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# THE VERDICT

Amity Paye

## Guilty

Occupy Wall Street Activist Cecily McMillan Faces Years in Prison

Occupy Wall Street activist Cecily McMillan has been in and out of court for the past two years. On Monday, she became one of the first Occupy protesters to face serious jail time when jurors found her guilty of second-degree assault, which could carry a seven-year sentence.

McMillan was arrested on March 17, 2012, as she left Zuccotti Park during a protest to celebrate the six-month anniversary of OWS. She was one of about seventy arrested that night, most of whom have had their charges dropped. But while McMillan has been found guilty of assaulting NYPD officer Grantley Bovell, she maintains that she reacted instinctively, elbowing Bovell in the face after her breast was grabbed during her arrest. During the incident she was beaten and suffered a seizure before being hospitalized for cuts and bruises on her back, shoulders, head, and breast.

On Monday, May 5, McMillan was sent directly to Rikers Island until May 19, when she will receive her final sentencing.

"Cecily has been found guilty. 6pm solidarity rally at Liberty Square. No JUSTICE? No PEACE! #Justice4Cecily," read the text message sent out to hundreds of Occupy supporters and activists by the OWS communications team.

McMillan's supporters rallied immediately outside the courthouse after her guilty verdict was announced and headed to Zuccotti. At the rally, more than fifty protesters chanted, "Prosecute the cops for sexual assault," and held a speak-out. Others wore cut-outs of pink handprints, which were banned from court, symbolizing McMillan's assault, and chalked statements on the cement that read, "Warning: NYPD may sexually assault you in this park."

"Everyone is quite upset and I think some of us are quite surprised but most of us are not surprised at the verdict.... It's a legal travesty but I am not shocked," said Yoni Miller, a member of the #JusticeforCecily Team, a group of Occupy veterans organizing to help support McMillan.

McMillan's trial was long and drawn out. After more than two years, proceedings were postponed yet again on April 7 because of issues with jury selection. While activists argued over who should be tried in the first place (Cecily or Officer Bovell), Judge Ronald Zweibel repeatedly ruled against the inclusion in court proceedings of the larger context of OWS police violence.

"It has been clear from day one that Cecily has not received a fair and open trial. The job of a judge during a jury trial isn't to guide the verdict to fit his opinion. Judge Zweibel, who consistently suppressed evidence, has demonstrated his clear bias by consistently siding with the

prosecution," wrote the #Justice4Cecily Team in a statement Monday.

"It's been something like over forty times that she's been in court about this trial," said Stan Williams, a member of the #JusticeforCecily Team. "We have been always waiting and that's a big stress."

However, while the verdict may not have been a surprise, the outcome still breaks with the trend of Occupy cases in New York. Occupy activist Shawn Schrader, who was also hospitalized on the same night as McMillan's incident, won an \$82,500 settlement against the NYPD in December. In March, another Occupy activist, Michael Primo, was found not guilty of assaulting an officer after his lawyers were able to prove, using video of his arrest, that the NYPD had fabricated information about the incident. Around the country Occupy protesters have similarly been found not guilty, had cases dismissed, or received large settlements from their arresting police force.

McMillan's guilty verdict puts her in a tiny group of Occupy protesters actually jailed after their arrests. One other example is Mark Adams, an activist who has been called the "first political prisoner" of the Occupy movement after serving twenty-nine days in jail on Rikers Island in 2012 for his involvement in a protest at New York's Duarte Square.

During the thirteen days that McMillan will spend at Rikers Island, her legal team will prepare her case for appeals. Members of the Justice for Cecily team have also begun to publicize McMillan's East Elmhurst address and urge her supporters to send her mail, which they will then forward to her at Rikers.

"Dearest comrades," wrote McMillan in her last public statement on February 9. "It is because of you that I will walk into that courtroom with my head held high; I am truly honored to stand beside you. Occupy."

[Adapted from "Guilty: Occupy Activist Cecily McMillan Now Faces up to 7 Years in Prison," published by the *Nation*, May 6, 2014.]

Chase Madar

## A TEST OF CIVIL LIBERTIES

McMillan was one of over 700 protesters arrested in the course of Occupy Wall Street's mass mobilization, which began with hopes of radical change and ended in an orgy of police misconduct. According to a scrupulously detailed report issued by the NYU School of Law and Fordham Law School (extracted below), the NYPD routinely wielded excessive force with batons, pepper spray, scooters, and horses to crush the

Cecily McMillan

## Statement from Rikers

May 9, 2014

**Good morning. I'm writing from the Rose M. Singer Correctional Facility, dorm 2 East B on Rikers Island—where I've been held for the past four days.**

**Admittedly I was shocked by the jury's verdict on Monday, but was not surprised by the events that followed. An overreaching prosecutor plus a biased judge logically adds up to my being remanded to Rikers.**

**I was prepared then, as I am now, to stand by my convictions and face the consequences of my actions—namely that of refusing to forsake my values and what I know to be true in exchange for my "freedom."**

**Packed into a room with forty-five other women, often restricted to my cot, I've had nothing but time to measure the strength of my beliefs alongside that ambiguous concept: "freedom." (I've come to the conclusion that it is far easier to weigh such tradeoffs from the comfort of one's own bed.)**

**At Rikers, the day begins with 4:30 AM breakfast. Milk cartons in hand, the women echo a common set of concerns—"can't reach my lawyer, my family won't speak to me, no commissary"—and I become painfully aware of how privileged I am despite what is supposed to be the great equalizing suffering of the prison experience.**

**Unlike my peers, I have a hell of a lawyer—Marty Stolar—who made the long journey to hold my hand and promise "I will not stop fighting for you." I also have a gifted team of friends and organizers—#Justice4Cecily—that continues to provide around-the-clock care and mobilize public support. Finally, I'm incredibly lucky to have a vast and very much alive movement at my side—sending me "Occupy Love" from across the world.**

**Despite how obscenely unbalanced our circumstances are, my newfound friends—who have quickly become my comrades—are outraged by my story and resolve to do their part to keep me out of prison. After lunch, they spend their free time writing letters to Justice Zweibel defending my character and pleading for leniency.**

**At 6 PM dinner, the cramped circle of ladies ask me "What exactly is social justice organizing?" Over the complex choreography of food trading I tell them about Democratic Socialist leader Eugene Victor Debs. How nearly 100 years ago he publicly criticized US involvement in WWI—in violation of the Wartime Sedition Act—and was sentenced to ten years in prison for exercising his constitutional right to free speech. "Sort of like that," I explain, "But he's way out of my league—he's my hero."**

**By lights out, a subtle peace has begun to wash over me. I page through a book stopping at Debs' speech to the Federal Court of Cleveland, Ohio. I read and reread, as if a personal mantra, these opening lines:**

Your honor, years ago I recognized my kinship with all living beings, and I made up my mind that I was not one bit better than the meanest on earth. I said it then, as I say it now, that while there is a lower class, I am in it, and while there is a criminal element I am of it, and while there is a soul in prison, I am not free.

**At the close of the night, I smile and shut my eyes. As I drift off, "Somehow," I think, "this is all part of the plan."**

nascent movement. And then there were the arrests, often arbitrary, gratuitous, and illegal, with most charges later dismissed. McMillan's was the last Occupy case to be tried, and the court's ruling provides a clear window into whether public assembly stays a basic right or becomes a criminal activity.

The freedom to assemble remains strong—as long as you're a single person holding up your sign on a highway embankment or some other lonely spot. But the right to engage in real public demonstrations has been effectively eviscerated by local ordinances and heavy-handed police

tactics like aggressive surveillance, "kettling" protestors with movable plastic barriers, arbitrary closures of public spaces, and the harassment and arrest of journalists who would tell the tale.

It's not exactly one of our sexier inalienable truths, the freedom to assemble. It was supposed to be a done deal, a ho-hum "first-generation right" clinched long ago in our society, threatened only in places like Ukraine or Thailand while Americans raced forward developing new "positive" rights like the right to water or internet access. But like other "negative" freedoms against

state interference—freedom of religion and freedom from warrantless and invasive searches—the right to assemble is being challenged at a time when thousands of Americans are taking to the streets.

