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Prosecutors Won't Pursue Cases of 227 in Disputed Protest

By **SABRINA TAVERNISE**

The Manhattan district attorney's office said yesterday that it would not prosecute cases against 227 protesters who were arrested in one of the most disputed demonstrations of the Republican National Convention, saying it would be difficult to prove that the protesters had deliberately defied orders.

The decision effectively throws out one of the largest group arrests to occur on Aug. 31, the second day of the convention, when nearly 1,200 people were arrested around the city.

The demonstrators affected by yesterday's decision were arrested near ground zero after announcing their plan to march up Broadway to Madison Square Garden. They did not have a permit, but they held discussions with local police commanders, who allowed the march after protesters agreed to obey all traffic laws. But they were arrested almost immediately when, the police said, they violated the agreement by blocking the sidewalk.

Civil liberties advocates hailed yesterday's decision and said the dismissals proved the arrests were illegal. "It's so important that they did that," said Donna Lieberman, executive director of the New York Civil Liberties Union. "When people are arrested for lawful activity, it has a lasting chill. When the activity is protest, then the harm is all the greater."

But Police Commissioner Raymond W. Kelly defended the officers' actions, saying they had worked hard to accommodate the protesters, even those who did not have permits. The protesters broke the law when they unfurled a banner while on the sidewalk on Fulton Street, violating an agreement to walk two abreast, he said in a statement.

The decision "does not cast any doubt about the actions of the defendants, who were blocking pedestrian traffic in violation of the law, but reflects the difficulty of proving their intent in doing so," Mr. Kelly said.

The decision comes amid a continuing dispute between the city and civil libertarians over how long protesters were held in custody during the convention. Lawyers for the protesters have said that one of the city's goals was to stop the protesters from being heard during the convention, an argument that city and police officials have vociferously denied.

At a hearing yesterday for three of the protesters in Manhattan Criminal Court, William Beesch, an assistant district attorney, said his office had decided not to pursue the cases after reviewing the behavior of the officers and the protesters in the tangle of events that day.

While acknowledging that the protesters had "failed to heed the directives of the police," their vast numbers - there were several hundred at the site - would make it difficult to prove that every person arrested was deliberately defying police orders, Mr. Beesch said.

"The police likely created the impression among the participants that the march had official sanction," he said, reading from a statement.

What is more, the protesters behaved well in police custody, he said.

A Manhattan Criminal Court judge dismissed charges in the three cases before her yesterday, and Mr. Beesch said the district attorney's office would move to dismiss all the other cases.

In all, about 1,100 people who were arrested during the convention have been arraigned, out of the 1,784 cases the district attorney's office reviewed, said Barbara Thompson, a spokeswoman for the office.

One protester who appeared in court yesterday, Richard Hardie, a 73-year-old furniture designer from Northampton, Mass., said he was held for 49½ hours in a holding area on a Manhattan pier and in the courthouse.

Mr. Hardie, who grew up and went to college in New York City, said he was elated that his case was dismissed.

"I feel great," Mr. Hardie said. "I didn't think the city had a case. I was never told why I was arrested. The city should realize, and the mayor should realize, that they violated us."

But a criminal justice official for the city defended the arrests, pointing out that before yesterday, the district attorney's office had decided not to bring charges in only three of the nearly 1,800 arrests during the convention.

"The decision to dismiss the 227 says nothing about the quality of the arrests," said the official, who spoke on the condition of anonymity, adding that District Attorney Robert M. Morgenthau "felt he could not prove the intent of the protesters beyond a reasonable doubt."

Yesterday's decision applied to 227 cases, but more than 100 of those had already been adjourned in contemplation of dismissal, a common outcome of minor arrests.

A lawyer representing other protesters who were arrested that week, Norman Siegel, said that those who accepted the adjournment of their cases would still be able to join a class action suit or file a lawsuit saying they were held for too long before arraignment.

Martin R. Stolar, president of the New York City chapter of the National Lawyers Guild, who represents about 80 of the 227 protesters, said the protesters planned to bring a federal civil rights lawsuit against the city by the end of the month. For example, many of the protesters claim that they were held for longer than the 24 hours the law allows.

"Just saying, 'Oops, sorry,' is not enough," said G. Simon Harak, a coordinator for the War Resisters League, the group that organized the Fulton Street protest, and one of those arrested. "There has to be some kind of redress for the violation of our civil rights."