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EMERGENCY ISSUE

OUR LAST CLEAR CHANCE: RECONSTRUCTION OR DISINTEGRATION

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You are invited to a conference on

RACISM IN THE LAW

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NATIONAL LAWYERS GUILD

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VICTOR RABINOWITZ

A CALL TO THE BAR

To: Presidents of national, state, and local bar associations.

From: Victor Rabinowitz, president, National Lawyers Guild

The Report of The National Advisory Commission on Civil Disorders is one of the most significant documents to be prepared by a government agency in our lifetime. While it is addressed to all of the people, it has particular meaning for members of the legal profession. As citizens, and as counsel for distressed clients, all of us are concerned with such matters as employment, education, the welfare system, and housing, dealt with in the Report. But as lawyers we are professionally responsible for the administration of justice in the courts, and for the lawful execution of justice by the police. For this reason, we reprint here those parts of the Report dealing with these specific matters.

Perhaps it is fitting at this point to quote from the Introduction to the Report, so it can be seen in context:

> Violence and destruction must be ended — in the streets of the ghetto and in the lives of people.
>
> Segregation and poverty have created in the racial ghetto a destructive environment totally unknown to most white Americans.
>
> What white Americans have never fully understood — but what the Negro can never forget — is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it.
>
> It is time now to turn with all the purpose at our command to the major unfinished business of this Nation. It is time to adopt strategies for action that will produce quick and visible progress. It is time to make good the promises of American democracy to all citizens — urban and rural, white and black, Spanish-surname, American Indian, and every minority group.
>
> Our recommendations embrace three basic principles:
>
> - To mount programs on a scale equal to the dimension of the problems;
> - To aim these programs for high impact in the immediate future in order to close the gap between promise and performance;
> - To undertake new initiatives and experiments that can change the system of failure and frustration that now dominates the ghetto and weakens our society.
>
> These programs will require unprecedented levels of funding and performance, but they neither probe deeper nor demand more than the problems which called them forth. There can be no higher priority for national action and no higher claim on the Nation's conscience.

We appeal to you, as president of a bar association, to consider the following course of action:

1. Order a substantial number of copies of the Report and ensure its wide circulation among your members.

2. Study, as a minimum, the portions of the Report reprinted here on

the history of the Negro people in the United States, on the specific problems concerning police practices, and on the administration of justice in the lowest criminal courts.

3. Appoint a committee of leading members of your association to discuss these aspects of the Report, and especially the recommendations, at an early, special meeting of your association.

4. Call conferences of judges, lawyers in private practice, and those engaged as staff counsel for private concerns, as well as government lawyers, law professors, law students, and legislators to discuss the implications and implementation of the Report.

5. Propose that your association seek specific reforms in procedures by your local police department, sheriff's office, and magistrate's or recorder's court, based on your assessment of the problem on the basis of the guidelines and recommendations of the National Commission.

6. Move your association to implement those proposals now.

7. Throughout your deliberations, specifically invite all lawyers in your vicinity who are members of minority groups, and give full attention to the special problems they face in the practice of law in your locality.

The bar associations of the San Francisco-Bay Area have attempted an excellent beginning toward these ends by convening a Conference on Racism in the Law on May 4, 1968. The proceedings of the Conference, we hope, will soon be available in printed form for the use of bar associations which request them.

Although it is late in the day for dialog, that is undoubtedly the first step. We will be happy to participate with you in any way.

Members of our profession have, throughout history, been at the forefront of social change . . . in the birth of the nation, in the abolition of slavery, in the extension of economic security, and in the expansion of due process of law to the poor and disadvantaged. Once again it is necessary for us to play this catalytic, responsible role.

George W. Crockett, Jr.

DETROIT RECORDER'S COURT AND THE 1967 CIVIL DISTURBANCE

A United States Senate Committee recently suggested that Detroit's Recorder's Court was too lenient in its handling of cases growing out of Detroit's civil disturbance last summer. I assume the Committee had reference to the fact that the large bulk of the 1967 riot cases on our docket have been and are being disposed of as simple misdemeanors instead of felonies; and the sentences generally are limited to the time spent by the defendant in jail while awaiting reasonable bail or the final disposition of the case.

I disagree with the Senate Committee. Instead, I suggest that we judges (perhaps subconsciously) are belatedly endeavoring to make amends for the wholesale denial of the constitutional rights of virtually everyone who was arrested during that disturbance. And I include myself in this indictment. As the report of the President's Commission points out (Chap. 13, note 9), the bails fixed by me were the lowest in the Court; but they still were much higher than they should have been.

