



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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BY FACSIMILE AND FIRST CLASS MAIL

May 15, 2006

Raymond Kelly
Commissioner
New York City Police Department
1 Police Plaza
New York, N.Y. 10038

Re: CCRB Report About Dispersal Orders

Dear Commissioner Kelly:

On behalf of the New York Civil Liberties Union, I write in response to the May 9 letter from the CCRB to you about problems with dispersal orders during the Republican National Convention and your May 10 letter responding to the CCRB's letter. In particular, we write to express our concern about the Department's refusal to confront problems that may have resulted in the unnecessary and unlawful arrest of hundreds of political protesters.

At the outset, we were surprised by your attack on the CCRB for having released the letter publicly on the morning of its public meeting last week "in scarcely enough time for the ink to dry." Though your letter implies you received the CCRB letter only after it was given to the New York Times last week, we understand in fact that the CCRB provided your office with an unsigned draft on Friday, May 5, four days before the CCRB released it. If anything, the CCRB might be faulted for giving you advance notice (and presumably an opportunity to influence the letter before it was finalized). Your attack on the CCRB, in addition to being unfair to the agency, therefore appears intended to divert attention from the substance of its letter.

As for its substance, your letter first seeks to defend the NYPD's performance during the Convention by pointing to threats of a terrorist attack and concerns about civil disorder. While those concerns might well have been legitimate as a general matter, we continue to be troubled by the Department's insistence on equating political demonstrations with threats of terrorism and civil disorder. As is typically the case, the political demonstrations during the Convention were almost entirely peaceful and lawful. We do not think it productive to continue to speak about demonstration policing in terms of terrorism.

You next chastise the CCRB for criticizing Convention policing practices despite having received only a modest number of formal complaints and despite having substantiated only a

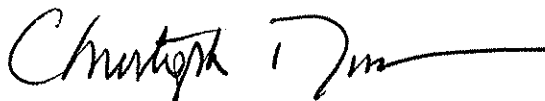
handful of them. Setting aside the role the Department's unlawful refusal to cooperate in CCRB investigations may have played in the outcome of those investigations, the CCRB's letter did not purport to stand on the number of complaints it received or substantiated. Rather, it dealt with a serious problem that surfaced in the investigations it conducted, a problem that contributed to the unlawful arrests of hundreds of lawful protesters.

As for that problem and the issue of dispersal orders, your letter responds to the CCRB by suggesting people were only arrested after adequate dispersal orders were given and adequate opportunity to disperse was afforded. This of course is the position the Department has taken from the outset, but the available evidence shows otherwise. With respect to the Fulton Street mass arrest, the Manhattan District Attorney's Office took the extraordinary step of dismissing all 227 cases after reviewing video tape showing that, after being told by the NYPD they could march, every person on the block was surrounded and arrested within one minute after a deputy chief shouted an order at the front of the march. And at the Convention's largest mass-arrest site – East 16th Street near Union Square – we now have sworn testimony from the commanding officer that, despite his attesting otherwise in Criminal Court affidavits, no order to disperse was given at all before nearly 400 people were arrested.

Since the Department has always defended its mass arrests during the Convention by contending it gave adequate dispersal orders, the additional claim in your letter that the arrests were proper because no such warnings were required is puzzling. Moreover, it cannot be squared with the Legal Guidelines the NYPD itself developed for the Convention, which called for the giving of dispersal orders prior to making arrests for disorderly conduct associated with marches. (I enclose the relevant portion of the Legal Guidelines.)

Rather than attacking the CCRB, we think it would be more productive if the Department addressed the legitimate policy and practice issue raised by the agency's letter. In that respect, we urge you to consider additional training that would assure, in those circumstances in which dispersal orders are appropriate, that Department personnel provide clear and audible warnings and further assure that people are given a genuine opportunity to comply with those orders. If this is done, the Department could greatly reduce the likelihood of unnecessary and unlawful arrests at future large-scale demonstrations.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Dunn", with a long horizontal flourish extending to the right.

