

RNC: Lessons learned

With dramatic flourish, Bill Clinton strode onto the stage of the Staples Center, and took his place at the podium. The assembled delegates sprang from their seats, and raised their voices in a collective roar. For the briefest moment, the cheers of the crowd drowned out the clatter of police helicopters that could be heard echoing through the roof above.

Outside of the convention hall, one could catch glimpses of the choppers maneuvering over downtown Los Angeles, their searchlights probing into the caverns between the skyscrapers. From the entrance to the Staples Center, one also had a clear view of the adjacent, fenced-in parking lot, which served as the convention's designated protest area. The lot was barren, save for a scattering of debris. In place of the crowds that had congregated there throughout the day, there were now only torn flyers, and hard rubber projectiles that police had fired just minutes earlier. A radio reporter held up a large rubber bullet for my examination.

"The police told us that we had fifteen minutes to get out of here," she said. "And five minutes later, without any other warning, they started shooting the tear gas and everything else."

As we walked toward the security fence, several dozen officers rushed past, clutching 12-gauge shotguns. We had come to Los Angeles to film the spectacle of a national political convention, and the evening was providing us with plenty of opportunities. We grabbed our camera gear and sprinted off after the LAPD. In the boulevard beyond the fence line, hundreds of Los Angeles police officers were gathering in phalanx formations. LAPD vehicles cruised the street, with SWAT police standing on the running boards. They were clad in black body armor, and their uniforms were festooned with CS gas canisters and "less-lethal" shotgun rounds. With a deafening rumble, scores of police motorcycles raced past us, in pursuit of a small band of protesters who were dispersing into the downtown core.

It was the summer of 2000, and the Democratic National Convention had

come to Los Angeles.

The upcoming convention

On September 1st of 2008, thousands of politicians, delegates, and reporters will converge on Saint Paul's Excel Energy Center for the commencement of the Republican National Convention. If past conventions are any guide, they will be met in the streets by an equally large throng of protesters.

While civic boosters tend to highlight the economic benefits that attend party conventions, these gatherings can also generate a host of nettlesome problems - from the challenges that accompany high-level security events, to the logistical complexities that flow from large-scale street demonstrations. Bound up with both of these matters are civil libertarian concerns over free expression, free assembly, and police use of force. As in other areas of civic life, the intersection of these kinds of issues has become ever more complex in the post-9/11 world. This article provides a brief analysis of some major security and civil liberties issues that will be at play during the RNC week, based on observations of past events.

Perimeter security

As with previous conventions, the size and scope of the security perimeter is likely to be a point of contention between police officials and protest organizers. From a law enforcement perspective, perimeter control is central to an effective security strategy, in order to prevent unauthorized persons from entering the event, and to allow screening for weapons and other hazards. From the vantage point of many demonstrators, the expansive security perimeters of past conventions have been used as excuses to move street actions far away from the focus of the protests, thus blunting their effect.

Prior to the 2000 Democratic convention, Los Angeles city officials fought a lengthy (and ultimately unsuccessful) court battle to confine protesters to a discreet location several blocks from the convention site. At the 2004 Republican convention in New York, the Secret Service and the NYPD set out a broad security cordon, which encased several city blocks within concrete barricades. Citing these precedents, local activists have expressed

concern about the possibility of similar conditions occurring during the RNC week. In response, Saint Paul police officials have stated their intention to keep the security perimeter as small as possible, and have noted that the footprint of the Excel Center will enable this to happen. This issue is likely to generate continued controversy, however, since the size and scope of the perimeter will not be finalized until shortly before the RNC week begins.

In recent years, political conventions have been classified as "National Security Special Events" or "NSSEs," which entail a high degree of federal involvement in setting the boundaries of security zones. Typically, federal agencies such as the Secret Service take the lead in designating secure cordons, while perimeter security itself is a joint local-federal responsibility. Local police agencies generally provide the bulk of the staffing and manpower outside of the perimeter area, while the Secret Service stations their personnel within - or on the edges - of the zone. Today, both sets of players coordinate their activities in conjunction with the regional JTTF - or Joint Terrorism Task Force - which involves a multitude of local and federal police agencies. These complex arrangements can raise command and control challenges for the multiple agencies involved. They also create a mix of jurisdictional issues that impact police accountability as it relates to the treatment of protesters, legal observers, and others.

In addition to the accountability issues that may arise from NSSEs, these events now pose additional challenges to protesters, who could face harsher penalties for entering secure areas during such events. Recently, a new federal statute was added to the US Code during the re-authorization of the USA PATRIOT Act, which set out significant criminal penalties for refusing to leave an area designated as secure by the Secret Service. Violating this law entails:

"willfully or knowingly entering or remaining in any posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting."

Those who violate the statute can be subject to,

"a fine ... or imprisonment for not more than one year." Higher penalties can be assessed for carrying or using a "firearm or dangerous weapon."