As our rights melt away, we have taken some solace in the nasty responses to Pussy Riot’s punk-rock protests in Putin’s authoritarian state. At least we’re not like Russia, where free speech is policed and controlled by law.

But what might happen to a homegrown Pussy Riot in New York? If, say, a politically conscious hip-hop group plugged in their amps near the altar of Saint Patrick’s Cathedral in Midtown Manhattan, you can bet that misdemeanor trespassing would only be the beginning. Given that US police often have such an easy time padding their charges—remember Cecily McMillan—it’s conceivable that an American Pussy Riot could face resisting arrest and assaulting an officer as well. That’s two years in jail, which is the same as the sentence handed down to Pussy Riot’s Maria Alyokhina and Nadezhda Tolokonnikova.

For decades, any hint of a comparison between freedom-loving America and authoritarian Russia has been viewed as the whiny hyperbole. But anecdotes and hypotheticals aside, how do Russia and the US compare when it comes to that fundamental index of negative liberty? Namely, how many people does the state lock up?

The US has the highest incarceration rate in the world. In 2012, the incarceration rate in the United States (707 per 100,000) was about one and a half times that of Russia (472) and over triple the peak rate of the old East Germany (about 200). The incarceration rate for black men in the US is over five times higher than that of the Soviet Union at the height of the gulag. These are of course different societies with different histories—but the brute fact of our hyperincarceration cannot be explained away.

Our clearly enumerated rights are supposed to guarantee our freedom, but in a landscape of extreme inequality—economic, racial, and gender inequality—the letter of the law doesn’t always amount to much. Changing this socioeconomic landscape requires mass mobilization—often raucous, often messy, and utterly vital to the health of any real democracy. With this channel of political activity overpoliced to the point of blockage, the result is a positive feedback loop of rising inequality and eroding freedoms.

Can this circuit be broken? The trial of Cecily McMillan could end in a lengthy prison term or it could end in probation. But such cases matter not just for the defendants, and not even just for our freedoms as ends in themselves. They matter for the future of the good life in the United States.

[Adapted from “Cecily McMillan’s Occupy trial is a huge test of US civil liberties. Will they survive?,” published by the *Guardian*, February 13, 2014.]

Molly Knefel

## McMillan’s guilty verdict reveals our mass acceptance of police violence

The verdict in the biggest Occupy-related criminal case in New York City, that of Cecily McMillan, came down last Monday. As disturbing as it is that she was found guilty of felony assault against Officer Grantley Bovell, the circumstances of her trial reflect an even more disturbing reality—that of normalized police violence, disproportionately punitive sentences (McMillan faces seven years in prison), and a criminal penal system based on anything but justice. While this is nothing new for the over-policed communities of New York City, what happened to McMillan reveals just how powerful and unrestrained a massive police force can be in fighting back against the very people with who it is charged to protect.

The jury didn’t hear anything about the police violence that took place in Zuccotti Park that night. They didn’t hear about what happened there on November 15, 2011, when the park was first cleared. The violence experienced by Occupy protesters throughout its entirety was excluded from the courtroom. The narrative that the jury did hear was tightly controlled by what the judge allowed—and Judge Ronald Zweibel consistently ruled that any larger context of what was happening around McMillan at the time of the arrest (let alone Bovell’s own history of violence) was irrelevant to the scope of the trial.

In the trial, physical evidence was considered suspect but the testimony of the police was cast as infallible. Despite photographs of her bruised body, including her right breast, the prosecution cast doubt upon McMillan’s allegations of being injured by the police—all while Officer Bovell repeatedly identified the wrong eye when testifying as to how McMillan injured him. And not only was Officer Bovell’s documented history of violent behavior deemed irrelevant by the judge, but so were the allegations of his violent behavior that very same night.

To the jury, the hundreds of police batons, helmets, fists, and flex cuffs out on March 17 were invisible—rendering McMillan’s elbow the most powerful

# “Most just wanted her to do probation, maybe some community service. But now what I’m hearing is seven years in jail? That’s ludicrous. Even a year in jail is ridiculous.”

ANONYMOUS JUROR, SPOKEN TO JON SWAIN OF THE *GUARDIAN*

weapon on display in Zuccotti that night, at least insofar as the jury was concerned.

That hyper-selective retelling of events to the jury mirrored the broader popular narrative of OWS. The breathtaking violence displayed by the NYPD throughout Occupy Wall Street has not only been normalized, but entirely justified—so much so that it doesn’t even bear mentioning.

After the police cleared the park that night, many of the remaining protesters went on a spontaneous march, during which a group of officers slammed a street medic’s head into a glass door so hard the glass splintered. It is the only instance of which I know throughout New York City’s Occupy movement where a window was broken.

Still, it is the protesters who are remembered as destructive and chaotic. It is Cecily McMillan who went on trial for assault, not Bovell or any of his colleagues—despite the thousands of photographs and videos providing irrefutable evidence that protesters, journalists, and legal observers alike were shoved, punched, kicked, tackled, and beaten over the head. That mindset was on display during the jury selection process at McMillan’s trial, when juror after juror had to be dismissed because of outright

bias against the Occupy movement and any of its participants.

It’s impossible to understand the whole story by just looking at one picture, even if it’s of McMillan’s injuries. But in McMillan’s case, that is exactly what the jury was asked to do. They were presented a close-up of Cecily McMillan’s elbow, but not of Bovell, and asked to determine who was violent. The prosecutors and the judge prohibited them from zooming out.

This is, of course, how police brutality is presented to the public every day, if it is presented at all: an angry cop here, a controversial protester here, a police commissioner who says the violence of the NYPD is “old news.” It’s why #myNYPD shocked enough people to make the papers—because it wasn’t one bruised or broken civilian body or one cop with a documented history of violence. Instead, it was one after another after another, a collage that presented a more comprehensive picture—one of exceptionally unexceptional violence that most of America has already accepted.

[Adapted from “Cecily McMillan’s guilty verdict reveals our mass acceptance of police violence,” published by the *Guardian*, May 5, 2014.]



### ELBOWS: A PUNITIVE HISTORY

In **hockey**, elbowing someone will earn you between two and five minutes in the penalty box.

In **baseball**, throwing an elbow in order to be hit by a pitch may result in not getting awarded a free base.

In **football**, a player who correctly deploys an intentional elbow is often rewarded with many thousands of dollars. Done incorrectly, elbowing is punished by fifteen yards of field position.

In **basketball**, “throwing bows” counts as a foul.

In **soccer**, an intentional elbow given to an adversary may earn you a yellow or red card.

In **rugby**, an illicit elbow will cost you a penalty kick.

In **boxing**, elbowing may result in a warning, a point deduction, or disqualification by a referee.

In **Zuccotti Park** . . .

# THE TRIAL

Kathryn Funkhouser

## THE EDITOR IN THE COURTROOM

Pretend you have to choose a book: one is a lurid airport paperback written for people who don't like to read, the story of a bad girl getting taken down a peg; the other is missing half its pages and it has a lot of footnotes. You'd choose the first book, whatever its faults—you can't even tell what the second one's about.

This was essentially the choice presented to the jury of Cecily McMillan's trial by the rulings of Judge Ronald Zweibel. In a fair trial, the jury must consider two full texts and answer a reading comprehension question: In this case, is there any reasonable doubt that McMillan intentionally assaulted a police officer for the purpose of preventing him from performing his duties? But when the jury convicted McMillan on May 5, they had really been given only one side of the story.

McMillan was arrested on the night of March 17, 2012, which fell on both St. Patrick's Day and the six-month anniversary of the Occupy movement—a date that would also become known for the seventy-three arrests that occurred in Zuccotti Park that night. While the police were clearing the park of the throng of protesters, McMillan's elbow struck Officer Grantley Bovell's face. The defense argues that this event occurred when McMillan, exiting the park as directed, was suddenly grabbed from behind by her right breast. Her elbow then struck

Bovell when she startled, without intent to strike him or knowledge that he was a police officer. The prosecution claims that McMillan hit Bovell with her elbow without provocation while he was escorting her from the park. The fact that the blow was struck was never disputed; the question was whether the blow was provably an intentional assault of an officer.

