

# **Portland's Pioneer Courthouse Square and Violations of First Amendment Rights**

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# Portland's Pioneer Courthouse Square and Violations of First Amendment Rights

By BARBARA G. ELLIS, Ph.D

Recent violations by the City of Portland concerning First Amendment Rights in Portland's popular Pioneer Courthouse Square appear to rest on its contractors and subcontractors perceiving the property as private property. And a perception by Portland's political activist groups that the first step in ridding the streets of demonstrators is to silence them on streets, sidewalks, or parks is to resurrect a noise ordinance declared illegal by the courts. Or the new wrinkle of making them apply for a noise variance—subject to the city's approval—each time they wish to exercise the First Amendment's guarantee of freedom of speech and assembly in public places.

The first activist organization in Portland to be singled out has been Portland's Peaceful Response Coalition (PPRC) which more than six years has had a small and brief Friday rally on the sidewalk fronting the corner of Broadway and Yamhill.

True, no test case has yet been filed for a U.S. Supreme Court ruling on protesters using bull-horns at that PPRC rally. Or its No War Drum Corps that leads its subsequent downtown marches. But today's activists live in a climate of the repressive Patriot Act, the Military Commissions Act (ending the 800-year-old right of *habeas corpus*) and President George Bush's Presidential Directive No. 51. The latter permits prison and seizing property and income for those he deems an enemy of the country, either domestic or foreign. Unless these "unitary" actions are repealed by Congress or Bush and Cheney impeached and ousted from office, those brave enough to voice opposition in a public place to any presidential action, may be "disappeared." If future Administrations use these precedents, the end of law and democracy and the start of dictatorial "order" is in sight for Portland and elsewhere in this nation.

As political activity in the upcoming general-election intensifies, so has harassment of PPRC activists by the Square's management firm, Pioneer Courthouse Square of Portland, Inc. Since hiring a private security force, Portland Patrol, Inc. in 2006, the employees bullying of political activists have indicated the First Amendment rights of speech and assembly in **public** places are in jeopardy.

Exercising First Amendment rights usually occur on public property—squares, parks, sidewalks, and streets. That is why it is important for those in Portland who seek redress of grievances against a governmental entity and, equally, all public officials and contractors know whether property is public or private. It saves time, money, effort, and grief to all concerned.

Vigilance concerning the Constitution in general and the First Amendment in particular must be eternal, judging from actions of those attempting to overthrow or overlook it or to circumvent it. Or those totally ignorant of it—especially a security force permitted to carry guns who believe wearing a badge gives them license to intimidate.

Make no mistake. Those attempting crackdowns on speech and assembly in public places via noise rules chiefly designed for *private* property, are contributing to the crumbling of the First Amendment, the buttress of the Constitution. They are the true enemies of this Constitutional democracy. Constitutional experts and law groups here and elsewhere in the country have been ringing alarm bells about what's going on. Even back in 2004, one of them pointed out that dozens of First Amendment cases

... attest to the pathology of a government so frightened of its own citizens that it classifies them as probable enemies. Mustering evidence from witnesses everywhere in the country (from trial judges in Oakland and Philadelphia as well as from First Amendment lawyers in New York, Portland, Boston, Washington [DC] and Miami) the report cites a long list of recent incidents in which various law enforcement agencies (federal, state, municipal) have deployed one or another of the increasingly sophisticated methods of intimidation (checkpoints, rush tactics, pop-up lines, containment pens, mass and false arrests, etc.) meant to negate the freedoms of speech and silence the voices of dissent.

To read the testimony is to know that the American democracy is in serious trouble. Not because the country lacks for a successful economy or a splendid military equipage, but because the wisdoms in office find the practice of democratic self-government vulgar and unsafe. Too loud, too uncivil and disrespectful, too many people in the room who don't belong to a health club or the Council on Foreign Relations, not enough marble in the ceilings and the walls.

The corporate and political gentry disapprove of the company and deplore the noise; whether seated in the Senate, installed in a television studio, charged with the management of an insurance company or a police precinct, they don't like to be reminded that democracy is by definition a work in progress, a never-ending argument between the inertia of things-as-they-are and the energy inherent in the hope of things-as-they-might-become.<sup>1</sup>

Up to 2007, the U. S. Supreme Court repeatedly struck down efforts to muzzle public dissent or street-corner preachers/teachers of whatever stripe. So have lower courts, including those in Oregon. The U.S. District Court quashed restrictions the City of Portland attempted to impose up to 1995 with a so-called "Free Speech Policy" and a specified spot in Pioneer Square. Under it, a speaker's vocal reach could not be farther than 10 feet—despite competing with buses, sirens, jackhammers, pile drivers, etc. in the city's noisiest area.<sup>2</sup>

They've also ruled that public parks, sidewalks, and streets are places for "public forums," no matter what state laws or city ordinances have on the books. The Court has repeatedly ruled—especially since the great protests against the Vietnam war in the late 1960s that this includes the "pure speech" on those public forums (demonstrations/rallies/picketing/leafletting) as well as "symbolic" speeches (street theater, T-shirts, armbands, etc.).<sup>3</sup>

Indeed, though the ancient orators in public places—Jeremiah to Demosthenes—didn't have battery-powered bull-horns to carry their messages, it was a given in antiquity that freedom of speech, assembly, and religion was, as the Court said, "part of the privileges, immunities, rights, and liberties of citizens."<sup>4</sup>

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<sup>1</sup> Lewis Lapham, "The Assault on Free Speech, Public Assembly, and Dissent," *A National Lawyers Guild Report on Government Violations of First Amendment Rights in the United States* (Great Barrington MA: The North River Press, 2004) pp. 1-2, <http://209.85.173.104/search?q=cache:qsP1vQ8IYuUJ:www.nlg.org/resources/DissentBookWeb.pdf+Marbet+v.+City+of+Portland+%2302-01448+HA&hl=en&ct=clnk&cd=2&gl=us>.

<sup>2</sup> *Rohman v. City of Portland*, 909 F. Supp. 767 (D.Ore. Nov. 22, 1995).

<sup>3</sup> *Hague v. CIO*, 307 US 496 (1939); *Shuttlesworth v. Birmingham*, 394 US 147 (1969); *Coates v. City of Cincinnati*, 402 US 611 (1971); *Grayned v. City of Rockford*, 408 US 104 (1972). *Tinker v. Des Moines Independent Community School District*, 393 US 503(1969).

<sup>4</sup> *Hague*, *Ibid*.

In one landmark ruling, the Court even declared that “public inconvenience, annoyance, or unrest are not sufficient reasons to carve out exceptions to the First Amendment.” The feisty defender of the Constitution Justice William O. Douglas in that case emphasized that:

**A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purposes when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. This is why freedom of speech...is...protected against censorship or punishment.... There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.<sup>5</sup>**

Even when great and grave national issues are involved, the public historically has strongly supported free speech in public places. American politicians and street-corner orators have never been under restrictions—even wartime conditions—though they might face wrath, a rope, or tar and feathering. For example, on the eve of the Civil War, Abraham Lincoln’s opponent Stephen Douglas drew 30,000 in Memphis for a three-hour, passionate, outdoor, anti-secession election speech—without restrictions on megaphones, space from speaker to audience, or paying a noise variance. During the Vietnam war, woe betide towns and cities trying to enforce noise-abatement laws or demanding variances—or, for that matter, parade permits.<sup>6</sup>

A spokesperson for the National Lawyers Guild addressed these current illegal gag laws that city authorities like those in Portland are wittingly (or unwittingly) attempting to use under the guise of public safety under Bush’s ineffective Homeland Security agency. Thankfully, despite a fear-ridden public most still defend and support freedom of speech and assembly. She wrote:

**Most of these practices have not, in fact, made this country safer and are often used as pretextual justification to broadcast the message that the act of engaging in First Amendment protected activity is unlawful. The government routinely depicts as public enemies, and even potential terrorists, those who speak out against U.S. government policies.**

**In contrast to the [Bush] Administration, however, most Americans favor the freedom to voice unpopular opinions: In a 2003 survey by the First Amendment Center to measure public support for First Amendment freedoms, 95% of respondents agreed that individuals should be allowed to express unpopular opinions in this country and two-thirds supported the right of any group to hold a rally for a cause, even if that cause is offensive to others.<sup>7</sup>**

<sup>5</sup> *Terminiello v. Chicago*, 337 U.S. 1 (1949), 4-5.