Nor am I convinced that there is general appreciation even now of the full extent of the injustices we committed by our refusal to recognize the right to immediate bail and our objection to fixing reasonable bail. Some of the cases which have come before me as a result of the curfew imposed following the death of Dr. King suggest that the prosecutor's office and the policemen in the street have learned nothing from last summer's experience; and this has serious implications for the coming summer.

The situation we faced last summer is authoritatively summed up in the recent Report of the President's National Advisory Commission on Civil Disorders (U.S. Govt. ed., p. 60):

> In all, more than 7,200 persons were arrested. Almost 3,000 of these were picked up on the second day of the riot, and by midnight Monday 4,000 were incarcerated in makeshift jails. Some were kept as long as 30 hours on buses. Others spent days in an underground garage without toilet facilities. An uncounted number were people who had merely been unfortunate enough to be on the wrong street at the wrong time. Included were members of the press whose attempts to show their credentials had been ignored.
>
> People became lost for days in the maze of different detention facilities. Until the later stages, bail was set deliberately high, often at $10,000 or more. When it became apparent that this policy was unrealistic and unworkable, the prosecutor's office began releasing on low bail or on their own recognizance hundreds of those

George W. Crockett, Jr., until his election to the Recorder's Court in Detroit in 1966, was a member of the Michigan Bar. He was the most recent recipient of the National Lawyers Guild's Franklin Delano Roosevelt Award. See 26 *Guild Practitioner* 25 (1967). Judge Crockett's remarks were prepared for a Detroit Conference of the American Civil Liberties Union, held April 20, 1968.

who had been picked up. Nevertheless, this fact was not publicized for fear of antagonizing those who had demanded a high-bail policy.

The Report mentions that at least 83% of these 7,200 arrestees were black citizens. I suggest that this fact accounts in large measure for the unconstitutional procedures uniformly followed by the authorities after their arrest—the exceedingly large number of unjustifiable felony charges which have since been reduced to misdemeanors; the insistence upon routine time-consuming clerical and identification procedures as a pretext for holding people in custody; the refusal to utilize the judges and staffs of other courts so as to expedite the processing of cases and afford time for individual examination at arraignments; and, of course, the assessment in mass of exorbitantly high bail which resulted in the exhaustion of our conventional detention facilities.

The Curfew Cases

The bulk of the 7,000 arrestees were arrested for being on the streets after the curfew hour. A large portion of these were juveniles whose cases came before Juvenile Court. Three thousand of these arrests occurred on the second day of the riot when the initial curfew Proclamation was in effect. Each of the curfew arrests made under the initial curfew Proclamation was illegal because the Proclamation failed to provide that its violation would constitute a misdemeanor. The statute makes such a provision mandatory. Notwithstanding this omission our Court enforced the initial Proclamation as written. Later this "error" was detected and a new Proclamation was issued.

This curfew misdemeanor was punishable by fine of not more than $100 and/or a jail sentence of not more than 90 days. As such, it was the equivalent of a traffic violation for which a traffic ticket normally is given and the defendant is not detained. There was then, in my judgment, no justification whatever in *detaining* these curfew violators any longer than the time required to obtain and verify their names and correct addresses. Either they should have been (1) issued a summons (on the spot or at the Precinct Station) to appear in Magistrate's Court; or (2) simply ordered to disperse and go immediately to their homes. Those who failed to appear on the appointed court date could be prosecuted by warrant later; and those who disobeyed the order to go to their homes should then be arrested and charged with the high misdemeanor of failing to obey the arresting officer—a prison offense.

Had this procedure been followed the number of arrestees would have been greatly reduced; the processing of cases involving serious charges would have proceeded more expeditiously; our detention facilities would have been more adequate for the demand; the rights of all citizens could have been secured; and most importantly, the fears and tensions in the Negro community would not have been nearly as great nor the aftermath of bitterness so potentially threatening.

Instead, the arresting officers, the prosecutors and the judges made a bad situation worse by their indiscriminate and prolonged detention of all curfew violators before bringing them before a judge. Almost without exception these people did not come before a judge until 24–48 hours after their arrest and their detention in city buses parked in the blazing sun. In most cases they admitted their guilt or they were tried by the judge and found guilty. In either event the usual result was a suspended sentence or a sentence to the days already spent waiting to be brought before a judge. In any event, the net result is that they were punished by "cruel and inhuman treatment" even before they reached court.