Throughout the case, the prosecutor set out to distract the jury from the question at hand by discussing undocumented events, treating witnesses' opinions as fact and casting aspersions on McMillan's character. Judge Zweibel gave them free rein to do so, while consistently ruling key testimony and evidence for the defense inadmissible. This pattern was most clearly demonstrated in the court's treatment of evidentiary video footage. Several videos posted to YouTube show the crowd at Zuccotti Park from different angles on the night in question. However, the jury saw only a sliver of blurry footage. According to the defense, out of a ten-minute video of the events before and after McMillan's elbow struck Bovell's face, only fifty-two seconds was admitted into evidence. Zweibel's justification? At the beginning of this fifty-two-second section is the first frame in which Bovell says he can definitively identify himself.

It's particularly convenient for Bovell that none of the contextual footage was shown. Another piece of his testimony was directly contradicted by the melee shown at the beginning of the video, in which another officer shoves a protester and announces through a bullhorn, "Leave the park or you will be arrested." Bovell testified that there was an announcement that the park was being temporarily cleared for routine cleaning, at which point the belligerent protesters suddenly began to cause trouble for the polite

police force. In the full video, the violence with which the police are shown to interact with unresistant protesters is key to understanding the events of that night. But the judge ruled this footage inadmissible because Bovell's memory, which proved extremely selective under cross-examination, conveniently didn't coincide with it. One of the jurors anonymously told the *Guardian* it was this fifty-two-second clip, taken out of context, that led the jury to its guilty verdict.

Another short clip was only allowed without sound—this one shows McMillan convulsing on the ground after her arrest. In that audio, jurors would have heard voices in the crowd shout at the police officers to help McMillan, which provides important context to the officers' motionless observation of her body. If McMillan were faking distress, as the prosecution alleged, it certainly fooled many of those present. Had audio been admitted, the prosecution would have been free to argue that the crowd's assessment was incorrect, but when the audio of the footage was ruled to be prejudicial, the ruling seemed calculated to bolster the prosecution's narrative. The police officer's casual reactions were there for the jury to note, but not the reactions of the civilians. Zweibel, through his selective admittance of clips, looked increasingly like an editor of those YouTube parodies of movie trailers in which *The Shining* is edited to look like a family comedy, or *Mary Poppins* is recut as a horror film. The prosecution became the director dictating a vision for the story, and Zweibel acted as the editor, selecting footage to tell the tale.

Throughout the trial, the courtroom rang out with objection, but the judge's rulings fell overwhelmingly in favor of the prosecution. Zweibel sustained so many of the prosecution's objections that several times he said "sustained" before Assistant District Attorney Erin Choi could even say the word "objection". Some courtroom onlookers began placing bets on how many "sustains" for the prosecution Zweibel would pronounce. Drew Mitchell, a member of the group Justice For Cecily who attended the trial, was shaken by

the pronounced inequality of the judge's treatment of the two sides: "Every rule that could be enforced on the defense was enforced. The prosecution had no rules."

McMillan's character and history were not only scrutinized but mocked. When defense witness Yoni Miller described McMillan's reputation in Occupy forums as the "queen of nonviolence," ADA Choi cried, "She is a fraud!" When Miller described seeing McMillan convulsing unaided on the pavement, Choi flailed her arms and hips in an exaggerated, ridiculous fashion, archly asking if her imitation of a seizure resembled McMillan's. The prosecution's portrait of this accomplished young activist, says Shay Horse, one of her supporters, is that of "a publicity-crazed millennial," an image that dovetails with their claim that McMillan hit Bovell for attention from the cameras. In her closing arguments, Choi extended her jeering tone to general statements about assault and those who are assaulted. She said that Bovell would have had to have iron hands to leave a bruise through clothes. Tim Eastman, who attended the closing arguments, tweeted: "Pros[ecutor] says Cecily is 'not shy' and therefore 'would not have trouble reporting sexual assault.'"

While the prosecution took copious liberties in their depiction of McMillan, any attempt by the defense to question Bovell's testimony or bring up his record was quickly shut down by Choi and Zweibel. Although Bovell's involvement in the Bronx ticket-fixing scandal was discussed, the defense was prevented from addressing other, violent parts of his record. In 2010, he was involved in a lawsuit against the NYPD for his participation in an incident in which NYPD officers ran off the road a teenage boy on a dirt bike. In 2009, he kicked in the face a suspect lying on the ground. He allegedly assaulted Occupy protester Austin Guest on the same day as McMillan's arrest. These episodes were not permitted to be entered into evidence. When Stolar explained to Zweibel that he had two eyewitnesses (uninvolved in the pending lawsuit against Bovell) who saw Bovell and a second officer lift Guest and slam him head first into each row of seats

## WE THE JURY

May 16, 2014

From: The jurors on the Cecily McMillan case

To: Judge Ronald Zweibel

Re: Petition to the court for leniency on sentencing

Dear Judge Zweibel:

We the jury petition the court for leniency in the sentencing of Cecily McMillan. We would ask the court to consider probation with community service. We feel that the felony mark on Cecily's record is punishment enough for this case and that it serves no purpose to Cecily or to society to incarcerate her for any amount of time. We also ask that you factor in your deliberation process that this request is coming from 9 of the 12 member jury.

Thank you in advance for your consideration in this matter.

Sincerely,

Charles Woodward  
Juror #2

Cc: All other jurors on this case  
Martin Stolar

David Segal

## On Jury Nullification

Since last year's tragic passing of Aaron Swartz, internet activist and my partner at Demand Progress, we've fielded countless questions about what conscientious people might do to reform the criminal justice process—one that has pursued the prominent prosecutions, and harsh sentencing, of hacktivists like Aaron, Weev, Barret Brown, Matthew Keys, and Jeremy Hammond; activists like Cecily McMillan; and, of course, untold thousands whose names never make headlines.

We think there's an answer: jury nullification.

What is jury nullification? By law, jurors have the right to vote against conviction not only if there is doubt about the defendant's guilt, but also if they believe the statute on which the prosecution is predicated is unjust, or has been unjustly applied.

Jury nullification has a storied history of use in service of the common good: to protect those found in violation of the Fugitive Slave Act for

on the bus used to transport prisoners to court, the judge exclaimed, “He must have been resisting!” and called the allegations hearsay.

Concrete evidence supporting the defense’s argument was consistently rejected in favor of the suppositions of the prosecution, whose arguments were often based on a lack of evidence instead of its presence. For example, while there is photographic evidence of McMillan’s bruises, coinciding with her story that her breast was grabbed, the prosecution was permitted to speculate that they were self-inflicted. Their alternate story involves Bovell’s helping out a female officer at whom McMillan was cursing, though no one in the trial could determine this female officer’s identity or even if she exists. The prosecution’s claims that McMillan faked a seizure and had no bruises when she was admitted to the hospital are based on the lack of notes taken during her medical treatment.

And was she really unwell? Bovell testified that he told her, “If you can speak to me, you can breathe.” “What medical degrees do you hold?” asked the defense attorney, Martin Stolar. “Objection,” said the ADA flatly. “Sustained,” said the judge, sounding bored. Now he had decided he didn’t find speculation unacceptable.

In her closing argument, Choi scoffed contemptuously that McMillan’s story would be more believable if she claimed that “aliens came down that night and assaulted her.” Let us consider: according to the prosecution, it’s more believable that an activist whose reputation is founded on nonviolence would change her

plan to go out with friends on a holiday to pick a fight with a possibly fictional police officer, then exhort bystanders to film her elbowing another officer in the face, for attention. After her arrest, she goes on to elaborately fake a harrowing seizure, and at some point after her admission to the hospital self-mutilates in order to severely bruise her own breast for the purpose of framing Bovell. This is more believable?

This is more believable than the possibility that on a night when protesters were arrested in a manner that the *New York Times* described as “brutal and random,” an officer who once kicked a suspect in the face grabbed McMillan’s breast, in a way consistent with bruises that were entered into evidence, and she flailed out with her elbow in a startled reaction? More believable than the idea that an officer on probation for being implicated in a ticket-fixing scandal would need a justification for the bruises on his prisoner and his public indifference to her medical distress?