<sup>6</sup> Rohman.. B. G. Ellis, *The Moving Appeal: Mr. McClanahan, Mrs. Dill, and the Civil War's Great Newspaper Run*, (Macon GA: Mercer University Press, 2003), 114.

<sup>7</sup> Heidi Boghosian, “The Assault on Free Speech, Public Assembly, and Dissent,” *A National Lawyers Guild Report on Government Violations of First Amendment Rights in the United States* (Great Barrington MA: The North River Press, 2004), 7, <http://209.85.173.104/search?q=cache:qsP1vQ8IYuJ:www.nlg.org/resources/DissentBookWeb.pdf+Marbet+v.+City+of+Portland+%2302-01448+HA&hl=en&ct=clnk&cd=2&gl=us>. First Amendment Center, *State of the First Amendment 2003*, 10, <http://www.firstamendmentcenter.org/PDF/SOFA.2003.pdf> (31 July 2004).

Those who regard the Constitution as just a troublesome piece of paper if political activists are concerned—seemingly those city and business letters pushing Pioneer Square officials to exert noise control—would be wise to educate themselves about the troubles they may bring down upon their heads if they cannot or will not distinguish between public and private property.

Tax revenues for the City of Portland, other public monies, and the Square's history attest that the Square is public property. So do its promotional materials. Yet, increasingly, the managers (PCSI)—and its security company (PPI) are behaving as if this park and sidewalk are private and exclusionary. The noise ban applied to PPRC rallies and marches are prime examples of that benighted thinking.

In terms of promotional materials, one website provides an overview to tourists and businesses of just how **public** Pioneer Square is, in terms of having attracted nearly ten million people for nearly a quarter of a century since the owners of a department store (Meier & Frank) opened negotiations in 1975 to sell the property to the **city**:

Portland's major urban plaza is the Pioneer Courthouse Square. The bricks that pave the entire city block include 63,000 inscribed with the names of Portland citizens. The money earned from this "brick sale" financed the construction of the park space, including two amphitheatres, a fountain, and whimsical art and structures. The site hosts many special events throughout the year, the Rose Festival's Festival of Flowers among them.

The Square is one of Portland's leading outdoor venues, hosting over 300 events each year that range from large-scale concerts to cultural festivals. The Square is a true symbol of Portland with its [publicly purchased] bricks symbolizing the people that make Portland such an extraordinary city.<sup>8</sup>

A more recent description about this 1.56-acre spot in the heart of Portland emphasized the heavily **public** nature of this **publicly financed** Square. Usually called "Portland's Living Room" by promoters, it would scarcely seem to be a private enclave admitting a group of visitors passing muster by the city or those contracted to manage this park. Indeed, the text not only concedes public ownership, but pride in Portlanders exercising the democratic freedoms conferred by First Amendment rights:

The center of the Square, however, is clear of public art and shops, instead offering its plain self simply as a public gathering space [Author's underscoring for emphasis]. The larger amphitheater, composed of steps and including a subtly integrated arcing ramp for wheelchairs, separates the smaller upper level from the main lower body of the Square. This plaza is the site of hackey-sack playing, of political rallies, of frequent protests, of the Powell's Books annual surplus book sale, of the annual Flowers in the Square display, of an annual sand castle building competition, and of numerous concerts to be witnessed from the amphitheater steps. Every winter, a large Christmas tree stands in the middle of the Square; its lighting is celebrated every year on the day after Thanksgiving by crowds of up to 15,000, which the Square accommodates in a crowded, but not uncomfortable, fashion. (A large menorah also is to be found in the Square, above the amphitheater in the southwest corner). . . .

While the physical image of the Square itself has changed little since it was built in 1984 (save the redesign of the once lavender-checked fountain into a more staid shale entity, in accordance with the original design), Pioneer Courthouse Square continues moving into the future. In the same public spirit characteristic of the history

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<sup>8</sup> Angela Brown, About.com: Northwest US Travel (Downtown Portland Attractions), <http://gonw.about.com/od/attractionsOR/a/portdowntown.htm>.

of this block and of the city of Portland as a whole, **the** Personal Telco project now offers, as of 2002, an 802.11b wireless access point. Anyone with a wireless card can tap into high-speed **Internet access** at no charge from anywhere in the square.<sup>9</sup>

In short, recent claims by PPI employees that the Square is private property has no basis in fact, as city officials know well. The brief history below by Portland writer Gregg Kantor explains how the **public/private** status is perhaps deliberately muddled by city and business leaders averse to events and people of which they disapprove. Political groups, to them—especially with music, sound systems, bull-horns—are little better than vagrants because they are dressed for Oregon weather. But playwright Henrik Ibsen, in *An Enemy of the People*, had his well-tailored doctor hero slink home in tatters after a day on the stump. Demonstrators, he said, should never wear their Sunday best on the street. In Oregon's rainy winters and humid summers, it's good advice.;

Up to the late 1970s, Pioneer Square was private property. The author has used boldface type to indicate a string of owners, in Kantor's story of its metamorphosis.

### **How Private Property Became a Public Park**

The Square that adorns the heart of downtown Portland today is there because of people--as a matter of fact, thousands of them. They were people who had visions of a better Portland. Some had wealth and were willing to take risks; others had little, but were generous....

First, there was **Elijah Hill**, a shoemaker, who came to Portland in the 1840's with a desire to begin a new life in a frontier town. Hill paid the not so grand sum of \$24 and a pair of boots for the property that is now Pioneer Courthouse Square.

But he didn't hold on to it long. A man named **James Fields** acquired the property a few years later. Nothing much is known about Mr. Fields except that in 1849 he struck it rich. That was the year he sold his property to the **Portland School District** for \$1,000....

The next step on the road to Pioneer Square was taken by the members of the Portland School District No. 1. On May 12, 1856, they voted to build a schoolhouse to replace the old rented quarters at First and Oak Streets. A \$4,000 school tax was approved, and with part of this money the block was bought from Mr. Fields.

On the site Portland's first schoolhouse was built. Central School, as it was called, opened on May 17, 1858, with 280 pupils enrolled for the first term.... In 1883, the District sold the block to Henry Villard's **Northern Pacific Terminal Company** for a then astronomical \$75,000.

Henry Villard was no ordinary man. At one point or another in his life, he was a renowned journalist, a financier, a railroad tycoon, and even the owner of the *New York Post*. But it was between 1874 and 1884 that Villard would leave his mark on Portland.

Terrence O'Donnell of the Portland Historical Society, tells us:

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<sup>9</sup> "Qousqous," Everything2, "Pioneer Courthouse Square," Oct. 22, 2002, [http://everything2.com/index.pl?node\\_id=1059041](http://everything2.com/index.pl?node_id=1059041); <http://www.pdxplan.org/PioneerCourtHouseSquare.HTML> also includes information from: <http://www.pioneersquare.citysearch.com/1.html> (the Square's official site) [http://www.pps.org/gps/one?public\\_place\\_id=19](http://www.pps.org/gps/one?public_place_id=19) (includes good pictures) <http://www.geocities.com/parasir/http://www.geocities.com/ortraxandroads/pchs.html> <http://www.cnn.com/TRAVEL/D ESTINATIONS/9806/portland/index4.html>.

