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City Arrest Tactics, Used on Protesters, Face Test in Court

By JIM DWYER

New York City has one memento from the 2004 Republican National Convention that seems destined to last: an especially bitter dispute over the city's methods and motives in detaining hundreds of protesters, well beyond the ordinary legal time limit of 24 hours, without the usual access to lawyers.

At times, the Police Department kept people in custody for two days or more before issuing them tickets for offenses like disorderly conduct.

Led by a vigorous defense from Mayor Michael R. Bloomberg, city officials say they did their best under a sudden and extraordinary flood of arrests, acknowledging that bystanders may have been swept up. Lawyers for a number of protesters say what the city did amounted to illegal preventive detention, a calculated effort to limit the chances of confrontation and possible embarrassment.

The full dimensions of the dispute may emerge in a contempt-of-court hearing for the city on Sept. 27, and in civil lawsuits that have been filed or are threatened.

What is clear now - from interviews, a review of newly released city and state records, and a decision from a previously undisclosed court hearing - is that the city's new system for speedy processing of mass arrests failed its first major test that week.

At least one of the city's major justifications for delays in releasing protesters is not supported by state records. In addition, the city chose not to abide by a state judge's direct order to grant lawyers immediate access to their clients. When another judge gave deadlines for the release of certain prisoners who had been held at length, top city officials repeatedly came back to court to report that they could not track the prisoners down in time. There were 1,781 arrests in all.

While the mayor has accurately noted that prosecutors have dropped very few of the arrests, it is also true that more than 600 of the cases have been provisionally dismissed,

indicating that the police detention amounted to a more severe punishment than any the courts would impose.

The city's top lawyer, Michael C. Cardozo, told a judge that much of the delay was not caused by the city, since it took "five or six hours to get the fingerprints from Albany," referring to criminal history records maintained by the state.

Yet state officials have a different story. They say that they sent 94 percent of the fingerprint reports to the city in one hour or less. Only one set of fingerprints - of 3,620 processed by the state from Aug. 30 to Sept. 3 - took as long as five hours to return to New York City authorities, according to a computer report provided by Jessica Scaperotti, a spokeswoman for the state's Division of Criminal Justice Services.

Numerous lawyers said they could not see their clients while they were in city custody. That state of affairs persisted even after a State Supreme Court judge in Manhattan, Emily Jane Goodman, drove to the courthouse at midnight on Sept. 1, and signed an order requiring the city to allow defense lawyers to meet their clients "forthwith."

Yet when defense lawyers delivered her order to corrections guards at a jail in the courthouse at 2:30 a.m. on Sept. 2, they were kept waiting nearly two hours and then were denied entry, according to Daniel L. Alterman, one of the lawyers. "The city refused to honor a lawful order of the court," Mr. Alterman said. Numerous other lawyers said they, too, had not been allowed to meet their clients in city jails or at a Hudson River pier used by the Police Department as a holding area.

Mr. Cardozo, the city's corporation counsel, said that he believed state law gave the city the right to an automatic stay of Justice Goodman's order in order to appeal to a higher court. John Feinblatt, the city's criminal justice coordinator, said that for logistical reasons, lawyers normally are not permitted to see their clients until they are in courthouse pens for arraignment, a point strongly disputed by defense lawyers. "There couldn't have been a night when safety reasons, security reasons, and efficiency reasons were more paramount," Mr. Feinblatt said.

A second state judge, John Cataldo of Supreme Court, gave the city a series of deadlines to bring prisoners before the court or release them during the last two days of the convention. Mr. Cardozo and Mr. Feinblatt told the judge that locating the prisoners was complicated because there were four places where they might be. Nearly 24 hours after the judge began setting deadlines that were not met, he held the city in contempt of court. In the next three hours, at least 311 people were released, records show.

Mr. Bloomberg has said that the office of Robert M. Morgenthau, the Manhattan district attorney, had declined to prosecute only three of the arrests. The district attorney "obviously thinks we behaved correctly and arrested the right people," Mr. Bloomberg

said.

The prosecutor's office confirmed this week that it had dismissed only three cases. Still, of the 1,102 people who went before judges, 70 have pleaded guilty and 621 cases were "adjourned in contemplation of dismissal," according to Barbara Thompson, a spokeswoman for Mr. Morgenthau. Such dismissals require the person to stay out of trouble for six months. They are a common outcome of minor arrests, including those made at major protests.

The uproar over the arrests and detentions began near the end of a tumultuous week of demonstrations during the convention, which were largely free of the violence and destruction that had been predicted by some authorities. Mr. Bloomberg has said that the larger picture shows that the city did an excellent job of keeping the streets safe and protecting civil rights.

