violent nature of the state’s repressive response. Without denying that, it is problematic to assume that there are political tactics (which are actually effective in any fashion) that can somehow avoid this state response. In the context of the contemporary period where even the act of public assembly can lure out riot police and military grade weapons, the naiveté of basing our strategy upon such an assumption is obvious.

There is a second, much more common, articulation of “nonviolent” strategy, often referred to as “Gandhian nonviolence”. This approach hinges on a strategy of luring out spectacles of police/state violence targeted at “nonviolent” or “peaceful” protestors. The goal, as Graeber describes it, is “to create a stark moral contrast: it strips bare the inherent violence of a political order by showing that, even when faced by a band of nonviolent idealists, the ‘forces of order’ will not hesitate to resort to pure physical brutality to defend the status quo.”61 The strategy seeks to generate these kinds of spectacles as a means of garnering media attention and increasing public support. In other words, it hinges upon provoking the powerful “backlash of repression.” The spectacle of October 25th serves as an epitomizing example for proponents of this strategy. And January 28th serves as a warning of the danger of being diverted from this strategy. The basic argument is that by failing to maintain what Graeber would call “nonviolent discipline,” i.e. engaging in “violent” tactics however those may be defined, Occupy Oakland undermined that contrast between the violence of the state and the “nonviolence” of “peaceful” Occupiers. As a result, it garnered negative media attention, lost public support, and played right into the state’s strategy.

There are two major challenges facing this strategy of “nonviolence” that most proponents fail to address. The first relates to the dynamics of spectacularization upon which the strategy hinges. What if despite all efforts to maintain “nonviolent discipline,” statist discourses can still easily render those that resist as “violent”? In other words, what if the state is effectively able to dominate the dynamics of spectacle? This should be the true lesson we take from January 28th – despite concerted efforts to maintain such “nonviolent discipline,” the state’s discursive strategy presented the day’s action as “violent”, thus legitimizing the state’s own deployment of violence. The different outcomes of October 25th and January 28th don’t result from any difference in strategy or tactics adopted by the movement on those two days. Rather, the difference lies in the fact that by January 28th, state discourses about “violent anarchists,” “outside agitators,” “domestic terrorists,” and “the Black Bloc” were so powerful that the state thoroughly controlled the spectacle that was generated. “Nonviolent” strategy hinges upon maintaining an image of “peaceful” or “nonviolent” protestors in order to generate the stark contrast necessary to generate moral outrage and repressive backlash. But the state’s discursive strategies hinge upon rendering all forms of resistance as “violence”. Proposals that forward “nonviolent” strategy need to account for the power of these discourses, rather than simply demanding that the subjects constituted by them be excised from the movement. To assume that Occupy, or any social movement, can somehow be cleansed of these dangers, fails to recognize that statist
discourse will always continue to generate them. Even if you stop every individual in a
march from breaking a window, as was achieved throughout the day on January 28th,
allegedly “violent” subjects will always be identified and targeted by the state.

There is a second assumption of this strategy that similarly needs to be rethought – the idea
that state’s deployment of force against the movement is generally amenable to
spectacularization. This reflects a more general problem in the scholarship on Occupy, a
highly narrow conceptualization of state power. Scholarly accounts of the state strategies
that targeted the movement tend to reduce them to forms of visible police violence and
coercion. If you dig through the scholarship and attempt to excavate these accounts, you
will find that most of them revolve around references to raids, evictions, arrests, the
deployment of “less lethal” weapons, and brutal beatings. For example, there is common
tendency to conflate the decline of the movement with the evictions. Scholars approach the
eviction of the encampments as the epitome and apex of the state’s attacks on the
movement. But this fails to recognize that many Occupy sites continued to thrive long after
the evictions, and that the severity of the state’s strategies intensified dramatically after
them. Another example lies in the emphasis and attention given to arrest figures (more than
7,000 reported nationwide). But simply quantifying arrests fails to even begin to capture
the full extent of what was suffered by Occupiers. Nor does it identify the most damaging
and violent consequences of these arrests. The vast majority of Occupiers arrested were
eventually released without charge or had their charges dropped or dismissed. But for the
substantial portion that did face prosecution, this sometimes resulted in consequences like
extended jail sentences or even solitary confinement. In other words, it was prosecutorial
power, as opposed to brute, spectacular police coercion, that ultimately did the most
violence to Occupiers. It was also in this prosecutorial moment when the intrinsically racist
and classist nature of state strategies most clearly surfaced, evidenced by the vastly
disproportionate prosecution of Occupiers who were Black, Brown, impoverished or
homeless. These consequences completely elude accounts which see only the state
violence that comes lodged out of “less lethal” munitions or can be tallied by arrest figures.
What remains urgently needed is scholarship that adopts a much broader conceptualization
of state power, attempts to account for the various forms of its deployment, and more
thoroughly maps its strategic evolution rather than concluding with stories of evictions and
mass arrests.

In conclusion, let us consider the implications of all of this for prevailing strategies of
“nonviolence”. What does it mean for a strategy that hinges on spectacularizing the state’s
violence if most of it is not even amenable to spectacularization? How do you create
spectacles out of pressured plea deals tucked away in secluded courtrooms or the chronic
paranoia resulting from being the target of constant surveillance? “Nonviolent” strategy
relies upon the ability to spectacularize visible police coercion. But this is only one of the
state’s strategies of power. And given that the state itself has learned the danger of this
strategy’s vulnerability to spectacularization, it rarely relies exclusively, or even primarily,
upon it. In other words, October 25th was a strategic misfire that the state rarely repeats. It
not only learns to incorporate discourses that disguise that coercion, it also adapts to evolve
much more powerful strategies for neutralizing resistance.
This dissertation offers the case of Occupy Oakland, and attempts to provide a much more thorough account of state strategies against the movement, aiming to map how they change over time. I would argue that OO provides the best case for this analysis given that scholars seem to unanimously agree that it experienced the most extreme state targeting of any Occupy site nationwide. In fact, many perceive the extremity of the state’s response to Occupy Oakland as being the primary factor propelling it to the forefront of the national movement. There is also a similar consensus that OO represented the most radical site within the Occupy movement. As Gould-Wartofsky describes,

> From its inception, OO had a markedly different content and more militant tone than its counterparts in other cities, making it less hospitable to a politics of compromise. Inspired, they say, by Oakland’s long history of black radicalism, and, more recently, by the anti-police rebellions and student occupations of 2009-2010, the occupiers of Oscar Grant Plaza staked out a distinct position within the 99 Percent movement, a political pole all their own. Theirs was a politics of total refusal, which went beyond opposition to the big banks and “Wall Street West” to an outright assault on what many believed to be the fundamentally illegitimate institutions of local, state and federal governance.

As will be discussed in the following chapter, one of the major conclusions of the scholarship on “political repression” of social movements is that Occupy fueled an evolutionary development of state strategies for policing protest, and that it did so because it was the first truly threatening and highly disruptive social movement to emerge in the US in decades. After years of highly orchestrated protests void of disruptive impacts, police departments all over the country were forced to quickly adapt to the disruptive tactics that re-emerged with the Occupy movement. Insofar as this is a basic premise of the scholarship, we can assume that Oakland’s position as the most radical and defiantly disruptive site of the movement provides a particularly illuminating window into the evolution of state strategies.
Chapter 1: THE EVOLUTION OF STATE POWER

According to much of the scholarship, January 28th epitomizes the reasons for the decline of the movement, specifically a shift away from the kind of “nonviolent” strategy that ensured the success of October 25th towards the increasing use of “violence”, which it is argued then led to negative media coverage, a decline of public support, and a ramping up of police repression. From this perspective, it is the movement’s decline into “violence” that leads to its demise. But as illustrated in the previous chapter, the different outcomes of October 25th and January 28th emerged not out of any change in the movement’s tactics (if anything they became less “violent”), but from a change in the state’s strategy, and particularly its increasing discursive dominance. While the movement created a spectacle of police violence out of October 25th that incited a powerful backlash, by January 28th the state so thoroughly dominated the discursive terrain that it was able to flip the script and render the day a spectacle of Occupier “violence”, one that then generated public support for greater repression of the movement. The moral of this empirical lesson is clear: our analyses of the decline of the movement need to focus more directly upon the state and its strategies, particularly discursive, rather than reverting to criticisms of the movement’s descent into “violence”. As I argued in the previous chapter, these criticisms adopt and perpetuate the very same statist discourse that targeted and so effectively undermined the movement.

Conceptualizing “Political Repression”: Repertoires of Protest Policing

These weaknesses of the research on Occupy reflect more general lacunae within the larger scholarship on social movements. Until recently the vast majority of research on what is termed “political repression” – conceptualized as a particular mode of social control distinguished by its objective to “prevent or diminish direct and non-institutional challenges to social, cultural, and/or political power (i.e. protest, activism, and social movements)” – has approached it as an independent variable. In other words, “political repression” has been of interest to scholars primarily as a factor that explains something about social movements (their decline or their tactical adaptations for example), while efforts to theorize repression itself have been much more limited.

More recently, scholarship that approaches political repression as a dependent variable has developed in two main directions. The first focuses on predictors of repression, seeking to identify factors determining the likelihood that movements will incite repressive responses. This scholarship would explain repression of the Occupy movement through factors like its posed “threat” (focusing on its adoption of confrontational or disruptive tactics); or its relative “weakness” (for example emphasizing the increase in repression as the movement lost mainstream support and dwindled down to more marginalized populations); or some combination of the two. While this approach does shift the subject of its analysis to repression itself, its explanations continue to focus upon characteristics of social movements. Thus, the repression of movements comes to be explained by their
posed threat, relative weakness, or perhaps even decline into “violence”. The one exception is research that searches for predictive factors of repression within the internal institutional characteristics of police agencies.\textsuperscript{70} While more thoroughly shifting the focus to state repression, these efforts to predict repressive outcomes limit their analysis to the internal attributes of state agencies without adequately accounting for the ways they interact with social movements. In summary, the scholarship on “political repression” is limited in two ways: it either reverts to narrowly focusing upon characteristics of social movements when explaining their repression, or it approaches state repression as statically disconnected from those movements.

Aside from the search for predictive factors, scholarship that treats political repression as a dependent variable has also developed in a second major direction that offers a much more dynamic approach. This research seeks to explain changes in repression over time and has particularly developed within the subfield referred to as “protest policing” scholarship. The concept of “protest policing” was first coined by della Porta and Reiter who define it as “the police handling of protest events”.\textsuperscript{71} This subfield is characterized by its heavy emphasis on what social movement scholars call the “iterative” or dialectical relation between strategies of protest and policing, focusing upon how their interaction fuels strategic and tactical adaptations.\textsuperscript{72} Building upon Tilly’s notion of “repertoires of contention” (referring to the ever changing set of tactics available to and adopted by social movements)\textsuperscript{73}, these scholars focus upon “repertoires of protest control”\textsuperscript{74}, seeking to explain how they change over time through their dynamic interaction with the tactical repertoires of social movements. In contrast to so much of the scholarship on political repression, these researchers focus directly upon the state and its concrete strategies, always approaching them in dynamic relation to the social movements they target.

\textit{The Contemporary Repertoire of “Strategic Incapacitation”}

Given this radically different approach, it is unsurprising that protest policing scholarship has generated a very different analysis of the events of January 28\textsuperscript{th}. Like other social movement scholars, they too have taken a particular interest in January 28\textsuperscript{th}, but rather than perceiving it as epitomizing the movement’s decline into “violence”, they see it as exemplifying the state’s contemporary repertoire of protest control, conceptualized as “strategic incapacitation.” As a strategy of policing, strategic incapacitation is oriented around the objective of pre-emptively containing the disruptive potential of protest. It seeks to incapacitate in a highly “strategic” fashion, meaning it targets those perceived to pose the greatest threat of disruption and it does so pre-emptively so as to prevent that potential disruption. Among the main tactics of strategic incapacitation are mass arrests which detain potentially disruptive groups for extended periods only to later release them without charge. The fact that prosecution is avoided in these cases reflects that their real objective is to contain potentially disruptive groups long enough to neutralize any threats they may pose. On January 28\textsuperscript{th}, Occupy Oakland’s new occupation effort was effectively incapacitated by arresting over 400 people. This group of protesters had distinguished itself by virtue of being the resilient remnant of a much larger march of over 2000 participants that had slowly dwindled down after repeated targeting with “less lethal” munitions. The
persistence of their commitment to the new occupation effort, even after hours of withstanding military grade weapons, clearly marked them as posing the greatest disruptive threat. The vast majority of these 400 people would never be charged with any crime, but were nonetheless detained (and subject to abuse) in county jails for several days before being released. As a result, this strategy successfully neutralized the threat of Occupy Oakland’s new occupation effort. While most scholarship on Occupy approaches January 28th as reflecting a change in movement tactics (claiming a descent into “violence” that is not empirically supported), scholars of strategic incapacitation see it as reflecting a powerful evolution of state strategies, one that enabled the effective neutralization of the Occupy movement while avoiding the kind of backlash that characterized October 25th.

Theorists of strategic incapacitation build upon the tradition within protest policing scholarship of mapping historical changes in policing repertoires by focusing on their dynamic interaction with repertoires of protest. They see strategic incapacitation as emerging in the contemporary period as a responsive adaptation to the failure of earlier policing repertoires when faced with the introduction of new tactics by social movements. The repertoire of “escalated force” dominated up until the 1970s and was characterized by the deployment of highly indiscriminate and extreme (even lethal) force, a lack of concern for First Amendment rights, and no communication or negotiation with protesters. The extremity of force deployed and the injuries and fatalities that resulted (for example in the 1970 Kent State shootings where the National Guard fired 67 rounds of live ammunition into a crowd of protesting college students, killing four and wounding nine others) generated a massive backlash of public opinion that led to a crisis for the repertoire of escalated force in the 1970s. This fueled strategic adaptation and the emergence of a new repertoire of “negotiated management” which became the prevailing strategy of police departments in the 1980s and 1990s.

McPhail and McCarthy, who first introduced and coined the concept of “negotiated management,” argue that the strategy emphasizes communication and negotiation with protesters (primarily through the mechanism of permits), provides greater protection of First Amendment rights, and greatly diminishes the use of force and mass arrests, which now become last resorts.75 But while scholars like McPhail and McCarthy understand this shift as a response to the public backlash against escalated force, seeing it as a positive development that provides greater protection for protest76, others view it as a responsive adaptation that aimed to contain the disruptive power of the social movements of the 1960s by managing them through permits and regulations.77 Given that this shift coincided with an increasing professionalization of social movement organizations78, the result was a period of highly contained, permitted protest throughout the 1980s and 1990s that was effectively drained of any disruptive potential. Others have gone even further and argued that negotiated management operated as the “velvet glove” accompanying the “iron fist” of a simultaneous militarization and rise of SWAT (Special Weapons and Tactics) units that “synergistically” emerged together as a strategic response to the disruptive protests of the 1960s (particularly the Watts Riots).79 What these more critical scholars share is an insistence that repertoires of policing are always oriented around the objective of containing and undermining the disruptive potential of protest, even when they come in the soft guise of a “velvet glove.”
Scholars of strategic incapacitation argue that negotiated management faced a major crisis with the reintroduction of highly disruptive tactics by the Global Justice movement in the late 1990s, and particularly its success in shutting down the World Trade Organization (WTO) meeting in Seattle in 1999. The “Battle of Seattle” represented the emergence of a new breed of “transgressive” protest characterized by the refusal of permits or any forms of negotiation with police, the re-introduction of highly confrontational, disruptive and unpredictable tactics, and the adoption of forms of leaderless organization and consensus decision making that posed a serious challenge to negotiated management strategies. Seattle vividly demonstrated the limits of negotiated management and its failure at containing transgressive protests. When forced to respond, the Seattle Police Department (with the assistance of the National Guard) descended into deploying extremely violent tactics and banning protesters from substantial areas of the city – strategies that generally had been avoided since the 1970s. The “Battle of Seattle” represented the end of a “long détente” between police and protesters in the United States.

Gilham and Noakes argue that police interpreted Seattle as a “watershed” moment that demonstrated the failures of negotiated management, thus fueling a shift to a new repertoire they call “strategic incapacitation”. They illustrate that the period immediately after Seattle witnessed a massive overhaul of policing strategies throughout the US. Police departments across the nation invested heavily in new munitions and riot gear, as well as in retraining and sending representatives to seminars sponsored by the National Association of Chiefs of Police and the US Department of Justice that provided them with tactics and skills for dealing with “a new breed of protestor”. They identify a range of new tactics introduced during this period, including: the strategic use of force with the aim of temporarily incapacitating protestors (for example the deployment of “less lethal” munitions or mass arrests); restrictions against protest in large segments of public space (“no protest zones”); extensive surveillance both prior to and during (“real time”) protests; and selective over enforcement geared at disrupting protest preparations (for example, raids premised on minor alleged fire code violations).

### Strategic Incapacitation: Targeted Pre-emption

The underlying objective of this new repertoire of protest policing is to incapacitate and to do so “strategically”. When scholars emphasize the “strategic” nature of this repertoire, they are referring to its two defining characteristics. Its efforts to incapacitate are strategic insofar as they are highly selective or targeted (always focusing upon “transgressive” or disruptive protesters) and pre-emptively oriented (seeking to incapacitate them before they can engage in disruption). It is this pre-emptively targeted character of strategic incapacitation that most fundamentally distinguishes it from earlier repertoires of protest policing. Contrasting earlier strategies like escalated force and negotiated management against this new contemporary repertoire highlights their relatively reactive and indiscriminate operation. No longer simply aiming to respond to disruption with either brute force or negotiation, this new strategy seeks to pre-empt its very possibility through highly strategic forms of incapacitation.
To elaborate upon the targeted nature of this policing strategy, scholars draw upon Tilly’s classic formulation of the distinction between protests that are “contained” (those where protesters are well known to police, negotiate and obtain permits, adopt familiar and non-disruptive tactics, and engage in self-policing) versus those that are “transgressive” and are undertaken by protesters “who are unfamiliar to the police or have established a reputation for disruptive behavior; are unable or unwilling to reach agreement with police prior to a demonstration; employ innovative tactics that they do not reveal in advance to police, or are deemed likely to challenge police control of public space and engage in direct action tactics.” Building upon this framework, they argue that strategic incapacitation emerged in the late 1990s as an adaptive response to the increasing prevalence of “transgressive” protesters who reject contained forms of institutionalized protest amenable to negotiated management strategies. While negotiated management continues to be used to manage “contained” protests, strategic incapacitation emerges as a strategy for targeting “transgressive” protesters. Thus one of the defining characteristics of this new repertoire is its selectively targeted operation, always oriented around identifying and neutralizing the threat of “transgressive” protesters who are deemed to pose the greatest risk of disruption.

While these scholars draw upon a strong Tillyian tradition within social movement scholarship to elaborate the targeted character of strategic incapacitation, they turn to the field of criminology, and particularly its theories of the “new penology,” to explain the fundamentally pre-emptive orientation of this new repertoire. Critical criminologists have developed a theory of new penology to explain the contemporary shift away from traditional philosophies of “correction” and “rehabilitation” towards penal practices oriented around pre-emptive “risk management.” Scholars of strategic incapacitation have applied this theory of new penology to the field of protest policing, arguing that the contemporary “shift in police tactics during protests is consistent with broader changes in the ideological underpinnings of crime control, including an emphasis on risk management and the prevention (rather than reaction to) crime and disorder.” These scholars explain the emergence of strategic incapacitation as being not only a response to the failure of negotiated management with the reintroduction of “transgressive” protest, but also as reflecting a larger shift to a “new penology” as the “criminological episteme” of the contemporary neoliberal period. From this perspective, negotiated management developed in relation to the “penal modernism” that characterized the post-War period, and approached crime as an individualized problem necessitating “rehabilitation” and “correction”, and ultimately aimed for the reintegration of offenders. In contrast, strategic incapacitation emerges in the neoliberal period and reflects a new penology which “reconceives crime as a systemic phenomenon” and focuses upon “identifying and controlling groups that pose a risk to social order, managing the risk they pose, and improving the efficiency of penal systems.” Eschewing any traditional goals of reform and reintegration, the new penology seeks instead to manage risk by incapacitating high risk populations. Della Porta and Reiter argue that these developments reflect a “repressive turn” away from the mid-century welfare state “compromise between a capitalist economy and state intervention oriented to reduce social inequalities and integrate divergent interests. The toughening of protest policing resonates with a neoliberal approach that restricts the function of the state to guaranteeing (external and internal) security and the free play of market forces.” Gilham argues that this shift has been further intensified by the response to 9/11, increasingly orienting protest policing around a logic of
“securitization” that seeks to identify and pre-emptively neutralize potential sources of disruption.92

The Strategies and Tactics of Targeted Pre-emption

In summary, the repertoire of strategic incapacitation is most fundamentally distinguished by its highly targeted and pre-emptive operation – identifying high risk subjects (“transgressive protesters”) and pre-emptively incapacitating their disruptive potential. Gillham and Noakes argue that this objective of strategic incapacitation is achieved through three primary strategies: intensive surveillance as a means of assessing risk; the extensive control of space to contain or isolate potentially disruptive protests (“no protest zones,” “free speech zones,” and a heavy reliance on barricades and fencing); and the strategic deployment of force (like mass arrests or “less lethal” munitions) with the aim of incapacitating transgressive protestors.93 While surveillance, efforts to control space, and the deployment of force are by no means new concerns for protest policing, the manner in which they operate – becoming increasingly targeted and pre-emptive – is dramatically transformed under the repertoire of strategic incapacitation.

Surveillance takes on a historically unprecedented significance for strategic incapacitation. Insofar as pre-emption is the objective, surveillance practices become essential for identifying those risks that require pre-emptive incapacitation. As Gilham argues, “[p]re-emptive protection is best achieved by conducting risk assessments to identify aggregates of people most likely to offend and incapacitating them.”94 By identifying individuals who are deemed to pose risk, surveillance practices enable “pretexual targeting”95 or “political profiling.”96 Under the repertoire of strategic incapacitation, surveillance practices become increasingly oriented around the objective of identifying high risk individuals or groups that are then targeted with a range of strategic incapacitation tactics, for example legally baseless arrests on nonpolitical charges immediately prior to protest actions.97 This understanding of contemporary surveillance deeply resonates with my own data on Occupy Oakland, where the City pursued intensive surveillance practices like regularly dispatching officers into the Plaza to photograph and video record Occupiers. Their primary objective was to gather information that could be used to identify “leaders” and “violent agitators.” In time, OPD produced a photobook of Occupiers that included pictures and some identifying information. This set off panic within the movement as people wondered whether or not they were included in this photobook and whether they might be targeted as a result. And it soon became evident that this was precisely the manner in which the photobook was being used. During the series of raids on the Plaza in December and early January, officers could be clearly seen referring to it and pointing out individuals who were then targeted (sometimes chased down) and arrested for minor misdemeanors like obstructing a sidewalk.

Another contemporary development characterizing the repertoire of strategic incapacitation is an increasing reliance upon “real time” surveillance. A range of surveillance tactics like city-wide CCTV (Closed-Circuit Television) systems or police videographers are utilized during protest events, enabling their “real time” viewing in central command centers where
strategic decisions are made to target and neutralize what are deemed as high risk protesters, for example through “snatch and grab” or “flying squads” (mobile police units that penetrate large crowds to execute targeted arrests).98 The clearest example of the centrality of real time surveillance in policing the Occupy movement lies in the case of Occupy Wall Street’s Liberty Square, over which NYPD permanently stationed its “Watch Tower,” a 25-foot-high mobile surveillance vehicle holding an observation booth enclosed behind darkened windows. This operated in conjunction with regularly deploying police units equipped with video recording devices (Technical Assistance Response Units) in the encampment, utilizing flood lights (to ensure visibility at all hours), and of course embedding undercover officers. Beyond this extensive surveillance operation at Liberty Square, NYPD also had access to a network of over 2000 CCTV cameras that track every square foot of public space in the surrounding Financial District.99 NYPD’s operations were able to tap into this massive “real time” surveillance apparatus, enabling constant observation of Occupiers who could then be targeted with a range of strategic incapacitation tactics.

While New York City may be the most extreme case, the situation in Oakland is not much different. The Civic Center surrounding Oscar Grant Plaza is equipped with over 70 surveillance cameras that enable complete real time observation of the entire area.100 And it is an increasingly common occurrence that protesters are arrested and charged on the basis of evidence captured on the hundreds of CCTV devices throughout downtown Oakland. This technology not only enables subsequent targeting with prosecution, it is also used for “real time” strategic decisions during marches or other large protest events. During Occupy Oakland’s May Day actions, for example, the City operated a command center downtown where the Mayor, Police Chief and other officials viewed live streaming video from CCTVs and officer deployed recording devices. The Mayor emphasized to the press that this system was crucial for OPD’s ability to identify and track “violent” protesters hidden within the larger crowd.101 What she failed to mention was that almost none of these “violent” protesters who were targeted with tactics like arrests by “snatch and grab” squads were actually later charged with any crimes, “violent” or otherwise. This clearly illustrates that the objective of this strategy was never to prosecute for any alleged “violent” criminal activity, but rather to identify those deemed to pose a high risk and incapacitate them before they could engage in any disruption.

The strategy of seeking extensive control of space also takes on new tactics and objectives under the repertoire of strategic incapacitation. There is now an unprecedented reliance upon barricades and fencing (like NYPD’s infamous orange netting) as a means of barring protesters from areas, disaggregating them into smaller penned groups that are easier to manage, or simply containing (“kettling”) them indefinitely throughout a planned action. There is also the increasing delineation of “no protest” and “free speech” zones aiming to keep protesters away from potential targets of protest. In many cases, “no protest zones” may not be officially demarcated but are de facto imposed by police barricades that obstruct entry. And during marches, mobile police units are continuously redeployed to form barricades that restrict certain routes and impose others. All of these tactics seek to incapacitate the disruptive potential of protesters and defend spaces that are targets of disruption, achieving what Noakes and Gilham call “essentially bloodless incapacitation” by effectively dominating the spaces in which protests occur.102 This was precisely the
strategy deployed by OPD on January 28th, when Occupy Oakland’s reoccupation attempts were incapacitated by continuously re-positioning police barricades around potential targeted sites. In the case of OO’s main target (a massive convention center), the barricading police line deployed “less lethal” munitions to ensure this control of space. The City of Oakland also regularly relied upon the containment strategy of erecting fencing around targeted occupation sites. While in some cases (where groups were large and morale was high) Occupiers proceeded to collectively tear down these fences, in many others, the tactic succeeded in effectively neutralizing the threat of any planned action (for example in the case of Occupy Wall Street’s failed attempt to occupy Trinity Church).

While the use of barricades and fencing or the deployment of police lines during marches are more obvious examples of strategies of exerting control over space, the most powerful tactic that emerged in Oakland was the imposition of “stay away” orders on Occupiers facing legal proceedings. These restraining orders barred individuals from being within a 100 to 300-foot radius of Oscar Grant Plaza. By late January virtually every Occupier who was arrested and charged (even with the most minor misdemeanors) had a stay away order imposed upon them, effectively criminalizing their very presence at OGP. The vast majority of these people eventually had their charges dropped, dismissed or reduced to minor citable violations. But the stay away orders, nonetheless, legally barred them from the Plaza for the duration of their court proceedings (ranging from weeks to months). Stay away orders served as a powerful tactic of strategic incapacitation, enabling the District Attorney’s office to target a high risk group (those deemed as posing greater threat of disruption by virtue of having been previously arrested) and neutralize that disruptive potential by legally barring them from this space. In the case of Oakland, it was stay away orders, rather than six-foot-high metal fences, that finally succeeded in thoroughly asserting the City’s control over this contested space.

Finally, and perhaps most revealing, is the manner in which the deployment of force is transformed under the repertoire of strategic incapacitation. While force has long been central to protest policing strategies, scholars emphasize its highly strategic deployment in the contemporary period. “The use of force is not an end in itself, nor is it indiscriminate. Instead, rearranging and incapacitating protestors.”103 In other words, the deployment of force comes to be increasingly oriented around the objectives of strategic incapacitation – seeking to temporarily incapacitate potentially disruptive protesters and defend spaces that are targets of disruption.104 This strategic shift is most clearly evidenced by the increasing adoption of “less lethal” munitions which dramatically expand the power to incapacitate protesters by developing forms of extreme force that stop just short of causing the kinds of fatal injuries characterizing escalated force strategies.105 The “less lethals” most commonly used for protest policing are military grade pepper spray and rubber bullets.106 In the case of Occupy Oakland, which faced the most extreme and extensive targeting with “less lethals” in the nation, OPD additionally deployed tear gas, “beanbag” rounds and “flash bang” grenades (munitions which achieve a temporary blinding impact). What distinguishes all of these munitions is their powerful capacity to disperse crowds, reflecting how they serve as a “new and effective means for managing unruly groups” and defending spaces.107 Most crucially, “less lethals” enable police to deploy the kinds of extreme force necessary to achieve these objectives without inciting the public outrage and backlash that always threatened traditional strategies of force. As Noakes argues, “bean bags do not
create martyrs, allowing police to achieve their short-term goal of dispersing the crowds without raising long-term questions about their own legitimacy.” Of course there are cases like the highly publicized critical wounding of Scott Olson, where “bean bags” did indeed create a martyr, unleashing a powerful backlash against OPD and the City. But these cases are actually quite rare relative to how extensively these munitions are currently deployed. In the six months after the critical wounding of Olson, OPD proceeded to deploy “less lethals” against Occupy Oakland on a dozen more occasions, causing numerous severe injuries, but never inciting any public outrage. In fact, the Frazier Report later found that OPD deployed these munitions almost every time it issued a dispersal order.

Another form of force that has been transformed under the repertoire of strategic incapacitation is the tactic of arrests, particularly mass arrests. While the prevalence of mass arrests receded during the era of negotiated management (serving as a last resort), they have once again become a commonly deployed tactic in the contemporary period. The nature of their deployment, however, is now primarily oriented around the objective of temporarily incapacitating large groups so as to pre-empt protest action. Arrests don’t actually seek to punish for any particular offense, but to temporarily incapacitate, evidenced by the fact that the vast majority fail to result in any kind of prosecution. Targeted protesters are often later released from jail without charge, but only after extended detention -- usually for the maximum legally allotted period or under ridiculously inflated bails that inevitably get dismissed or reduced once court proceedings finally commence days later. In Oakland this strategy particularly relied upon arrests for “obstruction” (obstructing an officer in the line of duty), one of the only minor misdemeanors in the County for which police are authorized to arrest and detain an individual rather than cite and release them. Dozens of Occupiers spent days in jail on obstruction charges that were never filed or prosecuted. Just this one tactic imposed thousands of hours of legally baseless incarceration upon Occupy Oakland. Police rarely even bother to gather necessary evidence or abide by procedural regulations since prosecution is not really the objective, but rather a temporary strategic incapacitation.

Further revealing this underlying pre-emptive objective is the fact that these arrests are so often executed immediately prior to or during planned protest actions.

The tactic of executing strategic arrests necessarily relies upon accompanying surveillance practices which serve to identify high risk individuals and groups who are then targeted with pre-emptive arrests, often times on nonpolitical or otherwise minor charges. “Such pro-active policing detains potentially disruptive actors from protest situations and sends a message to all others that regardless of their actual actions they are targets for arrest if they fit the profiles of a transgressive protester.” While surveillance practices function to identify high risk protesters who can then be targeted with strategic arrest, the arrests themselves also serve a surveillance function insofar as they aggregate groups of protesters who are then identified and documented through arrest procedures. Every mass arrest functions simultaneously to temporarily incapacitate a targeted group, as well as aggregate them in a fashion that enables their individuation and identification. This surveillance function can even be achieved without actually executing arrests. Ian McKim’s research, for example, illustrates how the containment strategies (temporarily “kettling” or penning in protesters) that are so common in the repertoire of strategic incapacitation serve a primary surveillance function in addition to being a means through which police exert
control over contested spaces and incapacitate potentially disruptive crowds. He identifies numerous cases where groups of contained protesters were released without charge, but only after having their photos and personal information taken. This strategy has been repeatedly used by the Oakland Police Department in recent years.

Over the course of one year, Occupy Oakland withstood over 800 arrests. This included three mass arrest operations that each targeted large groups ranging from 100 to 400 people. The vast majority of these people (approximately 95%) were not prosecuted, and in most cases not even charged after being released. But the tactic served two crucial repressive functions: it temporarily incapacitated so as to undermine planned action and pre-empt disruptive possibilities, and it also served as a means through which the state gathered the necessary information to disaggregate what had previously been an amorphous movement by identifying each individual. Furthermore, the very fact of having been arrested then, itself, rendered individuals as high risk or potentially “transgressive.” In other words, the tactic of arrests served to aggregate a population of high risk Occupiers who were then constituted as state targets. For example, once the infamous police photobook was obtained by Occupiers, it was found that many of the individuals included had been previously subject to arrest (which seemed to be one of the few possible criteria for what otherwise appeared as a randomly selected group). But once an individual came to be included in that photobook, they then became increasingly vulnerable to subsequent targeted arrests. Hence the tactic of arrests didn’t just serve a surveillance function by identifying high risk Occupiers, it also functioned as a mechanism for demarcating and constituting that population in the first place – a crucial discursive dynamic that has yet to be adequately addressed in the scholarship.

Another related issue that isn’t raised in the scholarship is the way in which the information gathered on individuals during the arrest process also provides the means through which to pursue further risk assessments – sorting out those with previous criminal backgrounds, repeated political arrests, out of state residency (“outside agitators”), lack of documented residence (“homeless”), probation, parole or undocumented status, and even simply by race. On the basis of this information, arrestees deemed to pose greater risk are then targeted with more intense tactics, for example: having their parole/probation revoked; being detained longer because of lack of residence; being placed in solitary confinement; or having additional charges filed against them resulting in their being prosecuted while others are released without charge. The arrests and subsequent prosecutorial process themselves serve as mechanisms for further risk assessment and selective targeting. One of the weaknesses of the protest policing scholarship is the narrowness of its focus, which is limited to the police handling of protest events. As a result, we know little about what happens after police execute arrests and the process is taken over by prosecutors. And yet the case of Occupy Oakland clearly illustrates that prosecution plays a central role in state strategies. While there has been a great deal of attention paid to mass arrests by scholars of strategic incapacitation, many recognize that what remains urgently needed is more research on the prosecutorial process that is triggered by those arrests. Who actually gets charged (particularly in terms of race, class or documented status)? What specific charges get pursued and against whom? How do these strategic prosecutorial decisions reflect the same underlying process of risk assessment that orients strategic incapacitation more generally? What impacts do these...
Prosecutorial strategies have upon the individuals targeted, and the movement more generally? These are some of the important questions that remain beyond the scope of the protest policing scholarship and which this dissertation hopes to address through a detailed examination of the case of Occupy Oakland.

**Containing the Danger of Repressive Backlash**

Finally, the most crucial way in which the deployment of force is transformed under the repertoire of strategic incapacitation is its greatly diminished risk of inciting public outrage and backlash. Having adapted and evolved in response to the weaknesses of earlier repertoires, the state now develops new tactics of force, like “less lethals” and unpunished mass arrests, which generally avoid this danger of “repressive backlash.” As Noakes argues, “[a]bsent video on the six o’clock news of the police beating the living daylights out of demonstrators, few Americans will be appalled by rubber bullets and pretextual arrests.” One of the key observations scholars of strategic incapacitation emphasize is its relatively superior capacity to neutralize disruptive threats in a manner that dramatically diminishes the risk of backlash or what they call “on the job” and “in the job” problems for police. In other words, this contemporary repertoire has strategically adapted to the danger of the “whip of the counter-revolution.” Its tactics effectively incapacitate in ways that fail to generate opposition or outrage. “Can the police arrest you because you fit a political profile? What if they release you twenty-three hours later without charging you? What if they hold you for ten days on excessive bail? What if they show up in court several weeks later and admit they have no evidence to support their charges?” Noakes succinctly captures here the nature of the state strategies that targeted Occupy Oakland. Hundreds of Occupiers spent countless hours in county jails where they faced forms of abuse that occurred tucked away and unobserved by the media or the public. And dozens of them spent months facing terrifying prosecution that ultimately fell apart in court, but which nonetheless delivered its intended effects.

The superiority of strategic incapacitation in terms of diminishing the risk of backlash extends far beyond just the manner in which it deploys force through “less lethals” or mass arrests. More fundamentally, the danger of backlash is contained by the increasingly targeted and pre-emptive nature of contemporary repression. State violence and coercion, even in its most blatant manifestations, generates little criticism when it is perceived to be appropriately targeted. The public shows little concern when the targets are “transgressive” protesters – a cast of discursively constituted subjects like “violent Occupiers,” “outside agitators,” “rioters,” “violent anarchists,” “the Black Bloc,” “criminal elements,” or even “the homeless.” In other words, the deployment of force under strategic incapacitation is buttressed by a powerful discursive operation that constitutes its targets in a manner that necessitates and legitimizes that deployment of force – thus greatly diminishing any public criticism. While scholars of strategic incapacitation emphasize the selectively targeted nature of this repertoire (targeting what they conceptualize as “transgressive” protesters), there has been little theorization of how this crucial underlying discursive process works. State repressive strategies don’t merely seek to identify “transgressive” protestors – they constitute them in the first place. It is these discursive strategies through which a cast of
“violent” Occupiers are constituted, and thus targetable, that need to be more adequately understood.

Secondly, the *pre-emptive* character of strategic incapacitation serves to further diminish the danger of backlash. This is the case because pre-emption is always premised and justified upon what *could* happen. In the contemporary period of risk assessment and “securitization”, there are always a range of powerful discourses that function to remind us of all the lurking threats that necessitate pre-emption. The vast majority of state force targeted at Occupy Oakland was justified not as a response to any specific action, but as a necessary preventative measure against the potential danger of “violent” Occupiers. Once again, it is these kinds of discursive dynamics – which powerfully function to contain the possibility of repressive backlash – that need much more scholarly attention.

**A Strategy of “Nonviolence” in the Era of Strategic Incapacitation**

This brings us back to the strategic question that oriented the previous chapter – what are the implications of adopting a strategy of “nonviolence” in response to contemporary state strategies? *How does a “nonviolent” strategy fare in the face of strategic incapacitation?* The “nonviolence” espoused by so many of those critical of Occupy Oakland hinges upon a strategy of provoking “repressive backlash” by generating spectacles of police violence against “nonviolent” protesters, which can then serve as windows of political opportunity. The exceptional case of October 25th is perceived as supporting the merits of this strategy. And the decline of the movement is understood as resulting from its diversion from “nonviolence”. The previous chapter argued that one of the problems with this approach is the failure to account for the discursive power of the state, and its ability to render movements as “violent” regardless of what tactics they actually utilize.

But the much more general problem is that the strategy fails to grasp the nature of the state’s contemporary strategies. A strategy of “nonviolence” that relies upon generating spectacles of police violence against “nonviolent” protesters is outdated insofar as it assumes that state power always manifests in the brute, *reactive, indiscriminate and spectacular* manner that characterized traditional strategies of force. But how do you create such spectacles out of forms of state force that are quietly doled out by prosecutors or get tucked away in the recesses of county jails? How do you incite outrage when the state’s attacks on the movement now appear so appropriately targeted – no longer indiscriminately misfiring on a “peaceful protester” like Scott Olson, but now aimed at the “violent agitators” or the “criminal elements” presented as diverting and undermining the movement? And how do you incite outrage when every deployment of state violence appears justified as a necessary pre-emptive measure against the risk of Occupier “violence”? A traditional strategy of “nonviolence” assumes that state power is *reactive*, rather than recognizing that it can *pre-emptively* constitute its own targets and justifications. It relies on the assumption that the state will deploy its violence *indiscriminately* and will generate spectacles out of martyrs like Olson, rather than recognizing its power to *target* in ways that diminish criticism. While the critical wounding of White, middle class, veteran Scott Olson incited massive public outcry, there
was virtually no concern for the many Black, Brown and poor Occupiers who were the targets of the state’s most vicious forms of violence. Nor for those Occupiers who were houseless, addicted, suffered mental health issues or had their probation revoked. Nor for the anarchists or those otherwise identified as politically radical. Any criticism was easily muted by discursive strategies that rendered these targeted populations as “violent Occupiers,” “outside agitators,” “criminal elements,” or simply “threats to public safety.” Contemporary strategies of repression rely upon accompanying discursive processes that constitute “peaceful protesters” against which a range of “violent Occupiers” are contrasted and targeted. And in the case of Occupy Oakland, once the state’s strategies became increasingly targeted in this manner – aimed at the most politically disruptive, the poorest, the most marginalized, and those already dispossessed of their homes, sobriety or sanity – not only did it incite no public outrage, it now even came to be lauded as reflecting a new model of “reformed” policing.

The state’s strategies have dramatically evolved. Having learned the lessons of escalated force, it now represses through means that increasingly contain and bypass the danger of repressive backlash. But while state power has evolved, strategies of resistance continue to cling to an outdated vision of “political repression” that expects it to manifest in ways that are nakedly visible, indiscriminately violent, and easily amenable to spectacularization – like the night of October 25th. But the reality is that the events of that night were a highly rare and exceptional window of opportunity, one that cannot be easily replicated in the context of contemporary state strategies. October 25th represents an exceptional misfire of naked coercion. And while that spectacle served as a rare advantage for Occupy Oakland, continuing to cling to a commitment to “nonviolence” that relies upon this strategy of spectacularization has proven highly disadvantageous. It is a strategy that fails to recognize both that the state’s tactics have evolved beyond this kind of vulnerability, and that its discursive strategies have enabled it to thoroughly dominate the dynamics of spectacle. While January 28th is seen as reflecting OO’s descent into “violence”, many participants that day actually carried (sometimes unconsciously) this underlying faith in the promises of “nonviolent” strategy – the belief that they could mobilize a collective large enough to “peacefully” undertake a successful new occupation, and that if they failed to do so, then the police violence that obstructed them would at least generate a spectacle that would incite outrage. And it indeed did. But it cast them as the “violent” subjects of this spectacle. Scholarship needs to understand this evolved terrain of struggle so that effective strategies of resistance can be identified. As Ciccariello-Maher urges, “our strategy must keep pace with that of our enemies.”

**Approaching State Power Beyond the Confines of “Protest Policing”**

These problematic assumptions that fail to grasp the nature of contemporary state power not only constrain movement strategizing, but also plague the scholarship on social movements. Much of the research on “political repression” adopts a narrow conceptualization that expects it to primarily manifest as forms of overt state force. Numerous scholars have called for broadening our conceptualization to include often overlooked strategies, beyond the police deployment of overt force. Yet while scholars...
agree on the need for a broader approach to “political repression,”, it has ironically been the most narrowly focused subfield of protest policing that has made some of the most original and productive contributions to recent scholarship. In part, this is because the easily observable nature of their subject matter – the police handling of protest events – has inclined these scholars to focus upon the state’s concrete strategies and tactics. And their emphasis upon their iterative relation to repertoires of protest has generated profound insights into the dynamics of how the state’s strategies evolve over time. As such, they have developed an understanding of contemporary policing that much more powerfully captures the strategies that targeted the Occupy movement. The urgent task that remains, however, is to expand research beyond the narrow confines of this subfield by applying its insights to a much broader conceptualization of state power.

The theory of strategic incapacitation provides the most promising theoretical starting point for an analysis of the empirical case of Occupy Oakland. This dissertation seeks to apply the two major arguments of this scholarship – that the state’s contemporary strategies evolve to be increasingly targeted and pre-emptive -- to the case of Occupy Oakland. While these observations about the pre-emptively targeted nature of state strategy are echoed in the larger scholarship on social movements122, the theoretical framework developed by protest policing scholars has proven the most fruitful for developing these insights.

The objective of this research is to make three major contributions that aim to elaborate and expand upon the insights generated by scholars of strategic incapacitation, and to do so in a manner that addresses some of the prevailing weaknesses of that scholarship. First, this dissertation provides a detailed empirical account of the actual processes through which state strategies evolve into forms of targeted pre-emption. While scholars have forwarded a theory and general historical account of the emergence of strategic incapacitation, concrete empirical analysis of this transformation remains limited. Beyond a general account of a historical shift after “Seattle”, we don’t really know what this process looks like on the ground in the various sites of protest throughout the nation. This reflects a more general lacunae of the protest policing scholarship, which tends to take a national level of analysis, characterized by strong comparative research. With the exception of work by a few scholars like Vitale123, King124 and Ciccariello-Maher125, detailed locally based empirical research has been limited.

But the Occupy movement has provided the perfect opportunity for such empirical work. The underlying assumption of the scholarship is that the repertoire of strategic incapacitation emerged as an adaptive response to the introduction of highly disruptive tactics and a rejection of negotiation by social movements in the late 1990s. While this process developed at a national level around the “Battle of Seattle,” the same challenge was posed by the Occupy movement in a much more widespread and locally urgent manner. It was no longer just a case of having to respond every year or so to one major planned protest around a global summit located in some US city (for which that local police department would be flooded with federal resources). Rather, the Occupy movement now introduced these kinds of disruptive tactics in cities and towns all over the country, and all within a matter of weeks. Hundreds of local police departments were faced with their own “Battle of Seattle” to which they each had to respond – inevitably inciting the
kind of evolutionary adaptation mapped out by scholars of strategic incapacitation. This provide not only a plethora of empirical cases, but the particularities of those responses also provides the variation necessary to begin teasing out the factors that shape the nature of this strategic adaptation in different sites. And if, as the scholarship argues, this process is fueled by the disruptiveness of tactics and the refusal of negotiation and cooperation by protestors,\textsuperscript{126} then we can expect that it would most intensive in the case of Occupy Oakland, which represented the most radical and disruptive site of the national movement.

The second goal of this dissertation is \textbf{to expand the insights of scholars of strategic incapacitation beyond the narrow confines of the subfield of protest policing}. The weakness of this scholarship derives from the narrowness of its focus – the police management of protest events. But limiting our analysis to the realm of policing constrains our vision of state power. My data strongly suggests that the insights about a shift to increasingly targeted and pre-emptive strategies applies to many other state agents, who become increasingly central as the state’s strategy evolves. The logic of targeted pre-emption orients the tactics and discourses of a wide range of state agents, including city administrators and officials, City Council, the District Attorney’s office, and even “civil society.” The goal is to heed the call of social movement scholars and apply a much broader conceptualization of state power to the case of Occupy Oakland, one that accounts for the role of a range of agents beyond the police.

In particular, the case of Occupy Oakland illustrates the centrality of the District Attorney’s office in the state’s strategy, and an increasing reliance on what I call “prosecutorial power.” While there is classic scholarship focusing on prosecution and forms of “legal repression,” these issues have received very little attention since then. Barkan and Earl have argued for the urgency of mapping this out as an agenda for future research,\textsuperscript{128} warning that scholars have ignored the “legalistic” strategies, particularly criminal prosecution, targeting social movements.\textsuperscript{129} Although protest policing scholarship has focused on the police tactic of arrests, it has thus far avoided addressing the prosecutorial dynamics triggered by arrests.\textsuperscript{130} Earl has begun to demonstrate how arrests impose a range of punitive costs on defendants irrespective of prosecutorial outcome (captured by the adage “you can beat the rap, but you can’t beat the ride”), and calls for further socio-legal research on the dynamics of arrest and prosecution.\textsuperscript{131} One of the primary objectives of this dissertation is to highlight the operation of prosecutorial power. The aim is to show how prosecutors rise to become central executors of the state’s strategy, and how the prosecutorial power they deploy has an unparalleled capacity for pre-emption. The case of Occupy Oakland vividly demonstrates that while police are effective agents of coercion, and even repression, it is prosecutors who wield the greatest power of pre-emption.

The third and final goal is to address one of the most striking weaknesses of the scholarship on strategic incapacitation – its failure \textbf{to account for the centrality of discourse within state strategies}. This relative silence is particularly surprising given that these scholars draw so directly upon theories of the “new penology” which are heavily inspired by Foucault’s emphasis on the discursive operation of power. Within that approach, power is defined as a \textit{relation of force} that can take various forms. All forms of power are conceptualized as \textit{strategies} (different ways of exercising force). And these
strategies of power are simultaneously exercised through particular tactics, as well as accompanying discourses. Theories of strategic incapacitation have begun to map out the concrete tactics of contemporary state strategies, but there has been virtual silence about the discursive operations that accompany them. While there is a general recognition that strategic incapacitation always hinges upon a distinction between “good”/“bad” (or “contained”/“transgressive”) protestors, there has been little theorization of how this distinction is generated in the first place. The state’s strategies don’t merely identify “transgressive” protesters – they function to constitute them. We need a better understanding of the underlying discursive process through which various forms of “bad” protesters are generated as a cast of state targets – “violent Occupiers,” “outside agitators,” “criminal elements,” or “the Black Bloc.” In other words, how do the tactics and discourses of the state’s strategy generate their own targets?

**The Case of Occupy Oakland: Mapping the Evolution of State Strategy**

In summary, this dissertation utilizes the case of Occupy Oakland to provide a detailed empirical account of the evolution of state strategies, both tactical and discursive, that maps out the role of a wide range of agents who deploy various forms of state power. Following the lead of protest policing scholars, I undertake this analysis of state strategy by focusing upon its concrete tactics and discourses, and always approaching them in dynamic relation to the strategic repertoires of the movement. My goal is to highlight an evolutionary process underlying this iterative development, through which the state’s strategies become increasingly targeted, pre-emptive, and discursively buttressed from public criticism or backlash. I approach this evolutionary development as the dynamic outcome of their iterative relation to strategies of resistance.

This dissertation attempts to capture this evolution by presenting an empirical account of the state’s strategies against Occupy Oakland that is disaggregated into three historical “moments”. Each “moment” is distinguished by the predominance of a distinct state strategy or “repertoire” of tactics and discourses that emerge and are shaped in response to the movement’s strategic advances in that period. While the state’s strategic repertoire is the primary focus, some of the movement’s strategies and tactics are necessarily mapped out in order to capture their iterative relation and the dynamic process of adaptation this fuels. Each “moment” commences with a strategic advance by the movement, in response to which a particular state “repertoire” or strategy emerges. Each “moment” concludes once the state’s strategic repertoire has sufficiently evolved to defend against that advance, thus forcing the movement to strategically and tactically adapt to a new political terrain. As the movement forwards an adapted strategy in the dawn of the next “moment”, it once again fuels an adaptation of the state’s strategic repertoire in response. Organizing the empirical account in this manner is intended to capture an underlying transformation of state power, which evolves from being highly reactive, indiscriminate and vulnerable to spectacular backlash to being increasingly pre-emptive, targeted, and now discursively buttressed by the state’s own tactics of spectacularization.
The first “moment” commences with the movement’s occupation of Oscar Grant Plaza. Faced with Occupy Oakland’s highly disruptive tactics and its firm rejection of any forms of negotiation or cooperation with City officials, the state resorts to a strategy of *Naked Coercion* (reactive, indiscriminate violence that is highly vulnerable to spectacularization) which backfires and results in an internationally televised disaster on the evening of October 25th. This creates an extraordinary window of opportunity for the movement, dramatically increasing public support and enabling it to undertake the first general strike in the U.S. since 1946. This fuels a process of adaptation as the struggle proceeds into the second “moment”, and the state shifts to a strategy of *Targeted Repression* that is increasingly pro-active, targeted and discursively buttressed so as to diminish the danger of its spectacularization. The new strategy succeeds in permanently dislodging the occupation of Oscar Grant Plaza, as well as criminalizing the tactic of occupation and excising it from movement’s repertoire. Still unsatisfied with the repression it had achieved, in the third and final “moment” the state introduces a strategy of *Pre-emptive Neutralization* that is pre-emptively oriented, targeted at high “risk” populations and discursively buttressed by powerful spectacles of “risk”. This enables a thorough incapacitation of the movement – fully neutralizing its potential for collective action by rendering Occupiers a target population that could no longer even publicly assemble without inciting highly militarized police responses that were now pre-emptively justified by the risk of “violence” they collectively posed.

Before proceeding with the empirical chapters of this dissertation, it is crucial to first clarify my usage of the term “evolution”, which is not intended to suggest some kind of linear or teleological progression. This research identifies three distinct strategies or forms of state power: *Naked Coercion, Targeted Repression* and *Pre-emptive Neutralization*. The empirical account is organized as an evolution through three “moments” that each correspond with one of these strategies. But it is crucial to emphasize that this is for analytic purposes – to highlight their distinctiveness, as well as to illuminate the process through which they transform and develop. It is not intended to suggest that one form replaces the other or that any of them ever disappear, but rather that a particular one predominates within each “moment”. Although *Pre-emptive Neutralization* is the most developed and effective strategy, the state continues to rely upon *Targeted Repression* and often resorts to *Naked Coercion*. All three forms can be observed in any given “moment”, however the analysis emphasizes how a particular one predominates. Furthermore, the term “evolution” is also not invoked to suggest some kind of learning curve whereby the state becomes enlightened to a strategy it was previously unaware of. The state’s strategies are always shaped and constrained by the particular terrain of struggle at that time. It is the evolution of the terrain of struggle that enables the shift from one strategy to another.
Chapter 2: NAKED COERCION ("Holding Ground")

**Occupy Oakland Strikes: The Occupation of Oscar Grant Plaza**

The fall of 2011 witnessed the emergence of the largest social movement in the United States since the 1960s. The “Occupy Movement” was launched in New York City’s Financial District with the occupation of Zuccotti (“Liberty”) Park and the establishment of Occupy Wall Street (OWS) on September 17th. Within just a few weeks it had spread across the nation, with occupations in 462 cities and towns in the US. The movement, itself inspired by earlier occupations like those of the “indignados” in Spain and the Egyptians in Tahrir Square, soon expanded internationally as well, spreading to 951 cities in 82 countries. In the context of the US, this not only represented the largest popularly based social movement to emerge in decades, but also one that raised issues of economic inequality that had been long silenced, particularly during the contemporary period of neoliberalization. For the first time since the early 20th century, Americans adopted an explicitly class based politics, one that came to be articulated in the new language of the “99%”.

Occupy Oakland (OO) was birthed on October 10th when around 500 people gathered downtown and established a camp directly in front of City Hall at Frank Ogawa Plaza. Around 20 tents were pitched that evening, and over the course of the next two weeks the occupation would grow to 147 tents housing around 550 people and providing a wide array of resources, including food, medical assistance and childcare for thousands of Oaklanders.

**The Tactic of Occupation**

While Occupy Oakland emerged as part of “the Occupy Movement,” it also drastically differed from other sites. More generally, the hundreds of occupations referred to as “the Occupy Movement” actually exhibited wide variation in terms of political positions, espoused objectives and strategic orientations. The “movement” had no shared strategy or objectives (which varied not only between sites but even within them), leading to criticism that it had “no demands” or goals. But it wasn’t actually goals that Occupiers lacked (which in fact were numerous and sometimes even contradictory), but rather any consensus around these objectives or strategies for achieving them. If we look for shared “demands,” goals or strategy, there is nothing that demarcates Occupy as a “movement”. But these widely varying sites of resistance did share one common characteristic – their reliance upon the tactic of occupation. It is this tactical approach that unified them into the Occupy movement.
While the tactic of occupation has a long history in the US, it gained prominence in the 1960s with the Civil Rights and later Anti-War movements which creatively refashioned it in the form of “sit-ins”. Occupation can be defined as the tactic of physically taking over spaces in a manner that fundamentally lays a claim to them (the later criteria distinguishing it from other spatially oriented tactics like blockades). Hence, we can demarcate the Occupy movement by identifying the hundreds of sites where people gathered to take over and lay claim to spaces in their local communities. But while the entire national movement adopted this tactical approach, the character of these occupations varied drastically. They all occupied, but how they did so, and what it meant for them, differed across sites and was continuously contested within each of them.

The manner in which the tactic of occupation was implemented varied as a result of the different strategic orientations held by Occupiers. Strategies are visions or plans for achieving a specified objective. Tactics are the means used to achieve that objective. The Occupy movement was distinguished by its shared primary tactic – everyone was occupying. But occupation came to take highly varied forms that reflected the strategic variation within the movement. We can map a wide strategic continuum across the national movement ranging from reformist to revolutionary strategies. One end of this spectrum was represented by a reformist position that asserted that “the system is broken” and that the unchecked power of Wall Street had corrupted the democratic process. From this perspective, the objective was to fix this broken system through a reformist strategy that placed pressure on elected officials to make them accountable to people rather than corporations. Within this strategic orientation, the tactic of occupation was implemented as an expression of “free speech” and “assembly” – occupying public spaces serves as a means of assembling to seek government redress of grievances. This strategy adopts the tactic of occupation to protest and reform a “broken”, but otherwise viewed legitimate, democratic system. At the other end of the spectrum lies a revolutionary strategy that rejected reform and viewed the system as intrinsically problematic. From this perspective, the problem didn’t lie in Wall Street’s lack of accountability to government, but rather in the very nature of capitalism and its relation to the state. The system wasn’t “broken”, but was in fact operating exactly as intended. Hence, placing pressure on political officials to enact reform made no strategic sense. In this approach, occupation is implemented not as a means of assembly for government redress of grievances, but as form of direct action that rejects the state and seeks to directly enact change. Thus, occupation necessitates reclaiming or liberating public spaces from the grip of the state and takes the form of pre-figurative action that seeks to build “a new world in the shell of the old.”

Hence, widely divergent strategic orientations shaped the manner in which occupation was actually implemented in different sites of the movement. This also shaped the auxiliary tactics that accompanied occupation in different sites. Where occupying was part of a larger reformist strategy, it was most likely to be accompanied by tactics like petition signing, ballot measure proposals, or campaigns to re-call elected officials. In contrast,
revolutionary strategies adopted occupation alongside a spectrum of direct action tactics that ranged from building self-sustaining resource provision structures (community kitchens, schools, libraries, medical and child care, etc.) to targeted forms of property destruction. Every occupation was distinct in terms of its tactical repertoire, reflecting highly varied strategic orientations. In some cases, tactical repertoires were oriented around a strategy of civil disobedience, or the intentional disregard for laws that are perceived as unjust. Occupation in this strategic context was intended as a clear act of civil disobedience – rejecting the state’s authority to regulate the public’s right to freely occupy public spaces. But while most Occupy camps were in fact in violation of laws that prohibited overnight lodging in public spaces, they varied greatly in terms of the extent to which they pursued a strategy of civil disobedience. Occupy Philly, for example, obtained a permit for overnight camping and the City even provided services like portable toilets, trash removal, and an electrical hook-up through City Hall, all of which Occupy Philly agreed to pay for. Occupy Las Vegas signed a contract with the County that permitted them to camp as long as certain conditions were met (like providing portable toilets, trash removal, and purchasing insurance to relieve the County of liability). In contrast to these cases, in others sites the civilly disobedient character of occupation was purposively emphasized as an explicit rejection of the state’s authority to regulate the use of public space. Occupy Oakland took a firm position in this regard, rejecting all proposals to obtain permits for the camp, or any other efforts to minimize the illegal character of the occupation.

Similarly, occupations also varied in terms of their disruptiveness. While some were oriented around a strategy that intentionally sought to disrupt the routines of everyday life, others sought to minimize the disruptive impacts of their camps. At one extreme lies Occupy Las Vegas which reached out to the County and local police department prior to establishing its camp, proceeding then to negotiate the contract discussed above. In these negotiations, an agreement was reached to locate the camp a mile and a half away from the Las Vegas strip and five miles away from City Hall, ensuring that it “does not interfere with residents or businesses[.]” As a County Commissioner put it, “[t]hey wanted to hold their protest in a responsible and peaceful manner…So I, along with another commissioner, agreed it would be best to work with this group to accommodate their request in a way that minimized the impact on the public.” While those in Las Vegas sought to occupy as non-disruptively as possible, many Occupiers aimed to actively exploit the disruptive potential of their occupations, choosing locations that were central sites of business or local politics. Many, like Portland or LA, chose to occupy in the immediate vicinity of their city halls, seeking to disrupt “politics as usual.” In the case of OWS, Zuccotti Park was chosen for its proximity to Wall Street, aiming to disrupt “business as usual” and the daily routines of bankers and financial analysts who now had to make their way through throngs of Occupiers to get to work. Occupy Oakland was established at the most central location in Oakland, both in relation to politics (right at the foot of City Hall) and business (in the heart of commercial downtown Oakland).
Finally, occupations also varied in terms of the spaces they targeted and the state authority that held jurisdiction over them. Occupy Wall Street’s target of Zuccotti Park was an exceptional case in that it is privately owned and operated but contractually obligated to be open and accessible to the public 24 hours a day. OWS strategically exploited the quasi-public/private character of Zuccotti given that it wasn’t subject to City park curfews and therefore NYPD lacked legal authority to clear out Occupiers on this basis. However, the vast majority of Occupy camps involved the occupation of public spaces, and were therefore directly under the jurisdiction of some state authority. But the particular state authority holding jurisdiction over these public spaces also varied. In Oakland Occupiers took over city land, in Tacoma it was state land, in DC it was federally held land, and in Las Vegas it was county land. The kind of public space at stake determined the state authority that would play a leading role in responding to the movement in each site.

In summary, while the Occupy movement was characterized by its shared tactic of occupation, the nature of these occupations varied drastically across the country. In the case of Oakland, it was an occupation of City held public space in a civilly disobedient and highly disruptive manner that thoroughly rejected state authority and was part of a larger strategy of direct action. The crucial point in considering this variation is to recognize that the different ways in which the tactic of occupation was implemented in different sites of the movement necessarily elicited and shaped different strategic responses from the state. In the language of social movement scholars, the particular strategies and tactics of resistance in each site shaped the nature of the state’s strategic. Insofar as my objective is to understand the dynamic relationship between movement and state strategies, it is crucial to specify the strategic repertoire adopted by Occupy Oakland against the larger general context of the national Occupy movement. Occupation involved and meant very different things to different people across the country. For some it was a means of enacting First Amendment rights of assembly and free speech that aimed to garner the attention of elected officials in the hopes of pressuring for reform. For others it was a form of direct action that rejected the state as a solution and intentionally violated the law with the aim of disrupting politics and business as usual. These differences would come to have profound impacts upon shaping the strategic responses of the state in different sites.

But nowhere was the state’s response as extreme and violent as the case of Oakland, where it eventually resorted to a highly militarized police operation on October 25th that descended into an internationally televised disaster. The relatively extreme nature of this state response can only be understood by examining the specific iterative relation between movement and state repertoires that characterized the struggle in Oakland. In this chapter I will forward the argument that the tactical repertoire adopted by Occupy Oakland posed a threat to the state that was nationally unparalleled. This resulted not only from the particular character of its occupation, but also the auxiliary tactics that accompanied it – all of which came together to deny the state the kinds of openings and opportunities for intervention that had varying levels of success in other sites. My aim is to illustrate how
these dynamics characterizing the first “moment” of struggle in Oakland served to fuel a shift to a strategy of *Naked Coercion* that lured out the most spectacularly violent face of the state.

**The State’s Initial Strategy: Non-Enforcement and the “Balance” of First Amendment Protection**

“*At this time we continue to assess and weigh the need to cite citizens for minor infractions against their overall need and right to assemble peacefully in a public place.*”¹⁴⁰ (Christopher Bolton, OPD Chief of Staff)

The City of Oakland’s initial response to the establishment of Occupy Oakland’s encampment on October 10th was highly constrained by widespread national support for the movement. The clearest indication of this was its decision to overlook the blatant violation of a City municipal code prohibiting overnight lodging in parks, and instead turn a blind eye to the illegality of the encampment. The morning after the establishment of the camp, OPD’s Chief of Staff, Christopher Bolton sent various city officials an email asserting that while overnight lodging was a violation, “at this time we continue to assess and weigh the need to cite citizens for minor infractions against their overall need and right to assemble peacefully in a public place.”¹⁴¹ [Emphasis is mine.] Minutes later the City’s Community Services Coordinator emailed City Administration officials asking: “Do we have a position or statement regarding the encampment in the plaza? Are we in solidarity?” He continues by inquiring whether protestors have “a right to be there as long as they want?” and whether there are any ordinances that prohibit the occupation.¹⁴² The Deputy Mayor for Community & Governmental Relations, Sharon Cornu (who later resigned after the November 14th raid on OO¹⁴³) responds that activity in the Plaza is protected to the best of her knowledge, and that public and media inquiries should be handled by emphasizing that this was going on all over the country and that while OPD was closely monitoring the situation, it had “instructions to respect the First Amendment.”¹⁴⁴

Given the widespread national support for the movement, the state’s initial strategy was highly constrained by fear that enforcement action could easily result in a backlash of public opinion. Furthermore, aiming to exploit this public sentiment to strengthen their own constituencies, numerous local elected officials issued statements of support for the movement. Oakland City Council member, Desley Brooks camped out for the first two
nights of Occupy Oakland in one of the most highly publicized performances. When speaking to reporters as she emerged from a tent on the first morning of the occupation, she acknowledged that the camp was in violation of city ordinances, but nonetheless emphasized the need to show solidarity with the demonstrators. Another City Council member, Jane Brunner expressed similar support, asserting that “[i]t’s about time people are speaking up.” Local state congressional representatives also voiced support, like Congresswoman Barbara Lee who issued a statement on the first morning of OO’s occupation in strong support of “the courageous people who have started Occupy Wall Street…I am inspired by and will work with those on the front lines of this growing movement[.]” But perhaps the clearest indication of this perceived pressure to exhibit support for the movement among political officials emerges from the internal city email exchanges during this early period of the occupation. Deputy City Administrator, Arturo Sanchez expresses concern on October 13th about Mayor Quan’s very presence at City Hall, asserting that “I would only want her away from city hall so she does not on a whim decide to go walk in protest and engage in any way, as she may be apt to do[.]”

In this context where Congressional representatives were issuing statements of unequivocal support and City Council members were pitching tents in solidarity, it was inconceivable for the City to enforce municipal codes outlawing overnight lodging in Frank Ogawa Plaza. Sue Piper, a spokeswoman for Mayor Jean Quan’s office reported to media at the time that “the order of the day is ‘keep it cool.’…For now, Piper said, police won’t be asked to clear the plaza of campers unless public safety issues begin.” [Emphasis is mine.] The City of Oakland’s initial strategy towards OO’s encampment was one that was replicated in many other sites throughout the nation – an explicitly acknowledged non-enforcement that presented the duty to protect First Amendment rights as outweighing the need to enforce against “minor infractions” – as long as “public safety” issues didn’t arise.

In taking this initial position, the state essentially provided a level of legitimacy for the occupations. Legitimation resulted from the very fact that the state was not pursuing enforcement and was instead turning a blind eye to the illegality of the encampments. In the case of Oakland, CBS News concluded that Mayor Jean Quan had “condoned the occupation” by addressing the camp on the morning after it was established. Despite the fact that her visit primarily entailed pleading with campers not to urinate on the Plaza’s historic oak tree because it had “shallow roots,” her very presence at the camp and her administration’s failure to enforce violated city municipal codes were understood as “condoning” and thus legitimizing the occupation. But even beyond this turning of a blind eye, the discursive strategy that justified non-enforcement served to further legitimize the occupations. It did so by asserting that the need to enforce “minor infractions” was outweighed by the greater duty to protect First Amendment rights of assembly and free speech. This discursive strategy essentially rendered the tactic of occupation as a (tenuously) state protected form of exercising First Amendment rights. In other words, occupation was constituted as a form of public assembly and an expression of free speech.

This discourse was adopted by most state officials and mainstream press. For example, Congressman Pete Stark issued an initial statement of support for Occupy Oakland asserting that "everybody's got a right to express their opinion and I applaud these folks for
organizing to express theirs.” Occupation is understood here as a means of assembling to exercise the First Amendment right of expressing “opinions”. This discourse was even embraced by many Occupiers throughout the nation who ascribed to reformist strategies and understood occupation as a form of free speech and a means of assembling to seek government redress of their grievances.

But while the state’s discursive strategy presented occupation as a First Amendment protected right, it also set the limits and terms for the revocation of that right. Non-enforcement was justified by the position that First Amendment protection outweighed the duty to enforce “minor” violations, but only as long as “public safety” issues didn’t arise. At the heart of this discourse is a tenuous balance that must be negotiated by the state – it must seek to balance roles that are at times in conflict, protecting First Amendment rights while also enforcing violations that endanger “public safety”. Non-enforcement was meant to signal the state’s prioritization of the protection of First Amendment rights – but the “balance” discourse that accompanied it simultaneously legitimized the state’s prerogative to revoke those rights, if and when this was outweighed by the need to protect “public safety”. And indeed, this is precisely how state officials all over the country came to revoke the public’s right to occupy public spaces – raiding and evicting camps on the basis of their threats to “public safety”.

In many Occupy sites throughout the nation, state officials took an initial non-enforcement strategy that very quickly shifted towards enforcement action justified within these terms of a tipped “balance” where the protection of “public safety” increasingly outweighed concern for First Amendment protection. If we closely examine these state articulations of “public safety” threats we find a number of common characteristics; namely an emphasis on the undesirability of the people occupying these spaces, specifically the homeless, and a focus on issues of drug use, violence, and public sanitation. To put it crudely, the threat to “public safety” was essentially articulated as the danger of public spaces being overrun by the homeless, addicts, and other undesirables who were bringing with them their violence, drug abuse and general filth. The case of Portland serves as one of many examples of this dominant discourse. Mayor Sam Adams, who had initially decided to allow two encampments near City Hall, issued a statement when announcing eviction plans that justified it in terms of “health and security concerns” and emphasized an alleged increase in the homeless population and heavy drug use in the area. Oakland’s City Administrator, Deanna Santana made similar assertions when the City raided Occupy Oakland’s camp for the first time, claiming that the City’s “homeless services team” had been preparing for days by arranging for shelter and service referrals for the camp’s homeless population. In the case of Minnesota, the county board justified the need to prohibit overnight lodging by emphasizing having received complaints of “assaults and public intoxication” at the Occupy camp. In a manner that was replicated across the nation, these “public safety” concerns were posited as prohibiting the real public – as opposed to the homeless, drug users, or other “undesirables” – from using these public spaces.

The state’s initially strategy of non-enforcement was accompanied by a discourse of “balance” that set its own limits in the terms of “public safety.” And the shift to enforcement was accompanied by a discursive strategy of emphasizing threats to “public
safety” that essentially demarcated a dangerous non-public against whom the real public’s safety had to be defended. The problem as presented by the state was that these sites of protected free speech and assembly were being overrun by undesirable people and activities that prohibited the (real) public from exercising these rights. This strategy laid the seeds that would shape the subsequent development of state discourses targeting Occupy: demarcating what counted as a public deserving of First Amendment protection (“peaceful protesters”) against those who, by being associated with homelessness, drugs, or violence, would be denied those rights in the interest of “public safety.” As thousands of people across the country were arrested and evicted from public spaces, the state presented itself as doing so in the name of protecting the First Amendment rights of the real public.

Thus far these developments have been laid out in general terms and in relation to the larger national movement. The following sections will map out the particular case of Oakland, where the tipping of this “balance” and the shift to enforcement took the extreme form of a highly militarized police raid on October 25th, followed that evening by even more violent police operations geared at preventing a reoccupation. One of the objectives of this chapter is to explain the extremity of this state response in Oakland. But before proceeding to do so, it is important to first briefly consider certain particularities of the Oakland Police Department that make this extreme enforcement action even more surprising. OPD has faced years of extensive litigation and federally mandated reforms relating to its “crowd control” practices at demonstrations. This process of reform was first initiated in 2003 with the Negotiated Settlement Agreement in the infamous “Oakland Riders” case, a civil lawsuit alleging widespread misconduct within the Oakland Police Department. The case was brought by 119 plaintiffs who had been beaten, kidnapped, and/or had drugs planted on them by four officers (known as “the Riders”). It was later determined that the victims combined had served over 25 years of imprisonment as a result of these false charges. Ensuing investigations revealed not only widespread misconduct in the Department but also a general climate of tolerance for such abuses. The case was eventually settled through a Negotiated Settlement Agreement that awarded $10.9 million to the plaintiffs and required OPD to implement a series of reforms. Federal Judge Thelton Henderson appointed an independent monitoring team to ensure that the Department complied with the settlement agreement.157

Shortly after, the City faced yet another class action lawsuit resulting from injuries caused by OPD at an anti-war protest at the Port of Oakland on April 7, 2003. Protestors attempted to blockade the terminal gates of American President Lines, a shipping company that transported US military supplies to Iraq. Without giving protestors the opportunity to disperse, OPD officers drove into the crowd on their motorcycles and unleashed rounds of “less lethal” munitions, including wooden dowels and stinger grenades, causing extensive injuries to at least 58 people. Once again Federal Judge Henderson negotiated a settlement agreement that awarded over $2 million to the plaintiffs, mandated police reform, and established OPD’s first official “crowd control” policy. To ensure compliance, Judge Henderson placed OPD under federal court supervision for three years.158 But in 2010, Oakland’s crowd control procedures once again came under fire, this time around the policing of the Oscar Grant protests which again resulted in another settlement agreement, awarded over $1 million to the plaintiffs, and imposed further reforms to OPD’s crowd control policy.159
This long history of litigation against OPD cost the City millions of dollars, made it increasingly fearful of litigation, and imposed policy reforms that carried the weight of judicial oversight and the threat of federal receivership. But what is most significant for our discussion here is the manner in which this history came to force a particular (at least professed) role upon law enforcement in Oakland. Cumulatively, these legal battles resulted in OPD’s *Crowd Control and Crowd Management Policy* which “mandates the protection of the right to assemble and demonstrate [as] a primary goal of the OPD in their planning for the management of demonstrations[.]”\(^{160}\) In other words, in order to abide by these federally imposed guidelines, OPD had to present itself as a protector of First Amendment rights, and it had to balance this role with other duties of law enforcement. Hence the discourse of “balancing” First Amendment protection against enforcement of “minor infractions” that was so prominent nationally was further intensified in the case of Oakland by a long history of litigation, costly payouts, and threats of federal receivership. If there was any city in the nation under pressure to present its police department as being able to successfully negotiate this delicate balance, it was Oakland. But, as it would turn out, it would be the City of Oakland that would fail most disastrously at this task.

