



Cathryn L. Hazouri, Executive Director • Mark Silverstein, Legal Director

August 6, 2008

Mr. Alvin LaCabe
Manager of Safety
1331 Cherokee Street, Room 302
Denver, CO 80202
By email to: Alvin.Lacabe@denvergov.org

Mr. William Lovingier
Director of Corrections and Undersheriff
Denver Sheriff Department
1437 Bannock Street, Room 405
Denver, CO 80202
By email to: Lovingierb@ci.denver.co.us

Dear Mr. LaCabe and Mr. Lovingier:

I write to raise some questions and to ask for a meeting about Denver's plans for handling and processing arrestees during the upcoming Democratic National Convention ("DNC").

This letter is written in the hope that Denver can avoid many of the problems New York City experienced in the wake of mass arrests for minor violations during the Republican Convention in 2004. The influx of more than 1800 detainees exceeded New York City's ability to adequately house, process, and provide for their needs. The result was numerous cases of unreasonably long detentions for minor offenses, even after processing was completed, as well as complaints that detainees were deprived of access to counsel, telephone calls, medical care, and safe and sanitary facilities.¹

As a threshold matter, the ACLU applauds Denver's recent announcement in a July 23, 2008 press release, that Denver officers would only make full custodial arrests during protests as a "last resort":

“[A] Denver police officer has the discretion to ask for voluntary compliance, deliver a warning, issue a citation or make an arrest based on the totality of circumstances. In many cases, individuals voluntarily comply with requests and officers are able to peacefully stop unlawful activities without citing or arresting anyone. In the context of the peaceful

¹ The New York fiasco prompted several lawsuits for damages--one of which is a class action filed on behalf of more than a thousand detainees--in which the claims include 1) overcrowding; 2) failure to provide adequate medical care and access to medication; 3) denial of communication with and access to attorneys; 4) failure to provide access to adequate food and water; 5) unsanitary conditions of confinement; and 6) unreasonable and inordinate delays in releasing persons after processing was complete.

demonstrations that involve violations of the law, arrests are a last option - used when all other options have been exhausted or imminent safety concerns are involved.”

Certainly, when officers are able to address concerns with verbal warnings or by citing and releasing the person at the scene, then potential problems with overloading detention facilities are avoided. I hope that Denver will emphasize this well-considered policy not only in reminders to its officers, but also with officers from other jurisdictions who will be assisting Denver during the DNC.

In a recent article that appeared in the Rocky Mountain News, a spokesperson for the Denver Sheriff Department revealed that Denver was planning a temporary facility for processing persons who may be arrested during the DNC.² According to the article, the facility will be able to “process” 30 to 50 persons per hour.

While this rate would represent an apparent increase in the speed with which the Sheriff Department is currently able to “process” arrestees, it may not be sufficient to avoid an unreasonable backlog that will overwhelm the staffing and infrastructure at the temporary facility.

If 300 people are taken to Denver’s temporary detention facility within a short time frame, processing those persons at the rate of 30 to 50 per hour would take at least 6 to 10 hours. During the Republican National Convention in New York City in 2004, nearly 1,100 people were arrested in a four-hour period.³ If a similar situation occurred in Denver, it would take at least 22 to 36 hours to process those persons.

Moreover, I assume that the “processing” discussed in the Rocky Mountain News refers only to the administrative steps taken when the Sheriff Department accepts custody of a new prisoner, such as booking, fingerprinting, photographing, and, perhaps, a check with the Identification Bureau.

It does not include the additional time for processing the paperwork for arrestees who can post bond and the additional time between the posting of bond and releasing the arrestee. When 80 persons were arrested in connection with the 2007 Columbus Day protests, persons who had completed all the necessary steps of the intake process spent many additional hours in detention while their bond paperwork was processed. Even after their bond money had been accepted and listed as “posted” on the Sheriff Department computers, numerous detainees were required to wait additional hours—up to 12 and 13 hours in some cases—before they were released.

Regardless of how long persons are kept in the temporary detention or processing

² Sara Burnett, “Denver courts, jail gearing up for convention contingencies,” Rocky Mountain News, August 4, 2008.

³ Rights and Wrongs at the RNC: A Special Report about Police and Protest at the Republican National Convention, p. vii (available at http://www.nyclu.org/pdfs/rnc_report_083005.pdf).

facility, Denver will be required to comply with a Colorado statute that guarantees the right of detainees to meet with attorneys in a confidential setting:

16-3-404. Duty of officers to admit attorney. (1) All peace officers or persons having in custody any person committed, imprisoned, or arrested for any alleged cause shall forthwith admit any attorney-at-law in this state, upon the demand of the prisoner or of a friend, relative, spouse, or attorney of the prisoner, to see and consult the person so imprisoned, alone and in private, at the jail or other place of custody, if such person so imprisoned expressly consents to see or to consult with the attorney.

Please note that this statute applies no matter where a detainee is held, whether it is a jail or “other place of custody.” The limited function of the temporary facility does not excuse Denver from its legal duty under the statute. Subsection (2) of the statute provides that any peace officer who violates this statute is subject to a penalty of up to one thousand dollars.

