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May 9, 2006

Police Commissioner Raymond W. Kelly
New York City Police Department
One Police Plaza, room 1400
New York, NY 10038

Dear Commissioner Kelly:

The board's evaluation and closure of six of the 63 complaints stemming from the Republican National Convention raised concerns regarding the clarity and specificity of orders issued by deputy chiefs in two separate incidents. The board believes that if the deputy chiefs had employed different tactics, the police department may possibly have avoided arresting a large number of individuals. The board recommends that the department review the training it provides officers in the context of existing procedures for policing demonstrations. All officers, particularly high-ranking supervisors, should ensure that in policing demonstrations they give protestors audible and unambiguous notice as to what behavior is expected of them and an opportunity to comply before they are arrested.

In the first incident, a deputy chief authorized the arrest of 227 individuals participating in a march on Fulton Street during the afternoon of August 31, 2004. Though the group did not have the required permit for a march, police commanders decided to try to accommodate the group and allow them to march under certain conditions. As video footage shows, an inspector announced to the group via bullhorn that it planned a "march without a permit" and ordered participants to walk on the sidewalk in "single or double file" so as not to obstruct pedestrian traffic and to "comply with the lights." The inspector concluded by stating, "Have a safe march." About two minutes later, a deputy chief ordered that the march stop and yelled, without the assistance of a bullhorn, "You are all blocking the sidewalk. If you do not disperse you will be placed under arrest." Within one minute the deputy chief ordered officers to arrest all the marchers standing on the block-long sidewalk.

Later the same day, another deputy chief supervised the arrest of at least 15 individuals taking part in a demonstration on a sidewalk near Herald Square. Video footage reveals that the deputy chief repeatedly spoke without a bullhorn, telling the group that it was "blocking pedestrian traffic" and warning participants to "clear the streets" or be arrested. Six minutes after issuing these warnings, the deputy chief ordered officers to arrest all the remaining protestors.

In both incidents, deputy chiefs gave orders for a crowd to disperse without the use of a bullhorn or other amplification device. Giving such an order without amplification to a large crowd raises the possibility that police arrested civilians who might have obeyed police commands had they heard them.

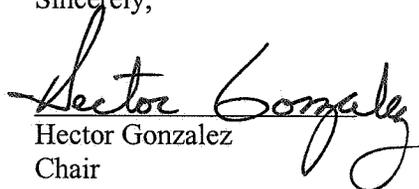
Video footage of the two incidents also revealed other problems with the deputy chiefs' orders. On Fulton Street, the deputy chief ordered officers to arrest marchers just 50 seconds after he instructed them to disperse. In addition, marchers who wanted to comply with the order had limited means by which to leave the area: they were blocked by a wrought iron fence on their left, a line of police officers on

bicycles on their right, and other marchers in front of and behind them. The only realistic departure route for those who wished to leave—and the footage suggests that many marchers did not want to be arrested—would have been through the line of officers, some of whom did not hear the chief’s dispersal order and therefore prevented civilians from passing.

Though officers at Herald Square gave demonstrators the time and opportunity to disperse, the language the deputy chief used in his dispersal order created uncertainty. The deputy chief told civilians standing on a wide sidewalk to clear the “streets.” The deputy chief told the CCRB that he used the word “street” to include the sidewalks, and he later ordered the arrest of all demonstrators who remained on the sidewalk. However, the footage captures demonstrators questioning whether the sidewalk was synonymous with the term “street.” Without a precise directive, individuals who might have left the area did not do so and subsequently found themselves under arrest

It was the department’s own policy—as reflected in its Legal Guidelines for the Republican National Convention— “to accommodate ... marches, whether planned or unplanned, in order to minimize disruption.” To reasonably accommodate such marches, it is imperative that police deliver orders in a manner that civilians can hear and understand and with which they can comply. It is the board’s hope that after reviewing these two incidents, the department can improve and/or reinforce its training to avoid similar situations in the future.

Sincerely,


Hector Gonzalez
Chair


Florence L. Finkle
Executive Director

c: Board members