Ultimately, to Judge Zweibel and his court, it was more believable that this young woman is simply crazy than that this man could commit an act of sexual violence and lie about it, in a manner consistent with both his personal history and the culture of the institution that employs him. It’s not even a good story, but it had a hell of an editor. In a just system, editors don’t belong in courtrooms—and Cecily McMillan doesn’t belong in prison.

[Adapted from “Editors Don’t Belong in Courtrooms, and Cecily McMillan Doesn’t Belong in Prison,” published by the *Nation*, May 9, 2014.]

helping slaves escape before the Civil War; to defend those prosecuted for supposedly seditious speech acts; and in a quiet way, even today, in communities oppressed by unjust drug laws and other perversions of our criminal justice system. Some argue against this tack because white racists have employed nullification to acquit perpetrators of hate crimes. This has undoubtedly happened, but the federal government may intervene in cases where racism has obviously determined a verdict. And one must ask whether crimes perpetrated by individual white racists, or a system of laws and policing that currently incarcerates more than one million people of color, is the more dangerous problem.

Jury nullification places the burden of action on the jurors instead of the vulnerable defendant. Michelle Alexander, a law professor and author of the influential book *The New Jim Crow*, has encouraged accused people to decline plea deals, which are core to our current system of overly punitive policing. About 95 percent of felony convictions are the result of plea bargains. She writes that “if everyone charged with crimes suddenly exercised his constitutional rights, there would not be enough judges, lawyers, or prison cells to deal with the ensuing tsunami of litigation.”

Alexander is absolutely correct, but her prescription forces the accused into a literal prisoner’s dilemma—each accused must believe that tens of thousands of other defendants are willing risk harsh sentences by going to trial. Mass juror nullification would produce the desired outcome that Alexander describes, while placing the onus primarily on the jurors, who have nothing to lose. Thus, while the first impulse of many people called to jury duty is to wriggle free, conscientious people should instead proactively strive to be empaneled (without perjuring themselves, of course) to undermine unjust prosecutions.

Were 6 percent of the population to commit to practicing jury nullification, more than half of twelve-person juries would include at least one potential nullificationist. The very reasonable chance that the accused would not be convicted would incentivize a decline in plea deals and a corresponding increase in jury trials, which could result in the resource strain and fundamental reorientation of the criminal justice system that Alexander seeks. Vote to acquit. Save a life.



MOLLY CRABAPPLE, “CECILY AND HER LAWYER” (DETAIL)

Maurice Isserman

## JURORS’ REMORSE

**On Saturday, May 3, my son and I took Cecily McMillan to lunch. Cecily, as is now widely known, is an Occupy Wall Street activist and the defendant for the past month in a criminal trial for allegedly assaulting a New York City police officer; she is also a graduate student at the New School and my thesis advisee. We talked about her trial and agreed that after her lawyer’s masterful summation of the case the day before, she was almost certain to be acquitted. The worst outcome she faced when the case went to the jury on Monday, May 5, we thought, was a hung jury.**

**We also discussed her future plans, which included moving back to her hometown of Atlanta and writing a book about her experiences with Occupy. On Sunday evening, May 4, she sent me an email asking for suggestions about what to say to the press the next day, following acquittal or dismissal of the case. In my reply I sent her the opening paragraph of the famous Eugene Debs statement to the court in 1918—“while there is a soul in prison, I am not free . . .”—and some generic remarks thanking her lawyers, supporters, and the jurors (the latter for “proving themselves able to think for themselves”).**

**The next day, May 5, after deliberating for less than three hours, the jury found Cecily guilty, and the judge remanded her to Riker’s Island to await sentencing on May 19.**

**How I got to be this old and yet remain so stupid is a question for another day.**

**How Cecily, twenty-five years old and facing the prospect of spending the next seven years in prison, was convicted on the basis of the flimsy case presented by the DA’s office is a more important question. The “central issue” in the trial, as the *New York Times* noted during jury selection in early April, “is who assaulted whom” in the midst of a police operation clearing Zuccotti Park, birthplace of Occupy Wall Street, on March 17, 2012:**

Prosecutors say Ms. McMillan wheeled around and elbowed Officer Grantley Bovell in the face while he was arresting her. Ms. McMillan says Officer Bovell grabbed her right breast from behind and she reacted instinctively, not knowing he was a police officer.

**She has published pictures, which she says were taken just after her arrest, of a dark bruise on her breast.**



Natasha Lennard

## IT'S THE COPS, STUPID

McMillan's conviction offers an unambiguous answer to that popular and rhetorical chant levied at police lines during Occupy protests: "Who do you protect? Who do you serve?" The court's reply is clear: systems of power and their NYPD guardians will be coddled with impunity, while protesters will be beaten, broken, and jailed.

For two years, McMillan has lived with the weight on her shoulders of a potential prison sentence. She has intimated to me that her ordeal has left her psychologically depleted; she is regularly close to tears. No one would instinctively regard this young white woman as an archetypal victim of police abuse and legal persecution. McMillan herself admitted as much to TruthDig when she recently commented, "People of color, people who are poor . . . do not have a chance for justice. Those people have no choice but to plea out. They can never win in court. I can fight it. This makes me a very privileged person."

Many have suffered more than McMillan at the hands of aggressive policing and protracted legal processing. Yet her case remains significant. McMillan's Occupy persona—that of the liberal Democrat pushing for representative politics and party-building organization—sat at stark odds with some of Occupy's (and my own) more radical desires for a chaotic, unforecasted space of

ongoing dissent, occupation, and street action.

However, the arc of her case is representative of Occupy's downfall. Critics may have pointed fingers at activists' failures, sidestepping the real locomotive force behind Occupy's dismantling: it's the cops, stupid. McMillan has also been emotionally broken by the police and a legal system that's inclined to give officers (even those like Bovell with a history of excessive force allegations) the benefit of the doubt.

Her case has highlighted a structural problem propping up US criminal justice. It's the same issue tragically brought to light by late technologist Aaron Swartz's case. Namely, that the cards are ever stacked against the defendant while the prosecution is laden with leverage. In choosing to go to court, as opposed to settle and fallaciously admit guilt, McMillan risked up to seven years in prison. Swartz too refused to settle and accept the designation "felon," and consequently faced possible decades in prison. The twenty-six year old chose suicide instead. McMillan chose to fight in court. She has been punished with a guilty verdict, denial of bail, and the promise of jail.

The toll of protracted legal processes cannot be overestimated. Combined with draconian minimum sentencing laws, a vast amount of defendants in this country plea out, forgoing their day in court. "When one considers the fact that more than 95 percent of all criminal cases are resolved with guilty pleas, it is very clear that prosecutors control the criminal justice system through their charging and plea bargaining

**Justice Ronald A. Zweibel, the presiding judge, would not allow the defense to introduce evidence from police internal files about other occasions when Officer Bovell used excessive force (he is currently facing a civil suit from another protester arrested the same night as Cecily). He did allow testimony establishing that Bovell was involved in a notorious ticket-fixing scandal in the Bronx, fixing parking tickets for himself, family members, and friends, with an official reprimand on his file. So the case came down to Officer Bovell's credibility versus that of the defendant.**

**Cecily's lawyer, Martin R. Stolar, attempted to persuade the jurors that Bovell's testimony had numerous internal contradictions. He pointed out, for example, that in the initial arrest report Bovell charged that Cecily attacked him while he was escorting another prisoner from the park. By the time the grand jury handed down its indictment, it was Cecily he was escorting when she attacked him. Bovell claimed that he first noticed Cecily when she was cursing at a female police officer, and that the female police officer was by his side when he was attacked. Why, then, Stolar asked the jurors, had the prosecution made no attempt to identify or produce the mystery female police officer—despite the fact that if they had, she could have provided corroborating evidence for Bovell's testimony? Other police officers who were present that night at Zuccotti Park testified regarding one or another aspect of the case, but not one of them, Stolar noted, witnessed the interaction between Cecily and Officer Bovell.**



MOLLY CRABAPPLE

powers," wrote American University law professor Angela Davis.

McMillan's trial began over two years after the incident for which she was charged. As she herself noted, she had the privilege and support to take her case to court. In a world different from this one, where justice is more than just a word, McMillan wouldn't be on trial at all—she'd be receiving settlement money

from the NYPD for an assault that was witnessed by dozens. But in this world, the justice system has rewarded McMillan with two exhausting and drawn out years and a felony conviction.