Villard was born in Bavaria. He came to this country in 1853. He worked as a journalist. In fact, he became famous as a journalist because he covered the Lincoln-Douglas debates. He went on to become a battlefield journalist in the Civil War. And after that he suffered from ill health, and returned to Germany where he became interested in the railroad business. And it happened that at about that time people were trying to get a railroad from Oregon to California. And they were selling bonds to finance it, many of these bonds in England and Germany. And they were about to default.

So the holders of the German bonds sent Villard over to see if he could rescue the whole enterprise. And that's how he happened to come to Oregon. He did rescue the enterprise. In fact, he formed the Northern Pacific and was able to get the first train through to Oregon. It cost him so much money, however, that he went broke the same year that it arrived, 1883. Therefore, the hotel he had planned for the center of the city (at the present site of the square) got its foundations built, but that was about all.<sup>10</sup>

"Villard's Ruins" were a sore upon the Portland landscape. For five years they would sit idle, a testament to the city's lack of vigor.

Two years after [a vagabond's] murder [on the site of today's Square], six of Portland's leading businessmen, including **William Ladd**, **Henry Corbett**, and **Simeon Reed**, took action. The city needed a first-class hotel, not a downtown graveyard for dumping bodies. They offered to put up \$250,000 to build a first-class hotel, if others would put up an equal amount.

Some **322 local citizens** invested in the Portland Hotel Company, setting a tradition of community involvement that would eventually be repeated to help finance today's Square [Author's emphasis in boldface, underscoring]. The majestic Portland Hotel opened to the public on April 7, 1890 atop Villard's old foundation. It cost over \$750,000 to build, and no other hotel on the West Coast could rival it.

George McMath, a local historian, recalls the later years of the hotel:

The Portland Hotel was not just for visitors to the City. For over 60 years it would serve, like today's Pioneer Courthouse Square, as a gathering place for the residents of Portland. The hotel, like the Square, became the focal point of the city where Portlanders came to eat, dance and socialize. Over the years its reputation as an elegant hostelry grew. Many names and faces graced its entrances, including seven United States presidents who stayed during their visits to Portland. The Lewis and Clark Exposition in 1905 brought thousands of visitors to Portland and the hotel's business boomed.

But in the 1930's, competition from the newer and more modern Benson and Multnomah hotels bit into profits, causing great concern over the future of the hotel's operations. And despite efforts to modernize to keep pace with the new competition, profits remained low. The mortal blow was to come on Christmas Eve 1941. **Edward Boyce**, part owner and the man in charge of the hotel's operations for 30 years, died suddenly. The family--after Boyce's death--kept spending to a minimum but shortly afterwards put the hotel up for sale.

Wartime rationing, food costs, and a loss of trained personnel to better paying defense jobs finally brought the hotel to its end.

In 1944, [department store owners **Julius Meier** and **Aaron Frank**

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<sup>10</sup> O'Donnell, Terence and Thomas Vaughan. *Portland: an informal history and guide* (Portland, OR: The Oregon Historical Society, 1984), pp. 35-39.

purchased the Portland Hotel. It was rumored they bought it to prevent another interested investor from constructing a major department store on the site. Whatever their reasons for buying the hotel, on June 27, 1951 Aaron Frank announced that it would be demolished. The new use for the property would be a two-story parking structure.

It was a use that would nearly two decades later bring the property to an important turning point--and an important battle. It was a battle being fought in many American cities between **public** and private interests and between people and cars. The winner would decide the fate of the property for a long time to come.

Portlanders, like residents of other cities in the country, became addicted to the automobile in the 1950's and 1960's. This addiction created parking and traffic problems that threatened to drive away both shoppers and merchants from the center of the city. By the late Sixties the lack of parking was frustrating all who used the downtown area. And it was obvious to Meier and Frank that their two-story parking structure could not meet the demands of those driving downtown to shop.

So in 1969, Meier and Frank proposed to replace their two-story parking structure with an 8- to 10-story parking structure that would have room for 800 cars. They hired a Tacoma developer who, on their behalf, came to the City for a building permit.

A storm of protest arose as many felt the city needed a park for people, not for cars. Meier and Frank claimed the garage was the key to their survival downtown.

### **The Square Goes Public**

A city park at the site of the Meier and Frank parking structure was not a new idea in 1969. In the early Sixties, Lloyd Keefe, then City Planning Director, had believed the site would be ideal for a park and had directed his staff to prepare designs as early as 1962 and 1963. But the time wasn't right. And the admitted parking problem was not addressed by a new park.

The proposal to build the parking garage in 1969 focused the city's attention on the block. And at an emotional City Planning Commission meeting in January of 1970, Meier and Frank's proposal was denied. Some say that [psychologist and civic activist] Betty Merten's impassioned plea for open space at that location, helped carry the day:

**I wish to speak on behalf of the women of Portland, upon whom the life or death of the downtown retail business largely depends. An additional parking structure in the core area will not bring about revitalization. Another parking structure will not bring shoppers back.**

**Lloyd Center, with its wide malls, greenery and park-like setting makes shopping appealing. Could not downtown Portland be equally appealing? Instead of cars, noise and air pollution, we can have walkways, parks and people. Or, City Hall can wait and see while pollution levels become higher and higher and livability falls lower and lower. The choice is ours, for our city, for our children.**

The vote was unanimous. The value of the property as open space weighed heavily in the City Planning Commission's decision. Still, they

recognized the need to solve the serious parking problems in downtown.

The solution would be a plan for downtown.

Richard Brainard, planner and urban designer, was among those who would be involved in that effort.

[An organization called] "The Downtown Group" formed what was called a Downtown Committee made up of a number of important downtown business people, including Glenn Jackson, Bill Roberts, the presidents of both banks, president or chairman of the local department stores and a number of other important developers in downtown.

They came up with what I believe was \$80,000 towards ... a land-use plan for downtown Portland. In addition to that, the **State Highway Department** came up with something more than a \$100,000 to do both a traffic circulation and a parking plan for downtown Portland.

Frank Ivancie, who was then in charge of the Planning Commission, put together a citizens' advisory committee which was chaired by Dean Gisvold. Working with that committee, CH<sup>2</sup>M as the technical planners came up with a land-use plan for downtown Portland at the end of an 18-month period and in February of 1972, presented the plan to the City Council. So the City Council officially put their stamp of approval on a central square... in December of 1972.

Only a month after adoption of the Downtown Plan Goals and Guidelines, a new Mayor walked into Portland's City Hall. His name was Neil Goldschmidt. He would take the first step to implement the Downtown Plan and pave the way for Pioneer Square.

In 1975, Neil Goldschmidt began negotiations with Meier and Frank to obtain for the city the property that was once owned by Elijah Hill, James Fields, the Portland School District, the Northern Pacific Terminal Company and the Portland Hotel Company.

Ernie Bonner, planning director for the city at the time, comments on those crucial negotiations:

Well, Neil went directly to Jim Coe, who was at that time the local manager for Meier and Frank. Jim made it very clear to Neil: Meier and Frank wanted parking. They needed parking. And so when the city could deliver a parking garage, Meier and Frank would agree to sell the Pioneer Block to the city. It was really that simple.

Fortunately, Mayor Goldschmidt already had a plan: two parking garages, one on the east and one on the west end of Morrison, which was the shopping street in downtown. So, as soon as Jim Coe laid out those conditions for the sale of the Pioneer block, Neil went to work. And when private interests found that it was infeasible to build a parking garage there, Neil sent Dave Hunt of the Portland Development Commission. [He was] busy at the task of building a city garage on what was called at that time the Blue Mouse Block, between third and fourth on Morrison.

Meier and Frank's demands on the design of the parking garage were really very tough. They wanted more spaces than the city felt feasible. They wanted a circular ramp design. They wanted elevators facing their store. They wanted skyways going directly between the department store and the parking garage. And, as it turns out, they eventually paid for the cost of the extra features that were included at their request.

So when the city [planners] finished their design and committed to build the kind of parking structure that Meier and Frank wanted, then Meier and Frank agreed to sell the Pioneer Square block to the city. It was a trade,

really. A good trade, good for the city and Meier and Frank.