Given this historical context, we would assume that Oakland would be among the most careful and restrained in its “crowd control” strategies. And yet it turned out to be the most reckless. Why? Rarely is this question raised – instead there is an underlying assumption that OPD’s actions reflect just another outburst from a historically rogue and violent police force. This approach seeks to explain these developments exclusively in relation to the history and internal institutional characteristics of OPD. However, the extreme nature of the police operations on October 25\(^{th}\) cannot be adequately explained by reference to some intrinsically corrupt character of OPD, but rather, requires approaching it in relation to OO’s tactical repertoire and the dynamism characterizing that “moment” of struggle between the movement and the state in Oakland. In the following section, I will lay out a number of auxiliary tactics adopted by OO and attempt to illustrate how they came together to deny the state a range of strategic openings that were possible in other locations. In other words, OO cut off the state’s strategic options in a manner that served to lure out its most violent and coercive face for the world to see on October 25\(^{th}\).

**The Crisis of Soft Management: Occupy Oakland’s Tactical Repertoire**

The strategy of “balanced” non-enforcement quickly hit the limits of its own feasibility. As Occupy sites across the nation drew more and more people and camps continued to grow without any seeming limit, continuing to turn a blind eye to these rapidly growing encampments was no longer a feasible option. Ironically, non-enforcement had the unintended impact of increasing the number of people flocking to Occupy camps insofar as it signaled a degree of state protection or legitimacy and therefore minimized the perception of risk involved in participating in the movement. The state’s strategy had essentially undermined itself. It resorted to non-enforcement in an effort to avoid provoking and thus fueling the movement. Yet non-enforcement, and especially the discourse of protecting First Amendment rights that it came guised in, made the prospect of Occupying less risky and more palatable to those who otherwise may have been
unlikely to participate in the movement. In the case of Oakland, non-enforcement led to a rapid growth of the camp that quickly made the strategy hit its practical limits.

Internal city emails reveal the mounting concern among Oakland city officials about this fast paced growth of the camp. Deputy City Administrator, Arturo Sanchez’s daily morning email updates always began with an accounting of the increase in tents from the previous day. By just the second night of the occupation the camp had grown to include more than 60 tents. By the fourth day (with 6-8 more tents reportedly added overnight), Sanchez warns “[t]hey are running out of space upon which to camp.” The following morning’s update, with the subject heading “Camp grew…”, reports 7 new tents and has an aerial photograph of the encampment attached that shows well over a hundred. As city officials grew more and more nervous about this rapid expansion, some hoped that lack of space might contain the situation. What transpired, however, was the opposite – lacking adequate space, on October 18th Occupy Oakland established a second camp at nearby Snow Park. Tents sprung up there, initially housing about two dozen people, and soon multiplied as well. The occupation was clearly growing without bounds.

The fast paced growth of Occupy Oakland’s camp quickly rendered the state’s initial non-enforcement position unfeasible. It could no longer turn a blind eye to an occupation that was increasingly taking over the entire central downtown area. As this pressure increased, city officials resorted to various soft management tactics that aimed to manage the camp by addressing minor violations deemed as threats to “public safety” (for example prohibition of onsite cooking or restrictions on amplified sound) while continuing to ignore the underlying illegality of the encampment. These tactics, which will be discussed in detail in this section, included efforts like mass distributing flyers outlining regulations in the camp or assigning police “escorts” to unpermitted marches. I describe these state efforts as “soft management” tactics rather than “soft enforcement” because they still remained oriented around an underlying non-enforcement strategy and thus lacked any real threats of enforcement. They relied instead upon presumed cooperation and negotiation with Occupiers. “Soft management” can be understood as an imitation of a “negotiated management” style, but one that crucially differs in that it neither enjoys any opportunities for negotiation or cooperation, nor is it buttressed by any real enforcement threat. For example, mass distributing flyers outlining regulations for the camp makes little sense if Occupiers ignore (or even ceremoniously burn) them and if the City is not actually prepared to enforce any of those regulations. A similar problem emerges for the tactic of “escorting” un permitted marches. “Negotiated management” of marches is premised upon a previously issued permit negotiated between state and movement representatives, and behind which lurks threat of enforcement if it is violated. But these kinds of tactics make no strategic sense in a context where marches are intentionally unpermitted, marchers reject any negotiation or cooperation with police, and the state itself remains unwilling to engage in enforcement.

In other words, “soft management” reflects the habits and assumptions of a negotiated management style playing out in a context where it is suitable to neither the movement nor the state’s own strategic position. City officials in Oakland, still beholden to public support for the Occupy movement, feared that any enforcement action could easily backlash. Furthermore, the state’s own discourse of “balancing” First Amendment
protection against enforcing “minor violations” discouraged it from explicitly pursuing petty enforcement. Still clinging to an underlying non-enforcement strategy, it resorted to soft management tactics that lacked any real enforcement mechanisms and relied instead upon negotiation and cooperation with Occupiers. While this approach had varying levels of success in other Occupy sites, the particular constellation of auxiliary tactics adopted by Occupy Oakland undermined it from the outset.

**Horizontalism**

“[They] have no centralized leadership. As a result it will be difficult to communicate with them about policies and rules.” 165 (Arturo Sanchez, Deputy City Administrator)

The state’s soft management tactics immediately faced a challenge in Oakland – OO’s firm commitment to horizontalism, or the rejection of leadership and all other forms of authority. Aiming to softly manage the camp necessitated identifying leaders or representatives with whom to negotiate around issues of “public safety” that might create potential openings for state intervention. But Occupy Oakland’s tactic of leaderless organization undermined these state efforts from the beginning.

Horizontalism is an Anarchist principle that had broad influence upon the Occupy movement. The initial Occupy Wall Street camp was launched by a group of Anarchists and came to be organized around the Anarchist principle of horizontalism, which is an anti-hierarchal approach to organizing that operates through consensus based participatory democracy. Rather than leaders or representatives, this form of organization relies upon general assemblies as a means of collective decision making. All participants have equal voice within general assemblies and no one holds the authority to represent others. Within this form of organization, no one can claim to be a leader, representative or spokesperson for the movement and the General Assembly serves as the only representation of the collective will. Horizontalism reflects Anarchism’s commitment to a prefigurative politics that seeks to create a “new society within the shell of the old.” From this perspective, organizational structures and forms of struggle should seek to embody the egalitarian relations that are envisioned for this new world, rather than reproducing the very hierarchies and forms of authority that are being struggled against.

While horizontalism had broad ideological influence throughout the Occupy movement (as reflected in the common claim that Occupy “has no leaders,” or alternately that “we are all leaders”), the extent to which it was actually practiced varied drastically across the nation. Certain sites like Oakland or New York (where Anarchists played a central role in launching the occupations and numbered heavily among Occupiers) exhibited a firm
commitment to horizontalism, while other sites of the movement only superficially adopted the principle. Hence leaders, representatives and other forms of hierarchal organization did indeed emerge in many Occupy sites – and thus created openings for state intervention through negotiations. The cases of Occupy Las Vegas and Occupy Philly where contracts were negotiated with the state by representatives of those respective movements serve as prime examples.

It should be pointed out that horizontalism is usually approached not as a tactic, but as a form of (non-hierarchal) organization. While I don’t deny that it is indeed an organizational form, I also view its adoption as a strategically intentional tactical choice – one that has emerged as an iterative response to state strategies, which have historically targeted social movements by targeting their leadership (whether by assassination, imprisonment, cooptation, or other forms of neutralization). This understanding is particularly acute among activists in Oakland, home of the Black Panther Party, which represents one of the most violent cases of this in US history. In such a context, a tactic of leaderless organization is adopted as part of a larger strategy that aims to deny the state the possibility of killing the movement by chopping off its head. Occupiers in Oakland, whether or not they ascribed to Anarchist principles, nonetheless understood the strategic advantage of horizontalism.

OO’s horizontal organization proved quite a challenge to the state’s soft management tactics because no leaders, representatives, or mechanisms for negotiation could be identified. Internal emails among city officials reflect how this realization dawned upon them and became an increasingly urgent concern as time passed. OPD’s Chief of Staff reported after the first night of the occupation that “all efforts at establishing communication failed” as a result of the fact that OO “lacks any centralized organization or formal leadership[.]” On the same day, Deputy City Administrator Arturo Sanchez complained that Occupiers had “no centralized leadership. As a result it will be difficult to communicate with them about policies and rules.” Lacking any formal leadership to negotiate with, city officials had to come up with an alternative strategy.

What they resorted to was the tactic of walking through the camp and mass distributing a series of flyers outlining rules and regulations. Arturo Sanchez first suggests this approach on the morning of October 12th, drafting the first flyer laying out a list of rules in what he characterizes as a “non-confrontational way” (illustrating how the state’s soft management tactics were still oriented around a non-enforcement strategy that feared provoking a backlash of public opinion). The flyer, which outlined various regulations and a range of items that had to be removed from the camp by a 4pm deadline, was delivered that day to the camp’s information tent. The following morning, Sanchez reported the camp had increased by about 15-17 tents overnight, that Occupiers had complied with some, but not all, of the rules outlined in the flyer, and that they still refused to obtain permits for amplified sound. But despite the fact that Sanchez “was not happy” that a large tarp which had been requested to be removed was still in place, he argues that “it may not be the issue over which we would want to push a confrontation… [which] may provide
more reason for them to act on Saturday [at a planned march that drew 2,500 people] when there may be more anarchists and or people here.”170

An hour later Sanchez sends out an email suggesting he attend OO’s pre-General Assembly [GA] facilitation meeting to formally submit a request to be added to speak on that evening’s GA agenda.171 This reflects how, on day three of the occupation, city officials were still struggling to identify a mechanism through which to manage the camp. And coming to recognize OO’s firm commitment to horizontalism, they understood the General Assembly as being the only possible mechanism for negotiation. Sanchez’ suggestion of making a formal request to be added to the GA agenda was informed by Mayor Quan’s blundering attempt to interrupt the General Assembly two days earlier. Oakland North reported that “[a]fter a few minutes of listening to the meeting, Quan attempted to speak, both to address their concerns as well as to warn the campers against public urination.” The Mayor was told she couldn’t interrupt the assembly and had to wait on stack (a line formed by those waiting to speak at GAs) like everyone else. She then proceeded to leave after facilitators instructed her to formally submit a proposal about her public urination concern and resumed with the meeting’s agenda.172 During the two weeks before the City raided the camp, the Mayor, city council members and various city officials made numerous attempts to speak at OO’s General Assembly. On every occasion they were prevented from interrupting the agenda, informed that they could not speak in any official capacity, and told that they had to wait on stack like everybody else for their turn. And on most occasions they were heckled, shamed and banished by the jeers of the crowd.

In response to OO’s horizontalism, the state resorted to soft management tactics like mass flyering and “visiting” (i.e. crashing) general assemblies. The underlying weakness of these tactics was that they relied upon cooperation from Occupiers rather than threats of enforcement. Insofar as the state was attempting to maintain a non-provocative, non-enforcement strategy, it was forced to seek out cooperation as the only means of managing the camp. This strategy failed miserably in the face of another auxiliary tactic adopted by the movement—a rejection of all forms of cooperation with the state. The Frazier Report succinctly captures these developments:

An effort to identify leadership of Occupy, and then establish a working, collaborative relationship between Occupy and City officials, was a priority of the City from the very early stages of the movement in the Park. A city representative feels that Occupy never allowed this relationship to develop, and in fact Occupy members ensured that it deteriorated over time.173

**Direct Action & Non-Cooperation with the State**

*Since the beginning, the City has tried to negotiate with the encampment. While we have been able to talk to individual groups, we remain one of the few cities where*
The City of Oakland’s efforts at soft management were undermined from the outset by OO’s firm rejection of all forms of cooperation with the state. This tactic of non-cooperation was part of a larger strategy of direct action that oriented the occupation in Oakland. As I’ve emphasized, the Occupy movement reflected wide strategic variation that ranged from those who viewed occupation as a means of exercising First Amendment rights aimed at pressuring for a reform of the system, to those who viewed it as a form of direct action that firmly rejected the political and economic system and sought to create a new world in the “shell of the old.” While the former relied upon tactics that aimed to capture the attention of elected officials, the latter adopted direct action tactics and rejected all forms of negotiation or cooperation with the state.

Occupy Oakland’s tactic of non-cooperation manifested in a number of ways, including formally banning state officials from participating in OO in their official roles as representatives of the state or addressing the General Assembly in any official capacity. City administrators who attempted to more informally “dialogue” with Occupiers were generally rejected and regularly complained of being harassed and pressured to leave the camp. A few weeks into the occupation, Mayor Jean Quan released a statement characterizing the particularly uncooperative and anti-statist position of OO in relation to other Occupy sites: “[s]ince the beginning, the City has tried to negotiate with the encampment. While we have been able to talk to individual groups, we remain one of the few cities where occupiers refuse to allow direct communications with a group of representatives.”

Another indicator of a movement’s relationship to the state lies in the practice or rejection of obtaining permits. I have already discussed the cases of Occupy Philly and Occupy Las Vegas which obtained state permits for their encampments. Beyond just the act of seeking out state permission to occupy, these sites of the movement reflected a high degree of cooperation with the state over issues like the provision of electricity, portable toilets, trash removal, and liability insurance. Occupy Oakland positioned itself on the other end of this spectrum -- categorically refusing to obtain state permits, whether for the encampment or any marches or actions. And while the City had taken a non-enforcement position in relation to the unpermitted encampment, the unpermitted marches that regularly took over the streets, disrupting business and traffic downtown, presented a more urgent challenge. These marches, ranging from a few hundred to a few thousands participants, occurred regularly during the first two weeks of the camp. In response, the state resorted to yet another soft management tactic – assigning police “escorts”. Police “escorting” generally entailed petty management tactics like blocking off particular streets or continuously
repositioning lines of officers along the march’s route. But even these relatively “soft” efforts served to provoke and incite marchers who understood them as forms of state aggression. As such, conflict with police became, and long continued to be, a central dynamic of Occupy Oakland marches. Nothing absorbed the focus of a march, or rejuvenated its energy, like the sight of OPD. Marchers would stop and engage in verbal confrontations with officers that ranged from calmly informing them that they too were part of the “99%” to angry chants of “Fuck the Police!”. Deputy City Administrator Arturo Sanchez provides an assessment of the situation in an email on October 18th where he relays that “[t]hey consider any OPD attempt to escort marchers an escalation” and reports being informed by Occupiers that any City attempts to facilitate marches will be considered a form of provocation and may “lead to riots[

During this period there is increasing concern expressed by OPD and City Administration officials about the rising cost of “escorting” and “facilitating” these unpermitted marches. In an October 18th email notifying Police Chief Jordan and the City Administrator’s Office of two more planned marches, Deputy Police Chief Israel complains that “[t]his a huge drain on our resources to fight crime.” Hours later he sends another email with no content other than the subject heading: “Costs for bay of rage march on Friday. $22,876[”. The strategy of police “escorting” not only proved costly and largely futile, but also appeared counterproductive. Marches proceeded on a regular basis, they continued to disrupt downtown traffic, and police presence only seemed to further incite them.

The underlying weakness of soft management tactics like police “escorts”, mass flyering, or general assembly visits, was that, given the state’s continued commitment to strategy of non-enforcement, they lacked any real threat of enforcement and instead relied solely upon a presumed cooperation from Occupiers. Even the very language of “escorting” implies a cooperative and consensual relationship. This strategy may have worked to some extent in Philadelphia or Las Vegas, but it failed miserably in Oakland, where OO’s unwavering rejection of all forms of cooperation with the state quickly undermined these efforts. When city officials distributed their flyers, Occupiers tore up and even ceremoniously burned them. They harassed city officials out of the camp and booed them off the general assembly stage. And they greeted their OPD “escorts” with cries of “Fuck the Police!” Even when the state was aiming to present itself as non-provocative and non-threatening through friendly flyers, GA visits, or police “escorts”, the movement flipped this and revealed the state’s objectives for what they really were – repression of the movement. Increasingly frustrated by this non-cooperation, city officials would soon realize the futility of their strategy.
Provoking Open Confrontation with Police & Defending the Camp as a Police-Free Space

“[S]ome of the protesters are craving confrontation with the police regardless if any enforcement action is being taken.” (OPD Sergeant)

“Fuck the Police!” (Occupy Oakland)

As City officials became increasingly frustrated with the failure of their soft management tactics, they shifted towards an enforcement strategy that manifested in the form of a violent raid on October 25th. So far I’ve discussed two movement tactics which forced this shift – a commitment to horizontalism that denied the state any mechanisms for negotiation, and an anti-statist non-cooperation that frustrated all efforts at soft management. But if there is one factor that placed the most pressure on the state’s strategy and intensified the shift towards enforcement, it was the movement’s unabashed “FTP!” (“Fuck the Police!”) stance, manifested in tactics like provoking open confrontation with police and defending the camp as a police-free space.

The city’s efforts to assign police “escorts” as a soft management strategy failed in the face of OO’s insistence on transforming all interactions with police into open confrontations. But even if these marches had not been met by OPD “escorts”, they would have still ended up on OPD’s doorstep. It was characteristic of the unpermitted marches during this period, and long after, to take routes that primarily targeted OPD headquarters and the adjacent Manuel Wiley Courthouse and North County Jail. Even marches that specifically focused on other targets (for example, corporate banks or real estate developers) almost always made a stop at OPD. The point was made abundantly clear, OO was identifying policing and state violence as a primary target of the movement.

Within a few months this tactical ritual of marching against the police would formalize into a weekly series of what were called “FTP!” (“Fuck the Police!”) marches. Week after week, and in the face of quickly escalating arrests and police violence, Occupiers gathered every Saturday night, taking over downtown streets and marching to cries of “Fuck the Police!” I will discuss these “FTP!” marches in more detail in the next chapter but I introduce them here as a reflection of OO’s insistence on placing policing and state violence at the heart of its critique. Occupy Oakland soon came to be well known for its anti-police position, both distinguishing it and alienating it from the larger national Occupy movement. Many criticized OO for “just wanting to fight with the cops” and diverting the movement from what were perceived as its proper economic concerns (“holding Wall Street accountable”). But Occupiers in Oakland insisted on placing issues of police
violence and state repression on par with demands for economic justice, seeing the two as intrinsically linked.

Occupy Oakland’s explicit anti-police stance partially derived from its more general anti-statist position. The police were recognized as the repressive arm of the state, tasked with enforcing the maintenance of the status quo. From this perspective, the extreme inequality and impoverishment that characterize capitalism can only be maintained through mass violence and coercion doled out by state institutions like police, prisons and militaries. Hence, for many Oakland Occupiers there was no conflict between standing up against economic inequality and police repression – they were two sides of the same coin. But beyond this general anti-statist politics, OO’s anti-police stance also emerged out of the particularities of Oakland – its demographics, the relationship between OPD and local communities, and a long history of struggle around police violence and “misconduct”. Demographically, Oakland represents much greater diversity than most other Occupy sites throughout the nation, many of which were predominately white and middle class. It is a city that is historically home to large African American and Latino communities who are now being displaced through rapid gentrification, and thus increasingly targeted with the kinds of extreme policing and violence that inevitably accompany that process of displacement. The concerns of these communities would come to fundamentally shape the politics of Occupy Oakland. If we look at the movement nationally, we see that occupations in cities with large non-white, poor communities (like Oakland, LA, or New York) were the most likely to raise concerns around police violence alongside their economic demands. It is perhaps also not a coincidence that these are the same cities where the Occupy movement faced the most vicious police operations.

The Oakland Police Department has distinguished itself nationally for being particularly plagued by violence and “misconduct”, and recent threats of being placed under federal receivership have further entrenched this rogue reputation among law enforcement agencies. There is a long history of hostile relations between OPD and the poor Black and Brown communities of Oakland, marked by countless police murders and general lack of accountability for police violence. But Oakland also has a long history of local struggle around these issues, reaching as far back as the community self-defense campaigns of the Black Panther Party in the 1960s. More recently, these struggles converged around the murder of Oscar Grant, a young Black man who was shot and killed in 2009 by a BART (Bay Area Rapid Transit) police officer while he was laying on the ground unarmed, face down and handcuffed. At the time that Occupy Oakland emerged in the fall of 2011, many activists and community organizers in Oakland had been mobilized around the Oscar Grant struggles and were heavily organizing around the issue of police violence. Many of the earliest Occupiers who initially launched OO were central participants in the Oscar Grant movement and this undoubtedly came to shape the nature and direction of the occupation in Oakland. This was foreshadowed on the very first evening that Occupy Oakland was established when one of the first proposals to ever be passed in the General Assembly
called for renaming the location of the camp (officially called Frank Ogawa Plaza) as Oscar Grant Plaza. From that night forward Occupiers exclusively referred to their new home as “Oscar Grant Plaza,” or “OGP” for short, evoking a long history of community struggle against police violence.

Occupy Oakland enacted this “FTP!” stance through the tactic of **provoking open confrontations out of all interactions with police**, aiming to transform them into highly charged spectacles that clearly revealed OPD’s underlying repressive function. This tactic severely strained the state’s attempts at soft management. Police “escorts”, for example, were assigned as a means of managing the crowd while seeking to avoid the kinds of open confrontations that could result from enforcement. The tactic of “escorting” aimed to present police as “facilitating” the “free speech” of marchers while also guarding against any threats to “public safety.” But despite how hard the state tried to cling to a non-confrontational soft management strategy, Occupiers insisted on turning every interaction with police into highly charged spectacles of confrontation. How could the state possibly present its police force as “escorting” and “facilitating” the “free speech” of a public that was loudly exclaiming “Fuck the Police!”?

But the boldest assertion of OO’s “FTP!” stance manifested in the form of tactics geared at preventing police penetration into the encampment. In fact, Occupy Oakland was the only Occupy camp in the nation that, even if for a brief period, was successfully **defended as a police-free space**. This process began with one of the very first proposals ever submitted to OO’s General Assembly, calling for establishing the camp as a police-free space. Consensus was reached and the proposal was passed after a great deal of lengthy discussion where countless people rose to speak about the ways that police violence and harassment targeted their communities. For many white, middle class or otherwise privileged Oaklanders, this became an education in the realities of police violence that face these communities on a daily basis. An understanding emerged that for Occupiers most affected by this state violence, the camp could never be experienced as a safe space if police had any presence there. The act of taking this position served as a crucial expression of solidarity with the most oppressed within the community and created a sense of collectivity that gave life to this newly emerging public calling itself Occupy Oakland.

Of course, implicit in taking such a position is a commitment to actually defending the camp from police infiltration. Taking this stand wasn’t simply achieved by passing a proposal through the GA or chanting “Fuck the Police!” through the streets, but rather through repeated, sometimes highly risky, collective confrontations with police. In the first two weeks of the camp, police made numerous efforts to enter the Plaza. On almost every occasion, Occupiers would gather and attempt to physically obstruct them by forming a large crowd (or “skirmish line” as OPD would describe it) as a barrier. Internal City emails document the first reporting of an incident of police being barred entry to the camp. On the third morning of the occupation, an OPD Sergeant emailed his Acting Lieutenant to report being confronted while attempting to walk through the Plaza in the early morning hours. “When I declined the request to leave the park, they tried to summon their security forces
who were apparently still sleeping. [They] implied that they would remove officers by force if their new city was invaded and [that] we needed to ask permission to enter the park.” He concludes by warning that “some of the protesters are craving confrontation with the police regardless if any enforcement action is being taken.”

By just the third morning of the occupation, this OPD Sergeant recognized an underlying strategic problem that still hadn’t quite dawned on city officials – their intended non-provocative, soft management approach was being consistently undermined by the movement’s tactic of provoking open confrontations with police “regardless if any enforcement action is being taken.” Later, after numerous failed efforts, police strategy shifted from trying to penetrate into the camp (at least by uniformed officers) to assigning officers to posts around the camp’s perimeter, essentially establishing a police barrier around the area. This served as a containment strategy by cutting off this occupied space from the rest of downtown Oakland. It also allowed for surveillance by stationing officers around its perimeter with video recording devices that zoomed into the camp. The response of OO to these tactics serves as one example of the many creative ways that Occupiers provoked confrontations with police as a means of bringing a hyper-visibility to their presence and function. What emerged was a crew of Occupiers who took on the task of heckling, parodying, yelling at, or otherwise irritating officers posted on the camp’s peripheries. Many of those who became particularly known for and adept at this work were Black men who had a history of being arrested, harassed and beaten, sometimes by the very cops they were confronting. They tirelessly spent hours provoking, distracting, and generally bringing a hyper-visibility to this police strategy of cordoning off, surveilling and intimidating Occupiers.

Three days after the Sergeant reported being pressured to leave the camp, another, this time more serious, incident is reported. On October 16th OPD officers attempted to respond to a call to assist the Oakland Fire Department (OFD) with handling a medical emergency involving an Occupier who fell fourteen feet from a structure in the Plaza. When two officers attempted to enter the camp to reach the OFD personnel treating the patient, they reported being “confronted with profanity, name calling, and chants.” A group of around 30 Occupiers then formed a “skirmish type line” that prevented the police officers from entering. When OFD (who never faced any problems entering the camp) then cancelled the call for OPD assistance, the officers retreated, being followed out by chanting Occupiers.

By the next morning (the one week anniversary of the camp), Arturo Sanchez was urgently raising this concern with Police Chief Jordan and City Administrator Deanna Santana, warning that Occupiers “are becoming increasingly aggressive” and that they were training to mobilize in “human chains” around the Plaza in preparation for confrontations with the police. The situation is further exacerbated a few hours later when Deputy Police Chief Israel sends an email with only the subject heading “Member of the media was just bit by a protestor’s dog after he refused to leave the encampment area. Officers are enroute.” Within the hour more information filters in, indicating that a KTVU reporter approached the camp and was bitten on the arm by a dog, but that it was an accident and that the dog was in no way directed to do so. Occupiers subsequently proceeded, with a great deal of profanity, to instruct the reporter to leave the camp area. But while this KTVU report
was verbally pressured to leave the Plaza, the police officers attempting to respond to the incident were physically prevented from entering the camp altogether — this time by yet another “skirmish line” that had now grown to between 50 to 75 people according to OPD’s estimates.\textsuperscript{184}

By its one-week anniversary, Occupy Oakland had lived up to its aspiration of creating and defending a police free camp. OPD officers were being effectively prevented from entering the Plaza, and each victory served to embolden Occupiers whose human chains grew larger by the day. These human chains served as a tactical ritual that not only successfully banished police, but also solidified a sense of community and solidarity within the camp. These impacts cannot be overstated. Nor can we overstate the significance of the sense of security and relative freedom experienced in this new police-free space by Oaklanders whose bodies, homes and communities had always been targets of OPD. Perhaps most important was the realization that this space had been liberated through a coming together of Oaklanders who courageously stood in solidarity with each other. This collective experience would serve to embolden Occupy Oakland, enabling it to undertake actions over the course of the next few months that reflected an ambitiousness and risk that were nationally unparalleled.

Occupy Oakland’s successful defense of its encampment as a police-free space was the single most crucial way it distinguished itself from the larger national Occupy movement. It was the only occupation in the country where uniformed officers were literally incapable of entering the camp without resorting to a great deal of force (which is precisely what would soon transpire). In the context of Oakland, this was the full fruition of occupation. Insofar as it was oriented around a strategy of direct action that firmly rejected the state, occupation necessitated reclaiming public spaces and exorcising them of the police — an extraordinary feat that Occupy Oakland was able to achieve, even if only for a brief period. It is crucial to recognize the magnitude of the threat this posed — the state had effectively lost sovereignty over an area that literally engulfed City Hall and was in the heart of Oakland’s commercial center. Occupiers in Oakland were not seeking to merely “assemble” in this space, they were battling to thoroughly liberate it from the grip of the state.

In this section, I’ve attempted to map out the tactical constellation that shaped this first “moment” of struggle between state and movement in Oakland. Auxiliary tactics like horizontalism and anti-statist non-cooperation undermined the state’s attempts at “soft management” by denying it cooperation or any openings for negotiation. Simply put, Occupy Oakland refused to be softly managed. But beyond all other factors, it was OO’s fierce commitment to defending its camp as a police-free space that most powerfully undermined the state’s attempts at soft management and intensified the shift to enforcement. And it was also this tactic that most differentiated OO from the larger Occupy movement, perhaps helping to shed light on why enforcement would come to take such a relatively extreme and violent form in Oakland — where OPD, under unwavering orders to “hold ground” and “contain” the Plaza, would launch multiples rounds of “less lethal” munitions against a large unarmed crowd of Occupiers who, even in the midst of tear gas and rubber bullets, kept defiantly returning to reclaim the space they had liberated and lost.
The Discursive Shift to Enforcement

“Basically, it's not legal for them to camp; we're accommodating it. And we've been telling them, we reserve the right to change our minds at any time... Certainly, that kind of behavior makes it more difficult to continue...”185 (Spokesperson for Oakland City Administration)

Monday October 17th marked both the one-week anniversary of Occupy Oakland and a dramatic turning point in the state’s strategy towards the occupation. While non-enforcement may have initially been perceived as a viable option, losing complete control of central downtown Oakland was not. Internal city emails capture this mounting concern with every incident of police being barred entry to the camp. On the morning of October 17th, Deputy Police Chief Jeffrey Israel (who was later demoted to captain186) sounds the warning to Chief Jordan, explicitly calling for eviction.

This is a very dangerous situation and one that exposes the City to liability if another person needs our assistance and we cannot provide it. This will only get worse as they feel more empowered to challenge authority. I recommend that discussions begin to remove the campers from the plaza.187

With mounting pressure from OPD, growing frustration on the part of city officials whose flyers and “friendly” gestures were being hostilely rejected, and increasing fear of liability in incidences like the injured Occupier and the dog bitten reporter, the City begins week two of the occupation with a dramatically different attitude.

The “Balance” Tilts: “Public Safety,” “Small Business” and “Violence”

The following day, the City Administrator’s Office distributed yet another flyer in the camp – this time one that was more deliberately confrontational. When the City’s Communications Director sent the flyer out in a mass email announcement to City personnel, she explained that “[d]emonstrators were initially cooperative, but the City has been growing increasingly concerned about public health, safety and crowd control issues...and we are informing the demonstrators of our requirement to address those concerns as a condition of our peaceful coexistence.”188 The issuing of this flyer marked a shift in the state’s approach towards more aggressive forms of management that now hinted towards warnings of enforcement. The October 18th flyer reflects an important discursive shift where the tenuous “balance” of protecting First Amendment rights tilts
towards enforcement as a result of “public health and safety” issues that are presented as becoming increasingly dangerous. In asserting that these concerns must be addressed as “a condition of our peaceful coexistence,” the flyer is clearly invoking the state’s prerogative to revoke protected First Amendment rights once this is outweighed by threats to “public safety.” This position was further elaborated by a spokesperson for the City Administration who asserted that the City had been allowing demonstrators to “peacefully express their First Amendment rights” but that it must “balance that with the need to maintain public health, public safety and crowd control.” To make sure the point was abundantly clear, she explained “[b]asically, it's not legal for them to camp; we're accommodating it. And we've been telling them, we reserve the right to change our minds at any time…Certainly, that kind of behavior makes it more difficult to continue…” The October 18th flyer and the accompanying statements issued by city officials mark a discursive shift in the state’s strategy – the tenuous “balance” had now clearly tilted towards the need for enforcement.

The October 18th flyer justifies the state’s revocation of protected First Amendment rights on the basis of threats to “public safety,” laying out a range of complaints and concerns. It refers to the incidences of the injured Occupier and reporter, demanding full access to the Plaza be allowed for all “first responders” (conveniently lumping together police with firefighters and EMT personnel who never experienced obstacles to entry). It reasserts the requirement of permits for amplified sound, and emphasizes problems of graffiti and vandalism. It also prohibits dogs from being in the Plaza and makes reference to children climbing and sitting on structures (like trees and fencing), which it characterizes as a “significant safety risk.”

Beyond these specified issues, the flyer poses a range of general concerns that give us a clearer sense of the state’s articulation of this “public safety” threat. It emphasizes receiving complaints of “public drinking, intoxication, drug use and sex in public” which it presents as infringing upon the right of other groups, “the public, employees, and schools” to utilize this public space. The flyer also reasserts the prohibition on public urination, emphasizing the threat to public health.

Corresponding with the issuing of this flyer, the City was also publically emphasizing the health hazard posed by what it claimed was OO’s exacerbation of a pre-existing rodent problem around City Hall. After an investigation by the Alameda County Health Department on October 19th, the City claimed that rats had fully infested the encampment. A spokesperson for the City Administration summarized the threat to “public health and safety,” asserting that the camp may have to be shut down because it was attracting “rats, alcohol and illegal drug use[.]” In other words, undesirable people, like the rats they brought with them, had “infested” this public space with their addictions, promiscuities and general filth.

The assertion underlying these allegations was that the state was now forced to protect the public from the dangers of this infestation. Who was this “public” in need of state protection? Clearly not those being characterized as homeless or drug addicts, since these were precisely the people from whom the real “public” had to be protected. The October 18th flyer specifically identifies two groups when referring to the “public”: “employees” (i.e. not the unemployed) and “students” (clearly invoking a greater vulnerability of youth in order to emphasize the need for state protection). But if we look beyond the flyer to the larger discourse characterizing state and media accounts at the time, we find that the group
most commonly invoked as being vulnerable to the harmful impacts of OO was actually "small business". City officials made repeated assertions that Occupy Oakland had negatively impacted local struggling small businesses, often characterizing them as “mom and pop” stores. Although mainstream media generally parroted these claims, an investigation by Oakland North (a publication of the University of California, Berkeley’s School of Journalism) concluded that aside from a few that were located on the immediate periphery of the encampment, businesses in the area generally reported that Occupy hadn’t impacted their sales at all. However, most media outlets failed to question or investigate these claims and uncritically disseminated the state’s assertions. What would soon become a major state discursive strategy began in this early period with claims that the camp was driving away customers and causing economic decline for “small business.” This would later morph into grossly inaccurate claims that these small businesses suffered extensive property damage (graffiti or broken windows) at the hands of Occupiers (despite the reality that OO’s tactic of property destruction was virtually exclusively targeted at banks and large corporations).

This emerging state discourse pitting Occupy Oakland against “small business” served to obscure that it was actually corporate and large business interests that were increasingly pressuring the City towards more aggressive enforcement against OO. On October 20th, the City’s Senior Policy Advisor reported receiving inquiries from Bank of America and Kaiser about the City’s position on Occupy Oakland. She also advised that the City issue a statement to be sent to the Oakland Chamber of Commerce. While large corporate interests were actually the main voices in city officials’ ears, their public presentation of the problem emphasized the negative impact of OO upon “small business”. This discursive strategy also obscured the extensive support for Occupy Oakland by many local small businesses, not to mention workers, during this period. Everett & Jones BBQ, a well-known local small business, donated Porta Potties for the encampment, as did the local chapter of the Nurses Union. The Rising Loafer, another locally owned small business regularly provided free food and coffee to Occupiers and allowed them to use restroom facilities, as did many other small businesses in the area. The employees at the Tully’s Coffee right next to the camp pooled their money to buy coffee, food and cleaning supplies for the camp. The manager of Tully’s was quoted in a local newspaper as saying “It’s been out of our own pockets because we are part of the 99 percent...Just because we’re at work doesn’t mean we don’t agree with the main cause, the big picture. If I wasn’t working, I’d be right out there with them.” And throughout the coming months when OPD would regularly unleash tear gas and “less lethal” munitions on OO, a number of these employees and small businesses opened their doors to provide refuge for fleeing Occupiers.

Given the general climate of support for the Occupy Movement at the time, the state, with the help of mainstream media, had to mount a discursive campaign to justify and generate consent for a shift to enforcement. Threats to “public safety” and negative impacts upon “small business” served as the strategic discursive openings for state intervention. The state presented itself as being forced to act now that the camp had been overrun by undesirable characters engaging in illicit and harmful activities that threatened the health
and safety of the real public. It was forced to act now that small businesses were being negatively impacted – small businesses that had already been struggling under the harsh economic conditions that Occupy claimed to oppose. The image presented of Occupy Oakland causing harm to these “mom and pop” stores was intended to illustrate that it had been dangerously diverted from the national movement’s original objectives. This discourse was geared towards a public that generally supported the Occupy movement, enabling them to continue to maintain this general position while simultaneously supporting state enforcement against Occupy Oakland, which was perceived as having hijacked the movement. These discourses around “public safety” and “small business” were introduced by the state in this early period and continued to develop over the course of the following months until they had served to drastically transform public opinion.

However, the single most powerful and recurrent discursive attack forwarded by the state during its shift to enforcement was that the city of Oakland now faced the threat of “violence” unleashed by Occupy Oakland. While this discourse flourished over the coming months, becoming a powerful force altering public perception of the movement, it was actually introduced and gained momentum before there was even any actual “violence” to speak of. City officials and mainstream media began vaguely eluding to threats of “violence” within the camp from as early as the first week anniversary of the occupation when the state began shifting towards an enforcement strategy. By October 20th, when the City would finally issue a formal notice for OO to vacate the Plaza, this discourse had been sufficiently consolidated such that the eviction order justified itself on the basis of “safety hazards” in the camp including “the increasing frequency of violence, assaults, threats and intimidation[.]

During this period, city officials publicly made numerous, often vague, references to incidences of “violence” within the camp. One issue that they repeatedly referenced as evidence of this problem was the claim of an incident of sexual assault within the camp (which was later prominently cited as a justification in the state’s notice to vacate the Plaza). It is impossible to deny that acts of violence occurred in the camp – whether sexual assaults, fights or threats and intimidation. To imagine otherwise is to presume that it would be possible for Occupy Oakland to somehow instantaneously create a space free of the specter of violence that permeates everyday life. Even if OO could succeed in its aspiration of temporarily banishing police violence in this new world it was struggling to create, the violence that seeps into our interpersonal relationships was another matter altogether – an undeniable and painful reality that many Occupiers struggled with. It was in fact one of the most urgent challenges facing the movement. Insofar as it aimed to create a space beyond the state and its institutions of policing, OO had to figure out how to deal with power imbalances and forms of interpersonal violence among Occupiers. In other words, it had to figure out how to approach the problem of “security” without recourse to the state. This was a challenge that the state thoroughly exploited in its discursive attacks against OO, repeatedly referencing threats of “violence” that lingered in the camp. The
implicit assertion was that all kinds of dangers lurked in the absence of state regulation: Occupy Oakland’s police free camp was essentially a vacuum of state power and therefore posed the threat of unchecked violence.

Similar to claims about negative impacts on “small businesses,” mainstream media parroted and consolidated the state’s discourse about the problem of “violence” in the camp. An article published on October 19th in the *Oakland Tribune* entitled “Occupy Oakland residents struggle with internal security issues” serves as an epitomizing example of this discourse. The piece focuses on what it refers to as “an almost overwhelming sense of urgency developing around the need to resolve internal security issues that have bedeviled residents and passers-by alike.” The article then identifies the root of this dilemma as emerging out of the dangerous diversity of different people interacting in what it calls a “democracy free-for-all,” or in other words, a space lacking the “security” of state regulation.

Homeless people, ex-convicts, at least one registered sex offender, students, unemployed hotel workers, anarchists and reform-minded activists freely mingle in what amounts to a democracy free-for-all...Sometimes, everyone appears to be on the same page. But the skein of civility has been frequently shattered as bullies, the mentally ill, drunks, thugs and anarchists have threatened the safety and well-being of the camp’s more peaceful residents.  

“Lodging”: *Disassociating Occupation from First Amendment Protection*

*The City of Oakland and its police department support and protect the right of all individuals to engage in free speech and their right to assemble. However, this encampment is a violation of the law.*

The issuing of the October 18th flyer marked the full fruition of the state’s “balance” discourse – having reached its inevitable limit where the tenuous “balance” shifted and the duty to protect First Amendment rights was now clearly outweighed by the more urgent need to address threats to “public safety.” This “balance” framework was the discursive counterpart to the state’s initial non-enforcement strategy – it was a discourse that served to both legitimize and set the limits of non-enforcement. But once that limit was reached,
the shift to a new strategy of enforcement necessitated a fundamental discursive transformation – one that began to disassociate the tactic of occupation from First Amendment protection. A strategy of non-enforcement came guised in a “balance” discourse that approached occupation as a (tenuously) state protected form of free speech and assembly. The shift to a strategy of enforcement necessitated shedding this discursive framework in favor of a new one that now rendered occupation as indisputably illegal.

This process of disassociating the movement’s tactic of occupation from First Amendment protection is first introduced in the October 18th flyer in relation to “structures” which now become targeted for enforcement. While the flyer lays out a wide range of complaints, there are no corresponding references to any enforcement mechanisms, just the vague assertion that addressing these issues is necessary for “our peaceful coexistence.” The flyer does, however, introduce a clear enforcement warning in relation to one issue – asserting that “structures built in the Plaza are prohibited and do not constitute free speech.” [Emphasis is mine.] The flyer warns that if all structures are not dismantled within 24 hours, “the City will make arrangements to remove them.”201 This marks a major shift away from the state’s earlier stance that these minor violations were outweighed by the need to protect First Amendment rights. The October 18th flyer makes a clear departure from that position, not only shifting to enforcement, but also now disassociating the presence of any “structures” in the camp from protected expressions of free speech. The state’s first warnings of enforcement are delivered in relation to “structures”, marking the beginning of a discursive battle aimed at disassociating the tactic of occupation from First Amendment protection.

With the October 18th flyer, Occupy Oakland had received its first threat of enforcement. What was OO’s response? Hours after the flyers were delivered to the camp, Arturo Sanchez reports back: “The flyer did not go over well…They indicated they have burned all notices and intend not to ever comply[.]”202 After the public burning of the October 18th flyer (a spectacle intended to clearly symbolize OO’s refusal to cooperate at any level with the state), City Administration officials were fed up with the non-cooperative tactics of OO undermining their every effort at negotiation and soft management, and now turned to an enforcement strategy that aimed to bring an end to the occupation. At this point, both OPD, which had led in pressuring the City to take a more aggressive position against OO for days, and the City Administrator’s Office were ready to proceed with an eviction plan. But the deal was sealed on October 19th when City Council member Pat Kernighan sent Mayor Quan and City Administrator Santana an email that began with the line, “I think the time has come to end the encampment on the Plaza” and ended by expressing City Council’s willingness to support and participate in “making the decision”.203 Within just one-week, City Council members had gone from pitching tents and issuing statements of solidarity to demanding that the City act to “end the encampment.” With the City Council now aligned with OPD and the City Administrator’s office, the state had consolidated itself around a new enforcement strategy and a determination to evict the camp.
The next day, on Thursday October 20th, City Administrator Deanna Santana issued a formal “Notice to Vacate” the Plaza, which was then distributed throughout the camp. Occupy Oakland had now received an eviction order. This serves as the clearest indicator of the state’s shift in strategy. Gone were the “friendly” flyers and soft management tactics that lacked any real enforcement mechanisms – the state was now issuing an eviction order with explicit warnings of enforcement. This “Notice to Vacate” provides an interesting window into the discursive transformation that accompanied the state’s shift in strategy. While it represents a definitive shift to enforcement, it still largely does so within the terms of the old “balance” discourse, justifying eviction on the basis of “deteriorating public health and safety conditions,” including: graffiti and vandalism, disruption of public use of the plaza by other groups, fire hazards, the “increasing frequency of violence, assaults, threats and intimidation,” health hazards (including the exacerbation of a pre-existing rodent problem) and damage to the “historic tree”. The notice concludes, “[a]s a result of these serious conditions, the Administration has determined that facilitating this expression of speech is no longer viable, nor in the interest of public health and safety.” [Emphasis is mine.] So while the state had shifted to a strategy of enforcement, the October 20th “Notice to Vacate” still came guised in a discourse that recognized occupation as the exercise of free speech, even as it asserted the need to revoke this right due to “public safety” threats.

The “Notice of Violations and Demand to Cease Violations” issued and distributed two days later on October 22nd marks an abrupt departure from this position, and the adoption of a new discourse that thoroughly disassociated occupation from First Amendment protection. Building upon the earlier assertion that occupation related “structures” were enforceable violations, the notice focuses upon “lodging materials” like tents, sleeping bags and supplies. Occupation, no longer an “expression of free speech,” is now constituted as illegal “lodging”. The notice asserts:

The City of Oakland and its police department support and protect the right of all individuals to engage in free speech and their right to assemble. However, this encampment is a violation of the law. You do not have permission to lodge overnight in Frank Ogawa Plaza. You must remove all tents, sleeping bags, tarps, cooking facilities and equipment and other lodging materials from the Plaza immediately. Your continued use of the Plaza for lodging will subject you to arrest. [Emphasis is mine.]

This notice not only put Occupy Oakland under clear threat of impending eviction, but also fundamentally transformed the discursive terrain of struggle between the state and the
movement. The state’s position towards the camp had shifted from that of a difficult to manage expression of free speech to a clear violation of law (illegal “lodging”) that would now be enforced. Gone were the constraints of needing to “balance” the prioritization of First Amendment protection against “minor violations,” premised within a discourse that accepted the tactic of occupation as an expression of free speech. The October 22nd “Notice to Vacate” clearly asserts that the City and OPD “support and protect the right of all individuals to engage in free speech and their right to assemble”, but that “this encampment is a violation of the law.” The tactic of occupation was being rendered as illegal “lodging” and disassociated from First Amendment protection. The state had now consolidated itself around a new strategy of enforcement that was accompanied by a new discourse, one which shifted the terrain such that occupation was no longer a matter of free speech, but rather an unequivocally illegal act. Once these discursive openings for state intervention had been established, the City began planning for an eviction that was now imminent.

**The October 25th Raid**

Beginning with the issuance of the “Notice to Vacate” on Thursday, October 20th, concern about an impending raid spread like wildfire throughout camp. Yet even in the face of this threat, Occupiers continued their activities as before: general assemblies were held, committees met, and the camp continued to function as usual, making it clear that Occupy Oakland refused to acknowledge the state’s order to vacate. Various strategies for dealing with the raid were discussed and implemented: a text alert system was created to mobilize supporters when the raid began; tactics for defending the camp or engaging in civil disobedience were shared and debated; and the National Lawyers Guild stationed legal observers at the Plaza around the clock and distributed its hotline number in case of arrests. By Monday October 24th, the two-week anniversary of Occupy Oakland, it was obvious to both the state and the movement that neither side was budging in this standoff and that a raid was both imminent and inevitable. As Occupiers celebrated their anniversary that night with cake, music, and dancing in the camp, OPD was busy finalizing operational plans for a pre-dawn raid.

Police began arriving at the Plaza around 4:30 am. As they assembled, small groups of defiant Occupiers attempted to construct barricades around the camp with dumpsters, trashcans and even OPD’s own barricade fencing. At approximately 4:40 am OPD announced on a loudspeaker that all those remaining in the Plaza would be subject to arrest. While some people left the camp (Chief Jordan later claimed that around 30 people “peacefully” complied with the order to leave), around 150 people remained, some locking arms in a human chain as police prepared to advance on them. By 4:50 am, almost 600 officers in riot gear had assembled around the perimeter of the camp. This
included 392 of OPD’s own officers, as well as 202 others drawn from 14 different neighboring law enforcement agencies through “mutual aid” agreements.210 Standing shoulder to shoulder, these 600 officers created a physical barricade around the entire perimeter of the camp, blocking all access, including media. The operation went into full swing at 5:15am, when police lines began marching forward, advancing on the camp.211 Within minutes, loud explosions and tear gas filled the air.212

OPD’s barricade and its extensive deployment of tear gas ensured that there would be no recordings or any documentation of what actually occurred inside the camp during the raid operation. As a result, media relied almost exclusively on police reports, which presented a climate of brazen lawlessness and emphasized threats to the physical safety of officers.213 Chief Jordan held a press conference during which he confirmed that police had used tear gas and fired beanbag rounds at protestors (but denied reports of the use of rubber bullets214), which he justified by claiming that rocks, bottles, kitchen utensils, trash cans and firecrackers had been thrown at officers.215 OPD spokesperson, Johnna Watson also issued a statement repeatedly emphasizing that the Department was forced to deploy tear gas and “less lethal” projectiles “as a defense tactic[.].”216 This scenario, however, seems highly unlikely given that 150 Occupiers (many having just been jolted awake) were surrounded and being advanced upon by over 600 police officers in riot gear amidst debilitating tear gas and rounds of “less lethal” projectiles.

By 5:30am (within just 15 minutes of advancing on the camp), the City reported that the operation had been completed and that the Plaza had been successfully “contained”.217 As the “clean-up phase” began, a group of OPD officers was relocated to Snow Park to evict the small encampment there as well.218 This was undertaken despite the fact that almost none of the “public health and safety” issues outlined by the city as justification for vacating the Plaza applied in the case of Snow Park – there were no reports of violence or injury; no portable toilets or sanitation issues; no cooking or open flames219; and Occupiers had even raised $250 to purchase lawn mowers in order to mow and weed the overgrown and neglected park220, undeniably improving conditions there. But the fact that Snow Park was nonetheless raided alongside Oscar Grant Plaza illustrates that the state was now oriented around an enforcement strategy that targeted occupation, not merely as a “public safety” threat, but as a criminal act of “lodging”. By 10 am both police operations were complete, 85 people had been arrested (79 at OGP and 6 at Snow Park),221 and all remnants of the encampments (tents, supplies, kitchen equipment) had been destroyed and flattened in what one local paper described as resembling a “refugee camp that had been struck by a hurricane[.].”222

While the “clean-up phase” was being completed, Police Chief Jordan was holding a press conference where he expressed being “very pleased with the way things went” because neither officers nor arrestees had sustained injuries (ignoring reports from the National Lawyers’ Guild that two Occupiers suffered broken hands and another was hospitalized
with a head injury\textsuperscript{223} and that there had been minimal damage to property (presumably referring to City property since all of the Occupiers’ possessions had been flattened and were at that very moment being hauled away and trashed by Public Works).\textsuperscript{224} When reporters questioned why Mayor Quan wasn’t present, City Administrator Santana explained that she was currently in DC on a prior engagement that involved trying to raise money for the Port of Oakland.\textsuperscript{225} Mayor Quan had, however, issued a statement that morning commending Chief Jordan and OPD for what she called “a generally peaceful resolution to a situation that deteriorated and concerned our community.”\textsuperscript{226} While Chief Jordan and Mayor Quan clearly felt the raid’s execution had been a success, they couldn’t possibly imagine the backlash they would face in just a few short hours when around 2000 Occupiers would return to reclaim the Plaza in an evening confrontation that would put the brutality of the Oakland Police Department on full display for the world. But signs of what was to come were already apparent: within just minutes of OPD’s completion of the raid and departure from Snow Camp, tents had already popped back up there…\textsuperscript{227}

\textit{OO Strikes Back: Re-Occupation}

In the course of the raid, 85 Occupiers were arrested, most of whom would be cited and released later that afternoon and evening (although some would be held in jail for days). Any remaining Occupiers were pushed out of the area, which remained under tight police control throughout the morning. But by early afternoon the appearance of order began to crack as hundreds of Occupiers regathered downtown, enraged by the violent nature of the pre-dawn raid and preparing for a face-off with OPD that city officials couldn’t even begin to fathom.

Occupy Oakland had prepared for the raid by agreeing upon a plan of action that called on all Occupiers and supporters to regather outside the main branch of the Oakland Public Library (located a few blocks from the Plaza). Almost 700 people convened at the library that afternoon\textsuperscript{228}, listening to enraged first-hand accounts of the violence and brutality experienced within the police barricade that morning. As time passed more arrived, many having come straight from being released from Santa Rita or North County Jails. They were all exhausted, some were injured or still suffering the effects of tear gas inhalation, and many exhibited signs of trauma. OPD’s eviction operation had a severely militarized character that many Oaklanders (and most Americans) had never experienced before. Imagine being jolted awake in the pre-dawn hours to an advancing line of hundreds of riot police, being immediately blinded and choked by tear gas, shot at with “less lethal” projectiles, repeatedly struck by the batons of officers tasked with flattening and clearing out the encampment, and physically dragged out of the Plaza to face arrest and be transported to jail. But despite the general sense of trauma and exhaustion in the crowd, there was also a burning determination to fight back. The collective sense of outrage at the City’s violent police operation mounted as the crowd grew, and it soon became clear that there was a virtually unanimous consensus to retake the Plaza.

At around 5:20 pm, the crowd began to march with the aim of re-occupying Oscar Grant Plaza.\textsuperscript{229} But in true Occupy Oakland fashion, the march first headed a few blocks away
towards OPD headquarters and the adjacent North County Jail. At around 5:45 pm the march was met by one of OPD’s “Mobile Field Forces” (MFF) deployed in a “rolling street closure” (a straight line of dozens of shoulder to shoulder officers) that prevented it from advancing any closer than a block away from police headquarters and the jail. OPD reports claim that at this time bottles, “unknown liquids,” and wax projectiles containing blue and red paint were thrown at the MFF line. Several officer, covered in paint, attempted to make an arrest but were immediately surrounded by a crowd determined to prevent this. The situation forced a quick response from OPD, one that occurred, according to their own reports, amidst “a great deal of confusion” and “simultaneous conversations on the OPD radio[].” An OPD ARGUS (Aerial Reconnaissance Ground Unit Support) helicopter located the surrounded MFF officers and directed one of the department’s Tango Teams (specialized units equipped and authorized to use chemical and other “less lethal” munitions) there. Police reports describe a “fully involved ‘street fight’” that lasts approximately seven minutes until the Tango Team reached the officers and proceeded to “provide assistance” by firing tear gas grenades into the crowd. Two individuals were subsequently detained.

**State Strategy: Naked Coercion (“Holding Ground”)**

It was around 6pm and riot police and tear gas already filled the streets of downtown as thousands of people were on their commutes home from work. Many stopped in shock at the war like scenes in front of them before quickly rushing out of the area. But Occupiers and their supporters kept flooding in and the march continued to grow as it roamed through downtown streets towards Oscar Grant Plaza. Police reports estimate that by 7pm there were between 1500 and 2000 protestors gathered at the main intersection leading into the Plaza. They were met there by a barricaded police line that was clearly tasked with preventing the crowd from entering. Some protestors began removing barricades and dragging them into the street as police tightened their lines and began loading munitions. A dispersal order was given over a loudspeaker declaring the scene an unlawful assembly, stating that anyone who remained was subject to arrest, and warning that chemical munitions would be deployed if the crowd failed to disperse. The dispersal order seemed to have no effect as the march stood its ground (with many protesters even sitting down in the middle of the intersection). Just a few minutes later police fired tear gas canisters into the crowd. After several loud bangs, tear gas filled the air and people began running in every direction, gasping for breath and blinded not only by the haze of gas, but also by police deployed “flash bang” grenades (munitions that achieve a temporary blinding impact on large crowds).

Tear gas and “flash bangs” succeeded in dispersing and fragmenting the crowd, but only temporarily. By 8pm, the march reconvened several blocks away at Broadway and 19th Street. At around 8:30pm the march returned to the Plaza to face off yet again with the
Police barricade. According to police reports there were now approximately 1000 people who had regathered at the Plaza.\textsuperscript{240} The size of the crowd no doubt took OPD by surprise. It is unlikely that they anticipated that a thousand Occupiers would return to the Plaza even in the face of chemical and “less lethal” munitions. As police issued dispersal orders yet again, the crowd defiantly held its ground, chanting loudly and even dancing in the street. After several minutes OPD deployed tear gas once again.\textsuperscript{241} By OPD’s own accounts (which are grossly underestimated, as will be discussed shortly), at least 16 rounds of chemical munitions were deployed that evening.\textsuperscript{242} But while each deployment of tear gas led to a dwindling of the crowd, hundreds of people kept returning to the police barricade throughout the night. Many now had vinegar soaked cloths covering their mouths, while others just seemed to have developed an increasing tolerance for the gas (some even able to pick up tear gas canisters and throw them back across the police line). At 9:30pm another round of tear gas, as well as bean bag rounds, were unleashed on the increasingly resistant crowd. At 10:30pm around 300 Occupiers remained at the police barricades,\textsuperscript{243} some dancing rebelliously, others chanting at police, “you’re sexy, you’re cute, take off your riot suit.”\textsuperscript{244}

As dawn rose the following morning around a dozen defiant Occupiers still remained fixed at the barricades, with more slowly trickling back in after having taken a few hours of rest.\textsuperscript{245} Tear gas fumes still lingered the next morning and signs of the clashes throughout the night were clearly evident. The police operations undertaken in the previous 24 hours would come to incite an unimaginable backlash and have profound and far reaching consequences. Nonetheless, at that moment one thing was abundantly clear – the state had successfully achieved its overriding objective – it had effectively “contained” the Plaza. And police forces were soon joined by Public Works employees tasked with the job of quickly erecting a tall wall of metal fencing around the entire perimeter of the Plaza. City officials claimed this was done in order to undertake necessary clean up and repair operations (although no fencing was deemed necessary the day before during the actual post-raid clean-up operation). Despite these claims, the barricade of metal fencing now completely encircling the Plaza made the state’s real objective abundantly clear – to “contain” the Plaza, “hold ground,” and prevent any possibility of a re-occupation.

The City defended OPD’s deployment of chemical and “less lethal” munitions as a “crowd control” strategy on the basis of two allegations: that it was necessitated by the large size of the crowd which had to be dispersed because of the “public safety” threat it posed; and because protestors were throwing projectiles at police officers. During the 9:15 pm press conference held by OPD in the midst of the night’s police operation, Chief Jordan asserted that his officers had no choice but to deploy tear gas because of the size of the crowd and the fact that protestors were throwing objects at police, including rocks, bottles, pipes, glass, and paint, as well as tear gas canisters launched back across police lines.\textsuperscript{246} Jordan also vaguely claimed that two officers had been injured by these projectiles.\textsuperscript{247} He denied that the loud explosions heard throughout the night were police deployed “flash bang”
grenades as alleged, claiming they were M-80 explosives thrown at police by protestors (ensuing investigations later proved that OPD had indeed deployed this type of munition). The City Administration articulated the same justifications in an update it issued to City officials and City Council members during the operation, notifying them that chemical munitions were being deployed.

The justifications offered by the state reflect an effort to present its police operations as being in line with federally imposed crowd control policies which mandate that the deployment of “less lethal” munitions is only legally permissible as “reasonable force” if it is utilized to make arrests or to actively disperse a crowd. The mandate to “actively” disperse a crowd requires that any deployment of “less lethal” munitions be accompanied by the simultaneous deployment of officers or Quick Response Teams tasked with directly dispersing the crowd, as opposed to maintaining fixed positions behind barricades while munitions are launched, as was the case with OPD’s operation on October 25th. These issues become the primary concern of the series of state launched investigations and reports that later ensue. In particular, the federally imposed Frasier Report comes to the damning conclusion that police operations involved virtually no effort to make arrests or actively disperse the crowd. The report asserts that although there were multiple incidences of police deploying “less lethal force,” “no effort was made to take the suspects into custody when it would have been reasonable to do so.” While 85 people had been arrested earlier in the morning raid operation which lasted no longer than 15 minutes, only 5 arrests were made during the entire evening’s clashes which lasted for hours and involved much greater deployment of police force. Furthermore, the report asserts that all officers remained behind the barricade and “[t]here was no plan or effort to dynamically move forward, disperse the crowd, and make arrests after the dispersal orders were given and chemical agents were deployed.” In other words, if the use of these “lethal than lethal” weapons was justified on the basis of projectile throwing protestors (as Chief Jordan, OPD and City officials kept insisting), there was virtually no effort to arrest these alleged projectile throwers. And if the justification was the need to disperse a crowd that was creating a public safety threat, again there was no evidence of any efforts to actively do so.

While the Frasier Report, like the series of other internal state investigations into October 25th, is primarily focused on the question of whether the deployment of “less lethal” munitions was legally permissible and in line with federally mandated crowd control policies, it also provides us with a clear sense of the actual underlying objective of police operations that evening. These investigations make it abundantly clear that the goal was neither to affect arrests of projectile throwers, nor to necessarily even disperse the crowd – but rather, to “contain” the Plaza and use any means necessary to prevent the possibility of re-occupation. This is the real reason why tear gas, “flash bang” grenades, “beanbag” rounds and other “less lethal” weapons were indiscriminately unleashed upon a large unarmed crowd by a fixed line of officers positioned behind barricades that prevented entry to the Plaza.

The Frazier Report identifies a number of issues as contributing to OPD’s decision to deploy chemical munitions as a “crowd control strategy” on the night of October 25th. A
primary factor was the extreme shortage of OPD personnel initially allocated to man the barricade blocking entry to the Plaza. While officers were assigned posts throughout downtown and police lines were continuously relocated in response to the march, there were reportedly only 28 officers positioned at the barricade at the time the march first approached the Plaza. Clearly the City had not anticipated the enormity of the response that would be incited by its dawn raid. While there were 602 officers mobilized that morning to evict roughly 150 sleeping Occupiers, only 28 officers were initially assigned to man the barricade blockading the Plaza later that evening. This vastly outnumbered police line could hardly hope to “hold ground” at the Plaza against nearly 2,000 advancing Occupiers without the deployment of extreme force. The report asserts that:

The confrontation that took place during the evening at FOP Park was the result of an aggressive plan by some of the protesters to “re-take” the Park. The Operations Section Chief was faced with a decision to either allow 1,500 to 2,000 protesters to retake FOP Park, or hold ground. At one point the Operations Section Chief related he was repeatedly informed by allied agencies that their officers were being pelted by rocks and missiles. The Operations Section Chief chose to hold ground and attempted to disperse the crowd from a stationary position, primarily utilizing allied agencies and deployment of less-lethal munitions and chemical agents. [Emphasis is mine.]

This conclusion makes abundantly clear that police strategy hinged on the decision of whether to allow Occupiers to “retake” the Plaza or to “hold ground,” and that the unwavering goal tasked upon OPD that night was to “contain” this space and prevent any possibility of re-occupation. It was this objective, not arresting projectile throwers nor dispersing a large crowd presenting a public safety threat, that necessitated the indiscriminate and repeated targeting of hundreds of unarmed Occupiers with chemical and “less lethal” weapons.

How are we to understand these police operations on the night of October 25th? Why would a police department tinkering on the brink of federal receivership and under enormous pressure to abide by mandated crowd control policies undertake such a recklessly violent and legally questionable strategy? Furthermore, how could a city that was already buried under the financial burden of litigation around police misconduct even consider such inevitably costly tactics? Oakland distinguishes itself nationally as spending exponentially more than other cities to settle lawsuits alleging police misconduct and civil rights violations. Between 1990 and 2013, $74 million was paid out to settle at least 417 lawsuits. A study published by the UCLA School of Law found that in just the four-year period between 2006 and 2010, Oakland spent $22 million to settle 55 cases against its police force comprised of 747 officers, while the Los Angeles Police Department (LAPD), a vastly larger agency with 9,461 officers, spent $48 million on 155 cases. In other words, while OPD is less than 1/10 the size of LAPD and holds jurisdiction over a comparatively minuscule area and population, it racked up almost half the expenditures for police
misconduct. San Diego, which has a police force that is almost three times larger than Oakland’s, paid out only $374,000 on 5 cases during the same period (less than 2% of Oakland’s expenditures). Within California, and the nation more generally, Oakland has long held the distinction of being desperately buried under the financial burden of dealing with allegations of misconduct and civil rights violations by its police force.

Given that the City was already so overwhelmed by these legal costs, which totaled over $13 million in just the previous year, why on earth would it even consider the kind of strategy it deployed on the night of October 25th (which has as of now already cost the city almost $6 million in settlements)? The answer cannot simply lie in the inherently corrupt or rogue nature of the Oakland Police Department which, after all, was simply executing the task it was assigned by city officials. Clearly OPD’s Operation Section Chief was himself following orders that demanded that his vastly outnumbered officers “hold ground” by any means necessary. As I’ve repeatedly asserted, we can only understand the state’s strategy that night in relation to, and as a direct response to the specific strategies and tactics of the movement. The overriding significance for the state of “holding ground” can only be understood as a response to the particular manner in which the movement in Oakland adopted the tactic of occupation. From the onset, this was a battle over space – a fierce struggle on the part of Occupiers to assert a claim to this space and directly challenge the state’s sovereignty within it. Occupation in this context wasn’t merely an effort to “assemble” in this public space but to thoroughly wrestle it from the grip of the state. State power could no longer regulate this “liberated” public space from which it had been exorcised. Nowhere else in the nation was the state’s sovereignty so thoroughly challenged. Thus the state’s single minded objective that night (even if it resulted in enormous backlash and years of costly litigation) was to reassert its sovereignty over this occupied space.

In other words, the state’s violently aggressive strategy on the night of October 25th was most fundamentally shaped by the particular nature of the tactic of occupation in Oakland, and the severity of the threat this posed to state sovereignty. Furthermore, it was shaped by the larger tactical constellation that characterized this moment of struggle and severely constrained the state’s strategic options. The movement’s strategy of occupation was accompanied by auxiliary tactics like horizontalism, non-cooperation, and an insistence on provoking open conflicts with the police which all came together to drastically limit the possibilities for state intervention. When all efforts at negotiation and soft management failed, the state’s only option for reasserting sovereignty over this occupied space was to resort to extreme force. And although OPD had assumed that deploying “less lethals” would easily “contain” the Plaza and disperse the crowd, the unrelenting refusal of Occupiers to abandon their encampment forced it to deploy these munitions repeatedly and extensively throughout night. In other words, Occupy Oakland lured a strategy of Naked Coercion out of the state that would come to be rendered a disastrous spectacle.
The Spectacle of Naked Coercion

It could be argued that this was in fact one of the strategic objectives of the movement that day – to force the state to show its naked coercive face. This is not to deny that the primary goal in peoples’ minds on October 25th was re-occupation. Clearly, the bold courage and resilience of the crowd that night reflects just how much was at stake for people. They were defending a space that held previously unimaginable political possibilities, and prefiguring this new world had been a profoundly life altering experience. The “Oakland Commune” (as the camp was sometimes called) represented the first real possibility for change, community and social justice – something worth standing up for, even against the onslaught of riot police, tear gas and rubber bullets. Both the extremity of the violence deployed by the state, and the stubborn resilience exhibited by the movement that night reflect the enormity of what was at stake for both sides.

But alongside this fierce determination to reclaim the camp, Occupiers held another strategic objective that night – to provoke an open confrontation with the state that forced it to show its true violent face for all the world to see. The state’s own strategy in executing its raid that morning attempted to minimize visibility by scheduling it in the pre-dawn hours when it could be completed under the cover of darkness, and executing it inside a massive police line that completely shielded the operation from media and public view. And the massive post-raid “clean-up” operation was completed by shortly after 9am as commuters had begun filtering back into downtown. But although the state’s strategy was to minimize visibility, Occupy’s response was to force a spectacle out of the state – to force it to repeat its violence in the light of day. So while the state completed its “clean up” operation by the time the downtown morning commute commenced, the reoccupation effort later that day forced it to deploy tear gas and riot police smack dab in the middle of the evening commute. And by prime-time, local, national and even international press were covering “the Battle of 14th & Broadway” live, disseminating war-like images that stunned the world. Every time the crowd returned to the front lines choking on tear gas and ducking bean bag rounds, they were pushing OPD to fire again…and again, for all the world to see. The state may have succeeded in its unflinching objective of “containing” the Plaza that night, but the movement succeeded in achieving something much more powerful – tearing off the state’s guise as guardian of “public safety” and revealing its true coercive face.

The reoccupation effort reflected a more general approach that characterized Occupy Oakland – a strategy of spectacularization that sought to bring a hyper-visibility to state violence. The tactic of provoking open confrontations with OPD also serves as an example of this strategic orientation. Another manifestation was the movement’s tactic of relying upon citizen journalism and social media as a means of bringing a hyper-visibility to all confrontations with the state. Much has been made of the significance of social media to Occupy and contemporary social movements. Without adopting the assumptions or claims of these arguments, or overstating the centrality of these technologies, it is nonetheless crucial to recognize the role they play in shaping the strategies of both state and movement actors. This is an issue I will return to in later chapters, discussing the ways that the state turned these forms of documentation to its advantage (particularly as a means of identifying and incriminating individuals for prosecution). Without yet delving too deeply into the pitfalls and complexity of this strategy, it can be said that forms of social media
played a determining role in the outcome of events on October 25th. They essentially ensured that images of police violence and brutality were captured and disseminated to the world.

Forms of citizen journalism were a crucial tactic for Occupy Oakland for a number of reasons. For one, they provided the only means of communicating with the outside world given the increasingly biased slant of mainstream media, which generally parroted the position of police and city officials. As such, many Occupiers routinely photographed, video-recorded, live-streamed, blogged, or tweeted about Occupy as a means of getting a more accurate presentation out to the public. Insofar as mainstream media largely served the interests of the state and capital, Occupy had to respond by generating its own social media. Forms of citizen journalism also served an important defensive function – aiming to, if not constrain, at least document the state’s violence against the movement.

Occupiers who committed themselves to this work spent hours tirelessly livestreaming to ensure that any and all incidences of police force and violence were captured. They incessantly tweeted, blogged and updated Facebook with accounts of the true facts on the ground. And in many cases, they placed themselves in serious danger of either injury or arrest in order to ensure that the public had a clear view of the state’s violence.

While these forms of social media documented countless incidences of police aggression, few rose to the level of what was captured on the night of October 25th. Given the generally “embedded” position of mainstream media whose reporters were stationed in safe areas that were peripheral to the battles that raged on the street, OO’s live-streamers and citizen journalists, many of whom placed themselves in serious physical danger that night to provide some semblance of defense for others, became crucial actors shaping how events would unfold. They captured scenes that the news agencies failed to, and quickly became sources that mainstream media was forced to rely upon (during this period television and print news is flooded with images and footage captured by citizen journalists). We can also assume that this plethora of citizen journalism played a role in forcing mainstream media to present a slightly more accurate and thorough presentation than would have been the case otherwise. There is no way that media outlets could compete with this torrent of citizen journalism, much less maintain any semblance of legitimacy, if they failed to report some kind of accurate presentation of what was happening that night. While the movement as a whole, through its unrelenting reoccupation effort, had provoked the state into this spectacular display of violence, it was these citizen journalists, often armed with little more than their iPads or cellphones, who forced mainstream media to display that spectacle for all the world to see.

The images and footage captured that night had a profoundly shocking impact: police in full riot gear, their guns drawn and pointed at unarmed protestors; clouds of teargas blanketing downtown streets; injured and scared protestors frantically running to avoid being hit by “less lethal” projectiles. One of the more substantial contributions by mainstream media that night was the aerial footage captured by their helicopters, which presented a terrifying bird’s eye view of downtown streets filled with thousands of protesters. The viewer watches as “flash bang” explosions go off in their midst and hundreds of people swarm away in every direction. The images were ghastly. The nation
was appalled at the militarized character of the police operations they were watching live on their television screens. And this was all occurring during a time (the “Arab Spring”) when the U.S. government was loudly chastising Arab “regimes” like Egypt and Syria for unleashing their militaries on their own people who were simply exercising democratic freedoms of public assembly and protest. And here was the purportedly “democratic” U.S., right in Oakland, California, deploying extreme militarized force against its own unarmed citizens. The hypocrisy was palpable. The state’s violence was undeniable.

The Achilles Heel of Naked Coercion: The Spectacular (Mis)Targeting of Scott Olsen

Of all the violent scenes captured that night, one quickly rose to prominence. Bloody images of Scott Olsen, a young White veteran who was critically shot in the head with a police projectile, went immediately viral and ignited national outrage. Multiple sources captured video footage of Olsen standing directly in front of the police barricade along with another veteran, Josh Shepard, as “flashbang” explosions and tear gas are being deployed on the crowd. Olsen is wearing military fatigues while Shepard is dressed in full Navy uniform and waving a flag with the name of their organization, “Veterans for Peace,” emblazoned across it. At this time Olsen was positioned only 15 feet from the line of police officers deploying “less lethal” munitions into the crowd. As multiple explosions go off and people scatter and flee from the area, Olsen and Shepard remain standing fixed in their positions. Seconds later, the camera zooms in on Olsen who is now laying prostrate on the ground. It is later confirmed that Olsen was shot in the head at close range (approximately 15 feet) with a Flexible Baton Round. More commonly referred to as “beanbags”, the City describes them as "cloth-enclosed, lead-filled round[s] fired from a [12 gauge] shotgun.”

