 New York Daily News 3

Appeals Court Kills Motley Jab at Cops

By NORMA ABRAMS and JOHN MURPHY

A panel of three judges of the United States Circuit Court of Appeals yesterday struck down Thursday's order by Federal Judge Constance Baker Motley commanding the city police to protect antiwar protesters during Memorial Day weekend demonstrations.

The panel, consisting of Chief Judge J. Edward Lumbard and Judges Henry J. Friendly and Paul R. Hays, vacated the order as an "abuse of discretion."

The decision came a short time before the order was to be read to police beginning with yesterday's 4 p.m. shift and at all roll calls today and tomorrow.

Order Called Unnecessary

The judges ruled that the order, won by the New York Civil Liberties Union and others representing antiwar protesters, was unnecessary in the wake of administrative actions taken to insure adequate police action at demonstrations since the police handling of violent disturbances May 8 near City Hall. The police had been criticized for their actions on that occasion.

Burt Neuborne, attorney for the Civil Liberties Union, said the appeals judges' reversal of the order would be appealed to a justice of the United States Supreme Court.

Judge Motley, in issuing her order to police, said that there was "an almost total breakdown" of police protection at City Hall when construction workers attacked students and other antiwar protesters.

In opposing the order before the appeals panel yesterday, Corporation Counsel J. Lee Rankin called the order "quite unusual," an "aspersion on every police officer in this community," and a "libel against the people of this city."

New York City historically has protected everyone's First Amendment right to protest, he said.

The appeals judges held that if there had been continued police failure to respond adequately to attack on protesters after the events of May 8, the order might have been justified.

But, they noted, Mayor Lindsay on May 9 had denounced the previous day's melee and had said that "a breakdown of the police as the barrier between them and wanton violence" had been the "most appaling" aspect of the events.

The city adequately protected two succeeding demonstrations, one by prowar and one by antiwar partisans, and promulgated revised rules for the handling of such disturbances, the judges said.

The judges also ruled invalid a contention by the plaintiffs that while they had confidence that Lindsay and Police Commissioner Leary were willing to act effectively to protect demonstrators, they might find it difficult "to get their views through to the force without assistance from a federal injunction."

The judges said, "We perceive no basis for this fear."

NEWS photos by Ed Clarity

Chief Judge J. Edward Lumbard (left) and Burt Neuborne of Civil Liberties Union outside Federal Court in Foley Square.