To claim then that our disposition of the curfew cases was too lenient overlooks completely the injustice already visited upon these defendants as well as the fact that the magnitude of the arrests made any other final disposition impossible in these cases.

The Felony Cases

But the real complaint about "the leniency" of Recorder's Court seems to concern our disposition of the felony cases.

The publicity credited to the prosecutor's office and the police department at the time of the 1967 disturbance left the public impression that an unusually large number of major crimes were being committed; and there were repeated assurances that "these felons will be prosecuted to the full extent of the law."

When, as it later appeared, the evidence was not forthcoming to support these serious charges, the judges are criticized and the complaint is heard that Recorder's Court judges are too lenient.

The truth of the matter is that in the overwhelming majority of the cases the police and the prosecutor simply charged more than they could possibly prove. And I am of the view that much of this was done deliberately and for the purpose of having a prohibitive bond placed against the defendant so the defendant could be detained in prison pending his examination and trial.

The report of the President's Commission states that 24% of those arrested for felonies in the Detroit riots were never prosecuted. That is, they never became court cases. Also, of the 76% who were prosecuted, about half of these (49%) were dismissed at the preliminary examination for lack of evidence. This report further points out that 26 persons were charged with sniping but 23 of these charges were dismissed; 34 persons were arrested for arson, but 21 of these were never prosecuted; 28 persons were arrested for inciting to riot but 22 of these were not prosecuted; and of the 253 assault arrests, 184 were discharged, 11 were convicted, and 58 are still pending.

The statistics from our own Court records are most revealing. They support the fact that hundreds of unwarranted arrests were made and the

arrestees were later discharged without being brought to Court. Of the 7,200 persons arrested our records show that only 4,260 were brought to Recorder's Court. The other 3,000 were juveniles or they were discharged by the Police or the Prosecutor without court appearances.

Of the cases brought to our Court 75% of the persons were charged with a felony. So the accused is entitled to counsel, he is entitled to an arraignment on the warrant; to a preliminary examination; and to an arraignment on the information—a total of three court appearances before his trial date. And since virtually all of those charged with felonies were indigents, each of these felony cases costs Wayne County taxpayers a substantial sum in assigned counsel fees, notwithstanding they amounted, at most, to misdemeanors in which there is not a right to assigned counsel. Also an average of six months was required to process these felony charges from warrant to judgment whereas only days are required for a misdemeanor. Thus, this procedure of uniformly making felony charges has completely disrupted our Court docket and greatly increased the city and county's cost of operating Recorder's Court.

In these felony cases, as in the curfew cases, the prosecutor demanded and our Court imposed unconstitutional bail ranging from $10,000 to $200,000! And we did it routinely and without making any individual inquiry whatever to determine if such bail could be justified. The asserted justification for this unusual procedure was: "We have to keep *these people* locked up and off the streets so they won't go out and do the same thing again"! Or "The Prosecutor and the Police Department is waiting for an FBI check so we won't allow any wanted criminals or 'outside conspirators' to escape"!

The Prosecutor knew or should have known—and certainly we judges should have remembered—that reasonable bail before conviction is a matter of constitutional right under both our State and Federal Constitutions. As the U.S. Supreme Court said in *Stack v. Boyle* (1951) 342 US 1:

> This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. . . . Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.

There are other principles set forth in *Stack v. Boyle* which are binding upon us in fixing bail and which we ignored. Thus the Court pointed out:

> . . . the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant. . . .
>
> * * *
>
> If bail in an amount greater than that usually fixed for serious charges of crimes is required . . . , that is a matter to which evidence should be directed in a hearing so that the constitutional rights of each petitioner may be preserved.

Again Justice Jackson's opinion points out:

> Each defendant stands before the bar of justice as an individual. . . . Each accused is entitled to any benefits due to his good record, and misdeeds or a bad record should prejudice only those who are guilty of them. . . .
>
> It is not the function of [the charging authority] to fix bail, and its volunteered advice is not governing. . . . Such recommendations are better left unmade, and if made should be given no weight.

The unconstitutional conduct of our Court in fixing prohibitive bail in a uniform en masse matter and without any inquiry into the defendant's family, employment or community ties cannot be condoned. And our action was further compounded by an oral order to the Sheriff to refuse to release even those who offered our high bail unless the Court could reexamine and determine if their bail should not be made higher still! However, this provision went too far for several members of our Court and they each gave specific orders to the Sheriff and to the bonding clerk to release immediately anyone who posted the bond initially fixed by them.