### **Public Design and Public Financing**

Even after arrangements were made by the city to acquire the property from Meier and Frank, there were still two major obstacles to overcome before Pioneer Courthouse Square could become reality.

First, a design for the Square was needed. Second, and perhaps more important, money had to be raised to build it.

The first obstacle would be overcome by an inspired team of local urban designers. The second would only be overcome by **tens of thousands of Portlanders** [Author's boldfacing, underscoring].

One would think that picking a design for the Square would be easy. But such was not the case. A national design competition was conducted by the Portland Development Commission in 1980, and over 162 submissions were received from across the country. A jury of Portlanders was selected to recommend to the City Council which design should be used.

On July 30, 1980, the City Council accepted the jury's recommendation to proceed with a design submitted by a local team led by Willard K. Martin. The team included J. Douglas Macy, landscape architect; Terrence O'Donnell; Spencer Gill, writer; Robert Reynolds, artist and photographer; and Lee Kelly, sculptor.

The selection was controversial. Doug Macy explains:

**The downtown business community was concerned that the open design of the Square would attract undesirables** [Author's underscoring]. They were more concerned about having an enclosed space which would serve people on a year-around basis. They were also worried about the weather. We understood the concern for year-around use and we understood the concern for undesirables hanging out in the Square. But we felt that an open, accessible design which accommodated people's activities would really be a vital place in the downtown to serve everyone. So we felt that to enclose the space any more would be a mistake. It would be like another building.

Dissension over the design threatened efforts by the city to raise money for the Square. **If the city could raise the money, it would receive a federal matching grant [\$1.5 million plus the DOT's \$100,000] to help with the construction of the Square** [Author's boldfacing, underscoring].

In January of 1981, Portland Mayor Frank Ivancie announced that the Pioneer Courthouse Square was dead. The \$1,500,000 in local funds that were needed to supplement the federal grant Portland had received simply could not be raised, partly because of opposition to the design by important potential contributors.

When Corbett, Failing, Ladd and Reed tried to find local funding for the Portland Hotel, there were undoubtedly skeptics. And so perhaps it was only fitting that nearly 100 years later there would be skeptics who would claim the money couldn't be raised for the Square.

But in the tradition of those leading businessmen in the 1880's who found 322 local investors for the Portland hotel, a group called Friends of Pioneer Square was formed. Molly O'Reilly, director of the group, tells of their efforts:

Well, when Frank made the announcement that the Square was dead, its supporters kind of galvanized. They were really angry about that. They weren't willing to accept it.

They got their organization together and really committed themselves to raising the money because obviously if they could raise the money, the project couldn't be killed.

I think it was in a real brainstorming session that the idea of selling bricks came up. It was obvious that with all the high level opposition to the Square you couldn't run an ordinary fund-raising campaign and start with the big gifts because the big gift wasn't there right then. But if you could prove that the people of Portland really were behind this idea, and really wanted it, then the big gifts would come [Author's underscoring]. That's the way the thinking went.

So they came up with the \$15 bake-your-name-in-a-brick campaign. And as soon as that got rolling and it was obvious there was support, the Friends put together a fine catalog of the other architectural features in the Square. You could buy planters. You could buy trash receptacles. You could buy trees. You could buy trellises, waterfalls. You name it. They worked real hard at that. Those big items don't go without some salesmanship. But in a year they sold \$500,000 net of the bricks and \$1,000,000 of the major items. And they accomplished their goal.

There were three birthdays celebrated here on April 6, 1984: Will Martin's, the City of Portland's, and Pioneer Courthouse Square's. At the Square's opening, Will Martin told the crowds that had gathered that the Square was a "downtown living room for the **people of Portland**."....

It is now the focus of downtown life—a gathering place for Portlanders for generations to come. 191 events were held in the Square in 1985 alone [in 2007, 300]. The Square fits so naturally into our city that already it is becoming hard to remember what was there before the red bricks.

But should you ever forget, just look down at the floor of the Square and read the names on the bricks. **These people and others brought you Pioneer Courthouse Square** [Author's boldfacing, underscoring].<sup>11</sup>

Author John L. Compton emphasizes the federal government's role in the Square's development using taxpayer monies—another indicator of the project's public ownership:

The U.S. Department of the Interior, which had awarded a \$1.5 million matching grant in Land and Water Conservation funds to assist in acquisition of the site for recreation open space, could not approve construction of a covered facility. An apparent impasse developed since the city could not afford the building costs without the financial support of the downtown community and the federal government.

All development ground to a halt by January 1981 when the Mayor declared the project dead. Emotions were high and the city was divided. The City Council decided that \$1.6 million was needed from private sources for construction to begin and authorized a small group of public-spirited citizens to try to raise it. They organized themselves into Friends of Pioneer Square.

The Friends believed that most people would like to be immortal. Failing that, they might settle for having their names live forever, or at least as long as an engraved brick might endure on the Square....They decided to launch the brick-sales campaign on April 6, 1981—Portland's birthday.<sup>12</sup>

<sup>11</sup> Gregg Kantor, video script of *Pioneer Courthouse Square*, 1986, [http://www.pdx.edu/usp/pioneer\\_square.html](http://www.pdx.edu/usp/pioneer_square.html).

<sup>12</sup> John L. Compton, *Doing More With Less: In Parks and Recreation Services*, Portland OR: Taylor & Francis, 1987), pp. 70-72,

Compton points out that the group and volunteers, including two Commissioners, raised nearly a million dollars from the **public** for the bricks and all the Square's architectural features. The city-funded Portland Development Commission (PDC) provided \$20,000 in seed money for office space and hiring "a public-relations/advertising firm to define the campaign and produce materials." A year-long promotional campaign yielded 63,000 sales—all fed into a computer for a master list to be set in type by a printing firm. Smith Masonry of Clackamas made the bricks. Bricks are still being sold, albeit at \$100 each.<sup>13</sup>

### **The Brick Sales Reinforce Public Ownership**

So much for Kantor's review of how Pioneer Square became a public park in the heart of downtown Portland.

One important part of public life was that the taxpayers—federal/state/city—footed most of those initial costs. But so did at least 63,000 people who bought those name-enscribed bricks in the square. They're still buying them.

One website ([www.gonw.about.com](http://www.gonw.about.com)) has a link called "Find Your Brick." It leads to a link called "Brickfinder," operated by a Scott Hanselman. Appendix A reveals that the archives still hold data on the names of those brick buyers and beneficiaries. All bricks are alphabetized by first names, the reason "family plots" were not possible as is customary in selling cemetery lots.

At \$15 per brick, the yield of \$945,000 represented a significant sum in underwriting this public project. Since then, city revenues—including rent from Starbucks and other vendors—cover upkeep and security. Ergo, the Square is Portland's **public** "living room," but it can't bar those not permitted to enter someone's **private** living room.

Such use certainly includes the public's right to exercise the First Amendment rights the Framers insisted upon: "...the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." "*Peaceably*," then as now, had nothing to do with decibel levels. And "*assemble*," then as now, meant the people's right to gather on public property. After all, the Framers had been forbidden in Colonial times—on pain of stocks, floggings, prison, or summary execution—by British governors, constables, and troops to assemble and peaceably petition for even small grievances against the Crown and its representatives.<sup>14</sup>

### **Decibel-Heavy Events in the Square**

The initial city tactic to keep "undesirables" and hooligans out of the Square was to crowd it with programs drawing large audiences. In 1984, for example, it often involved a noon-time concert or one at 5 p.m. Today's additions are the free evening movies of Flicks on the Bricks and a New Years Eve celebration.<sup>15</sup>

It should be noted that no noise-control ordinance seems to have been imposed on political events until the end of 2007, despite the city's Noise Control

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<http://books.google.com/books?id=qbI9AAAAIAAJ&pg=PA71&lpg=PA71&dq=portland's+pioneer+square+brick+sales&source=web&ots=KjrdnBBSzt&sig=Vz-QhBafzvuyPLJctiAbN5i0V0k#PPP1,M1>

<sup>13</sup> Ibid.