One can see the utility of this law from a security perspective, but it remains to be seen how broadly the statute will be interpreted - particularly as it relates to protest actions. If applied expansively, this statute could have significant implications for legal observers and videographers at the RNC event who may be skirting the edges of secure cordons in order to observe police/protester interaction. Protesters could also be at risk of facing enhanced penalties under a broad application of the law. Could, for instance, entering a secure area with a picket sign be construed as "carrying a dangerous weapon" by the U.S. Attorney's office? Such broad statutory interpretations are not uncommon in federal prosecutions. During the 1980s, for example, racketeering laws originally aimed at organized crime were interpreted expansively, and used to target sit-in protesters at abortion clinics instead.

Crowd control protocols

Police agencies at NSSEs need to prepare for all types of crowd control contingencies, due to the vast numbers of people who descend upon such events. In addition to the scores of delegates and support staff, protesters at the 2000 DNC numbered in the thousands, and demonstrators at the 2004 RNC numbered in the tens of thousands. While prudence requires that crowd control planning include preparations for riots and other disturbances, past NSSEs have also illustrated the hazards posed by the improper deployment of riot police. At the 2000 Democratic convention, LAPD officers fired volleys of rubber bullets at fleeing protesters and reporters, and crushed the sternum of a CNN sound recordist with a riot baton. Such overzealous police behavior can chill free speech, cause significant injuries, and subject the host city to hundreds of thousands of dollars in civil claims. The city of Seattle, for instance, is still litigating WTO claims from police actions undertaken nearly eight years ago.

A well-coordinated crowd control plan is essential to the operation of a large-scale event like a political convention. If such a plan flounders, its failure can not only compromise event security, but it can cause other excesses as well. For one such example, we can look to the Seattle WTO ministerial, where poor preparation on the part of the municipal police department was compounded by federal pressure brought to bear on the host city. Had Seattle properly managed the first day of the WTO meeting, much of the aggressive police clamp-down that occurred later on could have been avoided.

On the opening day of the WTO talks, Seattle police deployed large amounts of tear gas and pepper spray against non-violent demonstrators who were blocking traffic outside of the convention center. As former Seattle police chief Norm Stamper has subsequently noted, the early morning tear-gassing served little practical purpose, and set a confrontational tone for the entire event. At the same time, a failure by police to provide adequate staffing throughout the downtown core led to the creation of under-policed zones where vandals could act with impunity. The scope of the vandalism that occurred later that morning then prompted federal officials to lean hard on local police, who authorized sweeping measures to suppress all activity in the streets - including lawful protest and assembly. In the chaos that ensued, individual police officers engaged in random acts of violence, such as assaulting shoppers and passers-by in areas far from the WTO meeting site. Such acts were reported by numerous witnesses, including public officials like Brian Derdowski, a county council member for the Seattle area.

According to Derdowski, SPD officers drove a group of protesters out of downtown Seattle, and pursued them into the Capitol Hill residential district. After the protesters dispersed, Derdowski and others reported that police randomly shot pepper ball rounds at pedestrians, and even fired rubber bullets at shoppers emerging from a grocery store. In addition, police deployed vast quantities of tear gas in the area. Capitol Hill resident Christopher Huson noted that, "There was so much gas released, that I couldn't stand on my front lawn and breath." Neighborhood outrage over these events culminated in a protest later that evening, in which over one

hundred local residents confronted a platoon of riot police who had been ordered to occupy a Capitol Hill intersection. A stand off between the two groups ensued, and council member Derdowski attempted to defuse the situation through negotiation. After several hours of pleading with neighborhood residents and police to leave the intersection, many of the locals began to drift away. Derdowski later told me that he felt he had narrowly prevented an ugly confrontation. He then recounted what happened next, as the crowd diminished:

"By this time, it had wound down to the point where people were singing Christmas carols, so I turned my back on the police line .. and as soon as I turned my back on the police line, I was hit in the back by a tear gas canister."

Video of the event shows police firing a volley of tear gas and concussion grenades at Derdowski and a small number of protesters, who subsequently flee from the intersection. That same videotape also illustrates the aftermath of the incident, as videographer Dave Hannagan turns the camera on himself, to reveal a bloody gash in his forehead caused by a police projectile.

Unlike the Seattle PD, the Saint Paul police department has a much better record of managing protest events - even in highly charged situations like the Klu Klux Klan rally that occurred at the state capitol several years ago. Some of the potentially confrontational aspects of the RNC week will likely result from the involvement of federal authorities, who could add a new and unpredictable dimension to the dynamics of the convention, depending on their tactical and procedural requests regarding crowd control.

JTTFS and city officials

As previously mentioned, the Joint Terrorism Task Force will have a role in coordinating RNC security, both during the convention itself, and in the run-up to the event. Since 9/11, the JTTF concept has spread throughout American policing, and most major cities now have such a coordinating body. JTTFs involve officers from state and local police departments - as well as FBI agents - who share information and tactics related to counter-

terrorism. Due to the FBI's involvement, some of the information shared within JTTFs is classified, and local officers who serve on the task force must have security clearances in order to access it. Generally, local political officials do not have such clearances, which can limit their specific knowledge of JTTF actions. This has been a source of controversy within some communities, such as Portland, Oregon, which recently withdrew from participating in ITS regional JTTF over concerns about accountability. It remains to be seen whether such debates will emerge in relation to RNC planning, or whether municipal/federal communication will be sufficiently transparent to satisfy all parties.