Like Occupy at large, and other movements in recent decades that have coalesced around dissent and challenged bastions of power, McMillan has been assailed and dragged

**There was one other piece of evidence against Cecily, a video taken by another protester of the events that led to her arrest. According to the prosecution, moments before assaulting Officer Bovell, Cecily called out to onlookers, "Is anyone filming this?" The prosecution argued that, in search of glory or excitement, she wanted a record made of her daring act of revolutionary bravado, or something like that. Her lawyer suggested a more plausible explanation—that she feared exactly what happened, a physical assault in which she was the victim, and hoped that a camera would provide a deterrent. If Cecily was contemplating committing a felony, he asked, why would she solicit a filmed record of her crime? In any event, as this account for the Village Voice suggests, the video evidence presented to the jury was less than compelling:**

[Assistant District Attorney Erin] Choi also attacked McMillan's claim that she was grabbed from behind by her right breast, and that that was the reason that her elbow flew up and hit [police officer Grantley] Bovell. "This defendant wants you to believe . . . she was grabbed by her right breast," the prosecutor said. "But this video is crystal clear."

She was referring to a blurry, chaotic YouTube video that does show McMillan elbowing the officer; the defense attorneys have argued it also shows a dark blur, possibly Bovell's arm, crossing McMillan's body in the moments before the attack. Choi's claim that the video was "crystal clear" prompted what sounded like shocked laughter from several

through the bureaucratic mud. While we await her sentencing hearing, this guilty verdict should resonate. Occupy's heyday is years behind us, but—as McMillan's verdict proves—the injustices that galvanized thousands to take to the street prevail. It's a chilling fact that even McMillan, the mildest and most moderate among us dissenters, will be denied her freedom.

[Adapted from "Cecily McMillan's Guilt: Injustice at Its Most Basic," published by *VICE*, May 5, 2014.]

Sarah Jaffe

## Post-Occupy, #myNYPD makes New York's Blood Boil

On Tuesday, April 22, the New York City Police Department had a very bad idea. Someone at the NYPD decided that the department could be doing better with its social media engagement and asked people to tweet photos of themselves with NYPD officers using the hashtag #myNYPD.

Perhaps predictably, the photos were not what they wanted. Activists quickly flooded the hashtag with photos of violent arrests, many of them from the days of Occupy Wall Street. The result was that the hashtag trended, with activists around the world joining in, prompting spinoff hashtags and even garnering the notice of the tabloids and the *New York Times*.

It seems the NYPD doesn't quite understand the depth of the city's anger toward the department, even with a new (well, new-old) commissioner under a

# WHOSE NYPD?

new mayor who ran a campaign against stop-and-frisk. Mayor Bill de Blasio even went so far as to declare: "Now that we've moved away from that broken policy, and we've settled the lawsuits, and we are changing the dynamics on the ground between police and community, I think the average officer's having a much better experience."

The average officer may be faring better, but a whole lot of New Yorkers out there still aren't.

On April 23, the day after #myNYPD hit Twitter, I spent the afternoon in a criminal courtroom in Lower Manhattan listening to some reasons why New Yorkers don't feel safer with police around. Cecily McMillan, a graduate student and Occupy Wall Street organizer, sat in the defendant's chair, scribbling notes to her attorneys on hot pink note-paper. McMillan was arrested on March 17, 2012—the six-month anniversary of Occupy—when Zuccotti Park was cleared of protesters who had briefly taken back the park late in the night.

I never met Cecily McMillan at Occupy Wall Street and I didn't meet her on Wednesday. I was unable to speak with McMillan's lawyers, who are under a gag order from the judge and prohibited from talking to reporters. Instead, I simply sat in the audience, one of many there to observe.

And I didn't see McMillan's arrest. But like many people who'd been around

Occupy Wall Street, I stopped by the park that night after drinks with friends in the area. The park was ringed with police, but for the time I was there, the atmosphere was celebratory if tense. Old friends chatted; bagpipers were playing. At one point a small handful of police officers charged into the park and pulled down a tarp draped between two trees, but there were no arrests, and after a while, I went home. Looking back at my Alternet report on the event, I note I told friends: "I just want to get out . . . before they stomp on someone again." The park was evicted of Occupiers while I was somewhere underground on a 2 train.

What happened after I left was captured on cell-phone video and livestreams. A video of McMillan apparently having a seizure after her struggle with the officer was disallowed from the courtroom the morning of April 23, according to *Wall Street Journal* reporter Nick Pinto, who's been covering the trial daily. But as the *New York Times* described the scene back in March 2012:

At one point, a woman who appeared to be suffering from seizures flopped on the ground in handcuffs as bystanders shouted for the police to remove the cuffs and provide medical attention. For several minutes

the woman lay on the ground as onlookers made increasingly agonized demands until an ambulance arrived and the woman was placed inside.

Also disallowed from the trial was Officer Bovell's record; he has faced prior allegations of brutality, and is currently being sued by another Occupier, Austin Guest, who says Bovell dragged him down the aisle of a bus while "intentionally banging his head on each seat." The NYPD has paid out thousands to settle claims by Occupiers. A joint report from NYU's Global Justice Clinic and Fordham's Walter Leitner International Human Rights Clinic found that the police's treatment of Occupy included "frequent alleged incidents of unnecessary and excessive police use of force against protesters, bystanders, journalists, and legal observers; constant obstructions of media freedoms, including arrests of journalists; unjustified and sometimes violent closure of public space, dispersal of peaceful assemblies, and corraling and trapping protesters en masse." Yet Cecily McMillan, not Officer Bovell, is on trial, and the judge ruled that the officer's record is irrelevant.

When testimony began at the trial that afternoon, Officer Linda Waring was on the stand. Waring took custody of McMillan after she was sent to the hospital, to jail, and eventually to Central Booking. McMillan's lawyer, Martin Stolar, asked Waring repeatedly whether she saw injuries to McMillan, what her complaints were at the hospital, how she reacted to the news that she was being charged with assaulting an officer. Waring responded that McMillan seemed surprised, that she didn't know why she'd be charged with such a thing. When Stolar asked her opinion of the Occupy protests, the judge disallowed every question except: "Were the protesters smelly?" and "Was it personal for you?"—to which Waring replied, "No, it's business."

What they don't tell you about court, what the courtroom dramas don't show, is how deadly boring it is. At one point during the testimony of the District Attorney's Office forensic video expert, explaining a video that allegedly depicts McMillan's altercation with Officer Bovell,

reporters in the front row. (A court security guard quickly rushed over and hushed them.)

**It should not be a good sign for the prosecution when journalists assigned to cover a case respond with open derision at a key piece of evidence like the blurred YouTube video. But the jurors bought it. Following the trial, one juror sought out a reporter from the Guardian newspaper (which consistently provided the best coverage of the case). He was motivated by the shock of learning that his vote for Cecily's guilt could lead to her spending the next seven years in prison:**

The juror confirmed [Cecily's lawyer] Stolar's fears. "For most of the jury, the video said it all," the juror said. The juror said that an immediate vote after the 12 were sent out for deliberation found they were split 9-3 in favour of convicting. After everyone watched the clip again in the jury room, the juror said, two of the three hold-outs switched to the majority, leaving only the juror who approached the Guardian in favour of acquitting the 25-year-old. Sensing "a losing battle," the juror agreed to join them in a unanimous verdict. "I'm very remorseful about it," the juror said a few hours later, having learned of McMillan's potential punishment.