Within seconds of Olsen falling to the ground, around 20 protestors gather around him trying to provide aid, at which point video footage clearly shows an officer throwing what is later confirmed to be a CS Blast Grenade directly in their midst. (The grenade exploded so close to Olsen’s body that he suffered burns on his shoulder.) The targeted crowd scrambles away from Olsen who remains lying on the ground until a short while later when a smaller group returns to pick up his body and carry him away. The scene continues to be documented as footage captures the bloody face of Olsen being carried away as his rescuers shout “he’s been shot!” and repeatedly scream for medical assistance. Without any help from police who continue deploying “less lethal” munitions on the crowd, protestors are eventually able to get Olsen out of the area and rushed to the hospital where he would remain in critical condition, having suffered a fractured skull, a broken neck vertebrae, and brain hemorrhaging that was so severe it was uncertain if he would suffer irreparable brain damage, or even whether he would survive. While there were numerous police inflicted injuries that evening, the shooting of Scott Olsen was distinguished by virtue of how thoroughly it was captured by both citizen journalists and mainstream media. Cameras were undoubtedly focused upon Olsen
and Shepard considering the juicy media appeal of their images - fully uniformed U.S. veterans, bravely placing their bodies on the frontlines between riot police and the unarmed crowd being targeted with military grade weapons. These circumstances ensured that the shooting of Scott Olsen was captured and soon virally disseminated.

Yet despite the undeniable nature of this footage, the state would continue to duck responsibility, deny obvious facts, and obscure any process of accountability for months to come. It took a year before Chief Jordan would finally confirm that it was one of his police officers who shot Olsen in the head. (All kinds of allegations were made about injuries that evening potentially being the result of projectiles thrown by protestors). OPD was also eventually forced to admit that the specific weapon used was a Flexible Baton Round or “beanbag”. This became such a crucial point of contestation because Oakland’s crowd control policy imposes strict guidelines on the use of these kinds of Specialty Impact Munitions (SIM). They are categorized as “direct fired” munitions, which are only authorized for use against a specific target and can never be deployed for general “crowd management, crowd control or crowd dispersal.” Furthermore, they can only be used in cases where the specific target is engaging in conduct that poses an “immediate risk to the lives or safety of other persons.” Clearly this was not the case with Scott Olsen who was shown (from multiple directions by multiple sources) to have been standing still when, and long before, he was shot. It is also legally prohibited that these munitions ever be used to target the head or neck region, as was the case with Olsen, except in situations where “deadly force would be justified.” Furthermore, the Frasier Report came to the damning conclusion that OPD had failed to respond and provide any medical assistance to Olsen after he was shot, again violating its crowd control policy. The fact that all officers at the scene claimed not to have seen Olsen, when he was laying clearly visible on the ground bleeding from the head no farther than 15 feet from them, is dismissed by the Frasier Report as “unsettling and not believable.”

It took a year of enormous public and legal pressure before OPD and the City of Oakland finally admitted what extensive documented footage made clearly evident. There were two major factors that enabled the state to obscure facts and elude accountability. The first was OPD’s failure to maintain mandated munition logs or virtually any accounting at all of the weapons issued or deployed on the night of October 25th. Neither the Department’s officers nor their supervisors filled out any records indicating what munitions were issued that evening. Furthermore, the required reporting of “use of force” incidences were clearly lacking. For example, there were only eight reported incidences of Flexible Baton Rounds having been deployed. But given that numerous Occupiers, aside from Olsen, had documented wounds from these lead filled “beanbags”, it seems highly implausible that so much injury could have been caused by the deployment of just eight rounds. There was also a great deal of debate as to whether OPD had deployed “Flash-Bang type grenades” which emit a bright flash, accompanied by a deafening loud bang, that has a momentary blinding impact. The deployment of these munitions results in disrupting the sensory capacities of the crowd and generally causes panic as people blindly flee in every direction. Investigations eventually forced OPD to admit having used CS Blast Rubber Ball Grenades. While this munition is not officially categorized as a “flash-bang” device, it has
impacts described as being “similar in nature to the flash-sound distraction type” in that it emits a bright flash and loud explosive sound alongside the chemical gas it is intended to deliver.272 OPD was eventually forced to admit that one of its officers had thrown a CS Blast Grenades directly into the crowd attempting to aid Olsen.273

The second factor that enabled OPD to duck accountability for so long was its improper use of Mutual Aid forces in manner that ultimately obscured which law enforcement agencies were actually involved in any given incident of “use of force.” The Mutual Aid System is a state-wide law enforcement structure that facilitates assistance between neighboring law enforcement agencies in order to manage large-scale events or respond to emergencies (including “civil unrest”).274 OPD had called in 14 other law enforcement agencies to assist with its operations throughout the day and night of October 25th. When allied law enforcement agencies are mobilized, they are legally bound to function under the mission concept of the agency they are aiding (in this case OPD), rather than being allowed to operate independently or according to their own jurisdictional guidelines. Most importantly, they can never be deployed “even under extreme conditions, to missions where comingling with OPD tactical resources could occur[.].”275 “Tactical resources” refer to units like OPD’s “Tango Teams” which are authorized to deploy “less lethal” force. “Comingling” in these contexts where extreme force is deployed is strictly restricted in order to ensure both that these deployments abide by the guidelines governing that jurisdiction and that there is a clear line of accountability. Thus, Mutual Aid resources are generally assigned to limited supporting roles like “infrastructure protection, custody and control of arrestees, perimeter security, and fixed post positions, etc.”276 However the Frasier Report revealed that, due to the shortage of OPD personnel “to defend FOP Park” on the night of October 25th, “Mutual Aid resources were inter-mixed with OPD tactical resources at locations where multiple use of force applications occurred.”277 The report concludes that “several agencies were interspersed with OPD in defending FOP Park, causing accountability for inflicting injury to protesters to be severely hampered.”278

Although the City was eventually forced to admit culpability in the case of Scott Olsen, it was able to elude responsibility for so long because of the lack of munition logs and the improper use of Mutual Aid. This resulted in severely obstructing the accountability process and obscuring the violence deployed by the state that night. Although the OPD officer who shot Scott Olsen in the head was never publicly identified, the officer who subsequently targeted the crowd attempting to aid him with a CS Blast Grenade was eventually identified as Robert Roche. (Roche had previously been involved in three fatal police shootings in Oakland, none of which resulted in any disciplinary action.279)

Although Roche was initially terminated from the Department, this was later successfully challenged by the Oakland Police Officers Association (OPD’s union) which appealed the decision.280 The arbitrator of the case concluded that Roche had simply been following orders from his commanding officers,281 and thus overturned his termination and ordered him reinstated with back pay. 282 Roche’s attorney argued that his client had been scapegoated after the City suffered “international embarrassment,” referring to him as “the soap the OPD commanders used to wash themselves clean of their mistakes.”283 The President of OPD’s union went even further, arguing that Roche “is a phenomenal police officer, and he was scapegoated like all the other officers from the Occupy experience.”284
The union was furious at what it perceived as the City’s colossal failures in its planning for Occupy protests and its subsequent efforts to lay blame on rank and file officers.\textsuperscript{285}

In a sense, Roche’s attorney and the police union are right – insofar as disciplinary action only focused upon rank and file officers, and not their commanding supervisors nor the city administrators who determined the overriding objectives of police operations in the first place, culpability was narrowly defined in the limited terms of individual police “misconduct”. While this approach presents the problem as being that of a “few bad apples” like Roche, the reality was that officers were in fact acting in line with the commands of their superiors. Roche was part of a grossly outnumbered police line that was tasked with the unflinching objective of “holding ground” against 2000 advancing Occupiers intent on reclaiming the Plaza. This was a police line that was armed to the teeth with military grade weapons like CS Blast Grenades, Flexible Baton Rounds, and a seemingly never-ending supply of chemical gas. And not only were they armed with this arsenal of “less lethal” weapons, but this was done with virtually no accounting of what munitions were issued, what was deployed, when and by whom. In other words, the deployment of police force that night was done under the cover of a lack of organizational accounting, and later a bureaucratic obfuscation, that served to thoroughly conceal and mystify the violence involved. Whether or not this was the intended message to officers, what is clear is that they were heavily and unaccountably armed and then left to face off with a massive crowd against which they were under unflinching orders to “hold ground”. Clearly, this was not simply a case of individual “misconduct” by Roche or other officers, but rather the outcome of the overall strategy of police operations that night, which involved the extensive and indiscriminately crude deployment of extreme force.

Scott Olsen was shot in the head on October 25\textsuperscript{th}, not because some officer engaged in rogue “misconduct”, but because OPD’s operations involved the unregulated and \textit{indiscriminate} deployment of “less lethals” against a large crowd. But the fact that this untargeted force resulted in the critical injuring of Scott Olsen was a stroke of horrible luck for OPD and the City. Scott Olsen represented the worst possible victim that could have emerged, one that was most perfectly poised to evoke empathy from the American public. This was a young 24 year old White man – and not one of those “dirty hippies” or “violent anarchists” -- but a former Marine who had served his country in two tours in Iraq. He was a professional, middle class, educated man with a tech job as a systems administrator in a San Francisco software firm.\textsuperscript{286} This was the man OPD had shot in the head while he stood in silent protest with his fellow Veterans for Peace. While poor Black and Brown youth are executed by police on a daily basis in this country, the injuring of Scott Olsen was a crime that outraged the American public. The press droned on and on about how Scott had bravely survived two tours in Iraq only to come home and be shot in the head by OPD. Accountability was demanded. Protests and vigils were held, and investigations were launched. The City eventually settled a federal lawsuit by agreeing to pay Olsen $4.5 million for his injuries and the resulting permanent brain damage he suffered.\textsuperscript{287}

It was the indiscriminate nature of police violence on October 25\textsuperscript{th} that resulted in the (mis)targeting of someone like Scott Olsen. And Olsen wasn’t the only such victim that night. Images of a woman in a wheelchair caught trapped in a haze of teargas also went viral.\textsuperscript{288} These spectacles of “good” “peaceful” demonstrators being targeted with military
grade munitions made the state’s claim that it acted to ensure “public safety” appear ridiculous. Such untargeted and indiscriminate deployment of violence could not conceivably be defended in such a manner.

Since settling the lawsuit, Olsen and his attorneys have launched a campaign to once again reform OPD policy on the deployment of “less lethal” munitions. The campaign specifically problematizes the kind of indiscriminate or untargeted deployment of force that occurred on October 25th. In particular, they call for the need to regulate how various “less lethal” weapons are used in conjunction with each other. In Olsen’s case, he was hit by a Flexible Baton Round, a munition intended for targeted impact against a specific individual that is suspected of posing a safety risk. But this target specific munition was deployed at the same time as untargeted munitions like those that emit tear gas and “flash bangs”, which inevitably result in panic and people running blindly in all directions. OPD commanders issued the authorization for officers to shoot their targeted impact munitions into the crowd while tear gas and flashbangs were being simultaneously deployed. 18 seconds after that authorization was given, Scott Olsen was shot in the head. Olsen describes the situation:

The beanbags and the flashbangs were both key in what happened to me. They used the flashbangs, and they are designed to cause panic. They are designed to cause people to scatter. Now, you can’t safely fire beanbags into a crowd after you deploy those flashbangs. You can’t hit the target, because people are going to be running.289 [Emphasis is mine.]

Olsen’s words, “[y]ou can’t hit the target,” precisely capture the underlying weakness of police operations on the night of October 25th, and more generally, the Achilles heel of the state’s strategy in this first “moment” of struggle. The state was seeking to repress a movement that presented itself as a large undifferentiated mass – it faced off against thousands of Occupiers who formed a diverse crowd that included everyone from the homeless to retired teachers, from marginalized Black and Brown youth to former Marines. The state’s overriding objective was to “hold ground” and “contain” the Plaza against this amorphous crowd. Therefore, its strategy for doing so was to deploy indiscriminate violence – since after all, it could not yet discriminate. In this early period, the state is faced with a movement about which it knows little. It can’t pinpoint leaders, there is no identifiable organizational structure to target, and the crowds it encounters are vast and unprecedented in their diversity. State power has no knowledge of the movement it seeks to repress, therefore it resorts to tactics that have no identifiable target beyond the crowd itself – violent raids, mass arrests, or the indiscriminate deployment of “less lethal” weapons like tear gas and “flash bang” explosives. Because the state cannot yet individuate, it clumsily and violently aims at the crowd as a whole. The state’s strategy of Naked Coercion in this “moment” is reactive, untargeted and highly vulnerable to spectacularization.
The weakness of this strategy was made evident with the shooting of Scott Olsen, where
the reactive and untargeted deployment of force resulted in (mis)targeting the worst
possible victim, one whose injuring would incite massive public outrage. The state would
soon learn this lesson well. And state strategies would evolve to begin individuating the
movement and identifying more acceptable targets. Never again would it make the mistake
of (mis)targeting a Scott Olsen. New targets would emerge, now identifiable as “violent
protestors,” “outside agitators,” “criminal elements” or “anarchists”. New targets, who by
virtue of their race and class, history of imprisonment or homelessness would evoke little
empathy from the mainstream public. In other words, state power would cease to be so
clumsily reactive, indiscriminate and prone to spectacularization. But while this evolution
was imminent, the immediate impact of the spectacle of October 25th was to incite a
backlash of public outrage so intense that it would effectively paralyze the state – thus
creating vast new possibilities for the movement.

Backlash: State Fragmentation and Paralysis

The morning after October 25th witnessed a frenzy of national and international media
coverage that fueled public outrage at the violent and militarized nature of OPD’s
operations. The Mayor and City Administrator’s phone lines were clogged with thousands
of calls expressing that outrage, and OPD received the largest influx of complaints in its
history. The backlash was so intense that it served to exponentially increase public
support for the movement. Celebrities made highly publicized expressions of solidarity –
Michael Moore flew in to speak at the camp and rapper Lupe Fiasco donated thousands of
dollars for the purchase of new tents. Donations and resources flooded in from across the
nation, including a $100,000 from Occupy Wall Street, and countless local and national
organizations mobilized support. The California Nurses Association, for example, set up a
First Aid tent for OO, with one member asserting that the “incident [October 25th]
solidified our resolve even further to be out here in a medical capacity.”

The backlash from October 25th also led to a national discussion that fundamentally
questioned the state’s justifications for its violence. Mainstream media outlets and popular
shows like John Stewart’s Daily Show and the Colbert Report ridiculed the state’s
justifications for the police operations that night. If the “public safety” concerns were
issues like graffiti, public sanitation or the exacerbation of a rodent problem, as the state
suggested, how could it possibly respond to such petty threats by deploying military grade
weapons against a large unarmed crowd? Ghastly images of tear gas and injured protestors
made the state’s claim of acting as guardian of “public safety” appear ludicrous. As OPD
would itself soon be forced to acknowledge, it had a serious public relations problem
“shaped by written, visual and electronic images of helmeted police, confrontations with
Occupy protesters, political controversy and the inability to comply with the Negotiated
Settlement Agreement[.]”
But the most significant outcome of the backlash of October 25th was that it served to so powerfully divide and internally fragment the state that it momentarily paralyzed it. The Mayor, the City Administrator’s Office, and City Council all struggled to distance themselves from OPD and shift blame for the police operations that night. Mayor Quan issued a public statement to Occupy Oakland claiming “I am deeply saddened by the outcome on Tuesday. It was not what anyone hoped for, ultimately it was my responsibility, and I apologize for what happened.” While she simultaneously distanced herself by claiming that she neither directed the eviction, nor was even aware of the subsequent clashes with police because she was flying across the country at the time. “Before I got in the plane, things seemed pretty peaceful” she said. While Quan struggled to distance herself from OPD’s operation, she faced similar distancing from within her own administration. The Mayor’s Legal Advisor, Dan Siegel, made a highly publicized speech to Occupy Oakland in which he reported that he had “strongly” advised Quan against evicting the encampment, and that in his “professional opinion” the City’s actions later that evening had not been legal. Meanwhile City Council members publicly expressed their criticism, claiming to have been sidelined in the planning and execution of police operations. Councilmember Jane Brunner told reporters that they were not briefed on plans for the eviction, nor the deployment of “less lethal” weapons until after the fact. “That’s what[’s] frustrating to me as a councilmember. I should have been briefed by the City Administration and the OPD…They should have included us in that decision.” The state, from the Mayor’s Office to the City Council, was denouncing and distancing itself from its police force. Furthermore, in defending the role of their own agencies, they all shifted blame towards each other. OPD’s union was furious at what it perceived as its officers being scapegoated for the outcome of an operation they had been assigned to execute by city officials who were now ducking blame.

**Occupy Oakland Strikes Again: The Political Opportunity of Spectacular Backlash**

**The Second Encampment**

The result of this internal fragmentation the “morning after” October 25th was a virtual paralysis of the state. While city officials were busy defending themselves and shifting blame, they could do little to contain the massive outpouring of protest in the streets of Oakland, and they definitely didn’t dare to deploy their police force in any visible capacity. On the afternoon of October 26th, an estimated 3000 Occupiers returned to reclaim the Plaza. As they marched through downtown streets, police officers were posted at a few central locations (the police department, jail, freeway entrances) and police cars followed the march from a distance on parallel side streets, but they never directly interfered or interacted with marchers. And once the march reached the Plaza, the massive crowd swelling far into neighboring streets, there was no visible police presence there at all. It was an almost eerie scene in the aftermath of the militarized police line Occupiers had faced there the night before. The state was completely absent. The only sign of any lingering state effort to “contain” the Plaza was a barricade of tall metal fencing that had been quickly erected that morning by Public Works in a futile attempt to prevent entry. In a
collective display of defiance, Occupiers toppled and dismantled the fence, enabling the crowd to flood into the Plaza for what would turn out to be Occupy Oakland’s largest general assembly ever.298 The next morning, Public Works employees would return to find their fencing had been turned into a giant sized art installation directly in front of City Hall. The paralysis of the state had created unprecedented possibilities for action.

After the crowd reoccupied the Plaza that night, it proceeded to hold a general assembly that involved the participation of almost three thousand people and lasted well over four hours. The success of the reoccupation effort led to a proposal for a second major advance – a city wide general strike, to be accompanied by a blockade of the Port of Oakland, within just one week. Over 1600 votes were counted and the proposal was passed by a 96.9% consensus.299 The proposed action was so ambitious (the last general strike in US history having been in 1946) that many questioned whether OO could possibly pull it off, especially in such limited time. But the movement was rejuvenated by the complete success of its reoccupation – state sovereignty had never been so visibly absent. As that historic GA proceeded, a single tent was raised, while Occupiers cautiously awaited a police response that never came. By the next evening 15 tents had sprung back up and the kitchen was fully operating again. Within a week the camp had regrown to over a hundred tents, and by the time the City finally responded with its second raid on November 14th, they had multiplied to well over 160. The numbers of people flocking there daily also significantly increased during the second encampment. After having deployed atrocious levels of violence to “contain” the Plaza, the state was faced with the reality that the occupation had not only survived, it had grown.

The re-occupation further exacerbated divisions within the state. Immediately after the raid Mayor Quan had proclaimed that her office would work to restore the Plaza as a “place for free speech and peaceful assembly,” but that overnight “camping” would not be allowed.300 Quan was taking the position of supporting OO’s right to occupy as long as occupation entailed engaging in “free speech and peaceful assembly,” but drawing the line when this morphed into “camping” (or “lodging”). However, her administration could do little to enforce this distinction at the moment given that it was terrified of deploying its police force in any visible manner. Who would actually prevent the re-pitching of tents and the return of “camping”? In other words, contrary to her public pronouncements, the Mayor’s office did nothing to prevent reoccupation of the very space it had just ordered its police force to violently evict.

OPD was furious. Not only had it been directed to execute the operations of October 25th and then scapegoated for them, but now it was faced with an even larger, more disruptive occupation while its hands were being tied by local state paralysis. Exactly one week after the raid, on the morning of November 1st, OPD’s union released an “Open letter to the citizens of Oakland.” The statement proclaimed,

As your police officers, we are confused. On Tuesday, October 25th, we were ordered by Mayor Quan to clear out the encampments at Frank Ogawa Plaza and to keep protesters out of the Plaza...Then, on Wednesday,
October 26th, the Mayor allowed protesters back in – to camp out at the very place they were evacuated from the day before.\textsuperscript{301}

The statement goes on to criticize the Mayor’s Administration for issuing a memo to city employees giving them permission to take the day off for Occupy Oakland’s planned general strike. “That’s hundreds of City workers encouraged to take off work to participate in the protest against ‘the establishment.’ But aren’t the Mayor and her Administration part of the establishment they are paying City employees to protest? Is it the City’s intention to have City employees on both sides of a skirmish line?” The statement ends by asserting “[i]t is all very confusing to us” and asking citizens of Oakland to demand leadership “who will step up and lead – not send mixed messages.”\textsuperscript{302} It was a scathing attack on the Mayor and her administration, one that very publicly aired the state’s internal divisions.

The November 2\textsuperscript{nd} General Strike and Port Shutdown

It was in this context of state fragmentation and paralysis that the very next day, on November 2\textsuperscript{nd}, Occupy Oakland undertook one of the largest and most successful political mobilizations in contemporary US history. The turnout for the General Strike exceeded all expectations. Estimates for the day range up to 100,000 participants. The streets were completely flooded, most businesses closed, and the movement effectively shut down downtown Oakland for the day. The city’s major center of commerce and local politics was completely claimed and transformed into a space of celebratory resistance. Music blared as people danced in the street, speeches emanated from every corner, collective art projects were created, and food and drink were freely passed around. It was a day that birthed entirely new political possibilities for all who participated in it. And it gave new life to the identity of the movement – Occupy Oakland physically manifested itself as a sea of tens of thousands of people who succeeded in collectively reclaiming their city.

While the movement’s primary tactic that day was a general strike, this was accompanied by a wide range of auxiliary tactics that were highly diverse. This diversity reflected the vastness of the movement at that moment – tens of thousands of Occupiers and supporters who came from different racial and socioeconomic backgrounds and held widely divergent political views. It was also a reflection of OO’s “Diversity of Tactics” position which encouraged support for tactics across this spectrum. In fact the original proposal passed by OO’s General Assembly called for what it referred to as a city wide “General Strike and Day of Action.” The proposal proclaimed that “[w]hile we are calling for a general strike, we are also calling for much more. People who organize out of their neighborhoods, schools, community organizations, affinity groups, workplaces and families are encouraged to self organize in a way that allows them to participate in shutting down the city in whatever manner they are comfortable with and capable of.”\textsuperscript{303} [Emphasis is mine.]
Occupy Oakland was calling for a day of mass autonomous actions utilizing varied tactical strategies.

This call for autonomous actions and tactical diversity turned out to exceed all expectations. It is literally impossible to document the hundreds of actions that were undertaken that day or to possibly capture their brilliant diversity, ranging from highly organized to spontaneously creative. Local unions came out in full force, with workers striking and pouring into the streets in union led marches. SEIU Local 1021, which represents 1,750 City employees, encouraged its members to take leaves of absence for the day and the Teachers union (Executive Board of the Oakland Educational Associations) endorsed the Day of Action and held a massive rally. Students and teachers at five local elementary schools up for closure as a result of budget cuts mobilized in mass walk-outs that filled the streets of downtown with thousands of young people. Several thousand UC Berkeley students, faculty and staff rallied and proceeded to march for miles from the university to downtown Oakland. All of these groups utilized the opportunity to self-organize around issues that most concerned them, whether contract negotiations, school closures, or tuition increases.

There were thousands of people who adopted reformist strategies that sought to seize the opportunity to pressure for reforms within the system. These groups utilized auxiliary tactics like undertaking voter registration, gathering signatures for ballot measures, or launching a recall campaign against Mayor Jean Quan. And there were more radical groups that engaged in auxiliary tactics oriented around a strategy of direct action, including disruption, forced closure of businesses and targeted property destruction. In particular, a large anarchist organized “Anti-capitalist March” took over downtown streets, graffitied or broke the windows of corporate banks, and forced banks and other corporations to close down for the day. There were also many who utilized a wide range of creative and artistic tactics: musical performances; dance parties; flash mobs; graffiti; art installations; and clown performances to name just a few. Others adopted various prefigurative tactics that sought to manifest alternatives to the capitalist market: mobile kitchens were set up and mass feedings were organized, people passed out free water and snacks, while others freely offered their skills and services (whether massages, face painting or performances). Members of Unite-here (a union representing local restaurant workers) organized a giant public feast, and local musicians ensured that every street corner vibrated with sound.

OO’s “Day of Action” concluded with a wildly successful effort to blockade the Port of Oakland. The strategy was to use the tactic of community pickets in order to block entrances and prevent access by workers or vehicles, thus effectively shutting down Port operations. OO’s General Assembly had called for the blockade as a means of bringing visibility to what it called “Wall Street on the Waterfront.” The idea was that in the context of Oakland, the Port represented a center of global capitalism much like Wall Street. Furthermore, the Port (although leased out to corporate management) was fundamentally a public resource (or “commons”). The blockade was intended both to disrupt the workings of global capital and to illustrate that the Port ultimately belonged to the people. Finally, it was intended as an act of solidarity with port workers represented by ILWU (International Longshore Warehouse Union) who at the time were locked in fierce contract negotiations with EGT (a consortium of the St. Louis based logistics firm Bunge International, the
Japanese firm Itochu International, Inc. and the South Korean firm STX Pan Ocean) which holds enormous power at ports throughout the West Coast. OO’s organizing work in preparation for the blockade involved extensive outreach and negotiations with the ILWU, which was legally prevented from officially endorsing the action but, nonetheless, issued public statements making it explicitly clear that its members would not cross a community picket line.

In the early afternoon, tens of thousands of people descended upon the Port in a massive march that seemed to have no end. At 6:15pm officials announced that all maritime operations had been effectively shut down at the Port of Oakland. Thousand people remained into the night as the tactic of a blockade slowly morphed into that of an occupation. Beyond the goal of halting commerce, the movement had successfully reclaimed this public “commons”, turning a center of global capitalism into a space of public celebration with music, dancing and revelry. It wasn’t until 11am the next day that the Port was finally reopened for business. The Manager of Media and Public Relations for the Port reported that the economic impact of the blockade was estimated at around $4 million in lost revenue.

OO’s “General Strike and Day of Action” turned out to be successful beyond all expectations. The movement had succeeded in undertaking the first general strike in the US in over 60 years, as well as effectively shutting down the fifth busiest port in the nation. The magnitude of this success reflects the window of political opportunity created by the backlash of October 25th. It had fueled such a swelling of public support for the movement that almost 100,000 people flooded into the streets. It also resulted in fragmenting and paralyzing the state, preventing it from even attempting to contain or police the outpouring of protest (not daring to deploy its police force and instead inviting state workers to join in). This temporary state paralysis meant that OO enjoyed a full week of a camp that was generally free of police or state intervention – a thoroughly liberated and occupied public space that allowed for unprecedented networking, organizing and mobilizing. It was the occupation that provided the movement with the necessary ground to launch these advances. And the enormous success of the General Strike and Port Shutdown made one thing vividly clear: the state’s failure to dislodge the encampment had enabled Occupy Oakland to pose a level threat that was previously unimaginable.

*The “Violence” of Nighttime “Agitators” & the Discursive Targeting of Police Force*

Although there was virtually no police presence or state intervention throughout the daytime hours of the General Strike, the situation changed dramatically once the sun set that evening. Police reported no arrests at all up until 9pm, but by the end of the night 103 people had been arrested. At 10:30pm the City’s Emergency Operations Center issued a press release claiming that OPD had identified a “small group of anarchists that are roaming through the crowds.” The City Administrator’s Office reported to the press that the demonstrations throughout the day were “primarily peaceful” and “consisted of mostly marches, rallies, and music performances…However, after midnight, a number of isolated
incidents occurred throughout the area, including property vandalism, lighting fires, and police assaults.” From the minute the sun went down, City officials began weaving a story about a “generally peaceful” day that was stained by the “violence” of “agitators” who took over at night once the majority of good “nonviolent” protestors had gone home. Mainstream media fully adopted the state’s presentation in its coverage. The next morning, Oakland North lead with a piece entitled “After Midnight, Conflict Erupts between Protestors and Police,” asserting that “[a] generally peaceful day of protests…ended with clouds of tear gas, burning barricades and loud banging sounds.”

It is quite likely that the state was not only prepared to utilize police force in the evening hours against any kind of lingering protestors presence in the streets, but that this was in fact part of its larger strategy for undermining OO’s General Strike and Day of Action. However, it was one particular action that night that served to incite an immediate and massive police response – an autonomous action utilizing the tactic of a small scale occupation. The targeted site, the Travelers’ Building, was a city owned property within blocks of the Plaza, which formerly housed a program providing assistance for the homeless. But the building had sat vacant ever since the program had been closed down as part of City budget cuts. This occupation effort was oriented around a strategy of direct action; rather than demanding that city officials refund the program, the group instead proceeded to take over the building with the aim of directly providing shelter and services to the community. Their position was that if the City was willing to board up a publicly owned building rather than allow it to serve as shelter, while thousands of Oaklanders slept in the streets, then the people should simply retake this public space and open it up for public use. In the early evening, a large group of several hundred Occupiers converged around the building, occupied it, and proceeded to immediately begin setting up a library and other services.

The police response to this action was massive and immediate. While OPD had been visibly absent all day, this small occupation effort brought them out in full force. 47 officers in riot gear descended from vans and began encircling the area. Some Occupiers attempted to defend the space by building barricades with nearby dumpsters and wooden pallets or igniting small fires in metal trash bins. Within minutes of creating a cordon, OPD gave a dispersal order that warned of arrest and the use of chemical agents. Shortly after, tear gas was deployed. Journalists on the scene also reported loud explosions and flashes of light, indicating the simultaneous deployment of “flash bang” type munitions. Numerous arrests were made and Occupiers were chased by police lines into neighboring streets.

Riot police continued to chase and encircle protestors in surrounding areas of downtown throughout the night in what turned out to be hours of intense confrontations. The types and extent of police force deployed that night were quite similar to the operations of October 25th. A civil rights lawsuit filed by the National Lawyers’ Guild would later confirm that OPD utilized “‘beanbag’ rounds, explosive teargas filled blast grenades, and other unconstitutional force and arrests against protestors.” There were also numerous reported injuries that night, at least four of which required hospitalization. Among those injured was Scott Campbell, a journalist who was shot in the upper thigh with a “beanbag” round (the same munition that critically injured Scott Olsen) while he was filming a police line. Like Olsen, Campbell was shot in an area of the body that is prohibited from being
targeted unless lethal force is warranted. Eventually, Scott Campbell and 11 others who were injured on the nights of October 25th and November 2nd were awarded a $1.17 million settlement from the City of Oakland for the injuries they suffered. The settlement also mandated that OPD’s crowd control policy would be once again placed under federal court supervision for another four years, with the possibility of being extended up to seven years if any further violations occurred.  

If we compare the police operations on the nights of October 25th and November 2nd, we find that the types of police force used, the manner in which they were deployed, and the legal repercussions they had were actually quite similar. But, nonetheless, they resulted in radically different outcomes in terms of public opinion. While October 25th incited massive public outrage, there was no such backlash to November 2nd. In fact, it actually resulted in regaining a shred of legitimacy for OPD and the City, while beginning to chip away at public support for the movement. Why? If there was one crucial difference between those two police operations, it was not in the actual deployment of force, but rather in its discursive presentation. In the case of October 25th, police violence appeared indiscriminate – firing upon anyone in the crowd, even a “peaceful protester” like Scott Olsen. In contrast, on November 2 the deployment of police force was now accompanied by a state discursive campaign that presented that force as being highly targeted – a story of a “peaceful” day stained by the “violence” of nighttime “agitators”. While the majority of good “peaceful” protestors had witnessed no police force, nor even police presence that day, it was the “violent agitators” who came out at night that had necessitated police action.

The occupation of the Travelers’ Building figured heavily into the state’s discursive attack. The City released an official statement claiming that “Oakland Police responded to a late night call that protestors had broken into and occupied a downtown building and set several simultaneous fires…The protestors began hurling rocks, explosives, bottles, and flaming objects at responding officers.” The City not only justified police operations as being a response to the “violence” of late night “agitators”, but it also presented that “violence” as being senseless – just the random setting of fires and hurling of explosives with no obvious objective. The statement makes no mention that the occupied building is public property owned by the City, suggesting that Occupiers had now turned to expropriating private property. Referring to it only as “a downtown building” the statement was also silent on the details of its history – that it had housed a homeless aid program which had been scrapped by the city and had long sat vacant. This account served to thoroughly obscure the political nature of the action and present an image of a handful of “agitators” engaging in senseless “violence” and the expropriation of random private property. The media enthusiastically disseminated the state’s account, parroting police claims that protestors “threw concrete chunks, metal pipes, lit roman candles and molotov cocktails…sparking bonfires that leapt as high as 15 feet in the air.” The sensationalist reporting seemed to all hinge on the same theme – that a victorious and “peaceful” daytime general strike had descended into “violence” when “[a]fter many strikers went home, more militant protesters took over[…]” As the New York Post put it, “[a] protest that shut down the Port of Oakland to show the broadening reach of the Occupy Wall Street movement ended in violence when police in riot gear arrested dozens of protesters overnight who
broke into a vacant building, shattered downtown windows, sprayed graffiti and set blazes along the way.”316

Given that “violence” figured so heavily in the state’s account of November 2nd, it is important to take a minute and consider exactly what constituted that “violence”. None of the injuries reported that night were caused by protestors. They were all a result of the deployment of police force (whether “beanbag” rounds, beatings or tear gas inhalation). So then what were all these incidences of “violence” that kept being emphasized by both state and media accounts? Acts of targeted property destruction like graffiti, vandalism, or broken windows. The City Administrator’s Office reported that a number of businesses had either been sprayed with graffiti or suffered vandalism like broken windows. But while state officials emphasized the extent of this property destruction, they failed to mention that the vast majority of it actually occurred during the daytime. They were also silent on the fact that this property destruction was exclusively targeted at large corporations (particularly banks like Chase, Wells Fargo and Bank of America) and police property (two windows and a glass door of OPD’s recruitment office were smashed and the words “Fuck you pigs” was spray painted on the sidewalk in front of the building). The state’s presentation not only conflated property destruction with “violence”, but it also presented that property destruction as senseless by obscuring the targets and political nature of the tactic. These facts were left out of state and media accounts in favor of vague references to “violence” that presented an image of roaming bands of Occupiers randomly inflicting destruction in their midst.

The state’s discursive strategy was so successful, and so thoroughly disseminated by the media, that the next morning one of the single most successful political mobilizations in contemporary US history was completely overshadowed by the “violence” of nighttime “agitators”. This strategy hinged upon constituting the movement’s auxiliary tactic of property destruction (as well as small scale occupation of public properties) as a form “violence” to which the state was forced to respond, thus obscuring and legitimizing the state’s own deployment of force. It also hinged upon the character of the nighttime “agitator”, which drew upon several pre-existing iterations of the “violent” protestor. Some of the coverage was implicitly racialized, suggesting that Oakland’s usual “rioters” took over in the night – conjuring up images of Black and Brown youth opportunistically engaging in looting and destruction. This was a well versed story in Oakland, having figured prominently in state discourse during the Oscar Grant Rebellion in 2009. This “Rioter” was characterized as lacking any political motivation – presented as having no interest in the political actions of the day, but taking advantage of the opportunity to come out at night and “wild out.” But although the implication was that the “Rioter’s” motives were opportunistic – exploiting the opportunity to engage in looting – there was silence regarding that fact that absolutely no looting at all had been reported on November 2nd.

Alongside this highly racialized presentation of the “violent” “Rioter” who was denied any political motivation, there surfaced another, also racialized, character whose very politics posed the danger of “violence” – the (White) Outside Agitator. This too had long been a commonly invoked subject in state discursive strategies, conjured up every time mass protest erupted in Oakland. Nationally, it is a strategy that goes back to the Civil Rights and even Anti-Slavery struggles when protests in the South were regularly blamed on
outsiders (White Northerners) who were allegedly there to incite the local community. The presentation of this “Outside Agitator” depends upon the simultaneous depoliticization of Black and Brown communities (“Rioters”) whose motivation is always reduced to individual opportunism. From this perspective, any political action must necessarily be the work of White “Outside Agitators” who come to town to “incite” apolitical communities of color that are perceived as themselves being incapable of such action. In the case of Occupy Oakland, this strategy barely needed to be dusted off, also having figured prominently in the state’s discursive attacks on the Oscar Grant Movement. The City introduced this strategy against OO as early as October 25th. Internal city emails, released as a result of a Freedom of Information Act request, reveal that officials were instructed on “talking points” about that day’s police operations, which included emphasizing that “[s]ome of the arrestees came from as far away as Florida or Illinois.”317 This subject of the “Outside Agitator” took on life through incessant references to “anarchists” and “the Black Bloc.” Early on the night of November 2nd, police issued a statement that they had identified a “roaming” band of “anarchists”” hiding among the larger crowd. And city officials reported that “the Black Bloc” was responsible for much of the vandalism and “violence” that night. The state’s account transformed black bloc from a type of tactic into an identifiable group or gang of “violent” “agitators” (“the Black Bloc”). From this night on, the characters of the “violent anarchist” and “the Black Bloc” would figure heavily in state discourse and public perception of Occupy Oakland.

The fundamental difference between the deployment of police violence on October 25th and November 2nd was that in the former case that violence appeared indiscriminate, while in the latter it was accompanied by a powerful discursive campaign that made it appear targeted, and which introduced a cast of characters (opportunistic “rioters”, “outside agitators,” “roaming” bands of “anarchists”, and “the Black Bloc”) that posed such danger of “violence” that it necessitated and justified the state’s own deployment of force. The (mis)targeted indiscriminate force that characterized October 25th had been discursively transformed into what appeared to be a justified and more disciplined response to the “agitators” who had stained Oakland’s victorious day with their “violence”.

**Discourses of “Violence”, Crime & Economic Decline**

The state’s discursive attack characterizing Occupy Oakland as posing the threat of “violence” extended far beyond the night of the November 2nd General Strike. In particular, it played a central role in state claims about the dangers of OO’s camp. This discourse, first introduced during the buildup to the first raid, was significantly amped up during the second encampment and came to be thoroughly consolidated by what is sadly a common occurrence in Oakland – a shooting in the middle of downtown. On November 11th, a young Black man named Kayode Ola Foster was shot and killed on the outskirts of the camp, a few feet from the BART (Bay Area Rapid Transit) entrance. It is an area that is heavily populated at all times and where fights, shootings, and constant policing are not uncommon. However, in this case, the proximity of the shooting to the encampment was taken full advantage of by state officials who immediately exploited it as proof of the danger of “violence” in OO’s camp. Occupiers struggled to argue that there was no
connection between the shooting and Occupy Oakland and that the incident was something that could have, and indeed did, occur long before the encampment. But these efforts proved futile against a full scale state and media campaign that presented the murder as an inevitable outcome of the lurking dangers of OO’s encampment. OPD released a statement that offered very little identifying information about the suspect, but nonetheless insisted that he had been “a frequent resident” of the camp. Police also claimed that the victim’s family had confirmed that he too had stayed at the camp prior to his murder, thus presenting the shooting as a case of Occupy Oakland’s internal conflicts erupting in violence. OPD’s account of the incident provided the perfect platform for city officials like Mayor Quan who proclaimed that the shooting “underscores the reason why the encampment must end. The risks are too great.”

The manner in which the state discursively exploited the murder of Kayode Ola Foster was part of a larger campaign aimed at presenting the encampment as drawing “violent activity” and being a “magnet for crime in the middle of downtown Oakland.” The City Administrator claimed that “[a]t the camp there have been reports of fires, some in tents, assaults, and this week, a homicide.” A number of City Councilmembers came together to issue a public statement outlining a list of grievances against OO, including failure to “control outbreaks of violence[.]” Media reports at this time were also full of unsubstantiated state claims about “increases in crime” having occurred ever since OO established its camp. This claim was repeated so incessantly that it soon became accepted as unquestionable fact. However, internal emails released as a result of a Freedom of Information Act request later revealed that City officials were actually aware that there had been a significant reduction in crime since the establishment of OO – at the very time they were insisting it had increased. The emails confirm that OPD Chief Jordan received an update in the last week of October that reflected that crime was down 19%. He then proceeded to email one of Mayor Quan’s advisors stating “Not sure how you want to share this good news. It may be counter to our statement that the Occupy movement is negatively impacting crime in Oakland.”

Alongside these discursive attacks about the “violence” and increases in crime caused by OO, there was also a great deal of highly publicized discussion about the costs it had imposed upon the city and the economic decline it was resulting in. The City Administrator’s office issued a statement that estimated that the city had incurred over $1 million in expenses related to Occupy Oakland in just the period between October 10th and October 28th (the vast majority of which was for OPD overtime). Within a month this would grow to estimates of $2.3 million and by mid-December, in a speech to the city’s Commonwealth Club, Mayor Quan would place this at over $5 million. The Mayor and other city officials repeatedly emphasized that these expenditures were being allocated away from other programs that were already underfunded, and particularly diverting resources away from fighting crime. This strategy (which drew upon the state’s earlier campaign alleging OO had caused an economic decline for local “small business”) presented Occupy Oakland as causing economic disaster for a city that was already struggling with limited resources. On November 9th, five city councilmembers held a press conference alongside a number of Oakland business owners calling for the immediate eviction of Occupy Oakland, alleging it was destroying the downtown economy. The Oakland Chamber of Commerce led these demands for eviction, reporting that hundreds of...
its members were complaining about the impacts of OO. Its President, Joseph Haraburda asserted at a City Council meeting that the City had already lost two separate deals that would have leased out a total of 50,000 square feet of commercial office space downtown. He reported that businesses were deciding against operating in Oakland, citing the possibility of “future strikes, property damage, and the unsightly camp[.]” He concluded his remarks by warning that several downtown businesses had threatened not to renew their leases “unless something is done, and done immediately.”  

“Lessons Learned”: Reconsolidating the State through “Reform”

State discourses about the “violence”, crime, and negative economic impacts caused by Occupy Oakland served to powerfully impact public opinion. The media reported that many Oaklanders were increasingly fed up with this movement that had spiraled out of control and were demanding that something be done. Within just a few weeks of the colossally disastrous police operations of October 25th, the state had succeeded in mounting a discursive campaign that effectively established the urgency and necessity of undertaking another eviction, rallying significant public support for this. But while these discourses may have served to substantially diminish what had been widespread public support for the movement, there still remained the issue of addressing the public disapproval and distrust of the state resulting from October 25th. It was towards this objective that city officials introduced a discourse of “reform” that presented the state as self-critically reflecting upon the problems of October 25th.

This discourse was fueled by a strategy of launching internal investigations in order to, as one City Councilmember put it, “see what lessons we can learn.” At least five investigations into the police operations of October 25th were initiated, all by institutions internal to the state like OPD’s Internal Affairs Department or the Citizen Police Review Board. In December the City contracted with the Frazier Group LLC to conduct what it called an “impartial” “third-party” investigation. But critics questioned the impartiality of the $100,000 contract given that the investigative team was composed solely of law enforcement experts and Frazier, the lead investigator, had just stepped down from his role as President of the Police Executive Research Forum (which consulted with Quan and other mayors nationwide on how to evict Occupy camps). Whether undertaken by agencies of OPD or contracted out to professed “third parties,” these were all internal reviews that were ultimately geared at presenting the state as being engaged in reforming itself and pursuing accountability. This investigative discourse was crucial for re-establishing legitimacy and reconsolidating the state following the internal fragmentation caused by the backlash of October 25th. Once the Mayor, OPD and other city officials stopped pointing fingers and shifting blame upon each other, they reconsolidated themselves around joint assertions of “lessons learned.” As Police Chief Jordan later put it, “I ask that you not only judge us by the mistakes that were made, but also by how we correct them.” It would be months until these reports and recommendations were issued but the immediate impact of this investigative discourse was to present the state as self-reforming and reflective on “lessons learnt.” This was a discourse around which a fragmented state was able to reconsolidate itself. It was also a discourse which implied
accountability through investigations, suggesting that there was a higher power (most clearly federal courts threatening federal receivership) to which OPD and the City would be held accountable.

And indeed there was a higher, federal, power that now came to play a significant role in developments in Oakland. The first raid on October 25th, as well as the police operations that followed into the night, were fully planned and executed at the local level. Furthermore, aside from some involvement by the City Administrator’s office, it was primarily OPD that directed and managed the operations. The situation in the second raid on November 14 was dramatically different. The Mayor, City Councilmembers and other city officials did not feign absence or claim to have been sidelined this time around – the entire local state apparatus was involved and unified around the eviction operation. Furthermore, there was a great deal of state involvement beyond the local level – including both coordination among officials in different cities across the nation, as well as direction at the hands of federal agencies like the Department of Homeland Security (DHS) and the Federal Bureau of Investigations (FBI). This operation was no longer led and primarily controlled by local police, but rather involved the cooperation of a wide range of local and federal state agencies.

The State’s New Strategy: A “Peaceful Eviction” – The November 14th Raid

The public first became aware that there had been federal coordination of the crackdown on Occupy camps when Oakland’s own Mayor Quan casually let it slip out in a BBC interview that she had been on a conference call with 18 other mayors across the nation to discuss their responses to Occupy. The press pursued this lead further, identifying an anonymous source within the Justice Department who reported that federal agencies had consulted with local law enforcement on strategies for evicting Occupy camps.328 Although these revelations led to outrage at what was perceived as a federally led conspiracy, in the contemporary post-9/11 period, federal oversight, inter-agency collaboration and “information sharing” on issues of law enforcement and “national security” are common practices. This not only occurs via direct linkages between local and federal state agencies, but also through mechanisms of “civil society” such as “non-governmental organizations” like the Police Executive Research Forum (PERF). On November 4th, PERF facilitated the second in a series of conference calls among mayors and law enforcement officials across the country to advise them on eviction strategies. The US Conference of Mayors also facilitated a similar conference call on November 10th.329 Just four days later, on November 14th, Occupy Oakland was raided. The following day a raid was executed on Occupy Wall Street. And during the course of the next ten days, there were eviction operations in over a dozen more cities. Police forces across the nation had cracked down on Occupy camps, and they did so in some glaringly similar ways.

Investigations by the press eventually revealed some of the tidbits of advice that were doled out on these conference calls. Officials were extensively advised on the legal basis of evictions, suggesting they emphasize public health and safety issues and pursue
enforcement through local ordinances that prohibited “lodging” or imposed curfews on public parks. They were also advised on specific eviction strategies and tactics. It was suggested that eviction notices avoid setting deadlines in order to maintain an element of surprise in the raids and prevent Occupiers from mobilizing defensive responses. While officials were advised to utilize a massive show of police force in the execution of raids (even suggesting riot gear), they were simultaneously guided in how to diminish the risk of this force devolving into spectacle. The FBI reportedly advised local officials on managing press relations around evictions, much of which seems to have been geared around avoiding press all together, for example suggesting that raids be planned for times (pre-dawn) when press and bystanders would be least likely to be present. Finally, officials were advised on how to prevent protesters from returning to cleared-out encampments, and how to “accommodate” the rights of demonstrators after evictions were completed.

The raid on Occupy Oakland on November 14th was among the first in a long series of nationwide evictions that reflected these nationally coordinated strategies and tactics. On November 12th, the City Administrator’s Office issued an eviction notice in the form of a “cease and desist” order that focused upon the camp’s violation of local “lodging” ordinances, asserting that “overnight lodging” or the presence of any “lodging materials” (“all tents, sleeping bags, tarps, cooking facilities and equipment”) at any time of day were violations that would be enforced with arrest. The order made no mention of a deadline for enforcement, ensuring an element of surprise.330 Eviction notices issued in other cities followed a similar pattern.

With the issuing of this eviction notice, Occupiers braced themselves for a police operation that could descend upon them at any moment. Given the extremely violent nature of the first raid, many prepared themselves for the worst case scenario and packed up and left. For some, the consequences of another raid were simply unbearable – whether it meant once again losing all their possessions, facing grave bodily injury, or risking arrest that could spiral out of control as a result of their probation, parole or undocumented status, or even just their race, class or characterization as “homeless”. While the lingering effects of the first raid forced some to step back from the occupation, many others remained to defend the camp.

The next day (just one day before the raid would be undertaken), Mayor Quan issued a public statement thanking all the “peaceful” protestors who had voluntarily left the camp. She also thanked (unnamed) community leaders who had “called for the encampment to come to a peaceful conclusion.”331 The gross irony was that Occupiers who were being characterized as “peaceful” for voluntarily leaving the camp332 had actually done so out of fear that the state was about to engage in a repeat performance of the kind of militarized violence that was deployed on October 25th. More importantly, those who chose to remain in the camp in violation of “lodging” ordinances were now presented as engaging in, or at the very least inciting, “violence” (no matter that it was the state’s own violence being incited). Quan’s statement clearly captures the state’s discursive strategy at the conclusion of this “moment” – establishing a distinction between good “peaceful” protestors who voluntarily relinquish the tactic of occupation and the “violent” ones who insist on continuing to occupy, and thus present themselves as justifiable targets of state enforcement. These discursive attacks served to further a process that had already been
underway – an effort to disassociate the tactic of occupation from First Amendment protection. But now they went even further, aiming to disassociate the tactic from the movement itself. Good “peaceful” Occupiers were those that no longer occupied, but rather voluntarily heeded the state’s call to end the occupation. The conclusion to Quan’s statement succinctly articulates this strategy of disassociating the Occupy movement from the tactic of occupation (purposively avoiding the term “occupying” in favor of “camping”): “Camping is a tactic. It is one that has divided Oakland, a city of the 99%. It’s time to work together on the issues of unemployment, foreclosures, and education cuts. While the camping must end, the movement continues.” [Emphasis is mine.] In other words, “peaceful” Occupiers are those who were willing to pursue an Occupy Movement without the occupation.

Early the next morning, on November 14th, OPD executed its second raid on Occupy Oakland. It commenced even earlier in the dawn hours (4am) to further reduce its visibility and conclude clean-up operations well before the morning commute. And this time police barricades were established for blocks around the Plaza, creating a much larger contained perimeter that kept out media and any other passersby. Broadway, the main street leading to the Plaza, was cordoned off for five blocks and wasn’t reopened until 8am. Media reports confirm that journalists were not allowed into the area until 6:30am when the operation had been completed. Clearly, there was a much more concerted effort to prevent any risk of police force descending into spectacle like October 25th. This strategy and the corresponding tactics of cordons and media black-outs were replicated in other cities in the series of nationwide raids that would very soon follow.

There was also a concerted effort to minimize any displays of obvious police force this time around. While there was indeed a great deal of force deployed, it was now highly disciplined and contained within certain forms. There was still the deployment of a ridiculously disproportionate police force of 300 officers (drawn from multiple law enforcement agencies) to execute the raid, and they once again arrived in riot gear. But this time around they were clearly directed to carefully undertake arrests without resorting to additional displays of force. And most crucially, they refrained from any deployment of untargeted or indiscriminate force. No teargas or other “less lethal” weapons were deployed. Instead, officers surrounded the perimeter of the Plaza, a clear dispersal order was given, Occupiers were allotted adequate time to actually evacuate if they chose to, and then officers proceeded to arrest and carry away anyone who remained. The execution of this raid clearly aimed to model the terms of OPD’s federally imposed crowd control policy which mandates that after “allowing time for the individuals to comply before enforcement action is taken,” officers should then proceed to “arrest individuals who refuse to follow valid police orders, rather than using weapons or other force to move them.” The few images of the raid that did publicly surface showed riot geared officers appearing to gently carry away Occupiers whose limp, but otherwise unresisting, bodies clearly illustrated their active choice of engaging in civil disobedience. Police reported that 33 arrests had been made and emphasized that there were no reported injuries. Media coverage starkly and repeatedly contrasted this eviction with the October 25th raid. As both city officials and media put it, the city of Oakland had finally succeeded in executing a “peaceful eviction.”
The raid operation was thorough and fast. All remnants of the camp were flattened and it was completely evacuated, with the exception of one lone Occupier who defiantly climbed up into a tree in the Plaza. This tree occupation was the only lingering sign of resistance as police and Public Works employees swiftly completed their “clean-up” operation long before the morning commute began. At 7am city officials arrived to take a highly publicized joint tour of the camp. This included the Mayor, OPD Chief Jordan, and City Administrator Deanna Santana, who was trailed by her Assistant, Arturo Sanchez. They were led on a walk-through of the post-raid camp by a group of ten OPD officers and followed by a gaggle of reporters (who only minutes before had even been allowed anywhere near the vicinity of the Plaza). One reporter even remarked on how “Jordan stopped briefly and smiled, studying one of the small vegetable plots planted by protesters.” This performance, clearly intended as a media stunt, served as a symbolic gesture of the state’s unified presence. In contrast to the ducking of accountability and claims of ignorance that characterized state officials’ positions after October 25th, this time around they made sure to be visibly and collectively present in a highly publicized performance of unified action. The state had reconsolidated itself around the success of its “peaceful eviction,” executing a raid that lived up to mandated crowd control policies and appeared to have avoided resorting to unnecessary force.

A press conference was held shortly after, where officials emphasized their success in the planning and budgeting of the second raid. Chief Jordan reported that the operation deployed significantly fewer officers than the case of October 25th (while he claimed only 100, he was forced by reporters to admit that it was closer to 300 once Mutual Aid was accounted for). Jordan and City Administrator Santana also emphasized that City expenditures on police operations were significantly less this time around, estimated at $300,000 to $500,000. Santana explained the reduction as resulting from the fact that there had been extensive planning for this raid, unlike October 25th which had been executed as an emergency response operation. She also reported that the funding would be drawn from the City’s $30 million reserve fund and therefore wouldn’t affect the budgets of other city services. The obvious implication of all these assertions was that this had been an extremely well prepared, highly disciplined and “peaceful” eviction operation – a stark contrast to the reactive and indiscriminate violence that characterized October 25th. Clearly, “lessons had been learned.”

From Containment to Targeted Repression: The Constitution of the “Violent Occupier”

Of course, the crucial question at the time was how Occupy Oakland would respond to this raid. Similar to the case of October 25th, OO had once again prepared for the raid by calling for Occupiers to reconvene at the nearby public library. Nearly 1000 people would gather there that afternoon to march back to the Plaza. During the City’s press conference immediately after the raid, Chief Jordan had expressed that he expected a “peaceful rally” and that he didn’t anticipate any clashes between police and protestors. When asked to
elaborate on why, he explained that the difference this time around was that the City planned to immediately reopen the Plaza for public use. “The difference is that we’re going to open the plaza almost 24 hours sooner. As you recall, last time it took two days for it to be reopened[.]” Although Jordan conveniently elided over the fact that it was Occupiers who had forced open the Plaza on October 26th by toppling the fence the City had erected to barricade it, his point was that there were no plans to try and “contain” the Plaza this time around. “We don’t really have any reason to keep people out of the plaza because it’s a public domain.” He also asserted that the City would not enforce any curfews and that the Plaza would now remain open to the public 24 hours a day.340

In stark contrast to its strategy of “holding ground” and “containing” the Plaza after the raid of October 25th, this time the City immediately reopened it for uninterrupted 24-hour public use. However, Jordan also emphasized that police would now strictly enforce against any forms of “lodging”. Occupy Oakland could return, but there would be zero tolerance for occupation. Jordan relayed that this would be ensured by maintaining a constant police presence “at all times in the immediate future.” The City no longer futilely attempted to assert territorial sovereignty by “containing” this contested space and trying to keep all Occupiers out. Instead, it now opened it up, but under the constant presence and surveillance of police who would target any signs of “lodging”. In taking this position, the state presented itself as “accommodating” the First Amendment rights of “peaceful” protesters who simply sought to “assemble” and exercise “free speech,” while undertaking increasingly harsh enforcement action against those that insisted on continuing to “lodge” and “camp”.

The City had not only adapted its raid strategy, executing a “peaceful eviction,” but also its post-raid strategy, which had backfired and failed miserably on October 25th. Attempting to “contain” the Plaza had led to a confrontation with Occupiers that necessitated the deployment of extreme police force to achieve that objective. But the state’s new strategy of immediately reopening the Plaza avoided this kind of confrontation, as Occupiers now marched right back into this contested space without any apparent police obstruction. Avoiding that confrontation ensured that no spectacle or backlash could result from it. It also enabled the state to present itself as “facilitating” the First Amendment rights of Occupiers – as long as they remained “peaceful”. And it was through establishing this crucial distinction that the state laid the discursive basis of its subsequent strategies against Occupy Oakland. The post-raid strategy of reopening the Plaza but strictly enforcing against “lodging” established the distinction between “peaceful” protesters for whom occupation entailed state permitted forms of “assembly” and “free speech,” and those “violent” Occupiers who insisted on illegally “lodging” and “camping”. While the state’s earlier strategy was indiscriminate and homogenizing, seeking to keep all Occupiers out of the Plaza, it now established a basis for distinguishing between “peaceful” and “violent” ones – enabling to it to target the latter, while “facilitating” the First Amendment rights of the former. Furthermore, ensuring this right to “peacefully” protest now even appeared to necessitate intensifying enforcement against those Occupiers whose “violence” threatened to undermine that right.

When state strategy targeted Occupiers as an amorphous crowd (whether by barricading them all out of the Plaza or indiscriminately launching “less lethals” at them), it resulted in
unifying them in their collective reoccupation effort. It also unified them with a public that was appalled by the indiscriminant nature of the state’s violence and violation of civil rights. But this new targeted strategy would soon achieve precisely the opposite effect – fueling division within the movement and a decline of public support by inciting raging internal struggles and public debate over questions of “violence” and “nonviolence”. And most crucially of all, this new state strategy constituted for itself an acceptable target – the “violent Occupier.” No longer would it make the mistake of deploying its violence indiscriminately, and thus risking the possibility of spectacular backlash by misfiring upon “peaceful protesters.” The “violent Occupier” would now serve to render the state’s deployment of force as appropriately targeted, necessary, and justifiable.

Conclusion: Dislodging the Encampment

The November 14th raid marks the conclusion of the first “moment” of struggle – the point at which the state’s strategy had evolved enough to neutralize the threat posed by Occupy Oakland’s encampment. Having learned the danger of spectacular backlash that resulted from its earlier strategy of Naked Coercion (reactive, indiscriminate violence that is highly vulnerable to spectacularization), the state adapts its tactics to diminish this risk and execute a second raid that succeeds in permanently dislodging the encampment, and without inciting public outrage or backlash. The occupation – in the sense of a complete reclamation of public space that fundamentally challenged state sovereignty – had been brought to an end. Although Occupiers continued to gather, resist and struggle in the Plaza, they would never again occupy it in the same sense. The loss of the camp would have profound consequences for a movement that drew its strength and solidarity from its daily practices of occupation. It was through everyday life in the camp that Occupiers engaged in direct action, mutual aid, and a whole range of practices that unified them, and thus created vast new possibilities for collective action. It is the severity of the threat this posed that made dislodging the encampment the most crucial initial objective of the state’s strategy against the movement. The first step in neutralizing the threat posed by Occupy Oakland was to destroy its very foundation, the camp.

Beyond dislodging the encampment, the state also achieved two important discursive objectives by the end of this first “moment”. It had thoroughly shed its earlier discursive strategy that presented occupation as a form of First Amendment protected “assembly” and “free speech” and introduced a new discourse that now criminalized the tactic by rendering it a form of illegal “lodging”. This was accompanied by a range of statist discourses that constituted the subject of the “violent Occupier” and thus provided an acceptable target for state repression. The enormous power of this discursive strategy is most clearly evidenced by how quickly and dramatically it succeeded in transforming public opinion – within less than three weeks of the colossal disaster of October 25th, it was Occupy Oakland, rather than OPD, that was now increasingly associated with “violence.”
Chapter 3: Targeted Repression ("Violent Occupiers" vs. "Peaceful Protesters")

*Occupy Oakland Strikes: The Tactical Adaptation of Occupation*

By the dawn of the second “moment” the political terrain of struggle between state and movement was radically transformed. The camp had been permanently dislodged, the tactic of occupation had been stripped of First Amendment protection, and support for the movement had significantly eroded as the public increasingly associated Occupiers with “violence”. These developments, and the adapted state strategy that had achieved them, dramatically altered the terrain of struggle, and thus forced the movement to adapt its own strategy and tactics in response. This iterative dynamic not only fueled an adaptation of movement strategy, but also shaped the particular nature of that adaptive response. Given that the state’s new strategy hinged on targeting “lodging” at Oscar Grant Plaza, Occupy Oakland now turned to adapting its tactic of occupation in a manner that sought to elude this enforcement strategy.

**The Occupation Seeks a New Home**

When nearly 1000 Occupiers marched back to the Plaza after the second raid, they encountered no barricade fencing, riot clad police line, or any other obstacles to entry. However, they did arrive to find clusters of OPD officers positioned throughout the area. This new strategy of utilizing constant police surveillance to prevent the re-emergence of any signs of “lodging” ensured that no tents were pitched that night, nor in the days to come. Vigilant police surveillance prevented any of the camp’s “structures” from resurfacing in the Plaza. It appeared, for the moment at least, that the occupation of Oscar Grant Plaza was no longer a possibility. One of the movement’s initial responses to this new reality was to identify new sites for the occupation. The first option pursued was that of moving to OO’s satellite camp at nearby Snow Park. While the City’s first raid on October 25th had entailed a simultaneous eviction of Snow Park, the second operation on November 14th left this encampment (with around 25 tents at the time) intact, although the City announced in its press release that it would be cleared in the near future. After Occupiers had been evicted from Oscar Grant Plaza, some took refuge at Snow Park, and within just three days the camp there had grown to around 40 tents. But the occupation of Snow Park survived for only one week after the raid on OGP. On November 21st, OPD executed a midnight raid operation that succeeded in a thorough and permanent eviction of the park.

Even prior to the raid of Snow Park, many Occupiers had been calling for the movement to identify an alternative location for a new camp. Among their concerns was the peripheral location of Snow Park (situated near Lake Merritt in an area that was relatively secluded...
and had little pedestrian presence during non-business hours). It was argued that OO needed to identify a more central location where public visibility might provide greater defense from police repression (a concern that soon proved justified when the City’s midnight raid on Snow Park garnered little public or media attention). Thus, on November 16th, an emergency proposal was passed by OO’s General Assembly calling for the occupation of a City owned vacant lot located in the highly central intersection of 19th and Telegraph streets. The site, only a few blocks from Oscar Grant Plaza, was in a heavily populated location adjacent to the Fox Theater and surrounded by numerous restaurants, bars and residences.

On Saturday, November 19th Occupy Oakland kicked off this new occupation effort with a march throughout the city that drew around 1500 people. The march began at Oscar Grant Plaza, proceeded through the downtown area where it stopped at banks like Chase and Wells Fargo, and then headed to Lakeview Elementary School (one of five Oakland schools up for closure due to budget cuts at the time) to join a massive unpermitted rally to defend public education. Shortly before 5pm the march headed to its final destination at 19th and Telegraph to establish its new occupation. The City had again resorted to a containment strategy and erected a tall chain link fence around the entire perimeter of the lot. But the strategy once again proved futile in the face of over a thousand Occupiers who easily proceeded to topple it. People flooded into the lot and began immediately pitching tents and setting up tables and canopies. By the time a light rain began to fall at 7pm, 25 tents had already been erected and OO’s Kitchen Committee had food tables up and running. A huge flatbed truck that had provided sound for the march was parked adjacent to the lot, blaring music as hundreds of Occupiers danced and celebrated the occupation of their new home.

OPD officers were present at the scene at all times, but stood back as Occupiers tore down the fencing, set up camp, and celebrated through the night. The only enforcement action that night was targeted at the sound truck. After OPD threatened to confiscate the truck, members of OO’s Sound Committee drove it several blocks away to a private residence where they attempted to unload the sound equipment. But several police vehicles followed the truck and confiscated it anyway, as officers used aggressive baton jabs to shove Occupiers against a brick wall while threatening to arrest them for “obstruction”. But aside from this incident, which police undertook blocks away to reduce visibility, they carefully refrained from any enforcement action that night. OPD had clearly been given a directive to avoid any possibility of intervention that could descend into spectacle. OO had anticipated this concern and strategized to try and exploit it, scheduling the launch of the occupation on a Saturday night when the surrounding bars and restaurants ensured the area was heavily populated. However, this strategy only served to briefly postpone police enforcement action. OPD stood back, but only until 8am the next morning when it could conduct a low visibility raid. Given that it was an early Sunday morning, there were few other people in the vicinity. And because it had rained throughout the evening, there were also few Occupiers who had actually remained at the new encampment until morning. Taking advantage of this situation, police were easily able to outnumber the small group of Occupiers present at the time. OPD issued a dispersal order that threatened arrest and then allotted Occupiers twenty minutes to remove all “lodging” materials and leave the area. No “less lethal” weapons, nor any significant police force, were deployed. No arrests were
made and OPD’s spokesperson reported that most people complied and left “peacefully”. What initially appeared as the possibility of a new home for OO was a short lived reality, lasting no more than one rainy night.

It was now apparent that the tactic of large public occupations was being effectively neutralized by the state. Site after site, the City was cracking down on any attempts to occupy central public spaces. After the failure of the 19th & Telegraph occupation, many Occupiers turned to the alternative strategy of small scale occupations that targeted foreclosed homes held by large corporate banks. These efforts were aided by OO committees and other local organizations committed to foreclosure defense. The movement was adapting to the state’s relentless enforcement against large scale public occupations by shifting to small scale actions that sought to defend private properties against bank foreclosure.

The tactic of foreclosure defense occupations initially focused primarily on homes in West Oakland, a historically Black community that has experienced a massive foreclosure crisis as a result of being heavily targeted with subprime loans. The first action was undertaken on December 10th, when Occupiers mobilized to re-seize the home of Gayla Newsome, a mother of two who had lost her home after falling behind on her mortgage for only two months. The Sherriff’s Department had evicted the family while Gayla was at work, leaving her two young daughters locked out on the street in their pajamas. The effort was launched with a rally of nearly 300 people who marched from a nearby park to Newsome’s home, helping the family move back in. From that moment on, Occupiers maintained 24-hour presence at the home to defend against any possibility of another eviction. The City responded within a few days, sending ten OPD officers to accompany a realtor and locksmith and evacuate and re-seize the property. Occupiers had organized a text alert system which enabled them to mobilize a quick response – within around twenty minutes, 60 people, including reporters, arrived to the scene, where they were able to force OPD to retreat by insisting that this was a civil matter requiring enforcement by the Sherriff’s Department. This initial success fueled further foreclosure defense actions. The next effort focused upon a property on 18th & Linden Streets that was scheduled for impending foreclosure. This occupation was initially organized in collaboration with the owner and was heavily publicized as a means of launching a larger foreclosure defense campaign in the area. The action was soon undermined, however, when the owner was pressured to sign a declaration for the City stating she wanted Occupiers removed from the property.

Shortly after, OO’s Tactical Action Committee (TAC) joined Causa Justa: Just Cause (a local organization committed to advocating for tenant and immigrant rights) to launch another occupation of a foreclosed property at 10th and Mandela Streets. The action was organized in solidarity with the Ramirez family, who were now forced to rent their home from its new owners after it had been sold by Bank of America (acting on behalf of Fannie Mae), which had violated the terms of their loan modification by selling off their home prior to the conclusion of the mandated 30-day grace period. In an effort to protest and challenge the questionable foreclosure of the Ramirez’ home, TAC and Causa Justa identified another foreclosed property in the area that was vacant but also held by Fannie Mae and proceeded to occupy it. They issued a warning that they would continue to do so
until Fannie May reversed the foreclosure of the Ramirez’ home. The occupation was launched with a large rally where the Ramirez family addressed the crowd, followed by a march to the site of the new occupation. Once the vacant home was taken over, Occupiers proceeded to hold a BBQ in the front yard for the community, alongside workshops on eviction defense and tenants’ rights. Beyond calling for the return of the Ramirez’ home, they also demanded that the currently occupied vacant property be turned into low-income housing. In response to this action, the City immediately issued an eviction order. The occupation lasted for two and half weeks before OPD executed a raid operation, on December 29th, that cleared the property and resulted in a dozen arrests for “trespassing”.

State Strategy: Swift Enforcement against “Lodging” and “Trespassing”

After the City issued an eviction order for the 10th and Mandela Street property, it became apparent that small scale foreclosure defenses would be met with just as swift police enforcement as mass public occupations. The only real difference in the state’s strategy was that it resorted to “trespassing”, rather than “lodging”, charges as the basis for enforcement. Adapting its own strategy in response to this realization, OO’s Tactical Action Committee identified another vacant site for a small scale occupation that they hoped would be less vulnerable to state eviction strategies – a lot near the intersection of 20th & Mandela Streets that was (believed to be) owned by the City. The lot, which had sat vacant for years, was surrounded by tall, nearly opaque fencing that gave it a secluded character and minimized public visibility. On December 22nd, Occupiers quietly proceeded to set up tents and a small kitchen inside the lot. The low visibility of the occupation allowed it to survive, but once again, only for a few days. On December 28th, several OPD officers entered the lot, escorting in a man whom they identified as the owner of the property. Although TAC had been under the impression that the lot was publicly held property, it turned out that it had actually been auctioned off in 2006 to a group of investors from outside Oakland. As this information surfaced, Occupiers recognized the situation as just another example of a larger neoliberal project through which the City had been siphoning off public properties at grossly devalued prices to speculative investors. And not only had the lot been left to sit vacant and unused for years (amidst a severe housing crisis), but the investors had also failed to pay the $13,000 in property taxes they owed. Yet, rather than pursuing the taxes it was owed or repossessing the lot and putting it towards community use, the City instead directed OPD to clear the property and enforce against “trespassing”. Just two hours after having escorted the property owner onto the lot, 30 officers returned to execute a raid, arresting around 25 Occupiers, most of whom were later cited and released.

The tactic of occupation could find no easy targets – whether highly visible public spaces or secluded vacant properties. There seemed to be nowhere beyond the reach of the state’s enforcement – not even in the middle of the lake. On December 11th, a small group engaged in an autonomous action to occupy, or as they termed it “Aquapy”, Lake Merritt by launching a 10-foot-long raft, the “SS Don’t Let the Banks Punk You Out.” But it took just three days for the City to figure out how to execute an aquatic raid where a police vessel with six officers forced the raft out of the lake. The three “Aquapiers” on board
were escorted with their hands in zip ties to the boat house where they were detained for
about 30 minutes before being released with citations for violating a city ordinance that
prohibits unpermitted boats on the lake.346

The Vigilance of Occupation: Tree Occupations, Guerilla Gardening and Mass
Feedings

The movement’s initial response in the aftermath of the November 14th raid was to search
for alternative sites for the occupation, including both large central public spaces like Snow
Park or 19th & Telegraph, as well as small foreclosed private properties. But all of these
efforts proved short lived. It soon became clear that identifying alternative sites for
occupation would provide no strategic advantage. With this realization, many Occupiers
began to explore the possibility of developing new alternative forms of occupation. Rather
than searching for a new site, attention turned to occupying OGP in new creative ways.

Although the movement pursued occupation of other sites during this period, Occupiers
had never relinquished their commitment to Oscar Grant Plaza. While tents were no longer
pitched there, there was constant Occupier presence at OGP at all times of the day and
night. General Assemblies drawing hundreds of people were held at the Plaza every
evening and committees continued to meet there daily. All kinds of events continued to be
regularly held there, including trainings and workshops, as well as daily meals. While the
state’s enforcement strategy had succeeded in preventing the re-pitching of tents or the re-
emergence of certain signs of “lodging”, it had failed to diminish Occupier presence in the
Plaza. It resulted, rather, in reshaping the ways that Occupiers asserted that presence, as
they sought to continue occupying while shedding the characteristics of occupation that
were being targeted for state enforcement (relinquishing their tents, for example).

These alternative strategies aimed to occupy Oscar Grant Plaza in ways that hoped to elude
the reach of the state. One clear example lies in the tree occupation that was the only
remnant of the camp to survive the November 14th raid. Long-time local Ohlone (Native
American tribe indigenous to the area) activist, RunningWolf, ascended into one of the
trees in the Plaza right before OPD commenced with the raid, and neither police nor
firefighters even bothered to try and remove him.347 As the movement dealt with the harsh
blow of the second raid, RunningWolf remained perched in that tree for almost two weeks,
inspiring a series of subsequent tree occupations in the Plaza and serving as a defiant
example of resistance that eluded the grip of the state.

