

## Jailing Demonstrators. Also: Police-Community Relations

by {ga=jvitullomartin}

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Protesters arrested for minor offenses will no longer be held overnight in jail, the Police Department informed Judge William Pauley III of the U.S. District Court in Manhattan in mid-July. This is excellent news. Let's back up.

After the killing of Amadou Diallo--the young, unarmed, African street vendor--by four police officers on February 4, 1999, thousands of New Yorkers poured into the streets of Lower Manhattan to protest what some saw as police brutality and others as police incompetence. Hundreds were arrested for minor offenses--disorderly conduct, obstructing government, disobeying an order to disperse.

The Police Department followed its time-honored procedures in arresting and releasing demonstrators. Those who showed identification and who had no other criminal complication--such as drugs, weapons, or outstanding warrants--were given desk appearance tickets (DATs). DATs are routinely issued to minor offenders to ensure their appearance in court on a specified date, while allowing them to go home in the meantime.

DATs make eminent sense. An arrest is not a punishment, just as the police are not judge and jury. The sole point of an arrest is to secure the appearance of the person before a judge. Those arrested on minor charges are usually jailed only if the police fear flight or violence.

During the Diallo demonstrations, then-Police Commissioner Howard Safir decided that protesters should be jailed rather than released. The police began to hold demonstrators for a few hours in the precinct, and then transfer them to a central booking facility. Here they were held--usually overnight--until arraigned before a judge. Judges routinely dismissed almost all charges.

Until May 1, this policy of jailing some demonstrators had been informally enforced. On May 1, for reasons that "remain unclear," according to the New York Times, the Chief of Department (the NYPD's highest-ranking uniformed officer) formalized the policy. He issued a directive forbidding desk appearance tickets for offenses committed at demonstrations of 20 people or more. All demonstrators, he ordered, were to be, in police terminology, "processed on-line," meaning detained for arraignment. You and I would call it jailed.

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Daniel Connolly, the lawyer in charge of this for the city's Corporation Counsel, defended the new police policy. He argued that the policy was intended to discourage crime and to process offenders (i.e., protesters) efficiently. In a June interview Connolly said, "The police department has many exceptions in which desk appearance tickets are not given--in cases of assault, for example, or cases involving alcohol, or when people are from out of town. No DATs. This is just another exception."

Connolly also mentioned what he called "the recidivist threat," the problem that demonstrators committed to civil disobedience will reappear at the rally if they are released with a desk appearance ticket. Meanwhile, minor offenses committed by anyone but demonstrators--littering, for example, or walking a dog off leash--would still generally be handled with desk appearance tickets. Only demonstrators were to be jailed.

This, of course, raised serious constitutional issues, as the New York Civil Liberties Union argued in a law suit in federal court. NYCLU lawyer Christopher Dunn argued that "singling out demonstrators to be `put through the system' specifically retaliates against citizens exercising their First and Fourth Amendment rights." The point of the arrests was to remove people from the scene of constitutionally protected political activity.

From the nation's founding forward, American courts have had to grapple with balancing the people's right to peace and order with rights of free speech and assembly. Disturbances of the peace that involve noisy parties or public vandalism present no constitutional problems. But disturbances that result from what people say or from public demonstrations quickly invoke the constitutional guarantees of freedom of speech and freedom of assembly.

During the 1960s the Supreme Court became increasingly reluctant to permit local police to forbid or halt civil rights demonstrations. As Justice Potter Stewart wrote in 1963, the state may not "make criminal the peaceful expression of unpopular views." The court has cast a cold eye ever since on local regulations that threaten freedom of speech and the right to assembly.

While the government may, under its police power, legitimately regulate the "Time, Place, and Manner" of demonstrations, it may not use the guise of regulation to interfere unduly with the people's right to assemble. In practice, this is a difficult area, requiring good judgment and sensitivity from local officials.

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New York often lacks both. The problem is that the people wishing to exercise their right to assemble and demonstrate mainly wish to protest against Mayor Rudolph Giuliani and his Police Department--the very officials asserting the right to jail the protesters. Do protesters often embarrass the mayor and the police? Yes, but that is their constitutional right.

In July the Police Department and the Corporation Counsel decided to back off jailing protesters overnight. Some sense of balance and order has been restored.

Desk appearance tickets served the people and the police of the City of New York well for years--and now they will again. Jailing protesters on minor--sometimes trumped-up--charges before they see a judge has been consigned to a brief, unfortunate moment in the dustbin of New York City history.

Commissioner Kerik and the Police Department can return to what they do best: fighting real crime, not legitimate protest.

### **A PROPOSAL FOR POLICE-COMMUNITY RELATIONS**

After a few months in office, police commissioner Bernard Kerik announced in January that one of his top priorities would be improving police-community relations. High-ranking officers would attend community meetings in person, precincts would be more welcoming to the public, officers on the street would be encouraged to be polite and attentive.

A report by the Citizens Crime Commission, which calls itself an independent criminal justice research organization, concludes that the police department is not yet courteous enough for many New Yorkers--even though the vast majority feel safe in their neighborhoods. Indeed, 91 percent of the 834 New Yorkers surveyed from October 2000 through February 2001 said they feel safe in their neighborhoods during the day, 77 percent feel safe at night, and 84 percent regard their neighborhoods as safer than a year ago.

But the problem of race continues to raise its ugly head: 67 percent of surveyed New Yorkers said that the police were tougher on blacks than on whites, and 59 percent said that brutality was a serious problem in the department.

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Meanwhile, civilian complaints against the police jumped 12 percent in the first six months of 2001, according to the Civilian Complaint Review Board. It logged 2,418 complaints through June 30, or 264 more than in the six months last year. Charges of abuse of authority were up 12 percent, and charges of excessive force up 9 percent.

The Citizens Crime Commission has a suggestion. They believe that CompStat, the police department's renowned computerized crime-tracking system, could be "helpful in breaking down divisions between police and citizens." They urge the department to begin an "expanded information-sharing effort" with neighborhoods to provide crime data while enlisting the help of residents in planning crime-fighting strategies that would be both effective and "not offensive to the community." Worth a try perhaps.

Julia Vitullo-Martin, a long-time editor and writer on urban affairs, is the former director of the Citizens Jury Project at the Vera Institute of Justice. She is now writing a book entitled *The Conscience of the American Jury*.