**Reinforcing the ambiguous video evidence was the obvious and unrelenting hostility of the judge toward Cecily and her lawyers, the mild-mannered**

**demeanor displayed by Officer Bovell on the witness stand, and, possibly, an inclination on the part of individual jurors to take the word of uniformed authority over that of scruffy anti-establishment protesters. Not that Cecily presented herself that way in the courtroom, but it didn't help her when one "supporter," acting on his own, stood up in court mid-trial and began denouncing the proceedings as a typical example of capitalist injustice, etc. I think there was something else involved. Call it cognitive dissonance, for lack of a better term. The very aspect of the case that outraged Cecily's supporters the most—that she was the victim of a brutal sexual assault and wound up being tried as the aggressor—was too disturbing a reality for the jurors to come to grips with. Who wants to live in the kind of a society where that can happen? Better just to deny it, accept the official version, vote guilty—or risk being part of a "losing battle."**

**On a final note: the New York County District Attorney Cyrus Vance, Jr. (son of Jimmy Carter's Secretary of State) would not offer Cecily a misdemeanor plea. Remember that when he seeks higher office, as someone with his pedigree and position inevitably will.**

[Adapted from "The Disturbing Verdict Against Cecily McMillan," published by *Dissent*, May 8, 2014.]

## Cecily McMillan's case can't just be about her, about whether she's a nice girl or a pacifist or not. It has to be—as the #myNYPD hashtag reminded us with its seemingly endless stream of violent photographs—about a police force that has gotten away with too much for too long and has not changed nearly enough.

at least one juror appeared to actually fall asleep. And yet as you sit there, watching, listening to the same question being asked over and over, you remember that someone's life is on the line, that the third repetition of a blurry YouTube video from the night of March 17 could make the difference between conviction and acquittal. The video expert—in his three-piece suit and his smiles at the jury box, pointing at a green blur on a screen—becomes less boring when you remember that. You begin to sift through the hundreds of answers, looking for something that seems relevant. The fact that struck me was that the video was, according to the expert's testimony, downloaded from YouTube on the morning of March 18, 2012, just hours after McMillan's arrest. How quickly did the prosecution begin preparing its case? But those individual bits of information don't add up to anything on their own. You have to go every day for them to make a story, and even then you have to decide which bits fit into the story you believe is true.

Cecily McMillan's story fits into a bigger story about the NYPD and the city that I've been following for a while. Like many white women in New York, my first experience getting pushed around by the NYPD was at Occupy Wall Street. As a reporter, I would attempt to ask questions of officers and be rebuffed, sometimes physically; in a crowd, I looked like other protesters and was shoved around accordingly. I witnessed plenty of violent arrests, including those of friends and fellow reporters. I tweeted a few photos of those incidents on the #myNYPD hashtag. These days, protest arrests are scarce and attention has faded from the NYPD's repressive tactics; some seem to consider the matter of police abuses closed with the reforms passed by City Council and imposed by a court of law. Yet protest arrests have largely faded because Occupy no longer holds parks and takes streets—and out in residential neighborhoods, there are no livestreamers and few reporters. I rarely go a week without seeing police detaining someone, usually a young man of color.

Of course, it is important to cover Cecily McMillan's case, and to speak up for the rights of people everywhere to peaceably assemble in protest. It is equally important not to forget that there are people all over New York whose trials are not getting this kind of attention, or who do not go to trial at all because they have no help, no support, no one to stand by them while they refuse a plea bargain in an attempt to keep felony charges off their records. There were only two reporters who seemed to have stuck around for all of McMillan's multi-week trial. How many

reporters cover the courthouses for everyday arrests?

Cecily McMillan's case can't just be about her, about whether she's a nice girl or a pacifist or not. It has to be—as the #myNYPD hashtag reminded us with its seemingly endless stream of violent photographs—about a police force that has gotten away with too much for too long and has not changed nearly enough.

[Adapted from "Post-Occupy, #myNYPD Makes New York's Blood Boil," published by *In These Times*, April 25, 2014.]

**Mychal Denzel Smith**

## Not the first, Not the last

Cecily McMillan is the latest in a long line of victims, both known and unknown, of New York City's twisted interpretation of justice. In this world, police act with impunity, while the lives of the people living, working, and expressing themselves every day are condemned a second class citizenship that puts them at risk of prison or death for simply daring to exist.

**The number of people, particularly young men of color, the poor and homeless, sex workers, and trans and gender non-conforming folks, who are forced into interactions with this aggressively unhinged policing is unconscionable.**

Cecily is not the first to experience this type of injustice, and she unfortunately will not be the last. The number of people, particularly young men of color, the poor and homeless, sex workers, and trans and gender non-conforming folks, who are forced into interactions with this aggressively unhinged policing is unconscionable. Cecily's trial and impending punishment is the natural result of allowing the NYPD to act so brazenly above the law. Ask the families of Amadou Diallo, Sean Bell, and Ramarley Graham how this works.

"If you see something, say something," they tell us. What we see is police routinely harassing, beating, criminalizing, abusing, spying, torturing, molesting, and killing us. When the system has given them license to do so without consequence, who exactly are we supposed to tell?

*Jean Rice*

## CONCERNS ABOUT POLICING IN THE AGE OF DE BLASIO

We are waiting to see whether Police Commissioner William Bratton will resurrect Rudolph Giuliani's New York by subverting our new Community Safety Act, passed by City Council last summer to combat discriminatory policing. We will see whether Bratton's NYPD is left to run amok in our city's communities of color. Because my organization, *Picture the Homeless*, is not against the police, but for the constitutional rule of law, it is my greatest hope that Mayor de Blasio and his police commissioner will note that controlling NYC's population by arresting homeless people and people of color erodes the rule of law and widens the gulf between most New Yorkers and those we trust with law enforcement.

We have reasons to be skeptical: Bratton has held leadership positions within the NYPD previously,

and was a leading proponent of "broken windows" policing, which involved "cleaning up" the city by arresting homeless people and other vulnerable New Yorkers. The 14th amendment, guaranteeing equal protection under the law, was passed after the Civil War and must not be subverted today by discriminatory policing. It reads, "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the law."

To make that guarantee a reality, we need to pay strict attention as Mayor Bill de Blasio and Police Commissioner Bratton reconstruct our Civilian Complaint Review Board. If the Mayor selects two slots and his appointed police commissioner picks two slots, then the Review Board emerges as a stacked deck. I submit that this is a matter for our city council to consider.

## New Yorkers Against Bratton

# 100 DAYS OF BRATTON

In December 2013, New York City Mayor Bill de Blasio announced that Bill Bratton would return to the post of Police Commissioner of New York, a position he previously held under Mayor Giuliani. To some it signaled a hopeful change. New Yorkers had spoken out, Ray Kelly had stepped down, and stop-and-frisk was found unconstitutional for discriminating against minorities. But Bratton's record promised more of the same. In the mid-'90s, Bratton had been a strong advocate of the "broken windows" theory of policing, which holds that cracking down on petty, minor crimes—like breakdancing in the subway, busking, or riding a bike on the sidewalk—prevents the escalation of more serious crime. In March 2014, Bratton stated that broken windows policing would again be "a cornerstone" of police policy. In practice, broken windows, like stop-and-frisk, is a tactic that largely targets young people of color, immigrants, and the poor. To speak out against the continued abuses of the NYPD under Bratton, community members gathered to protest a police force that has been rebranded, but not reformed. —Eds.

**On Friday, April 11th, New Yorkers Against Bratton and Picture the Homeless hosted a community report and speakout marking the first one hundred**

*“Enough is enough. We don’t need bandages anymore. We need justice. We want to bring positive change. Not to combat the NYPD, but to condemn the cops that do wrong.”*

Kadiatou Diallo, mother of Amadou Diallo, who was unarmed and fired upon 41 times and killed by NYPD officers in 1999. May 9, 2014.

days of Bill Bratton’s second tenure at the NYPD. We were joined by activists and New Yorkers affected by Bratton’s most recent policing tactics outside of 1 Police Plaza to discuss the crackdown on low-level crimes in public transportation systems, attempts at coordinated sweeps of homeless New Yorkers, as well as Mayor Bill de Blasio’s “Vision Zero” initiative.

## Bratton’s Criminalization of the Homeless

The death of homeless veteran Jerome Murdough in his Rikers cell last month, after being arrested for sleeping in a public housing staircase, raises serious concerns about what Bratton’s “collaborative policing” actually means for vulnerable New Yorkers. The criminalization of the homeless and a propensity to arrest people for low-level crimes is a trademark of Bratton and of broken windows theory. Bratton announced homeless sweeps in February but cancelled them after homeless advocates and activists mobilized. His homeless crackdowns in the Skid Row section of Los Angeles, as well as the outcry from area activists and legal organizations, were rarely mentioned in his recent return to New York. What does his approach today mean for New York City?

