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How Occupy Boston ended more or less amicably

A lawyer for a nonprofit organization that manages the land where Occupy Boston camped out was part of the legal behind-the-scenes wrangling that led to a Dec. 7 court order denying the protesters' bid to stay.

Sheri Qualters

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A lawyer for a nonprofit organization that manages the land where Occupy Boston camped out was part of the legal behind-the-scenes wrangling that led to a Dec. 7 court order denying the protesters' bid to stay.

A peaceful end to the encampment followed the order. Police arrested just 46 remaining Occupy protesters early on Dec. 10, according to the Associated Press.

Len Freiman, a partner at Boston's Goulston & Storrs who represented the Rose Fitzgerald Kennedy Greenway Conservancy, joined the plaintiffs' and city's lawyers in the relatively relaxed legal battle over the protesters' encampment rights.

The protesters occupied Dewey Square on Boston's Greenway, parkland owned by the Massachusetts Department of Transportation and maintained and managed by the conservancy.

Goulston had represented the conservancy on more general matters, but was brought in as litigation counsel on Nov. 15, when Occupy Boston and four named plaintiffs filed in Suffolk County, Mass., Superior Court, Freiman said. The plaintiffs asked for a temporary restraining order and preliminary injunction that would allow them to stay in Dewey Square.

The conservancy's legal team worked with the city, but mounted its own legal case against the plaintiffs' request during the Nov. 16 hearing. Superior Court Justice Frances McIntyre partially granted the restraining order on Nov. 17. Freiman and his team also represented the conservancy during the Dec. 1 preliminary injunction hearing.

On Dec. 7, McIntyre vacated his order and denied the plaintiffs' preliminary injunction request.

The Conservancy had emphasized the prohibition in its guidelines against sleeping on the Greenway and that the park is closed from 11 p.m. to 7 a.m., Freiman said.

The argument was that while both the city and the conservancy respected the protesters' First Amendment rights "those provisions were reasonable time, place and manner limitations," Freiman said.

While the city emphasized health and safety concerns, the conservancy's main focus "was to be sure that the availability of the park for everyone and the preservation of resource issues were championed," he said.

"We each emphasized the respective issues we motioned and supported the other issues," Freiman said. "It made for a very good team approach to opposing the preliminary injunction motion."

"From a legal perspective, it was a time, place and manner case," said Michael Ricciuti, a partner in K&L Gates' Boston office, who said the city hired him following the first hearing. Ricciuti was the city's lead counsel during the preliminary injunction hearing.

"It was all about the facts, but the city gave the occupiers a very wide berth," Ricciuti said.

The conservancy provided a valuable perspective in the dispute, which "was resolved by and large in court and with argument," Ricciuti said.

"The lawyers' responsibility was to help the judge to get to the right result, and the protesters respected that," Ricciuti said.

Howard Cooper, a partner at Boston's Todd & Weld and one of the plaintiffs' lawyers, said the conservancy "deserves credit for initially recognizing the protesters' rights to assembly and free speech, and making a public statement early on that Occupy Boston was indeed an extraordinary event that would not be moved so long as the status quo was maintained."

Although the conservancy later changed its mind and argued in court against the protesters' rights to remain in Dewey Square, Cooper said he has "enormous respect for the professionalism" of all the defendants' lawyers.

Ultimately, the protesters deserve the credit for the peaceful end to their protest, Cooper said.

Following the Dec. 7 ruling, they "had a night of celebration attended by hundreds of people, and then for the most part voluntarily ended the encampment with the intent of continuing their movement without it."

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