Please confirm that Denver’s plans for any temporary detention or processing facility will include physical facilities that will permit the confidential attorney visits required by Section 16-3-404 of the Colorado Revised Statutes. Please also confirm that you will accommodate confidential visits between attorneys and detainees who wish to meet with them, in accordance with this statute.

Because you are planning for a worst-case scenario that contemplates potentially hundreds of detainees, the facility should allow for multiple simultaneous meetings between attorneys and persons arrested. As you know, the People’s Law Project is organizing volunteer attorneys to represent persons who may be arrested, and those attorneys will be appearing at the temporary facility asking to meet with detainees. Similarly, if the ACLU receives calls from detainees, ACLU attorneys are also likely to request the private consultations described in the statute.

At any temporary detention or processing facility, Denver will also be required to comply with a Colorado statute that guarantees the right of an arrested person to communicate with an attorney *and* a family member “by making a reasonable number of telephone calls or by communicating in any other reasonable manner.” Colo. Rev. Stat. § 16-3-402. I understand that the current policy of the Denver Sheriff Department allows free telephone calls only to local numbers, and that calls to other zip codes must be made collect. It is also my understanding that detainees are unable to make collect calls to cell phones. This policy poses a serious risk of violating the statutory rights of out-of-town visitors who may have come to Denver with family members who are reachable only on an out-of-town cell phone number. I believe that compliance with the Colorado statute requires Denver to permit these out-of-town detainees to make the necessary calls.

Please let me know whether Denver would be willing to relax the current policy

in order to facilitate the ability of detainees to contact family members, even if Denver would have to absorb the cost of what would be billed as long-distance calls. In addition, please let me know whether Denver would be willing to ensure that the telephone numbers of the American Civil Liberties Union of Colorado and the People's Law Project are prominently posted near all the telephones in the temporary detention center.

At the temporary facility, Denver will of course also be required to provide for detainees' basic human needs, such as adequate food and drinking water; access to toilets and facilities for washing; and access to medical care if necessary. Detainees must also be allowed the opportunity for bodily movement, including release from handcuffs or flexicuffs. *See* Colo. Rev. Stat. § 16-3-401(2).

In addition, Denver must establish a system to ensure that detainees are assured of access to medically necessary prescription medications they may be taking. Some arrestees will need prescription medications that are in the possession of family members who were not arrested. Denver will have to arrange a system to receive the medications from family members and then deliver them to the appropriate prisoner. Failure to deliver appropriate and necessary medications could result in serious deterioration and damage to a detainee's health.

Finally, Denver should also establish an easily accessible public mechanism whereby attorneys, family member, and friends of persons taken into custody can easily obtain accurate and reliable data regarding such information as who has been arrested; where the person is being held; the amount of bond necessary for release; and when and where the person will be released. A central clearinghouse of up-to-date and accurate information is especially important in light of the multiple steps and separate locations where detainees are likely to be confined as they move through different stages of the processing. For example, it is likely that someone arrested at a protest near the Pepsi Center could spend several hours in custody at or near the scene, perhaps waiting on a bus for transport to the temporary detention facility. Depending on the number of arrestees and the backlog, the detainee could then spend four to ten hours or more going through booking at the processing facility, and surely many additional hours if the detainee must wait there for bond paperwork to be completed. Before being released on bond, or while waiting for bond or a court date if bond is not posted immediately, the detainee would then presumably be transferred to yet another facility such as the Pre-Arrestment Detention Facility or the County Jail, or perhaps even to a different facility in another jurisdiction.

While the detainee in custody is moving from spot to spot, family members may be frantically trying to locate their loved one, perhaps to arrange an attorney visit, to arrange for posting bond, or to bring necessary prescription medications that might be desperately needed (with the need becoming more urgent as the hours in custody increase). Denver should ensure that accurate and updated information is easily available through an electronic system that can be accessed through the

internet as well as through telephone lines that are publicly advertised and adequately staffed to handle a potential flood of calls.

Many of the potential problems discussed above could be avoided—even after a detainee has been taken to the temporary facility and “processed”—by releasing the detainee with a summons and complaint instead of holding the detainee until bond is posted. Such a procedure, which is authorized by Section 16-3-105(b) of the Colorado Revised Statutes, would reduce the paperwork, the delays, and the time in custody, and would thereby reduce the population pressure on the temporary facility.

These potential problems could be further reduced if eligible detainees are released—whether it is with a summons and complaint or after posting bond—at the site of the temporary detention facility. This procedure would eliminate the time-consuming step of transferring detainees to yet another facility before release, a step that poses additional risks for medically vulnerable detainees.

Please let me know if we can meet to discuss these issues regarding persons who may be arrested during the Democratic National Convention. If you cannot arrange a meeting, then please respond to this letter, and please answer the specific questions I have posed regarding attorney visits, telephone calls, a system for family members to provide prescription medications that will be provided to detainees, and the setting up of a publicly accessible mechanism to make available information about detainees, their location, and their bond requirements.

I look forward to hearing from you soon.

Sincerely,

A handwritten signature in cursive script that reads "Mark Silverstein".

Mark Silverstein
Legal Director, ACLU of Colorado

cc: David Fine, Denver City Attorney at David.Fine@denvergov.org