With increasing enforcement against tents and other “lodging structures,” many Occupiers
searched for alternative, creative ways of asserting presence at OGP. For example, there
was a mass “guerilla gardening” effort that planted flowers, herbs and vegetables like kale
and lettuce all around the Plaza. Although police issued numerous warnings that this
gardening was illegal, Occupiers persisted in the hopes that the City would refrain from
directing OPD to uproot plants and undertake the potential spectacle of raiding a
community garden. Creative tactics like occupying trees and “guerilla gardening’ served to
symbolically assert a continued claim and presence in the Plaza. There may have no longer
been any tents, but flowering lettuce and Ohlone rituals lingered as symbols of an occupation that refused to relinquish its claim to OGP.

Among the most resilient remnants of the occupation were the daily meals that continued to be served long after the camp was evicted. The Kitchen Committee was one of OO’s largest groups, involving the participation of well over a hundred people and collaboration with various local organizations like Food Not Bombs. During the first and second encampments, OO’s kitchen was nationally unparalleled, operating 24 hours a day, serving hot meals, and offering a range of organic, vegetarian and vegan options. The kitchen was arguably one of the strongest components of Occupy Oakland’s camp, and therefore became one of the prime targets for enforcement, which intensified as it continued to operate even after the raid. While all forms of onsite cooking were heavily targeted for enforcement, OO’s Kitchen Committee developed alternative ways of preparing massive meals off-site and transporting them to the Plaza for distribution. OPD’s response was to engage in petty forms of enforcement, like harassing and ticketing Occupiers who momentarily parked on the Plaza’s periphery to unload food or targeting the tables used as illegal “lodging” related “structures”. But despite these police efforts, Occupiers kept transporting huge amounts of food into the Plaza where daily mass feedings continued to be the norm. Like “guerilla gardening,” this strategy adapted the tactic of occupation in ways that pushed the limits of state enforcement by creating situations where the City would have to direct OPD to engage in potential spectacles like uprooting plants or targeting people for simply trying to distribute free food.

State Strategy: The “Porta-Potty Raid” and the Targeting of Unpermitted “Structures”

But there were limits to these strategic advances, and numerous cases were the state undertook enforcement action. One extreme example is what came to be known as the Thanksgiving Day “Porta-Potty Raid”. Occupy Oakland held a massive public feast on what it referred to as “Thanks-taking Day” (reflecting the movement’s critical perspective on US colonialism and the genocide of indigenous peoples). The day began at dawn with Occupiers setting up a sound system in front of City Hall to blast live radio coverage of the Native American sunrise ceremony at Alcatraz. This was followed by twelve uninterrupted hours of serving food for the community at the Plaza. The action sought to differentiate itself from the usual charitable food distribution that occurs on holidays where the poor and homeless wait in line to receive a plate of food at soup kitchens or churches, only to be quickly rotated out to make room for the next person. The idea was to turn the Plaza into a space where all Oaklanders were welcomed to stay throughout the day, eat as much as they wanted, and feel a part of the community as they spent the day chatting, dancing and watching performances. The objective was to provide not just a hot meal, but rather the experience of being fully embraced by one’s community. In other words, the feast was intended not as a form of charity, but as a prefiguring of the bountiful possibilities of mutual aid. And the success of the action turned out to exceed all expectations. Food contributions began pouring in that morning and didn’t stop until late in the evening. Hundreds of people stopped by to contribute, ranging from individuals who had taken the time to cook an extra turkey or pie to small businesses that dropped off massive boxes of
pre-prepared or packaged food. There was so much food piled high in the Plaza that all were welcomed to cart off whatever they needed from the seemingly endless supply. Countless Oaklanders left OGP that day with enough food to at least ensure that their families could eat for the coming week. The bounty manifested from this practice of mutual aid was awe inspiring, as was the level of support coming from the larger community. Clearly, many Oaklanders perceived this as a way of supporting the movement that they felt good about.

The turnout for this event was massive – over a thousand people occupied the Plaza throughout the course of the day, momentarily reclaiming this contested space. But the action was also quite ambitious and risky – OO’s Supply and Kitchen Committees transported in tables, chairs and kitchen equipment that directly challenged the state’s ban on “lodging” related “structures”. Despite various forms of petty enforcement throughout the day, Occupiers succeeded in transforming the amphitheater in front of City Hall into a massive dining room with rows of tables surrounding enormous piles of food. The Plaza appeared thoroughly occupied in a manner that hadn’t been the case since the eviction of the encampment. Occupiers banked on the likelihood that the City would refrain from enforcement since this would present the unflattering image of OPD cracking down on Thanksgiving feeding.

And to some extent this strategy worked given that OPD refrained from confiscating food or tables that day, although it did resort to petty forms of enforcement like harassing, ticketing and citing people attempting to drop off food or supplies. But there was one particular unpermitted “structure” targeted for enforcement that subsequently devolved into what came to be known as the Thanksgiving Day “Porta-Potty Raid.” The local nurses’ union had donated portable toilets for the day’s event, which a driver attempted to deliver around 3pm that afternoon. Police officers on the scene directed the driver to leave because no permit had been obtained from the City. In response, around 150 Occupiers defiantly gathered around the truck to prevent it from leaving. As they loudly expressed their outrage that OPD was engaging in such petty enforcement against portable toilets on Thanksgiving Day, officers suddenly grabbed a Black man out of the crowd, tackled him to the ground and arrested him on charges of obstruction. The physically violent nature of the arrest, as well as the fact that officers had targeted this Black man out of a larger crowd for no apparent reason, served to further incite and outrage the crowd. What followed was a highly charged physical confrontation, during which a young Black woman was also tackled on the ground by officers. Back up police forces were called in, Occupiers were threatened with arrest, and some were even chased into neighboring streets. Police eventually retreated and Occupiers returned to their food and festivities, but the effects of the raid continued to linger throughout the day.

A New Model of Occupation: The “Vigil” Strategy

The Thanksgiving Day “Porta-Potty Raid” made one thing abundantly obvious – the continued presence of Occupiers at OGP, and the surviving remnants of occupation that lingered with them, posed a clear threat to the state, whose sovereignty over this space
remained contested even after two massive police eviction operations. While the camp had been dislodged, the occupation, or at least some remnants of it, had clearly survived the raids. And it was towards creatively cultivating these resilient remnants that the movement now turned – developing new forms of occupation, or new ways of asserting presence and claim to this public space, that managed to slip through the cracks of the state’s enforcement strategy. This process of iterative tactical adaption by the movement was shaped as a direct response to the state’s new discursive strategy. If it was “lodging” that now criminalized the tactic of occupation, then Occupiers would proceed to develop new ways of asserting presence and claim to Oscar Grant Plaza that purposively stayed far away from any suggestion of “lodging” (whether this meant relinquishing tents or doing without Porta-Potties). In doing so, Occupy Oakland sought to develop a new model of occupation.

This process formally began with an emergency proposal calling for a new “vigil strategy” that was virtually unanimously passed by OO’s General Assembly on November 23rd. The proposed strategy called for Occupiers to maintain a constant 24-hour presence in the Plaza in the form of a “vigil”, which would be clearly distinguished from “lodging” by refraining from sleeping or any other activities that could be legally construed as “dwelling”. This new strategy was shaped by the involvement of several members of Occupy Legal (a group of local attorneys and activists that provided legal support for the Bay Area Occupy movement) who committed to defending the “vigil” on the basis of legal precedent. In particular, they invoked a 1984 Supreme Court case (*Clark vs. Community for Creative Non Violence*) that challenged enforcement action against a protest organized by a homeless advocacy organization which involved pitching tents in Lafayette Park across from the White House. The Supreme Court ruled that “structures” like tents and tables were not subject to law enforcement in this case because they were erected as forms of “political expression,” and were thus constitutionally protected. However, the ruling also established that the act of sleeping nullified this protected status by transforming the action into a form of “dwelling”, which could then be targeted for enforcement. This legal precedent established “vigils” as constitutionally protected forms of political expression, as long as they refrained from any forms of “dwelling” or “lodging”.

In forwarding this new strategy, OO’s Vigil Committee hoped to “create a model for a new wave of Occupation protest throughout the United States.” This tactical adaptation emerged as a response to the state’s discursive strategy of gradually disassociating occupation from First Amendment protection by targeting it as illegal “lodging”. The movement’s response was to develop a new form of occupation – a “vigil” – that shed all characteristics of “lodging”, including tents, sleeping, or any other enforceable “structures” or signs of “dwelling”. There were, however, efforts to creatively incorporate several “structures” into the vigil. Given the City’s strict enforcement against tents, the Vigil Committee proceeded to construct a symbolic teepee in the Plaza. It also set up an information table which it argued was a form of “political expression,” rather than a “lodging structure.”

The Vigil Committee’s teepee was intended to symbolize a continued assertion of claim upon OGP, but one that aimed to avoid the “lodging” enforcement targeting tents. (The teepee’s cramped dimensions clearly distinguished its intended symbolic purpose given
that it could hardly be seen as a practical “lodging” structure.) This serves as just one example of how the “vigil” strategy adapted the tactic of occupation by transforming the manner in which it asserted a claim to Oscar Grant Plaza. Occupation entails asserting not only presence in a space, but also an underlying claim to it. When occupation had taken the form of an encampment, the claim to this space was asserted in the form of a complete rejection of state authority. In others words, occupiers “camped” and “lodged” in a purposive act of civil disobedience that fundamentally challenged state sovereignty. The state eventually responded with enforcement action that targeted this “lodging” and disassociated it from protected forms of political “assembly” or “free speech.” This culminated in a raid operation that dislodged the camp, and thus succeeded in reasserting the state’s territorial sovereignty. Put simply, the raid undermined the movement’s claim to this space – which was based on a rejection of state authority – by clearly asserting that state authority and clearing out the encampment. But although this strategy crushed the claim underlying the occupation, it failed to diminish Occupier presence at Oscar Grant Plaza. The “vigil” strategy aimed to maintain this occupying presence, while reformulating the claim being asserted within the terms of the state’s own discursive strategy – as a constitutionally protected “right” to “assemble” and hold “vigil”. Occupy Oakland’s creative response to the state’s enforcement strategy was to refashion the tactic of occupation in the guise of the state’s own discourse, rendering it a “vigil” and invoking the state’s incessantly repeated promise of protecting First Amendment rights. OO’s Vigil Committee issued a press release proclaiming:

With the vigil, Occupiers will continue asserting rights guaranteed by the United States Constitution to assemble, speak, and petition government for redress of grievances. The vigil is not the product of a bargain with Mayor Quan, nor is it negotiated with law enforcement – permission from the city is not required to exercise these constitutionally guaranteed rights.352

**State Strategy: Enforcement Shifts to Targeting “Encroachment”**

As the movement developed this new “vigil” strategy of occupation, the state adapted its own strategy in response. When occupation had taken the form of an encampment, state strategy had targeted “lodging”. But now that it took the form of a “vigil” that purposely eluded characterization as “lodging”, the state shifted to enforcing against “**encroachment**”. The City took the position that any objects or structures obstructing the public’s right-of-way violated a municipal code prohibiting “encroachment”. OPD officers began issuing citations and/or confiscating a wide range of “structures” for alleged “encroachment”. This included tables, canopies, and eventually even umbrellas, blankets and yoga mats.

As this new strategy of enforcement intensified, on November 29th two legal activists who worked with the Vigil Committee applied for a temporary encroachment permit
authorizing the teepee and information table. The City approved the permit but required that the structures be removed during the hours between 10pm and 6am and that no sleeping, food preparation, or any other forms of “dwelling” occur in or near the permitted items. The City later added the requirement that a chalked line be drawn around the teepee and table to clearly establish what was and was not a part of the permitted “vigil”. Another permit was also obtained by members of OO’s Interfaith Committee (comprised of local clergy and spiritual leaders of different faiths) which authorized their presence in the Plaza during daytime hours. Shortly after, they submitted an additional permit request for a canopy, which the City denied. The Interfaith Committee then proceeded to set up a large beach umbrella as an alternative to the rejected canopy, for which they subsequently received citations from OPD. On December 15th, they held an “umbrella action,” where they entered City Hall with umbrellas and launched into Mary Poppins style song and dance, as a protest against the City’s strategy of criminalizing possession of items like umbrellas as “encroaching structures”.

**The Auxiliary Tactic of Permits and the Expanded Realm of Enforcement**

The tactic of obtaining state permits was categorically rejected by Occupy Oakland’s General Assembly, which never approved a single proposal for permits. It was also a practice that was generally denounced by most Occupiers, who rejected any form of cooperation with the state. But at the same time, Occupy Oakland also maintained a firm commitment to a “diversity of tactics,” or the principle that Occupiers should be free to autonomously practice a wide range of tactics, as long as a necessary separation of time and space was observed to ensure that actions didn’t endanger or directly undermine each other. Hence, despite fierce debates, Occupiers in Oakland tolerated various tactics that they strategically disagreed with, whether permits or property destruction. Both permit applications were submitted as autonomous actions by small groups (without any endorsement from the General Assembly) and were heavily criticized by many Occupiers. They were also not endorsed by the Vigil Committee itself, which took the position that these were constitutionally protected forms of political expression, and therefore did not require permits. But while this auxiliary tactic was generally rejected by OO and pursued autonomously by small groups, it nonetheless came to have profound consequences in terms of fueling and shaping police repression of the movement.

Those who were most vocally critical of the permits warned of the dangers of this kind of cooperation with the state. In particular, they reminded others of the outcome of this strategy during the Oscar Grant Rebellion, when the City had revoked an issued permit immediately before a march and then proceeded to mass arrest protesters. And these fears were soon confirmed, as enforcement action in the Plaza, including harassment, citations and eventually arrests, intensified dramatically after the issuing of permits. Despite promising a level of protection, the permits actually served to dramatically expand opportunities for enforcement action. By virtue of establishing a state permitted realm of political expression, the permits now cast everything outside of this as enforceable “violations”. For example, if an issued permit prohibited food distribution or “lodging”, anyone eating or sleeping in the surrounding area could potentially be targeted with enforcement action for violating the terms of the permit. OPD’s realm of enforcement had now been dramatically expanded, and it proceeded with an aggressive strategy of issuing
citations for things like possession of blankets or food distribution anywhere in the vicinity of the permitted items. In many cases, individuals targeted with enforcement were not even aware of the existence of a permit, and were therefore unaware that they were engaging in activity that could be criminalized. As Mike King puts it:

> With a permit in place, activities that are legal under the law and constitutionally protected, like sharing food or possessing a blanket, became violations with civil and criminal consequences, even if the suspects never agreed to, or were even aware of, the terms of the permit. The permit served as a tool of repression, criminalizing ordinarily lawful activities for the expressed purpose of legitimating surveillance and physical repression.354

But the impact of the permits wasn’t limited to just rendering a range of mundane practices like sharing food as enforceable violations. They soon came to play a powerful central role in the state’s new strategy – targeted police raids that were disguised as “minor enforcement” of permit violations, but were undertaken in a highly provocative and violent manner intended to incite the surrounding crowd, and thus create a pretext for arrests on charges of obstruction, and later more serious felonies. While violations of the permit themselves (like possession of blankets or food distribution) were only civil infractions carrying the threat of citation, “obstructing” an officer during this enforcement action was a criminal act that could result in arrest. The state’s strategy was shaped by the fact that obstruction charges are one of the few minor misdemeanors in Oakland for which police can arrest and detain an individual rather than issuing a citation and releasing them. As a result, obstruction charges have become one of OPD’s most relied upon tools for the repression of political activists.

But it wasn’t until December 16th that OPD executed the first in its series of targeted raids. By this point, Occupy Oakland had maintained a constant presence in the Plaza for more than a month after the eviction, and the “vigil” had been in full swing for well over three weeks. While there was police enforcement during this entire period, it was generally limited to the issuing of citations or other forms of petty harassment. It is not until December 16th – a few days after the West Coast Port Shutdown – that enforcement takes a harsh turn and manifests in a clearly coordinated series of targeted raids that result in dozens of arrests and even cases of felony prosecution. It is impossible to ascertain the exact extent to which the December 12th West Coast Port Shutdown led to this intensification of enforcement, but one thing is certain – the state’s strategy of repression against the movement was significantly amped up immediately after.
**Occupy Oakland Strikes Again: The December 12th West Coast Port Shutdown**

Four days after the November 14th mass raid, OO’s General Assembly had virtually unanimously passed a proposal calling for Occupies across the West Coast to participate in a *coordinated blockade* of all coastal ports on December 12th. The proposal was a direct response to the nationally coordinated series of raids on Occupy sites throughout the country. The idea was that if state repression against the movement was going to be nationally coordinated, then the movement needed to strike back with its own forms of nationwide collaboration. The proposal asked all participating Occupy sites to organize mass community pickets that would effectively shut down their ports by forcing local arbitrators to rule that this created unsafe conditions for workers (thus avoiding legal retaliation against unions). The proposed blockade was also intended as a display of solidarity with port workers, including both the ILWU (International Longshore and Warehouse Union) who were in the midst of fierce contract negotiations with EGT, as well as non-unionized, largely immigrant, truckers fighting Goldman Sachs for better working conditions and the right to unionize. The proposal promised additional solidarity actions should any workers experience retaliation for honoring the community pickets. Finally, it warned that if any Occupy sites faced police repression at their ports, Occupy Oakland would extend its own blockade for an additional unspecified period of time.355

At least 25 Occupy sites directly participated in the West Coast Port Shutdown, including Los Angeles, Portland, Seattle, San Diego, Vancouver and Houston, and dozens more held solidarity actions across the nation.356 The blockade efforts met with varying levels of success. Terminals at ports in Portland, Longview (Washington), Seattle and Oakland were effectively shut down. Occupiers in Long Beach, San Diego and Vancouver were able to block their respective ports for about an hour before police operations dispersed them, leading to five arrests in San Diego and two in Long Beach.357 In response to this police repression, Occupy Oakland acted on its warning and extended its own action for an additional 24 hours, with two more shifts being blockaded. Oakland was by far the most successful site of the coordinated shutdown, with over 5,000 people participating in a blockade that extended for 36 hours.

There were all kinds of problems that surfaced with the West Coast Port shutdown, ranging from conflict between Occupy and leadership of local unions, to the state and media’s exploitation of this conflict through divisive propaganda (for example, emphasizing the negative impacts of the blockade upon rank and file workers). But one thing was certain – no matter its weaknesses, the West Coast Port Shutdown clearly illustrated that Occupy Oakland had the capacity to mobilize massive blockades that posed a serious threat to both state and capitalist interests. The Port of Oakland reported that the action resulted in $4 million in lost revenue and expenditures.358 OPD Chief Jordan estimated the cost of policing the port for two days of protest at around $1.5 million.359 And these estimates only account for the economic impact caused by just Oakland’s blockade. We can only begin to imagine the resources expended across the entire West Coast where over twenty-five local police operations had to be executed. And this economic impact grows exponentially when we consider the costs borne by capital operating at these various ports.
Goldman Sachs (one of the primary corporate targets of the blockade) reported a 5% drop in stock values that day.360

The threat posed by this strategic advance was immense, and exacerbated by the fact that this was now a repeat performance for Occupy Oakland. The movement had proven that it had the organizational and tactical capacity to impose enormous costs and disruption for both the state and capital. Within just days of the West Coast Port Shutdown, City Councilmembers Ignacio De La Fuente and Libby Schaaf submitted a proposal for an emergency resolution directing the Mayor and City Attorney to “use whatever lawful tools we have [to] prevent future shut downs or disruptions of any port operations.”361 Although the resolution failed to pass (dissenting councilmembers criticized its vague language and warned that it could be used to obstruct “protest against potential labor or other abuses”), it nonetheless serves to clearly reflect the severity of the threat posed by Occupy Oakland’s West Coast Port Shutdown.

**State Strategy: The Tactic of Targeted Raids (“Violent Occupiers” vs. “Peaceful Protesters”)**

It is in this political context, just three days after the conclusion of the West Coast Port Shutdown, that on December 16th OPD executed what would be the first in a series of targeted raids on Oscar Grant Plaza. Just as Occupy Oakland had adapted its tactic of occupation, the state also undertook a major tactical adaptation of its raid operations. In the first “moment”, the City had responded to OO’s encampment with mass raids. These initially commenced as highly reactive and indiscriminate operations oriented around a strategy of “holding ground” against an amorphous crowd. The disastrous failure of this strategy on October 25th forced the state to begin adapting its raid tactics to avoid any visible display of indiscriminate force and contain the dangers of spectacle, resulting in a successful eviction operation on November 14th. This ability of the state to shed the weaknesses of its initial strategy marked the conclusion of the first “moment”.

But it is not until the second “moment” that this tactical evolution fully culminates, and the state finally perfects its raid strategy – introducing the new tactic of targeted raids. In contrast to the reactive nature of the state’s earlier mass raids, these operations are highly coordinated and proactive, but discursively disguised as responses to the “obstruction” of “minor enforcement” of permit violations. Thus, the dozens of arrests they result in appear to be the unintended outcome of “obstruction” by “violent” Occupiers, rather than the intended objective of a coordinated state strategy. The state had perfected its strategy of diminishing the spectacular nature of its raid operations – they were now so discursively disguised that they were no longer even discernable as raids. The state had also now launched a whole range of surveillance practices through which it increasingly disaggregated what had previously been an undifferentiated and amorphous crowd. Therefore, it no longer launched its violence indiscriminately, aiming to “hold ground” as the only means of asserting its sovereignty. Instead, the state now disaggregated its targets by identifying the “violent Occupiers” lurking amongst the other “peaceful protesters,” and
proceeding then to deploy violence and repressive force against them in ways that were increasingly tucked away and secluded into its institutional recesses (whether county jails, courtrooms, psychiatric hospitals, or solitary confinement cells). Having evolved beyond a reliance on reactive, indiscriminate, and highly spectacular Naked Coercion, it now introduced a powerful new strategy of Targeted Repression.

The December 16th Raid: The Pre-text of “Obstruction” and the Shift to Targeted Repression

After having issued a warning earlier in the day, on Friday December 16th officers entered the Plaza at 2pm and began confiscating a range of items alleged to be in violation of the permit. They were joined by Public Works employees tasked with the job of carting away and disposing of items as police confiscated them. This included blankets, food, clothing and any other items deemed to be “unattended property.” Occupiers gathered in outrage, demanding to know why their possessions were being trashed. The aggressive nature of this police operation was immediately striking – clearly intended to incite the crowd given the manner in which officers quite forcefully confiscated and trashed everything within their reach. This strategy of provocation would be repeated again and again in the coming weeks in series of raids that were clearly geared at inciting the surrounding crowd, and thus creating a pretext for arrests on charges of “obstructing” police enforcement action.

Three people were arrested for obstruction during the course of the raid. One was a Black man who was arrested for trying to retrieve a blanket that had been seized and placed in one of Public Works’ trash receptacles. Another of the arrestees, a Black man named Kali, had tried to safely distance himself by retreating to a bench outside the immediate vicinity of police operations as soon as they began. But an officer approached him nonetheless, and demanded identification, which he immediately provided. After running his information and discovering that Kali was on parole, the officer returned and arrested him without further explanation. Despite the fact that Kali had physically distanced himself from the police operation, he too was charged with “obstructing” the enforcement action. All three of the arrestees that day were charged with misdemeanor obstruction, taken to jail, and detained with bail set at $5,000.

Occupiers raised the money necessary to bond out two of the arrestees, both of whom later had their charges completely dropped after drawn out court proceedings. But in Kali’s case, his parole status resulted in his being detained in jail, without the possibility of release on bail, until he was arraigned four days later. Given the extremely minor nature of the misdemeanor he was being charged with, it was assumed that he would be released on his own recognizance once he finally appeared at arraignment. But when that time came, the District Attorney strongly objected to his release, arguing that he lacked any documented residence and that his “homeless” status posed a flight risk. The judge ruled in the DA’s favor and Kali was returned to Santa Rita Jail to be detained until his next scheduled court date.

And this extended detention placed Kali in jeopardy of further, and much more extreme, repression. While he awaited his next court date in jail, a decision was made by the Sherriff’s Department to transfer him to solitary confinement, which shocked and outraged
Occupiers given the extremely minor nature of his misdemeanor charge. During this transfer to solitary, Kali suffered a beating at the hands of correctional officers that resulted in severe injuries, which were documented soon after by his attorney. Unsurprisingly, this led to his being charged with felony assault on a correctional officer (this being a highly common prosecutorial strategy geared at avoiding liability in cases of police inflicted injuries). The state ferociously prosecuted this case, setting bail at a staggering $560,000 and even threatening to use his prior criminal record to pursue the charge as a “third strike,” which would result in a life sentence. Kali was kept in solitary confinement for six months of drawn out court proceedings. This became so unbearable that he eventually accepted a plea deal that imposed a four-year prison sentence. When relaying his decision to his friends and supporters, he explained that he accepted these four years of incarceration because it offered the only immediate escape from solitary confinement. Sentencing would at least result in his being transferred to general population at a state facility, rather than forcing him to remain in the torturous conditions of solitary confinement through the indefinitely drawn out process of court proceedings. Tragically, Kali was once again reassigned to solitary confinement while serving this sentence, where he would remain for well over one year. During this time, he suffered extreme harassment and abuse by correctional officers, which again resulted in a felony charge of assault that further extended his sentence. He remains incarcerated almost five years later.

The December 16th raid introduced Occupiers to a new state strategy that was terrifying not only in its aggressiveness and severity, but also in its highly targeted operation. There had already been a foreshadowing of this new strategy on Thanksgiving Day, when officers had randomly targeted a Black man out of the larger crowd and arrested only him for “obstruction”. On December 16th, two out of three of the arrestees were Black men, who also happened to be particularly active in daily life at the “vigil”. Furthermore, in addition to Kali’s parole status, another of the arrestees had just completed his probation sentence. He later relayed that he was certain that officers, who had routinely harassed him while he was on probation, had purposely targeted him because they were unaware of this change in his status and assumed the arrest would trigger a probation violation. Although this arrestee was able to post bond (and later had the baseless charges against him completely dropped), the tragic outcome for Kali served as a terrifying warning that OPD was identifying Occupiers for whom enforcement posed particularly high risk (whether because of their parole/probation status, characterization as “homeless”, or even just their race) and viciously targeting them. This would be the first in a series of targeted raids that made simply being present in the Plaza an increasingly risky act, and much more so for some than others. Kali’s fate tragically illustrated that for some Occupiers, a minor misdemeanor charge could quickly snowball into parole violations, indefinite detention, the threat of a life sentence, and even years of solitary confinement.
The next in the series of targeted raids was executed on Friday, December 30th. The first enforcement action that day was a police operation that dislodged the tree occupiers and resulted in two arrests. After weeks of ignoring the tree occupations, the City had finally decided to bring them to an end. Around the same time, OPD issued a warning that Occupiers had until 2pm to clear the area of all items in violation of the permit. At this 2pm deadline, officers returned and began confiscating and issuing citations for items like sleeping bags, blankets, backpacks and even jackets or clothes that weren’t being worn at the time.

Occupiers present were faced with the dilemma of either allowing their possessions to be confiscated and trashed as “unattended property” or risk being issued a citation, or even arrested on charges of obstruction for trying to retrieve them. Once again the enforcement action was clearly intended to incite and provoke the crowd. At one point, an officer attempted to issue a citation to a young woman for the yoga mat she held in her hand. When he demanded that she provide identification, the woman responded by questioning why she was being cited for simply holding her personal property. The officer then proceeded to grab her and wrestle her arms behind her back to arrest her for obstruction (presumably obstructing his attempt to issue her a citation by questioning why she was receiving one). The physically rough manner in which he did so outraged the crowd, who began to gather around them in protest. Immediately, officers began grabbing other individuals from the crowd and arresting them on the premise of “obstructing” this enforcement action. In other words, they were arrested for obstructing the enforcement of an obstruction of an enforcement… (revealing the circular logic of this pre-textual strategy). In most of these cases officers exerted a great deal of force in executing arrests, causing multiple injuries. One arrestee was picked up and violently thrown to the ground in what the assaulting officer himself would later describe in court testimony as an “Oakland body slam”.

A total of eleven people were arrested. They were all boarded into a police van and, for reasons that were never explained, transported to an undisclosed location where the dark, hot van was left parked without ventilation for over 6 hours before they were eventually taken to jail for processing. Their hands were left bound in excessively tight plastic zip-ties the entire time (from which they reported suffering extreme pain, loss of sensation and bruising) and they weren’t told what was happening or why the van was left parked there so long. Many later described the sheer terror of wondering where they were, and what kind of extra-legal violence they might be subjected to, as they sat there for hours. Once they were eventually taken to the jail for processing, they found that not only were they all being charged with obstruction, but many of them were also facing much more severe felonies like assaulting an officer, attempting to incite a riot, resisting arrest, and even “lynching”. The latter is a criminal charge created by 1933 California anti-lynching legislation that aimed to prevent White vigilante mobs from abducting and publicly murdering Black people in police custody. The law defines lynching as “the taking by means of a riot of any person from the lawful custody of any peace officer.” One of the arrestees on December 30th – a woman of color – was arrested (and subsequently prosecuted) on this archaic “lynching” charge for allegedly grabbing the arm of the woman with the yoga mat while she was being placed under arrest.
The December 30th raid marked a harsh intensification of the state’s targeted raid strategy. Just as misdemeanor obstruction charges were used to create a pretext for arrest and detention out of minor citable permit violations, the arrests for obstruction themselves soon became windows of opportunity to tack on much more serious felonies, like resisting arrest or assaulting an officer. One of the advantages this provided was that while obstruction charges enabled a temporary detention of Occupiers (this being precisely the reason for utilizing this particular charge), adding on additional more severe charges served to significantly extend the duration of that detention by dramatically inflating the bail amounts involved. This effectively neutralized the movement’s capacity to raise the necessary funds to bail or bond out arrestees, ensuring that they would have to withstand at least a few days of jail time (sometimes much more), even in cases where the charges were so flimsy and fabricated that they immediately fell apart and were dropped once arraignment time finally rolled around. As the old police adage goes, “you can beat the rap, but you can’t beat the ride”.\textsuperscript{364}

As a result of the enormity of their bails, most of the arrestees were forced to sit in jail for four days until their scheduled court arraignments – at which time they were all released without charge. Later, changes in the state’s strategy would lead the District Attorney’s office to re-file charges against these Occupiers (a development discussed in the following chapter). While these subsequent strategic evolutions were imminent, at the time of their execution, these arrests were clearly oriented around one overriding objective – imposing extended periods of \textit{extra-legal detention} upon Occupiers. The clearest indication of this was the fact that the charges against those arrested in these targeted raids were usually either dropped, dismissed, or fell apart as soon as court proceedings commenced. The charges filed by police were so obviously exaggerated and even fabricated that the District Attorney’s Office didn’t even bother to pursue them (at least until state strategy later takes an even harsher turn). Clearly, the initial objective was never really prosecution, but rather the imposition of extended extra-legal detention. This was further revealed by the strategic timing of the raids, which had both been executed on Fridays (the raids on the foreclosure defense occupations were similarly scheduled). This resulted in extending the detentions because arrestees were forced to sit in jail over the weekend, awaiting Monday or Tuesday arraignments. In the case of the December 30th raid, this was extended even longer because of the New Year’s holiday. In retrospect, the strategy was grossly obvious – unleash officers into the Plaza right before the weekend to engage in highly provocative enforcement and subsequently arrest and detain individuals on trumped up charges with exorbitant bails that would fall apart as soon as they saw the light of a courtroom.

But this strategy also aimed for much more than just the punitive impact of extra-legally incarcerating dozens of Occupiers. It also achieved a powerful \textit{strategic incapacitation} of the larger movement by absorbing and diverting its time, energy and resources to dealing with these arrests – and always doing so right before the weekends, when the vast majority of OO’s major actions were scheduled. Hence, what actually transpired with these cases once Monday rolled around was of little concern to the state because the objective of preventatively incapacitating the movement’s potential for disruptive action that previous weekend had already been achieved.

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In the following chapter, I will discuss the subsequent development of state strategy that leads to the re-filing of charges against the December 30th arrestees. But I introduce this issue now to highlight a crucial dynamic of this state tactic of targeted raids that would later come to have profound consequences for Occupiers. The strategy of utilizing petty enforcement of permit violations as a pretext for executing arrests for obstruction also served to create opportunities to charge arrestees with additional, much more serious, crimes. While this strategy was initially oriented around the objective of imposing and extending pre-arraignment detention of Occupiers, it very soon came to provide the basis for a massive state prosecution campaign. Many of the December 30th arrestees would spend the next year defending themselves against ridiculously trumped up charges that were later re-filed by the District Attorney’s office and prosecuted with a vigor and severity that clearly revealed the political motivations involved.

Aside from an increasing reliance on extra-legal detention, the December 30th raid also reflected another development characterizing the state’s new strategy – it’s capacity to de-spectacularize its deployment of violence and repressive force. This de-spectacularization was achieved in two ways. First, by discursively disguising raid operations as unintended responses to the “obstruction” of “minor enforcement” action by “violent” Occupiers. In other words, one of the most powerful aspects of the state’s new strategy of targeted raid operations was that they weren’t even discernable as raids. Unlike the events of October 25th, which enjoyed live and international media coverage, this series of small targeted raids was virtually invisible to the public. Unless they happened to be in the immediate vicinity at the time, most Oaklanders would never even know they had occurred. Mainstream media coverage, which was relatively limited, fully adopted the state’s account, reporting that police had attempted to enforce against violations in the Plaza and had subsequently been “violently” assaulted by Occupiers, resulting in arrests. This discursive strategy not only justified the state’s own deployment of force (presenting it as a necessary response to Occupier “violence”), it thoroughly obscured it. Here we have the perfection of the state’s strategy of diminishing the spectacular nature of its raid operations. While the first raid on October 25th descended into a disastrous spectacle, the second raid on November 14th reflected a successful effort to substantially contain that danger of spectacle (through tactics like cordons, media blackouts, or refraining from setting deadlines for enforcement to maintain an element of surprise). But by the second “moment” the state was succeeding in executing raids that were so unspectacular that they were virtually undiscernible as raids. Nonetheless, the effects they achieved were actually much more powerful and terrifying to those targeted by them. Without resorting to tear gas or the mass deployment of “less lethal” munitions, this strategy resulted in causing immeasurable harm to targeted Occupiers, and more generally imposing a level of risk upon simply being present at OGP that was terrifying to all.

The second means through which the state neutralized the danger of spectacle was through de-spectacularizing its deployment of violence by tucking it away within the seclusion of its institutional recesses. It no longer resorted to deploying its violence in highly visible public displays. Massive formations of riot police launching “less lethal” munitions were replaced with small units of uniformed officers undertaking “minor enforcement” action. But despite the surface appearance, October 25th was no more violent than this series of targeted raids (which arguably resulted in causing much more harm to many Occupiers).
But the crucial difference was that this violence was no longer so spectacularly visible, and instead came to be deployed through institutional means that elude public visibility. Rather than being launched out of military grade munitions, the violence deployed against Occupiers was now doled out in highly secluded realms like county jails, solitary confinement cells, or police vans left indefinitely parked in unknown locations.

The January 4th Raid: The Disaggregating Power of Surveillance and the Terror of Targeted Repression

On January 4th OPD executed what would be its final, and by far most terrifying, targeted raid on Oscar Grant Plaza. In the case of both of the previous targeted raids, police had issued warnings early in the day, setting a 2pm deadline for removal of items in violation of the permit. Both raids were executed at 2pm after giving Occupiers the opportunity to comply. They were both initiated by approximately half a dozen officers (expanding slightly once back up was called for) and commenced with them provocatively issuing citations or confiscating items alleged to be permit violations, which then created situations where they were surrounded by incited crowds from which they could subsequently target individuals for arrest on obstruction and other more serious charges. The execution of the January 4th raid was strikingly different.

Just two days earlier, the City Administrator’s Office (citing multiple violations) had revoked the permit for the “vigil” teepee and information table. While one might assume that this would slow down enforcement action since there was no longer any permit to violate, it resulted in precisely the opposite. The revocation of the permit now rendered the entire “vigil” as unpermitted and therefore a target of enforcement. The same dynamics were at work in the Oscar Grant case that some Occupiers had warned about. By virtue of revoking a previously issued permit, the state had rendered the march (itself a constitutionally protected form of political expression and assembly) as an unpermitted target of enforcement. If no permit had ever been issued, the City would have had to balance any plans for enforcement action with, at least a show of, its duty to respect, and even “facilitate”, First Amendment rights. But the issuing and subsequent revocation of a permit established the basis for targeting the march as a violation for having proceeded after the permit was revoked. In a similar fashion, the moment the City Administrator’s Office revoked the teepee and table permit, it rendered the existence of the entire vigil a “violation” of the revoked permit, and thus subject to police enforcement action. While the initial permit issuing strategy had served to criminalize mundane practices like eating or sleeping anywhere near the teepee, the permit revocation strategy now rendered mere presence anywhere in (or as we shall see, even near) Oscar Grant Plaza a potential target for enforcement. This evolution of the state’s strategy served to dramatically distinguish the January 4th raid from its predecessors.

Unlike the previous raids, no warnings were issued on January 4th, nor was there any indication that enforcement action was going to be undertaken that day, ensuring an element of surprise. And this raid was executed, not in the middle of the afternoon, but
under the cover of darkness shortly after 11pm. At the time, there were only around 50 Occupiers in the Plaza maintaining the “vigil” through the night. The operation commenced swiftly, with 60 OPD officers – suited in riot gear – quickly descending out of police vehicles. They assembled into a line formation and immediately began advancing rapidly into the Plaza. Occupiers ran off in terror, but those that failed to do so quickly enough were grabbed and placed under arrest. A total of fourteen people were arrested.

The new charge lodged against these arrestees clearly reflected the change of state strategy. Given that there was no longer an issued permit, police operations ceased to be disguised as permit enforcement. Hence there was no “minor enforcement” action to charge Occupiers with obstructing. Instead, the state resorted to charging them with violating a municipal ordinance that prohibits the “obstruction of thoroughfares.” In other words, all of the January 4th arrestees were charged with blocking a sidewalk (regardless of the fact that most of them were fleeing at the time of their arrests). In addition to this misdemeanor charge, a number of the arrestees also faced additional felonies. Their bails ranged from $5000 to $30,000, and most would spend the weekend in jail as they waited for their arraignments. (Although this raid was executed on a Wednesday night, the arrests weren’t processed into the system until after midnight, and thus were documented as occurring the following day, resulting in extending the legally allowable duration of pre-arraignment detention through the weekend.)

The operation was executed swiftly. Officers seized the teepee, the table and all other remaining items in the area, which were immediately carted away by Public Works. OPD left Oscar Grant Plaza by 11:45pm, leaving no trace of the occupation behind. The ferocity of the raid (and the fact that Occupiers were chased away by police lines) resulted in completely clearing the area. Virtually no one dared remain near the scene. The speed and element of surprise characterizing the raid also ensured that there was virtually no media coverage. Anyone who happened to pass by the Plaza at midnight would have no idea that anything had just occurred there – except perhaps to notice that it was the first time in months that there were no signs of life there at all, nor any indication that there had ever been an occupation.

But the most terrifying aspect of the police operation on January 4th was the undeniable and blatant targeting on display. It wasn’t simply that those who refused to disperse or did so too slowly were the only ones arrested that night. There were a number of individuals running from the scene who were chased down, even into surrounding streets, and arrested. There seemed to be no concern for blatantly displaying this targeting, as officers repeatedly pointed out individuals who were then advanced upon and placed under arrest. This included two separate incidences of Black men being chased down the block and arrested for obstruction after having already fled the immediate vicinity of the Plaza. The questionable legality of charging these individuals with obstructing a sidewalk when they were clearly fleeing at the time of arrest was soon rendered irrelevant, as they both had more severe felonies lodged against them (which were eventually dismissed) and one had his probation revoked, for which he was forced to serve a one-month jail sentence.

While the blatant nature of its execution may have been shocking, there was nothing surprising about this targeting to Occupiers, who had become acutely aware of an intensification of police surveillance tactics in the previous weeks. Uniformed officers,
and occasionally even federal agents, had been routinely patrolling the Plaza with recording devices. Officers would, often quite conspicuously, aim their cameras at individuals or groups of Occupiers in a manner that was clearly intended to communicate that they were being identified and documented. Some of these interactions were highly charged, as Occupiers became enraged and officers continued to tauntingly follow and record them. Even more anxiety provoking were the numerous incidences where officers in the Plaza were observed flipping through what was soon confirmed to be an Occupier photobook. When copies were later obtained, it was found to include pictures and identifying information on what appeared to be a somewhat randomly compiled group of Occupiers. However, closer examination did reveal two factors that seemed to impact the likelihood of inclusion in the photobook: having previously been arrested during Occupy, or playing a particularly central role in the daily operation of the “vigil” (for example, highly active members of the Sound, Kitchen or Supply Committees). The photobook was a product of a range of state surveillance practices that sought to identify Occupiers who posed a greater risk, whether by virtue of having been previously arrested or by playing a major role in the daily maintenance of the “vigil”. It was through these practices that the state identified and targeted Occupiers it cast as either “violent” or “leaders”. During the raid on the night of January 4th, several officers could be observed holding copies of this photobook and proceeding to point out individuals in the crowd who were then advanced upon, sometimes chased, and arrested.

The characteristics of the kinds of people being disproportionately targeted for arrest in these raids was now clearly apparent. The heavy targeting of Black men (particularly those that were highly active and vocal in the movement) was undeniable. There was also clearly a concerted effort to identify individuals on probation or parole; a powerful strategy given that these arrests triggered violations that carried the threat of sentencing, even if all charges were dropped or dismissed (the law defines any interaction with law enforcement, even if it fails to result in prosecution, as a violation of parole/probation status). There was also a targeting of individuals perceived as being homeless throughout the course of the raids, as reflected not only in the baseless arrest of Kali on December 16th, but continuing through January 4th when one of the fourteen people arrested was an individual with no connection to Occupy. He had been sleeping in the Plaza, as he had always done, at the time he was apprehended by police. He was subsequently forced to serve significant jail time as a result of this arrest triggering a probation violation. While Occupy Oakland could definitely be argued to be one of the most diverse sites of the national Occupy movement, the demographics of the raid arrestees reflected a grossly disproportionate targeting by race, class, and history of imprisonment that was undeniable.

As reflected in the compilation of the photobook, there was also a heavy targeting of individuals who had been identified through police surveillance as being “leaders” because of their particularly active roles in daily operations at the “vigil”. Hence, many members of the Kitchen, Supply, Sound and Vigil committees found themselves primary targets of these raids, as well as of daily police harassment and surveillance. Many reported being aggressively targeted with citations and having their vehicles, equipment or other property confiscated, which they perceived as being intended to disrupt their “vigil” related work. Some of these individuals reported being followed by police vehicles far outside of the Plaza, sometimes even in their own residential neighborhoods. One woman who
transported mass donations of produce to the Plaza at a specific time every morning reported noticing a police vehicle routinely parked in front of her home as she began her daily rounds. She was one of the Occupiers targeted for arrest in the December 30th raid (after having just been released from jail a few hours earlier following an arrest for “trespassing” at one of the foreclosure defense occupations which she helped provide food for).

The tactic of surveillance provided the necessary basis for the state’s new strategy of Targeted Repression. It was the acquisition of identifying knowledge about individual Occupiers that then allowed for targeted forms of repression. Surveillance practices enabled the disaggregation of what had previously been an amorphous movement into identifiable individuals who could be assessed for the risks they were deemed to pose, and then targeted accordingly. Furthermore, just by its very operation, surveillance functioned to impose a sense of constant observation, individuation and potential targeting that came to internalized by Occupiers. No longer did anyone feel the protection of the crowd. Instead, each Occupier increasingly experienced themselves as individuated and identified subjects of state surveillance. This targeted subjectivity undoubtedly discouraged many Occupiers from participating in the movement or engaging in political activity. Hence, the power of surveillance practices far exceeds their capacity to enable Targeted Repression – beyond this power to target those deemed to pose the most risk, their very deployment achieved a preventative objective against the larger movement.

The Evolution of Targeted Repression: The Demise of the Occupation of Oscar Grant Plaza

The series of targeted raids on Oscar Grant Plaza serve as an epitomization of Targeted Repression, most clearly embodying the operation of the state’s new strategy in the second “moment”. This strategy evolved out of the failures and crisis of Naked Coercion (epitomized in the operations of October 25th) and as a response to strategic and tactical adaptation by the movement. This iterative dynamic fueled an evolution of state strategy that can be most clearly observed through contrasting the operations of October 25th with the series of targeted raids. In the former, we witness a highly reactive and indiscriminate deployment of violence that seeks to “hold ground” against an undifferentiated crowd, remains discursively naked, and results in spectacular backlash. In contrast, in the latter we observe a pro-active series of operations that seek to target “violent” Occupiers, and that deploy violence in ways that are either discursively disguised or contained and secluded, and thus thoroughly de-spectacularized. This perfection of the state’s raid strategy represents an underlying evolution of state power: a shift from reactive to proactive momentum; a disaggregation and identification of its targets; a discursive disguising of its force; an institutional seclusion of its deployment of violence; and a neutralization of the dangers of spectacular backlash.

We can also approach this evolution by comparing the epitomizing targets of these strategies. In the first “moment” Scott Olsen served as the epitomizing face of the victim of
October 25th. The indiscriminate violence that characterized that police operation resulted in the (mis)targeting of this White, middle class veteran. The critical wounding of this “peaceful protester” incited public outrage and enormous backlash. In contrast to the indiscriminate and spectacular (mis)targeting of Olsen, it was Kali who most clearly epitomized the target of state violence in the second “moment”. But while the public is well versed in Scott Olsen’s story, most have never even heard of Kali, who still remains incarcerated until this day. The little mainstream media coverage of Kali’s story at the time largely focused on his previous criminal history, his long struggle with mental health issues, his presumed “homelessness”, and allegations of a history of “violent” outbursts. In other words, he was presented as the epitomizing example of the “violent Occupier.” In contrast to the outrage incited by the wounding of a “peaceful protester” like Olsen, the rendering of Kali as a “violent Occupier” served to not only diminish public empathy, but even obscure the torture and immeasurable violence done to him.

The targeted raids had profound consequences for Occupy Oakland. Most crucially, this series of quietly executed “minor enforcement” actions achieved what two mass raids deploying hundreds of riot geared officers and military grade weapons could not – thoroughly extinguishing the occupation of Oscar Grant Plaza, even in its lingering clandestine remnants as a “vigil”. The targeted raids, and the larger strategy of Targeted Repression that oriented them, terrified Occupiers in ways that tear gas and rubber bullets never could. They rendered mere presence in the Plaza a highly risk act, one that could have consequences for some Occupiers that were simply unbearable. The occupation of Oscar Grant Plaza was never really enacted through the pitching of tents or the erection of an encampment, but simply through the collective presence of Occupiers, and the assertion of claim that represented. While mass raids and evictions may have succeeding in crushing any such claims to OGP, they still failed to repress Occupiers’ daily presence there. But the targeted raids now undermined Occupiers’ capacity for enacting the most fundamental component of occupation – simply asserting their collective presence at Oscar Grant Plaza. The state had now truly and thoroughly reasserted its territorial sovereignty. The occupation was dead.

**Occupy Oakland Strikes Back: “Fuck the Police!” – Provoking Spectacles of Confrontation with OPD**

The state’s strategy of targeted raids succeeded in bringing a permanent end to the occupation. Over 40 Occupiers had been arrested in the course of a few weeks. The movement was faced with the undeniable reality that given the increasing risk posed by simply being present in the Plaza, the occupation of OGP was no longer feasible. The consequences borne by Occupiers (whether arrest and detention, probation/parole violation, or felony prosecution) were simply too great.

One response to this new reality was the movement’s intensification of its “FTP!” stance and its adoption of an increasingly unapologetic and confrontational strategy of focusing on police repression. While this had always been a primary concern of Occupy Oakland,
many now perceived it as the single most urgent threat facing the movement. And given the increasingly apparent capacity of the state to intensify its deployment of force while simultaneously disguising it, Occupiers understood the urgency of bringing visibility to the police repression that was strangling the movement but going largely unnoticed by the general public. While “FTP!” had always been one of Occupy Oakland’s core tenets, it now became the movement’s rallying cry.

Occupy Oakland’s response to the state’s strategy of reducing the visibility of its violence and force was to revert to the *strategy of spectacularization* that had proven so successful on October 25\(^{th}\). This strategy of spectacularizing state violence was implemented through tactics that sought to *provoke hyper-visible confrontations with OPD*, in particular a series of weekly Saturday night “FTP!” marches. This was initiated by OO’s Tactical Action Committee (TAC) which put out a call for the first in a series of what they referred to as “Anti-repression/Fuck the Police” marches (soon to be shorthanded into simply “FTP!” marches). The marches were organized as autonomous actions (they had no endorsement from OO through the General Assembly) with an emphasis on encouraging a “diversity of tactics,” meaning participants were free to use a wide range of tactics, including targeted property destruction – which had become fiercely contested within OO as state discursive strategies increasingly exploited it as evidence of the movement’s “violence. This was explicitly articulated by the march’s organizers to ensure that Occupiers who chose to participate (and many did not) were fully aware that such tactics might be utilized. More generally, they emphasized that the action would take an unapologetic and confrontational stance against OPD.

Prior to the march TAC issued a press release that linked the recent police repression of Occupiers with the more general problem of state violence in Oakland. It asserted:

> The City of Oakland is a war zone. The politicians, chamber of commerce, large scale property owners and Oakland Police Department daily work together to make our lives a living hell. Between the inflated rents, unemployment and consistent indiscriminate police violence there is not a day where the social forces that surround us do not attack the very foundations of our lives. Recently over the past weeks those who have actively participated in Occupy Oakland have been the targets of the OPD...Dozens have been arrested these past weeks and many of them are still sitting in Santa Rita [Jail] facing daily harassment and brutality at the hands of the Alameda Sheriffs. This is war.\(^{366}\) [Emphasis original.]

The press release called for all Occupiers to gather at OGP at 8pm on Saturday, January 7\(^{th}\) to “march on the police.” It concluded with the demand: “FREE ALL OCCUPY
OAKLAND POLITICAL PRISONERS! LONG LIVE THE OAKLAND COMMUNE!
FUCK THE OPD!”

The tactic of FTP! marches aimed to spectacularize police repression by provoking direct confrontations with OPD that were publicly visible (hence the strategic timing of the marches on Saturday nights when the downtown area was full of people). OPD was engaging in increasingly aggressive and violent repression of Occupiers but in a largely contained manner that generally eluded public visibility. If only the movement could incite or provoke such displays of police force on a more public stage – this could provide the kind of political opportunity that resulted from the spectacularization of October 25th. As TAC asserted in its call to action, there was a “war” being waged by the state against the movement, but one that was largely invisible to the public. The movement’s new tactic of provocative FTP! marches sought to unveil this through confrontations with OPD that forced this warzone to visibly manifest itself in the streets of Oakland every Saturday night.

The first FTP! march was held on January 7th, which marked the third anniversary of Oakland’s Oscar Grant Rebellions. Several hundred Occupiers gathered at Oscar Grant Plaza where an enormous banner reading “Occupy Oakland – Fuck the Police!” was unfurled at the intersection of 14th and Broadway. It was quickly apparent that the City had prepared extensively for the march with dozens of OPD officers and numerous police vehicles stationed around the Plaza. The march commenced shortly after 9pm, taking over Broadway as it moved towards OPD headquarters and the jail. The crowd carried numerous banners proclaiming: “Better to die on your feet than live on your knees”; “Not gay as in happy, but queer as in fuck OPD”; and “Police nowhere, liberation everywhere.” And some Occupiers blew bubbles that trailed in massive clouds behind the march. Many wore all black, and some masked their faces as the march neared its target of OPD headquarters and the jail. Marchers arrived there to find a line of over 50 police officers, some in riot gear, standing in a shoulder to shoulder formation around the perimeter of OPD’s headquarters, creating a barricade that blocked access to the building and the jail behind it. Additional officers and dozens of police vehicles were positioned throughout the surrounding area. The march had indeed succeeded in its objective of drawing OPD out in full force – and thus visibly materializing a “war zone” where hundreds of Occupiers faced off with police, fully suited in their armor and lined up to defend their fortress.

State Strategy: Discursive Dominance and the New Dynamics of Spectacularization

As the evening proceeded the stand-off between Occupiers and OPD intensified. During this time, there were several incidences of property destruction, all targeted at either police or mainstream media outlets. Two police vehicles had their tires slashed, as did a KTVU news van which also had cables torn from an exposed switch board and an Anarchist symbol spray painted across it. There were also several incidences of plastic water bottles thrown at the police line, and a few small fires were lit in metal trash receptacles.
These acts would soon serve as the basis of the City’s claim that Occupiers had engaged in “violence” which had necessitated the police response that night. And that response would come to take an unexpectedly terrifying form.

On the march’s second attempt at approaching OPD headquarters and the jail, the crowd once again stood off facing the police line. Over the course of a few minutes, the line of officers slowly and repeatedly inch forward, forcing the crowd to retreat slightly each time. Video footage captured at the scene then shows the police line, with no warning, all of a sudden quickly charging on the crowd. As marchers attempt to scatter to safety, officers advance into the crowd with their batons swinging. Those that aren’t able to flee fast enough are trampled, beaten, and in some cases detained and arrested. There were numerous police inflicted injuries documented that night. A number of people reported injuries from police deployed “less lethals” like bean-bag rounds. But most of the injuries were inflicted by much more traditional means – direct brutal police beatings. Video footage captures one incident where an officer approaches a woman from behind and forcefully shoves her off her bike. Several people were hospitalized, including a young woman who suffered severe injuries from being clubbed by a baton, as well as a man whose leg was broken. A medic even reported that an officer had thrown a bike at him as he was attempting to treat an injured Occupier. The march had descended into a blood bath – clearly, the City no longer hesitated to brutally, and very publicly, unleash OPD on Occupiers. By the end of the evening six people had been arrested (three were released without charge but one faced five felony counts), there were numerous injuries, and Occupiers were generally terrified. This, indeed, was a “war”, and the City was making no qualms about it, showing itself to be quite willing to engage in overt displays of brute police violence.

TAC called for a second FTP! march the following Saturday night (January 14th). The crowd was significantly smaller this time around (less than a hundred people), reflecting the level of fear after OPD’s vicious attack the previous week. The outcome was similar, with numerous reported injuries and nine arrests (representing roughly 10% of the entire march). These FTP! marches would later resume and continue for months, but at that moment, the risks and consequence they posed were just too enormous. And not only did they result in baseless arrests and severe injuries, but this came to be thoroughly obscured by a state discursive campaign emphasizing the “violence” of Occupiers. Mainstream media coverage presented frightening images of downtown streets engulfed in tear gas and explosive sounds. There was no doubting that the streets of Oakland had descended into violence. But this was presented as violence by the hands of Occupiers who were just looking for an excuse to “agitate”, “riot” and attack the police. Both of the January FTP! marches were followed by City officials claiming that Occupiers had assaulted officers. Although there were a number of incidences of projectiles thrown at police lines, these were generally items like plastic water bottles that are highly unlikely to have caused injury to riot geared officers. OPD never offered any concrete information beyond the vague allegations, and all of the injuries documented in the extensive footage available were police inflicted and suffered by Occupiers.

Beyond these unsubstantiated allegations of police injuries, each march was also followed by OPD’s spokesperson, Joanna Watson, reporting arrests for serious and violent crimes to
the media that were never actually charged. One of the most egregious examples involved her claiming to reporters that one arrestee had been found in possession of “a quarter stick of dynamite” (a claim that was prominently and repeatedly cited in media coverage). No one was ever charged with this, nor for any kind of possession of explosives. But the media uncritically disseminated these state claims, never bothering to follow up and check on their accuracy (which would have required no more effort than a quick call to the District Attorney’s office). Even in cases where Occupiers were arrested on severe felonies at FTP! marches, these usually fell apart in court and were either dropped or significantly reduced. But these updates never surfaced in media coverage, which abruptly stopped after reporting the state’s initial propaganda. As a result, the general public was left with an image of senselessly violent Occupiers who were prepared to, quite literally, blow up downtown streets in the middle of a Saturday night.

This presentation was further shaped by the state’s continuing campaign to portray Occupiers as “outside agitators” who weren’t invested in Oakland and were thus willing to turn it into their “playground” of violence and mayhem. On January 27th, the City issued a press release which asserted: “Over the past few weeks, organizers have held marches in downtown Oakland which were billed as anti-police initiatives. During this period, about 15 arrests were made, with approximately 60% of those arrested residing outside of the region or the state.” This tactic of issuing statistics about the alleged “outsider” status of Occupiers is one that the City repeated incessantly (and which it has long resorted to every time protest erupts in Oakland). Similar claims were made after the first raid on October 25th when officials were instructed on “talking points” that included emphasizing that “some of the arrestees came from as far away as Florida or Illinois,” as well as after the second raid, when Chief Jordan asserted that only 9 of the 33 people arrested were from Oakland. And these allegations, along with statistics that appeared to support them, would continue to be repeated in the months to come.

Many of these alleged statistics were outright fabrications, but went unchallenged given that the only relied upon source for this information was the state itself (through its own reporting of its arrest records), and media didn’t bother to pursue any other sources (like the arrestees themselves, for example). But aside from outright fabrications, there was also a great deal of misrepresentation in these state allegations. The state’s identification of residence for arrestees was based upon what was previously documented with the state, and didn’t necessarily correspond with the information arrestees provided or where they actually lived. There were numerous people who lived in Oakland but, for a range of reason, had state documented residence in other locations, often no farther than neighboring cities or counties. And there were countless Occupiers who lived in border areas of Oakland that are officially classified as Berkeley or Emeryville, but worked, studied or spent much of their time in Oakland. And then there were those who had long lived in Oakland, but had recently moved to neighboring cities like San Leandro, Berkeley or San Francisco. In other words, many of the Occupiers classified by OPD and City officials as “outside agitators,” actually lived their lives in Oakland. From the perspective of Occupiers, it was actually OPD who were the “outside agitators” given that the vast majority of Oakland’s police officers commute into the city from their homes in distant suburbs that are not only far removed from Oakland geographically, but also demographically, socio-economically and culturally.
The outcome of these *FTP!* marches reflect the weaknesses of the movement’s strategy of spectacularization in the context of the new discursive terrain characterizing the second “moment” of struggle. While the movement still clung to the success of October 25th, the tactic of provoking hyper-visible confrontations with police no longer achieved the same kind of spectacles. Rather, these confrontations now took on radically different meanings that were powerfully shaped by months of the state’s discursive strategies. When police in riot gear deployed tear gas or “less lethals” in the middle of downtown on a crowded Saturday evening, it now appeared as a justified response to the dangers of “violence” posed by “outside agitators” intent on turning Oakland into their political “playground”.

Thus, even when the movement lured out extreme and highly visible police violence, this no longer achieved the same kind of spectacle. In fact, doing so in a context where the state so thoroughly dominated the discursive terrain resulted in feeding the state’s own new strategy of *spectacularization*. As Occupiers clung to a strategy that had proven so successful on October 25th, they found themselves cast as characters in a new kind of spectacle – it was the “violence” of Occupy that was now spectacularized.

**Occupy Oakland Strikes Back: “Move-In Day” – OO’s Last Mass Occupation Effort**

In the aftermath of the targeted raids, the movement faced several increasingly urgent challenges. One was the de-spectacularization of the state violence and repression targeting the movement. The “*FTP!*” marches emerged as a strategic response to this, one which proved to spectacularly backfire. But the most crucial challenge facing the movement was the loss of the occupation of Oscar Grant Plaza, to which Occupy Oakland responded with one final occupation effort on January 28th or “Move-In Day.” This would be Occupy Oakland’s last attempt at mass occupation – one that would fail miserably in the face of the enormous and violent police operations that were mobilized in response to it.

There would later be a great deal of criticism of Occupy Oakland for what was perceived as a naively ambitious occupation effort that was not only doomed to fail, but which some even argued was responsible for intensifying repression against the larger national movement, leading to its decline. OO’s stubborn insistence on establishing a new occupation came to increasingly alienate it from many other Occupiers and supporters that argued for a shift to alternative tactics. After the nationwide series of raids in November, most Occupy sites abandoned the tactic of occupation and turned their energies towards other endeavors, for example: anti-foreclosure work; struggles over local budget allocation; campaigns around student loans; and even electoral initiatives like “Occupy the Vote.” But Occupiers in Oakland still refused to relinquish the tactic of occupation, continuing to place it at the center of movement strategy. Despite the fact that OO’s final occupation effort would fail, it nonetheless reflected a strategic understanding of the significance of the tactic for the movement, and the dire consequences of its abandonment. The occupation had served as the bedrock of the movement, and its loss had a profoundly destabilizing impact.
At the most basic level, the loss of the occupation raised a range of practical concerns and urgent material needs. There were countless people who had come to rely upon the camp, and later the “vigil”, for basic shelter, security, food, medical attention or childcare. To the extent that occupation was implemented in Oakland as a form of direct action geared at prefiguring a new world, it had always aimed to self-sufficiently provide for the community through forms of mutual aid. After months of building and defending this new social world, the loss of “the Oakland Commune” created quite urgent concerns that affected the very livelihood of the most disadvantaged within the movement. Where would people sleep? Where would they find safe and warm shelter? How would they access food, medical attention or community support for childcare and other needs? The loss of the occupation was felt by all Occupiers, but for some it had much direr consequences.

Hence, there were a range of practical needs that fueled the call for a new occupation, especially given that it was during the cold and rainy winter season. But beyond these practical concerns, there was also an understanding that so much of the success of the movement had been premised upon the advantage of having an occupied and liberated space from which to organize and mobilize, as the General Strike had clearly illustrated. Even more fundamentally, it was the occupation that birthed and gave life to the community and collective identity of Occupy Oakland. It was through the very act of collectively liberating and defending this space, and then proceeding to prefigure a new world within it, that “the Oakland Commune” was born. And it was nurtured through daily practices of direct action, solidarity and mutual aid, like feeding, defending and caring for each other. It was through these practices of occupation that a collective identity as Occupiers was able to emerge from a highly diverse group of people from radically different communities and socioeconomic backgrounds who held a wide spectrum of political positions. What else was there to unify them? It was the daily practices of occupation that connected Occupiers – serving as the foundation of everything else. What was Occupy Oakland without an occupation?

These were the two crucial functions of the occupation. It served as a site for the practice of direct action and mutual aid in order to meet basic community needs, and through those practices, it also functioned to birth and solidify a collective political community. The loss of the occupation not only jeopardized these two processes that were so crucial for sustaining the movement, it also undermined the potential engendered through their interrelation. It disrupted the dynamic through which the practices of occupation created and shaped the kind of collective political community that was produced through them. One of the major reasons that Occupy Oakland drew so many – and such diversity – of people was because its strategic orientation prioritized direct action and mutual aid. It focused on the primary objective of building a self-sustaining community that could meet people’s basic needs. In a context like Oakland, where hunger, homelessness and vulnerability to violence are rampant, this political vision, and the capacity to actually manifest it, drew thousands of people. When Occupiers in Oakland describe how they were first drawn and became increasingly committed to the movement, many of them emphasize how the occupation met their basic needs, and how this liberated previously unimaginable political possibilities. They describe the sense of empowerment as they too began to participate in the practice of feeding, defending, and caring for others. Occupy Oakland’s strategic prioritization of these forms of direct action, mutual aid and solidarity served to
draw thousands of people who are often excluded from or alienated by most social movements. The occupation offered a form of political action that actually had relevance and direct impact on their lives.

Abandoning the tactic of occupation would mean relinquishing the commitment to this prefigurative strategy of direct action that prioritized meeting the needs of the community. Without an occupation where and how would people feed, defend and care for each other? Therefore, it would also mean abandoning those Occupiers for whom these needs were most urgent. An Occupy movement without the occupation would cease to have relevance for their lives. In other words, relinquishing the occupation would result in triggering a change in the composition of the movement, as it lost relevance for its most marginalized communities. A shift away from the practices of occupation would set off a subsequent shift in the political community that called itself Occupy Oakland. This is precisely what happened in many Occupy sites after the eviction of the camps – they came to be increasingly dominated (even more so than they had previously been) by White, middle class Occupiers. The same dynamic would later develop in Oakland, once occupation had been thoroughly excised from the movement’s repertoire. From that point forward, Occupy Oakland, which had once nationally distinguished itself for its racial and socio-economic diversity, began to slowly change its demographic face. This was most clearly apparent in the General Assembly meetings that continued to be held for several years. As time passed, without an occupation, the crowds it drew became increasingly White and middle class.

There is also evidence of a similar gendered impact resulting from the loss of the camps and the relinquishment of occupation, whereby the male dominated dynamics of the movement were exacerbated. This development reflects the significance of the practices of occupation for women Occupiers, who are disproportionately saddled with essential forms of care work and reproductive labor. The loss of the occupation meant that the pressure of these responsibilities could no longer be relieved through the forms of collective action and mutual aid that had been developed in the camps. For example, the loss of collective childcare made it increasingly difficult for women to participate in meetings or take “leading” (often instead referred to as “bottom-lining”) roles in committees or organizing efforts. The loss of the collective kitchens made it more difficult for them to attend nightly General Assemblies with their children, rather than spending the evening individually preparing dinner for them at home. More generally, these kinds of changes made it increasingly difficult to bring children into the movement at all. During the period of the encampment in Oakland, one of the most vibrant parts of the occupation was what was called the “Children’s Village.” And some of the most well known and loved Occupiers were young children. In fact, OO’s “Children’s Brigade” even occasionally led Occupy Oakland marches. But after the loss of the camp, and later the thorough destruction of the occupation, the presence and participation of those children, as well as their mothers and caretakers, drastically declined within the movement.

There have been many criticisms of the Occupy Movement for its failure to be truly diverse in its demographic composition, “leadership”, or the issues it prioritizes. There is no denying the validity of these criticisms, and indeed, there needs to be extensive reflection on the internal dynamics within the movement that create and perpetuate this. But we often fail to consider how these forms of inequality and domination in the
movement are also, in part, the outcome of state repressive strategies that seek to exacerbate them. Nothing had as much impact on transforming the character and demographic composition of Occupy Oakland as the destruction of the occupation. Dislodging the occupation also resulted in dislodging from the movement some of its most marginalized communities. This state strategy resulted in radically transforming the face of Occupy Oakland. As did a whole range of other state tactics like targeted raids, probation/parole revocations, or propaganda campaigns that criminalized the homeless in the camps as threats to “public safety” – all of which ferociously targeted the most impoverished and marginalized, and thus made participation in the movement much riskier for them. A similar gendered impact was achieved by tactics like transferring female arrestees to state hospitals for psychiatric evaluations (which appears to have been a common practice deployed by the NYPD against Occupy Wall Street), or routinely subjecting them to forms of sexual abuse in county jails (as repeatedly occurred in the case of Oakland). All of these kinds of tactics severely exacerbated the risk of participation in the movement for women, queer communities, people of color, the poor, the homeless, or those with prior histories of incarceration. And the centrality of this kind of targeting to state repressive strategies suggests that this is indeed an intended objective. These repressive strategies are targeted because they seek to have targeted effects, and to thus transform the very composition and character of the movement. Neutralizing the threat posed by Occupy Oakland necessitated dislodging from it those Occupiers whose impoverishment, exploitation or marginalization made the possibility of their collective action particularly threatening.

It was these understandings of the crucial significance of occupation for the movement that fueled the commitment to this tactic and led to the call for “Move-In Day” on January 28th. This was organized by OO’s Move-In Day Assembly and involved extensive planning and preparation throughout the month of January. The objective was to occupy a large City owned building and convert it into a social center that provided free shelter, food, medical care, childcare, and other services for the public. This new mass occupation effort was distinguished by its target -- rather than open public spaces like parks or plazas, it set its sights on vacant City owned properties. The logic of this strategy had been foreshadowed in the earlier Travelers’ Building occupation – occupying publicly owned buildings that the state was boarding up and leaving vacant while the city suffered a severe housing and shelter crisis. One member of OO’s Move-In Day Assembly described the new strategy as “signal[ing] a new direction for the Occupy movement: putting vacant buildings at the service of the community.” The Assembly also emphasized the practical necessity of the action, asserting that “since November, the city of Oakland and its police force have made it impossible for us to meet, to serve food and to provide a place for people to stay.”

Three days before the planned action, on January 25th, OO’s Move-In Day Assembly held a press conference and issued a “Letter to the Mayor, OPD and City Council on Occupy Oakland’s Move-In Day.” The release presented the planned occupation as an act of resistance to the structural violence that rendered so much of Oakland, including OO, homeless. Aiming to subvert the logic of the state’s discourse, it cast the defense of this status-quo as criminal, while rejecting the state’s criminalization of occupation.
As you probably know, Occupy Oakland is planning the occupation of a building on January 28th that will serve as a social center, convergence center, headquarters, free kitchen, and place of housing for Occupy Oakland. Like so many other people, Occupy Oakland is homeless while buildings remain vacant and unused. For Occupy this is in large part because of yourselves, having evicted us twice from the public space that was rightfully ours. For others it is because of the housing bubble, predatory lending, the perpetual crises of capitalism, and far reaching histories of imperialism and systemic violence….Our families, friends, and communities built the buildings that sit empty in post-industrial Oakland. Now these buildings outnumber the homeless and represent the theft of our collective labor as the class of the unpropertied and dispossessed. Allowing this building to remain vacant while so many are in need is injurious theft; its extralegal occupancy is not.378

Reminiscent of the call for the West Coast Port shutdown, the release also issued a very clear threat of further action if the occupation effort met with any police repression (explicitly reminding City officials that the extension of the port shutdown on December 12th following a similar warning had resulted in $8.7 million in lost revenue). The release ends by warning that this action could take one or more of the following forms: another Port shutdown; an indefinite blockade of the airport; an indefinite occupation of City Hall; or putting out a call to the hacker organization, Anonymous, for solidarity actions. The released letter ended with the warning: “Don’t fuck with the Oakland Commune.”379

While OO was making it publicly clear that it was about to embark on a massive occupation effort, there was a great deal of secrecy surrounding the specific details of the planned action. OO’s Move-In Day Assembly had made the decision to delegate the task of identifying the chosen building, as well as back up options, to a small subcommittee which was not to disclose this information, even to other Occupiers. This was a strategic decision geared at ultimately keeping this information from OPD and the City to prevent their ability to prepare police operations accordingly. The subcommittee was given criteria for choosing the building (a City owned vacant property, large enough to accommodate a massive social center, adequately sheltered for the winter, etc.) and was then tasked with doing so and preparing discretely. This created a lot of challenges and frustrations for the hundreds of people mobilizing for this planned “Move-In Day,” as well as the two day “Oakland Rise Up Festival” that was to commence once the location was occupied. But strategically, it provided the advantage that the City was left in the dark as to the exact target or nature of the planned action. It was clear that hundreds of Occupiers were going to participate in a massive occupation effort, but where they were going no one knew. In response to this threat (not to mention the additional threats of shutting down the airport or occupying City Hall), the City mobilized the largest and most aggressive police operation in Occupy Oakland’s history. The movement’s strategy of denying the state any definitive knowledge about its planned action was intended to diminish its capacity to prepare
defensive operations. The unintended consequence, however, was that it forced an adaptation that further fueled the dynamic evolution of state strategy.

**The State’s New Strategy: Incapacitation and Spectacularization**

Incapacitation through Tactics of Containment: *Barricades, Kettles and “Less Lethals”*

The size of the police force mobilized on January 28th was unprecedented. In addition to deploying most of OPD’s forces, the City also called in hundreds of officers through Mutual Aid agreements with at least twelve other neighboring law enforcement agencies. The City’s response to “Move-In Day” would involve police operations that were not only massive in size, but also unprecedentedly aggressive.

The day’s action commenced with a march from the Plaza that would eventually lead to the undisclosed location of the occupation. When the march began around 1:30pm, there were already formations of dozens of police officers in riot gear stationed in its vicinity. The march drew a crowd that was massive (growing to an estimated 2000 at its peak) and highly diverse, including militant youth, families with small children, and even a marching band dressed in pink and black tutus. As they marched, Occupiers carried with them furniture (some even carting sofas), kitchen equipment and other items intended for their new home. One woman carried a small plant, which she called her “housewarming gift” for Occupy Oakland. Hours later, she could be seen, still clutching that plant, as police chased, kettled and teargassed marchers.

