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TRANSCRIPT OF PROCEEDINGS

ORIGINAL

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FIRST AMENDMENT RIGHTS & POLICE STANDARD :
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LIVE TAPE

(The following transcript was prepared
from an audiocassette tape provided by the
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00113

1 I would like to invite you to respond to
2 something that came up earlier in testimony, I
3 believe with Mr. Spitzer and then with Ms. Hayden
4 Hillyard and it had to do with something that
5 transpired in one of the Pershing Park cases. And it
6 has to do with the issue of whether parading without
7 a permit is an arrestable offense. The court asked
8 what is the city's position: Is it an arrestable
9 offense to parade without a permit. Mr. Kover
10 responds yes. Do we believe it is an arrestable
11 offense? We do believe that to be so.

12 How can that be when that was
13 decriminalized?

14 MR. VALENTINE: Well, we actually heard
15 the testimony on this issue this morning. And I
16 raised that issue because although I am the head of
17 the litigation division, I am not involved in detail
18 in all of the litigation. This case, however, has
19 taken up a lot of my time because obviously, with
20 three class action lawsuits, it's something that
21 we're focusing resources on.

22 My understanding was is that the

00114

1 transcript involves a colloquy between Mr. Kover and
2 Judge Sarbin on this issue. Mr. Kover's position is
3 that the city has always argued that the violation of
4 the parading without a permit provision is a criminal
5 offense for which someone could be arrested. What he
6 was trying to clarify was that the MPD has a policy
7 of not making arrests under that clause, as well as a
8 policy of giving an order to disperse prior to making
9 those arrests.

10 When I looked at the technical argument
11 that one of the plaintiffs' organizations raised, and
12 that is that the criminal sanction provision they
13 thought had been changed. What I understand our
14 argument is is that what was changed was the criminal
15 provision for the traffic adjudication rules. And
16 the position of the city is that the council did not
17 -- or the executive did not in any way change the
18 underlying language of 24 DCMR 705, which
19 specifically says, in my opinion, that it is somewhat
20 criminal in nature because it refers specifically to
21 a conviction.

22 And in our brief we did cite case law in

00115

1 this circuit that says that you can be arrested for
2 an offense even if, as a matter of practice or the
3 statute itself doesn't provide for incarceration as a
4 punishment if you're convicted. So the position of
5 the city and the police department is that this is a
6 criminal offense for which you can be arrested.

7 It is the policy of the MPD, as I
8 understand it, now not to make arrests without giving
9 a dispersal order. And that's one of the items that
10 Judge Sarbin is looking at. And what I think is
11 instructive on this is that he denied the motion for
12 a preliminary injunction.

13 CHAIRMAN PATTERSON: Well, I can just say,
14 looking at the organic documents, that the definition
15 of the crime, the definition of a parade, the
16 definition of all of the above is within the traffic
17 rules that were in fact decriminalized by the
18 council. And we can perhaps share with you our
19 general counsel's opinion on this matter.

20 MR. VALENTINE: Right. There are, as I
21 understand it, there's a disagreement over the
22 provision for parading in the street and parading in

00116

1 the parks. My understanding is that the Office of
2 the Attorney General construes the applicable
3 provision as being 24 DCMR, which applies to a parade
4 in a public area and public space. And it's our
5 interpretation that we can make arrests for violating
6 that provision.

7 CHAIRMAN PATTERSON: And you have found
8 'parade' to be defined in that contest where?

9 MR. VALENTINE: I believe it is defined in
10 that provision of -- the question that you've asked
11 is a very interesting one because my view was why
12 hasn't this been reconciled. And so one of the
13 benefits, I think, of your legislation is that it
14 takes what may be an ambiguous phrase and resolves it
15 in favor of not making arrests. And that's one thing
16 that we certainly -- That's a policy decision for the
17 city to make.

18 Our position in defending against the
19 litigation is that we do believe that you can read
20 the quoting permit type requirement in 24 DCMR as
21 requiring a permit for which a person could be
22 arrested if they parade without a permit.

00117

1 CHAIRMAN PATTERSON: Just a cursory review
2 by our general counsel since this morning says, you
3 know, you're really on pretty shaky ground. So I'm
4 sorry to hear that. I believe we are good on shaky
5 ground

6 Let me come back to Chief Ramsey's
7 testimony. I would like to ask a followup question
8 with regard to the references to Section 106. This
9 is the section in the legislation regarding dispersal
10 orders. And I'm just going to read that section into
11 the record because I'd like to followup with a
12 question.

13 "Section 106. Police Handling
14 and Response to First Amendment
15 Assemblies. The MPD's handling
16 of and response to all First
17 Amendment assemblies shall be
18 designed and implemented to
19 carry out the District policy
20 on First Amendment assemblies.
21 When participants in a First
22 Amendment assembly fail to