This "high bail policy" in our Court was followed from Sunday until Friday noon with hundreds of presumably innocent people with no previous record whatever, suddenly finding themselves separated from their families and jobs and incarcerated in our maximum security detention facilities at Jackson and Milan; and all of this without benefit of counsel, without an examination and without even the semblance of a trial.

As should have been anticipated, racial tensions mounted to something approaching the explosion point. By Friday noon the prosecutor was so disturbed that he requested authorization to countermand our Court's bail orders and to use his uncontrolled discretion in releasing prisoners of his choice. Also by Friday noon the Governor, the Mayor and the President's personal representative were sufficiently apprehensive that they demanded and received a special audience with our Court where they each asked that we expedite the release of as many arrestees as possible.

Also by Friday afternoon a sizeable delegation representing Detroit's black community demanded and received a hearing with the judges of our Court and they lodged a vigorous protest about the flagrant denials of their civil rights and liberties; the killing of some 33 Negroes by police and guardsmen; and the indiscriminate kicking in of doors and searching black people's homes.

It was not until these happenings occurred that we judges returned to our judicial senses. Within a matter of a few hours orders were entered releasing the overwhelming bulk of these defendants on personal bond.

In the five or six years immediately preceding our 1967 disturbance, much progress was made in Detroit in improving police-community rela-

tions. No Police Commissioner in the past 25 years enjoyed the respect and confidence in the Negro community that Commissioner Girardin enjoyed prior to the summer of 1967. He is still highly regarded; but not his Department. And not the Wayne County Prosecutor's Office; and not the Recorder's Court. The black citizens of Detroit find it difficult to understand the essential justice of any system that will arrest, charge and prosecute 3,230 persons with felonies and then dispose of the first 1,630 of these with 961 dismissals, 664 pleas to misdemeanors (trespass, petty larceny and curfew violations) and only two convictions on the original charge!

It is not surprising that police-Negro tension is almost as high in Detroit today as it was immediately after last summer's events. The simple truth is Detroit's black community knows that the temple of criminal justice has fallen down; they feel the beams resting upon their necks at every turn. What is particularly disturbing is the refusal of the Establishment to open its eyes to this fact.

CHAPTER 5. REJECTION AND PROTEST: AN HISTORICAL SKETCH

INTRODUCTION

The events of the summer of 1967 are in large part the culmination of 300 years of racial prejudice. Most Americans know little of the origins of the racial schism separating our white and Negro citizens. Few appreciate how central the problem of the Negro has been to our social policy. Fewer still understand that today's problems can be solved only if white Americans comprehend the rigid social, economic and educational barriers that have prevented Negroes from participating in the mainstream of American life. Only a handful realize that Negro accommodation to the patterns of prejudice in American culture has been but one side of the coin—for as slaves and as free men, Negroes have protested against oppression and have persistently sought equality in American society.

What follows is neither a history of the Negro in the United States nor a full account of Negro protest movements. Rather, it is a brief narrative of a few historical events that illustrate the facts of rejection and the forms of protest.

We call on history not to justify, but to help explain, for black and white Americans, a state of mind.

THE COLONIAL PERIOD

Twenty years after Columbus reached the New World, African Negroes, transported by Spanish, Dutch and Portuguese traders, were arriving in the Caribbean Islands. Almost all came as slaves. By 1600, there were more than half a million slaves in the Western Hemisphere.

In Colonial America, the first Negroes landed at Jamestown in August, 1619. Within 40 years, Negroes had become a group apart, separated from the rest of the population by custom and law. Treated as servants for life, forbidden to intermarry with whites, deprived of their African traditions and dispersed among Southern plantations, American Negroes lost tribal, regional and family ties.

Through massive importation, their numbers in-

creased rapidly. By 1776, some 500,000 Negroes were held in slavery and indentured servitude in the United States. Nearly one of every six persons in the country was a slave.

Americans disapproved a preliminary draft of the Declaration of Independence that indicted the King of England for waging "cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere or to incur miserable death in their transportation thither." Instead, they approved a document that proclaimed "all men are created equal."

The statement was an ideal, a promise. But it excluded the Negroes who were held in bondage, as well as the few who were free men.

The conditions in which Negroes lived had already led to protest. Racial violence was present almost from the beginning of the American experience. Throughout the 18th century, the danger of Negro revolts obsessed many white Americans. Slave plots of considerable scope were uncovered in New York in 1712 and 1714, and they resulted in bloodshed—whites and Negroes were slain.