As the march proceeded through downtown streets, OPD deployed barricades to block access to certain routes, while police lines followed behind the march at all times. From very early on, it was obvious that police operations were going to be highly active and aggressive. After about an hour, a police barricade prevented the march from moving past the intersection of 10th and Oak Streets. The march responded by taking a quick unexpected turn into the nearby campus of Laney College. Hundreds of Occupiers flooded through the campus as police scrambled to mobilize a response. The march weeded through the crevices between campus buildings until reaching the other side where a bridge led to precisely the area that OPD had attempted to prevent access to by barricading 10th and Oak Streets. It now clearly dawned upon everyone that the target of the occupation lay before them – the Henry J. Kaiser Convention Center. The Kaiser Center was a publicly owned arena (which has since been sold off by the City) that sits near Lake Merritt. The 215,000 square foot building (officially an Oakland Historic Landmark) holds a 5,500 seat arena, a large theatre, ballroom, banquet rooms and a basement. This massive space had been sitting vacant and boarded up since the City had shut it down citing budget cuts in 2005. It undoubtedly represented one of the most egregious cases of wasted public resources in the city – a massive Convention Center that could provide shelter and
community space for thousands of Oaklanders was being left vacant and unused for years. And the City defended this vacancy – as it did with the thousands of other vacant properties throughout Oakland. In fact, it allocated massive City resources to doing so, even mobilizing large police operations to evict long vacant properties of “trespassers” or erecting fencing around an empty lot in order to defend its vacancy against the possibility of it being accessed and put to use by Occupiers. But on this day, it was forced to do so in a highly visible manner. As the march approached the Convention Center, dozens of riot clad officers quickly assembled in formation around the boarded up building. The police barricade continued to grow as additional officers were relocated there.

What followed was several minutes of a standoff between OO and police in front of the Kaiser Center. Occupiers stood on a bridge that overlooked the area, separated from the police barricade surrounding the building by at least a hundred yards of scattered construction equipment and fencing. OPD later issued a statement that claimed that a dispersal order was given around 3pm after some protestors “began destroying construction equipment and fencing.” The statement also asserted that “[o]fficers were pelted with bottles, metal pipe, rocks, spray cans, improvised explosive devices and burning flares.” In response to these alleged attacks, police deployed tear gas and beanbag rounds. Despite OPD claims, those at the scene report little more than a few incidences of items like rocks or water bottles (no explosives) thrown at a police line that stood at a far distance away (well over a hundred feet) and was heavily suited in the armor of riot gear. The launching of these projectiles was largely futile and symbolic – clearly posing nowhere near the threat of injury to officers that was alleged by OPD’s subsequent statements.

It was only 3pm and the downtown area was teeming with riot police and tear gas already filled the air. It was now undeniable that the City was prepared to unleash massive police force to prevent any possibility of a new occupation. After police began deploying “less lethal” munitions in front of the Kaiser Center, the march retreated, trying to head back in the direction of Oscar Grant Plaza. This attempted retreat, however, was blocked off by yet another police barricade. The marchers, now prevented from directly fleeing the area permeated with tear gas behind them, took a side route onto Oak Street. Police lines were quickly reassembled and within two blocks the march hit another barricade where a line of officers once again blocked its route. It was now clear that police lines weren’t just being deployed as barricades to contain and defend sites from potential occupation, but that they were also being continuously repositioned to aggressively surround and kettle marchers. It seemed that every direction the march took, it hit another police barricade. And this was occurring while police lines simultaneously pushed the back of the march forward. These peripheries of the march became particularly dangerous areas – numerous video recordings show officers shoving and hitting marchers with batons, and in some cases surrounding and arresting individuals for no apparent reason. There seemed to be no escape other than to burrow into the center of the kettled crowd.

Police lines pushed and surrounded the march into the area of Oak Street between 10th and 12th Streets. The standoff that occurred at this location would later come to be known as the “Battle of Oak Street.” OPD declared the scene an unlawful assembly and issued an order to disperse – however, dispersal was blocked for many segments of the march by the
police lines advancing from different directions. But the front of the march held its ground in a tense standoff against the police barricade at the intersection of Oak and 10th Streets. The frontline of the march included dozens of Occupiers holding make-shift shields, a new tactic introduced by the movement that day. Many had fashioned their shields out of garbage can lids, while some crafted larger more elaborate ones. Front and center stood a massive 6 by 4-foot shield of corrugated metal with multiples handles and the words “Commune Move In” emblazoned across the front. This new tactic was intended both to defend Occupiers from police projectiles like “bean bag” rounds, as well as to serve as a highly visible symbol of self-defense against such police violence. In an irony that captures the enormous discursive power of the state, these shields would soon come to be construed as “tools of violence” by City officials who sought to pass legislation criminalizing possession of them (a development discussed in the next chapter).

There were hundreds of pictures and video recordings taken of the standoff at “the Battle of Oak Street”. They show Occupiers at the front of the march kneeling behind shields as officers deploy rounds of projectiles into the crowd, including tear gas grenades and “bean bags” (there were also reports of injuries from rubber bullets). This continued for approximately 15 minutes as the shielded frontline of the march remained standing its ground. Some marchers threw plastic water bottles, rocks and other items at the police line, including throwing back OPD’s own tear gas canisters. Meanwhile, officers on the rear and side peripheries of the march continued to target individuals for arrest. OPD later reported that 19 people were arrested during this period. As the police line in front of the march deployed repeated rounds of “less lethal” munitions into the crowd, the officers at its rear began to aggressively advance forward. Increasingly caught in this kettle between one advancing police line and another fixed one deploying munitions into the crowd, Occupiers fled by taking one of the remaining open routes up 12th street.

Fleeing Occupiers marched up 12th Street back to Oscar Grant Plaza, followed closely at the rear by a police line that continued to deploy munitions into the crowd as it fled. Close to a thousand people returned to the Plaza, where overwhelmed volunteer medics attempted to treat injuries. Many Occupiers were disoriented, still reacting to tear gas inhalation or just the sheer terror of the police attack. But they proceeded to regroup and decided to pursue occupation of an alternative site – returning once again to the Travelers’ Building. The march resumed, leaving the Plaza for this destination shortly after 5pm. But once the crowd arrived there it was discovered that workers were inside the building at the time. The objective had been to occupy a vacant property and there was a general desire to avoid any confrontations with workers that might result from trying to force into the building. Thus the march, still being shadowed closely by police lines, departed from the Travelers Building and now headed towards the nearby lot at 19th and Telegraph Streets.

This lot had been the site of OO’s last mass occupation effort after the second raid at OGP, and it would continue to serve as a major meeting location for Occupy Oakland in the months to come. The march moved almost instinctually to this nearby site after plans to occupy the Travelers’ Building were scrapped, particularly given that police lines continued to advance upon it. But this decision would end up playing right into OPD’s tactical strategy of kettling the march. The vast majority of the lot was encircled in tall metal fencing. Occupiers had encountered the same fencing strategy when they occupied
the lot on November 20th, at which time they had torn it down. And it had remained down for weeks after OPD raided the lot the next morning. But just a few days prior to Move-In Day, the city had re-erected the fencing as part of a larger strategy of barricading potential occupation sites. The only area that was not fenced in was a small park secluded from the main streets at the back of the lot. When the march flowed into this area, police lines swiftly assembled around its perimeter to create an airtight kettle around the crowd. The march was being surrounded with no escape route – tall metal fencing blocking it on one side while police lines assembled on the other three. OPD then proceeded to give a dispersal order, but did so while simultaneously blocking all exit routes. Occupiers ran around in every direction in a futile effort to escape the kettle. Just minutes later officers deployed teargases and “flash bang” explosives directly into the kettled crowd, causing mass panic.

The police operations at 19th and Telegraph were thoroughly captured in video footage taken by one of the residents of a high rise apartment building directly overlooking the park. Ryan Jarvinen’s nine-minute recording provides a complete bird’s eye view of the entire operation, which unfolded right under his window. The footage shows hundreds of Occupiers running around frantically inside the kettle trying to find an open exit. It shows officers pointing weapons or striking baton blows at Occupiers trying to escape. Jarvinen can be heard on the recording exclaiming “these people can’t leave! But they’re being told to disperse. It doesn’t really make any sense…It’s really crazy. These people don’t really have anywhere to go!” Jarvinen is clearly shocked by what he’s observing. He estimates that he can see close to two hundred officers surrounding the area. He then points the camera towards the main street of Telegraph, where motorcycle police are blocking any vehicle or pedestrian traffic, creating a cordon to reduce visibility of the police operations underway. Seconds later his camera jolts back to the crowd as “flash bangs” explode and tear gas fills the air. As these munitions are being deployed on the trapped crowd, Jarvinen’s camera captures officers advancing on people in the crowd, their batons swinging. There is panic and sheer terror as people try to retreat from the advancing police lines but are trapped by the metal fencing. As hundreds of Occupiers are backed up against the fence, many begin desperately pushing at it, and within seconds the large crowd topples it over. Once the fence falls, there is a stampede over it as hundreds of Occupiers run across the lawn slipping out of OPD’s kettle and back onto the main street of Telegraph. Officers stood momentarily shocked as the entire kettle operation fell apart within seconds. The disastrous failure of this kettle operation undoubtedly exacerbated their frustration and exhaustion after hours of chasing Occupiers around downtown. From that moment on police operations intensified dramatically. When police would next catch up with the march moments later, they would undertake extreme action to bring a final, forceful and abrupt end to OO’s “Move-In Day.”

It is crucial to take a minute and reflect upon the tactics the state chose to deploy on January 28th, as well as the nature of their co-deployment. Why did OPD choose these particular tactics – barricades, kettles and “less lethals”? And how and why did it deploy them together? Tactics are always the clearest and most accurate reflection of a strategy and its objectives. Regardless of how the state seeks to present and disguise its operations, its tactics don’t lie – they inevitably reveal the objectives they are geared at achieving. It is
the state’s choice of tactics, and its strategy for co-deploying them, that most clearly expose its true objective on January 28th.

The case of Scott Olsen’s critical wounding on October 25th serves to illustrate this point. Olsen’s civil case, as well as the campaign he later launched to reform OPD’s crowd control practices, emphasized that his injuring was the result of the problematic co-deployment of the “less lethal” munitions utilized that night. The source of the problem was that OPD commanders had issued an authorization for the deployment of target specific munitions like “bean bag” rounds while untargeted munitions like tear gas and “flash bangs” were simultaneously being deployed. Olsen articulation of the problem with this co-deployment was that it resulted in the fact that “you can’t hit the target.” Why? Because one tactic is intended to target and apprehend a specific individual, while the other is intended to disperse crowds. In other words, these two tactics are intended for different objectives, which are undermined by their simultaneous co-deployment.

As discussed in the previous chapter, police deployment of “less lethals” is highly regulated, and there are only two objectives that legally authorize their deployment as “reasonable force.” They can either be utilized to target individuals who pose an immediate safety threat in order to apprehend them for arrest, or they can be deployed as a means to disperse large crowds who pose a “public safety” threat. All deployments of “less lethal” munitions must be geared towards one of these objectives. Hence, they are all classified in either one of two categories that distinguish their intended purpose as either target specific (apprehension) or untargeted (dispersal). The delineation between these categories is strictly maintained given their distinct objectives. It was the simultaneous co-deployment of munitions from both of these classifications that was specifically problematized by Olsen’s litigation and campaign. Why on earth would OPD fire target specific munitions like “bean bags” into a crowd that was scattering in panic because of the simultaneous deployment of tear gas and “flash bangs”?

Of course, OPD could provide no answer to this question that remained within the bounds of Department policy or met the legal criteria for “reasonable force” (as a result of which the City was forced pay a $4.5 million settlement to Olsen). But the real answer is that OPD co-deployed these munitions because it provided the most effective strategy for achieving the true objective of police operations that night, which was neither of the legally allotted options (apprehending suspected targets or dispersing a crowd), but rather to “hold ground.” The two categories of “less lethals” were used in conjunction with the tactic of police barricades, all three of which were part of a larger strategy geared at “containing” the Plaza and preventing the massive crowd from re-taking it. Clearly, barricades alone were insufficient for achieving that purpose, as Occupiers would have easily breached them. The police line barricading the Plaza, which was initially manned by only 28 officers383, would have hardly been able to achieve this objective against an advancing crowd of almost 2000 Occupiers without the deployment of “less lethals”. In fact, the first authorization for deploying tear gas that night was issued almost immediately after some Occupiers began removing the metal barricades that stood between the crowd and the police line.
Furthermore, deploying only untargeted munitions like tear gas would also have been insufficient, as groups of Occupiers (some of whom wore vinegar soaked masks or just simply exhibited an increasing tolerance to the gas) would have still likely breached the barricade and slipped into the Plaza. Tear gas and “flash bangs” might have been sufficient if the true objective was just to disperse the crowd. They, indeed, would have succeeded in reducing the size of the crowd, and therefore diminishing the “public safety” threat it posed (which is the only legally authorized reason to deploy them). But this would not have prevented a handful of resistant lingerers from staying in, or returning to the area. And without the “public safety” threat posed by a large crowd, this would cease be a legally permissible target for enforcement. It is true that OPD sought to disperse the crowd – but it needed that crowd to disperse anywhere but the Plaza. The real objective was to “contain” the Plaza and keep anyone from accessing it, which necessitated tactics like having police on the front line deploy “bean bags” and rubber bullets to ensure that the crowd wouldn’t penetrate that police line. In a context where OPD commanders were forced to make instantaneous decisions in response to a crowd whose size and stubborn determination was unanticipated (and completely dwarfed available police resources), deploying these three tactics simultaneously was the most effective strategy for achieving their mandated objective of “holding ground.” Thus while the police operation on the night of October 25th is considered a colossal failure in terms of its compliance with mandated policy or its legal consequences, it was actually quite successful in terms of achieving the difficult objective that OPD had been tasked with.

We can apply the same kind of analysis to the case of January 28th. Why barricades, kettles and “less lethals”? And, for heaven’s sake, why deploy them simultaneously? Why would OPD deploy police barricades as kettles to trap the crowd, and then simultaneously lodge “less lethals” into that trapped crowd? It is the simultaneous co-deployment of these tactics that is so disturbing and outrageous. Ryan Jarvinen, the resident who video recorded the 19th and Telegraph kettle operation from his window, can be heard in the recording exclaiming with shock: “It doesn’t really make any sense...It’s really crazy!” The strategy appears irrational and confused in terms of its objectives – deploying tactics that seem to contradict each other like issuing dispersal orders while simultaneously barricading exits. And it appears ridiculously excessive, suggesting that perhaps the only objective was to impose some kind of punitive injury and harm upon Occupiers. While there may have been some element of this – police forces may have, indeed, been increasingly “trigger happy” given their exhaustion and frustration from chasing Occupiers for hours throughout the day, this doesn’t explain the nature of the operation because it is OPD commanders, and not rank-and-file officers, who determine how operations unfold. Once again, tactics don’t lie. They always reveal the true objectives of a strategy. And even if the nature of their deployment is horrifying, they are never irrational insofar as they are always geared at achieving some specified objective.

So what does the strategic co-deployment of these three particular tactics – barricades, kettles and “less lethals” – reveal about the objective of the police operations on January 28th? The tactic of deploying barricades is oriented around a strategy of containment – seeking to contain and defend targeted sites. For example, immediately prior to January 28th, the City erected barricades around numerous sites that it perceived as potential targets for occupation. When barricades are formed into kettles, they are also intended as a
containment strategy, but one deployed to contain crowds. They can be utilized either to prevent the “public safety” threat posed by a large crowd, or to execute arrests (either of the entire crowd or portions of it). “Less lethals” are (legally) deployed for either the purpose of dispersing crowds (like tear gas), or to target an individual in order to apprehend and arrest them (like “bean bags” and rubber bullets). Each of these tactics appears to be geared at achieving distinct objectives. So why deploy “less lethal” munitions into barricaded kettles?

Like the wounding of Scott Olsen, the 19th and Telegraph kettle operation provides an analytic window into the strategy of the larger operation that day. Clearly in this case, the operation intended much more than to just defend this targeted site, since the lot was already barricaded with fencing. All OPD commanders would have had to do was station a handful of officers (from the massive force they had available on the scene) to form a barricade around this fencing to ensure its containment. If their objective had been similar to the operations of October 25th and sought only to “hold ground,” this would have been achieved easily by doing so. Clearly, their strategy was not oriented around the containment of the space, but of the crowd itself. And the objective was obviously not to disperse the crowd since that crowd was simultaneously being kettled. Nor could the objective have been to apprehend particular targets since, again, the crowd was being kettled and there was clearly no problem of apprehension that would require the additional deployment of “less lethals”. So if objective of this containment strategy was neither dispersal nor apprehension, what actually was it? The overriding objective of police operations on January 28th was to prevent any possibility of an occupation. And the most effective means for achieving this was through a strategy of Containment that focused upon achieving a thorough Incapacitation of the crowd.

It was OPD’s explicit mandate of preventing any possibility of occupation, and the difficult circumstance in which it was forced to do so, that served to shape the nature of police operations that day. Achieving this objective was no easy task given that the City didn’t know the exact target of the occupation effort and the movement had spent the past month secretly preparing. In such a context, what is the most effective strategy for preventing that possibility as thoroughly as possible? Once again, barricades themselves would prove insufficient. OO’s strategy of secrecy around its occupation plan meant that there was no way of knowing which sites might be targeted. It was likely that multiple sites and back-up plans had been identified. Clearly attempting to barricade all potential sites was neither feasible, nor an effective strategy. (Although, the City did allocate extensive resources to erecting fencing and other forms of barricades around numerous sites in preparation for the day.) Given that there was no way to definitively contain what were unknown, targeted site(s), the only effective option was to contain the targeter – to make the crowd the focus of the containment strategy – and to seek to thoroughly incapacitate it so as to pre-empt any possibility of an occupation. Hence, kettles provided a much more effective tactic than simply utilizing barricades to try and contain sites. OPD began attempting to deploy a kettle strategy immediately after the march left the Kaiser Center. The police barricade, along with the co-deployment of tear gas, had effectively prevented Occupiers from reaching this initially targeted site. But as soon as the march began to leave that area, OPD initiated kettling attempts – clearly aiming to contain the crowd before it could proceed to another target site. And from that point on, it continued to try and execute
a kettle throughout the day. But the sheer size of the crowd (estimated to have begun at around 2000) made that difficult, and necessitated the co-deployment of other tactics – like launching “less lethals” to try and manage the direction of the crowd, block its routes, and force it into containable areas. Or even co-deploying the much more crudely traditional tactic of advancing police lines swinging batons as a means of forcing the back of the march forward and compressing its peripheries, so as to diminish its size and make it more easily containable.

None of these co-deployments are random, irrational, or the result of some “misconduct” by trigger or baton happy officers. They are all the result of “real time” strategic decisions by OPD section chiefs and commanders, who make those decisions on the basis of the assigned objective they’ve been tasked with. Their job is to determine the best means to most effectively achieve that objective, which requires making a range of “real time” decisions that must immediately respond to the actions of the crowd. So while such decisions may appear senseless from the perspective of critics, reformers or the general public, they are actually highly strategically rational, representing the best means to achieve a specified objective under particular conditions. Clearly, the strategy of simultaneously co-deploying barricades, kettles, “less lethals” and police beatings is rational if the objective of that strategy is to try and surround, compress and contain a large unmanageable crowd that keeps slipping through the cracks of your containment efforts. And particularly so if that objective has to be achieved in the context of an urban landscape with endless crevices (like entrances into the campus of Laney college), and against a crowd of 2000 that includes dozens of bikers and hundreds of youth sprinting off in different directions. OPD spent hours chasing and trying to contain this uncontainable crowd, to the point where the exhaustion of its officers was clearly apparent (and even repeatedly ridiculed by Occupiers). The co-deployment of tactics like “less lethals,” baton beatings and random arrests was a strategically necessary part of the day’s kettle operations – intended to terrorize and thus diminish the crowd to a containable size. And this is precisely what happened over the course of the day. Although the unrelenting determination and endurance of Occupiers prolonged and extended this process for hours, eventually the crowd dwindled to the point where containment was finally a feasible possibility.

And it seemed that OPD commanders had finally enjoyed a stroke of luck when the march flowed into the small enclosed section at the back of the 19th and Telegraph Street lot. The size of the crowd had not only significantly diminished by this point, but it was also now entering what was relatively an easily containable area that was secluded from the main streets. The fencing that had already been erected to barricade the lot provided one side of the kettle, and police lines were quickly mobilized to try and barricade the remaining sides. Having significantly exhausted and depleted their police resources through hours of chasing the march and blocking repeated occupation attempts, OPD commanders undoubtedly felt a pressure to finally execute this kettle before the opportunity was lost, necessitating an immediate strategic decision. This urgency was further exacerbated by the fact that as soon as the marchers who were still flowing into this area realized they were walking into a kettle operation, they would of course start fleeing in different directions. And Occupiers had an intimate knowledge of the crevices of this particular urban landscape given that they had previously occupied it. Hence, there would still remain the
possibility of an occupation effort by a smaller group who had eluded the kettle. In such a context, what is the most effective means of thoroughly kettling the crowd? Authorizing the deployment of “less lethals” like tear and “flash bangs” as a means of forcing the direction of marchers into the containable area. And simultaneously co-deploying advancing police lines to serve as barricades that block all exits routes and seal the kettle. And then, unleashing some of those officers to simultaneously deploy tactics like baton swinging or pointing their munitions at Occupiers to prevent their exit and force them back into the crowd. It was this strategy of co-deployment that offered the most effective means to finally ensure containment of the crowd. Thus, while this operation may appear horrifyingly senseless from the perspective of an observer like Jarvinen, it is actually the outcome of a series of highly strategic “real time” decisions by OPD commanders. And the fact that they made these decisions despite the horror, costly litigation and compliance violations that were likely to result, indicates that the objective they were tasked with – preventing any possibility of an occupation – was overriding and unflinching.

But all of these strategic calculations were undermined, and the entire kettle operation fell apart by virtue of one miscalculation. While commanders were so concerned that the advancing police lines were vulnerable to breach (hence all the baton swinging and munition pointing), they failed to adequately consider the vulnerability of their six-foot metal fence. While they mobilized police forces to try and barricade all the other directions, they relied solely on the metal fence to serve as its side of the kettle, without additionally stationing officers in front of it (further illustrating that containing this targeted space wasn’t their primary objective). This was a crucial miscalculation. The fencing was initially intended as a tactic to barricade and contain the lot – not the crowd. It could effectively serve the function of keeping out an approaching crowd that was seeking to access the lot for long enough to enable a police response to prevent that. But it served as an extremely poor means of containing a large crowd (still estimated at this point at around 1000) that was being simultaneously advanced upon by baton swinging police lines and surrounded by the explosion of tear gas and “flash bangs.” In such a context, a six-foot metal fence is no match for the massive, and terrified, crowd. Commanders made a “real time” decision to incorporate a tactic (barricade fencing) initially intended for containing a site into an operation now oriented around containing a crowd, without adequately considering its efficacy in such a situation. This small tactical oversight – resulting out of decisions to co-deploy tactics in originally unintended ways – turned out to be the “Achilles’ heel” of the entire operation. The crowd easily toppled the fence and spilled back into the main streets, undermining OPD’s kettle and the only real opportunity it had had all day to successfully execute its containment strategy. Thus, the next time an opportunity presented itself, which would be very shortly after, OPD was prepared to secure its kettle, execute its containment strategy and prevent the possibility of an occupation, by any means necessary.

Mass Arrests and the De-spectacularization of State Violence

After escaping the kettle at 19th and Telegraph, the march briefly proceeded up Broadway until police lines were able to surround it once again in front of the YMCA between 22nd
and 23rd Streets. Officers blocked the crowd (estimated at this point at approximately 500 people) on both sides, creating a tight kettle (with the exception of entries into buildings on that block which were soon sealed by police). Without giving any dispersal order, at around 6:30pm OPD announced that everyone at the scene was now under arrest. This procedure egregiously violated the Department’s crowd control policies which require that a dispersal order be given declaring an unlawful assembly, followed by providing at least two exit routes for dispersal, prior to making any arrests. Marchers were neither given a dispersal order, nor were they given any opportunities to disperse. OPD later attempted to defend this action by citing previous dispersal orders given that day, particularly at the 19th and Telegraph kettle. However, even this logic violated Department policy which mandates that if a crowd disperses pursuant to a declaration of unlawful assembly and subsequently reassembles at a different location, this necessitates determining that scene to be an unlawful assembly and once again issuing a dispersal order that actually allows individuals to disperse prior to undertaking arrests. But of course, OPD’s objective was never to disperse the crowd, but to contain and incapacitate it.

As police lines slowly advanced upon the crowd, Occupiers tried to retreat against the sides of the YMCA building. Dozens of them were crammed on the steps that led up to the entry doors. After several tense minutes of being trapped in OPD’s advancing kettle, all of a sudden a portion of the crowd began to flood into the doors of the YMCA. Later that evening and throughout the coming days, OPD and City officials would allege that Occupiers had “broken into” the YMCA (despite the fact that it was actually open at the time), using language like “invaded” and “stormed”. Occupiers decried the allegations, claiming they entered through doors that were opened for them by YMCA staff. Eventually this version of events was confirmed by extensive cell phone footage taken at the scene. The footage captures several minutes of what occurred directly in front of the doors of the YMCA, showing Occupiers repeatedly pleading with employees to be let in. They can be heard frantically yelling that police are advancing and that they have nowhere to go. The footage then shows the doors being opened by staff (without any force on the part of Occupiers), followed by the cheers of the crowd as it floods in. It took months of civil litigation before these facts were confirmed and the state’s allegations of a “break in” were refuted. (YMCA employees reported at the time that they were officially instructed not to discuss the events with anyone while legal proceedings were underway.)

Police officers descended up the stairs and blocked the building’s doors, but only after a large portion of the crowd had slipped through. Officers were then deployed in two teams – one which maintained the kettle outside of the building and another that chased those fleeing into the YMCA. Witnesses describe a chaotic scene inside the building as Occupiers ran around frantically looking for an exit. One small group was able to make it through a back door and escape before OPD completely sealed the building and announced that all non YMCA members were under arrest. There were numerous YMCA members that were caught up as bystanders in this melee. One man described the scene with shock, recalling “[t]he police came in there. Hell, they thought everyone was with the occupiers. I said ‘I’m a member, don’t hurt me. I’m just here to exercise.” While some Occupiers reported trying to disguise themselves as exercising bystanders, this proved futile once officers demanded member ID’s and arrested everyone who failed to provide them.
Police also proceeded to arrest everyone caught in the kettle outside the building. This was a massive operation that took over six hours to complete. There is some available video footage that was taken from inside the kettled crowd before the arrests had been completed and cell phones were confiscated. The footage shows Occupiers chanting loudly and repeatedly: “Allow us to disperse! Allow us to disperse!” as officers proceed to grab and arrest people one by one. Over time officers arrested everyone in the crowd, all of whom sat against the building with their hands in zip ties for hours while police processed each individual one by one and boarded them onto awaiting MUNI buses (the City’s public transportation system had to be called in to transport such a large number of arrestees). It would be six hours before the sidewalk was cleared of all detainees. A total of 390 people were arrested and taken to North County and Santa Rita Jails. Many spent two to three nights in jail while they were slowly booked and processed in this massive arrest operation that severely strained the County’s detention facilities. Most were charged with failure to disperse, although some were released after extended detention without ever even being processed or charged. Those that had the unfortunate luck of being arrested inside the YMCA were additionally charged with burglary.

The following day OPD reported that this had been the largest mass arrest in the City’s history with a total of 409 arrests. 19 of those people had been arrested earlier in the day (primarily during the “Battle of Oak Street”) but the remaining 390 had all been taken into custody at the YMCA kettle. To put this into perspective, consider that this one incident resulted in more arrests than all of the police operations in OO’s history combined. On the day prior to January 28th, the City had issued a statement reporting that, up until that point, there had been a total of around 300 Occupy related arrests. The two largest arrest operations during that period included the raid of October 25th, which resulted in 85 arrests, and the night of the General Strike on November 2nd, which concluded with 103 arrests. On January 28th there was estimated to be less than 500 people in the march at the time it reached the YMCA. Almost 400 of those people, representing roughly 80% of the entire crowd, were placed under arrest. The small minority that escaped arrest was either able to slip through police barricades in the few seconds they were first assembling, or had the fortune of being among the few to find an exit through the back door of the YMCA before police sealed it. This comparative perspective illustrates the unprecedented scope of the mass arrest operation on January 28th. The state’s other tactics throughout the day also reflected an unprecedented aggressiveness: countless kettle attempts that egregiously violated Department policy; the dangerous deployment of “less lethals” into trapped crowds; police lines that repeatedly advanced upon the march with their batons, “bean bags” and baseless arrests; and numerous officers engaging in conduct, like randomly shoving individuals off their bikes, in a manner that clearly illustrated they were not acting “rogue” but with the, if not authorization, tolerance and encouragement of their commanders. These tactics, and the mass arrest of virtually the entire march at the end of the day, made abundantly clear that OPD had been authorized to use virtually any means necessary to prevent any possibility of a new occupation.

The mass arrest of over 400 Occupiers on January 28th was clearly intended to strategically incapacitate the crowd in order to prevent any possibility of an occupation. This was ensured by OPD’s decision to arrest and detain the entire kettled march, rather than issuing citations for failure to disperse and releasing marchers (which would be
normal protocol for such a minor offense). Clearly, if OPD had chosen to do the later, it would have likely faced another occupation attempt within hours. But detaining all of these Occupiers in county jails, and extending the duration of that detention for days, ensured that Occupy Oakland wouldn’t be occupying anything that weekend. This was particularly the case because OPD had effectively apprehended the population of Occupiers who posed the greatest risk of further occupation efforts, given that they had distinguished themselves by virtue of being undeterred by hours of increasingly violent police operations. Furthermore, not only did this strategy serve to incapacitate this particularly high risk population, but it also absorbed and diverted the energy of the larger movement into having to deal with this mass arrest. Thus, Occupiers who weren’t incapacitated inside the county jails, spent the next few days either in front of those jails or doing other urgent forms of jail support: tracking down and notifying the family and friends of arrestees; raising necessary bail funds; fighting for urgently needed medical attention that was being denied; or simply caring for the hundreds of Occupiers who were being slowly spit out of those jails having been exhausted, injured, physically or sexually abused, and generally traumatized. This is the manner in which the state thoroughly incapacitated the movement in order to prevent any possibility of an occupation. And the City’s willingness to engage in such a strategy, knowing that it would inevitably lead to enormous legal and financial consequences – jeopardizing OPD’s compliance with federal mandates and resulting in extensive civil litigation – reflects the unflinching nature of that objective.

This strategy subjected hundreds of Occupiers to various forms of state violence, but did so within the seclusion of institutional recesses like county jails. And these forms of violence began even before arrestees were transported to jail. They were kept in painfully tight plastic zip tie cuffs for 8 to 12 hours while they were being booked, during which time they were denied access to bathrooms and urgently needed medical attention. Once they were transferred to the jails, many were simply left in overcrowded holding areas. The County’s two main jails could hardly contain this abrupt and massive overflow of inmates, so most Occupiers were never moved to cells but kept in cramped holding areas (including even shower rooms) for extended periods of up to several days. Many complained of nausea or difficulty breathing as a result of the tear gas fumes that still lingered in the clothes, hair and skin of detainees being cramped together in these unventilated areas.

But the most urgent concern was that dozens of Occupiers had been severely injured throughout the day’s police operations and were being denied any medical attention (with the exception of a nineteen-year-old woman who was taken to the hospital to be treated for internal bleeding after being struck by police in the kidneys with a baton). Numerous reports of injuries were filtering out through phone calls from those in jail, particularly to the hotline operated by the National Lawyers Guild (NLG). The NLG issued a statement that relayed having received “many reports of assaults on protestors, including an incident in which police knocked one person’s teeth out with a baton strike to the face. Police reportedly threw others through a glass door, and down a flight of steps [in the YMCA]. A videographer was pushed to the ground and clubbed.” The NLG statement then warns of the current danger to detainees, given that they were being denied medical attention and prevented from accessing necessary medications (including HIV meds and medication for a severe kidney condition). The NLG also reported that groups of female detainees had been forced to provide urine samples (for pregnancy testing) in front of male correctional
officers, and that many were reporting forms of sexual harassment and abuse, including being given strip searches during which they were forced to parade naked in front of male inmates. These forms of violence targeted at female arrestees later became the basis of a mass civil litigation case against the City and County.

Despite the terrifying nature of these reports that were filtering out of the jails, there was still little sense of the magnitude and severity of the situation given that detained Occupiers were being denied access to legal counsel. Even up to two days after the arrests, NLG attorneys reported being denied access to visit their clients. There was a general sense of mass panic among Occupiers on the outside, as they struggled to even figure out who was sitting in jail (painfully slow processing times meant that many arrestees didn’t even get entered into the system for days), and what kind of condition they were in. A reporter for the San Francisco Bay Guardian who was caught up in the mass arrest at the YMCA (all journalists at the scene were arrested) published an article upon his release from jail that tried to roughly estimate the extent of injuries suffered by arrestees. He reports: “[t]he number of injured protestors is unknown, but in the 19 person sampling of arrestees with whom I spent 20 hours, two had bruises from baton strikes, one suffered from an injured foot after a pepper-bomb exploded upon impact with her ankle, and most had irritation in their eyes, ears, and throat from exposure to tear gas and pepper spray.” This reporter’s “sample” represents only 5% of the total number of arrestees that day, suggesting that overall injuries were indeed extensive.

But the true extent of the injuries and violence suffered by Occupiers on January 28th, and throughout the following few days, was largely obscured by virtue of containing it within jails and the institutional seclusion that was ensured by tactics like denying access to attorneys. This served as part of the state’s larger strategy of de-spectacularizing its deployment of violence against Occupiers. And its success in effectively doing so then enabled the state to launch a discursive campaign that so grossly distorted events, that it would soon transform the day into an infamous example of Occupier “violence”. In other words, the de-spectacularization of the state’s own violence allowed for a strategy of spectacularizing the alleged “violence” of Occupiers.

Most of the arrestees spent two to three nights in jail before eventually being released. By Monday afternoon (almost 48 hours later) 337 arrests had been processed (most released with minor citations for failure to disperse that would never even be prosecuted), while the remainder hadn’t even yet been entered into the system. At least 100 people were still sitting in jail, whether because they had yet to be processed or because they were facing more severe charges. At that time, 69 arraignments had already been scheduled for the following morning, including approximately 50 pending felony charges for a range of severe crimes. But when the time came for arraignments the next day, Occupiers arrived in court to find that the District Attorney only had sufficient evidence to charge 12 people, only 4 of whom were being charged with felonies while the remaining 8 faced minor misdemeanors. All of the remaining 397 people who had been arrested were released without ever being charged with any crime. January 28th represented, by far, the most egregious example of the state’s strategy of extralegal detention. Almost 400 Occupiers spent days in jail on charges that were so flimsy that they never even reached a courtroom. And it was arguably the most disastrous mass arrest operation in OPD’s history in terms of
setting off extensive civil litigation and renewed calls for placing the Department under federal supervision given its blatant violation of mandated policies. Once again, the severity of this legal backlash illustrates that OPD and the Sherriff’s Department (which holds jurisdiction over county jails) were directed to utilize whatever means necessary to prevent any possibility of a new occupation.

And the legal consequences of this were enormous. OPD’s compliance with federally imposed mandates was already under heavy scrutiny ever since the events of October 25th. Just a week prior to January 28th a federal judge ruled that OPD remained “woefully behind its peers around the state and nation” in terms of complying with its crowd control policies.391 The police operations of January 28th led to renewed outrage over the egregiousness of OPD’s violations and noncompliance. The National Lawyers Guild, which had stationed legal observers on the ground throughout the day (many of whom were arrested), issued statements reporting that OPD had not followed procedures requiring dispersal orders, that it had deployed tear gas in violation of policies, and that officers had fired “sub-lethal ammunition indiscriminately into a crowd, at head level[.]” It also reported incidences of officers covering their identifying name tags, an act which is a criminal offense under California law and amounts to what one federal judge called “the most serious level of misconduct[.]” January 28th was a disaster in terms of OPD’s compliance with legal mandates, serving to further push the Department towards the brink of federal receivership.

The YMCA mass arrests also led to extensive civil litigation against OPD, the City, and even Alameda County (which through the Sherriff’s Department holds jurisdiction over all jails). A class action lawsuit was filed in federal court on behalf of the 409 arrestees, claiming unlawful arrest and violation of civil rights. The suit alleges that police trapped the crowd at the YMCA, failed to give a dispersal order, and then proceeded to detain them for periods ranging from 12 to 85 hours on charges that were never filed. It asserts: “Rather than [the standard operating procedure of] cite and release, class members were incarcerated for long periods in overcrowded and inhumane conditions, including unheated or deliberately chilled cells, with limited seating, no sleeping facilities, sometimes standing room only, no toilet facilities, no feminine hygiene and no food, water or medical care.” The suit reached a mass settlement agreement in 2014 which awarded $1.36 million to the arrestees.392

This class action suit was just one of many civil cases related to January 28th that reached settlements with the City. Robert Ovetz filed a suit that alleged that a police officer knocked his eyeglasses off of his face in front of the YMCA and that while he was struggling to find them, police shoved him to the ground, pushed his face into the concrete and proceeded to repeatedly strike him with batons. Ovetz was then arrested and detained by police on a felony charge of assaulting an officer, but the District Attorney’s office subsequently declined to file any charges against him. Ovetz’ suit, which alleges excessive force, assault and battery, conspiracy to violate civil rights, and false arrest, reached a settlement that awarded him $48,500.393 Joanne Warwick also received a settlement for her unlawful arrest, which was executed by officers in one of the police lines advancing upon the back of the march. Video footage of her arrest surfaced, showing one of the officers advance forward to shove Warwick off of her bike. Once she falls to the ground, she is
surrounded by police who proceed to place her under arrest, while those around her scream: “they pushed her! What is she being arrested for? She didn’t do anything!” Warwick was arrested and detained for two days on charges of obstructing a thoroughfare and resisting arrest (which the District Attorney once again declined to prosecute). She eventually received a $40,000 settlement from the City.394

The legal backlash set off by January 28th was unprecedented – with the exception of October 25th. Both of these police operations resulted in costly litigation and settlements, not to mention intensifying the scrutiny of federal courts and monitors through egregious acts of noncompliance. But despite these similarities, and despite even the fact that January 28th actually involved much greater deployment of violence, it generated virtually no public criticism. And this was the case because that violence was now effectively obscured by two powerful strategies. One was the state’s strategy of de-spectacularizing its own deployment of violence by containing and institutionally secluding it in ways that eluded public visibility. The second was an accompanying strategy of spectacularizing the alleged “violence” of Occupiers. This was achieved through a discursive campaign that created out of January 28th a highly publicized spectacle of that Occupier “violence”. The dynamics of spectacularization had been reversed. On October 25th, the movement succeeded in generating a spectacle of police violence that proved highly advantageous and exponentially increased public support. But on January 28th, Occupiers found that they were the ones who were now cast as the “violent” subjects of this media spectacle – one which so thoroughly distorted events, that it bore no resemblance to the reality they had just suffered.

The Spectacularization of Occupier “Violence” and the Criminalization of Occupation

One of the state’s strategies for ensuring that media coverage of January 28th was limited and distorted was to deploy the tactic of cordons. It cordoned off the area around the YMCA for the entire duration of the kettling and mass arrest operation, which extended for hours. It had also cordoned off surrounding areas during the kettle operation at 19th and Telegraph. And cordons were deployed at a number of other strategic locations throughout the day, for example during the “Battle of Oak Street.” It seemed that every time that OPD deployed police forces for kettle operations or the launching of “less lethals”, it simultaneously deployed additional officers to establish cordons around the area of those operations. This served to significantly obstruct press and bystanders from witnessing the most intense confrontations that occurred that day. It also deployed the tactic of arresting journalists and legal observers. A virtual media blackout was achieved at the YMCA by cordoning off the area and arresting all journalists and legal observers who were caught in the kettle. The National Lawyers Guild reported that the legal observers it had stationed there had all been arrested. And six journalists, all with visible press credentials, were also arrested at this time, including reporters for the San Francisco Chronicle, Mother Jones, the East Bay Express, Oakland North, the San Francisco Bay Guardian, and KGO Radio. Every one of them later reported that they had clearly identified themselves as media to police, but were nonetheless placed under arrest. One even reported that an officer to
whom he’d shown his press pass later pointed him out and specifically targeted him for arrest. Media were targeted in this fashion, and their arrests were executed first, so that they were not left to document the long kettle and mass arrest operation. Although most of the journalists were released later that night after the operation had been concluded, two were detained in jail. One was taken to Santa Rita Jail, where he spent an hour in the “drunk tank” before Mother Jones editors were able to convince police to release him. The other wasn’t released from Santa Rita until 3pm the next day.395

This strategy of deploying tactics like cordons and arrests of journalists further exacerbated the media’s tendency of relying exclusively on the accounts of OPD and city officials – which ironically, they continued to do while simultaneously publishing first-hand accounts by arrested journalists and decrying this violation of “freedom of the press” (this represented virtually the only critical media coverage at the time). And the accounts that state officials provided them with were strewn with factual errors, misrepresentations and downright fabrications (many of which were eventually refuted in legal proceedings). For example, Police Chief Jordan claimed that arrestees had been given multiple dispersal orders, were provided exit routes, and had even been offered directions on how to reach them (all of which were later disproven through civil litigation). He reassured reporters that “some people chose to leave, others didn’t” and that the decision was then made to “arrest those people that did not want to leave.”396 Other City officials were quoted making similar claims. This account of the day’s events, which was thoroughly disseminated by media, offered no suggestion of the reality that the march had actually been ferociously chased down and repeatedly kettled by OPD for hours.

One of the most egregious misrepresentations was the media’s parroting of the City’s claim that Occupiers had “broken into” the YMCA. This was later thoroughly refuted by video evidence, multiple witnesses and extensive litigation – none of which was ever reported by the media. The only exception was the San Francisco Bay Guardian which, much later, published a retraction to update its reporting which clarified that Occupiers had requested and been given access to the YMCA by employees. Several years later when the City paid out a massive settlement for January 28th, the media was finally forced to present at least enough accurate information about the police operations to adequately explain the reasons for the outcome of this litigation. But by that point, the objectives of the state’s discursive campaign had long ago been achieved, and the day’s events had even been largely forgotten by the general public. Hence, the over one-million-dollar cost of the settlement was worth every penny. Not only had the state freely engaged in a legally egregious tactical strategy that successfully achieved its objective, but any accountability and public knowledge of this would be delayed for years through the lengthy process of litigation. Thus, it was also free to engage in its factually egregious discursive strategy.

As the awarding of such settlements has become increasingly common, it appears that these kinds of legal and financial costs are even being anticipated and accounted for in the planning of police operations. Clearly, if OPD commanders felt so empowered to employ such egregious tactics, city officials had already accounted for and were prepared to assume these costs. This is an outcome of the iterative dynamic between movement and state strategies. The strategy of civil litigation by social movements has fueled a strategic response by the state of simply allocating for this as a necessary cost in the planning of its
operations. And as a result, it now maximizes the returns on this expenditure by thoroughly exploiting the opportunity it has purchased to both violate its own law, and delay any public knowledge of that fact. This strategy serves to dramatically expand the possibilities for the state’s tactical repertoire and discursive strategies. Perhaps this helps to explain why the contemporary period has witnessed a dramatic increase in the extent to which the state is (or appears to be) held accountable for exceeding its authority and powers through investigations and civil litigation, alongside a simultaneous increase in its apparent willingness to engage in such excesses. The state’s law enables its own violation by subsequently holding itself “accountable”. And the price it pays for that accountability pales in comparison to the excesses it has purchased.

While the state’s discursive strategy was extremely effective, the account it offered – 400 Occupiers arrested for trying to “break in” to the YMCA – was actually quite ludicrous. Why would the public accept such a story without raising the question of why Occupiers would engage in this strange action in the first place? Why would they choose the YMCA, of all places, as the target of their occupation? And why would they decide to “storm” it during operating hours while it was full of exercising members? But these questions were never really raised. And they weren’t raised because the public was now thoroughly steeped in a discourse that presented Occupiers as “criminal” “outside agitators” who simply looked for any opportunity to engage in senseless “violence”. This discourse not only depoliticized Occupiers by presenting their alleged “violence” as senseless, but it also criminalized occupation by rendering it a form of “break in.” Chief Jordan issued a press release after January 28th that asserted: “[i]t became clear that the objective of this crowd was not to peacefully assemble and march, but to seek opportunity to further criminal acts, confront police, and repeatedly attempt to illegally occupy buildings.”

As was the case with the series of targeted raids, the state’s discursive strategy hinged on presenting its operations as responses to Occupier “violence”. This was pursued through tactics like issuing OPD statements that emphasized (vaguely) alleged injuries suffered by its officers (while remaining silent on the numerous documented cases of injured Occupiers). Mayor Quan condemned what she called the movement’s “constant provocation of the police” and complained that there was “a lot of violence toward them.” These allegations were directly asserted as justifications of OPD’s own deployment of force. The Department’s statement reads: “Officers were pelted with bottles, metal pipe, rocks, spray cans, improvised explosive devices and burning flares. The Oakland Police Department deployed smoke, tear gas and beanbag projectiles in response to this activity.” [Emphasis is mine.]

It’s not merely that the state’s account legitimizes the violence of its police operations by presenting them as necessary in response to the “violence” of Occupiers. Much more fundamentally, it obscures those operations altogether by presenting them as a response. This was a central discursive dynamic of the second “moment”: while the state’s tactical strategies had evolved from being reactive (October 25th) to increasing pro-active (targeted raids), this was accompanied by a discursive strategy that simultaneously sought to conceal those advances as responses. As the direction of the momentum of struggle shifts, and as the state becomes increasingly offensive with its advances, it presents them in the defensive guise of a “response”. This discursive strategy was so successful that it soon
rendered the target of that “response”—the “violence” of Occupiers—a perceived reality. And it achieved this through the range of tactical strategies (targeted raids or police operations on January 28th) that so visibly, vividly, and repeatedly manifested that “response”. After months of media coverage that presented such frighteningly vivid manifestations of these “responses”, the public increasingly took for granted the reality of the “violence” they were responding to. It was through its very tactics of “response” that the state discursively constituted the target of that “response”. Over time, the “violence” of Occupiers became perceived as a reality that necessitated such “responses”.

No one decried the “violence” of Occupy as loudly as City Councilmember Ignacio De La Fuente who told reporters that it now amounted to “domestic terrorism.” “It’s an escalation that in my opinion, basically amounts to domestic terrorism where people start taking buildings and costing the city an increasable amount of resources.” Other City officials were quoted saying that “extremists” had now hijacked the movement. Mayor Quan called it a “violent splinter group”. She also emphasized the danger of “outside agitators,” falsely claiming that only 3 of the first 20 people arrested that day were from Oakland, and then expanding this claim further by asserting “[i]t appears that most of them constantly come from outside Oakland…and are really hurting the people they claim to be representing.”

This discursive strategy, drawing upon months of state and media propaganda, enabled the state to thoroughly dominate the dynamics of spectacularization. It was able to generate a spectacle of “Occupier violence” out of one of the most violent and procedurally egregious police operations in OPD’s history. Even after having been chased down for hours, targeted with “less lethals,” beaten down with batons, subjected to days of extra-legal detention, and inflicted with severe injuries, Occupiers found that they were the ones cast as the “violent” “criminal” characters of this spectacle.

But it was an incident that occurred at City Hall immediately after the mass arrest at the YMCA that provided the state with its perfect spectacle of Occupier “violence”. A few dozen Occupiers who had avoided arrest at the YMCA kettle marched back to City Hall where, according to City officials, they “broke into” the building and committed extensive vandalism and property damage. According to a press release issued by the City the morning after, this included “breaking an interior window to a Hearing Room, tipping over and seriously damaging the historic model of City Hall, destroying a case containing a model of Frank Ogawa Plaza, and breaking into the fire sprinkler and elevator automation closet.” City officials ensured that this story achieved maximum spectacle by hosting a press conference at City Hall the next morning, during which Mayor Quan took reporters on a guided tour to survey damage in the building. At the very moment that hundreds of Occupiers were still sitting in cells and cramped holding areas in county jails, some severely injured and being denied medical attention, mainstream media was focused on the “violence” of minor property damage like a toppled display case in City Hall.

Similar to the case of the YMCA, media uncritically parroted state allegation about a City Hall “break in.” While turning this into the main story of the day (rather than covering the largest mass arrest in Oakland’s history), the media seemed to make no effort at all to investigate the accuracy of this claim by officials. While Mayor Quan alleged that Occupiers had used either a crowbar or some kind of similar tool to break into an emergency door of the building, multiple witnesses refuted this allegation, confirming that
they had entered through open doors. A reporter with KPFA (a local independent community supported radio station) who was at the scene challenged the City’s claims:

I didn’t see anyone break into City Hall. The door was open. Some people went inside. A lot of people didn’t go inside. You could tell there was – a lot of people were hesitant to go inside. It seemed like a very major thing to do. The people who did go inside, they went into, I believe, the city council chamber, brought out the American flag that was in there, and then tried to burn it. They didn’t burn the whole thing, but they tried to burn it out here. Then the police showed up, fired some flash grenades, smoke bombs, and it dispersed.402

Despite multiple eyewitness accounts, mainstream media clung to the state’s story of a City Hall “break in”. And it particularly focused in on one thing that came to completely overshadow all other coverage of the day – an image of Occupiers burning an American flag in front of City Hall. It was this image that came to spectacularly epitomize the “violence” of Occupiers, effectively obscuring hours of aggressive police operations that left dozens injured and hundreds detained in jail for days on charges that would never be filed.

The heavy emphasis on this incident at City Hall, and its repeated characterization as a “break in” was clearly intended as part of a larger discursive strategy of criminalizing the tactic of occupation. Occupation was no longer presented as simply the violation of “lodging”, but as the crime of a “break in.” Yet, even if the Occupiers who had gone into City Hall were guilty of a crime, that crime would be “trespassing”. Given that they had entered through open doors, there was no “break in” involved in this act. But despite being refuted by multiple witnesses, Mayor Quan and other city officials continued to insist that the building had been “broken into,” even fabricating the suggestion that crow bars had been used. Similarly, they insisted that the YMCA, which was open at the time, had also been “broken into.” But it wasn’t just that state officials kept falsely insisting these were “break ins,” but also that they kept presenting them as occupation attempts. The state’s strategy of rendering occupation as the criminal act of a “break in” necessitated presenting strange examples like the YMCA and City Hall as occupation efforts. In one case, Occupiers were actually attempting to flee an aggressive advancing police kettle. In the other, a handful of no more than a dozen Occupiers who had fled that kettle were expressing outrage at the arrest of 400 of their comrades through the spectacle of a flag burning. Neither was an occupation effort. But rather than reference any of the multiple occupation attempts throughout the day (like the Travellers’ Building, for example), state strategy focused on emphasizing these two “break ins.” It would have been difficult to forward allegations of a “break in” to the vacant lot at 19th and Telegraph. But emphasizing the YMCA not only made this strategy of criminalization much easier, it also offered the advantage of presenting occupation as a particularly senseless criminal act. After all, why would anyone occupy the YMCA? The state’s discursive strategy, and the extensive media
coverage it received, served to render the incidences at the YMCA and City Hall (particularly the sensational image of the flag burning) as spectacles of senseless and violent “occupation”. It’s capacity to do so reflects the enormous power of discourse, and how it far exceeds any power of propaganda. It’s not merely that the state makes false claims about “break ins,” but that it even wields the power to render those “break ins” as occupations. By repeatedly asserting the false claim that Occupiers had engaged in a “break in,” the objective was not merely to make this appear true, but to make occupation appear as a criminal act.

Mayor Quan and other city officials fully exploited this spectacle, as clearly evidenced by their guided media tour of damage in City Hall. Their discursive strategy also involved emphasizing the costs that were being incurred by the City. Quan claimed that Occupiers had caused an estimated total of $2 million in damages from vandalism alone, and that overall costs related to Occupy Oakland protests had reached $5 million. OPD also reported that five homicides had occurred in the City during that very weekend, and Chief Jordan complained that “personnel and resources dedicated to Occupy reduce our ability to focus on public safety priorities.” Mayor Quan summarized the sentiment by asserting: “[t]he Bay Area Occupy movement has got to stop using Oakland as their playground.”

Occupy Oakland was able to mount only a very limited response to this powerful state discursive campaign. Beyond fixating on spectacular images like the flag burning at City Hall, mainstream media showed little interest in actually reporting on the day’s events. Media coverage generally consisted of presenting a series of spectacular images of violence and conflict in the streets of Oakland (what could be termed “riot porn”), framed only by statements from OPD and city officials. Occupy Oakland’s Media Committee struggled to challenge the dominant state narrative. The committee issued a press release that asserted:

The police actions tonight cost the City of Oakland hundreds of thousands of dollars, and they repeatedly violated their own crowd-control guidelines and protestors’ civil rights…With all the problems in our city, should preventing activists from putting a vacant building to better use be their highest priority? Was it worth the hundreds of thousands of dollars they spent?

But media opportunities for challenging the state’s discourse were few and largely limited alternative media like KPFA, which provided one of the few real platforms for Occupy Oakland to present its own account through the nationally syndicated show “Democracy Now”. The member of the Move-In Day Assembly who appeared on the show attempted to not only set the factual record straight regarding the day’s events, but also challenge the neoliberal logic underlying the state’s discourse.

So, tear gas, flashbang grenades, rubber bullets, beanbag guns were all used against Oakland residents who were
attempting to retake an abandoned building. All of this
was used to protect abandoned private property, and I
think that’s really revealing about the city’s priorities, that
it’s really more interested in protecting abandoned private
property than it is in human beings.406

But despite these efforts, the state’s narrative came to fully dominate the public’s
understanding of the events of January 28th. The success of its discursive strategy is a
reflection of how easily it draws upon dominant neoliberal discourse that renders threats to
property as “violence” and “terrorism”. The power of its narration stems from the fact that
this is the essential narrative of the neoliberal police state. And the movement’s inability to
effectively challenge and disrupt this narrative meant that the vast majority of the public
was left with an enormously distorted view of the events of January 28th. It was also left
with a perception of occupation as a senseless and violent criminal act. And this, of course,
would serve to dramatically diminish public support for Occupy Oakland.

The state issued Frasier Report cites a public survey assessing support for Occupy Oakland
that was conducted shortly after January 28th. Of the 500 people surveyed, 26% who
previously supported the Occupy movement claimed they no longer did so. The poll found
that a majority of 57% of people now opposed the movement.407 A major force in
diminishing public support was the state’s discursive strategy of presenting Occupy
Oakland as having been “hijacked” by a fringe group that had diverted it away from the
objectives and “nonviolent” strategy of the larger Occupy movement. The “violence” of
January 28th served to vividly illustrate this. The Mayor and other City officials made
numerous suggestions that January 28th represented the work of “extremists” or a “violent
splinter group.” This discursive strategy had gained traction as early as the General Strike
of November 2nd, when the state forwarded a narrative about a fringe of “violent”
nighttime “agitators” (“roaming bands of anarchists” and “outside agitators” hidden among
the larger crowd) who had stained what was otherwise a “peaceful” day of protest. By
January 28th, it appeared that these extremists had thoroughly overtaken Occupy Oakland,
as evidenced by the “break-ins” and burning of American flags. By presenting Occupy
Oakland as having been “hijacked” and diverted from the goals of the Occupy movement,
this state strategy enabled a public that general supported the larger Occupy movement to
maintain that position while simultaneously supporting increasing repression of Occupy
Oakland. It was through these kinds of discursive strategies that the state was able to
dramatically decrease public support and generate consent for further intensifying its
targeting of the movement.

**Conclusion: (The) Occupation is Dead…**

The conclusion of the second “moment” marks a dramatic evolution of state strategy and a
radical transformation of the political terrain of struggle. By the end of this “moment”, the
state had achieved a number of crucial things. First, its strategy of Targeted Repression
had succeeded in thoroughly extinguishing the occupation of Oscar Grant Plaza. Beyond
dislodging the encampment, it fully exorcised even the practices of occupation that
lingered there by making mere presence in this space increasingly risky for Occupiers. Secondly, it had gone far beyond stripping occupation of First Amendment protection, to now effectively **criminalizing the tactic**. This discursive strategy was accompanied by a range of tactics, like targeted and mass arrests, that consolidated that criminalization as “trespassing,” “obstruction,” “burglary,” or a “break in”, and imposed increasingly severe consequences (extended jail detentions rather than citations). The success of this strategy resulted in effectively **excising the tactic of occupation from the movement’s repertoire**. January 28th would be the last time that Occupy Oakland would ever attempt a mass occupation effort.

The state’s ability to fully repress the tactic of occupation would prove fatal to a movement that was fundamentally premised upon it. Even though the occupation effort on January 28th was a colossal failure, it signified a crucial strength that would never again characterize the movement. The power of that action clearly did not lie in some kind of well-orchestrated tactical strategy, but rather in the underlying sense of collective power reflected in the, perhaps naïve but nonetheless, fierce determination and hopefulness of 2000 Occupiers who carted old sofas and carried small potted plants through hours of being targeted with tear gas and “less lethal” projectiles. From where did this enormous sense of collective power emerge? From the experience of occupation – the daily practices of solidarity and direct action that empowered people to collectively stand up even in the face of violent police repression. The loss of the occupation, and the state’s thorough repression of this tactic, would come to have a profoundly fragmenting and destabilizing effect upon a movement that would never again find a collective home. Insofar as state repressive power sought to individuate and diminish the collective power of the movement, nothing achieved this as effectively as the death of (the) occupation.

But there still remained one final necessary step for the state’s thorough neutralization of Occupy Oakland. The first step had entailed dislodging the encampment, which served to disconnect the movement from the daily practices of occupation in the camp that had birthed, nurtured and sustained it. The next step had been to thoroughly crush the movement’s grip on Oscar Grant Plaza to ensure that this contested space no longer provided the opportunity for even the most clandestine practices of occupation to re-emerge. This was followed by excising the very tactic of occupation from the movement’s repertoire by criminalizing it and consolidating that through imposing increasingly severe consequences. By this point the state had neutralized the threat posed by the movement’s occupation of Oscar Grant Plaza, as well as its capacity for occupation more generally. But it still needed to neutralize the real threat underlying both – **the potential they had generated for collective action**. The very practice of occupation engendered powerful, and highly resistant, collectivities. This is precisely why it wasn’t sufficient for the state to just evict the encampment. The problem wasn’t simply that the camp posed a challenge to the state’s territorial sovereignty, but that the practices and collective bonds it had generated created a potential for collective action that would continue to pose a threat, beyond and long after the eviction of the encampment. Therefore, the state had to thoroughly wrench Oscar Grant Plaza from the movement, and thus deny it even the space for generating that potential for collective action. And it had to also wrench the tactic itself from the movement’s repertoire to remove any future possibility of the occupation of new spaces.
that might generate that potential. Each step carved away at the collective power that had been generated by the occupation, and blocked any possibilities for its regeneration.

But fully neutralizing this threat required one final blow – destroying that highly resistant collectivity that had already been generated, had survived all these blows, and continued to call itself Occupy Oakland. State power could not rest assured of its sovereignty until it had thoroughly neutralized the movement by preventing it from even asserting its collective public presence. Occupiers could no longer risk either being in Oscar Grant Plaza, or undertaking any occupation efforts. But soon, even the act of collectively assembling in public, regardless of where or what kinds of action were involved, would become an increasingly risky venture. Just the public appearance of Occupy Oakland would immediately incite highly militarized police operations that could now be easily – and even pre-emptively – justified as a necessary response to the threat of “violence” it posed. It was not enough that (the) occupation was dead. That highly resistant collectivity it had birthed – Occupy Oakland – also had to be destroyed. And achieving this objective necessitated the evolution of a dramatically different kind of strategy – one that no longer aimed merely to prevent any particular occupation but rather, to incapacitate the collective power of Occupiers in order to thoroughly pre-empt even that possibility.

The state’s advance towards this objective would be facilitated by another strategic victory it had achieved by the conclusion of the second “moment”. Having evolved beyond a strategy of Naked Coercion that had only an amorphous crowd as its target, its new strategy of Targeted Repression had effectively disaggregated the movement. This disaggregation was achieved by simultaneous tactical and discursive strategies. On the one hand, a range of surveillance tactics identified Occupiers and thus constituted individual targets. On the other, a range of normative discourses (including permits) differentiated “peaceful protesters” from “violent Occupiers”: distinguishing those who “assembled” from those who illegally “lodged” and “trespassed”; those who exercised “free speech” from those who “obstructed”; those who counted as a “public” deserving of First Amendment protection from those who, by virtue of their “violence” and threat to “public safety,” did not. In other words, Targeted Repression operated both through state tactics which identified individual targets for repression, and state discourses which rendered that repression as appropriately targeted.

This disaggregation of the movement is crucial for the further evolution of state strategy. And not simply because it enables Targeted Repression by constituting individual targets and rendering their targeting as appropriate. But also because, after having done so, it can then proceed to re-aggregate those individual subjects into delineated target populations that can then be collectively governed. While the individuating processes of Targeted Repression enable the targeting of individuals (rather than amorphous crowds like Naked Coercion), the state now undertakes processes of aggregation that enable it to constitute targetable populations. And just as the capacity to individuate revolutionized state power, so too does this new capacity to re-aggregate. If disaggregation enabled Targeted Repression, what form of power does aggregation enable? Pre-emptive Neutralization: the power to manage, govern and incapacitate those aggregated populations according to the risks they are deemed to pose. The capacity to individuate enables repression – the identification of individual subjects who can then be disciplined in a range of ways in order
to repress certain actions and subjectivities (as well as produce others). But the capacity to aggregate enables a form of power that no longer seeks to merely repress, but to pre-empt – no longer simply to discipline, but to thoroughly neutralize. And this objective is achieved through a strategy of aggregating, managing and incapacitating entire populations for the risks they collectively pose.

The strategy of Pre-emptive Neutralization cannot be exercised without the capacity for aggregation. Why? Because, unlike strategies that seek a form of prevention, this strategy of pre-emption cannot be targeted at identified individuals. This is what fundamentally distinguishes Pre-emptive Neutralization from its predecessor, Targeted Repression, which remains oriented around a strategy of prevention. The crucial difference between strategies of prevention and pre-emption lies in their objectives and the nature of their targeting. Targeted Repression is oriented around an objective of prevention – the identification of individual subjects who can be targeted in a range of ways in order to prevent them from engaging in particular forms of action. In other words, this form of power seeks to prevent someone from doing some thing. But the objective of pre-emption seeks much more – to thoroughly neutralize even the risk that anyone may do that thing. And this objective requires a fundamentally different strategy of targeting. No longer is the target some identifiable individual(s). Who knows who that someone who may do that thing could be? And no longer is the objective of that targeting to prevent that thing, but rather to neutralize the risk of even its possibility. The only effective strategy for pre-empting the possibility that anyone may do that thing, is to identify and aggregate all those who are assessed as posing that risk, and incapacitate them in ways that neutralize their potential for doing so. Prevention is achieved by the repression of individuals. But pre-emption can only be achieved by the incapacitation of populations.

This distinction between prevention and pre-emption captures the difference between what scholars call “strategic incapacitation” and what I refer to as Pre-emptive Neutralization. Both seek some form of incapacitation. But their tactics of incapacitation are oriented around fundamentally different strategies. “Strategic incapacitation” seeks to prevent a specific group of individuals from engaging in some specific form of action. The mass arrest of 400 Occupiers on January 28th serves as a perfect example. The state sought to prevent Occupy Oakland’s march from undertaking an occupation during its “Move-In Day”, which it successfully achieved, first through the “strategic incapacitation” of the larger march with kettles and “less lethals,” followed by the “strategic incapacitation” of its resistant remainder of 400 through their extended extra-legal incarceration. The state successfully prevented these Occupiers from undertaking an occupation on the weekend of January 28th. This state strategy is perfectly captured by the concept of “strategic incapacitation.”

But the tactics that emerge in the third “moment” reflect a much more ambitious aim – to pre-empt the possibility of anyone undertaking any occupation. These tactics are no longer targeted at any particular planned occupation, but seek to neutralize even that possibility. And they no longer just target specific individuals or groups that actually undertake (or even plan) occupation, but now also delineate entire populations who pose the “risk” of that possibility. The state introduces a range of new tactics (particularly prosecutorial) that constitute various “risk populations” like “stay awayees” (defendants who had restraining
orders placed against them criminalizing their presence in or near Oscar Grant Plaza) or “the Black Bloc” (which prosecutors began establishing legal precedent for classifying as a “criminal organization”). These tactics delineate, manage and incapacitate populations in order to neutralize the “risk” they collectively pose. What is an effective strategy for pre-empting any possibility of an occupation of Oscar Grant Plaza? Aggregating a population of those that pose a high risk of this (all Occupiers who had been arrested and had open cases) and deploying the tactic of “stay away” orders to criminalize their presence anywhere near the Plaza. And what is the best means for pre-empting “the Black Bloc” (meaning, pre-empting any forms of political action that seek to mask individual identities from the state by camouflaging them within a crowd)? Through criminalizing the act of wearing (or even possessing) masks and black clothing by seeking to establish legal precedent for prosecuting those who do as being engaged in the “conspiracy” of a “criminal organization.” These strategies achieve their pre-emptive objective through tactics that aggregate and incapacitate high “risk” populations (those who face charges or dare to disguise their identities). These are just two examples of the kinds of pre-emptive tactics introduced by the state in the third “moment” which fail to be adequately captured by the concept of “strategic incapacitation.” The goal is no longer just a preventative “strategic incapacitation,” but rather a thorough Pre-Emptive Neutralization.

Although the state’s operations on January 28th were still characterized by a preventative objective, they initiated a shift to a strategy of incapacitation that was essential for a subsequent evolution towards pre-emption. And this evolutionary shift was fueled by the movement’s own strategic advances. By adopting a strategy of secrecy around its planned occupation effort, the movement created conditions where OPD had no definitive target to defend. It thus forced the OPD to shift the focus of its operations from trying to defend targeted sites from occupation, to having to incapacitate Occupiers to prevent that possibility. In other words, it forced a shift in the orientation of the state’s containment strategy. Without definitive knowledge of the space it needed to contain, it was forced to contain the crowd. While the objective of the movement’s strategy was to undermine the state’s capacity to prepare defensive operations that would block this occupation effort, it simultaneously forced upon it a process of adaptation that was crucial for the evolution of state strategy.

The movement’s strategy created precisely the kind of unknown and therefore unmanageable conditions that scholars identify with the “Battle of Seattle” and the subsequent shift from “Negotiated Management” to “Strategic Incapacitation.” In the case of the protests against the World Trade Organization’s meeting in Seattle in 1999, it wasn’t merely that protesters refused to negotiate, but also that police had no way of anticipating what actions would be undertaken and by which groups. With tens of thousands of protesters running around the city, there was no way of definitively defending against all the possible ways they might seek to breach the police operations that aimed to contain the space in which the meeting was being held. The weakness of police operations in Seattle was that they reflected a containment strategy oriented around the defense of spaces in a context where the movement created conditions that made this impossible. Similarly, state strategies against Occupy Oakland had thus far remained oriented around a preventative strategy that focused on defending targeted sites. In the first “moment” the state’s strategy was to try to “contain” and “hold ground” at Oscar Grant Plaza. In the second “moment”,

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strategy shifted from containment to regulation – rather than seeking to contain this space, it instead aimed to regulate the presence of Occupiers within it. But while the state’s tactics began to focus on targeting Occupiers themselves, they were still rooted in a strategy that sought to defend a particular targeted space. In other words, even as it shifted from a strategy of containment to one of regulation, the objective of that regulation was still to assert control over and “hold ground” in this contested space. That strategy of regulation remained anchored in an earlier containment strategy that was oriented around space – it regulated Occupiers in order to defend this particular site against any possibility of occupation. But OO’s strategy for launching a new occupation on January 28th dramatically changed this situation.

There was no longer a definitive sight around which the state could orient its strategy. Thus it was forced to shift the focus of its strategy so that it necessarily had to contain Occupiers in order to incapacitate them from undertaking whatever their planned occupation turned out to be. While this strategy remained fundamentally preventative, it initiated a crucial shift in orientation from containing sites to incapacitating Occupiers. It could still remain preventative given that OPD knew who was going to undertake occupation (the march, or some portion of it), and when they would do so (on January 28th). Hence, it could still aim to prevent that possibility by containing and incapacitating the march. But the success of this strategy illustrated the potential of orienting operations around incapacitating Occupiers rather than trying to contain or regulate the sites they sought (or might seek) to occupy. By forcing the state to defend against the possibility of an occupation with tactics that could no longer be oriented around a particular space, the movement fueled the evolution of a strategy that not only proved highly successful for this preventative objective, but also reflected new potential for thoroughly pre-empting that possibility.

Hence, the third “moment” witnesses the introduction of tactics that are no longer focused on controlling spaces that might be targeted for occupation, but rather populations that posed that risk. This marks the final evolution of state strategy: from a strategy of containment that seeks to control territory as a means of preventing occupation (Naked Coercion); to one of regulation that seeks to control individuals within that territory to further prevent that possibility (Targeted Repression); to, finally, one of incapacitation that seeks control populations in a manner that thoroughly pre-empts any such possibility (Pre-emptive Neutralization). Containment and regulation succeeded in preventing the re-occupation of Oscar Grant Plaza. But only a strategy of incapacitation could pre-empt the possibility of any further occupation. As long as the state’s objective was limited to defending particular spaces against occupation as a means of guaranteeing its territorial sovereignty, preventative strategies sufficed. But once it turned its focus to thoroughly annihilating the movement and the potential for collective action it represented, this required a new pre-emptive strategy of incapacitation. And this is the case because the state was no longer just trying to prevent occupation by controlling spaces and asserting its territorial sovereignty within them. This it was able to achieve through strategies of containment and regulation, which effectively prevented the occupation of those contested spaces. It is now the more general “risk” of occupation that the state aims to manage and neutralize. And once it is “risk” that the state seeks to control, this can only be achieved through tactics that target and incapacitate the populations who pose it.
If the objective is no longer simply the prevention of a particular occupation, but rather the pre-emptive incapacitation of that “risk”, how does this new strategy determine “risk” and identify those who pose it? Once again, by relying upon the capacities developed by Targeted Repression. What is it that this earlier form of power seeks to prevent? Deviations from the “norm”. This strategy achieved not only a disaggregation or individuation, but also a normalization. It identified and assessed individual Occupiers in relation to a set of norms, the most general being the “peaceful protester”. Targeted Repression was intrinsically normative. It operated through various tactics and discourses that constituted a range of norms and sought to prevent any deviations from them. It distinguished the norms of “public assembly” and “free speech” from the deviations of “lodging”, “trespassing” and “obstruction”. Permits serve as an epitomizing example, establishing a range of “norms” regarding the “time, place and manner” of presence in Oscar Grant Plaza. Establishing those norms then enabled enforcement against all deviations. It is these processes of normalization that provide the basis for the subsequent identification and aggregation of “risk” populations. The “norm” serves as the springboard for “risk” – it is an individual subject’s distance from the “norm” that determines the “risk” it poses. And the capacity for identifying individual subjects and assessing their deviation from these “norms”, enables their re-aggregation into delineated populations that can now be managed and incapacitated in order to neutralize the “risk” they collectively pose. While repression seeks to prevent deviations from the norm, pre-emption seeks to neutralize even that risk.

This intrinsic relationship between the normalizing strategies of Targeted Repression and the risk management they enable under Pre-emptive Neutralization is most clearly illustrated by the example of “stay awayees”. In the second “moment”, a range of tactics had already begun to establish the basis for aggregating risk populations. In particular, targeted raids resulted in producing a population of arrestees who had distinguished themselves as posing a particular “risk” by virtue of having deviated from the “norms” established by the permits. In the third “moment”, the District Attorney’s office re-aggregates these arrestees by imposing restraining orders on them, and thus legally constituting them as a targeted risk population of “stay awayees.” This strategy sought to pre-empt any possibility of an occupation of Oscar Grant Plaza by aggregating a high risk target population, criminalizing their presence anywhere near it, and thus neutralizing the “risk” they collectively posed.

Furthermore, these “stay awayees” were also part of a larger risk population that was constituted through the more general strategy of prosecution -- Occupiers with open cases. In the third “moment”, the state begins to exploit the full potential of its arrest operations. No longer deploying them only as a means of extra-legal detention (i.e. as preventative “strategic incapacitation”), they now become the basis for pre-emptive prosecutorial strategies. Hence, this period witnesses a dramatic reversal of the District Attorney’s role in state strategies. Rather than quietly dropping the baseless, and often ridiculous, initial charges filed by police, it began prosecuting them with an unprecedented vengeance. It also re-opened cases and re-filed charges to extend the reach of this strategy to encompass those that had been arrested in previous police operations. This prosecutorial strategy effectively constituted a targeted risk population of Occupiers who were being prosecuted and had open cases. Their potential for engaging in any form of political action was
substantially neutralized by prosecutorial tactics like imposing severe consequences on their open cases for any subsequent arrests (an extremely difficult thing to avoid given increasingly aggressive policing strategies). Prosecutors also deployed the tactic of offering plea deals of “deferred judgments” that promised charges would be dropped after a specified period (usually one to three years) as long as certain conditions were met – which always prominently included the requirement of avoiding any further arrests. This served as a tactic that aggregated these Occupiers into a targeted population, those that accepted deferred judgments, and substantially neutralized their capacity to continue participating in the movement or engaging in any form of political action.