<sup>14</sup> Amendment I, *The Constitution of the United States*, ratified effective December 15, 1791.

<sup>15</sup> Vicente Guzman-Orozco, "Portland's Square-Shaped Heart, Oregon.com, [http://www.oregon.com/trips/pioneer\\_square.cfm](http://www.oregon.com/trips/pioneer_square.cfm).

office's imposing a 55-decibel maximum (equivalent to an ice-cream vendor's bell) elsewhere in Portland.

Such maximums certainly were not imposed in 1994 on political events, when 55,000 overflowed the Square and surrounding streets to hear Hillary Clinton use a sound system in a political pitch for her husband, incumbent presidential candidate Bill Clinton. Her handlers could easily afford a noise-variance. Curiously, until December 21, 2007, the anti-war PPRC was never ordered to buy a variance. Nor could its minuscule treasury have afforded one even for a day, much less 52 Fridays per year.<sup>16</sup>

If indeed business interests, downtown workers, and tourists found PPRC's brief use of bull-horn and band significantly harming eardrums, as the PCSI people claimed, what of the other 300-day-long events in the Square with variances? Below is a sampling of the high-decibel programs touted for 2007 by PCSI as "recent successes":

- The Time-Based Art Festival of the Portland Institute of Contemporary Art (PICA). Renowned composer and singer Rinde Eckert led hundreds of Portlanders in a sing-a-long concert.
- The Saving Lives Benefit Concert raised money for the OHSU Cancer Research Institute. This Labor Day weekend event featured Linda Hornbuckle & Friends, Ill Fated Hero, The Light, Riny Horst and many other artists.
- The arrival and introduction of a potential Trail Blazer star Greg Oden packed thousands in the Square and sidewalks on two sides of the surrounding streets, raising the decibel to near-deafening levels.
- Venee Outreach Ministries provided a Christian event promoting cultural, denominational and ethnic unity through music.
- Talent For Africa's first annual Singing-in-the-Square event. Sixty singers and musicians raised funds for Open Arms International and to win studio recording time.
- The Festa Italiana Association included Italian food, music and dancing, a grape stomp, raffles and family fun. Thousands participated in this three-day Italian cultural event.
- the Oregon State Fair kick-off event involving food sampling, entertainment and interactive games during lunch time. Among them was a medieval-style jousting demonstration with knights on horses.
- The Volkswagon Noon-Tunes Summer Concert staged 14 noontime events throughout July and August. Thousands gathered each Tuesday and Thursday to hear the Free Will Band, Patrick Lamb, Stephanie Schneiderman and Johnette Napolitano.
- Mayor's Tailgate Party. A large and noisy audience gathered for this 17<sup>th</sup> annual inter-city contest to determine which city official could spit watermelon seeds the farthest. Hermiston's Mayor Bob Severson, Portland Parks Commissioner Dan Saltzman (subbing for Mayor Tom Potter) and other city officials competed despite city ordinances prohibiting spitting, smoking, urinating, etc. in the Square. Winner was reigning champion, Hermiston City Councilor Jackie Meyers (22 feet; Saltzman: 17 feet).<sup>17</sup>
- Love Rally. People gathered "to generate positive energy" at this 5<sup>th</sup> annual event of the Groove Enhancement Project to celebrate love through awareness, music, dance, art and peaceful action. Musical performances were

<sup>16</sup> *Pioneer Courthouse Square 2007 Newsletter*, <http://www.pioneercourthousesquare.org/newsletter>.

<sup>17</sup> Scott Moore, "Poo, Sweat and Spit," *The Portland Mercury*, August 9, 2007. <http://www.portlandmercury.com/portland/Content?oid=387963&category=38037>. Moore reported: "...irony of ironies—spitting isn't allowed in city parks. Saltzman's office responded that he was within the law because the square was officially sanctioned for seed spitting."

by Flipsta, Bryan Zentz and Sucka Punch.

- **El Grito.** Thousands celebrated Mexico's Independence Day with food, dancing, a beer garden, and live music. Politically, Fernando Sanchez Ugarte, consul general of Mexico, helped kick off the weekend event by delivering the Mexican revolutionary address "El Grito de Dolores".

- **KINK 10 Live Concert.** Radio station KINK held its 10th benefit concert for the release of the KINK Live 10 CD, and raise funds for SMART (Start Making a Reader Today). It drew thousands under the stars to listen to Suzanne Vega, deSol and Matt Nathanson.

- **Tree-Lighting Ceremony.** More than 20,000 gathered to see and heard Mayor Potter, Santa Claus—along with KGW News Channel 8 and KINK.fm emcees—open the holiday season with the lighting of a 75-foot tall Douglas-fir tree. The Portland Jazz Orchestra and Valerie Day led a community sing-along of favorite holiday songs.

- **Tuba Christmas concert.** Two hundred tubas, tuba enthusiasts, families and friends, music lovers, and shoppers participated in this 17<sup>th</sup> annual event of seasonal band/orchestra music and community sing-along.<sup>18</sup>

Contrast these activities with PPRC's small rallies and marches by the non-violent Portland Peaceful Response Coalition (PPRC) held Fridays at 5-5:30 p.m. for the last six years on an outside corner of the Square. Participants muster for speeches delivered on a bull-horn. Then, accompanied by the half-dozen members of the No War Drum Corps, they chant and march toward the Willamette river.<sup>19</sup>

Unlike organizations using the Square to provide entertainment, to raise funds, or sponsor business, religious, military, or ethnic celebrations, PPRC represents a mix of churches and political groups advocating the wars' end in Iraq and Afghanistan and against any pre-emptive attack/occupation of Iran.

### **First Amendment Violations**

In the past few years, city officials have followed the recent national pattern of hiring private contractors to save payroll, personal-injury claims, and pension expenses. In Portland, privatization accomplished all that and was designed principally to provide safety in parks and free Portland police for heavier law-enforcement duties. The system is expected to be permanent as city revenues drop and municipal needs increase.

The city already had hired a few Wackenhut employees for preserving safety elsewhere. For security and maintenance in the Square, it contracted with the Portland Business Alliance (PBA), a non-profit lobbying organization, to hire personnel.

In Fall 2006, city officials let a \$620,000 contract once again to the PBA apparently lacked the time and energy to continue finding "rent-a-cops," as they are known in street argot. They handed off the job to PCSI which subcontracted this service to a PPI which assigned 30 employees to do "order maintenance" by expelling the homeless, vagrants, and panhandlers in the parks. Whether armed or not (13 are unarmed), PPI personnel could arrest nor detain people, but could issue warnings and exclusion orders (30-180 days) that are valid in court. For arrests, they called in the police.

<sup>18</sup> Pioneer Courthouse Square, Inc., website, <http://www.pioneerCourthousesquare.org>. Pioneer Courthouse Square newsletters, September to December 2007, <http://www.pioneerCourthousesquare.org/newsletter>.

<sup>19</sup> Personal experience and <http://www.writingresource.info/pprc2.html>.