## Bratton’s Police Crackdown in Public Transportation Systems

The increase of arrests of panhandlers, acrobats, and Mexican women selling “churros” in the subway system is classic Bratton. This tactic mirrors a crackdown that many have seen with regards to MTA buses, most evident in a recent incident involving a young black man arrested in the Bronx after being pulled off the bus by the NYPD. While Bratton touts official drops in stop-and-frisks, a crackdown on immigrants, the poor, and young people of color on subways and buses parallels the spirit (if not the exact policy) of racial profiling that a majority of New Yorkers rejected in both opinion polls and citywide elections.

## Bratton and De Blasio’s Vision Zero Initiative

After an incident in January involving an elderly Asian man left bloodied after being arrested for jaywalking, there are serious questions about what this broad strategy will mean for everyday New Yorkers. Expanding the power of police to now target New Yorkers for minor traffic offenses ignores the abuses of power revealed during the campaign to reform the NYPD’s Stop and Frisk policy. George Kelling, influential author and consultant to Bratton, has already linked Vision Zero with the broken windows theory that both he and Bratton helped popularize.

Broken windows-based policing disproportionately affects communities of color. And Bratton’s indications that he will “build on” and “continue” the same counterterrorism strategies as that of former Commissioner Ray Kelly suggest that surveillance of Muslim-Americans will continue. So as Bratton and de Blasio embark on policing practices that target large populations of New Yorkers, a continuation of policies that criminalize and surveil people of color point to an NYPD that has been rebranded—not reformed.



## Sarah Leonard iPresente!

As Mother’s Day weekend began on Friday, May 9, mothers whose sons have been killed by the NYPD gathered in front of the United States District Court in Foley Square. They came to support Constance Malcolm, the mother of Ramarley Graham, a teen killed two years ago in his own home in the Bronx by NYPD officer Richard Haste. Haste was never indicted, and Malcolm is calling for a federal investigation.

Kadiatou Diallo, mother of Amadou Diallo, was present—her unarmed son was shot nineteen times in 1999. With her stood Iris Baez, whose son Anthony died twenty years ago after being choked by police officer Francis Livoti. And there was the mother of Sean Bell, the young man who in 2006 was shot at by the NYPD fifty times and killed on the eve of his wedding.

Together, the assembled mourners and organizers read through a long list of victims of police brutality. After each name, the crowd shouted, “¡Presente!”, telling the mothers that their children were present, alive in the struggle for justice.

For Police Commissioner Bratton, there’s no justice left to be served. He told NY1, “I’m very comfortable that all of those cases are exhaustively investigated by us, by the appropriate district attorneys’ offices.” And further insults to these families seem never to cease. Last year sixteen-year-old Kimani Gray was shot and killed by Sgt. Mourad Mourad in East Flatbush. This week Mourad, who was never charged, was offered a “Cop of the Year” award from his fellow officers. He declined it, under pressure from the community.

### Presente:

In 2013, Kimani Gray was killed by the NYPD in East Flatbush, Brooklyn. Eyewitnesses reported that Gray was shot repeatedly while lying on the ground. Gray’s family has called for an investigation into the killing.

In June 2012, Shantel Davis was shot and killed point-blank after being dragged from her car by the NYPD in Brooklyn.

In April 2012, Tamon Robinson was hit by an NYPD car and killed in Brooklyn. The case is still awaiting presentation before a grand jury. The

NYPD claims Robinson ran into the car. Robinson’s mother was ordered to pay for the repairs.

In February 2012, an unarmed Ramarley Graham was chased into his house by and NYPD officer and shot and killed in front of his younger brother and grandmother.

In 2008, Iman Morales was killed when the NYPD shot him with a taser while he was on the ledge of his apartment building in Brooklyn.

In 2007, sixteen-year old Khil Coppin was shot twenty times by the NYPD and killed while holding a hair brush outside of his Brooklyn home.

In 2006, Sean Bell was killed by NYPD in Queens on the night before his wedding day. He was shot fifty times. Three of the five officers responsible went to trial on charges ranging from manslaughter to reckless endangerment. All were acquitted.

In 2004, unarmed nineteen-year old Timothy Stansbury was killed by the NYPD in Brooklyn. No one responsible was indicted.

In 2000, Malcom Ferguson was shot and killed by NYPD in the Bronx.

In 1999, Amadou Diallo was struck by nineteen of forty-one shots fired by four NYPD officers after they mistook his wallet for a gun. The four responsible officers were indicted on charges of second-degree murder and later acquitted.

In 1995, Anthony Rosario and Hilton Vega were shot twenty-two times and killed by the NYPD in the Bronx.

In 1994, Anthony Ramon Baez was killed by the NYPD in the Bronx. His killer received seven years in jail.

In 1994, Ernest Sayon was killed while in police custody in Staten Island. According to the *New York Times*, the “coroner’s report says that the cause of death was suffocation . . . while he lay in a prone position with his hands handcuffed behind his back.”



"There is no evidence that her injuries were caused by NYPD. We have no idea where they came from."

—ADA Choi, closing arguments via @shawncarrie

PHOTOGRAPHS BY STACY LANYON

THE GLOBAL JUSTICE CLINIC (NYU SCHOOL OF LAW) AND THE WALTER LEITNER INTERNATIONAL HUMAN RIGHTS CLINIC AT THE LEITNER CENTER FOR INTERNATIONAL LAW AND JUSTICE (FORDHAM LAW SCHOOL)

## Suppressing Protest

Human Rights Violations in the US Response to Occupy Wall Street [p. 74–75]

A significant number of incidents [of misconduct] were reported on March 17–18, during the six-month anniversary celebration of Occupy Wall Street. One journalist described the night as "the most violent police response" he had seen at an Occupy protest. According to witnesses and news reports, police moved into Zuccotti Park where protesters were peacefully assembling, ordered everyone to disperse, and sought to close the park. The reasons for the police action are unclear, but appear to be based either on the presence in the park of handheld tent "signs," or because a tarp was tied between two trees. There are no reports or indications of any imminent or ongoing criminal activity or danger to public safety posed by the assembly. According to reports, the police, in seeking to disperse the assembly, then used unnecessary force against those in and around the park, including those engaged in passive resistance, as well as those seeking to leave the park in accordance with the dispersal order. One protester alleged witnessing police punch a woman in the side of her head, and repeatedly shove protesters from behind. A journalist stated that he was shoved from behind, saw police shove "a lot of other people," "repeatedly shove a woman who was saying that she was leaving," "stomp" on and kick people, "punch people in the heads to get them to release [from nonviolent resistance]," and pick a girl up and throw her. Another independent journalist stated that she saw an arrested protester screaming that his thumb was broken, and that she also saw smudges all over his face, "like [his] face had been stepped on." One protester, recognizing an officer and approaching him to greet him, stated that the officer without warning shoved him hard twice in the chest. During a march after the park's closing, journalists reported that officers slammed an Occupy medic's head into a glass door, smashing the glass.

Stacy Lanyon

## PHOTOGRAPHS FROM MARCH 17

A call was made to leave the park. It wasn't the first time I had heard a call like that from the police, but there was something different about it, an ominous energy in the air. I could see the police building up on the east side of the park. I photographed the call close up, and then I photographed the police making their way toward the barricades to enter the park, and they were definitely on the offensive. It seemed like they were ready for a fight.

A number of protesters decided to lock arms and sit down in protest of the call to leave. By that time, what appeared to be an army of police officers in formation began to make their way into the park. It was the most frightening thing I've seen firsthand. We were under attack.

I attempted to photograph the area where the protesters were locking arms, and a group of officers began to walk toward me and tell me to move back to the west side of the park. I wasn't able to witness what was going on with the people locking arms, but I did hear it. They were the sounds of pain, anger, and horror.

Once I was pushed to the west side of the park, the police had made a circle around the park with their bodies to prevent people from re-entering the park. I made my way around their circle back to the east side of the park where I saw the group of people who

had been arrested handcuffed and in a pen on the sidewalk. Some were face down, some had their clothing torn.