But the largest targeted risk population delineated by the DA’s office was constituted just by simply engaging in the tactic of re-filing charges against some Occupiers. This tactic established the very real threat that any Occupier who had previously been arrested could have charges re-filed against them. This effectively constituted a massive targeted risk population – the over 800 hundred Occupiers who had ever been arrested – whose likelihood of engaging in political action was substantially incapacitated just by the issuing of that threat. These are just a few examples of how the tactics deployed in the second “moment” with Targeted Repression come to serve as the basis for the tactics of aggregated risk management that later emerge with Pre-emptive Neutralization. Those individuals who had been identified and targeted for their deviations from the “norm” would now be aggregated into populations and targeted with tactics that sought to neutralize that “risk” they collectively posed.

The final evolution of state power relies upon not only the tactics, but also the discursive strategies that developed with Targeted Repression. By the conclusion of the second “moment”, the state had achieved discursive dominance. While its initial strategy of Naked Coercion lacked any discursive buttressing, by this point the state had thoroughly dominated the discursive terrain of struggle. Public perception of the struggle between state and movement had been radically transformed. A general public that had been outraged by the state’s violence on October 25th had now been diverted to a focus on the problem of Occupier “violence”. It had gone from defending occupation as a First Amendment right to perceiving it as a “violent” “criminal” “break in.” And it no longer perceived the state’s own violence as such, but as a necessary response to Occupier “violence”. The state’s tactical strategies were no longer left naked, but were now thoroughly buttressed by its discursive strategies.

The state’s success in dominating the discursive terrain of struggle in the second “moment” also enabled it to appropriate for itself the power of spectacle. It is the state, not the movement, that now wields the tactic of spectacularization. Spectacles of police violence give way to spectacles of Occupier “violence”. And therefore, it is now the movement that is subjected to spectacular backlash, as clearly illustrated by the outcomes of January 28th and the FTP! marches. The dynamics of spectacularization undergo a dramatic transformation over the course of the three “moments” of struggle. In the first, the movement enjoyed a discursive dominance (that had even been intensified by the state’s own initial discourse of “balancing” First Amendment protection), while the state’s deployment of violence was discursively naked, leaving it vulnerable to spectacularization. But by the second “moment”, the state had waged a discursive campaign that undid those
earlier discourses (stripping away the protections and public support they had provided) and forwarded new ones that radically transformed the way the movement, its tactics and the larger struggle were perceived. These discourses now associated Occupiers, rather than police, with violence and presented occupation, not as the exercise of public assembly and free speech, but as a “violent” and “senseless” “criminal” act. The state also began to deploy its violence in much more institutionally secluded ways that eluded public visibility. Thus, by the conclusion of the second “moment”, the state had de-spectacularized its own violence, while simultaneously spectacularizing the “violence” of Occupiers.

The dynamics of spectacularization undergo one final transformation in the third “moment”. Spectacularization now becomes one of the state’s primary tactics. Its centrality stems from its highly essential function for Pre-emptive Neutralization – generating spectacles which vividly embody the “risks” that necessitate pre-emption. Discursive strategies become increasingly oriented around presenting and exacerbating “risks” that serve to elicit and necessitate pre-emption. And the state introduces a particularly powerful new discursive strategy for achieving this – spectacles of risk. These spectacles serve as material manifestations that bestow a vivid reality to the “risks” they embody. As the struggle commences into the third “moment”, it is January 28th that provides the state with its perfect spectacle – consolidating a “risk” of Occupier “violence” that elicits and necessitates the introduction of a range of pre-emptive tactics that seek a thorough neutralization of the movement.

But pre-emption requires discursive strategies that provide it with much more than just its necessitation. Repression required a range of disciplinary strategies geared at presenting its exercise as “gentle”, thus disguising that it was in fact an exercise of force. For example, targeted raids that resulted in the incarceration of dozens of people and imposed forms of violence as unbearable as solitary confinement were discursively disguised as “minor enforcement”. This strategy had begun to first develop towards the end of the first “moment” when it served to distinguish the state’s second raid operation as a “peaceful eviction.” Just as repression had to appear “gentle”, pre-emption too necessitates a discursive disguise – one that renders this exercise of force as a response. This discursive strategy first gains traction with the series of targeted raids, which the state presented as responses to the “obstruction” of its “minor enforcement” efforts. And it fully develops during the second “moment” as the direction of the momentum of struggle between state and movement is reversed. During the first “moment”, state strategies were highly reactive, desperately seeking to defend against the strong advances of the movement. By the second moment, this has begun to shift, and the state’s tactical strategies become increasingly proactive, but its discursive strategies disguise these advances as defensive “responses”. This development then becomes the discursive basis for a final evolution towards a strategy of pre-emption. The state’s tactics of “response” serve to give a discursive reality to the target of that response – the “violence” of Occupiers. And once this Occupier “violence” has been thoroughly consolidated and spectacularized through the state’s repeated “responses”, it achieves such a reality that even its very “risk” elicits pre-emption. Thus, by the third “moment”, the direction of the momentum of struggle has fully reversed, with the state launching an unrelenting series of attacks that so thoroughly incapacitate the movement that it can do little more than desperately seek to defend itself. But the state’s
discursive strategy ensures that these pre-emptive advances against a highly incapacitated movement are perceived as necessary “responses” to the “risk” of Occupy Oakland’s “violence”. Unsatisfied with the prevention it had achieved through either brute coercion or even repression, the state now undertakes a strategy of Pre-emptive Neutralization that seeks to annihilate even the very “risk” of resistance.
Chapter 4: PRE-EMPTIVE NEUTRALIZATION

("Deterring Violence")

*The State Strikes First: The Shift to Pre-emption*

The third “moment” commences with the aftermath of January 28th. The outcome of that day’s events dramatically transformed the dynamics and terrain of struggle, creating the necessary conditions for the third and final “moment” of the state’s strategic evolution. Most fundamentally, January 28th marked the crucial tipping point that enabled the state to fully reverse the direction of the momentum of struggle. In the first “moment”, the state’s *Naked Coercion* was a highly reactive containment strategy that sought to defend against the major advance launched by the movement, the occupation of Oscar Grant Plaza. While it adjusts its strategy to effectively defend against this, the movement forwards additional advances, like the General Strike and Port Shutdown, which continue to force the state into a defensive reactionary position. By the second “moment”, state strategy had adequately adjusted to effectively defend against those advances and began to evolve into a more proactive strategy of regulation (*Targeted Repression*). As the movement had to respond to this shift, it found itself forced into an increasingly defensive position. But it is January 28th that provides the necessary tipping point for the state to fully reverse the direction of the momentum of struggle. Its advances are no longer just proactively preventative, but now thoroughly pre-emptive. From this point forward, the movement finds itself in a highly defensive position where it is faced with an unrelenting series of attacks that are no longer responses to any movement advances, but are launched pre-emptively so as to incapacitate it and neutralize even the possibility of an advance. The state introduces a new pre-emptive strategy of incapacitation – *Pre-emptive Neutralization* – that fully reverses the direction of the momentum of struggle in a manner that precludes any further advances by the movement. It is through this strategy of pre-emptive strikes that the state is soon able to thoroughly incapacitate the movement and neutralize any possibilities for resistance. Reactive coercion allowed for containment. Proactive repression enabled regulation. But only *Pre-emptive Neutralization* could achieve such a thorough incapacitation.

There were a number of outcomes of January 28th that solidified the defensive position of the movement. The most obvious was the impact and aftermath of the mass arrest operation. Over 400 Occupiers had been arrested and spent days exposed to various forms of state violence in county jails. A number of them were seriously injured from the day’s police operations, some still faced terrifying prosecution, and they were all generally worn down and traumatized by the experience. Furthermore, the movement as a whole now found itself completely consumed with the defensive work necessary to respond to this attack: ranging from the need to provide jail and court support; to raising bail funds or procuring legal representation for those who remained incarcerated; to more generally struggling to heal and care for each other in the aftermath of the state’s vicious assault. In such a context, launching any substantial strike back against the state seemed a virtual
impossibility. For the first time in the evolution of this struggle between state and movement, Occupy Oakland was so thoroughly weakened that it was unable to muster up any significant strategic response beyond these defensive measures.

The third “moment”, unlike the previous two, does not commence with any major strategic advance by the movement. It is the state that now strikes first, and the movement which is forced to respond. Therefore, this chapter is organized differently than the previous ones which each began with an advance by the movement, and proceeded to map the iterative dynamic and evolutionary adaptation that was set off as a result. Those chapters concluded once the state’s strategy had evolved enough to wage a response that effectively defended against that advance. This forced the movement into strategic adaptation, which then shaped the nature of its advance at the beginning of the subsequent “moment”. But the organization of this chapter differs, reflecting how the direction of the momentum of struggle has been reversed by this final “moment”. It commences with the state striking first, revealing the adoption of a new pre-emptive strategy that doesn’t respond to any advance by the movement, but seeks to incapacitate it so as to preclude even that possibility. And it is the state who continues to strike throughout the chapter, without any substantial responses by an increasingly incapacitated movement.

While the previous two chapters aimed to capture the iterative dynamic between state and movement strategies in each “moment”, this one focuses instead on mapping out the operation of the state’s strategy of pre-emption. That iterative dynamic that was so crucial for the evolution through the earlier “moments” begins to lose its significance once the direction of the momentum of struggle becomes increasingly unilateral, with the state relentlessly striking against a movement that can no longer mobilize any strategic response. The movement no longer even has the capacity to force further strategic adaptation upon the state, leaving it free to fully implement and consolidate its new strategy without obstruction. Thus the objective of this chapter is no longer to trace a back and forth between movement and state strategies, but rather to map out the implementation and operation of the state’s strategy of pre-emption as thoroughly as possible. In particular, it aims to highlight the role of a wide range of state agents that are mobilized and become central executors of this new strategy. The motivation behind presenting the final “moment” in this manner is to contribute to our empirical knowledge and theoretical grasp of the nature of the state’s contemporary strategy of power. We need a much more thorough understanding of how pre-emption actually operates. And this necessarily requires accounting for the role of a range of state agents beyond the police.

While police served as the main agents of the state’s earlier two strategies, relying primarily upon them proves inadequate for a strategy of pre-emption. The evolution of state strategy necessitates the incorporation of a much wider range of agents and diminishes the centrality of police. Police are extremely effective agents for a strategy of Naked Coercion that seeks the containment of spaces and ensures it through the deployment of highly visible violence. Thus it was OPD that primarily managed and directed the state’s operations on October 25th, for which it was blamed after the fact by other agencies that sought to distance themselves from that disaster. Police also remain well suited for a strategy of Targeted Repression that operates through regulation of Occupiers within those spaces the state seeks to contain and defend. While Targeted
Repression began to incorporate other state agents (city administrators who issued and revoked permits or prosecutors who quietly buried the outrageous charges filed by OPD), the police still retain their central primary role. But while these preventative strategies of containment and regulation relied heavily upon police for their execution, this proves inadequate for a strategy of pre-emption. The role of police never loses its strategic significance because the state is never willing to relinquish the force of its violence, which always continues to lurk behind its strategies. But the centrality of their role diminishes with the adoption of a pre-emptive strategy that necessitates mobilizing a range of other state agents. While policing is central to strategies of “enforcement” that seek to contain and regulate, the execution of a strategy of “deterrence” that aims to incapacitate (promising to “deter” before there is even a need to “enforce”) requires much more.

In particular, it necessitates and dramatically expands the role of prosecutors, who now rise as primary agents of pre-emption. This chapter allocates extensive space to the role of the District Attorney’s office in the City’s strategies against Occupy Oakland. The aim is to illustrate how these agents deploy a particular form of state power, what I call “prosecutorial power,” that proves to be a highly effective means of pre-emption. Through a range of prosecutorial tactics, the District Attorney’s office legally delineates high “risk” populations which it can then target with criminal consequences that serve as a highly effective means of collective incapacitation. Prosecutorial power enables the aggregation of entire populations of individuals who can now be more easily targeted with forms of coercion and regulation that result in their collective incapacitation. By legally delineating a population of “stay awayees,” the District Attorney’s office imposed upon these individuals a vulnerability to forms of state regulation and coercion (for example violation of their open cases or even a sentence of six-months imprisonment) that effectively resulted in their collective banishment from Oscar Grant Plaza – something OPD had never been able to achieve. Police can coerce, and even regulate. But it is prosecutors who wield the greatest power of pre-emption.

This chapter is organized around pre-emptive advances launched from various state agencies. These include the District Attorney’s office, OPD, City Council, and even “civil society”. The objective is to illustrate that no matter where these strikes emanated from, they all reflected the same orientation around a strategy of targeted pre-emption and its accompanying discourse of “deterrence”. It is a strategy that promises to “deter” the “violence” of Occupiers by identifying and pre-emptively incapacitating those who pose the greatest “risk” of perpetrating that “violence”. In stark contrast to a state which, in the first “moment”, was so internally divided, fragmented and narrowly reliant upon the coercive force of its police, this state now operates through a wide range of agencies that are highly unified around the same tactics and discourses of Pre-emptive Neutralization.

While the state’s relentless strikes against the movement are highly unified, the minimal actions the movement is able to mobilize are fragmented, decentralized and dispersed. This resulted from not only the weakened or defensive position of the movement, but also its increasing internal fragmentation. The loss of occupation set off a process of fragmentation within the movement that had profound impact. Without an occupation, nor even an occupation effort, Occupiers lost the space and practices that generated and sustained their collective bonds. This fragmentation was further exacerbated by state strategies that
intentionally sought to divide the movement, particularly discursive strategies that fueled divisions over questions of “violence” and “non-violence”. The state’s strategy of transforming January 28th into a spectacle of Occupier “violence” thoroughly enflamed those internal divisions, leading some to denounce and abandon the movement. In the same manner that October 25th had fragmented, and even momentarily paralyzed, the state, the spectacle of January 28th deeply divided and incapacitated Occupy Oakland. And without an occupation effort to coalesce around, the movement lacked the space or capacity to work through these divisions. It could also no longer rely on an occupation to collectively re-orient itself around a shared strategy, or even objective. It was the tactic of occupation that had provided the necessary unification for a motley crew of Occupiers who held a wide range of conflicting objectives and strategies. Without an occupation, it proved extremely difficult to repair the fissure that had been gouged within the movement by the state’s discursive strategy around “violence”. The division and distance between advocates of “non-violence” and supporters of a “diversity of tactics” soon became so entrenched that it appeared impossible to overcome. People increasingly perceived and identified themselves as advocates of either “non-violence” or “diversity of tactics,” rather than as Occupiers.

While some left the movement in frustration, many others who remained began to either shift the focus of their participation into particular OO committees that operated independently or formed smaller groups that were completely autonomous from Occupy Oakland. Through these increasingly decentralized networks, Occupiers (as well as those who no longer identified as such) organized a number of smaller actions and projects that were highly diffused and more embedded in Oakland’s various local communities rather than under the banner of the Occupy movement. These included efforts like: foreclosure defense actions in both West and East Oakland; numerous solidarity actions that supported the struggles of local (particularly non-unionized) labor; alliances with groups committed to pursuing accountability for local police murders (like the Coalition for Justice for Alan Blueford); and a series of neighborhood BBQs/Speakouts that practiced the principles of direct action and mutual aid throughout different areas of Oakland. These actions sought to be firmly rooted in local community struggles, rather than oriented around Oscar Grant Plaza or the Occupy movement. These adaptations were partially a response to the extremity of state repression around OGP, which forced Occupiers to seek out decentralized opportunities where their efforts might be more sustainable and less vulnerable to state targeting. But they were also shaped by what many Occupiers felt was an urgent need to re-ground political struggle in the local community, something that had been undermined by the loss of the occupation. Refusing to also relinquish their commitment to a prefigurative strategy that prioritized the needs of the local community, Occupiers sought out ways to practice direct action, solidarity and mutual aid without an occupation and beyond the confines of Oscar Grant Plaza.

This chapter does not cover these movement actions because they no longer have any immediate impact on the development of state strategy, which is the focus of this dissertation. It does, however, cover the only major advance by the movement in this final “moment” that proves substantial enough to incite an immediate strategic response by the state, its May Day actions. This would turn out to be Occupy Oakland’s last strike, after which it would never again mobilize a mass action. The final “moment” concludes with
May Day, by which point the state’s strategy of Pre-emption Neutralization had fully evolved, achieving a thorough incapacitation of the movement. May Day marks not only Occupy Oakland’s last major advance, but also the full implementation of OPD’s new strategy of targeted pre-emption. It witnessed the execution of police operations that deployed precisely the same forms of violence as October 25th, and in the same highly visible manner. But this time around, OPD is praised for its “reform” – lauded as a new model of policing that proved so effectively targeted that it had succeeded in “detering” the “violence” of Occupiers. This chapter aims to capture the evolution of state strategy in this final “moment”, mapping out the nature of its operation and the process of its consolidation. That process begins in the immediate aftermath of January 28th. Nothing could have provided a more promising window of opportunity for consolidating a new strategy of pre-emption than this spectacle of Occupier “violence”.

January 28th – The State’s Spectacular Window of Opportunity

Aside from abruptly reversing the direction of the momentum of struggle, January 28th also proved crucial to the evolution of the state’s strategy by providing its perfect spectacle of Occupier “violence”. On October 25th, a spectacle of police violence served as a major opportunity for the movement, which it utilized to establish its second encampment and launch a massive General Strike. But January 28th provided this kind of spectacular window of opportunity for the state, one that it thoroughly exploited to introduce its new strategy of pre-emption. This spectacle so visibly materialized the “risk” of Occupier violence that it elicited and justified a range of pre-emptive advances as necessary “responses”.

Despite the fact that January 28th represented the most violent police operation in Occupy Oakland’s history, the day’s events would come to be spectacularized as an epitomizing example of Occupier “violence”. The Mayor, city councilmembers, and numerous other city officials issued statements immediately after January 28th denouncing Occupy Oakland’s “violence”. Police Chief Jordan went so far as to even accuse the movement of “cyberterrorism”. What was this “cyber terror” he was referring to? A solidarity action undertaken by Anonymous, which on the evening of January 28th had posted a statement directed at OPD and Oakland city officials, asserting: “[y]ou tear gassed us. You shot us with your weapons. You arrested us. You beat us…” The statement linked to a document with a compilation of personal information for Mayor Quan, Police Chief Jordan, City Administrator Deanna Santana, City Attorney Barbara Parker, and seven members of City Council. This included personal phone numbers, home addresses, and biographical information, including family relations (particularly referencing Councilman Ignacio De La Fuente’s son’s rape conviction). This, however, was no aggressive hacking effort – virtually all the information compiled was already publicly posted online or accessible through paid information gathering sites that are readily available to the public. At the very moment that Anonymous posted this publicly available information, OPD was in the process of brutally kettling, beating and extra-legally incarcerating hundreds of Occupiers. And yet it was this minor response by one of the movement’s allies
that came to be designated as an “incitement to violence,” or even an act of “cyberterrorism.”

But the irony wasn’t limited to the egregiousness of the state’s own violence that day. Most of the allegations of “violence” against Occupy Oakland, of course, suggested that there had been extensive property destruction. Yet there was not a single documented case of property destruction throughout the entire day of January 28th. This was in stark contrast to previous Occupy marches or actions, like the November 2nd General Strike, where broken bank windows and graffiti were commonplace. Grasping the enormous power of the state’s discursive strategy of rendering property destruction as “violence”, Occupiers had purposively avoided the tactic so that it wouldn’t undermine their planned “Move-In Day.” Yet despite these efforts, the state still managed to wrench a spectacle of Occupy Oakland’s “violence” out of the day.

This was achieved through discursive strategies like rendering the incidences at the YMCA and City Hall as “violent” “break-ins.” It was also aided by the strategy of spectacularizing the very little property destruction that did occur on January 28th – the minimal damage done in City Hall. Thoroughly exploiting its potential, the Mayor held a press conference the next morning where she offered media a guided tour of this damage, which in fact amounted to no more than one broken window, some graffiti and a few toppled display cases. And of course, she failed to mention that all of this “violence” was undertaken after the mass arrest operation and the conclusion of a long day of OPD kettles, beatings and “less lethals.” But it was the image of the attempted burning of an American flag in front of City Hall that was most thoroughly exploited, widely disseminated as the quintessential example of Occupy Oakland’s “violence” on January 28th. This one image came to powerfully justify the aggressive nature of police operations that day as necessary “responses”, despite the fact that they were concluding by the time it even occurred. And of course, there was no mention that this spectacle was soon interrupted by OPD deployed tear gas.

Aside from suggesting extensive property destruction that never occurred, or decontextualizing and spectacularizing what little did occur, there were also a range of vague claims about the “violence” of diverting the City’s limited resources. City officials particularly emphasized the allegation that Occupy was diverting resources away from crime prevention, thus leaving Oakland more vulnerable to violent crime. Mayor Quan told reporters for KCBS:

> What they are doing against the city economically is not nonviolent either...Every Saturday they are doing demonstrations [referring to the Saturday night FTP! marches] and in my city that is my night of highest police need. They are taking away resources from my city and creating a situation that is making it more difficult for me to keep the city safer.412

There were countless claims in the press immediately after January 28th about the dangerous effects of the diversion of police resources that weekend. It was reported that “450 9-1-1 calls were, in the words of police officials, ‘delayed or unanswered’ because
On the afternoon of Jan. 28, as the police grappled with Occupy Oakland protesters, dispatchers received a flurry of 911 calls from people at the Port of Oakland who reported something strange swaying in the wind. Was it a leftover Halloween prop? An Occupy ploy?...When the police finally arrived, they discovered it was the body of a San Leandro murder suspect, a man who the authorities said had stabbed to death the 15-year-old mother of his child, then fled and hid for a night before he hanged himself at the Port...With the Oakland police and neighboring agencies busy arresting about 400 protesters, it would be 12 hours before the man’s body would be cut down, according to police investigators...The calls about the swaying body were among the 1,700 the police received over the course of 24 hours on the weekend of Jan. 28 while dealing with the largest showdown to date with Occupy Oakland protesters...While police were trying to control the Occupy movement over that weekend, police responded to at least five murders and more than 450 calls were made to 911...Of the five homicides, there has been only one arrest — of a teenager who confessed to killing his parents. Homicide investigators who were called to the scenes of the crimes were largely unable to track down witnesses and collect evidence. Officers who would usually assist investigators were arresting protesters.

The underlying assertion of these claims is that Occupy Oakland is responsible for completely unrelated acts of violent crime in Oakland by virtue of having “diverted” the police. But never is the question raised of why such extensive police resources (hundreds of riot geared officers called in through expensive Mutual Aid agreements) would be diverted to policing this one Occupy action. Nor is it pointed out that the Oakland Police Department fails to respond to most calls in Oakland on any given weekend. The decision to allocate such extensive police resources to the potential occupation of one vacant building (intended for the purpose of turning it into a social center open to the public), rather than responding to multiple cases of homicides and countless injuries to human beings, reflects a great deal about the priorities and objectives of the neoliberal police state. The invocation of “violence” primarily refers to threats to property. It is only within the terms of this neoliberal discourse that Occupiers can be held responsible for completely unrelated harm to human beings by virtue of having “diverted” police to the (implicitly) greater threat posed to property.

The most egregious example of the state and media’s leaps of logic around “violence” in the aftermath of January 28th was in relation to a homicide case that occurred right before that weekend. A fifteen-year-old boy named Moses Kamin murdered his foster parents. He
confessed to having choked his foster mother to death and later strangling his foster father with a plastic bag. Their bodies were found shortly after by police, stuffed in the trunk of the family car parked in front of the house, where Kamin had attempted to set the vehicle on fire. The story received highly spectacular coverage, much of which tentatively asserted that Kamin killed his foster parents after an argument over him spending too much time at Occupy Oakland. News articles ran with titles like: “Parents killed by their adopted son, 15, after they complained he spent too much time at Occupy Oakland[.]” And Glenn Beck even devoted extensive airtime on his popular nationally syndicated Fox News show to visually mapping the alleged connections between Occupy Oakland and the murders (with his usual bizarre but highly entertaining leaps of logic).

Although the media (particularly conservative media) went wild with allegations connecting Kamin’s murdering of his parents with his participation in Occupy Oakland, the real story that emerged through his prosecution bore little resemblance to these initial unsubstantiated claims. Kamin was charged as an adult, plead guilty to first and second degree murder, and was sentenced to 25 years to life in prison. Court proceedings revealed he confessed to police that he had killed his parents after an argument over his being suspended from school for marijuana possession. Kamin’s confession was obtained immediately after his arrest, raising the question of why police issued statements never refuted the rampant media allegations that the murders were incited by an argument over participation in Occupy Oakland. It was also confirmed that he suffered from dissociative disorder resulting from years of childhood abuse and trauma while living with his birth mother and later being shifted between various foster home placements. In the end, it was abundantly clear that the murders had nothing to do with Kamin’s alleged involvement in Occupy Oakland, which itself was never even substantiated. No evidence of his participation in OO was ever forwarded, and Occupiers in Oakland had never seen, nor even heard of Kamin before. Nonetheless, just by virtue of having occurred around the weekend of January 28th, these murders were catapulted it into yet another spectacle of Occupier “violence”. This was the discursive context at the dawn of the third “moment”. The state’s strategy was so powerful that it was capable of manipulating completely unrelated events into spectacles of Occupier “violence”.

But the most powerful force in consolidating a spectacle of “violence” out of January 29th was neither the state’s fabrications, nor its bizarre leaps of logic. Sadly, Oaklanders are quite used to the routine occurrence of homicides in their city. And there wasn’t much “violence” to even spectacularize beyond the images of a flag burning and a few toppled display cases. This was certainly nothing shocking or highly unusual to the public. So what was it that really consolidated this certainty that “violence” had occurred? The highly extreme “response” of the state. It was the extremity of the state’s own tactics that day, and its discursive strategy of presenting them as “responses,” that created a vivid sense of the reality and urgency of the “violence” they were “responding” to. The fact that OPD had arrested over 400 people, and that it was “forced” to undertake “defensive measures” like deploying “less lethals” suggested that such “violence” must have occurred. It is the state’s own tactics that serve to impart a vivid reality to the “violence” they claim to respond to.

There was one final characteristic of state discursive strategies around January 28th that was most striking – the repeated insistence that this “violence” was a consequence of
Occupy Oakland having been “hijacked” by a “violent fringe” within the movement. During this period, city officials and media made numerous references to the supposed rise of Anarchists within Occupy Oakland. Mayor Quan issued statements attributing the “window smashing and vandalism [on January 28th] to ‘a very quick takeover by the organized anarchists’.” These claims not only conflated Anarchism with violence, but also conveniently elided over the fact that Anarchists had been central participants in the movement since its very inception. This discursive strategy aimed to disassociate Occupy Oakland from the larger national movement by discrediting it having been “hijacked” by a “violent fringe faction.” In a highly patronizing fashion, Mayor Quan even told reporters: “I plan to call some of the national leadership of Occupy this week to say that the Oakland group is not nonviolent and has not agreed to be nonviolent. The national Occupy movement has said they are nonviolent.” The media thoroughly adopted the state’s discursive strategy, publishing countless articles during this time on “splits” within the movement over Occupy Oakland’s “violence”. The San Francisco Chronicle ran a story two days after January 28th entitled “Occupy Oakland protesters split over violence.” The Christian Science Monitor ran a similar headline: “Occupy Wall St. nonviolence: Is Oakland the exception or the future?” SF Weekly reported that while the national Occupy movement had largely committed to “nonviolence”, “Occupy Oakland had refused to do so and had “become infamous for its nonchalance toward militant protest tactics[.]” The San Francisco Chronicle went so far as to dramatize the situation as an urgent struggle over the very “soul of the Occupy movement”:

For many Occupy activists outside Oakland and San Francisco, the violent clashes with police and destruction that attended protests in those cities over the past two weeks not only went against the Occupy message - they’ve started to undercut its essence…Even within the cities, there is a deepening split between those who accept violence as a tactic and those who oppose it…The conflict is turning into a wrestling match for the soul of the Occupy movement in the Bay Area.

This strategy aimed to both enflame internal divisions within Occupy Oakland and disassociate it from the larger national movement. And it was highly successful in doing so, as evidenced by the raging debates that were set off immediately after January 28th. It was just one week later that Chris Hedges published his infamous piece identifying the “Black Bloc anarchists” of Oakland as “the Cancer of Occupy.” This further fueled extensive media and public debate over what was perceived as the increasingly urgent danger posed by “the Black Bloc.” Yet not only was there no black bloc action on January 28th, the only one ever undertaken during the entire national movement’s history occurred three months earlier during the day of the November 2nd General Strike. It is also during this period after January 28th that scholars like Todd Gitlin and Nathan Schneider recount having “extolled the need for nonviolent discipline” within the movement. There is no greater indication of the enormous power of the state’s discursive strategy than the fact that it incited such responses by scholars of social movements.
But this strategy achieved something far more important than even these divisive objectives; it discursively constituted the state’s new target – a “violent fringe” of Occupiers. Repeated assertions about a “violent fringe” of “extremists”, incessant references to “takeovers” by “violent anarchists,” and dire warnings of the “arrival” of “the Black Bloc” all served to consolidate the notion that the state had identified a population within the movement that posed a particularly high “risk” of “violence”. This discursive constitution of a “violent fringe” provided the necessary target population for the state’s new strategy of pre-emption. It is crucial to recognize the radical departure from the state’s earlier claims that police enforcement had been targeted at “violent” Occupiers. Those allegations referenced individually identifiable Occupiers (even if they had never been identified) who they alleged had actually perpetrated “violence”. But these new claims referenced an entire population who was alleged to pose the “risk” of perpetrating “violence”. This discourse provides a strategy of pre-emption with the target population it requires – a “fringe” whose “risk” of “violence” it can now seek to “deter”. The state’s strategy had evolved from being crudely untargeted (aimed at an amorphous crowd), to increasingly targeted (aimed at individual Occupiers), to finally becoming pre-emptively targeted (aimed at a high “risk” populations). No longer blindly unleashing violence at the crowd, state repressive power learns to discriminate – to disaggregate and constitute individual targets of repression (“violent” Occupiers). But once state power can discriminate, once it can claim to have identified the “violent” Occupiers – it can now profess the power to do so pre-emptively. The discursive shift from “violent” Occupiers to a “violent fringe” of Occupy Oakland signified that the state could now “deter” because it had identified the necessary target population. This “fringe” would be invoked incessantly by city officials, media, “counter protestors,” and even scholars in the weeks to come, providing both the justification and the target for the state’s new strategy of pre-emption.

**City Council Strikes: “Deterrence” through “Zero Tolerance” Enforcement**

After January 28th, the first major strike against the movement was launched by City Council in the form of a proposed resolution that directed the Mayor, City Administrator, and OPD to “use whatever lawful tools we have” to prevent any future unpermitted demonstrations. While the resolution specifically focused on the port of Oakland, it applied to all unpermitted gatherings or demonstrations that block roads anywhere within the city.429 The resolution was introduced on February 7th (just one week after the events of January 28th) by Councilmembers Ignacio De La Fuente and Libby Schaaf, who argued that the City should “use every tool at its disposal to stop the ongoing Occupy protests from escalating into violence and property damage.”430 De La Fuente had previously proposed a similar resolution immediately after the December 12th West Coast Port Shutdown but it was denied emergency status, never reaching a vote in City Council. But the aftermath of January 28th provided the perfect opportunity to reintroduce the resolution. There was a generally increasing sentiment among both state officials and the public that the City should stop “tolerating” these disruptive protests. California’s Governor Jerry Brown even offered up the National Guard to aid OPD in the event of another port shutdown.431
It is important to note that this resolution did not actually introduce any new legislation, nor even propose any change to existing legislation. There are already well established ordinances in Oakland that require permits for gatherings of over 50 people, as well as laws that prohibit the blocking of streets (a misdemeanor punishable with a $100 fine and up to 50 days in jail). There were already enforcement mechanisms established for these offenses and the new resolution didn’t propose any changes to them. What it proposed, rather, was that the City shift to a “zero tolerance” policy of enforcement. Speaking in support of the proposal, De La Fuente and Schaaf argued that the City’s current predicament had resulted from its previous strategy of selective police enforcement. In the effort to “balance” the protection of First Amendment rights, police had been directed to refrain from enforcing minor violations unless they posed “public safety” threats. De La Fuente argued “[we] have not been aggressively enforcing these rules, which is the reason we’re in the place we’re in now.” In a similar tone, Schaaf asserted “[w]hile we absolutely support free speech and free assembly, we will not tolerate people shutting down our Port and harming our workers that depend on the Port for their wage.” The bottom line of De La Fuente and Schaaf’s arguments were that OPD and the City should now “change tactics” and move towards a new strategy of “zero tolerance” for minor offenses.

But this call for “zero tolerance” was demanding much more than just a shift from “balanced” non-enforcement to enforcement. It demanded “deterrence”. The proposal introduces a new strategy that re-orientates enforcement around the pre-emptive objective of “deterrence”. The logic of De La Fuente and Schaaf’s arguments was that the failure to enforce minor violations had led to much greater offenses (“the reason we’re in the place we’re in now”). Councilmembers supporting the resolution argued that police and city officials should be using every legal means at their disposal “to stop the ongoing Occupy protests from escalat[ing] into violence and property damage.” [Emphasis is mine.] There is an underlying pre-emptive objective to this logic – it’s not simply directing OPD to now enforce minor violations, but to do so as a means of preventing escalation to greater crimes of “violence” and property destruction. The proposal marks not simply the shift from “balanced” non-enforcement to enforcement, but pushes it even further toward a strategy of pre-emptively oriented enforcement. This is clearly articulated in the very language of the proposal and the accompanying statements by city councilmembers, which repeatedly demand that the City “use whatever lawful tools we have” and “use every tool at its disposal.” The clear directive is for OPD to use “whatever” enforcement options “at its disposal” towards this other overriding objective of “deterrence”.

The proposed resolution failed to pass a City Council vote. Occupiers filled the council chamber in protest, resulting in hours of heated debate. Councilmembers Brunner and Brooks joined De La Fuente and Schaaf in voting for the resolution, while Kaplan and Nadel voted against it and Kernighan and Reid abstained. Despite its failure to pass, I would argue that the proposed resolution should be read as marking an important shift in state strategy at the dawn of the third “moment”. The fact that only two councilmembers voted in opposition to moving towards harsh pre-emptive policing of minor infractions (like gatherings without a permit or blocking roads), reflects that the state was indeed sufficiently consolidated around this new strategy. Regardless of how the vote proceeded
in the council chambers, the proposed resolution was a loud articulation of a new state strategy of “deterrence”.

**Civil Society Strikes: The Spectacle of “Stand for Oakland”**

City Council’s proposed resolution was the first articulation of the state’s new pre-emptive strategy, introducing its accompanying discourse of “deterrence” and its target of a “violent fringe.” But it is “civil society” that is then mobilized to consolidate this target and provide a highly spectacular opportunity for implementing the new strategy. The strike from “civil society” came in the form of a “counter-movement”, calling itself “Stand for Oakland,” that emerged to oppose the “violent fringe” who had “hijacked” Occupy Oakland. “Civil society” generates the spectacle of a “counter-movement” whose very emergence serves to give a reality to the “violent fringe” they stand to oppose. The term “civil society” is invoked here in the tradition of Marxists like Gramsci and Lenin who challenge any notion of a clear demarcation between state and civil society. While this “counter-movement” presented itself as “the public,” it was actually spearheaded and fully executed by OPD funded organizations, state officials and major local business interests. The state strikes by generating the spectacle of a “counter-movement” which presents itself in the guise of a “public”, yet thoroughly mimics the state’s own strategy and discourse.

Although the real forces behind this “counter-movement” have long played a powerful role in city, their manifestation as “Stand for Oakland” was quite brief, but nonetheless highly spectacular. This “counter-movement” showed itself only once – one week after January 28th, when a gathering of around 30 “counter-protestors” assembled on the steps of City Hall at exactly the same time that Occupiers had scheduled a rally there. “Stand for Oakland” orchestrated a “silent protest” that would not only soon devolve into a shouting match with Occupiers, but also provided the context for an OPD raid that turned the entire event into a highly televised spectacle.

Occupy Oakland’s Anti Repression Committee (which focused on providing court and jail support for Occupiers) had organized a series of actions for the day, billed as “Can’t Hold Us Down!: Convergence and Court Support Against State Repression of Occupy Oakland.” The day’s events began in the morning with a gathering at the courthouse for the arraignment of the January 4th raid arrestees. In a move that shocked even the National Lawyers Guild (NLG) attorneys working the case, the DA’s office announced its decision to move forward with prosecuting the arrestees for misdemeanor “obstruction of a throughway” (i.e. blocking a sidewalk). The District Attorney’s choice of this petty charge reflected the fact that there wasn’t enough evidence to accuse them with obstructing anything else (even roads), given that 60 police officers had jumped out of vans and chased them down inside the Plaza. Occupiers were outraged that after OPD had executed such an extreme police raid, the DA’s office was proceeding to prosecute arrestees for the ridiculously minor offense of blocking a sidewalk. One of the NLG attorneys representing the defendants asserted to the media that the outrageous nature of this prosecution reflected that the DA’s office was “filing the charges only to disrupt the protestors’ cause.”
After the morning court support for the January 4th raid defendants, there was a rally and “speak out” planned for noon at the Plaza, “featuring experts on repression in Oakland: our very own recently locked up comrades.” But when around 200 Occupiers converged at the Plaza, their planned rally was quickly transformed into a highly spectacular “face off” with a small group of 30 “counter protestors” calling themselves “Stand for Oakland.”

The group assembled on the steps of City Hall at around 11:45am (immediately before and in the same location as OO’s planned rally) They stood behind a giant green and yellow banner that proclaimed “Stand for Oakland.”

Mainstream media flooded the Plaza to cover what it called “the first appearance of a growing countermovement, opposing the allegedly destructive faction of Occupy Oakland.”

Dozens of reporters and cameramen were stationed in the area, while news helicopters swarmed overhead, all ready to capture what was presented as a “face-off” between this “counter-movement” and the “violence fringe” it opposed. But this coverage primarily focused on presenting the positions of the “counter-protestors.” What was the premise of their “Stand for Oakland”? The concerns expressed all hinged on the same story: “residents” taking a stand against the “fringe” faction of “outside agitators” who had hijacked the Occupy movement in their city and were now holding it hostage to their “violence” and “destruction”. Media presented countless quotes from these “Oakland residents” expressing how fed up they were with OO’s “violence”, usually elaborated as vandalism and property destruction, which they argued diverted crucially needed law enforcement resources from crime prevention. In particular, they repeatedly referenced the alleged “break-in” of City Hall on January 28th as an example of this kind of dangerous diversion of police resources. (The webpage of “Stand for Oakland” prominently features the infamous photo of Occupiers attempting to burn an American flag in front of City Hall on January 28th.)

Virtually every time the media quoted a “counter-protestor”, they explicitly and repeatedly identified them as “Oakland residents.”

“I’m just tired of the whole movement. It just seems that all they’ve caused is a lot of destruction and conflict,” said Oakland resident David Abdullah as he stood on the city hall steps behind the banner. “As an Oakland resident, I’ve just had enough, and I’m out here with all these people that feel the same way. We’ve had enough.”

Another “resident” is quoted as saying “I don’t think what is going on down here by [Occupy protesters] is representative of the residents of Oakland.” These countless reiterations of the concerns of “fed up residents” drew upon months of the state’s discursive strategy of presenting Occupiers as “outside agitators.” This was now powerfully consolidated by spectacularly positioning them in a “face off” against the “residents” of Oakland.

The “stand” articulated by the “counter-protestors” repeatedly emphasized that these “outside agitators” represented a “violent” “fringe” or “faction” of the larger Occupy movement which they were “hijacking” in Oakland. One “counter-protestor” explained...
that the movement in Oakland had “fallen off to the negative side” and been overtaken by “particularly fringe groups who are violent.” He and many others referenced January 28th as illustrating the rise of this “violent” fringe faction. As evidence of these claims, the media repeatedly noted that there had been “a heavy anarchist presence” that day (once again eliding over the fact that this was the case every day in Oakland). The “counter-protesters” emphasized that “Stand for Oakland” was “not necessarily against the Occupy movement” but opposed it being “hijacked” by fringe elements. The most explicit articulation of this position came from City Councilmember, Desley Brooks, the very same state official who had pitched a tent and camped overnight in a publicity stunt of “solidarity” with Occupy Oakland on the first day of its establishment on October 10th. Now, just a few months later, she was taking a “Stand for Oakland” to protest what she called OO’s decline to “straight up criminal behavior.” Brooks did numerous interviews with media on the scene in which she “differentiated between the larger movement and a handful of people she said had tarnished it.” Posing for reporters by the groups “Stand for Oakland” banner, she proclaimed “[t]he violent faction of the Occupy movement say they speak for Oakland. And your regular Oaklanders are here today to say they speak for themselves.”

Although Stand for Oakland was presented as a “counter-movement” of “regular Oaklanders,” closer examination reveals that there was nothing “regular” about these Oakland “residents”. The call for this counter protest was limited to just one single publicity notice that was posted on various local blogs and websites and distributed through neighborhood email listserves (particularly in the relatively affluent foothill regions). No sponsorship, contact information, or any other identifier of authorship appeared on the notice. But the individuals who actually participated in the “counter-protest”, and particularly those that were most vocal with media, virtually all turned out to be representatives of three groups: quasi “public” police organizations; major local business interests; and state officials and their staff.

It was later revealed that this “counter-protest” was initially spearheaded by representatives of various neighborhood police support groups. Among them was Angela Haller, who served as the Crime & Safety Team Chair for the East Oakland Neighborhood Crime Prevention Council and is known for her long history of campaigning for increases to OPD’s budget. Haller was joined by Nancy Sidebothom, who had been appointed by the Mayor as a member of the Community Policing Advisory Board (CPAB), which advises OPD on community policing matters. Having run for City Council on several occasions, Sidebothom had long campaigned as a pro-police advocate, even asserting in one of her old campaign websites that she had “been the target of a drive-by shooting because I stood on the side of the police.” Sidebothom was one of the most heavily quoted “Stand for Oakland” representatives in media coverage. She and Marilyn Singleton (a former Tea Party candidate for Congress) are presented as “residents” who “support the original message of Occupy Oakland but are now concerned that the movement has been taken over by a fringe group that advocates violence.” Like Haller, Sidebothom also chaired one of the City’s Neighborhood Crime Prevention Councils – “community” groups funded and resourced by the Oakland Police Department. In fact, most of the other 30 “counter-protestors” who participated that day were also drawn from these kinds of quasi “public” police organizations. Jill Broadhurst, a member of the District 4 Neighborhood Crime
Prevention Council who was passing out “Stand for Oakland” armbands at the event, told reporters that "most of the people who came out to support were from similar crime prevention groups[]."

Also conspicuously standing in “counter-protest” that day were a number of highly powerful and influential business interests. They included Paul Junge, the Public Policy Director of the Oakland Chamber of Commerce, who not only vocally participated but also helped promote and publicize the event. Alongside him stood Phil Tagami, a major local real estate developer who spearheaded many of the “redevelopment” projects that have fueled gentrification and mass displacement in Oakland. Tagami gained local notoriety during OO’s November 2nd General Strike by provocatively patrolling one of his properties (the Rotunda Building) with a shotgun while threatening to shoot protestors. Another major player in attendance was Greg McConnel, who is well known in Oakland for fighting against efforts to establish eviction protections by organizations like Causa Justa: Just Cause. Aside from the presence of such powerful local business interests, even the very brief call originally put out for the “counter-protest” repeatedly slips into conflating the “public” with business.

Come take a "Stand for Oakland" with Residents, Merchants and Downtown Businesses who have been the silent majority. On Monday, residents of Oakland will make a peaceful, visual statement opposing the vandalizing and terrorizing of our city - costing millions of dollars in security and lost revenue and causing a forced re-prioritization of citizen calls, on an already strapped police force, due to downtown chaos and violence. Oakland is worth Standing up for. Look for the arm bands, and come get one: stand in solidarity with Oakland. [Emphasis is mine.]

Despite efforts to present “Stand for Oakland” as a “public” of “regular residents,” it was clearly a publicity event orchestrated by a handful of representatives of police affiliated organizations and major business interests. The demarcation between this self-identified “public” and the state is a highly blurred one. The “neighborhood” crime prevention councils so disproportionately represented within “Stand for Oakland” are ultimately police funded organizations that serve as “community” fronts. And the Community Policing Advisory Board (CPAB) which Sidebothom represents is a fully state operated institution with board members appointed by the Mayor. Immediately after “Stand for Oakland’s” “counter-protest”, Anonymous issued a statement specifically targeting Sidebothom and questioning whether her role in organizing the event posed a “conflict of interest” or perhaps even an “ethics violation” of her position at CPAB. Anonymous’ post reads: “What We would like to know, is how many of the others of the 30 or so that showed up for your ‘Grass Roots Movement’ are on the City of Oakland’s Payroll?” In answer to Anonymous’ question, we can also point out the participation of City Councilmember Desley Brooks (who forfeited no media opportunity at the event), as well as Bruce Stoffmacher (on staff with Councilmember Libby Schaaf).
The “regular residents” of “Stand for Oakland” turned out to be a conglomeration of state officials, major capital interests, and representatives of police funded “community” fronts. Although presented as a “counter-movement”, this attack from civil society would more accurately be termed counterinsurgency. Berkeley Copwatch (which thoroughly investigated the orchestration of this event) came the conclusion that “Stand for Oakland is a counterinsurgency group that was organized by police support groups[.]”469 Another investigation into the group concludes:

Based on background research into some of the persons who appeared at the "Stand For Oakland" protest, and who spoke to the press on the group's behalf, and upon emails sent through neighborhood lists, it is our tentative conclusion that "Stand For Oakland" is likely the production of a handful of relative conservative Oakland political activists, and several members of the Oakland business lobby. They have, however, tapped a genuine frustration among many centrist liberals who for a variety of reasons feel alienated from Occupy Oakland, and who have been swayed by the now predominant framing – spread now incessantly by most major newspapers and TV stations – of the movement as causing "violence."470 [Emphasis original.]

The conclusion of these findings gets at a characteristic of “Stand for Oakland” that is far more significant than even its direct ties to the state – the manner in which it thoroughly mimicks the state’s discourse about a “violent fringe” of “outside agitators” who had hijacked the Occupy movement in Oakland. And the highly publicized emergence of this “counter-movement” served to give a spectacular reality to that “violent fringe.” The scene at this “face off” had all the makings of a spectacle, with “counter-protestors” lined up on the steps of City Hall behind their massive “Stand for Oakland” banner in “silent protest” (meant to emphasize the “peaceful” or “nonviolent” nature of their action in contrast to the “violence” of the “fringe” they protested). But their “silent protest” soon devolved into a heated shouting match that was captured from every angle by the dozens of journalists, cameras and mics on the scene. TV news vans lined the 14th street entry to the Plaza and news helicopters swarmed overhead, all eager to capture the spectacle of this “face off”.

But it was one single factor that served to elevate this from a mere shouting match into a spectacular media event – an unprecedentedly aggressive police raid that exhibited “zero tolerance” for the minor violation of unpermitted sound. Midway through Occupy Oakland’s rally, at around 12:30pm OPD issued an enforcement warning through a bullhorn stating that the “[o]peration of a sound system without a permit is a violation of the Oakland municipal code” and that failure to turn off the sound equipment could lead to citation.471 After this warning was issued, Occupiers turned off the sound equipment, but dozens of them proceeded to gather around it to prevent its confiscation given that police had begun assembling around its perimeter. Moments later, in a blatant act of defiance, the amplified sound returned as someone blasted Marvin Gaye’s “What’s Going On?”. About
a dozen officers, some in riot gear, began pushing through the crowd with their batons drawn in an attempt to seize the equipment. Occupiers struggled to dismantle it, trying to carry away its components in different directions. Small groups of officers engaged in a literal tug of war with Occupiers trying to defend parts of the equipment. While they managed to wrestle away the generator, police seized the amplifier and speakers.

The media ravenously descended upon this spectacle which had now exceeded all of their expectations. What began as a shouting match with “Stand for Oakland” abruptly turned into a physical altercation with close to three dozen OPD officers, some in riot gear. As small groups of officers pushed their way through the crowd to seize equipment, they were quickly surrounded by larger groups of Occupiers attempting to prevent this. These Occupiers and the police they surrounded were then surrounded by dozens of reporters poking cameras and mics in every direction. This was then observed by a surrounding crowd of passersby (all of this occurring during lunchtime on a weekday in busy downtown) who stared in shock at the melee unravelling before them. The entire scene was a giant spectacle, one which would receive extensive coverage on local news.

The police raid served to thoroughly anger and incite Occupiers, who scrambled around the scene demanding to know why OPD would send in riot police to deal with the minor citable infraction of operating unpermitted amplified sound. This minor infraction had served as the premise for an aggressive police enforcement action that seemed absurdly disproportionate. A member of the sound committee, and owner of the confiscated equipment, spoke at length to media on the scene. He questioned why police had chosen to confiscate the sound system that day, despite the fact that OO had utilized it (always unpermitted) on countless other occasions in the Plaza, without ever provoking such extreme police action.

I mean of course they’ve tried to confiscate it in the past. But this is the first time they’ve used riot gear and riot cops in order to take away a sound system in a largely peaceful assembly. I mean not largely peaceful, it was completely peaceful! People were sitting there talking about how they’re being messed with by police, and the cops come in and take the sound system away.

He concluded that “[i]t’s just another attempt to squash this movement…It’s like they don’t even want us to talk about Occupy anymore.”

Why indeed did the City decide to enforce this minor infraction with such aggressive force on that particular day? Why that day and not on the countless other occasions where OO utilized unpermitted sound? OPD Spokesperson, Johnna Watson responded to media inquiries by claiming that officers had taken enforcement action because “several business owners complained about the noise. Watson said police didn’t act previously because in some cases the protests were on weekends and no one complained and in other cases because the crowds were so large that it would have been dangerous for officers to come into the crowds and seize sound equipment.” Watson’s statement elides over the fact that OO had held numerous weekday actions, none of which incited such an extreme response.
And despite her claim, a large crowd of well over 200 Occupiers was in fact present that day (not to mention 30 “counter-protesters” and dozens of media and bystanders) and it did devolve into a dangerous situation. Clearly it’s not that there was a relatively smaller crowd at the scene that day – but rather, that three dozen officers and riot gear just happened to be on hand to “safely” execute enforcement.

Media failed to question why almost 40 OPD officers, some equipped with riot gear, would have been assigned to this enforcement action in the first place, given that the operation of unpermitted sound is a minor citable offense. Not only was the enforcement action ridiculously disproportionate to the violation, but it was also unprecedented. OPD had never enforced sound violations with such extremity. There also was no real police presence throughout that day’s other planned actions, neither outside the courthouse nor during the march. OPD had only showed up for this “face off”. And they did so fully suited and in massive numbers – clearly illustrating an intentional state strategy of spectacularization. This was a perfect opportunity for implementing the new “zero tolerance” approach being advocated by City Council – enforcing minor violations with disproportionate severity as part of a larger new strategy of “deterrence”. It was a spectacle intended to illustrate that the City was finally “cracking down” on Occupy Oakland.

Aside from providing the perfect opportunity for the implementation of the state’s new strategy, this spectacle of a “face-off” also consolidated its new target – the “violent fringe.” It is by generating the spectacle of a “counter-movement” of Oakland “residents” who rise to stand against this “violent fringe,” that the state bestows a vivid reality upon it – bringing it to life through this “face-off” with its nemesis. “Stand for Oakland” was presented in a manner that was directly contrasted with the “violence” of Occupy Oakland. Participants in the “counter-protest” repeatedly emphasized that they had obtained a permit for their event, which also figured prominently in OPD’s issued statements. By emphasizing their own permit (which wasn’t even necessary given that their gathering didn’t draw anywhere near the 50 people that would require one and their “silent protest” didn’t necessitate amplified sound), “Stand for Oakland” presented itself as the state sanctioned, “peaceful” contrast to Occupy Oakland. It’s orchestrated “counter-protest” established a state permitted realm of First Amendment protected “assembly” and “free speech” against the continued unpermitted actions of Occupy Oakland. This both provided the perfect context for enforcement, and also served to consolidate the “violent fringe” whose “hijacking” of the movement this “counter-movement” had risen to oppose. “Stand for Oakland” is just one of the many state “responses” that functioned to give a reality to the threat they claimed to “respond” to. But this state “response” proved particularly powerful by virtue of appearing to emanate from the “public”. “Civil society” strikes by generating the spectacle of a “counter-movement”, one that mimics the discourse, strategy and objectives of the state, but bundles itself up in the guise of the “public”.

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The Prosecution Strikes: The District Attorney’s Office & the Prosecutorial Power of Pre-emption

The Shift to Prosecutorial Tactics

As City Council and “civil society” were busy introducing the state’s discourse of “deterrence” and consolidating its new target population of a “violent fringe,” it was the District Attorney’s office that emerged as the central player in the state’s new strategy. The third “moment” marks a crucial shift in state strategy from an earlier reliance upon the coercive force of policing to a new emphasis on the pre-emptive power of prosecution. It is now prosecutors in fancy suits, rather than OPD officers in riot gear, who prove to be the most powerful executors of the state’s new strategy of Pre-emptive Neutralization.

This shift was first introduced in the prosecutorial aftermath of the series of targeted raids on Oscar Grant Plaza. While the state’s strategy had been to deploy the tactic of arrests as a means of temporary extra-legal detention, it now turned to more thoroughly exploiting their prosecutorial potential. From this point on, rather than dropping charges and releasing arrestees after extended pre-arraignment detention, the DA’s office began a campaign of highly severe prosecution. Once the arraignment date for the arrestees from the December 16th raid eventually rolled around (it was delayed for several weeks because [with the exception of Kali] they had been bailed out of jail prior to arraignment), they found that the DA’s office was moving forward with prosecuting them for the charge of misdemeanor obstruction (alleging they had obstructed officers attempting permit related enforcement action). The charges against them were eventually fully dropped, but only after months of drawn out court proceedings (which both absorbed countless hours of work by volunteer NLG attorneys and completely upended the defendants’ lives). And as described earlier, Occupiers were soon shocked to find out that the DA’s office had also decided to move forward with prosecuting the January 4th raid arrestees on the charge of blocking a sidewalk (although three of the defendants, two of whom were Black men, had additional charges added on). The ridiculously minor nature of the charges reflected that severe prosecution (selective and harsh prosecution for relatively minor offenses) was now a central tactic in the state’s new strategy.

The December 30th raid provided the opportunity for the DA’s office to introduce another tactic, one which dramatically expanded the reach of the state’s new prosecutorial strategy – re-filing charges against Occupiers who had been previously arrested and released without charge. The dozen Occupiers arrested in the December 30th raid had initially been released without charge after being detained for four nights in jail. Within a couple weeks of their release however, the District Attorney’s office re-filed charges against them and issued bench warrants for their arrests. The DA’s office would spend the coming months fiercely prosecuting these Occupiers on charges ranging from misdemeanor obstruction to felony assault on a police officer (most of which would eventually fall apart in court). This was the first, but by no means last time that prosecutors would deploy this tactic. A number of other Occupiers would later have charges re-filed against them (in many cases having bench warrants issued for their arrest without being notified). This tactic of re-filing
charges served to dramatically extend the reach of the state’s new prosecutorial strategy to include the hundreds of Occupiers who had been netted in OPD’s various arrest operations. And the fact that the state had previously relied so heavily upon the tactic of arrests as a means of extra-legal detention and preventative incapacitation meant that there was now a massive pool of former arrestees that could be potentially re-targeted with prosecution.

The pre-emptive power of these prosecutorial tactics derives from their capacity to delineate “risk” populations who can then be effectively targeted en masse with legal restrictions and forms of collective criminalization. While police enforcement action can only target individuals for criminal acts they have allegedly perpetrated, prosecutors can target entire populations pre-emptively (meaning prior to and irrespective of their conviction for any crime) simply on the basis of their deemed “risk” for engaging in criminal action. The DA’s prosecutorial strategy against Occupiers functioned to effectively delineate two “risk” populations that were then targeted with tactics geared at their pre-emptive incapacitation. One was a population of defendants with open cases that was aggregated by having charges filed, or re-filed, against them. The “risk” of their engaging in political action was effectively neutralized by targeting them with drawn out and often severe prosecution. This was accompanied by deploying tactics like imposing punitive consequences on their cases for any subsequent arrests (which further incapacitated their participation in the movement given the harsh intensification of OPD’s policing operations.)

But the DA’s tactic of re-filing charges also simultaneously constituted and incapacitated another, much larger, risk population – the over 800 Occupiers arrested over the course of six months of OPD operations. Just by virtue of re-filing charges against some Occupiers, the DA’s office established the very real threat that any formerly arrested Occupier could find themselves the target of this strategy. (Prosecutors have one year to re-file misdemeanor charges related to arrests, and up to three years in the case of most felonies.) This strategy constituted a massive target population which it placed in a state of legal limbo – achieving a powerful incapacitation just through the lingering threat of prosecution. This anxiety was intentionally exacerbated by the DA’s office through tactics like issuing public statements announcing that Occupy cases were “still under review” and that charges could be filed later. This was particularly deployed immediately after January 28th when District Attorney Nancy O’Malley told reporters that her office was still reviewing investigative reports against the hundreds of arrestees who had been released without charge and that further charges would likely be filed. This “reviewing” of cases would continue for months to come. Even in October of 2012 (one year after the establishment of OO), a spokesperson for the DA’s office, Teresa Drenick, informed reporters that some cases were still being reviewed for possible charging.

Another tactic that was deployed to further exacerbate the anxiety of this legal limbo was the common practice of re-filing charges without notifying defendants, who then became vulnerable to arrest on bench warrants that they weren’t even aware of. This set off a panic within the movement as Occupiers scrambled to determine whether or not they faced re-filed charges. This absorbed an enormous amount of time from NLG attorneys who had to repeatedly inquire about the status of individuals from the highly uncooperative office of the District Attorney. The tactic of re-filing charges, and doing so in an intentionally
ambiguous manner, served as a powerful means of pre-emptive incapacitation. The fear and anxiety it generated about the lingering possibility of being targeted for prosecution undoubtedly “deterred” many from continuing their participation in the movement. Occupiers were acutely aware that any further arrests, or even simply catching the attention of police surveillance, could lead to having one’s case “reviewed” for possible re-filing. And every time another Occupier had charges re-filed against them in the coming months, this anxiety and the incapacitating legal limbo it imposed was further exacerbated.

While the outcomes of the targeted raids suggested a shift towards the deployment of prosecutorial tactics, the aftermath of January 28th left no doubt that the District Attorney’s office had been mobilized as the central player in the state’s new strategy. January 28th represents a major turning point where there is a crucial shift in the state’s strategy of exploiting the tactic of arrests. The mass arrest operation that day was initially executed as a means of imposing extra-legal detention for the purpose of preventatively incapacitating the march from undertaking an occupation effort. This is clearly illustrated by the fact that the vast majority of the 409 people arrested that day, the largest mass arrest in Oakland’s history, were released after several days of detention without ever being charged with any crime. Even three days after the arrests, there were roughly 100 people still being detained. But when Occupiers flooded the courthouse that day for the scheduled arraignments, they were informed that 90 of those detainees were being released later that night without charge. The Bay Citizen and NBC News reported on the hectic scene at the packed courthouse where the reading of the list of names of the 90 Occupiers being released “was punctuated by a call of ‘fuck the police.’” Once the DA’s charging decisions were announced that day, Occupiers were shocked to find that only 12 individuals were being charged, 8 with misdemeanors and 4 with felonies. The fact that the District Attorney’s office only held sufficient evidence to file charges against 12 out of 409 arrestees (the majority of whom were only charged with minor misdemeanors) made it abundantly clear that imposing extra-legal detention had been the objective of OPD’s mass arrest operation.

But the manner in which the District Attorney’s office subsequently prosecuted the cases of those twelve chosen Occupiers (referred to as the “Move-In Day 12”), revealed a new strategy of severe prosecution. The DA’s office would allocate extensive time and resources to ferociously prosecuting these defendants, and in many cases for ridiculously minor charges. It would even undertake a costly jury trial just to prosecute one defendant for the misdemeanor of obstructing a sidewalk. January 28th marked a turning point where Occupier arrests no longer just served as a means of extra-legal detention, but now also provided the necessary fodder for a major, and highly severe, state prosecutorial campaign. This campaign of severe prosecution and perpetual “reviewing” of Occupier cases was introduced with an accompanying discourse of “deterrence” that emphasized the need for “zero tolerance” prosecution. The severity of these tactics was justified as a necessary preventative measure – meant to communicate that the City would “not tolerate” any further “violence” or threats to “public safety.” And indeed, this prosecutorial campaign powerfully achieved its objective of pre-emptive incapacitation. Fewer and fewer Occupiers could risk participation in the movement given the increasing danger of arrest by OPD and the severity with which the DA’s office would thoroughly exploit these opportunities for prosecution. While prosecutors had served as silent accomplices to police
in the state’s earlier strategy (repeatedly dropping fabricated charges and quietly sweeping a massive campaign of extra-legal detention under the rug of their routine court procedures), OPD now became the handmaiden of the DA’s strategy, executing the arrests that provided it with the necessary prosecutorial fodder. Being arrested by police now carried the risk of vicious prosecution, and therefore raised the possibility of much more severe consequences than just a few days in jails.

The centrality of the DA’s office within the state’s new strategy stemmed from the relatively enormous capacity of prosecutorial power for pre-emption. This power is deployed both through a range of prosecutorial tactics, like severe prosecution or re-filing charges, that prove highly effective at collectively incapacitating entire populations of Occupiers, as well as through prosecutorial spectacles that vividly materialize the “violent” targets of those tactics. The prosecution of Occupiers was routinely accompanied by a deliberate strategy of spectacularization. It was the District Attorney’s office, through its orchestration of these spectacularly publicized prosecutions, that generated the most vivid materialization of the “violent” Occupier that was so incessantly invoked in the state’s discourse. There is no state “response” that serves to consolidate the risk of “violence” it responds to as powerfully as the spectacle of prosecuting “violent” Occupiers.

The Prosecutorial Spectacle of the “Move-In Day 12”: A “Violent Fringe” of “Outside Agitators”

One of the major tactics deployed during this third “moment” was the increasingly common practice of issuing highly spectacular press releases immediately following the filing of charges against Occupiers. And the information provided in these state issued accounts always appeared carefully selected to convey the image of a having identified a “violent fringe” of the movement. Immediately after the District Attorney’s office filed charges against 12 out of the 409 arrestees from January 28th, OPD issued a press release identifying 11 of those individuals (the 12th individual’s information was withheld only because he had yet to be arraigned). The press release provided their full names, the charges they faced, and their mugshots.485 The media devoured this information and local papers and news stations prominently displayed and widely disseminated the released mugshots.486 One thing that was particularly striking was that they often displayed the 11 mugshots strung together in one image – suggesting that they were engaged in some kind of coordinated conspiracy. Despite the fact that none of their charges were related, this kind of orchestrated presentation served to vividly materialize the image of a “violent fringe.”

There was also clearly a concerted effort to portray arrested Occupiers as “outside agitators” who had brought their senseless “violence” to Oakland on January 28th. OPD’s press release, as well as statements by the DA’s office and the Mayor, repeatedly alleged that most of the arrestees were not residents of Oakland. The New York Times reported that, according to OPD, more than half of the 409 arrestees were “not from Oakland”.487 (As discussed previously, these publicized statistics were highly fabricated and
misrepresented.) The statements issued by officials particularly emphasized that most of those being charged, including all four of the individuals facing felonies, were not from Oakland.\textsuperscript{488} (This raises the question of whether the DA’s charging decisions were influenced in the first place by the documented residency of arrestees, an issue that will discussed shortly.) Mayor Quan issued a statement immediately after J28 asserting “[t]he Bay Area Occupy Movement has got to stop using Oakland as their playground.”\textsuperscript{489} District Attorney Nancy O’Malley similarly issued a statement claiming “[w]hile we respect every citizen’s right to protest peacefully, we will not tolerate individuals who come to Oakland with an organized strategy to riot, clash with police officers, vandalize property and wreak havoc upon the city.”\textsuperscript{490} [Emphasis is mine.]

The 12 Occupiers chosen for prosecution by the DA’s office were thoroughly exploited in the state’s discursive strategies, serving as the materialization of a “violent fringe” of “outside agitator.” The risk of “violence” they were alleged to pose was consolidated through the tactic of \textit{initially filing a range of violent charges} that were completely unsubstantiated. The misdemeanors charged against the Move-In Day 12 included battery, criminal threats, remaining at the scene of a riot, and resisting arrest (as well as conspiracy, vandalism and of course, blocking a sidewalk). The felonies included multiple counts of assault on an officer, and additional charges of resisting arrest and conspiracy.\textsuperscript{491} (The attempt to prosecute some of the defendants for conspiracy [which was ultimately unsuccessful] was clearly intended to suggest this “violence” had been masterminded by some “fringe”.) Highly spectacular media coverage presented this wide spectrum of violent charges alongside the released mugshots, appearing as undeniable proof of the “violence” undertaken by Occupiers that day.

The enormous power of spectacularization that prosecutors wield partially derives from their capacity to, quite egregiously, deploy this tactic of initially filing unsubstantiated violent charges against defendants. This has a powerful impact given that prosecutorial spectacles are almost exclusively shaped by the \textit{initial} allegations of prosecutors. In most cases the DA’s office initially filed highly exaggerated or outright fabricated charges that would inevitably either fall apart or be substantially reduced over the course of prosecution. But the court proceedings and legal process through which this happens usually occurs over an extended period of time (ranging from weeks to months). And while media devour the initial spectacular allegations of prosecutors (and the spectacular mugshots that OPD provides to accompany them), they rarely follow cases to report their actual outcome. This results in a discursive terrain where the state can wage attacks through spectacles of prosecution which create “violent” offenders out of flimsy cases that actually fall apart later on, once no one is any longer interested. This was precisely the DA’s strategy against the Move-In Day 12, who initially had a range of violent charges filed against them that were completely disproven during subsequent court proceedings.

Most of the misdemeanor cases were thoroughly refuted, but this occurred through a lengthy legal process that required enormous investment of time by pro-bono attorneys with the National Lawyers Guild. One of the examples previously discussed was the case of Joanne (who is herself an attorney) who was initially charged with blocking a sidewalk and resisting arrest. After the District Attorney’s office, lacking any evidence, dropped the charges against her, she filed a civil suit against the City for her unlawful arrest and
submitted video footage clearly showing her being thrown off her bike by the arresting officer without any provocation on her part. Also previously discussed was the case of Robert, a community college professor, who was initially arrested and charged by police with felony assault on an officer. Lacking adequate evidence to prosecute that charge, the DA’s office instead filed a misdemeanor charge of obstruction against him, which it was forced to also eventually drop, but only after five months of court proceedings. He also filed a civil suit against the city and provided video footage corroborating his claim that police had knocked off his eyeglasses, shoved him to the ground while he was struggling to find them, repeatedly struck him with batons, and bashed his face into the concrete.

These examples represent two out of the eight Move-In Day 12 defendants facing misdemeanor charges. Most of the others were also eventually cleared of all charges, some even winning large settlements for false arrest or violation of civil rights (which proved, once again, a bargain for the state given the enormous strategic value it had extracted from rendering them as “violent” Occupiers). But even the rare cases where defendants were successfully prosecuted, either being convicted by jury or pressured into plea deals, were often later refuted. Joseph, another of the Move-In Day 12, was the first Occupier to ever be successfully prosecuted, and one of only three to ever be convicted by a jury. He was arrested during the “Battle of Oak Street” and charged with misdemeanor obstruction of a thoroughfare (blocking a sidewalk) and resisting arrest. This Jesuit priest with no previous criminal background claimed that his arrest occurred while stopping to try and assist a homeless man who was being trampled by the line of officers aggressively advancing on the back of the march. He also alleged that he was beaten by police, a claim supported by a fellow Jesuit priest who published an article in a national Catholic news magazine describing the extensive bruising all over Joseph’s body that could still be observed upon his release after three days in Santa Rita jail. Citing his religious ethics, Joseph decided to reject the DA’s plea deals on principle, and to proceed with a jury trial. He spent months in court, where he was eventually convicted by a jury for the misdemeanor crime of obstructing a thoroughfare (the jury deadlocked on the charge of resisting arrest). Joseph was sentenced to 5 days in jail, 10 days in the “Sherriff’s work program,” a fine of $233, and two years of probation.

Within just days of the jury handing down its decision, video footage surfaced that radically contradicted the prosecution’s case and supported Joseph’s version of events. The footage clearly showed him walking among a large crowd at the back of the march when he is abruptly advanced upon from behind by an officer who repeatedly strikes him in the back with a baton. He continues to try and run forward with the crowd as he is being struck. It is seconds later that he is arrested, after attempting to stop and assist another individual being trampled by the advancing police line. The footage not only vividly captures the unprovoked police beating of Joseph, but also clearly refutes the allegation of obstruction for which he was convicted. How could he be guilty of obstructing a thoroughfare when he was clearly running away from officers at the time of his arrest? But unfortunately for Joseph, this footage didn’t surface until after he was already convicted by a jury, and overturning that conviction would require a further investment of enormous time and resources. While the District Attorney’s office appeared to have access to unlimited resources for its prosecution campaign, even proceeding with an extremely costly jury trial to convict Joseph for blocking a sidewalk, Occupiers and their stretched
thin pro-bono attorneys did not. Joseph’s story illustrates how even the few successfully prosecuted cases against Occupiers were often fabricated, drastically inflated and lacked substantiating evidence. His case also illustrated a reality that was terrifying to Occupiers – the ease with which prosecutors could win jury verdicts, even in the flimsiest of cases, given the current state of public opinion. If this White Jesuit priest with no criminal background and a long history of community service could be convicted by a jury in Oakland, what would this mean for the dozens of other Occupiers facing prosecution?

Robert, Joanne and Joseph were three of the eight Occupiers charged with misdemeanors – a college professor, an attorney, and a Jesuit priest who were all eventually proven innocent, but who nonetheless figured prominently in the DA’s prosecutorial spectacle immediately after January 28th. The fact that they were eventually cleared of charges or that evidence had surfaced supporting their innocence received virtually no media coverage. But their mugshots and the initial allegations of “violence” against them spread like wildfire in the days after January 28th (and still come up prominently in internet searches). In fact, the mugshot of one of the Move-In Day 12 defendants (an individual who was only ever charged with minor misdemeanors and has since passed away) is still prominently displayed in an online advertisement for a company that sells criminal background searches (they are free to use the image because, having been released by OPD, it was made available in the public domain). After winning a settlement from the City, one of the Move-In Day 12 launched a campaign to try and remove his mugshot from the internet, an extremely difficult task given how widely it had been disseminated by media. The consequences suffered by these Occupiers reflect the enormous power of spectacularization wielded by prosecutors. Prosecutorial spectacles are virtually exclusively shaped by the initial allegations of prosecutors, regardless of the actual outcome of prosecution. And prosecutors are generally free to file even the most egregiously fabricated cases, given that media and the public quickly grow bored of the legal process necessary for their refutation. Hence they are able to generate spectacles that have a profound impact upon public opinion by vividly materializing “violent” Occupiers. While these effects are immediate, their consequences continue to linger long after for those who are targeted.

While the District Attorney’s office was able to craft “violent” Occupiers out of even these misdemeanor charges, it extracted the greatest spectacularization from the cases of the four individuals charged with “violent” felonies. Three out of these four defendants were charged with felony assault on a police officer, and there were additional felony charges for resisting arrest and conspiracy. These four defendants, all men, were represented by the DA and the media as the worst “violent” offenders. But most of these charges also either fell apart or were substantially reduced over the course of the coming months. One of the four was Adam, a young Black man who was charged with felony resisting arrest, as well as a number of misdemeanors like remaining at the scene of a riot and issuing criminal threats. The case against him was also refuted by footage that surfaced, showing him amidst a large crowd being kettled in front of the YMCA as police began their mass arrest operation. He is shown surrounded by dozens of people chanting “allow us to disperse” when officers, without any provocation on his part, randomly grab him out of the larger crowd and drag him to the ground. The footage doesn’t capture the full extent of what subsequently occurs but Adam suffered a beating that knocked out several of his
teeth and resulted in severe damage to his face. He had to be bonded out immediately by Occupiers (at enormous cost given that bail was set according to the highly inflated charges) in order to get him urgently needed medical attention. Unsurprisingly, the DA’s office spent over a year aggressively prosecuting Adam for “resisting arrest.” This reflects a highly common state strategy of aggressively prosecuting victims of police beatings as a means of avoiding liability. Having the misfortune of being beaten by police, and particularly if there is some documentation of it, often inevitably means “catching a case,” one that is going to be ferociously prosecuted as a defense mechanism of the state. All four of the Move-In Day 12 arrestees charged with felonies had documented police inflicted injuries, some so severe that they required urgent hospitalization or extensive medical care.