Now, neither PCSI nor PPI's records are public, making accountability nearly impossible for ordinary Portlanders with time, energy, and financial constraints. The same cynical posture is being taken by other security firms such as Blackwater in Iraq, permitting employees to take any action with impunity with predictably irresponsible and fatal results—and adverse publicity. In Portland, the PPI situation is a financial, moral, and public-relations disaster waiting to happen with a jumpy, in-your-face, trigger-happy force. Police overreaction in recent years has resulted in lawsuits draining the public pocketbook. City officials seem to be gambling that if a fatal mishap results in the Square, they'll be free of lawsuits draining the public coffers as was the case in August 2002. And with closed private records, PCSI and PPI may be gambling they have no liability either. It's doubtful, however, if the courts in fatalities will let them escape so easily.<sup>20</sup>

An investigative reporter for one of Portland's alternative newspapers quoted a California security specialist, who agrees with this analysis about the "menace" of hired guns:

Privatizing law enforcement puts everyone at risks, he says, because private forces are focused on the concerns of their employer, not civil rights and due process. "I think it's very dangerous," said Schneier, who lives in Mountain View, Calif. "And it's a very bad idea. There's a reason we have a public police force. Private security agencies are not accountable to the public. It's a very bad trend. The same trend that's happening in Iraq. The public should have the same worries for the exact same reasons."<sup>21</sup>

Nothing is known about how well PPI screens employees. What *is* known to Portland's political activists is that those in the Square are demonstrating little or no knowledge of the U.S. Constitution's First Amendment. Or if they do, its application concerning people distributing literature, carrying signs, preaching/teaching, or assembling to protest grievances against a governmental officials.

Their knowledge about city ordinances involving parks or of what constitutes public property and sidewalk right-of-way seems equally nil and equally dangerous. Their employer obviously has not oriented them about all the First Amendment cases the city has lost in the last decade to political and religious activists. It would seem attributable to poor (or no) training by private firms or the proclivity of hiring people significantly ill-suited to public service of *any* kind.

Their employers—the collective top-down sequence of City of Portland, PBA, Pioneer Courthouse Square of Portland, Inc., and PPI—seem to have learned nothing from losing those major First Amendment lawsuits either. Case details are contained in Appendix B.<sup>22</sup>

The first case goes back to 1995 (*Rohman v. City of Portland*) when a street preacher was booted from Pioneer Square on the 10-foot noise ordinance and successfully sued in U.S. District Court. The judge questioned the city's Free

<sup>20</sup> Joanne Zuhl, "From Private Enterprise to Private Enforcement," *Street Roots, USA*, April 24, 2007, [http://www.streetnewsservice.org/index.php?page=archive\\_detail&articleID=1134](http://www.streetnewsservice.org/index.php?page=archive_detail&articleID=1134). Enji, "On Buddha," Portland Indymedia website, [http://portland.indymedia.org/front.php3?article\\_id=5854](http://portland.indymedia.org/front.php3?article_id=5854).

<sup>21</sup> *Ibid.*

<sup>22</sup> *Legal Briefs*, <http://www.portlandcopwatch.org/PPR32/legalbriefs32.html>.

Speech policy as “unconstitutionally vague,” threw out the policy’s absurd 10-foot rule, and declared that the preacher’s First Amendment rights had been violated and constituted “irreparable injury.” He even granted injunctive relief. The city deserved this barb:

First, how is a speaker to know, with any degree of certainty, whether his voice will reach beyond ten feet? Second, how is a law-enforcement official to determine whether a speaker is intending to communicate?<sup>23</sup>

Another case combined two events: Eleven Portlanders opposing President Clinton’s 1998 bombing runs over Iraqi air space and others arrested at a May Day melee set off by the police in 2000 in the South Park blocks. The case centered on a state law (ORS 166.025)(1)(e) involving disorderly conduct which permitted police to arrest people for failure to obey orders to disperse—in *any* place or under any circumstances. Though sworn to support and defend the Constitution, Portland police obviously had no more ideas about its First Amendment than do the PBA, PCSI, or PPI officials and employees.

By 2003, more than 135 anti-war demonstrators had been arrested under that law. Aided by two legal entities (National Lawyers’ Guild, ACLU of Oregon), the activists sued the city in 2004 on the grounds that the law was unconstitutional. The Oregon Supreme Court agreed.<sup>24</sup>

Many Portlanders and county residents were polarized and became activists after police overreacted against demonstrators and innocent passersby on August 22, 2002 near the Hilton hotel. Twelve litigants successfully sued the city, winning \$300,000 in damages. One (activist Lloyd Marbet) refused to accept the award. Additionally, in separate action in federal court, the plaintiffs’ legal team was awarded \$545,000 for its services.<sup>25</sup>

The third action involved the Square. In April 2002, police arrested two women seeking petition signatures legalizing medical marijuana. Aided by the Oregon Law Center, they successfully sued the city *and* Pioneer Courthouse Square, Inc. in U.S. District Court over the unconstitutionality of the city’s 30-day “exclusionary” ordinance (PCC 20.12.265).

The Court ruled the ordinance violated both the First Amendment’s speech and assembly rights and the Fourteenth Amendment’s guarantee of procedural and substantive due process. They also were permitted to sue for damages.<sup>26</sup>

Exclusionary citations immediately dropped from an annual 2,500 to 1,500, but the lesson seems to have been lost once PPI employees were hired to police Pioneer Square. PPI harassment of activists seems to have begun the moment its proprietor, a former police officer, signed the PBA contract.

For example, one morning last summer, an impeachment activist was distributing literature to those crossing an almost empty Square.

<sup>23</sup> *Rohman v. City of Portland*, 909 F. Supp. 767 (D.Ore. Nov. 22, 1995).

<sup>24</sup> *State v. Ausmus*, S49364, A107691 (March 11, 2004).

<sup>25</sup> *Marbet, et al. v. City of Portland, et al.*, December 2004  
*State v. Ausmus*, S49364, A107691 (March 11, 2004).

<sup>26</sup> *Yeakle and Sheffer v. City of Portland and Pioneer Courthouse Square*, CV 02-1447-HA (February 26, 2004, *Courthouse News*, Vol. X, No. 3, March 11, 2004, [http://209.85.173.104/search?q=cache:hTcx\\_tIjojIj:ord.uscourts.gov/news/x3.pdf+\(PCC\)+20.12.265&hl=en&ct=clnk&cd=7&gl=us](http://209.85.173.104/search?q=cache:hTcx_tIjojIj:ord.uscourts.gov/news/x3.pdf+(PCC)+20.12.265&hl=en&ct=clnk&cd=7&gl=us). Exclusions, Failure to Disperse, *Legal Briefs*, No. 32, SEE Appendix B for these cases.

A PPI employee raced from its office to declare soliciting in a private park was against the law. Standing near the enscribed brick bought for a daughter in 1981, she pointed out the Square was a **public** park. With hands on hips (near his gun), he ordered her to leave or face a citation.

When she moved to the sidewalk and continued to pass out literature, he rushed over and shouted: "I'm not warning you again! Get out or you'll be cited!"

When she quietly pointed out that a sidewalk definitely *was* a **public** right-of-way, he insisted the *entire* block—including sidewalks—was private property. "Get across the street to Nordstrom's or else!" he ordered. She asked him to provide the ordinance number concerning the Square's private identity. He fumed, but raced off. Ten minutes later, he was back with a telephone number for PCSI. She shuddered, especially after learning about the runaround given another Portland activist who described PPI and PCSI treatment in a memorable Portland Indymedia post.<sup>27</sup>

Then came the recent noise ban against the PPRC.

On December 21, a PCSI official propelled Portland's Noise Abatement officer to address PPRC activists and threaten to issue citations unless they stopped using a bull-horn and the No War Drum Corps in their Friday rallies on Broadway and Yamhill streets, just outside the Square. If they wanted to continue, they were instructed to buy a noise-variance permit each week. At, say, \$10 per Friday, the annual cost would be over \$500; at a \$100 rate, \$5200. Nothing guaranteed, of course, that they would be granted one. They were told that business owners around the Square and visitors opposed the noise there and along the marching routes.

Group members vainly cited First Amendment rights in a **public** place as well as never having receiving a single complaint in more than six years of rallies/marches. Spokesman William Seaman told a Channel 6 interviewer that even if a variance were only a dollar, First Amendment rights were being denied. It was unnecessary perhaps to point out that a street preacher with a reach of 50 yards holds forth daily on the city's South Park Blocks across from Portland State University's Smith Hall.