Mass detention

Given the potential size of counter-convention demonstrations, it is likely that a significant number of arrests will occur during the RNC week. Many involved persons - including police officials and protest organizers - have stated their hopes for a calm convention week, and local officials show no signs at this time of relying on the type of indiscriminate, mass arrests that characterized the 2004 Republican National Convention. However, prudent planning requires that the city identify detention areas beyond the city and county jails, in the event that large-scale arrests occur, and the jails become overcrowded. The failure to adequately plan for such a contingency can result in law enforcement using ad hoc arrangements later on, which can subsequently result in poor prisoner conditions, or even prisoner abuse.

Again, one can look to the Seattle WTO protest to see the relevant problems. The mass arrests conducted during the WTO week far outpaced the city's detention planning for the event. As the ministerial continued, arrestees were taken by bus to the Sand Point Naval Base - an abandoned military facility on the outskirts of Seattle. Due to a lack of processing staff, arrestees were kept waiting on buses for hours in flex-cuffs, without access to bathroom facilities. Many of those arrested were not processed within the time frame required by law. Legal observers were denied access to the detention site, and a lack of oversight - coupled with the chaotic environment at the Sand Point facility - resulted in numerous cases of police misconduct.

In a number of instances, police used pepper-spray, beatings, and pain-compliance holds to remove non-violent sit-in protesters from the buses. I had occasion to speak with an arrestee who was seriously injured during his removal from a city shuttle at the Sand Point facility. Jonathan Moore had participated in a sit-in protest on his bus, in response to the poor detention conditions at the naval yard. When police arrived to clear his shuttle, they used two separate pain-compliance holds on Moore. One hold entailed bending Moore's right hand backward toward his wrist. A second hold involved violently twisting Moore's left arm, breaking a bone which remained untreated for several days, until after he was released from Sand Point.

Processing problems were also seen during the 2004 Republican National Convention, when scores of arrestees remained in detention far beyond the twenty-four hour period allowed by New York law. Much of the processing backlog witnessed in New York and Seattle can also be attributed to decisions made by police officials to authorize strategies of indiscriminate, mass arrests. While Seattle seems to have moved in this direction in an ad-hoc manner, NYPD planning documents obtained by the New York Sun in 2007 show that New York officials planned to exclusively arrest - rather than cite and release - protest participants at the RNC event. NYPD arrests tactics at the 2004 convention involved surrounding whole blocks with rubber construction netting, and then arresting everyone within that zone, whether protester, journalist, or passer-by.

Military assets

The use of military assets in domestic law enforcement has been debated with growing frequency since the 1990s, when the FBI used military hardware and tactics in highly publicized raids at Waco, Texas and Ruby Ridge, Idaho. Military personnel have also been involved in various NSSEs, in a variety of covert and overt capacities.

Federal and state law regulates how (or whether) military units can participate in law enforcement activities. State National Guard units, for instance, are generally allowed to act in concert with local police agencies in a variety of scenarios, including providing extra manpower for crowd

control situations. In such instances, Guard units work under the command of civilian law enforcement.

Federal military units, however, are more restricted in their ability to participate in domestic law enforcement activities. In general, such activities are prohibited by the Posse Comitatus Act of 1878, which prohibits the use of active duty military personnel in law enforcement, unless otherwise authorized by Congress or the Constitution. Since the 1980s, Congress had created an increasing number of exceptions to the Posse Comitatus Act, enabling the military to operate more broadly in the domestic sphere. Such exceptions allow it to facilitate counter-drug operations, or to act as de facto law enforcement in the event of nuclear attack. One additional Posse Comitatus exception was written into law late last year. It expanded the pre-existing Insurrection Act (which allowed the President to activate federal troops to quell domestic rebellions) in order to grant the President additional authority to deploy federal troops during,

"a natural disaster ... terrorist attack, or other condition, when the President determines that the authorities of the state are incapable of maintaining public order."

Absent such conditions, the deployment of federal troops would be illegal. However, it should be noted that the language of the statute holds that the discretion to deploy such troops rests with the President, and is based upon his assessment of local conditions.

This kind of Posse Comitatus loop-hole was long sought by the Bush administration, which advocated for expanded powers to deploy troops after the 9/11 event, as well as after Hurricane Katrina. It remains to be seen how this expanded authority might be utilized, or how it might conceivably mesh with NSSE contingency planning. For background, it should be noted that long before the recent changes to the Insurrection Act, the Clinton administration had employed military assets at NSSEs, seemingly without any express grant of congressional approval. During the WTO event, Delta Force personnel were used to monitor developments in protest activity, and to advise law enforcement on how to proceed. Likewise,

federal military personnel were reportedly used to surveil protesters during the 2000 IMF/World Bank protests in Washington DC.

While it is highly unlikely that the Insurrection Act would be utilized during the RNC week, the deployment and use of federal military assets should be a matter of great interest to legal observers during the 2008 political conventions. Local officials, too, should insist on being appraised of federal military contingency plans, as well as what the White House considers to be the threshold criteria for "militarizing" security at the Republican National Convention.

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