While the four felony cases were all presented as “violent” offenses, it was Ahimsa who the DA’s office presented as the “worst of the worst”. NBC News’ description of him as being in the “deepest and direst straits” was an understatement. He was charged with eight felony counts of assaulting a police officer, resulting in a staggering $400,000 bail. How had the DA’s office determined to file eight counts of this charge? By alleging that he threw a series of eight projectiles (claimed to be rocks) – for each of which the DA filed a separate charge. All eight counts were submitted in court as “John Doe” or unsigned indictments, meaning there were no officers identified as witnesses to the events, nor was any injury, or even contact, alleged to have occurred. Ahimsa issued his own account through his attorney to his family, who launched a campaign for his release. They relayed that he indeed admitted having projected something right before his arrest – seedpods, weightless pouch-like enclosures that carry seeds of plants. According to the account provided to his family, this occurred during the “Battle of Oak Street” when “[t]he police were assaulting from both directions…They had teargas, and he [Ahimsa] had a handful of seedpods, small brown circles, the weight of popcorn. He threw them against the teargas as a sign of protest, certainly with no intent to harm. The objects thrown were completely harmless.” Tragically for Ahimsa, his symbolic protest of throwing seedpods against “less lethal” munitions would be grossly distorted into eight felony counts of assault, despite the fact they were never even alleged to have made contact with any identifiable officers. Ahimsa’s case never had an opportunity to unfold in court. Court proceedings were brought to a conclusion after a month when he took a plea deal that forced him to accept a felony conviction and serve three years of probation.

Why would Ahimsa accept such a detrimental plea agreement (marking him for life as a felon) in a case where the evidence submitted by prosecutors was so flimsy? In his case, this decision was shaped by much more than just a fear of the potential outcome of taking the case to jury trial given the severity of public opinion against Occupiers. The plea deal was extracted from him, like so many other defendants in this nation, through extreme forms of coercion – specifically the tactic of placing him in solitary confinement throughout his extended detention. The inflated nature of the DA’s filed charges resulted in a staggering bail ($400,000) that highly diminished any likelihood of bailing him out during court proceedings (this would require forfeiting a $40,000 bond to obtain his release). This prosecutorial tactic ensured that he would have to sit in jail throughout the lengthy legal process of defending himself. Furthermore, the Sherriff’s Department (which supervises county jails) deployed the tactic of placing this “violent” Occupier in solitary confinement where he had no human contact, nor any direct communication with the
outside world, for weeks on end. It was this highly coercive strategy that pressured him (like Kali) into eventually accepting a plea deal because it presented the only way of immediately getting out of solitary confinement. Ahimsa’s story is a terrifying example of how these state tactics are able to generate “violent” criminals out of Occupiers who throw seedpods in symbolic protest. Whether through coercing plea deals, or simply manipulating prosecutorial spectacles out of flimsy cases, the state extracts “violent Occupiers” out of those that dare to resist.

**Stay Away Orders: The Delineation of the State’s New Target Population**

Prosecutorial spectacles like those wrenched out of the cases of the Move-In Day 12 are crucial accompaniments for the introduction of pre-emptive tactics. By vividly materializing the threat of a “violent fringe,” they serve to elicit and necessitate the need for “deterrence”. The prosecutorial spectacularization of January 28th justified and facilitated the introduction of a number of pre-emptive tactics by the District Attorney’s office, including disproportionately severe prosecution, the continuous “reviewing” of previously dropped cases, and the filing of highly inflated charges. These were all presented as necessary measures for “deterring” the “violence” of Occupy Oakland. It was the discursive strategy of generating prosecutorial spectacles which consolidated this “violence” that paved the way for introducing the state’s new tactical strategy.

The spectacular prosecution of the Move-In Day 12 served as the opportunity to fully implement what would prove to be the state’s most effective prosecutorial tactic – the issuing of *stay away orders*. While a range of tactics like severe prosecution or refiling charges functioned to create targetable risk populations, it was through the delineation of a population of “stay awayees” that the District Attorney’s office deployed its greatest power of pre-emption. The deployment of this tactic achieved a level of incapacitation that far surpassed any of the state’s other strategies, playing a crucial role in its ability to thoroughly annihilate the movement.

A “stay away” is a type of court imposed restraining order that legally requires a defendant to keep away from a specified place. Restraining orders can be issued as part of sentencing once an individual is convicted, but they can also be imposed prior to any conviction as a condition of a defendant’s release from custody (often in addition to bail), in which case they remain in effect throughout the duration of court proceedings (unless they are revoked at the discretion of a judge). The legal authority to impose restraining orders in these cases where defendants have yet to be (and may never be) convicted of any crime, derives from the court’s prerogative to “weigh public safety” concerns when setting pretrial conditions.498 One of the most common applications of restraining orders is in domestic violence cases where a defendant is prohibited from contact with the alleged victim. They are also often applied in criminal cases as a means of barring defendants from the locations where their alleged crime occurred (for example, prohibiting their presence in the vicinity of a particular store they are alleged to have robbed). But recent decades have also witnessed an increasing prevalence of forms of restraining orders that are applied not because of any identifiable risk to particular individuals, but for the more general purpose...
of ensuring against threats to “public safety.” In particular, the “War on Crime” (and its related “War on Gangs”) popularized the application of gang injunctions, restraining orders which demarcate specified areas and prohibit within them the presence of any individuals identified as being gang affiliated. (Gang injunctions and their similarities to stay away orders will be discussed in more detail shortly.)

The first time this tactic was deployed against Occupiers was on January 9th, when a stay order was issued against one of the arrestees from the January 4th midnight raid. The choice of this particular Occupier as the first target of this strategy is highly revealing. The individual was a young Black man who was highly active in the movement. He had been pointed out and chased down for arrest during that raid. He had also been previously arrested for trespassing in one of OPD’s raids on a foreclosed home in West Oakland. His prominently active role in OO’s foreclosure defense projects and its Tactical Action Committee undoubtedly played a role in exacerbating his targeting, both by OPD in their arrest operations, as well as in the District Attorney’s subsequent prosecution efforts. This individual became the first Occupier rendered as a “stay awayee” when an order was issued (as a condition of his release from jai) barring him from being within 300 feet of Oscar Grant Plaza.499

Shortly after, when the arrestees from the December 30th targeted raid had charges re-filed against them, they too had stay away orders imposed as conditions of their release from custody. But once again, it was January 28th that provided the window of opportunity for the state to fully implement this strategy, both intensifying and adjusting its deployment in some striking ways. Stay away orders were imposed upon every single Move-In Day 12 defendant as a condition of their release (in most cases, in addition to exorbitant bails). Defendants had no choice but to accept this condition if they chose to be bailed out or otherwise released from jail. The orders prohibited them from being either at the Kaiser Convention Center or the area around the YMCA (depending on the location of their arrest). But what was particularly striking was that they also banned all 12 of defendants from coming within 300 feet of City Hall and Oscar Grant Plaza500 – despite the fact that not a single one of these arrests, nor any of the alleged criminal activity, occurred there. While the previous cases where stay orders were issued followed the normal logic of imposing restraining orders – applying them in relation to the sites of alleged criminal activity – this development introduced a twist that clearly illustrated the political motivations behind the strategy. The previous “stay awayees” had been restricted from OGP because their alleged offenses occurred there (during the December 30th and January 4th targeted raids), but the legal justification for banning the Move-In Day 12 from the Plaza remained unclear given that this location had no relation or relevance to their cases. Violation of these stay away orders carried a potential sentence of six months in jail.501

January 28th, once again, proved to be a major strategic turning point, after which every single time an Occupier was arrested and appeared in court, prosecutors requested the issuing of a stay away order. And judges granted them for virtually every request. The nature of court proceedings against Occupiers after January 28th made it abundantly clear
that this was the DA’s new favored tactic. It often appeared to be the primary objective of prosecutors, one they prioritized even over the successful prosecution of the cases. It was not uncommon to watch a prosecutors show virtually no concern for a case’s development, but jump to life immediately once the opportunity for petitioning for a stay away presented itself. And after having that request granted by more than willing judges, they fell right back into their seats, showing little interest in scheduling future court dates or proceeding with pre-trial processes. Every time a defendant’s release from custody or a plea deal was being negotiated, the only non-negotiable condition that prosecutors clung to was the imposition of stay away orders. What is striking about these prosecutorial practices is how clearly they illustrate that successful prosecution is not actually their objective. These prosecutorial tactics are deployed towards other strategic objectives – in this case, the objective of banishing a high “risk” population of Occupiers from Oscar Grant Plaza.

The discursive strategy that accompanied the implementation of this tactic reveals a great deal about its underlying strategic objectives. In the aftermath of January 28th, the District Attorney’s Office, the Mayor and other city officials, issued numerous statements about pursuing stay away orders as a part of what they called a “new strategy” of dealing with Occupy Oakland. During her guided media tour of property damage in City Hall the morning after January 28th, Mayor Quan told reporters that the City would request stay away orders for about 100 protestors, prohibiting them from entering Frank Ogawa (Oscar Grant) Plaza and even “possibly all of downtown Oakland.”502 (The protesters she was referring to were the 100 Occupiers who were still being detained in jail at that point. But the City would only be able to obtain stay away orders against 12 of them since the other 88 were released without charge the next day.) This was the first of a slew of official statements asserting the necessitating of utilizing stay away orders against Occupiers. OPD’s spokesperson, Johnna Watson released a statement to the press, explaining that they were among the new “smarter strategies” the Department was pursing in handling Occupy cases. "We want to implement other tools that the law allows us," she said, pointing out that the Department had pursued a similar strategy against sex workers and drug dealers.503

The clearest articulation of the state discourse that accompanied the introduction of this new “smarter strategy” came from the District Attorney herself, Nancy O’Malley who published a widely disseminated Op-ed piece in the San Francisco Chronicle just a few weeks after January 28th, entitled “Occupy Oakland tamed with stay away orders[.]” In it she explicitly lays out both the justifications for and objectives of this new strategy. Why the need for stay away orders? O’Malley’s entire account hinges upon the assertion that the generally “peaceful” Occupy movement had been “hijacked” by a “militant” fringe “with a mission to destroy the community fabric of Oakland through the use of violence.” She begins her piece by distinguishing this “violent” fringe from the larger national Occupy movement:

Since the Occupy Wall Street movement began last fall, marches, rallies, encampments and protests have collectively served to shine a spotlight on economic conditions in our country. In Oakland, as in many other cities, large, peaceful demonstrations have brought together citizens from all walks of life united in their belief that the economic chasm must be
More recently, however, Oakland protests have claimed to be Occupy actions when, in fact, they have turned away from the initial message of the Occupy Wall Street movement. These protests have devolved into militant operations that call for violence against the police and the city of Oakland. People have attended these marches wearing masks and dark scarves that served to conceal their identities. Their actions were violent, senseless and criminal. [504 Emphasis is mine.]

O’Malley’s argument is premised upon a distinction between the larger “peaceful” Occupy movement and a “violent fringe” in Oakland. There are several characteristics of this “fringe” that are repeatedly emphasized in her account, as well as in those of other officials during this period. As usual, there was the repeated suggestion that these were “outside agitators.” This was clearly the intention behind issuing fabricated statistics that alleged that most of the January 28th arrestees, and all of the “most violent” of the Move-In Day 12, were not Oakland residents. Mayor Quan explained to reporters that the stay away orders were necessary to keep those who had been arrested multiple times “out of Oakland,” citing that the protests had already cost the “financially troubled city” around $5 million. [505 The clear suggestion was that the state had identified, through “multiple arrests,” a fringe of “outside agitators” who were, as Quan termed it, “using Oakland as their playground.” [506

There was also the repeated characterization of this “fringe” as criminal. This was clearly the intention behind Quan’s (false) claim that the targets of this strategy had been arrested multiple times. It was also what was suggested by OPD spokesperson Watson’s analogy regarding the success of utilizing stay away orders against sex workers and drug dealers (populations that are similarly targeted with these forms of pre-emptive collective criminalization). But it was DA O’Malley who was the most explicit about this criminalization. Her piece in the San Francisco Chronicle supports that accusation by referring to January 28th, when she alleges that 400 arrests were made for “various criminal offenses” [507 (conveniently eliding over the fact that less than 3% of these people were ever charged with any crime). But beyond these vague suggestions, she explicitly states that the “actions” of this “fringe” are “violent, senseless and criminal.” [508 What “criminal” action is she referring to? The statement immediately follows the claim that these “militants” have “attended [Occupy] marches wearing masks and dark scarves that served to conceal their identities.” O’Malley achieves quite an impressive rhetorical feat with this discursive strategy – in one swoop, criminalizing both this “violent fringe,” as well as the act of defending oneself from state identification and targeting by masking up during a march. All while also simultaneously invoking the boogey-man of “the Black Bloc” as the masked face of this “militant” fringe.

But the most incessantly emphasized characteristic of this “fringe” of “criminal” “outside agitators” was, of course, their propensity for “violence”. When announcing the stay away orders imposed upon the Move-In Day 12, District Attorney O’Malley claimed the purpose
was “to protect the city from violent activists.” She supported this assertion by reporting that to date (February 19th), her office had filed charges against 65 Occupiers alleging “criminal behavior,” which she described as “ranging from felony assaults on the police, felony vandalism and resisting arrest to trespassing.” O’Malley reported that her office had pursued stay away orders against the most “violent protestors” among those defendants, and that the court had issued them in 14 cases so far. She explained that the court holds this prerogative because it has the duty to balance threats to “public safety” against the due process rights of defendants. The logic of these assertions is that stay away orders are a necessary and “smarter” strategy in cases of “violent” Occupiers who pose a continued risk to “public safety.” “To protect public safety, my office will use all of the resources provided under the law. We will not give free rein to those intent on using violence against the community and our police officers.”

While O’Malley discusses these “violent” offenders in general and vague terms, an examination of the actual 14 cases of imposed stay away orders that she is referring to presents a starkly different picture. As mentioned earlier, the first imposition of a stay away order was against an individual who was charged with misdemeanor trespassing (for his presence in a foreclosed home) and later misdemeanor obstruction of a sidewalk (after being chased down in the January 4th raid) – neither of which could be remotely construed as either “violent”, nor as “felonies” (as O’Malley’s statements repeatedly emphasized). Furthermore, 12 of the other 14 referenced stay away orders were issued to the Move-In Day 12 defendants – 8 of whom were charged only with minor misdemeanors like obstruction of a thoroughfare or resisting arrest. And after January 28th, every single time an Occupier was charged, the DA’s office vigorously (and often single mindedly) pursued a stay away order, regardless of the nature or severity of the charges. Although the state’s discourse on the necessity of this new tactic hinged upon allegations of “violence”, there was virtually no violence ever even alleged in any of the cases where stay away orders were imposed.

By mid-March, stay away orders had been issued in well over 30 cases. Teresa Drenick, spokesperson for the District Attorney’s Office, explained to reporters that the increase over the past few weeks was because prosecutors had been directed to pursue them in cases where protestors were “violent”. But the defendants she was vaguely invoking were in fact UC Berkeley students who were charged with misdemeanors like obstructing a public place. In March, the DA’s office had extended its strategy against Occupy Oakland to the Occupy Cal movement developing on the UC Berkeley campus (which, like Oakland, falls under the jurisdiction of the Alameda County District Attorney). Twelve people had previously been charged in connection with their participation in an Occupy Cal protest on November 9th. As their court proceedings got underway in the month of March, all but one of them had stay away orders imposed. The orders prohibited them from setting foot on any University of California property (not only UC Berkeley but throughout the entire state) with the narrow exception of “official business” like attending required classes. The only one among the twelve defendants who was able to successfully challenge the order was an Associate Professor in the University’s English Department. And one other defendant was able to negotiate a modification to the order that at least allowed him to continue residing in his own home (his apartment being technically located on the peripheries of campus property), although his presence in the surrounding area was to be
limited only to directly travelling to and from his home. Attorneys for the “Occupy Cal 12” attempted to challenge the basis of the stay away orders by pointing out that none of their defendants were being charged with any crimes that could even remotely be construed as “violent” or as posing a threat to “public safety.”

But there was actually a nuance to these state allegations of “violence”. Although officials vaguely referred to acts of violence that were alleged to have been committed by these Occupiers being prosecuted, there was a more general underlying assertion about the need to prevent any escalation to “violence”. The primary argument was not that stay away orders were issued because defendants had engaged in violence (although such unsubstantiated claims were made), but rather that they were necessary to deter criminal acts and violence. In her OpEd piece, District Attorney O’Malley explains the legal basis of imposing stay away orders: “California courts have long upheld the authority to issue a stay-away order as a condition of release from custody. Stay-away orders serve a vital community need to keep the peace, avoid further criminal conduct and maintain safety in public spaces.”

OPD Sergeant Chris Bolton articulated the same pre-emptive objective when discussing the new strategy with reporters after J28: “[T]he intent was to obtain stay away orders for individuals likely to return and create further problems. I don’t know where we developed the idea. But the strategy itself is proving effective.”

In other words, it’s the tactics pre-emptive orientation that most fundamentally characterizes it as one of the state’s new “smarter strategies.”

The clearest indicator of the pre-emptive orientation of this prosecutorial strategy was the specified location from which defendants were ordered to stay away. In most cases where such restraining orders are imposed by the court, the specified location corresponds with where the alleged criminal act occurred. But in the case of the stay away orders issued against Occupiers, there was no such correspondence. Regardless of where the alleged criminal activity occurred, stay away orders would always focus upon banning defendants from Oscar Grant Plaza and the surrounding downtown area (with a radius ranging from 100 to 300 yards). [In the case of the Occupy Cal protesters, they were banned from all UC campuses throughout the state, clearly aiming to incapacitate their potential for any further student activism.] While some of the issued orders also pertained to other areas (usually the actual location of the alleged crime), in all cases they included a stay away from OGP. But in many of these cases, there was absolutely no allegation of any crime committed near this area. In her OpEd, O’Malley defended the imposition of stay away orders in relation to OGP by asserting that it was “where protests turned violent or vandalism occurred” (although clearly not by the particular individuals being targeted). In the one of cases of the Move-In Day 12, the prosecutor argued that a stay away from OGP should be imposed, despite the fact that the alleged crime occurred nowhere near there, because “other demonstrators went there after [he] was in custody.” This highly unusual application of restraining orders clearly reflects the underlying objective orienting the deployment of this tactic – to delineate a population of high “risk” Occupiers and neutralize any threat they pose by criminalizing even their very presence near Oscar Grant Plaza.

While the issuing of stay away orders functioned to delineate a risk population that could be effectively incapacitated by criminalizing their presence near OGP, the accompanying discursive strategy was necessary for consolidating the risk of a “violent fringe” that would
serve to justify and elicit the need for such prosecutorial tactics. Hence, official statements, and particularly O’Malley’s highly publicized editorial, aimed to vividly concretize this “violent fringe” for the public. Examples include O’Malley’s attempt to invoke the image of “the Black Bloc,” or OPD’s presentation of the Move-In 12 mugshots in one consolidated image. But the state relied not only upon its own campaign of spectacles, it also exploited those unintentionally generated by Occupy Oakland’s earlier strategy of spectacularization. In particular, the series of FTP! marches figured prominently in state allegations of a “violent criminal fringe.” In her piece, O’Malley provides an example of this “fringe” of Occupiers by invoking the FTP! marches. She cites an online announcement for the march scheduled for the week after January 28th, paraphrasing it as “declaring their intent to fight with the police and warning peaceful marchers to stay away.” She then directly quotes a statement pulled from the subsequent week’s FTP! announcement, presenting it without context and thus distorting it as a call to violence. The extracted quote reads:

IMPORTANT NOTE: If you identify as peaceful and are likely to interfere with the actions of your fellow protesters in any way (including telling them to stop performing a particular action, grappling, assaulting or holding them for arrest), you may not want to attend this march. It is a militant action.

The quote is presented by O’Malley in a decontextualized manner that renders it a call to violence and serves to obscure the actual objective of organizers, which was to avoid conflicts over tactics that could result in incriminating Occupiers or making them vulnerable to state targeting. The FTP! marches were organized as autonomous actions (not officially endorsed by Occupy Oakland) by OO’s Tactical Action Committee (TAC) and were meant to serve as an autonomous realm that encouraged a “diversity of tactics.” The idea was that this was to be a political space that allowed for tactics like property destruction (breaking bank windows or engaging in political graffiti) or direct confrontations with police. The intent of organizers in issuing their announcement was to make this explicitly clear, particularly for those who may have been uncomfortable with or opposed to those tactics (often articulated as a critique of them as not being “peaceful”), so that they could make informed choices about participation. But the primary intent and concern of organizers was that no one who opposed such tactics should engage in confronting those who utilized them in a manner which could result in making them vulnerable to state identification and targeting (“holding them for arrest”). Furthermore, organizers were explicitly condemning acts of violence (“assaults”) directed towards fellow protestors on the basis of their chosen tactics. This was in direct response to several incidences (particularly during the General Strike of November 2nd) where self-identified “peaceful” protestors physically assaulted individuals engaging in tactics like graffiti or vandalism. From the perspective of the organizers of the FTP! marches, there was nothing “peaceful” about directing physical harm at human beings because they were engaged in political action that damaged property. These issues were heavily and passionately debated and discussed within Occupy Oakland in the context of a larger raging, state provoked, debate over “violence” and “non-violence”. But all of this nuance and context was stripped
away when O’Malley quoted the extracted passage (from a much longer announcement which addressed many of these issues). The result was to present FTP! marches as a concrete example of the “senseless, violent, criminal” fringe so heavily invoked by the state after J28. To make sure the point was abundantly clear, O’Malley ends her piece with the following statement:

Let me be clear: These individuals were not rallying on behalf of Occupy Wall Street, or even the greater Occupy Oakland movement. Rather, they advertise themselves as ‘militant, anti-government, anti-police, and anarchists,’ with a mission to destroy the community fabric of Oakland through the use of violence.519

There was little that Occupiers could do to challenge the stay away orders given that they were imposed fully at the discretion of judges. The only available mechanism for challenging them was through drawn out legal motions submitted by attorneys, particularly through the American Civil Liberties Union (ACLU). The ACLU submitted a writ of habeas corpus on behalf of four Occupy Oakland defendants challenging the stay away orders as unconstitutional. The arguments made in this legal challenge were laid out by the ACLU’s Michael Rischer in an Op-ed piece that the San Francisco Chronicle published right alongside O’Malley’s. Rischer particularly focused on challenging the stay away orders for pre-emptively denying defendants, who had yet to be convicted of any crime, of their constitutionally protected First Amendment rights.

The latest tactic in Oakland of issuing stay-away orders to keep demonstrators from public protest sites presents serious constitutional concerns. Issuing broad stay-away orders against people who have been charged with (but not convicted of) crimes during Occupy-related events effectively silences future speech by people who may never be convicted of anything…In this country, it’s unacceptable to keep demonstrators out of the public square because they might engage in illegal conduct in a future demonstration. Censorship in anticipation of future illegal conduct is both unconstitutional and just plain wrong.520

The primary legal challenge forwarded by the ACLU and others was that these stay away orders were unconstitutional because they pre-emptively restricted the First Amendment rights of individuals who had yet to, and may never, be convicted of any crime.521 There were also supplemental arguments that challenged the necessity of the orders, and whether the charges alleged actually constituted threats to “public safety” that were legally sufficient to impose such restrictions. Attorneys argued that the minor, non-violent misdemeanors their clients were being charged with made such assertions ridiculous. They also challenged the size of the specified exclusion zone (covering a vicinity ranging from
100 to 300 feet around City Hall and Oscar Grant Plaza), which the ACLU argued was far larger than any orders that had been upheld by the courts. In his Op-ed, Rischer asserts:

Even if prosecutors are able to justify more limited stay-away orders in individual cases, keeping demonstrators three football-fields away from City Hall simply goes too far... *Free speech* can be messy. It can make us uncomfortable. It can be unpopular. But those who wrote our Constitution recognized that messy, uncomfortable, unpopular speech is often what leads to important public debate and change, and that it is this type of speech that is most in need of protection against censorship and other government interference. That is why we have a First Amendment. And that is why we must be particularly vigilant when the government seeks to keep protesters away from the public square.522 [Emphasis is mine.]

Rischer’s articulation of the unconstitutionality of the City’s application of stay away orders reveals a great deal about the logic of these legal challenges, and how they are narrowly constrained by the field of constitutional law in which they must be waged. Challenging the constitutionality of these orders necessitates doing so in terms of their “very troubling first amendment implications[.].”523 In other words, they must be presented and challenged in the terms of constitutional law – *as a restriction upon individual First Amendment rights*. The fundamental objective of these legal struggles was to challenge the pre-emptive orientation of the stay away orders. But the terms of constitutional law require presenting the problem of pre-emption in a very particular and narrow way – as the pre-emptive denial of individual rights to “free speech”. This is presented as constitutionally problematic because it curtails the individual’s right to future political expression (“silences future speech”), and particularly because it does so prior to any conviction for the alleged crimes.

In other words, the field of constitutional law provides a highly narrow terrain for challenging the state’s strategy of pre-emption because it only allows for challenges at the level of its *repressive operation* – its restriction of individual rights (which are limited to things like “free speech”). But this strategy does much more than just repress the individual’s right to future free speech, it also *pre-emptively designates an entire population* for whom political activity, as well as a range of mundane daily practices, are now *criminalized*. The stay away orders constituted a population for whom simply being in the vicinity of Oscar Grant Plaza was now a criminal offense punishable with up to 6 months in jail. “Stay aways” were not just individuals who had their rights to political expression restricted. They were a new, state designated high “risk” target population whose political activity, geographic mobility, and very presence in this politically contested space were now criminalized. There is nothing inherently illegal about an individual’s presence near Oakland’s City Hall. But engaging in this (constitutionally protected) act is rendered a crime when it is committed by this population who has been pre-emptively demarcated by the state for its “risk”. The state’s strategy operated both at
the level of repression (the restriction of individual rights) and pre-emption (the collective 
criminalization and incapacitation of high “risk” populations).

While constitutional law provides a narrow terrain that disallows any challenges of stay 
away orders in terms of their pre-emptive collective criminalization of targeted 
populations, this dynamic been much more directly challenged by activists fighting against 
gang injunctions in Oakland. Gang injunctions are also a form of court imposed restraining 
orders, but they are distinguished by the fact that they are imposed upon groups, rather 
than individuals. The issuing of a gang injunctions demarcates particular spaces and 
prohibits within them the presence of any individual identified by the state as being a 
member of designated gangs. The orders effectively restrict individuals identified as gang 
affiliated from engaging in a range of otherwise legal activities in designated areas. As the 
ACLU puts it “[g]ang injunctions make otherwise legal, everyday activities—such as riding 
the bus with a friend or picking a spouse up from work late at night—illegal for people they 
target.” In other words, the orders pre-emptively criminalize entire populations. Gang 
injunctions are obtained by the City Attorney or District Attorney who request that a judge 
designate a particular gang as a threat to “public safety.” Once this occurs, the injunction 
constitutes a “high risk” population (anyone identified by police as gang affiliated) whose 
mundane activities and even very presence in designated areas are now criminalized. And 
similar to the case of stay away orders, there is not necessarily any correspondence 
between any alleged criminal activity by the individual and the specified exclusion zone. 
The correspondence in these cases is collectively established – it is through designation as 
part of a “high risk” population that the individual comes to be marked as posing a threat to 
“public safety” in the areas from which they have been ordered to stay away. Insofar as 
gang injunctions explicitly operate by designating target populations (“gangs”) they much 
more clearly reveal the collective criminalization that characterizes the operation of state 
strategies of pre-emption. And the history of their implementation starkly reveals their 
capacity for demarcating, criminalizing and incapacitating massive populations. Around 
the time of the LA Riots in 1992, LAPD Police Chief Daryl Gates proudly boasted the 
capacities of his gang databases, informing reporters that 47% of all Black men in Los 
Angeles between the ages of 21 and 24 were identified and listed as gang affiliated.

Occupy Oakland’s Anti-Repression Committee (ARC) joined forces with the Stop the 
Injunctions Coalition (STIC), an organization devoted to challenging the two temporary 
gang injunctions imposed in Oakland, to issue a collaborative statement drawing parallels 
between stay away orders and gang injunctions.

The City of Oakland and Alameda County are actively trying to 
circumvent Constitutional due process protections in the 
established criminal “justice” system to target activists and 
communities of color. They are using the courts to impose 
“gang injunctions” against those they call “gang members”, and 
more recently against “occupy protesters” via “stay-away 
orders”. Both types of court orders are police state practices, 
which misuse the court system for political purposes to 
criminalize individuals and communities, without actually 
proving any criminal violations.
This statement draws a parallel in terms of the underlying profiling and collective
criminalization at work in this strategy. Stay away orders and gang injunctions are legal
mechanisms through which the state designates “high risk” populations (alleged to pose
threats to “public safety”), whether “gang members” or a “violent fringe” of Occupiers,
who are then criminalized pre-emptively, without ever having to engage in any otherwise
criminal activity. In one case that target population is designated through practices of racial
profiling, in the other through profiling of a political nature. It is the very pre-emptive
nature of these strategies that necessitates profiling. After all, these strategies don’t operate
by identifying those who have engaged in violence or violated public safety, but rather by
targeting those deemed to pose the “risk” of doing so. Identifying risk essentially requires
guessing who may pose such threats – and therefore pre-emptively designating groups on
the basis of a range of factors, whether race or forms of political activity (like ascribing to
Anarchism or masking up to prevent state identification). Pre-emption necessitates
profiling – the designation of high “risk” populations, who can then be targeted with forms
of pre-emptive incapacitation.

Issues of profiling and pre-emptive collective criminalization are much more clearly
revealed when we examine stay away orders in relation to gang injunctions, rather than
solely within the narrowly imposed terms of constitutional law. While the right to future
“political expression” comes to be prioritized in constitutional challenges to stay away
orders, struggles around gang injunctions go far beyond demands for individual “free
speech”. The Black and Brown communities targeted by gang injunctions are not being
prevented from going to sites of political demonstrations, they are criminalized for their
presence in their very own communities. The decades of gang injunctions suffered by these
communities in California offers important insights into the underlying operation of this
strategy. Injunctions and stay away orders are pre-emptive tactics through which the state
demarcates “high risk” populations who are deemed to pose threats to “public safety” that
require their pre-emptive neutralization. And these strategies aim to not only govern “high
risk” populations, but also contested spaces where the state struggles to assert its
sovereignty -- whether Oscar Grant Plaza or what it terms “gang infested” neighborhoods.
The state seeks to govern these highly contested spaces by regulating and criminalizing the
very presence of those populations deemed as “high risk”.

But the greatest weakness of legal challenges against the constitutionality of stay away
orders was not their narrow critique of pre-emption, but rather the extensive duration of
time necessary to pursue this litigation. Similar to the case of civil litigation against OPD
for crowd control violations, these legal processes served to buy the state an enormous
amount of time to actually deploy its strategies before they could be effectively challenged.
And the sluggishness of court procedure was intentionally exacerbated by judges who
exploited every opportunity to delay or obstruct it. Numerous attorneys devoted close to a
year of their time to challenge the stay away orders in court. But by the time the litigation
process really got underway, the state had already achieved its objective of banishing
Occupiers from Oscar Grant Plaza, regardless of whether this would later be determined to
be unconstitutional.
Stay away orders proved to be the state’s most powerful prosecutorial tactic. They had a staggering impact upon the movement that cannot be overstated. This strategy of deploying stay away orders against Occupy Oakland had three major effects. First, it legally demarcated a high “risk” population of Occupiers and collectively incapacitated them by criminalizing their presence near Oscar Grant Plaza. But the reach of this tactic was also extended far beyond the demarcated population of “stay awayees.” This was done through the same strategy of intentional ambiguity that accompanied the DA’s tactic of re-filing charges. The uncertainty around the stay away orders was generated both through the ambiguity of their documentation and because they were repeatedly issued without notifying individuals or their attorneys. In fact, many attorneys had to repeatedly inquire and clarify the status of their clients with the District Attorney’s office. The tactic of intentionally deploying stay away orders in an ambiguous way left Occupiers uncertain of their status, and thus swallowed them into a targeted population that was now dramatically expanded to include those placed in a state of legal limbo. By intentionally leaving the contours of this designated population of “stay awayees” ambiguous, the DA’s office extended the reach of this strategy far beyond the actual designated group.

Furthermore, Occupiers who actually knew they had stay away orders imposed were often uncertain whether it was a 100 or 300-yard radius around OGP that applied in their cases (the orders varied between the two specifications). And everyone – defendants, their attorneys, and even judges and OPD – seemed unclear on where exactly the specified zone of exclusion began and ended. Were the 100/300 yards to be measured from the front entrance of City Hall? The center of the Plaza? The intersection of 14th and Broadway streets? These ambiguities permeated court hearings, which repeatedly devolved into long requests for clarification of these issues. They also shaped the highly charged interactions between “stay awayees” and police, who were clearly given no instruction on how to ensure proper enforcement of the orders. This created all kinds of dangers for “stay awayees” who were now being heavily targeted by OPD enforcement.

This ambiguity was on full display in the very first case where an Occupier was arrested for violating a stay away order. Joe B., like all of the other Move-In Day 12 had a stay away order issued as a condition of his release. But according to his attorney, the order was lifted at a court hearing on February 8th. At around 9pm that same evening he was arrested while walking through the Plaza, despite trying to explain to police that the stay away order was no longer in effect. He was forced to remain in jail until a subsequent court hearing could clarify the situation. While all this unfolded, OPD and the DA’s office engaged in their usual spectacularization, issuing several releases to the press about the arrest. The media reported that Joe B. had violated a stay away that had been imposed “following violent behavior and arrests during a volatile protest[].” OPD spokesperson, Joanna Watson issued a press release that supported these allegations of “violence” by identifying him as “one of four individuals charged with a violent felony offense stemming from the Jan. 28 protest.” But in fact, Joe B. was not one of the four individuals charged with felonies. The San Francisco Bay Guardian was the only media outlet to actually fact check OPD’s claims. As it reported, “according to records at the District Attorney’s office, that’s incorrect; [he] is charged with three misdemeanors…While everyone scrambles to get their story straight, [he] is still in jail. He has a hearing at 2 o’clock today. If found to have violated a stay-away order, he could face six months in prison.”
Stay away orders delineated and incapacitated a high “risk” population of Occupiers, and the accompanying strategy of implementing them in intentionally ambiguous ways served to both dramatically expand that population (to include those in a state of legal limbo) and increase their vulnerability to enforcement (by leaving these terms unclear). The second major impact of these orders was that they proved to be the final blow to Occupy’s Oakland’s grip on Oscar Grant Plaza. They served to detach the movement from its home in a manner that was unprecedented. Neither the two mass raid operations, nor even the terrifying series of targeted raids in late December/early January, could fully banish Occupy Oakland from OGP. The mass raids had dislodged the encampment. And targeted raids more thoroughly dislodged practices of occupation there by making presence at the Plaza increasingly risky for Occupiers. But despite this, Occupiers continued to gather there in mass numbers for General Assemblies and other large meetings. The movement was still managing to assert presence in the Plaza as long as it was an adequately large enough collective presence (like the several hundred Occupiers who regularly showed up for General Assemblies). This was the last remaining means of gathering at OGP without being so highly vulnerable to police enforcement (although there were various cases of police targeting individuals during General Assemblies or other large gatherings).

While earlier state strategies had made presence at OGP increasingly risky (through the possibility of citation or arrest for “lodging” or “obstruction”), the stay away orders rendered that presence thoroughly criminal. For an increasing number of Occupiers (exactly who remaining unclear) simply being present at OGP (without even any suggestion of “lodging” or “obstructing”) was now a criminal act. The impacts of this were profound. Meetings, events, and actions that had always been embedded at OGP were now increasingly moved to new locations so that “stay awayees” weren’t excluded or at risk for participating. Even OO’s General Assembly was now relocated to the lot at nearby 19th and Telegraph for every other meeting in order to allow “stay awayees” to be present half the time. From the beginning of February when the DA’s office fully rolled out this strategy, the mass gatherings of Occupy Oakland (whether General Assemblies, committee meetings, events or even informal gatherings) became increasingly dislodged from their home at Oscar Grant Plaza. Many events and meetings were moved to the lot at 19th and Telegraph, where OO had unsuccessfully tried to move its occupation. But the state effectively obstructed the possibility of this lot serving as a comparable space for the movement by continuing to contain it with fencing, leaving very limited open space which was both too small to hold the movement, as well as highly secluded from public view. And there were very few other possible alternatives in the surrounding area. In other words, the state ensured that Occupy Oakland could not access another public space that could serve as a comparable home.

It was in this manner that the stay away orders had their third and most profound impact – they undermined Occupy Oakland’s capacity to collectively assemble itself in public space. Oscar Grant Plaza had served as the space where the movement gathered and publicly asserted its collective presence. Without it, and without any alternatives, gatherings (whether meetings or events) were increasingly forced into private spaces (nearby coffee shops or homes for example). These developments didn’t just present logistical challenges for the movement – more fundamentally, they reflected the manner in which this state strategy served to dislodge Occupy Oakland from public spaces. A
movement that was premised upon the occupation and reclamation of public space, and which flourished through a range of daily practices in those public spaces, was being effectively banished from them.

The one factor that changed everything for the movement – relocating GAs and dispersing all kinds of political action away from OGP – was the state’s exclusion of this newly targeted population of Occupiers. There was no way for the movement to remain unified at OGP in a context where so many were banned from this space. Stay Away orders completely transformed the geography of downtown Oakland for Occupiers. Oscar Grant Plaza had gone from being a liberated and reclaimed space beyond the reach of the state to becoming the central point of demarcation around which a new geography of policing had been imposed. Occupiers identified stores, restaurants, bars, and coffee shops in the area in relation to the stay away borders, now all classified in terms of whether or not they were “stay away safe”. And many were forced to develop new roundabout routes in their daily lives as the stay away borders circumvented their movements. Even OO’s marches had to adjust in response to the stay away orders. They now had to be routed with specified stops or destinations outside of the stay away border so that “stay awayees” could safely join for periods of the march. Occupy Oakland’s most often repeated march route was from the Plaza down Broadway to OPD headquarters and the jail. Once stay away orders were imposed, a new landmark emerged on this classic route – what was referred to as “Yard 301”, the carefully measured location (cautiously measured to account for all the various ambiguities in its specification) where “stay awayees” could safely join the march.

“Yard 301” represented the border of a new geography of policing – Occupy Oakland could not collectively assemble itself until it reached this threshold. This illustrates how the state’s strategy of deploying stay away orders achieved even more than the incapacitation of a targeted high “risk” population. It criminalized the presence of this targeted population within the entire central downtown area. But by doing so, it also effectively criminalized any effort by the movement to collectively assemble itself in that public space. In other words, it served to neutralize Occupy Oakland by criminalizing the very act of collectively assembling in public. This annihilated the very foundation of the movement, and the most basic component of occupation – the assertion of collective public presence.

The Prosecutorial Spectacle of the “Ice Cream 3”: “Rioters” & “Hate Crimes”

While it intensified its strategy of deploying stay away orders against Occupiers, the District Attorney’s Office also undertook the production of yet another spectacle – the prosecution of three Occupiers who would come to be known as the “Ice Cream 3.” The heavy emphasis on generating prosecutorial spectacles reflects how essential these kinds of discursive attacks were for the implementation of the state’s new strategy. The power of these spectacles cannot be overstated – they had profound impacts upon shaping public opinion and dramatically diminishing what had initially been unprecedented public support
for the movement. And while a wide range of state officials deployed this tactic of spectacularization, the power of prosecutorial spectacles was unparalleled.

On March 2\textsuperscript{nd} three Occupiers, Michael, Nneka and Randolph, were charged with felony robbery, to which a felony “hate crime” enhancement was added. The charges stemmed from an altercation that occurred on February 22\textsuperscript{nd} when approximately two dozen Occupiers gathered at Fenton’s Ice Cream parlor in the affluent Piedmont area of Oakland before convening a protest outside a nearby Wells Fargo bank. On the very day that the DA’s office filed these charges, OPD issued a highly spectacular press release about the alleged “hate crime.” According to the issued statement, the alleged victim (who was not identified except as “a 20 year resident of the neighborhood”) observed Occupiers “calling for a riot” near the Wells Fargo bank and approached them to “suggest they not riot in her neighborhood.” OPD spokesperson Johnna Watson issued an accompanying statement asserting that the victim was then “surrounded by three protestors and battered as they yelled vulgar epithets regarding their perception of her sexual orientation.” (The allegation was that the victim was called a “dyke bitch.”) It was also asserted that the victim’s wallet was stolen during the altercation, and that she sustained physical injuries. OPD reported that it had arrested one of the suspects shortly after the incident. The other two were subsequently identified and arrested at an Occupy Oakland protest a week later on February 29\textsuperscript{th}. All three were detained in jail with their bails set at around $100,000 each. The lead investigator on the case asserted that the severity with which the case was being prosecuted was intended to communicate that “we have a zero tolerance for hate crimes.”

The case of the Ice Cream 3 is distinguished by how clearly it reveals the deliberateness of the state’s strategy of prosecutorial spectacularization. The District Attorney’s office, with extensive cooperation from OPD, literally crafted this spectacle of a violent “hate crime” out of a minor allegation of a stolen wallet (which itself was later shown to fabricated). This was not a case where the DA’s office was exploiting the prosecutorial potential of OPD’s arrest operations. Rather, it utilized OPD to execute (long after the alleged act) the arrests necessary for this prosecutorial spectacle. The case of the Ice Cream 3 vividly illustrates both the deliberateness of this strategy, as well as the unparalleled power of prosecution for achieving spectacularization.

Once again, OPD and the DA’s office issued multiple press releases regarding the charges and provided the defendants’ mugshots to the media, which dutifully disseminated them widely. The state’s account was that these three Occupiers had not only engaged in “violence” (robbing and “battering” the alleged victim) but that they had done so as part of a “hate crime” – implying that their perception of her as a lesbian was the motivating force behind their actions. It was this designation as a “hate crime” that served to elevate this otherwise relatively minor allegation of a stolen wallet into a major crime deserving of felony charges and special enhancements. It was also this designation that transformed a relatively minor altercation into a spectacular story with juicy media appeal. And in the usual fashion of prosecutorial spectacles, despite the fact that the state’s case against the Ice Cream 3 was thoroughly refuted in subsequent court proceedings, it was only the DA’s initial allegations of a “violent” “hate crime” that were widely disseminated to the public.
It is these delays of court procedure that enable prosecutors to deploy some of their most powerful tactics. This includes not only the **initial filing of unsubstantiated “violent” charges** (as discussed in relation to the Move-In Day 12), but also the **initial filing of inflated charges** (egregiously inflating a relatively minor offense into multiple and/or serious felony counts). There were a number of ways that prosecutors deployed this tactic. It was highly common to initially file felony counts for offenses that were clearly misdemeanors. Many offenses are what are termed “wobbly”, meaning they can either be charged as misdemeanors or felonies, depending upon the severity of the offense. There were countless cases where prosecutors initially filed felony charges against Occupiers, knowing that they would be “wobbled” down and reduced to misdemeanors as soon as they were challenged in court. But this process took days and even weeks to unfold.

Another method of inflation was to tack on additional charges for any conceivably possible related offense, most often “obstruction” and “resisting arrest.” And sometimes it was achieved simply through filing multiple counts of the same charge (for example, the eight separate counts of felony assault filed against Move-In Day defendant, Ahimsa). In the case of the Ice Cream 3, prosecutors took a single minor allegation of a stolen wallet and inflated it into a felony robbery charge, supplemented that with a “hate crime” enhancement, and proceeded to file it against three Occupiers. This generated enormous power to spectacularize their prosecution. Wallets are stolen are every day in Oakland, but “hate crimes” present spectacular media appeal.

The tactic of inflating charges (or fabricating “violent” ones) empowered prosecutors in another crucial way – it resulted in dramatically increasing bail amounts. This significantly diminished the likelihood of bonding out defendants during court proceedings, forcing them to sit in jail throughout the long process of trying to defend themselves. These tactics effectively empowered prosecutors to impose extensive pre-conviction incarceration upon Occupiers. By asserting that Move-In Day defendant Ahimsa had thrown eight “projectiles”, inflating this to the offense of “assault on an officer,” and then proceeding to file eight separate charges of it, the DA’s office generated a staggering bail of $400,000 that effectively forced him to sit in solitary confinement for a month, and eventually accept a plea deal. The same strategy resulted in imposing bails around $100,000 for each of the Ice Cream 3, who all had to spend weeks in jail and pay out exorbitant bonds, only to have these ridiculously inflated (and fabricated) charges eventually dropped.539

Beyond the power to impose temporary incarceration, these prosecutorial tactics also achieved a massive extraction of financial resources from the movement through forcing the payment of bonds. When an individual is held in custody, a specified amount of bail is set based upon the charges filed. If the individual has access to the full amount, they can post bail, which is then returned in full at the conclusion of the court proceedings (unless of course they “jump bail” and fail to appear in court). But if an individual doesn’t have access to the full bail amount (which becomes an increasing challenge as charges are inflated), their only option is to pay a “bond”, a percentage of the bail [usually 10%] paid to a private bondsman who keeps that payment in exchange for taking the risk of posting the entire bail. Tens of thousands of dollars in bonds were extracted from Occupy Oakland, having a tremendous financial impact upon the movement. There were numerous cases where thousands of dollars were raised to bond out detained Occupiers on grossly inflated
charges that were significantly diminished or dropped altogether within days of their release. The tactic was so recurrent that it appeared to be a deliberate strategy of extortion.

In a sad irony that so often characterizes the iterative relation between state strategies and resistance, the strong capacity that Occupy Oakland exhibited for raising bail funds and for “anti-repression” support more generally, seemed to only intensify the deployment of these prosecutorial tactics. Occupy Oakland developed a strong culture of “anti-repression,” which emphasized solidarity and support for Occupiers who were targeted by the state. OO’s Anti-Repression Committee organized extensive court and jail support, and established a bail fund that was nationally unparalleled. And far beyond what was undertaken by this committee, most Occupiers in Oakland invested enormous time and resources towards “anti-repression” work. The movement’s strong culture of “anti-repression” perceived it as an essential practice of solidarity that was obligatory upon every Occupier. But this movement strength served to intensify and exacerbate the severity of the state’s prosecutorial strategy. Once Occupy Oakland exhibited that it had the solidarity and capacity to bond out defendants charged with minor misdemeanors like obstruction (the most common charge in the early period), the DA’s office moved towards further inflating initial charges as a means of significantly raising bail amounts. No longer relying primarily on obstruction charges (which generally carried bonds around $500) prosecutors became much more creatively severe in their filing strategies. Occupiers now faced charges of “assault”, “conspiracy” and even “hate crimes.”

The deployment of these tactics essentially amounted to a strategy of extortion that drained the movement of financial, legal and other resources. But while the movement was drained, the District Attorney’s office and OPD seemed to have access to virtually unlimited resources when it came to prosecuting Occupiers. This was most striking in the case of the Ice Cream 3, where the DA’s office allocated extensive resources to aggressively prosecuting these Occupiers for a “hate crime” in a case that revolved around the allegation of a stolen wallet. OPD’s allocation of resources to this case was similarly striking. The lead police investigator assigned to the case was Sergeant Randell Wingate, OPD’s highest paid officer in fiscal year 2010-2011 (with a total compensation of $423,246). Wingate is a Green Beret veteran who has been repeatedly decorated throughout the course of his long police and military careers. His term with OPD had also been marked by a number of allegations of misconduct, including a case where the City had to pay out $350,000 to settle a lawsuit alleging Wingate had assaulted a man in 2005. It’s quite telling that OPD would assign this senior, highest paid, clearly zealous officer to a case involving an allegation of a stolen wallet. In the city of Oakland, it is rare that police even respond to such calls (usually citing that lack of resources force them to prioritize more violent crimes), much less allocate senior officers to investigating them.

It took almost three months of court proceedings before the state’s accusations against the Ice Cream 3 were refuted and charges against all three defendants were dropped. It is worth closely examining the prosecution of this case, given that it so clearly reveals the deliberateness with which the DA’s office and OPD fabricated this prosecutorial spectacle. It also reveals a great deal about the state’s larger strategy against Occupy Oakland in this third “moment”. In particular, it illustrates how the effects of the spectacularization of this case were intended not only for the general public, but also Occupiers themselves. And
there was a very important lesson communicated to Occupiers through this spectacle—beware of the risks of citizen journalism or any efforts at documenting interactions with police.

The prosecution’s case was built around video footage taken at the scene by Occupiers themselves and subsequently posted on the internet. The media reported that police had used this footage to identify suspects. The attorney for one of the defendants relayed that the police report indicated that OPD was conducting continuous internet surveillance for livestream or video footage. These revelation exacerbated fear within the movement that forms of citizen journalism by Occupiers could be used for incriminating purposes by the state. What ensued were heated debates within Occupy Oakland about the role and responsibilities of photographers, videographers, and especially livestreamers (whose footage was made immediately and irreversibly available online) within the movement. The concern was that forms of documentation intended to protect Occupiers (from either police violence or false charges) could be turned into the very evidence necessary to prosecute them. And there were numerous cases were Occupiers were prosecuted based upon such evidence. This was precisely the warning being issued to Occupiers through the spectacular prosecution of the Ice Cream 3. And they were by no means the last Occupiers who found themselves the target of prosecution based upon this kind of evidence.

This strategy was crucial for the state, given that by this point there were already numerous cases against Occupiers that had been undermined when video footage surfaced that contradicted the allegations of prosecutors. Not only was video footage being used to clear Occupiers of charges, it was even resulting substantial settlements against the City. Many of the cases of the Move-In Day 12 disintegrated as a result of video footage taken by Occupiers. Clearly this tactic posed a threat to the state that required its neutralization. One of the most powerful ways of discouraging Occupiers from engaging in this practice of documentation, and especially from making it public by posting it online, was by transforming it into a potentially incriminating practice. This was particularly ensured because there was never any way to be certain to that any given footage was non-incriminating. There were a range of charges being lodged against Occupiers that made even the most mundane or harmless actions potentially criminalizable. Footage simply showing that an individual was present in a given situation could be sufficient to charge them with “obstruction”. In the case of the Occupier in the December 30th raid who was charged with “lynching” (legally defined as any effort to obstruct an arrest), the prosecution submitted footage that appeared to show her simply touching the individual being placed under arrest as evidence of the alleged “lynching”. In other words, a whole range of unintended acts could be criminally incriminating and any footage made public could potentially be used to prosecute. The state’s strategy of transforming this defensive tactic into a means of incrimination undermined the movement’s capacity to use documentation to defend itself from police aggression or false prosecution. The prosecution of the Ice Cream 3 served as the spectacular means through which the state issued this warning to Occupiers.

There was one more crucial development of state strategy reflected in this case—the fact that the spectacle generated out of this “hate crime” didn’t hinge upon the usual allegation of “outside agitators.” OPD, the District Attorney’s office and the media did repeatedly
emphasize that the alleged victim was a “longtime resident” of Oakland (hence her effort to defend “her neighborhood”). However, all three of the defendants in this case were also residents of Oakland545 (although still presented as “outsiders” to the alleged victim’s affluent Piedmont neighborhood). While in many cases the state’s claims of “outside agitators” were false and highly exaggerated, this never appeared to deter such claims. But in this case, two of the three targeted Occupiers were Black youth, while the alleged victim was an affluent White woman. Hence the spectacularized mugshots of the “Ice Cream 3” didn’t jive with the state’s usual trope of Occupiers as “outside agitators” – relatively privileged White youth (perhaps “violent anarchists” or “the Black Bloc”) who come to use Oakland as their “playground”, wreaking their havoc and destruction upon the City’s own hard working, less privileged residents. So if these weren’t the usual White “outside agitators”, who then were they? “Rioters.” This word was incessantly invoked in official statements and media coverage. OPD’s issued press release, as well as statements by the DA’s office, asserted that the alleged victim was concerned that the suspects were intending to “riot” and that she approached them to “suggest they not riot in her neighborhood.” The police report for the incident claims that when the alleged victim first saw the suspects, they were proclaiming “let’s start a fucking riot!”

This illustrates the implicitly racialized underpinnings of these state generated spectacles, which have long oscillated between two basic tropes. Whenever rebellion surfaces in Oakland, state discourse implicitly presents it as the senseless “violence” of either one of these two characters: White “outside agitators” exploiting Oakland as their political “playground”; or Black and Brown youth who lack any real politics and exploit the “excuse to riot”. These are the two main characters of the state’s strategy of spectacularizing political unrest in Oakland –the White “Outside Agitator” and the Black “Rioter”. They each come to the foreground or recede in different periods. Occupy marked the re-ascendance of the “outside agitator” trope while the earlier Oscar Grant Rebellions were largely presented in the terms of a senseless “riot”. But even as one character recedes, it still lingers in the discursive shadows. There is always the suggestion that either the “riots” were incited by “outside agitators,” or that “outside agitators” were joined by opportunistic “rioters”. While the Oscar Grant Rebellions were largely presented as senseless “rioting” by Black and Brown youth (with a heavy emphasis on stories about looting) there was always the recurrent suggestion that they had been riled up and “incited” by anarchists and other “outsiders”. And from the very beginning, discursive strategies against Occupy Oakland continually suggested that the movement was being diverted and exploited by the “rioters” so prevalent in Oakland.

The spectacle of the “Ice Cream 3” represented a departure from the “outside agitator” trope that was so prevalent in strategies against Occupy Oakland, and a re-foregrounding of the “rioter” character who was brought to life through the prosecutorial targeting of these Black youth. And it was the manner in which this case was racialized – as the “violence” of senseless rioting Black youth – that fueled its framing as a “hate crime.” Dominant white supremacist culture presents Black and Brown communities (both in the US and abroad) as being particularly plagued by homophobia and misogyny. Indeed, much of US colonial and imperial history has been marked by claims of protecting women, and sexual minorities, from the uncivilized misogyny and homophobia of the communities being occupied, enslaved or warred upon. Even today, dominant US culture is inclined to
critique misogyny or homophobia among oppressed communities in ways that it never examines within itself (for example, the disproportionate concern for women’s rights in places like Afghanistan or Nigeria, while similar issues are never raised about other parts of the world). Through the aggressive prosecution of the Ice Cream 3 for a “hate crime”, the state was exhibiting its “zero tolerance” when it came to defending a privileged, affluent White woman from the “hate” and “violence” of Oakland’s impoverished and marginalized Black youth.

In stark contrast to the spectacle of a “hate crime” forwarded by the state, a radically different picture emerged from the actual preliminary hearing where the DA’s office was finally forced to present its evidence. As the case unfolded, a range of glaring discrepancies emerged. The prosecution’s case made four major allegations: that the alleged victim (now identified as a 42 year old White woman named Kelly Stowers) was “surrounded and prevented from leaving the area”; that she was punched by one protestor and more generally “battered” resulting in bruising and scratches; that she had her wallet stolen during the altercation; and that she was the target of derogatory slurs regarding her perceived sexuality (being repeatedly called a “dyke bitch”). Every one of these allegations was refuted during the preliminary hearing. Defense attorneys called witnesses who testified that Stowers herself had “initiated the verbal altercation,” exhibiting what one witness called “fight-baiting behavior.” Witnesses also testified that Stowers had initiated the physical altercation by “smacking people,” and that several people at the scene had tried to restrain her. One witness even testified that it was actually Stowers who had punched one of the defendants, not vice versa as the prosecution claimed. Aside from arguing that Stowers herself had initiated the verbal and physical confrontations, the defense also questioned the prosecution’s claims that she had been “battered” or even sustained any injuries. The DA’s office had defended its extreme prosecution of the case (filing felony charges and adding a “hate crime” enhancement) by citing that the alleged victim had been injured. But the prosecution offered little evidence of any injuries. When questioned by reporters, OPD’s spokesperson Johnna Watson was forced to admit that Stowers hadn’t sustained any injuries “that would be treatable at a medical facility.” Not only was there no real evidence presented supporting the prosecution’s claims of injury, but it is quite telling that the DA’s office chose to only file charges for robbery and a “hate crime” but no charge relating to any form of physical injury (assault or battery).

Defense attorneys even thoroughly undermined the minor allegation upon which the entire case was premised – that Stowers’ wallet had been stolen during the altercation. During her testimony, she claimed that she felt a tug on her bag and looked down to see one of the defendants, Michael, pull his hand away. But under cross examination Stowers was forced to admit that she hadn’t actually seen him take her wallet. Furthermore, it was established that she had returned to a nearby store immediately after the incident to inquire whether she had accidently left her missing wallet there (a fact that she initially denied on the stand but was eventually forced to admit during cross examination).

The prosecution’s allegation of a “hate crime” was also thoroughly refuted. The “hate crime” enhancement added to the robbery charge was based upon the allegation that one of the defendants, Nneka, had called Stowers a “dyke bitch” during the altercation. But the
defense proved that it was actually Stowers who had initiated the “verbal abuse” when she called Nneka (who is a young Black woman) a “nigger” and began “accusing people of using crack.” Stowers initially denied this on the stand but when challenged during cross examination, she was forced to admit that “I may have said that.” Defense attorneys established that it was after Stowers hurled these slurs, that the defendant had responded “How would you feel if I called you a bull dyke?”

Aside from the fact that any “hate speech” during the incident was initiated by Stowers herself, there was a much more fundamental hole in the prosecution’s “hate crime” allegation. California state law mandates that the application of a “hate crime” enhancement requires showing that the underlying criminal activity was motivated by a discriminatory bias. For example, the application of a “hate crime” enhancement to an assault charge would apply in a case where a beating of an individual was motivated by bias towards their perceived sexuality. According to the logic of the law, the prosecution would have to prove that the robbery (stolen wallet) that was alleged in this case was fundamentally motivated by a bias towards Stowers’ perceived sexuality – or as one of the defense attorneys put it, that they were “committing a robbery for the purpose of preventing a person from exercising their sexual orientation.” This was a ridiculous leap of logic that clearly reflected the artificially constructed nature of the DA’s case.

There was another ridiculous leap of logic which served as the premise for charging all three defendants for this “hate crime.” All three were charged with felony robbery and a “hate crime.” However, only Michael was alleged to have stolen Stowers’ wallet, and no evidence was ever presented that either of the two other defendants played any role. And only Nneka was accused of using the derogatory slur that was the basis of the “hate crime” charge. It was never even alleged that either of the two other defendants made any such comments. One of the three, Randolph, was never accused of playing any role in either the act of robbery, or the hurling of slurs. The prosecutions only allegation against him was that “he had pushed [Stowers] around.” However, neither he nor any of the defendants were ever charged with assault, battery or any offense related to causing or even attempting physical injury. When defense attorneys tried to challenge the collective criminalization of their clients by charging them for acts that they weren’t even alleged to have been involved in, the judge overruled the challenge by siding with the prosecution’s argument that they had all been in “close proximity” during the incident. The prosecution’s case, as well as the judgments of the court, reflect a logic of collective criminalization that also orients other prosecutorial strategies against Occupiers (like stay away orders). The defendants are charged (for acts they didn’t even participate in) by virtue of simply being a part of the group “in close proximity” to Stowers. While this would normally be characterized as being bystanders, in this case it sufficed to make Occupiers accomplices, or at least conspirators. The implicit suggestion was that whoever may have actually undertaken the robbery or “hate crime,” all of those charged were somehow involved in conspiring towards it. Although conspiracy was never legally charged in this case (as it was in others), it served as the underlying assumption that held together the prosecution’s flimsy case.

Occupy Oakland collaborated with the attorneys for the Ice Cream 3 to publicly challenge the state’s prosecution of this case as a “hate crime.” They held a press conference in front
of the courthouse on April 3rd where they denounced the charges as “an offensive abuse of the justice system.” At the press conference an attorney representing one of the defendants spoke at length about the irony of the DA’s fervor in prosecuting this case given what he characterized as its general indifference towards hate crimes. He relayed how his firm also represented two Oakland residents who were viciously assaulted (one requiring substantial facial reconstructive surgery) while their assailants hurled homophobic slurs at them. The DA’s office had declined to prosecute that assault at all, much less as a hate crime, leading the attorney to question why it had chosen to take a position of “zero tolerance” in this petty case involving a stolen wallet.564 Oakland Occupy Patriarchy (OOP), an autonomous working group of women/queer Occupiers, also organized a rally to protest what it called “the divisive nature of the charges” and issued a statement asserting: “OPD’s claim that they care about ‘hate crimes’ is a disgusting manipulation of OUR identities as women and queers, in order to justify state violence that we ABSOLUTELY OPPOSE.”565 [Emphasis original.]

Any remaining doubt that the DA’s office, in collusion with OPD, intentionally manufactured this spectacle of a “hate crime,” was dispelled by the end of the pre-trial hearings. Most damaging to the prosecution’s case was the revelation that the alleged victim, Stowers, had submitted three separate police reports over the course of a week, and that there were glaring discrepancies between them. In the first police report, which was submitted the evening of the incident, Stowers definitively identifies another Occupier (none of the Ice Cream 3) as the individual she saw stealing her wallet. This was an individual, highly active in OO, who bore what some might call a strong resemblance to Michael who was eventually charged with the crime. And in fact, it was that Occupier who police had initially arrested on the evening of the incident. But OPD released him the next day, presumably after reviewing video footage and realizing the misidentification. When asked on the stand why she had mistakenly identified this other Occupier as the perpetrator in her initial police report, Stowers denied making the identification, claiming to have never even heard his name before the police report was read to her in court. She admitted that she hadn’t read the report before signing it. Even more bizarrely, the officer whose signature identified him as having taken the report also testified in court that he had never heard of that Occupier’s name before. In their investigation of the case, the San Francisco Chronicle concluded that “[i]t’s unclear how the name got on the report.”566 After the misidentified Occupier was released the next day, Stowers was called into OPD to make a second report. The second report makes no mention of his name – it completely disappears from the account – while the remainder of the report remains virtually unchanged. One of the defendant’s attorneys charged that “[b]etween the first two statements you get the feeling that the police have reviewed the livestream [video footage] and realized that there were some problems in the first statement.” The third police report, which finally identified suspects, was created a full week after the incident, just hours before Michael was finally arrested and charged. The following day the other two defendants were arrested at an Occupy march to defend public education.

The holes and blatant fabrications in the DA’s case were so extensive (even mainstream media found the ordeal bizarre) that charges were eventually dropped – but not until almost three months later on May 21st, the very day the case was scheduled to go to trial. In other words, the DA’s office prosecuted these ridiculously fabricated charges with “zero
tolerance” up until the last possible moment, and then simply dropped them completely. But by that point, the state had wrenched out of these three Occupiers a prosecutorial spectacle complete with mug shots, allegations of a “violent robbery” and even charges of a “hate crime,” all of which were widely disseminated by the media. Clearly the DA’s office didn’t actually anticipate a successful prosecution of this case because its real objective was to generate a prosecutorial spectacle. This reflects the power of spectacularization wielded by prosecutors – regardless of the truths that eventually emerge through the course of prosecution, they nonetheless succeed in achieving their discursive effects – whether it’s transforming Occupiers who throw seedpods in symbolic protest into “violent outside agitators,” or crafting “hate crimes” and “riots” out of Black youth protesting in front of banks in affluent neighborhoods of Oakland.

*The Pre-emptive Power of the Prosecutor*

One weakness that continues to plague our understanding of the state strategies targeting social movements is the tendency of narrowly focusing upon the police. This is the case both in terms of scholarship, and within social movements themselves. But this narrow emphasis on policing constrains our analyses, obscuring the many forms that the state’s power can take. While the coercive power of its police force always remains integral to its strategies, they evolve to increasingly rely upon a wider range of agents who wield various forms of state power. In particular, this evolution necessitates the rise of prosecutors, who emerge as primary agents of pre-emption. The centrality of their role stems from the prosecutorial power they wield and its unparalleled capacity for pre-emption. Prosecutorial power is deployed through both a range of prosecutorial tactics, as well as discursive strategies that generate prosecutorial spectacles. And its deployment enjoys the added advantage of remaining generally invisible. Unlike the deployment of police force, prosecutorial tactics often go unrecognized, deployed in the seclusion of court rooms and under the cover of tediously drawn out legal processes. And the spectacles that prosecutors craft enjoy relatively greater legitimacy, resulting from the privileged “objectivity” endowed to legal discourse. When the District Attorney’s office files charges, these allegations are accepted as facts to a much greater extent than those of OPD or other city officials. When statist accusations are forwarded through a legal discourse, they generate enormous capacity for spectacularization. Indeed, the allegations themselves become so thoroughly accepted as objective facts, that neither the media nor the public shows much interest in their prosecutorial outcome.

A number of prosecutorial tactics emerged as central to the state’s strategy against Occupy Oakland. These included: severe prosecution (harsh and selective prosecution for relatively minor charges); the re-filing of charges (re-opening cases against previously arrested Occupiers who had been released without charge); the initial filing of unsubstantiated violent charges (fabricated charges for violent offenses); the initial filing of grossly inflated charges (minor offenses inflated into severe felonies and/or multiple counts); and the issuing of stay away orders (pre-conviction restraining orders criminalizing presence at OGP). All of these tactics were oriented around a strategic objective of pre-emption, and all were accompanied by a discourse of “deterrence”.

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These prosecutorial tactics achieved their pre-emptive objective in several ways. First, they legally designated and incapacitated high “risk” populations by criminalizing either their presence near Oscar Grant Plaza or their political action more generally. By criminalizing the presence of “stay awayees” anywhere within 300 yards of OGP, prosecutors were able to effectively banish them, and eventually the larger movement from central downtown Oakland. No other state strategy proved as successful for pre-empting the possibilities for resistance within this contested space. More generally, by targeting a substantial population of Occupiers with prosecution, the District Attorney’s office significantly incapacitated their potential for continued political action (which now raised serious consequences for their cases and their lives). And the DA’s strategy of deploying its tactics in an intentionally ambiguous way served to vastly expand the incapacitated population of Occupiers. Hundreds remained in a state of legal limbo for months, uncertain whether they had, or would have, charges re-filed or stay away orders issued against them. These prosecutorial tactics politically incapacitated massive populations of Occupiers, and thus effectively neutralized the threat of collective action posed by Occupy Oakland.

Secondly, these tactics enabled prosecutors to impose extensive pre-conviction incarceration upon Occupiers. Unlike police, whose initially filed charges can only legally result in 48 hours of detention (not accounting for weekends or holidays), prosecutors can wrench weeks and months out of defendants through egregiously fabricated or inflated charges and drawn out court procedures. The vast majority of the charges filed by prosecutors against Occupiers eventually fell apart in court. But in the (extended) meantime, they imposed thousands of hours of incarceration upon Occupiers who would never be convicted of those crimes.

There was one additional means through which the DA’s office imposed incarceration without conviction for the charged offense – the highly common tactic of probation/parole violation or revocation. This tactic was deployed in conjunction with OPD’s strategy of heavily targeting Occupiers on probation/parole for arrest. The case of Kali, who was targeted for arrest after officers ran his information and became aware of his parole status, serves as a prime example. Occupiers on probation and parole were among the most viciously targeted by both OPD and the District Attorney’s office, and collusion between these two agencies resulted in severe consequences for them. OPD would particularly target Occupiers on parole/probation for arrest, and the DA’s office would subsequently use the arrest to violate their probation/parole, often while releasing others without charge. This prosecutorial prerogative stems from the fact that any interaction with law enforcement is legally defined as a violation of parole/probation – even if no charges are filed and the allegation of criminal activity proves unsubstantiated. In other words, if OPD alleges an offense, just the allegation (regardless of any committed offense) constitutes a criminal violation. This empowers the DA’s office to impose extensive detention by violating an arrestee’s probation/parole, and in some cases even revoking it. On the six-month anniversary of Occupy, there were three Occupiers sitting in jail facing no charge other than probation violations. All three of them had been arrested alongside others who had subsequently been released without charge. But in their cases, the DAs office pursued probation violations or revocations. One was a man named Truth who had been arrested twice, both times during major actions and alongside dozens of others who were released without charge. But in his case, the DAs office moved to revoke his probation. The
consequence for Truth was 13 months of incarceration. Without a doubt, Occupiers on probation/parole were the group that served the far greatest jail time for their participation in Occupy Oakland. The prosecutorial tactic of probation/parole violation and revocation effectively incapacitated an entire population of Occupiers, not only those who were directly targeted but all those whose status placed them at risk. This collusion between OPD and the DA’s office served to neutralize a population whose potential for collective action posed a particularly enormous threat.

Third, all of these tactics achieved a powerful pre-emption simply by virtue of their severity. The consequences of being targeted, whether revocation of parole/probation or extended detention through drawn out prosecution and grossly inflated bails, had a chilling impact upon political activity. The severe consequences of potentially being the target of these prosecutorial tactics undoubtedly “deterred” many from continuing their participation in the movement. Fourth, prosecutorial strategies significantly drained the movement’s resources and diverted its energies to defensive “anti-repression” work. Indeed, there came a time when many Occupiers found themselves spending more time in court than organizing or participating in actions. And finally, these strategies had powerful discursive impacts, consolidating the risk of Occupier “violence” and justifying the need for “deterrence”.

Prosecutorial Spectacles played a central role in the state’s discursive strategies against Occupy Oakland. The cases of the Move-In Day 12 and the Ice Cream 3 vividly illustrate the capacity of prosecutors to generate spectacles of “violent” Occupiers out of the flimsiest and most fabricated charges. There was another prosecutorial spectacle that similarly received a great deal of media attention – the case of Cesar, a young Occupier convicted for felony vandalism. Cesar’s case reveals another favored prosecutorial tactic against Occupiers – the pursuit of civil cases for restitution. He had the misfortune of being the first Occupier who had a civil case brought against him. The City Attorney’s office alleged that Cesar had smashed the windows of OPD’s Internal Affairs and Recruiting Office on the evening of the November 2nd General Strike. He had been arrested that evening alongside dozens of other Occupiers, all of whom were released without charge. But months later, on February 27th, the City filed a civil case against him seeking $6,654.63 for damages. Spokesperson for the City Attorney, Alex Katz explained to reporters that criminal charges were not being pursued against Cesar at that time and that the civil case “is a completely separate thing.” On March 7th, the City Attorney’s Office issued a press release that utilized the case to introduce the City’s new strategy of civil litigation against Occupiers. The release explicitly laid out the objectives of the strategy: “(1) To assure that taxpayers do not have to shoulder the replacement and repair costs for vandalism, and (2) To deter wanton destructive acts during future protests by holding individuals accountable for their behavior.” [Emphasis is mine.] The tactic of civil litigation was oriented around the same pre-emptive objective and discourse of “deterrence” that characterized the state’s larger strategy of prosecution. And of course, the City Attorney’s press release once again emphasized that it would “continue to review other vandalism cases” for possible civil litigation.

Civil cases seeking restitution for damages were filed against a number of other individuals in the months to come. In Cesar’s case, criminal charges were also re-filed against him shortly after civil litigation proceeded. He was charged with felony vandalism, for which a
jury found him guilty on August 13, 2012. At the conclusion of his trial, Cesar was remanded into custody and sentenced to six months in jail and five years of probation, as well as ordered to pay full restitution. The District Attorneys’ Office invested significant effort in publicizing the case, issuing a number of press releases and statements (accompanied, of course, with the usual OPD mugshot), all of which particularly emphasized that Cesar was not a resident of Oakland but from the Sacramento area. Deputy District Attorney Carrie Skolnick told reporters that the conviction was meant to send a strong message that “Oakland is already a city that in some ways is economically disadvantaged, and then to have people come from the outside and trash the city, and then the taxpayers have to pick up the bill, is unfair.” The strong message being spectacularized by the DA’s office was that it would show “zero tolerance” for “outside agitators” responsible for “wanton destruction” of the city. And indeed this strategy achieved its objective of deterrence by virtue of the severity of that message – that the “violence” of one broken window would result in 6 months of jail and a lifetime of being designated as a felon.

The consequences for Cesar were, and continue to be, immense. Aside from the extended incarceration and financial obligations imposed upon him, the spectacularization of his case also profoundly affected his life, disrupting his college studies and permanently impacting his employment prospects. Cesar was one of only three Occupiers whose case ever proceeded to a jury trial, all three being convicted. Joseph, the Jesuit priest was another jury convicted Occupier. In his case, video footage clearly supporting his innocence surfaced just days after he was convicted by a jury for obstruction of a throughway. Similar refutation has emerged in Cesar’s case, although after a much longer drawn out period. The DA’s case against him was primarily based upon the testimony of its main witness, Officer Anthony Tedesco who claimed to have definitively identified him as the perpetrator. However, an unrelated civil suit against the City later obtained body camera footage from officers on the scene that thoroughly challenged Tedesco’s testimony. In March of 2014, the First District Court of Appeal in San Francisco ordered the presiding judge on the case to consider this additional evidence, which he then proceeded to dismiss without holding any hearings to actually review it. After another year and a half of further filings by NLG attorneys, in August of 2015 the appeals court ordered the presiding judge to actually hold a hearing on the new evidence, asserting that it “called into question, and potentially impeached, eyewitness Officer Tedesco’s trial testimony.”