Experience in demonstrations over the past three years in Portland—including those enclosed in fencing on mud at the Airport—made participants aware that the next step would be a ban from the Square altogether. And, as night follows day, the step after that would be banning all city demonstrations as is the situation in all dictatorships elsewhere in the world with police and armies using water cannons, clubs, and firearms to clear streets. Tiananman Square in 1989 is not so far removed from the Boston Massacre of 1770—or the brutality of the Portland police near the Hilton Hotel in 2002.

Notification via the Internet about the noise ban was sent immediately to most of the area's 157 activist groups. The following Friday (December 28), representatives of several met at the Square and elsewhere to assess whether to meet with the Mayor and/or Commissioners to remind them about previous court rulings and request that PPI thus educate its personnel not to violate the

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<sup>27</sup> Author's personal experience. Enji, "Buddha in the Square," Portland Indymedia website, [http://portland.indymedia.org/front.php3?article\\_id=5854](http://portland.indymedia.org/front.php3?article_id=5854).

First and Fourteenth Amendments. Or to meet with Portland Business Alliance officers to point out these Constitutional rights and court rulings. Or, if no positive response was forthcoming, to warn that PPRC would be exploring legal action against all four entities responsible for the Square.

On the following Friday, a bull-horn was used by PPRC spokespersons to explain to a sizable crowd the PCSI orders issued by the Noise officer. The subsequent march, covered by Channel 6, involved members using *two* bull-horns in leading chants as demonstrators made for City Hall's 4<sup>th</sup> Street doors. Upon arrival, protesters chanted slogans and listened to the recitation of the First Amendment. Two Security officers came out, one ordering the group to the sidewalk.

The response was reminders that the City Hall premises were public property and open to public assembly to petition against grievances. Ordering an assemblage away on perception that City Hall grounds were private property involved the very grievance at issue in Pioneer Square. Their response was a plea to depart because a wedding reception was going on inside. Having made the point about freedom of speech and assembly and lingering for a few moments, the group marched and chanted back to Pioneer Square for closing speeches.<sup>28</sup>

Whether the group received only a temporary reprieve from noise citations is as yet unknown, but a PPRC member will appear before the City Council the following Wednesday to contest this latest abridgment to First Amendment rights along with previous supportive court rulings.

Even so, the situation bodes ill for 2008 when political activism in the Square will be extensive with noise levels well above 55 decibels and variances ignored. At the worst, as revelations about Blackwater's criminal actions become public knowledge, vigorous action by the PPI to enforce dead ordinances and state laws can only backfire once again in possibly expensive rulings against all Pioneer Square's officialdom.

At the least, PPI violations could prove politically damaging for city officials, one of whom is running for mayor. Political parties certainly will not remain silent on this issue. Nor will powerful progressive attorneys, supported by national legal organizations, if past cases are any indication.

Far better for the city to take its Pioneer Square contractor/subcontractors in hand and mandate a thorough knowledge and *practice* of the First and Fourteenth Amendments as a hiring condition. And to fire those who ignore it.

The PPRC's weekly event, and others in 2008, may grate on the sensibilities and behavioral values of some business, civic, and society leaders. But to Portlanders, schoolchildren, and tourists, political activism in the Square is a reminder that the Constitution is being kept alive by those expending time, energy, and shoeleather protesting its perceived violations. The nation's Founders considered freedom of speech and assembly so essential to democracy especially when tyrants might threaten it that they made sure it led the Amendments in the Bill of Rights section of the Constitution.

Peaceful political activities in the Square demonstrates that First Amendment rights are available to all Americans when elected officials seem unresponsive to constituents or are themselves complicit in undermining the document governing the Republic's freedoms for 220 years.

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<sup>28</sup> Author's personal experience, Jan. 4, 2008.

## Appendix A

### **Brick Sales and Searches in the Square**

Brick sales started on April 6, 1981 and are ongoing—though currently priced at \$100 each. Each purchaser was issued a certificate, though it is unlikely many still exist, given departures and deaths of donors and recipients. The prime evidence that the public owns the park is in those 63,000+ enscribed bricks in the Square. An archival master list is obviously available from one Scott Hanselman.

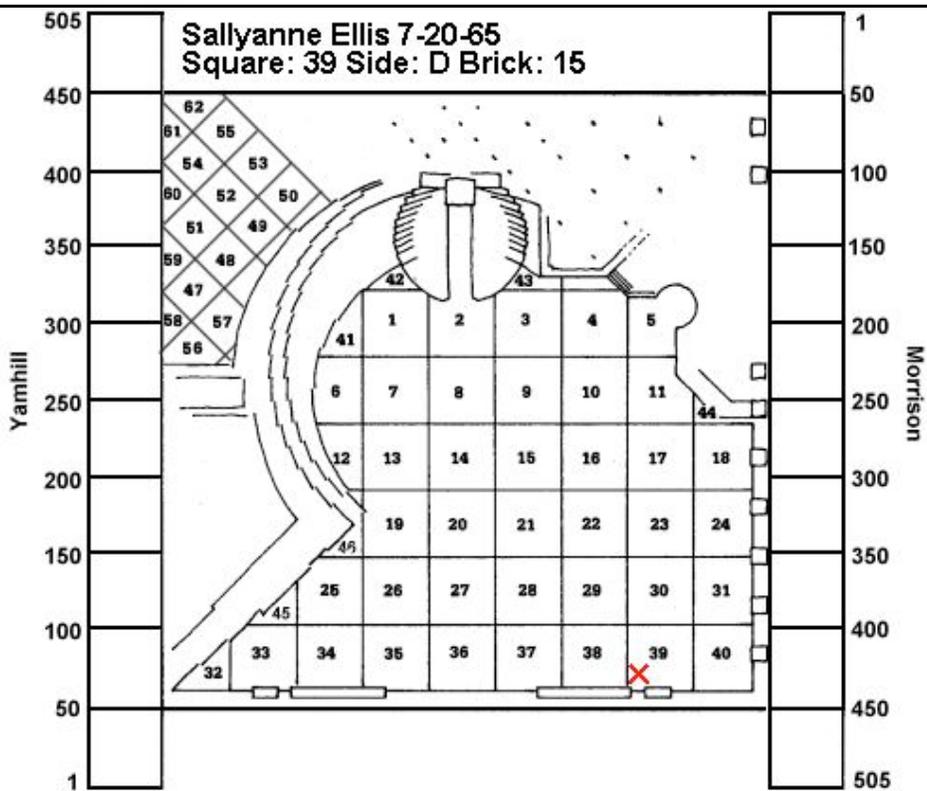
A daughter's brick—bought at the start of sales in 1981—was located through URL sources listed in the endnotes below. Location maps for identifying bricks are almost identical to those for cemetery sites. Prior to computers, donors and recipients either had to pay for a map or risk temporary backaches in seeking the enscribed brick—first name first in the requirements of only 24 spaces.

The search results for that daughter's brick are on the next page:<sup>29</sup>

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<sup>29</sup> Scott Hanselman, <http://www.pioneercourthousesquare.org/mappage.aspx?name=Sallyanne+Ellis+7-20-65&SQUARE=39&SIDE=D&ROW=H&BRICK=15>, [http://gonw.about.com/gi/dynamic/offsite.htm?zi=1/XJ&sdn=gonw&cdn=travel&tm=8835&f=00&su=p284.8.150.ip\\_&tt=2&bt=0&bts=0&zu=http%3A//www.pioneercourthousesquare.org](http://gonw.about.com/gi/dynamic/offsite.htm?zi=1/XJ&sdn=gonw&cdn=travel&tm=8835&f=00&su=p284.8.150.ip_&tt=2&bt=0&bts=0&zu=http%3A//www.pioneercourthousesquare.org).

Year	BRICK NAME	SQUARE	SIDE	ROW	BRICK
1981	Sallyanne Ellis 7-20-65	39	D	H	15



## Appendix B

### Pioneer Courthouse Square Litigation

Lawsuits cited in this paper are below and formatted from original sources in the endnotes.