Mr. Bloomberg said that the city wanted to move faster in getting people out of jail, but that the police were stymied by an extraordinarily high number of arrests, including hundreds made within several hours on the Tuesday of convention week. He and his senior aides say the extended detentions were simply a byproduct of the city's diligence in maintaining public order, while ensuring that hundreds of thousands of people could safely exercise free speech rights in dozens of marches, protests and demonstrations.

For the lawyers of many of those arrested, however, the city seemed to have swept up protesters, then managed the arrest process to keep them away from judges and in police custody until President Bush spoke on the last night of the convention. The tactics amounted, said Norman Siegel, a civil rights lawyer, to "preventative detention."

That charge was described as a "patent lie" by Police Commissioner Raymond W. Kelly, who noted that protesters were moved through the system quickly until nearly 1,200 people were arrested in one four-hour period on Aug. 31.

The system had been swamped, Mr. Cardozo told Justice Cataldo. "Yesterday was the largest number of arrests in the history of Manhattan," he said.

In fact, while the total number of arrests on that evening - 1,128 - was extraordinarily high for any borough, it was 30 percent lower than the total on June 14, 1982: that morning, 1,691 people were arrested at disarmament demonstrations in Midtown.

Justice Cataldo took note of the circumstances of the mass arrests but pressed the city to begin releasing people who had been charged only with violations and had been in custody for more than 36 hours. More than a decade ago, the State Court of Appeals said that in the absence of extraordinary circumstances that could not be foreseen, people who have been arrested must be brought before a judge within 24 hours. On an ordinary day in

Manhattan, when roughly 260 people are arrested, they are brought before a judge, on average, in 23.7 hours, Mr. Feinblatt said yesterday.

In repeated appearances before Justice Cataldo, Mr. Cardozo and Mr. Feinblatt said they were trying hard to comply with the order but were encountering significant problems in tracking down the prisoners.

During those proceedings, on Sept. 2, Mr. Siegel, Mr. Alterman, and other lawyers from the Legal Aid Society and the National Lawyers Guild obtained a writ of habeas corpus, one of the judiciary's most powerful, if sparingly used, tools. Issued by Justice Cataldo, it ordered the Police Department to bring the prisoners to court or release them.

Deputy Chief John J. Colgan, who oversaw the operations of the mass arrest facility at the West Side pier, said each prisoner went through an intricate, careful process.

They were unloaded from buses, photographed with the arresting officer, and searched, he said. Their belongings were listed on an inventory. "Everything was itemized, line by line," Chief Colgan said. He and Mr. Cardozo both said that Web sites had advised people going to the protests to bring laden backpacks for the purpose of bogging down the system. In addition, many of those arrested - more than 60 percent - were from out of state and were carrying all they had brought with them when they were arrested, said Mr. Feinblatt of the mayor's office.

Each case was also reviewed by lawyers from the Police Department's legal division before it was sent to the district attorney's office.

After that, the arrested people were taken from the pier to central booking in Lower Manhattan where they were fingerprinted, and a computer docket was created of their arrest. Justice Cataldo wondered why the city had not simply dispensed with the fingerprinting process. He noted that in the vast majority of the arrests, the offenses were so minor that state law did not require fingerprints, unless the police were dissatisfied with the proof of identity, or because they suspected that the person might be wanted on a warrant.

Mr. Feinblatt said the fingerprints were essential. "It's Criminal Justice 101," he said. "If you had forgone the printing, you'd have no idea if there were warrants."

Mr. Feinblatt was unable to say yesterday if anyone arrested at the protests was wanted elsewhere.

He was asked about the discrepancy between the city's assertion that it was taking five to six hours for fingerprint reports to come from Albany, and the state report showing that nearly all were produced in less than an hour. "A number of them took much longer than

five hours," he insisted. The state report shows only one that took four to five hours to produce, and none that took more than five hours.

Another source of delay in receiving the fingerprint reports could have been a backlog in computer printing, city officials suggested.

During the court proceedings, Justice Cataldo held the city in contempt for not bringing the prisoners to court or releasing them, as he had ordered. Mr. Cardozo said the city would appeal that order.

Throughout those sessions, the judge and the defense lawyers repeatedly asked why people charged with such minor crimes were being held for so long. Near midnight on Sept. 2, five protesters were still in custody. Mr. Cardozo urged the judge not to order their release. Unlike most of those arrested in demonstrations, they had been accused of felonies - riot and assault. Using authentic credentials, they were among a group of 12 who got onto the floor of Madison Square Garden and disrupted a speech by a White House aide.

Mr. Cardozo said, "I would also like to say that these are very serious offenses. Some of the people were seen on national television. There was a serious threat in Madison Square Garden."

Their cases turned out to be not all that grave. By the next morning, the Manhattan district attorney's office had decided to drop the riot and assault charges. All that remains of the original charges, according to Robert Gottlieb, a lawyer representing a number of protesters, is disorderly conduct.