I didn't notice Cecily until Officer Bovell attempted to have her stand in order to bring her to the bus. When he tried to lift her, it was clear that she was in distress and was unable to stand. He seemed very irritated with her and continued to grip her arms and try and force her to stand. While he was doing this, she looked like she was in utter pain. Her mouth was open as if she could have even been shrieking. There is even one photo where her feet are barely touching the ground. He eventually gives up and attempts to get her to sit back down on the sidewalk, and this moment looked even more painful to her. It appeared as if she wasn't even conscious enough to realize what was being done to her and how to move

He seemed very irritated with her and continued to grip her arms and try and force her to stand. While he was doing this, she looked like she was in utter pain.

her body in order to find a seat.

The next time I saw her was when she was lying in front of the bus having what appeared to be a seizure. While she was convulsing on the pavement, no one was attending to her, and she was left in her handcuffs for some time. The police eventually removed the handcuffs and moved her back to the sidewalk on the east side of the park. When there, I witnessed her coming in and out of consciousness. She'd come up—it



"You already know that this defendant is an actress. She told you about her theater background."

—ADA Choi, closing arguments, via @shawncarrie

appeared as though she was coughing or gasping for air—and then she would pass out onto the pavement again.

I remember holding my breath for her whenever she went down. When she was up, you knew she was OK at least for that moment. I remember being very shocked that an ambulance hadn't arrived. It seemed like forever, though I can't say exactly how long had passed since it began. I wasn't able to photograph the ambulance arriving or anything that came after because as we were behind the barricades photographing, an officer came up to us and told us we had to move back. Then, without even giving us a second to do so, he and another officer took the barricade and began to use it to force the crowd back. At the same time, one used his hand to push my shoulders and chest violently. There were a number of people behind me, so I wasn't able to move. I was stuck enduring the the force of the barricade against my stomach as I was squeezed against the people behind me and the violent shoves of the officer. I never had or thought I ever would be brutalized in such a way.

Susan Kang

## WITNESS FOR THE DEFENSE

I participated as a witness for the defense during Cecily's trial. I was one of the first people to see Cecily McMillan after her release, meeting her at an emergency room in Brooklyn, and later documented her injuries in her apartment—photographing dark bruises on her chest, ribs, back, arms, legs, and face. They clearly depicted that there were many dark bruises and injuries in multiple places on Cecily's body, including the bruise above her breast.

One of the main allegations of the Assistant Defense Attorney Choi was the audacious claim that Cecily had not been beaten by the Officer Bovell and fellow cops on M17, despite countless eye witness testimonies (and video footage) to the contrary. Rather, the ADA suggested that Cecily injured herself somehow, despite being handcuffed and under police custody until her release Monday evening. Because I had met her almost immediately after her release and then had photographed her injuries after we left the ER, I was convinced that my testimony would be helpful. The jury seemed responsive and sympathetic to my testimony, as Cecily's attorney questioned me about the

*Whether this reflected a deferential respect for law enforcement or a distrust for Occupy activists, it is discouraging that documented acts of violence against peaceful protestors was less sufficient and convincing to a citizen jury than a grainy, unclear video clip.*

many photographs depicting the injuries. I even successfully identified the dark bruise across Cecily's eye in her booking photos, a dark stripe that suggested a baton. The ADA didn't even try to question my credibility and testimony. (I am a professor at John Jay College of Criminal Justice).

I was shocked and saddened to hear about the jury's decision to ignore the overwhelming evidence of her injuries, her seizure, and her mistreatment by the cops

following her arrest, in favor of the insinuations and character assault suggested by ADA Choi. The jurors were convinced by several seconds of an edited video that did not clearly demonstrate anything at all. Whether this reflected a deferential respect for law enforcement or a distrust for Occupy activists, it is discouraging that documented acts of violence against peaceful protestors were less sufficient and convincing to a citizen jury than a grainy, unclear video clip.

## GET INVOLVED

**Cecily's sentencing date is May 19, 2014.** For regular updates and more information about actions leading up to Cecily's sentencing, visit [justice4cecily.com](http://justice4cecily.com).

**Write to Cecily:** Address the envelope with your name and return address to:

Cecily McMillan  
Book & Case Number 3101400431  
Rose M. Singer Center  
19-19 Hazen Street  
East Elmhurst, New York 11370

Do not include objects other than paper in the envelope, including glitter or things glued to the letter. Use paper, not cards. Write your name and the page number on every page, and use respectful language, because your letter will be taken out of the envelope and read prior to delivery.

**Organizations:** Communities United for Police Reform, Police Reform Organizing Project, Correctional Association, Audre Lorde Project, Silvia Rivera Law Project, Streetwise and Safe, FIERCE, Justice Now, Incite!, Critical Resistance, Black and Pink

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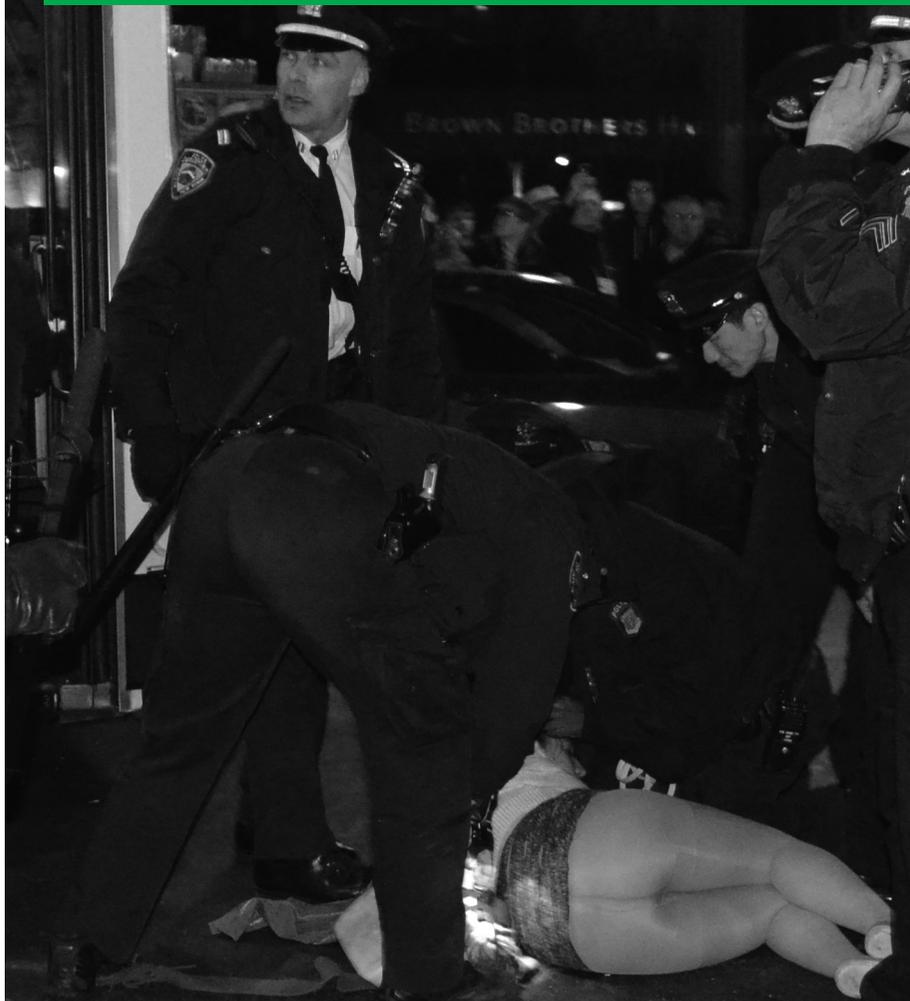
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write to us at [gazette@nplusonemag.com](mailto:gazette@nplusonemag.com)

"The defendant's story is so ridiculous and unbelievable that she might as well have said that aliens came and attacked her that night."

—ADA Choi, closing arguments, via @shawncarrie



"This is not someone who would be shy to say that she was sexually assaulted if she was really sexually assaulted."

—ADA Choi, closing arguments, via @shawncarrie

CECILY'S SENTENCING DATE is MAY 19, 2014  
SEND SUPPORT at [www.justice4cecily.com](http://www.justice4cecily.com)



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**4CECILY MAY 19**