

Writ Enjoining City Police On War Protests Nullified

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The Federal Court of Appeals for the Second Circuit nullified a Federal District Court order yesterday that would have required the city's Police Department to remind every member of the force this weekend of his duty to protect antiwar demonstrators from physical assaults and threats.

Judge Henry J. Friendly, writing for a three-judge panel, said the order, signed by Judge Constance Baker Motley Thursday night, was "an abuse of discretion" and ordered it vacated.

The court implied there was no reason to assume that the police would not protect peace demonstrators from violence on the part of their opponents.

Judge Friendly, Chief Judge

J. Edward Lumbard and Judge Paul R. Hays convened hastily in Foley Square yesterday morning, on a Federal Court holiday, to consider the city's appeal from Judge Motley's order, which was supposed to have gone into effect yesterday.

The case came before Mrs. Motley after a Wall Street lawyer, Michael Belknap, and eight students and bystanders filed a suit charging Police Commissioner Howard R. Leary and the Police Department with not providing adequate protection at a peace rally in the Wall Street area on May 8.

After the rally, some construction workers beat students

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and other people demonstrating their opposition to the war in Vietnam in Wall Street, at City Hall Plaza and at Pace College.

Judge Motley found that Commissioner Leary and his subordinates failed to react to warnings of violence on that day and she issued a temporary order, to be read to all policemen before an antiwar demonstration scheduled for today on Fifth Avenue, requiring them to protect demonstrators against violence or threats this weekend.

City's Role Stressed

The Circuit Court found that proper responsibility for protecting the rights of New Yorkers to demonstrate lay with the Mayor and the Police Commissioner.

Judge Friendly said in the opinion, filed at 4 P.M., that the case might have had merit "if there had been a continuation of police failure to protect antiwar demonstrators, such as the judge was justified in thinking had occurred on May 8, or even if city officials had done nothing about the incident."

"But the facts are to the contrary," he wrote, "for on May 9 Mayor Lindsay issued a statement characterizing the previous day's violence as 'appalling' and saying that what was 'most appalling' was 'that the people of this city witnessed a breakdown of the police as the barrier between them and wanton violence.'"

That statement by the Mayor, and one by Commissioner Leary emphasizing the duty of the police to protect people exercising their right of free speech, showed that they were making efforts to fulfill their responsibility, the court asserted.

"There is left no basis at present for any reasonable citizen to assume that these [guarantees] will be ineffective so that he must refrain from exercising his First Amendment rights to protest peaceably against the war—or anything else," the Circuit Court declared.

The Police Department said

yesterday that, pending action by the Circuit Court, the order had not been read to the police.

During the oral arguments in the 17th-floor courtroom yesterday, Corporation Counsel J. Lee Rankin told the judges, "The Federal court system has no right to take over the management of the Police Department."

Court Order Criticized

He called Judge Motley's order "an aspersion on every police officer in this city" and said "this community supports the right of all people to peacefully demonstrate, and the Police Department supports this."

Mr. Rankin said that the Police Department had spent \$1.3-million in overtime alone in covering demonstrations since the violence on May 8.

The plaintiffs were represented by three lawyers, Burt Neuborne of the New York Civil Liberties Union; Mort Cohen of South Brooklyn Legal Services, and Mrs. Mary Kaufman of the National Lawyers Guild.

After the Circuit Court decision, Mr. Neuborne said that he was trying to appeal to the Supreme Court. But he said that since the High Court was not now in session, "I think we'll run out of time." The order that was reversed applied only through tomorrow.

The lawyers issued a statement saying that the Circuit Court "has, in effect, given the Police Commissioner a second chance to see to it that adequate police protection is afforded to antiwar protesters."