The legal struggle to exonerate Cesar still continues almost five years after his arrest. It has necessitated an enormous investment of time and resources by pro-bono attorneys and Cesar’s community, not to mention having irreparably changed the course of his life. Not only has evidence surfaced supporting his claim of innocence, but it is also now disturbingly clear that the prosecution intentionally withheld this evidence from defense attorneys. These revelations suggest that the District Attorney’s office played a highly active role in fabricating a case against Cesar, who may have even been chosen for such targeting on the basis of his Sacramento residence, and thus his potential for embodying an “outside agitator.” It is of course impossible to confirm that possibility, but these revelations raise the question of why he would be chosen as the suspected perpetrator in this case when he was initially arrested among a much larger group who were all (including him) released without charge at the time. Furthermore, why would the DA
choose this particular Occupier for prosecution without actually having any evidence to prosecute him with (aside from fabricating OPD eye witness statements). Again, while we can only speculate about such a strategy on the part of the DA’s office, it nonetheless leads us to consider the possibility that Occupiers were selectively targeted for prosecution. When all four of the Move-In Day 12 prosecuted for “violent” felony charges turn out not to be residents of Oakland (at least by the state’s designation), we are left to wonder what kind of demographic factors influenced the DA’s charging decisions.

The case of Occupy Oakland clearly illustrates the enormous pre-emptive power of prosecutors. While a range of city officials and particularly OPD played central roles in the state’s coercive and repressive strategies, the evolution towards Pre-emptive Neutralization witnessed the rise of the prosecutor. There is a diminishing reliance upon forms of police coercion that were central to earlier strategies, and an increasing shift towards forms of prosecutorial pre-emption. While extra-legal detention resulting from baseless police arrests was a favored tactic during the first “moments”, the later period reflects a shift to prioritizing severe and spectacular prosecutions. OPD executed 600 arrests during the first six months of Occupy Oakland. But this figure rose by only 200 in the subsequent six months. But while the DA’s office only pursued charges in roughly 10% of the arrests executed in the first half of the year, this figure rose to nearly 25% in the second half. And the nature of that prosecution became dramatically more severe and vigorously pursued. This reflects a strategic shift from deploying police arrests to achieve preventative extra-legal detention to emphasizing the pre-emptive potential of prosecutorial tactics.

In concluding this section, let us step back and attempt to survey the impact of prosecutorial strategies targeting Occupy Oakland. The District Attorney herself provides us with some highly revealing data. On April 13th (around the six-month anniversary of OO), O’Malley, alongside OPD Chief Jordan, participated in a panel discussion organized by the California Association of Black Lawyers (CABL). During the panel, both attempted to defend their respective agencies against accusations of politically motivated targeting of Occupy Oakland. Jordan attempted to refute the allegation that OPD had undertaken a massive campaign of legally questionable arrests, while O’Malley defended her office from the accusation of maliciously targeting Occupiers with prosecution. Both of their defenses hinged upon the claim that they had actually targeted a statistically small “violent” fringe of the movement. Jordan reported that his officers had interacted with more than an estimated 60,000 protestors, but that they had only arrested a small fraction of that number, citing roughly 600 arrests. He asserted that these figures “proved” that OPD was “intending only to arrest those acting violently.” In other words, the claim was that OPD had only arrested 1% of the protestors it encountered – the “violent” fringe of the movement, as Jordan would put it. But Jordan’s claim was called into question by O’Malley’s own attempt to defend her office from what she called “baseless” accusations of malicious prosecution. She reported that her office had thus far only filed charges against approximately 65 Occupiers out of the hundreds who had been arrested. "You can see from the number of charges that we have been very careful...We have focused on those individuals engaged in violent behavior.” While O’Malley offers the same defense as Jordan – both insisting that arrests and prosecution have focused on a small fringe of “violent” offenders – her claims directly contradict Jordan’s. If prosecutors had sufficient evidence to file charges in only 65 cases out of over 600 arrests (roughly 11%) this would
indicate that almost 90% of OPD’s arrests were baseless, failing to result in any criminal charge. By the one-year anniversary of Occupy Oakland, the number of arrests had risen to over 800. Only roughly 5% of these cases resulted in a conviction.

But these few convictions were heavily touted by the District Attorney’s Office as proof of its successful prosecution of a small “violent” fringe of Occupiers. Statistics compiled by the DA’s Office at the request of the San Jose Mercury News reveal that criminal charges were pursued in only 109 of the over 800 cases of arrested Occupiers. At the time, half of those cases (55) were still pending, while the other half (54) had reached completion. Of those that had been concluded, 22 cases had been dismissed for insufficient evidence (as would be many of the pending cases), while the remaining 32 defendants had been, in the words of the DA’s office, “found guilty.” This number would rise only slightly once the remaining pending cases were resolved. While O’Malley touted the 32 successful prosecutions won by her office, only 3 of those defendants were found guilty by a jury. This included Jesuit Priest Joe who was found guilty of blocking a thoroughfare and alleged window smasher Cesar. In both cases evidence later surfaced that supported their claims of innocence and refuted the allegations of prosecutors. The remaining 29 defendants all accepted convictions as part of plea deals. In other words, the District Attorney’s office had utilized a strategy of pressuring for plea deals as a means of obtaining almost all of its few successful prosecutions of Occupiers. And there were all kinds of means through which plea deals were pressured, even coerced, out of defendants. The case of Ahimsa, the Move-In Day 12 defendant who accepted a plea deal after one month of solitary confinement, serves as one of the most extreme examples. More generally, long drawn out prosecutions served to slowly break down the energies and endurance of defendants. Months of court proceedings created all kinds of challenges, ranging from having to take extended time off of work to needing to arrange for childcare for every court hearing. A number of Occupiers chose to take deals accepting convictions for minor misdemeanors as a means of finally ending the drawn out and anxiety provoking process.

The DA’s office also achieved many of its successful prosecutions through a strategy of offering “deferred judgments,” which are a form of plea deal that promise charges will be dismissed at the conclusion of a specified period of time (usually between one and three years) as long as the defendant doesn’t engage in any criminal activity during that time and meets all conditions specified in the plea deal (for example community service). Although “deferred judgments” mean that defendants will eventually be cleared of all charges, they nonetheless get classified as convictions and counted in the District Attorneys’ statistics for successful prosecutions. All of the dozen defendants from the January 4th targeted raid accepted “deferred judgments” as a means of finally concluding what had been months of drawn out prosecution for the misdemeanor offense of blocking a thoroughfare. Just this group itself constituted more than 25% of the DA’s entire collection of “guilty” verdicts. In other words, despite O’Malley’s claim that her office focused on those “engaged in violent behavior,” a quarter of her touted convictions of “violent” Occupiers were deferred judgment plea deals for blocking a sidewalk.
These examples all serve to give a clearer picture of the true nature of prosecution of Occupiers during this period—these are the successful prosecutions of “violent” Occupiers so heavily spectacularized by O’Malley’s office. In the end, there was virtually no violence even alleged in the actual prosecution of these cases. But there were indeed extensive allegations of “violence” throughout the process, particularly during the spectacularized periods when initial inflated charges were filed. If we consider the gap between the initially filed charges and those that were eventually pursued, we get a stark picture of the power of prosecutorial spectacles in generating the threat of “violent” Occupiers. Numerous individuals were initially charged with felonies that ranged from assault with a deadly weapon, possession of explosives, and robbery to even conspiracy and “hate crimes”. These grossly inflated charges were heavily publicized, often alongside mugshots, and disseminated widely by the press. But in the end, most charges (that weren’t fully dropped) boiled down to misdemeanors, with the top three being trespassing, disorderly conduct, and obstruction. Even the most extreme felony cases, like Cesar’s which resulted in a six-month jail sentence and five years of probation, involved property destruction amounting to a broken window. Despite the fact that very little violence was even actually alleged in these cases, the tactic of prosecution itself, and most importantly, the tactic of spectacularizing those prosecutions, served to constitute the very threat of “violence” so heavily invoked by the state, regardless of the actual outcome of those prosecutions. Prosecutors have an unparalleled power to generate and consolidate the subject of the “violent” Occupier.

In conclusion, the third “moment” witnesses the ascendance of the prosecutor. This marks an evolution of state strategy—from dependence upon police coercion that threatened to devolve into spectacle, to a new reliance on a prosecutorial power that was itself unspectacular, but also able to craft its own spectacles. This dissertation emphasizes prosecutorial power both because it figured so centrally in the case of Occupy Oakland, but also to encourage further reflection on the full spectrum of state agents and the various forms of state power they deploy. Focusing too narrowly upon the police results in a tunnel vision that obscures our vision of contemporary state power. But of course, that power never relinquishes the coercive force of its police. While the state’s strategies evolve to contain certain forms of violence and coercion (particularly those that pose the danger of devolving into spectacle), they never eschew the power of the police. They do, however, radically transform the nature and strategic orientation of policing. And so the conclusion of this final “moment” of struggle in Oakland brings us back to OPD. This story of the evolution of state power began with them as they indiscriminately launched their “less lethal” munitions against a large, undifferentiated crowd. And this story ends with their transformation—through a process of “reform”—towards a strategy that is not only now targeted, but even professes the power to target pre-emptively.

The “Reform” of OPD and the Rise of Pre-emptive Policing

We now return to OPD, examining the transformation of police tactics and strategy during this final “moment” in the evolution of state power. These developments were particularly fueled by a process of “reform” initiated in response to criticisms of the Department’s
handling of Occupy Oakland, and particularly the police operations on the night of October 25th. Processes of “reform” are highly revealing, representing institutional responses to major challenges or crises of legitimacy. In other words, “reform” provides an analytic window into the iterative dynamic of state strategic adaptation. The backlash from the spectacle of October 25th incited a massive process of reform, beginning with the launching of a series of investigations (all internal to the state despite claims of being commissioned to “impartial third parties”), followed by recommendations for disciplinary measures (focused exclusively on “misconduct” by individual rank and file officers), and finally concluding with the implementation of a series of reforms to OPD’s crowd control practices. This section will map out this process of “reform”, seeking to highlight three major dynamics: 1) how it generated an investigative discourse that served towards reconsolidating the state following the crisis of legitimacy and internal fragmentation resulting from the backlash from October 25th; 2) how it pursued “accountability” in a manner that obscured general institutionalized practices and strategies by narrowly focusing on individual “misconduct” by rank and file officers; and most crucially, 3) how its implementation re-oriented policing around a strategy of Pre-emptive Neutralization.

A great deal of the backlash from October 25th landed in the lap of OPD, while other state agencies desperately tried to distance themselves. The Oakland Police Department received the largest influx of complaints in its history in relation to that day. It was OPD that was perceived as the source of the problems on October 25th, having violated its crowd control policies, indiscriminately deployed “less lethals,” inflicted numerous injuries, and obscured accountability through lack of regulation and improper use of mutual aid. Insofar as OPD was perceived as the source of the problem, police “reform” was touted as the solution.

The process of “reform” was initiated shortly after October 25th with the launching of a series of investigations. At least five investigations into the police operations of October 25th were initiated, all by institutions internal to the state like OPD’s Internal Affairs Division (IAD) or the Citizen Police Review Board (CPRB). In December the City contracted with the Frazier Group, LLC to conduct what it called an “impartial” “third-party” investigation. But critics questioned the impartiality of the $100,000 contract given that the investigative team was composed solely of law enforcement experts and the lead investigator, Thomas Frazier had just stepped down from his role as President of the Police Executive Research Forum (which had consulted Quan and other mayors nationwide on how to evict Occupy camps). Whether undertaken by agencies of OPD or contracted out to professed “third parties,” these were all internal reviews that were ultimately geared at presenting the state as being engaged in reforming itself and pursuing accountability. Generating this kind of investigative discourse was crucial for re-establishing legitimacy and reconsolidating the state following the internal fragmentation caused by the backlash of October 25th. It effectively enabled the Mayor, OPD and other city officials to cease with their finger pointing and blame shifting and come together around joint assertions of “lessons learned.” As Police Chief Jordan put it, “I ask that you not only judge us by the mistakes that were made, but also by how we correct them.”

The results of the Frazier Group’s “impartial” investigation were presented to the City on April 30th and contained 68 findings and recommendations to improve OPD’s handling of
future demonstrations.581 The Frazier Report, like all the other state launched investigations, primarily identified the source of the problems on October 25th as being issues like staffing shortages, budget cuts, and outdated training and equipment.582 In other words, the problem was presented as that of an under-resourced and overwhelmed police force that required major investments of funding, technology and training.583 These investigations and the recommendations they offered provided what Police Chief Jordan called a “road map” to improving the department.584 The investigative discourse of “reform” presented the state as self-reforming, generating a “road map” around which it could reconsolidate and re-legitimize itself. And the “road” to “reform” primarily lead in two directions: either insisting on the need for more training and resources (the problem being presented as that of an under-resourced department lacking adequate training), or focusing on individual level disciplinary measures (the problem presented here as that of individual “misconduct” by rank and file officers). The Frazier Group’s investigation, which looked into over 1,100 complaints filed against OPD in relation to Occupy events, identified 44 officers who had violated department rules or engaged in “misconduct”. Without publicly identifying any of the officers, Chief Jordan recommended disciplinary measures for them, which included: termination for 2 officers, 1 demotion, 15 suspensions, 3 referrals for counseling and training, and written reprimands for 23 others.585

The majority of these disciplinary measures were extremely minor in their severity, amounting to little more than written reprimands or referrals for training. The more serious consequences involved short term suspensions, or in the most extreme cases, two recommendations for termination. But as discussed in Chapter 2, the case of Robert Roche illustrates that even in the rare cases where serious disciplinary measures were imposed, they were likely to be reversed after appeals were filed by OPD’s union. Roche was terminated after being identified as having fired a CS Blast Grenade directly into the crowd attempting to aid Scott Olsen. But the union’s appeal resulted in reversing his termination and reinstating him with full back pay586 (essentially amounting to a two year paid vacation). The arbitrator came to this decision after determining that Roche had simply been following orders from his commanding officers. Roche’s attorney called him the “scapegoat” that served as "the soap the OPD commanders used to wash themselves clean of their mistakes."587

The outcome of Roche’s case reflects two important dynamics of these processes of “reform”. First, although reform touted the pursuit of accountability through disciplinary measures, this generally entailed extremely minor forms of discipline (like written reprimands or mandated trainings), while the few more serious cases were likely to be reversed through institutionalized appeal procedures. Secondly, insofar as disciplinary action only focused upon rank and file officers, and not their commanding supervisors nor the city administrators who determined the overriding objectives of police operations in the first place, culpability was narrowly defined in the limited terms of individual police “misconduct”. This approach presents the problem as being that of a “few bad apples” like Roche, and thus the solution as lying in individual disciplinary measures. But the reality, as the arbitrator of Roche’s case concluded, is that officers were in fact acting in line with the commands of their superiors. Not only Roche and other rank and file officers, but even the Section Chief who gave them the authorization to deploy “less lethal” weapons, were all simply doing the job they were assigned, equipped, and pressured to do. This helps shed
light on why even the few substantial disciplinary measures imposed were so likely to be reversed – while the process of reform sought to discipline “misconduct” by individual officers, institutionalized procedures (like the appeals process) recognized that individual officers were simply acting according to the commands of their superiors (who were themselves also following orders that established the objectives of police operations in the first place). The entire chain of command was oriented around the unflinching objective of “holding ground” and preventing any possibility of a reoccupation of the Plaza. And they were tasked with doing so against a massive crowd which dwarfed the number of officers on the scene at the time. To achieve this objective, they were issued a wide range of military grade “less lethal” munitions, without any of the mandated accounting procedures, and were then comiled with outside law enforcement agencies that did not operate under the same restraints, further muddling accountability. They were then issued an order to deploy those weapons without any further strategic direction. Clearly, pursuing accountability in limited terms of individual “misconduct” obscures the overriding institutional objective and strategy that shaped police operations and oriented the actions of the entire chain of command.

These were two of the main functions of OPD “reform”: generating an investigative discourse that facilitated a reconsolidation of the state following a crisis of legitimacy and internal fragmentation caused by the backlash of October 25th; and obscuring the state’s underlying objective and strategy that night by narrowly focus upon the problem of individual “misconduct”. But the most powerful function of “reform” was that its implementation fueled an evolution towards increasingly pre-emptive tactics and strategies of policing. Once the Frazier Report was issued in late April, OPD announced that it was implementing a series of reforms in accordance with the Report’s recommendations. On April 23rd Mayor Quan and Police Chief Jordan held a press conference to announce the reforms. The changes to OPD’s crowd control strategy were presented as responses to the problems identified in the various investigations into its police operations on October 25th. There were several major criticisms that surfaced from these investigations. Most fundamentally, the federal monitor charged with overseeing OPD’s compliance with mandated crowd control policies asserted in February that he was “thoroughly dismayed” by the Department’s “overwhelming military-style” response to the Occupy protests, and particularly by its use of “less lethal” munitions against crowds.588 Up until that point, OPD had declared twelve Occupy Oakland protests to be unlawful assemblies and had deployed “less lethal” munitions in all but two of those cases.589

In addition to the general admonition for an overreliance upon “less lethal” munitions, there was a more specific criticism about the indiscriminate manner in which they were deployed. OPD’s crowd control policy mandates that the deployment of “less lethal” munitions is only legally permissible as “reasonable force” if it is utilized to make arrests or to “actively” disperse a crowd (meaning that small units of officers must simultaneously attempt to directly disperse the crowd rather than remaining stationed behind fixed barricades while munitions are deployed). Criticisms of OPD’s deployment of “less lethal” munitions on October 25th hinged upon its failure to meet either of these criteria. There was virtually no effort to make arrests (only five people were arrested throughout many hours of deploying tear gas and other munitions against thousands of people), and all officers remained in fixed positions behind barricades. It was these failures to comply with
crowd control policies that were presented as resulting in the disastrous outcome of OPD’s operations that night – the mass, untargeted deployment of “less lethal” weapons. Rather than identifying and actively apprehending particular suspects, OPD had indiscriminately targeted the crowd as a whole.

How did Chief Jordan and Mayor Quan propose to reform this situation? They presented their new strategy at the April 23rd press conference where they announced reforms. In particular, the new strategy emphasized the deployment of small units of officers (Tango Teams or Quick Response Forces) into crowds to apprehend individual protestors. As Jordan put it, the new strategy involved “using smaller units to go into the crowd and remove people that are causing problems[.]”590 This strategy of deploying tactical teams for “surgical” removals was presented as the solution to the problem of mass untargeted force that characterized October 25th. No longer would OPD indiscriminately unleash “less lethals” upon an entire crowd. Now it would aim to identify and remove the protestors “causing problems.” The strategy provided an alternative to deploying mass indiscriminate force (whether “less lethals,” kettles or mass arrests) – one which now professed the power to discriminate by identifying the “violent” protestors without infringing upon the rights of the “peaceful” majority. This presented the perfect solution to OPD’s mandate to “balance” the role of facilitating First Amendment rights with the duty to protect “public safety.” Police Chief Jordan issued a statement at the time that proclaimed: “It is our duty to protect public safety and at the same time balance the free speech rights of individual protesters with the rights of non-protesting residents.”591

These reforms were announced just days before May Day, for which Occupy Oakland was planning its first large scale action since the disastrous outcome of January 28th. OO had spent much of February and March trying to bounce back from the severity of that state assault, severely obstructing the possibilities for any major advances during that time. But as May Day approached Occupiers began planning for a day of wide spread actions that promised strikes, bridge closures and mass disruption. Despite the recent lull in Occupy struggles nationwide, a major day of action was anticipated in Oakland, which the New York Times called “the most stubbornly active outpost of the Occupy movement.”592 Mayor Quan and Chief Jordan’s press conference announcing OPD’s planned reforms occurred just a week before May Day. The only major challenge to the announcement at the time came from the American Civil Liberties Union (ACLU) and the National Lawyers Guild (NLG) who argued that federal mandates required that OPD consult with them before instituting any changes to its crowd control policies.593 In response to this challenge, the Supervising Deputy City Attorney announced that the new measures were “being postponed until after the May Day events.”594 But although the City officially claimed to have postponed implementing these policies, the new strategy was undeniably on full display on May Day.
**OO’s Last Strike: May Day and the Pre-emptive Neutralization of Occupy Oakland**

Occupy Oakland planned for an ambitious and widespread day of actions on May Day which were announced at a press conference on April 26th.\(^595\) There was once again a call for a General Strike and the city was covered in posters and flyers proclaiming: “No Work! No School! No Business as Usual!” There were also a range of smaller actions organized by various labor unions and other local organizations. The International Longshore and Warehouse Union (ILWU Local 10) called for a work stoppage that effectively shut down the Port of Oakland for the day.\(^596\) The California Nurses Association (CNA), representing 4,500 nurses at Sutter Hospitals, organized a one day strike action in Oakland and eight other Bay Area cities to protest reductions in benefits that were being imposed while the hospital’s profits and executive salaries were on the rise. (Sutter proceeded to lock the nurses out for four additional days after their strike, for which CNA filed a complaint with the National Labor Relations Board calling it “punitive action.”)\(^597\) The Golden Gate Ferry Workers also organized a strike for the day that left thousands of commuters stranded.\(^598\) But the most ambitious plans for a labor organized action came from the Golden Gate Bridge Labor Coalition, a collective of 14 unions who were in the midst of contract disputes, particularly over healthcare benefits. The Coalition had approached Occupy Oakland with the request to assist in executing a blockade of the Golden Gate Bridge on May Day. The proposed action was bold and held the potential of mass disruption (preventing thousands of commuters from entering or exiting San Francisco). However, after weeks of strained negotiations and planning between the Coalition and OO, the action was called off. The Coalition had reached out to OO because of its now proven capacity to blockade the Port of Oakland and the large numbers it could potentially bring out for the planned bridge blockade. But OO had held firm to one condition; that it would only participate in a blockade if it was organized in conjunction with a strike by rank and file union members\(^599\) (rather than serving as what some called a “rent mob” for union leadership\(^600\)). As negotiations over this and other issues became increasingly strained, the Coalition ultimately called off the action the night before May Day.\(^601\)

While the Golden Gate Bridge blockade was cancelled, the other strikes and labor actions proceeded as planned and thousands of unionized workers participated that day. Aside from organized labor, there were also numerous actions that focused on the struggles of non-unionized and undocumented workers. A Precarious and Service Workers Assembly was established, organizing a number of actions in support of workers “who don’t comply with the traditional definition of labor” in what they called “a new kind of solidarity network.”\(^602\) There was also extensive organizing around struggles of undocumented workers, and immigrant rights more generally. One of the largest actions of the day was the March for Dignity and Resistance, organized every years since 2006 by a coalition of immigrant rights advocates.\(^603\)

In summary, alongside Occupy Oakland, there were a wide range of labor unions and local organizations that planned strikes, walkouts or marches for May Day. What most fundamentally characterized OO’s general strategy for the day was the decentralized and dispersed nature of the planned actions. Rather than organizing a single large scale action
(like January 28th’s Move-In Day), there were instead plans for multiple strike stations, floating pickets, and simultaneous small marches that snaked throughout the city in different directions. In other words, the underlying strategy involved mobilizing multiple sites of simultaneous disruption (with several planned points of mass convergence throughout the day.)

OO called for people to begin the day by gathering at three different strike stations at 8:30am. Each strike station was organized around a particular theme and target. One was the “Anti-Capitalist Brigade” which convened at Snow Park (the site of OO’s now evicted satellite occupation) from where it broke out into flying pickets that roamed around downtown aiming to shut down banks, as well as the Chamber of Commerce.604 The march succeeded in shutting down branches of Bank of America and Wells Fargo.605 “Solidarity with Workers” was spray painted on the façade of a Bank of West branch, where riot police soon surrounded the doors to prevent marchers from entering.606 At Wells Fargo, a marcher was arrested for writing “Love > Money” in blue chalk on the building’s brick façade, but was let go shortly after as a large crowd gathered and chanted for his release.607

Secondly, there was an “Anti-Patriarchy” strike station that convened in front of Child Protective Services (CPS) at Broadway and Fourth Streets around a giant banner reading “You can’t spell COPS without CPS.”608 The action was organized by Oakland Occupy Patriarchy (an autonomous working group of women/queer Occupiers) which called for shutting down what it characterized as a “horribly oppressive institution that doesn’t give a fuck about children or parents!” They distributed flyers that asserted “We cannot only block capital in spaces of waged labor, but also in the capitalist, racist, patriarchal reproduction of social life! STRIKE EVERYWHERE!”609 Well over 200 hundred people converged around the CPS building, where a police line barricaded the front entrance. The group then marched to the nearby Superior Court building, which houses Alameda County’s Family Court.610

Finally, there was the “Anti-Gentrification” strike station which convened at Telegraph and 22nd Streets (the center of the newly gentrified “Uptown” district), from where it descended into a series of flying pickets aiming to shutdown gentrifying businesses in the area. Many businesses did shut down, whether as acts of solidarity or out of fear of being targeted and forcibly shut down.611 Marchers pounded on the doors of Starbucks and other businesses perceived as fueling gentrification, chanting “Shut it Down!”612 One of the morning’s more spectacular confrontations occurred in front of Rudy’s Can’t Fail Café, where a scuffle ensued between marchers and group of people led by Phil Tagami, who was appropriately suited up in black fatigues and combat boots.613 (Tagami is a major real estate developer who spearheaded many gentrification projects in the area and gained local notoriety after provocatively patrolling one of his buildings with a shotgun during the November 2nd General Strike. He was also a central participant in “Stand for Oakland.”) The “Anti-Gentrification” and “Anti-Patriarchy” strike stations reflected OO’s effort to expand its critique of both capitalism and the state; refusing to limit its protest to big banks and police departments, it sought to highly the devastating economic impacts of gentrification and the coercive functions of patriarchal state institutions like CPS and Family Court.
The morning of May Day was marked by numerous actions, marches and shutdowns, organized by OO as well as by various other unions and local organizations. There was a dispersed, decentralized and spontaneous strategy characterizing the morning that proved a serious challenge for OPD. There were multiple sites of simultaneous disruption and numerous marches that broke out in different directions, often spontaneously changing their routes or breaking into smaller groups.614 As these mini marches snaked throughout downtown, they occasionally intersected. Marchers chanted jubilantly as they converged and grew larger, only to soon split off once again.615

By 10:30am a few of the marches arrived at Oscar Grant Plaza, where OO had called for a mass convergence and rally at noon. What began as a crowd of several hundred people continued to grow larger as noon approached and more of the small marches descended into OGP. The decentralized strategy characterizing the morning posed a challenge for OPD, which had to continuously reposition its officers throughout downtown. But as the noon rally approached, a massive police presence converged around Oscar Grant Plaza. Clusters of police in riot gear were stationed around the area. This included many among the hundreds of officers that had been brought in through mutual aid agreements with neighboring police departments, the Alameda County Sheriff’s Department and the California Highway Patrol.616 Establishing a massive police presence in the area was part of OPD’s general strategy for the day. As Chief Jordan later explained to reporters, the strategy was to have a large number of highly visible uniformed officers in order to “send a message that we’re not going to tolerate acts of vandalism, violence or any kind of disruption to business.”617 And establishing this aggressive police presence wasn’t limited to just stationing large numbers of officers in the area – the Alameda County Sheriff’s Department even rolled out an MRAP (Mine Resistant Ambush Protected) tank (these are armored tanks used in Iraq and Afghanistan and designed to withstand IED [Improved Explosive Devices] attacks).618 Occupiers stood in shock as they watched the MRAP tank slowly roll down Broadway and around the peripheries of the Plaza. As noon approached, the crowd of protestors continued to grow, and police presence increased dramatically. Tensions mounted as protestors engaged in heated verbal confrontations with police swarming the area from every direction.

Organizers decided to slightly delay the noon rally in response to an increasingly aggressive police presence – riot geared officers had begun provocatively assembling in formation around the perimeter of the main entrance to the Plaza. But the rally was soon prevented altogether once OPD deployed a round of tear gas at 12:19pm, followed by two more rounds a minute later.619 Given that OPD’s new strategy was to avoid the deployment of “less lethals” or any other untargeted tactics in favor of a targeted strategy of apprehending individual suspects, how is it that tear gas was already being deployed so early in the day? The simple answer is that while the new targeted strategy was presented as an alternative to “less lethals” or mass untargeted force, it actually served to create the very conditions that necessitated their deployment. Small tactical teams of officers were assigned to “surgically” penetrate the large crowd in order to apprehend particular individuals. (This strategy has come to be referred to as “snatch and grab” within activist circles.) But the aggressive, violent, and often either random or racist manner in which they did so inevitably served to incite and outrage surrounding protestors. And once small tactical teams of officers were surrounded by large crowds of angry protestors (and
sometimes targeted with projectiles like plastic water bottles or paint), this created the very conditions that necessitated and justified deploying “less lethal” munitions – in order to ensure the safety of those officers, as well as prevent the crowd from obstructing whatever enforcement action they were purportedly undertaking. This is precisely what occurred immediately prior to OPD’s first deployment of tear gas that day at 12:19pm.

Video footage taken at the scene shows a small group of officers running into the crowd, appearing to be chasing someone (although it’s unclear exactly who). A young woman in a black hoodie is seen riding her bike close to them, at which point one of the officers lunges and throws her off her bike. Other officers join to tackle her to the ground in a clearly aggressive manner. The woman’s face is pinned to the ground as she screams “I didn’t do anything!” while the officers restrain her hands using plastic flexi-cuffs. One eyewitness told reporters “[r]eally it seemed like it was just to rile up the crowd. That was successful; the crowd was riled up.” As an outraged crowd surrounds her, additional officers swarm in and assemble in a shoulder to shoulder formation facing the crowd, creating a protective barrier around the detained woman and arresting officers. They then begin moving slowly through the crowd in an attempt to transport them back to nearby police vehicles. But the crowd continues to surround them, effectively kettling the police. It was these conditions – the risk to officer safety created by the strategy of penetrating large crowds with small tactical teams – that necessitated and justified OPD’s decision to then deploy tear gas and “flash bang” grenades against the larger crowd. And indeed, it did exactly that within just minutes of unleashing officers into the crowd to make the first initial arrest. The logical outcome of a strategy of inserting “snatch and grab” squads into large crowds is that the crowd will likely attempt to snatch and grab back those who are targeted.

The situation created by this strategy of targeted “surgical” removals also inevitably created the opportunity for further arrests. This is precisely what was triggered by the initial arrest of the woman who was violently pushed off her bike. As the crowd around the arresting officers grew larger and increasingly agitated, police targeted three more individuals for arrest (one of whom was a young Black man whose aggressively violent arrest further outraged the crowd). As police officers made additional arrests, this further served to draw crowds attempting to defend the targeted individuals (either by de-arresting them, or at least vocally challenging their arrests). The result was that there were simultaneously multiple sites where small tactical teams of officers were attempting to make arrests and being surrounded by large agitated crowds. Video footage taken at the scene captures the resultant mayhem as OPD began deploying “less lethals” – as the camera is fixed on one group of officers engaged in a standoff with the crowd, loud “flash bangs” and tear gas explode in the distance as part of an effort to assist another surrounded tactical team. The situation was further exacerbated when OPD attempted to drive a patrol wagon onto the scene in order to transport out some of the arrestees. But the large crowd surrounded it as well, chanting “We are not afraid!” The crowd slowly pushed against the police vehicle, eventually forcing it to retreat. This set off both jubilant cheering from the crowd, as well as a further deployment of tear gas and “flash bang” grenades by OPD.

With the assistance of these “less lethals,” the arrests were finally executed, after which there was a momentary period of calm around OGP. Police temporarily retreated enough to
allow people to re-converge in front of City Hall for a rally protesting stay away orders. A large crowd formed around the entrance of City Hall. Many wore masks with the images of particular “stay awayees” who were themselves absent but whose faces now dotted the entire area. A line of California Highway Patrol officers stood in formation blocking the front entrance of City Hall throughout the rally, as protestors circled around a giant maypole that was erected directly in front of them. But OPD’s ceasefire was short lived. By 1:30pm the crowd once again stood off against a police line on the south side of City Hall on 14th Street, at which point OPD deployed another round of tear gas. The crowd attempted to push back against the police line, again chanting “[w]e are not afraid.” According to Legal Observers stationed there by the National Lawyers Guild, several protestors were injured at this time, including a woman who suffered a severe head injury after being struck by a police baton.

By 1:30pm OPD had established a cordon around the area that blocking all traffic on Broadway between 13th and 15th Streets, and which remained in effect until around 3:30pm. Chief Jordan held a late afternoon press conference where he confirmed that four people had been arrested and provided justifications for the Department’s deployment of “less lethal” munitions. OPD also issued an accompanying bulletin that clearly laid out these justifications. It asserted that “[t]he crowd surrounded the officers and small amounts of gas were deployed on three occasions in limited areas to disperse the specific small groups of people who were committing the violent acts.” Media reporting emphasized OPD’s claim that tear gas was used “sparingly” and presented its deployment as highly targeted and discriminating—“small amounts of gas” deployed in “limited areas” against “specific small groups” engaged in “violence.” [Emphasis is mine.] Chief Jordan also explained that tear gas had to be used to “fend off people trying to stop the targeted arrests[.]” Jordan noted that this highly targeted deployment of tear gas was a new strategy, telling reporters that “even though the use of small amounts of gas had long been part of the department’s policies, ‘I don’t recall using that before.’” Press coverage thoroughly adopted OPD’s presentation of its strategy, proclaiming “[i]n contrast to past demonstrations in which downtown was enveloped by clouds of the gas, it was possible to see and breathe within minutes Tuesday after the gas was released.” The underlying claim in all of these assertions was that “less lethal” munitions were deployed in a highly limited, targeted and discriminant manner. The irony is that while OPD’s new strategy was presented as an alternative and solution to the indiscriminate deployment of mass force, it actually provided the context and justification for deploying force against the larger crowd by creating conditions where officer safety was at risk or where targeted arrests were challenged. Furthermore, OPD then presented this deployment of mass force as somehow indiscriminately targeted against particular groups engaging in “violence” – an absurd claim to make about munitions like teargas and flash bang grenades that achieve their effects indiscriminately upon large crowds no matter how “sparingly” they are deployed.

After two hours of intense confrontations, the issuing of several dispersal orders and the deployment of multiple rounds of tear gas and “flash bangs,” police were eventually able to clear the area by around 3pm. They were aided by the fact that most people had begun leaving the downtown area to join the March for Dignity and Resistance planned for that afternoon. The event, held annually by immigrants’ rights advocates since 2006, began with a rally in Fruitvale Plaza, in the heart of East Oakland’s Latino community, followed
by a march all the way to City Hall. It was one of the few events that day for which organizers had obtained a permit, and it was heavily attended by families and children. OPD estimated that up to 5,000 people participated in the march that day.631

A group of well over 300 people who had remained in the vicinity of OGP up until 3pm converged to begin marching towards East Oakland in order to meet up with the March for Dignity and Resistance. After finally dodging the aggressive police forces around the downtown area, they marched for miles to San Antonio Park where they joined others awaiting the massive march that was scheduled to soon pass that location.632 Once the two groups converged, the march proceeded on its way downtown to City Hall.633 Police presence was very minimal throughout the March for Dignity and Resistance, in direct contrast to the aggressive policing of unpermitted marches throughout the day. Chief Jordan had informed reporters prior to May Day that “[w]e are looking at changing our tactics of how we approach to be much more assertive in terms of not allowing unpermitted marches throughout the city.”634 The permitted March for Dignity and Resistance marked a short reprieve from the aggressive policing that characterized the rest of the day. But the situation changed dramatically once the march arrived back to City Hall and Oscar Grant Plaza.

The march arrived at OGP at 6:27pm, with thousands of people swarming around City Hall and the downtown area. But as it grew darker, those numbers began to drop as many marchers scrambled out of the area in fear of the quickly growing and aggressive police presence. The rumors circulating all day that there would be an effort to re-occupy the Plaza that evening had clearly incited a massive response by OPD. The police operation that would transpire over the course of the next few hours far exceeded the rest of the day in its aggressiveness. The objective was to clear the area around OGP and prevent any possibility of a re-occupation. As darkness descended around 8pm, the number of officers dramatically increased, while the number of protestors dwindled down to around 2,000 who dared to remain in the area.635

It was around 8:30pm that the first targeted arrest occurred that night, with officers tackling a protestor to the ground. Oakland North journalists at the scene reported that they were unable to determine what had precipitated the arrest of that individual.636 This was once again followed by several other arrests from the surrounding crowd. Just minutes later, at 8:35pm OPD issued a dispersal order, which was immediately followed by the deployment of a “flash bang” grenade. The dispersal order included the admonition that chemical agents would be used and that physical injuries might be sustained by anyone who remained in the area. As helicopters swarmed overhead, officers assembled in formation around the intersection of 14th and Broadway and began pushing the crowd north, away from Oscar Grant Plaza. At first, the line of officers pushed forward slowly, shoving protestors with their batons. But all of a sudden, they began running full speed ahead without warning, creating a terrified panic that sent the crowd scrambling in all directions (a similar tactic was utilized during the first FTP! march). Some businesses in the area, like Awaken Café and Mr. Pizza Man, briefly opened their doors to provide refuge for at least a few of the fleeing marchers. After this aggressive advance by police lines, the number of protestors in the area quickly diminished down to just a few hundred. After having pushed the remaining marchers a few blocks North, OPD once again issued
another dispersal order that instructed people to leave the area and to do so by walking only on the sidewalks. More people were arrested at this time, including several who were on the sidewalk at the time of their arrests, according to Oakland North reporters. This strategy of deploying aggressively advancing police lines, accompanied by random baseless arrests, succeeded in frightening most people out of the area. By 9:20pm only 40-50 people dared to remain in the vicinity, and by 11:00pm the entire area around OGP had been cleared by police, bringing a dramatic conclusion to May Day.637

The following day, city officials and the media lavished praise on the Oakland Police Department for its May Day operations. There seemed to be virtual agreement that police operations that day reflected just how successfully OPD had “reformed” itself of the problems associated with October 25th and its earlier handling of Occupy Oakland. As the New York Times put it, “[t]he day proved to be a relative success for the Police Department…tear gas and other so-called nonlethal munitions were used only sparingly. There were no serious injuries, and only 39 protesters were arrested, compared with 400 at the last major Occupy action.”638 The touted success of OPD’s operations on May Day was presented as resulting from its new strategy of “surgical” targeted arrests. As CBS News reported:

Oakland Mayor Jean Quan is pleased that there wasn’t as much vandalism or as many arrests during Tuesday’s May Day demonstrations as there were during previous Occupy Oakland protests…According to Quan, officials now think they have a template to keep the protests from getting out of hand…Quan said from now on, police will use force on a selective basis, in a more surgical way. The change in tactics also means targeting specific troublemakers instead of inciting the whole crowd by setting off tear gas or firing beanbags indiscriminately when one or two people turn violent…She added that police have learned how to follow people who have been violent and arrest them when it’s less dramatic and less people are involved.639

Mayor Quan presented OPD operations on May Day as the new “template” for policing protests, one which relies upon “selective” and “targeted” force, rather than “setting off tear gas or firing beanbags indiscriminately[.]” She supported her claim that OPD had learned how to identify and track “violent” protestors by informing reporters that she and OPD Chief Jordan had been watching the protests live on streaming video from a command center downtown (viewing both police cameras as well as livestreams operated by Occupiers themselves). A spokesperson for the City told reporters that “[t]he May 1 demonstrations were the first time live web streams became part of the swirl of information that flows into Oakland’s Emergency Operations Center during major incidents…giving Police Chief Howard Jordan, Mayor Jean Quan and other city officials eyes on the street.”640 These claims served to suggest that OPD operations on May Day had achieved a level of technological sophistication (through “real time” surveillance) that effectively enabled identifying “violent” protestors within larger crowds.
One of the most striking claims made by Mayor Quan after May Day was that “there wasn’t as much vandalism...as there [was] in previous Occupy Oakland protests.” But in fact, there was actually a tremendous amount of property destruction that day targeted at banks and gentrifying businesses (including broken windows, smashed ATMs, and extensive political graffiti), not to mention police vehicles (one of which was set on fire). But touting the success of OPD’s operations on May Day, for once, necessitated de-emphasizing the extent of property destruction that day. In stark contrast to January 28th when city officials and the media droned on and on about vandalism and property damage despite the fact that there was virtually none to speak of, they minimized the enormity of it on May Day in an effort to illustrate that OPD’s operations were so successful that they had effectively “deterred” that “violence”.

Despite the fact that widespread property destruction and extensive deployment of “less lethals” was undeniably apparent to anyone on the scene that day, media thoroughly adopted the City’s claims about the success of its police operations on May Day. Media accounts emphasized the contrast to October 25th, presenting OPD as having successfully “reformed” itself by perfecting a new model of targeted force. Even some of OPD’s staunchest critics spoke out in praise. John Burris, a renowned civil rights attorney who has been at the forefront of litigation pushing for OPD reform and federal oversight of the Department for decades, told the San Francisco Chronicle that May Day’s police operations “showed progress.” He elaborated by explaining “I have no objection to strategic deployment of weapons. Our big issue has been the general deployment of weapons into a crowd. If a police officer has reason to believe a person has engaged in assaultive conduct, they can employ whatever means they have available to them.”

Even one of Oakland’s most renowned copwatchers was lauding this new model of targeted force.

OPD basked in the praise. Finally, after a long period of backlash since October 25th, it appeared to have thoroughly “reformed” itself. Furthermore, it also appeared to have finally perfected its role of “balancing” the protection of First Amendment rights with its duty to enforce “public safety.” As OPD’s Chief of Staff Christopher Bolton put it, the strategy of targeted arrests “was our attempt to handle things on a smaller scale, in hopes of facilitating the majority’s freedom to assemble.” A strategy of targeted force enabled police to focus on “violent troublemakers” while still “facilitating” the First Amendment rights of the “peaceful” majority. OPD emphasized that on May Day at least 5,000 people took part in marches or actions occurring in different parts of the city and extending from dawn until almost midnight. Having arrested only 39 people all day (in contrast to the over 400 arrests on January 28th), and having used “less lethal” munitions only “sparingly” OPD presented itself as having learned to identify and target the “violent” Occupiers out of the larger crowd of “peaceful” protestors. As usual, these troublemakers were characterized as “outside agitators” intent on bringing destruction to Oakland. City officials reported to media that “[a]s has happened many times before, there was a small group of people who came to Oakland intent on provoking violent confrontations with the police and vandalizing the city.” [Emphasis is mine.]

It was the targeted nature of OPD’s new strategy that was so heavily praised by state officials, media, and even long time critics of the Department. But there was another
characteristic of the new tactics that few seemed concerned with – their pre-emptive orientation. Clearly there was a directive for OPD to “reform” its practices to be more targeted (in contrast to the untargeted and indiscriminate mass force that was so problematized). But there was also a directive, emanating from all realms of the state and “civil society,” for greater deterrence of “violence” and vandalism by Occupy Oakland. The onus was on OPD to prevent protests from “escalating” to “violence” or mass property destruction. This sheds light on why the Mayor’s claims of “success” on May Day necessitated minimizing the true extent of property destruction that day – presenting OPD as having successfully deterred the kind of damage associated with earlier protests.

Hence, OPD’s new “reformed” strategy actually had two major components – it was not only now targeted, but pre-emptively so. When discussing the new targeted strategy with reporters, OPD’s Chief of Staff explained that “[a] key element of our strategy change is to intervene early.” OPD was presented as now being able to identify “violent” Occupiers in the crowd so successfully that it had effectively “deterred” the kind of damage and destruction caused in previous Occupy actions. As Mayor Quan praised, “the Oakland Police Department was able to isolate those individuals, arrest them quickly and minimize the damage they were able to cause.” While even critics of OPD lauded its new targeted strategy, there was silence on the fact that this targeting was being pre-emptively executed. The Mayor boasted OPD’s capacity to identify and target “violent” “troublemakers” before they could enact their violence, thus “minimiz[ing] the damage they were able to cause.” How is that OPD commanders viewing “real time” surveillance of the crowd were able to identify these targets? On the basis of assessments that designated particular characteristics as high “risk”. Or in other words, on the basis of pre-emptive profiling. Many of those targeted by “snatch and grab” squads or in the subsequent arrests they enabled, exhibited characteristics that were central to the state’s presentation of a “violent fringe” of Occupiers, for example wearing all black or disguising individual identities through hoodies, masks or other means. OPD’s strategy of “deterrence” necessitated a pre-emptive profiling that identified these high “risk” populations and neutralized them.

This final evolution towards Pre-emptive Neutralization was fueled in response to the movement’s own strategy on May Day. This process had been initiated on January 28th, when OO’s secrecy around its “Move-In Day” action denied the state any knowledge of what sites would be targeted. This forced a shift from a state strategy that sought to contain and defend targeted sites, to one that now necessarily had to focus on containing the crowd. This adapted strategy was possible on January 28th because OPD was at least certain that whatever site might be targeted, it would be targeted by the massive march. Hence its strategy could be oriented around containing and preventatively incapacitating the march. But the situation on May Day was dramatically different, with the movement adopting a purposively decentralized, dispersed and spontaneous strategy. Very similar to the “Battle of Seattle,” a wide spectrum of both organized and spontaneous actions were being undertaken by small groups in dispersed locations throughout downtown Oakland. There was clearly no possibility of containing all the potentially targeted sites, but neither was it feasible to try and contain all of these crowds. What is the most effective strategy in such a context? Focusing on identifying high “risk” populations within those crowds and pre-emptively incapacitating them.
While OPD and city officials explicitly articulated the objective of deterrence in many of their public statements (“intervening early”), the clearest indication of the pre-emptive orientation of the new strategy lies in the state’s inability to prosecute the targeted “violent troublemakers” – the 39 people arrested on May Day. The emphasis on the relatively few arrests made that day (39 versus the 409 arrests on OO’s last major action) suggested that OPD had finally learned to effectively isolate the “violent” Occupiers. But once again, the vast majority of those arrested were never actually charged with any crime (after again spending up to two nights in jail). In fact, only 3 of the 39 arrestees had any charges filed against them. The clear implication was that 36 out of the total 39 arrests were pre-emptively executed given that prosecutors had nothing to charge arrestees with.

It should be noted, however, that two of the May Day arrestees were on probation. While releasing others without charge, the DA’s office proceeded to revoke their probation, resulting in their having to serve extended jail sentences despite the fact that they were never charged with any crime on May Day. The DA’s office also once again promised that it would continue to “review cases” for potential future filing. One Occupier did indeed have charges re-filed against him, a young Black man whose targeted arrest (immediately following the initial arrest of the woman thrown off her bike) outraged the crowd due to its violent execution. He had been tackled to the ground by three officers, one of whom had used a taser on him. The violent arrest was captured on video footage that was later widely circulated. Although this individual had been released with no charge after 72 hours in jail, the DA’s office re-filed charges against him almost a year later and issued a bench warrant for his arrest. On May 19th, 2013 ten OPD officers surrounded his home with their guns drawn and executed his arrest.

Aside from the inability to prosecute the targets of this new strategy, even the initial charges for which people were arrested called into question the state’s claim of having “isolated” the “violent” troublemakers. Of the 39 arrestees, 27 were arrested for “obstruction” (the enforcement action they were alleged to have “obstructed” remains unclear given that charges were never pursued), while another 7 were arrested for failure to disperse after the issuance of an unlawful assembly. In other words, 34 out of those 39 people were arrested for a minor misdemeanor that involved no violent activity whatsoever. The remaining five were initially arrested on charges including felony robbery, battery, vandalism, resisting arrest, and even “possession of an incendiary device.” So perhaps OPD had actually isolated at least five of these “violent” agitators? Not quite. Once the Alameda County District Attorney announced the actual filed charges, there were only three people charged with any crime. One was charged with felony assault on a police officer. The second was charged with felony vandalism, and the third with failure to disperse and misdemeanor resisting arrest. That was it. That was all that OPD’s dragnet of targeted force was able to produce. All the remaining arrestees were targeted, in many cases violently tackled to the ground by several officers, for no apparent reason. The black hooded woman who was brutally knocked off her bike and whose arrest set off the entire series of subsequent arrests for “obstruction”, not to mention the deployment of tear gas and “flash bang” grenades on the larger crowd, was never charged with any crime. But her arrest, and particularly the outraged response it drew from the crowd, served to elicit and justify police operations that descended into mass force. Most crucially,
it served to present that mass deployment of force as somehow being targeted, since after all OPD had “isolated” and arrested the “violent troublemakers.”

And this was the underlying power of OPD’s new strategy – it was through executing these arrests that the deployment of force appeared “targeted”. The arrests indicated that police had identified the “violent” fringe of Occupiers out of the larger “peaceful” crowd. And despite the fact that the arrests eventually turned out to be baseless, they served as the necessary instigation, and later justification, for the deployment of mass force. Thus while even the staunchest critics of OPD lauded the targeted nature of its new strategy, there was a general failure to adequately question the nature of that targeting: who was actually being targeted and on what basis? How was that targeting executed? And how did it ultimately serve to expand police capacity to deploy force against the larger surrounding crowd? The primary reason these questions were left unraised is that the very terms of assessing police operations were defined by an investigative discourse generated by the state itself.

“Reform” is a statist discourse – generated by state initiated investigations, state issued reports, and the statements of city officials about “roadmaps” and “lessons learned.” It is the state that sets the terms and boundaries of its own “reform”.

According to the series of state orchestrated investigations, the two main failures of police operations on October 25th were that “less lethals” were deployed without any simultaneous effort to execute arrests and that officers had remained stationary behind barricades rather than “actively” seeking to disperse the crowd. The mass violence deployed by OPD on October 25th was legally questionable because it had virtually no arrests to show for it. Arresting 39 individuals on May Day (even if later proven to be mostly without basis) served to offer up the legally mandated proof that OPD’s deployment of force was indeed “targeted” – meaning that its deployment was intended to achieve arrests (no matter their actual legal outcome). Furthermore, the strategy of sending small tactical teams into crowds to “surgically” execute these arrests served to illustrate that OPD operations were not “stationary” like the case of October 25th. The strategy appeared to have so thoroughly fulfilled the requirements and demands of “reform” that even Oakland’s copwatchers praised OPD’s “progress”.

The Oakland Police Department is perceived as having adequately “reformed” itself and shown “progress” because of the new “targeted” nature of its strategy. But, again, the important question is – how exactly does this targeting work? OPD and city officials would like us to believe that their new strategy is targeted at the “violent” fringe of the movement. But their inability to prosecute the vast majority of the targets of this strategy belies their claims. It illustrates that the targeting that OPD was being commended for was actually pre-emptive in nature. OPD’s assertions of having “deterred” greater crimes and “violence” on May Day suggests that they successfully pre-empted this through an effective strategy of targeting these “troublemakers” before they could do more damage. And that’s the thing about pre-emptive policing – it can always praise its own professed success because, after all, one can only imagine the “violence” that was prevented by police operations. Hence the next day, the Mayor, city officials and the press all praised OPD’s success on May Day, emphasizing how the “violence” and vandalism of previous Occupy actions had been effectively “deterred”.

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Not only do these pre-emptive operations enjoy the advantage of appearing successful at their objective of “deterrence”, but they also function like so many of the state’s other “responses” – the magnitude and severity of the police operations themselves serve to give a reality to the threat they profess to “deter”. OPD’s operations on May Day were massive – hundreds of its own officers, supplemented with hundreds more brought in through mutual aid agreements. These police forces were heavily equipped with riot gear, “less lethals,” and even military tanks. As Chief Jordan explained, this massive police presence was central to the Department’s general strategy for the day, intended to “send a message that we’re not going to tolerate acts of vandalism, violence or any kind of disruption to business.” But OPD’s strategy simultaneously sent another, much more powerful, “message” – the massive militarized police “response” consolidated the very threat it professed to “deter”.

Police operations were oriented around a pre-emptive targeting (on the basis of “risk” assessments”) that inevitably generated the “violence” and “mayhem” they warned of. By identifying a high “risk” population of “troublemakers”, and proceeding to target them before they could undertake their “violence”, this strategy of “surgical removals” incited outraged crowds – thus consolidating the professed threat being “deterred”, and eliciting and justifying the state’s further deployment of force. And at the end of the day, OPD had mugshots and video footage of a “violent fringe” that served to powerfully justify the entire day’s operations. Pre-emption is a strategy that constitutes its own targets, generates its own “risk”, and always provides its own justifications. OPD’s strategy was to go out looking for a “violent fringe” of Occupiers – and the very tactics of that “response” generated the “violent fringe” it then professed to have deterred.

It is crucial to note that the kind of “targeted” strategy deployed by OPD on May Day was also documented in other Occupy sites, specifically New York and Seattle. This suggests that this pre-emptive orientation is not confined to Oakland and the “reform” of OPD, but is a new direction in policing that needs to be documented and challenged nationally. Indeed, it serves as an indication that the pre-emptive strategies and tactics observed in Oakland are part of a larger evolution, marking the emergence of forms of state power that don’t merely seek to repress resistance, but to pre-emptively neutralize it.

**Epilogue – City Council Strikes Again:** “Tools of Violence” and the Criminalization of Risk

Shortly after May Day, Oakland’s City Council forwarded yet another initiative to dramatically expand OPD’s realm of enforcement. This came in the form of a proposed ordinance criminalizing possession of what were characterized as “tools of violence” at protests or demonstrations. The proposal (“Ordinance Prohibiting the Possession of the Tools of Violence During a Demonstration”) was sponsored by Councilmember Patricia Kernigan and City Attorney Barbara Parker and submitted for a vote in the City Council’s Public Safety Committee on May 22nd. The ordinance proposed to make it a criminal offense to possess “a club, fire accelerant, fireworks, painting device, paint projectile,
shield, sling shot, hammer, or wrench while participating in any demonstration.” Violation of the proposed ordinance would become a criminal offense punishable with up to 6 months in jail and a $1,000 fine.659

The proposed “tools of violence” ordinance was presented by Kernigan and other city officials as part of the larger effort towards “reforming” OPD’s crowd control practices. In the same manner that they introduced OPD’s new targeted “surgical” strategy for May Day, city officials presented the ordinance as an alternative and solution to the problem of mass indiscriminate force characterizing OPD’s previous handling of Occupy Oakland. In a debate on KPFA Radio, Councilmember Kernigan argued that the ordinance would enable police to focus on “violent” protestors instead of “teargassing whole crowds of people.”660

There was also once again an emphasis on how the ordinance would allow OPD to target those “violent” protestors while still “facilitating” the First Amendment rights of the “peaceful” majority. The proposal for the ordinance asserts that “[t]he City of Oakland supports and has a long and proud history of supporting peaceful protests and demonstrations. Unfortunately, some individuals have used protests in Oakland as ‘cover’ to commit acts of violence, arson and vandalism.”661 In forwarding this ordinance, City Council sought to assist OPD in their new strategy of targeting “violent” protestors by creating a criminal offense that authorized police to arrest individuals in possession of any of the designated “tools of violence” at a protest or demonstration. The explicitly preemptive objective articulated in the ordinance is to empower police to isolate and target those possessing such “tools”, and therefore “deter” the potential “violence” they could cause. The ordinance proclaims that it “would deter the violence, property damage, and arson that have accompanied past demonstrations in Oakland[.]”662 [Emphasis is mine.] As city officials later relayed to the media, the goal “was to help police weed out agitators from groups of protesters before the protests got violent.”663 [Emphasis is mine.]

It’s worth taking the time to examine the ordinance itself and the manner in which it criminalizes possession of what are termed “tools of violence.” The most striking characteristic of the proposed ordinance is that it thoroughly conflates “violence” with property destruction. It provides a long list of examples of “violence” at previous Occupy Oakland actions, all of which exclusively refer to incidences of property damage (graffiti, broken windows or other forms of vandalism). The only exception is a reference to protestors throwing projectiles at police officers. And the only physical harm referenced in the entire ordinance is one example where it is claimed that an officer was injured when paint got into his eyes.664 When challenged on this issue in the debate on KPFA Radio, Councilmember Kernigan was eventually forced to admit that titling the ordinance “tools of violence” was misleading and that “maybe this should be called tools of vandalism…because that’s what it’s really about[.]”665

In the debate, Kernigan than proceeded to emphasize that those that suffered most from this vandalism or “violence” were “small businesses” who were already struggling under increasingly harsh economic conditions in Oakland. She proclaimed: “little small moms and pops shops…all had their windows broken[.]”666 This was a grossly fabricated claim that sought to obscure the highly targeted nature of the movement’s tactic of property destruction. Virtually every act of property destruction undertaken throughout Occupy Oakland’s history was targeted at banks, large corporations, gentrifying businesses, or
vehicles and equipment of police or mainstream media. This is not to deny that property
damage may have been incurred by small businesses, but this was the rare exception and
was generally criticized and rejected by most Occupiers in Oakland. And while city
officials like Kernigan emphasized the alleged damage to “small moms and pops stores,”
the actual ordinance itself presents a starkly different picture. The long list of examples
referenced in the ordinance primarily refer to property damage incurred by major banks
and large corporations like Burger King, Rite Aid and Whole Foods. These are the only
“victims” that actually surface in the proposed ordinance. Thus, it is not merely that the
ordinance conflates “violence” with property destruction, but that it specifically defines
that “violence” as highly targeted property damage directed at banks, large corporations,
and police. This is the “violence” that the Public Safety Committee of Oakland’s City
Council was so urgently concerned with – not Scott Olsen’s fractured skull and permanent
brain damage (which eventually cost the city over $6 million), nor Kaveh Sabeghi’s
ruptured spleen, nor any of the dozens of documented, severe police inflicted injuries
sustained by Occupiers.

A further irony was that one of the “tools of violence” referenced most often by city
officials at the time were the defensive shields that could increasingly be observed at
Occupy marches. The proposed ordinance refers to their being utilized to form “skirmish
lines for the purpose of confronting police” in what it characterizes as “battle” with
officers. While shields are presented here as a means of attacking police officers, this
obscures the fact that they actually emerged within the tactical culture of Occupy Oakland
as a direct defensive response to police violence – specifically the deployment of “less
lethal” projectiles known as “Specialty Impact Munitions” (like rubber bullets or the
“beanbags” that critically injured Scott Olsen). It was on January 28th’s Move-In Day that
shields became a common sight at Occupy marches. This was after months of police
operations where these munitions had resulted in countless severe, sometimes critical,
injuries. Yet it was these shields, not the police munitions they sought to defend against,
that came to be discursively transformed into “tools of violence,” alleged to reflect a desire
to engage in “battle” with police. While OPD was left to freely deploy “less lethal”
munitions during political demonstrations (albeit admonished to do so in a more “targeted”
manner), the Public Safety Committee of Oakland’s City Council sought to disarm
protestors of the shields with which they attempted to defend themselves from that police
violence. Such a gross irony only makes sense within the terms of the state’s neoliberal
discourse. When “violence” is conflated with targeted property destruction, deploying
police force in response, even when it causes injury to human beings, is rendered justified.

If passed, City Council’s proposed ordinance would have two major impacts. First, it
would significantly expand OPD’s realm of enforcement at protests by rendering
possession of a whole range of items (including a can of spray paint or a wrench) a
criminal offense. But the even more crucial issue is that it would pre-emptively constitute
this new criminal offense. There is nothing inherently criminal about possession of a can of
spray paint or a wrench. But possession of such items by someone engaged in political
protest would now be rendered a criminal act. Why? Not because they actually committed
any criminal act like graffiti or vandalism, but because they exhibited the “risk” of doing
so. The pre-emptive logic of the ordinance is to criminalize the very possession of these
“tools” as a means of deterring that potential “violence” or vandalism. The ordinance seeks
to empower police to identify, target and neutralize such threats before they come to fruition. In other words, “deterrence” necessitates pre-emptive criminalization. In Kernigan’s KPFA debate, the interviewer succinctly captures this dynamic when he asks: “Isn’t the city’s job to punish people after they’ve broken the law, not before?” Kernigan dodges the question by vaguely responding that the ordinance places “reasonable time, place and manner” restrictions on free speech.669

City Council’s proposed ordinance reflects a final evolution of Pre-emptive Neutralization that fundamentally distinguishes it from the state’s earlier pre-emptive advances. Those previous initiatives involved forms of pre-emptively executed enforcement, i.e. targeting those who exhibited the “risk” of “violence” prior to their ability to actually undertake that violence. But this ordinance proposed to criminalize that “risk” itself. The ordinance does not criminalize the “violence” it seeks to “deter” – the act of graffiti or the breaking of a window. These are already well established criminal offenses for which police have every authority to arrest. Nor does the ordinance merely direct OPD to enforce against these offenses with “zero tolerance” (as the earlier proposed City Council ordinance sought to achieve). It no longer just authorizes police to target those exhibiting “risk” – it renders that “risk” itself as a crime. It criminalizes “risk”. This marks a shift from a strategy of pre-emptive targeting (pre-emptively executing enforcement action) to one of pre-emptive criminalization (pre-emptively constituting the criminal offense that serves as the basis of enforcement action). In other words, it criminalizes the very potential of resistance.

The proposed ordinance never even reached a vote in City Council. The Public Safety Committee meeting during which it was scheduled for a vote was flooded by Occupiers and had to be abruptly brought to a close after hours of increasingly heated debate and disruption.670 The proposal was then fully withdrawn by its sponsors when Occupiers organized a march on Councilmember Kernigan’s home. She later relayed to reporters that she had abandoned the ordinance because she "made a judgment call that the need for it did not outweigh the fact that it seemed to be galvanizing the Occupy movement."671

While the movement had indeed been sufficiently galvanized to mobilize a challenge to the proposed ordinance, it would not be the last time this effort to authorize the pre-emptive criminalization of protestors would rear its head. A little over a year later, on July 30, 2013, a virtually identical proposal was submitted by Councilmember Noel Gallo. One of the very few changes in the proposed ordinance was its title, perhaps reflecting Councilmember Kernigan’s reluctant admission that her earlier proposal conflated “violence” with vandalism. While the earlier version was entitled “Ordinance Prohibiting the Possession of the Tools of Violence During a Demonstration,” the new one was revised as “Ordinance Prohibiting the Possession of the Tools of Violence and Vandalism During a Demonstration.” [Emphasis is mine.] Beyond this minor revision, there was very little that distinguished the proposed ordinance from its predecessor – except the fact that it was immediately passed in a 5-0 vote (only one councilmember abstained and two were absent).672

What factors enabled the swift and unchallenged passage of this ordinance in 2013 when it had galvanized such resistance just a year earlier? One reason is that there was no challenge posed by Occupy Oakland this time around, and this was the case because there
was no longer much “Occupy Oakland” to speak of. Although various forms of organizing and resistance continued, and by many of the same people, they were more decentralized and decreasingly under the rubric of the “Occupy” movement. Nearly two years of state attacks had thoroughly stomped out the movement, leaving many of its participants struggling to restore their lives.

A second factor was that another resistance movement had once again resurfaced in Oakland – a longstanding struggle against the racism of the criminal justice system and the larger police state. In July of 2013, the streets of Oakland erupted in rebellion in response to the acquittal of George Zimmerman for the murder of an unarmed Black teenager, Trayvon Martin. For several consecutive nights, protestors filled the streets, blocked freeways and engaged in widespread disruption. There was also substantial targeted property destruction (mostly smashed bank windows and political graffiti). The Trayvon Martin protests witnessed a shift in state discursive strategy back to the racialized language of “riots”. In contrast to the state’s presentation of Occupy Oakland, which generally hinged upon the character of the (White) “outside agitator,” there was now a return of the (Black) opportunistic “rioter”. Yet, just as in the case of the Oscar Grant Rebellions in 2009, there continued to be the suggestion that this “rioter” was being “incited” by “violent anarchists” and other “outside agitators”.

City officials denounced the rebellions in Oakland, calling for OPD to put an end to the senseless “violence”. This context provided the perfect political opportunity for re-introducing the “tools of violence” ordinance. The proposal for the ordinance begins by proclaiming, “[t]his behavior is unacceptable and needs to stop. There have been demonstrations all over the country in response to the verdict in the George Zimmerman case yet no other city has experienced the level of violence and destruction that we have experienced here in Oakland.” The ordinance hinged upon the same pre-emptive strategy for “detering” this “violence” as the earlier version. The new sponsor Councilmember Gallo relayed to reporters, “I want to give our Police Department the tools it needs to stop violence before it happens instead of waiting until afterward, when it’s too late. We have to be proactive.” He reassured reporters that police were able to recognize “who’s about to do something different” then “peacefully protest.”

But there was one single factor that played the greatest role in facilitating the passage of this ordinance in 2013 – the highly publicized injuring of Drew Cribley, a White employee at an upscale restaurant in Oakland. Cribley was struck in the cheekbone with a hammer during an altercation that occurred on July 15th, the third night of rebellion in Oakland after the Zimmerman verdict. Protestors had engaged in substantial property destruction, mostly targeted at banks and gentrifying businesses in the newly developed “Uptown” district, including Flora, the restaurant where Cribley worked. At the very time of the altercation, there was a benefit event at Flora, attended by Phil Tagami and other real estate developers, to raise money for Oakland businesses who had incurred vandalism during the previous two days.

According to media accounts, what transpired that evening was that Cribley, frustrated with the “senseless” destruction of the previous two days (which he argued “took away
from the [protestors’] message”), courageously stood in front of Flora to defend it from approaching “rioters”. When he witnessed someone attempting to break a window with a hammer, he told them to stop, for which he was rewarded with a hammer strike to the face. Media reported that he suffered “three cuts on the left side of his face, a black eye and a swollen cheek.” Cribley was quoted as attributing the relatively minor nature of the injuries to the fact that he was wearing glasses, which he said absorbed some of the shock and “possibly saved his life.” Media coverage of this incident was extensive, spectacular, and completely overshadowed coverage of the protests themselves or the issues they were raising. Local news stations jockeyed for interviews with Cribley, and an online fundraiser for his medical expenses was immediately flooded. Even Cribley’s rock band saw a drastic boost in popularity, which they quickly capitalized on with a sold out local show. To put it crudely, Drew Cribley became the poster child for a new articulation of “Stand for Oakland.” He became the epitomizing face of the victim of the “senseless riots” – one whose courageous stand served to galvanize massive public support for a crackdown on protestors in Oakland. He also represented the very first allegation of protestors violence that actually involved harm to human beings. While state discourse had long droned on about “violence” as it pertained to property, it was the human face of a victim that captured public attention.

However, many witnesses at the scene tell a strikingly different version of this story. In their accounts, as the march passed through the “Uptown” district that evening, there were many, mostly White, men standing guard in front of businesses with bats or other weapons. Cribley and another man stood armed with a bat in front of Flora. These witnesses confirm that a protestor was attempting to smash a window, but they also assert that it was Cribley and the other man who attacked him, one grabbing him, the other raising his bat. In these accounts, it is at this point that the protestor swings the hammer in defense and runs away. While the media story portrays Cribley as a hero, in these accounts he figures as a vigilante, threatening and then actually engaging in violence in order to defend (his boss’) private property.

The contrast between these two understandings of the Drew Cribley incident is stark. Much of public opinion was shaped by the media presentation of Cribley as a hometown hero who was taking a stand against “violent” “rioters” (who were once again presented as being incited by “outside agitators”). But within activist communities in Oakland, the incident was perceived as epitomizing the racism and violence of gentrification. Flora is an expensive upscale restaurant that has flourished through the gentrification of what is now called the “Uptown” district in Oakland. It caters to relatively affluent, primarily White, customers who have recently arrived on this gentrification wave. In contrast, a large portion of the people protesting in the streets of Oakland following the Zimmerman verdict were Black and Brown youth whose families were being increasingly dispossessed by this wave of gentrification. And there was no greater epitomization of the violence of gentrification than the fact that Cribley and others like him felt authorized (and in no way punishable) to publicly arm themselves with bats and target violence, meaning actual physical harm, at youth engaged in property damage. Nothing reveals the nature of a police state like the vigilantism it breeds. It is the hammer striking the window that is rendered a tool of “violence”, not the bat that strikes human beings in defense of that window. Within the neoliberal logic that orients gentrification and every other form dispossession,
“violence” refers to threats to property. It is the window of Flora that must be defended from “violence”. When “violence” is conflated with property destruction, deploying force in response (even if it involves vigilantes with bats), is rendered justified, even heroic. This is the same logic that acquitted George Zimmerman for killing young Trayvon Martin – after all, his vigilante violence was justified as a defense of his gated community. And this is why the acquittal of Zimmerman touched such a nerve in gentrifying Oakland where youth of color are increasingly policed in order to provide “security” for the gentrification project. It is only within the terms of this racist neoliberal logic that Drew Cribley can be rendered a hometown hero who took a courageous stand against the “outside agitated” “violence” of the Black and Brown youth of Oakland.

City officials thoroughly exploited the incident. Councilmember Gallo re-submitted the “tools of violence” ordinance just two weeks later. Cribley himself publicly supported the ordinance, telling reporters “I think the only people who should have hammers in Oakland right now are the ones boarding up the buildings” (a reference to the windows smashed during the protests). The ordinance passed immediately, without a single vote of opposition. No one would dream of challenging an ordinance that sought to empower police to arrest hammer swinging protestors before they could do the kind of “violence” suffered by Cribley. The ordinance went through its final passage into law on September 17th, 2013.

The passage of the “tools of violence” ordinance represents a final evolution towards Pre-emptive Neutralization. While earlier strategies involved the pre-emptive targeting of those engaged in political resistance, this ordinance authorized their pre-emptive criminalization. In other words, the ordinance represents the legal codification of pre-emption. While it may seem an overreaction to be concerned with the criminalization of individuals armed with hammers at protests, we must remember that these developments always begin in such minor ways. Recall that the process of transforming the tactic of occupation from a First Amendment protected form of assembly into the criminal act of “lodging”, “trespassing”, and even “burglary” began with the targeting of “structures”. And while forcing Occupiers to relinquish their tents may have seemed reasonable (just another minor “time, place and manner” constraint), this quickly morphed into the policing of tables, umbrellas, yoga mats and blankets. And enforcement against these “structures” resulted in dozens of arrests, numerous prosecutions and a general terror that thoroughly banished anyone seeking to be political in this “town square”. Criminalizing “structures” soon developed into a thorough criminalization of political activity in front of Oakland’s City Hall. Similarly, criminalizing “tools of violence” represents just an initial step in the incremental criminalization of resistance.
Conclusion: THE PARASITIC DYNAMISM OF STATE POWER AND RESISTANCE

This dissertation aims to expand and develop our understanding of the contemporary state strategies targeting social movements. One of its objectives is to contribute to academic scholarship by encouraging a reassessment of how we conceptualize the “political repression” targeting movements. State power is a strategy or relation of force that can take various forms and is deployed by a wide range of agents. Collapsing those strategies under the rubric of “political repression” obscures that variation. This research identifies three strategic repertoires: Naked Coercion, Targeted Repression and Pre-emptive Neutralization. Each reflects a distinct form of state power: coercion; repression; and pre-emption. The failure to theoretical disentangle these strategies has obstructed our ability to adequately understand how state power targets social movements in the contemporary period.

Pre-emption fundamentally differs from earlier strategies of coercion or repression. Foucault has illustrated the difference between coercion (what he calls “Sovereign Power”) and repression (“Disciplinary Power”), arguing that the later introduced an entirely new “economy of power” that was fundamentally different in its nature, scale and operation. The same analysis needs to be applied to the emergence of pre-emption. Collapsing pre-emption under the rubric of “political repression” obscures fundamental differences. The state strategies facing social movements today don’t simply seek to repress, but to pre-empt the very risk of resistance. And this necessitates a strategy of power that is radically different in its nature, scale and operation. It necessitates a strategy of incapacitation rather than discipline, and it requires that that strategy be targeted at entire populations. It necessitates targeting not just individuals who deviate from norms, but entire populations who exhibit the “risk” of doing so. Strategies evolve from those that seek to preventatively repress and discipline to those that are not satisfied until they neutralize, incapacitate and thoroughly pre-empt.

Secondly, this also dissertation seeks to contribute to a rethinking of strategy within social movements. What can be drawn strategically from the conclusions of this research? Most crucially, it highlights the problematic nature of relying upon a strategy of spectacularization. This applies not only to the predominate strategy of “nonviolence”, but also to insurrectionary approaches that share the underlying assumption that it is possible to provoke spectacles of state violence that will provoke outrage sufficient to rouse people to action. The case of Occupy Oakland illustrates that luring out even the most visible spectacles of police violence generally fails to incite action, nor even any real outrage. Social movements are faced with the contemporary outcome of a long iterative process of state strategic adaptation; state strategies have learned the lesson of the “backlash of repression” and have evolved to bypass that danger. Coercion and repression may result in advantageous backlashes, but pre-emption rarely does. A strategy that continues to wait for the political opportunity of “repressive backlash” proves increasingly futile in the contemporary period of pre-emption.
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<td>Results in backlash that paralyzes and fragments state and creates window of opportunity that serves as advantage for movement</td>
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