# Trial Ends on Demonstrations

5-7-73

By Paul W. Valentine
Washington Post Staff Writer

With a mixture of bitterness and humor, government and civil liberties lawyers last week completed two years of intense courtroom bickering over what may seem a picayune issue —the number of political demonstrators who may protest in front of the White House.

But to the Secret Service and the American Civil Liberties Union, the two principal combatants in the fray, it is a dead serious business.

It poses the delicate problem of balancing presidential safety with the right to political dissent.

Specifically at issue is a National Park Service regulation, written in 1967, which limits the number of demonstrators to 100 on the sidewalk in front of the White House on Pennsylvania Avenue NW and to 500 in adjacent Lafayette Park.

Any surplus over that number in these troubled times, says the Secret Service, would create a potentially unmanageable threat to White House security.

Beside, argue government attorneys, the rights of the general public—tourists and passersby—must be balanced with those of protesting groups, and the park and sidewalk thus should never be given over entirely to demonstrators.

The ACLU, led by attorney Joseph L. Rauh Jr., counters that the 1967 regulation was politicially inspired by the late President Johnson's personal displeasure at the sight of antiwar "freaks" near the White House and is calculated to minimize the visibility of antiestablishment dissent.

In arguing that the regulation should be stricken as a violation of First Amendment rights of free speech and assembly, the ACLU also contends that the park service and Justice Department have generally abused the demonstration permit system in the city by evasive and delaying tactics designed to keep protest organizers off balance.

Opposing attorneys last Wednesday completed a nine-day trial on the issue before U.S. District Judge George L. Hart Jr.

More than 35 witnesses testified, ranging from Secret Service Chief James J. Rowley and former Attorney General Ramsey Clark to a kaleidescopic string of little known political protesters, radical dissidents, Quakers, Buddhists and an Arlington taxi driver.

Hundreds of pages of testimony now must be transcribed and voluminous written briefs submitted by attorneys before Judge Hart rules on the validity of the regulation, probably late this summer.

The multifaceted trial capped two years of sporadic litigation in which the ACLU has sought to have the regulation stricken. Taken three times to the U.S. Court of Appeals on preliminary issues, the case was most recently sent back to Hart for the just completed full dress trial on the fundamental issue of the regulation's constitutionality.

Whatever Hart's ultimate ruling, it will be appealed, probably to the Supreme Court, lawyers for both sides say.

The trial started bumpily with Rauh accusing Judge Hart on the first day of being prejudiced in favor of the government. Thereafter, the trial was punctuated with barbed and often angry exchanges between Rauh and Hart.

"You're interfering with my cross-examination" of a government witness, Rauh remonstrated at one point after Hart interrupted him.

"And I'm going to continue to interfere if you keep wasting time," Hart snapped back.

At another point, Hart accused Rauh of using 'filibuster" tactics in cross examining assistant Secret Service Director Thomas J. Kelley.

For almost two years prior to the present trial, the park service regulation has been suspended by court order pending final outcome of the case. The government is permitted to seek court-ordered reinstatement of the regulation, however, on a demonstration-by-demonstration basis and has done so several times.

Rauh, Fitzpatrick, Ralph Temple and at least four other ACLU-affiliated lawyers say they would view any final ruling against them as a grave precedent that could encourage additional restrictive laws to be enacted at state and local levels throughout the country.

Secret Service and police officals view the nescessity for numerical limitations with equal gravity.

If a resurgence of the massive demonstations of the late 1960s should occur, they say, police could not stop a mob from literally

# in Front of the White House

storming the White House fence, and some protesters would probably be shot and killed in the process.

Secret Service director Rowley and other government witnesses stressed what they said is the need in this open democratic society to maintain a "low security profile" around the White House to avoid a "garrison state" atmosphere.

That low profile could not be maintained if demonstrators rampaged in unrestricted numbers at the periphery of the White House, Rowley said.

Rauh attacked Rowley's reasoning as specious, contending that history shows no instance of mass assaults on the White House, that the present White House fence could be strengthened and heightened to block possible future mobs without creating a garrison state atmosphere and that the whole "low profile" argument is a phony cover for a government policy of suppressing political dissent.

Other major ACLU contentions in the trial were:

• Sone high officials, including then Attorney General Ramsey Clark, opposed the 100/500 regulation as of doubtful constitutionality but were overriden by the White House. Clark testified that he had such doubts but was not directly involved in formulating the regulation. It was adopted in August, 1967.

• Only a "clear and present danger" to public safety could justify the regulation and the government has failed to domonstrate such danger.

• Smaller crowds imposed by the regulation in fact could more likely trigger violence than a large crowd. Crowd behavior specialist Jerome H. Skolnick testified that larger crowds are less mobile and more "cross sectional" and thus less likely to be swayed by hostile splinter groups bent on violence.

• Lafayette Park can easily hold 50,000 protesters and the White House sidewalk almost 5,000 without disrupting auto traffic or nonparticipating pedestrians.

• The National Park Service and Justice Department have consistently employed delaying and evasive tactics to limit antiestablishment protests. A stream of witnesses ranging from former antiwar Vietnam war veteran leader John Kerry and 1969 Moratorium organizer Sam Brown to Quaker vigil members, a shaved-headed Buddhist and disgruntled Arlington cab driver Edward Saffron testified that they were subjected to an assortment of harassments, delays and in sone cases arrests.

Assistant U.S. Attorney Zimmerman, through questioning of government witnesses, countered that a "potential threat" to presidential safety, rather than "clear and present danger," is sufficient reason to limit demonstrations in front of the White House.

Secret Service officials Rowley and Kelley testified that the increased militancy of demonstrations during the 1960s placed new security burdens on the White House, justifying the park service regulation.

Zimmerman maintained that no internal White House memos and other documents introduced at the trail showed that President Johnson was personally upset by demonstrators. Also, he said, the memos indicated that all government officials, including Attorney General Clark, were in "full agreement" on the need and legitimacy of the regulation. Clark said he could not recall the memos.

Zimmerman also vigorously attacked Skolnick's testimony that small crowds may be more violence-prone than larger crowds.

Noting that the testimony was based chiefly on a list of demonstrations, rallies, protests and riots reported in The New York Times from 1965 through 1969 and in 1972, Zimmerman argued that the list did not reflect the total number of disturbances in the country, and the two years skipped in the Skolnick study—1970 and 1971—were among the most violent in recent history.

Skolnick said lack of manpower and resources prevented him from researching 1970 and 1971.

While 50,000 demonstrators might comfortably fit into Lafayette Park, ACLU witnesses admitted under Zimmerman's cross-examination that such a crowd would undoubtedly disrput both auto and pedestrian traffic if a riot or other violence erupted.

Park service witnesses also denied harassment of demonstrators and demonstration applicants. National Capital Parks director Russell Dickenson testified that special efforts have been made in recent years in expediting applications, training park employees in the procedures and extending full courtesies to all protesters who act within the law.