### **Federal Judge Rules City Exclusion Policy Unconstitutional<sup>30</sup>**

On February 26 [2004], U.S. District Court Judge Ancer Haggerty ruled that Portland City Code (PCC) 20.12.265, which Portland Police have used to issue orders excluding certain people from public places for 30 days, is unconstitutional. Under the ordinance, a police officer can issue a 30-day exclusion from any City park to any person who violates any state law, city or county code, or Park Bureau rule or regulation. The judge ruled that the ordinance violates the First Amendment and the Fourteenth Amendment's guarantee of procedural and substantive due process.

The case stems from a 30-day exclusion order issued to a woman collecting signatures for medical marijuana in Pioneer Courthouse Square in April, 2002. The woman and her co-petitioner were excluded from the Square, Ankeny Plaza and the South Park Blocks for 30 days. They filed a civil suit in Federal Court against the City of Portland and Pioneer Courthouse Square under 42 U.S.C. § 1983 for violating their civil rights. The judge ruled that PCC 20.12.265 is unconstitutionally overbroad and violates the First Amendment on its face and as applied to the two women. The judge awarded summary judgment to the two plaintiffs, allowing them to collect compensatory damages. Almost immediately, Commissioner Jim Francesconi, who heads up the City's Parks Bureau, rewrote the City Code. But rather than improve it, he created exclusions that can last as long as 180 days.

**For more information contact the Oregon Law Center at 503-295-2760.**

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### **Oregon Supreme Court Strikes Down 'Failure-to-Disperse' Clause of Disorderly Conduct Law**

On March 11[2004], the Oregon Supreme Court struck down as unconstitutional a portion of Oregon's disorderly conduct statute which allowed police to arrest persons who disobeyed police commands to disperse. ORS 166.025, Oregon's disorderly

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<sup>30</sup> *Yeakle and Sheffer v. City of Portland and Pioneer Courthouse Square*, CV 02-1447-HA(February 26, 2004, *Courthouse News*, Vol. X, No. 3, March 11, 2004, [http://209.85.173.104/search?q=cache:hTcx\\_tIjojI:ord.uscourts.gov/news/x3.pdf+\(PCC\)+20.12.265&hl=en&ct=clnk&cd=7&gl=us](http://209.85.173.104/search?q=cache:hTcx_tIjojI:ord.uscourts.gov/news/x3.pdf+(PCC)+20.12.265&hl=en&ct=clnk&cd=7&gl=us). Exclusions, Failure to Disperse, *Legal Briefs*, No. 32, <http://www.portlandcopwatch.org/PPR32/legalbriefs32.html>. *People's Police Report* #32 Table of Contents. *People's Police Report* Index Page.

conduct statute, had been used by Portland Police to arrest peace demonstrators when the demonstrators failed to leave an area.<sup>31</sup>

Under ORS 166.025(1)(e), someone commits the crime of disorderly conduct if he or she gathers with others in a public place with the "intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof" and fails to comply with an officer's order to disperse. In 1998 eleven people were arrested in downtown Portland under the statute while protesting the U.S. bombing of Iraq in 1998 and others were arrested during the police actions at the May Day 2000 demonstration. The protestors filed a lawsuit, which led to the decision by the Court invalidating the statute. Last year, police arrested over 135 anti-war protestors simply for failing to obey an order to disperse.

The Oregon Supreme Court ruled that ORS 166.025(1)(e) is unconstitutionally overbroad because it prohibits conduct that is protected under Oregon's constitutionally guaranteed rights to free speech and assembly. The Court noted that persons who are exercising their protected rights of peaceable assembly or expression often do so with the intent to cause public inconvenience, annoyance, or alarm, but that in itself does not make their conduct criminal.

The Court's ruling is a major victory for peaceful protestors exercising their constitutional rights of speech and assembly.

**The National Lawyers Guild and the ACLU of Oregon assisted in this case. Call the Belmont Law Center at 503-234-2694 or the ACLU at 503-227-3186.**

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## Settlements for August 2002 Police Actions at the Hilton Hotel<sup>32</sup>

By STEVE DUIN  
*The (Portland OR) Oregonian*

Thursday, June 9, 2005.

Alan Graf and Lloyd Marbet go back 15 years and they have one another pegged. "Lloyd is a purist," says Graf, the pragmatist. That may explain the parting of their ways. Two weeks after Graf once again celebrated victory for the pepper-sprayed protesters who brought suit against the city and the Portland police, Marbet -- one of the 12 plaintiffs -- has filed a bar complaint against his friend and lead attorney.

The purist feels betrayed. "Alan had an ethical obligation to represent my

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<sup>31</sup> *State v. Ausmus*, S49364, A107691 (March 11, 2004).

<sup>32</sup> Steve Duin, "The Purist and the Pragmatist Part Company," *The Oregonian*, June 9, 2005, Lloyd Marbet website, <http://www.marbet.org/main.html>.

interests," Marbet says. "In the course of this litigation, his own interests begin to become evident."

The pragmatist is annoyed by what he describes as an all-too-familiar turn in the community of political activists.

"If you win, you've sold out. If you're not struggling, you're not a true activist," Graf says, wearily. "It's a sign to the right that they don't have to worry. The left will self-destruct."

In October 2002, Marbet and eight other protesters filed suit against the city in federal court, alleging the police used excessive force while confronting demonstrators who'd gathered outside the Hilton Hotel in Portland to protest the appearance of President Bush at a fundraiser for U.S. Sen. Gordon Smith, R-Ore.

The protesters had compelling video evidence of what Graf called "a police riot," in which the cops plowed into a fairly peaceful crowd with pepper spray and rubber stingballs. The group was eventually joined by three other plaintiffs who were injured at anti-war demonstrations the following March.

Last December, all of the plaintiffs save Marbet agreed to a \$300,000 settlement with the city. They did not receive an official apology, although then-Mayor Vera Katz said, "Mistakes were made. . . . You had to be blind not to see it."

Two weeks ago, a federal judge ordered the city to pay Graf and his legal team \$545,000 in attorney fees. Graf says the team put 3,900 hours into the case. He adds that the city's attorneys devoted 4,400 hours to the defense effort before concluding Katz's eyesight was better than theirs.

In the beginning, Graf and Marbet were adamant the plaintiffs were -- as attorney Elizabeth Joffe wrote in January 2004 -- "deeply committed to effecting change in the Portland Police Bureau's handling of peaceful protests in the future. Any settlement will have to include, at a minimum, policy changes and guarantees limiting the use of pepper spray in these situations."

For two years, that commitment was mutual and similarly directed. Marbet argues in his carefully constructed bar complaint that while the purist never wavered in his refusal to "be bought off by the city," the pragmatist eventually decided that a \$300,000 settlement and attorney fees were victory enough.

"For us to think we're going to reform the police bureau overnight is a pipe dream," Graf says. "That's what separates me and Lloyd. 'Policy' is just paper. The money is going to get their attention. The headlines will get their attention."

That's a legitimate perspective, Marbet says, but because it isn't mine, it shouldn't be my attorney's. Marbet maintains the settlement cost the city nothing; it consists of taxpayer dollars, after all. And the headlines didn't stop Police Chief Derrick Foxworth from promoting two supervisors, Lt. Mark Kruger and Capt. Marti Rowley, who were part of the August 2002 melee.

Marbet's bar complaint seeks to determine whether Graf developed "a personal and financial stake" in the outcome of the case, specifically the funding of the fledgling Northwest Constitutional Rights Center, which operates out of Graf's office.

At least two of the plaintiff attorneys protested that Graf was pressuring the plaintiffs to contribute to the center. In a November 2004 email, Graf wrote, "(I)f we don't come up with at least \$120,000 from the Plaintiffs, I don't see any

reason to keep the Center's doors open."

In that case, "We will all go away from this having gained nothing from our efforts other than some money," the pragmatist writes, sentiments that would make the purist proud.

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