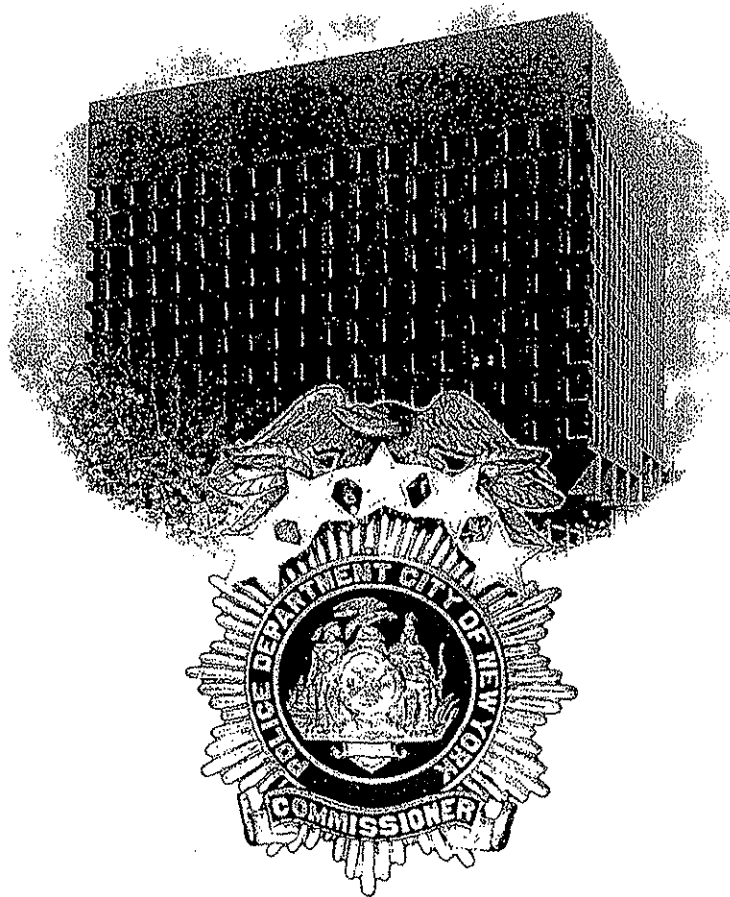
Christopher Dunn

c: Hector Gonzalez, Chair, CCRB
Florence Finkle, Executive Director, CCRB
John Feinblatt, Criminal Justice Coordinator
Peter Vallone, Jr., Chair, New York City Council Public Safety Committee

**NEW YORK CITY
POLICE DEPARTMENT**

**LEGAL GUIDELINES FOR
THE REPUBLICAN NATIONAL
CONVENTION**

MARCH 10, 2004



RAYMOND W. KELLY
POLICE COMMISSIONER

**NEW YORK CITY
POLICE DEPARTMENT**

**LEGAL GUIDE FOR THE
REPUBLICAN NATIONAL CONVENTION**

**RAYMOND W. KELLY
POLICE COMMISSIONER**

**GEORGE A. GRASSO
FIRST DEPUTY COMMISSIONER**

**STEPHEN L. HAMMERMAN
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Prepared by:

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Assistant Deputy Commissioner**

**Kerry R. Sweet
Captain**

Legal Bureau Staff



LEGAL GUIDELINES FOR THE REPUBLICAN NATIONAL CONVENTION

(d) Use of Sound Devices

The issuance and use of sound devices in a public place is governed by the Administrative Code, Section 10-108. A permit is required in order to use or operate a sound device in a public place. A summons may be issued if a person at a demonstration uses a bullhorn or similar sound amplification device without a permit. Mere possession of the device is not a violation, only the actual use and operation of the device amounts to an offense. (Reference Chapter II for specific details)

(e) Marches Through the Streets

Generally, no permit is required for groups of demonstrators to walk or march along the sidewalk. If such conduct results in a substantial disruption of pedestrian or vehicular traffic, members of the group could be arrested for disorderly conduct or simply ordered to disperse. Generally, however, it has been the Department's policy to accommodate these marches, whether planned or unplanned, in order to minimize disruption.

A march in the roadway may be considered a "parade" for which a permit is required under Administrative Code Section 10-110. The appropriate charge, if any arrests are made, is disorderly conduct. Nevertheless, arrests are appropriate only if a substantial disruption of pedestrian or vehicular traffic occurs. In addition, marchers should first be warned that they will be arrested unless the march is discontinued. Every effort should be made to record vehicle descriptions and license plates of vehicles actually obstructed or video of pedestrians dangerously being forced into the roadway.

(f) Onlookers at the Scene of Arrests

When an officer stops, detains, or arrests a person in a public place, other persons who happen to be in the area may remain in the vicinity of the stop or arrest. This right to observe is limited by reasons of safety and disruptions to the police action. Guidelines applicable to such situations are as follows:

- (1) A person who merely remains in the vicinity of a stop or arrest shall **not** be subject to arrest *unless* the officer has probable cause to believe the person or persons are obstructing governmental administration (Penal Law Section 195.05).
- (2) **None** of the following constitutes probable cause for arrest or detention of an onlooker *unless* the safety of officers or other persons is directly endangered or the law is otherwise violated:
 - a) Speech alone, even though crude and vulgar;
 - b) Requesting and making notes of shield numbers or names of officers;
 - c) Taking photographs;
 - d) Remaining in the vicinity of the stop or arrest.
- (3) Whenever an onlooker is arrested or taken into custody, the arresting officer shall report the action to the supervisor at the station house or other place where the person is taken.

LEGAL GUIDELINES FOR THE REPUBLICAN NATIONAL CONVENTION

POLICE OFFICIAL

"YOU HAVE BEEN WARNED BY MR./MRS _____ TO VACATE THESE PREMISES. YOU MAY STILL LEAVE VOLUNTARILY IF YOU WISH. IF YOU DO NOT LEAVE, YOU WILL BE ARRESTED FOR CRIMINAL TRESPASS. IF YOU RESIST, AN ADDITIONAL CHARGE OF RESISTING ARREST WILL BE PLACED AGAINST YOU".

DISORDERLY CONDUCT - ARREST WARNINGS

"MY NAME IS [RANK AND NAME], YOU ARE UNLAWFULLY OBSTRUCTING VEHICULAR (OR PEDESTRIAN) TRAFFIC. I AM ORDERING YOU TO LEAVE THIS (ROADWAY OR SIDEWALK). IF YOU DO SO VOLUNTARILY, NO CHARGES WILL BE PLACED AGAINST YOU. IF YOU REFUSE TO LEAVE, YOU WILL BE PLACED UNDER ARREST AND CHARGED WITH [DISORDERLY CONDUCT/OR OTHER PERTINENT TRAFFIC INFRACTIONS]".

(GIVE OPPORTUNITY TO LEAVE)

"SINCE YOU HAVE REFUSED TO LEAVE THIS (ROADWAY, SIDEWALK), I AM ORDERING YOUR ARREST ON THE CHARGE OF DISORDERLY CONDUCT".