Negroes were at first barred from serving in the Revolutionary Army, recruiting officers having been ordered in July 1775, to enlist no "stroller, Negro or vagabond." Yet Negroes were already actively involved in the struggle for independence. Crispus Attucks, a Boston Negro, was perhaps the first American to die for freedom, and Negroes had already fought in the battles at Lexington and Concord. They were among the soldiers at Bunker Hill.

Fearing that Negroes would enlist in the British Army, which welcomed them, and facing a manpower shortage, the Continental Army accepted free Negroes. Many slaves did join the British, and, according to an estimate by Thomas Jefferson, more than 30,000 Virginia slaves ran away in 1778 alone, presumably to enlist. The states enrolled both free and slave Negroes, and finally Congress authorized military service for slaves, who were to be emancipated in return for their service. By the end of the war, about 5,000 Negroes had been in the ranks of the Continental Army. Those who had been slaves became free.

THE CONSTITUTION AND THE LAWS

Massachusetts abolished slavery in 1783, and Connecticut, Rhode Island, New Jersey, Pennsylvania and New York soon provided for gradual liberation. But relatively few Negroes lived in these states. The bulk of the Negro population was in the South, where white Americans had fortunes invested in slaves. Although the Congress banned slavery in the Northwest Territory, delegates at the Constitutional Convention compromised—a slave was counted as three-fifths of a person for determining the number of representatives from a state to Congress; Congress was prohibited from restricting the slave trade until after 1808; and the free states were required to return fugitive slaves to their Southern owners.

Growing numbers of slaves in the South became permanently fastened in bondage, and slavery spread into the new Southern regions. When more slaves were needed for the cotton and sugar plantations in the Southwest, they were ordered from the "Negro-raising" states of the Old South or, despite Congressional prohibition of the slave trade, imported from Africa.

The laws of bondage became even more institutionalized. Masters retained absolute authority over their Negroes, who were unable to leave their masters' properties without written permission. Any white person, even those who owned no slaves—and they outnumbered slaveholders six to one—could challenge a truant slave and turn him over to a public official. Slaves could own no property, could enter into no contract—not even a contract of marriage—and had no right to assemble in public unless a white person was present. They had no standing in the courts.

DISCRIMINATION AS DOCTRINE

The situation was hardly better for free Negroes. A few achieved material success, some even owned slaves themselves, but the vast majority knew only poverty. Forbidden to settle in some areas, segregated in others, they were targets of prejudice and discrimination. In the South, they were denied freedom of movement, severely restricted in their choice of occupation and forbidden to associate with whites or with slaves. They lived in constant danger of being enslaved—whites could challenge their freedom and an infraction of the law could put them into bondage. In both North and South, they were regularly victims of mobs. In 1829, for example, white residents invaded Cincinnati's "Little Africa," killed Negroes, burned their property

and ultimately drove half the Negro population from the city.

Some Americans, Washington and Jefferson among them, advocated the gradual emancipation of slaves, and in the 19th century, a movement to abolish slavery grew in importance and strength. A few white abolitionist leaders wanted full equality for Negroes, but others sought only to eliminate the institution itself. And some antislavery societies, fearing that Negro members would unnecessarily offend those who were unsympathetic with abolitionist principles, denied entrance to Negroes.

Most Americans were, in fact, against abolishing slavery. They refused to rent their halls for antislavery meetings. They harassed abolitionist leaders who sought to educate white and Negro children together. They attacked those involved in the movement. Mobs sometimes killed abolitionists and destroyed their property.

A large body of literature came into existence to prove that the Negro was imperfectly developed in mind and body, that he belonged to a lower order of man, that slavery was right on ethnic, economic and social grounds—quoting the Scriptures in support.

Spreading rapidly during the first part of the 19th century, slavery held less than one million Negroes in 1800 but almost four million by 1860. Although some few white Americans had freed their slaves, most increased their holdings, for the invention of the cotton gin had made cotton the heart of the Southern economy. By mid-century, slavery in the South had become a systematic and aggressive way of treating a whole race of people.

The despair of Negroes was evident. Malingering and sabotage tormented every slaveholder. The problem of runaway slaves was endemic. Some slaves—Gabriel Prosser in 1800, Denmark Vesey in 1822, Nat Turner in 1831, and others—turned to violence, and the sporadic uprisings that flared demonstrated a deep protest against a demeaning way of life.

Negroes who had material resources expressed their distress in other ways. In 1816, Paul Cuffee, Negro philanthropist and owner of a fleet of ships, transported a group of Negroes to a new home in Sierra Leone. Forty years later, Martin R. Delany, Negro editor and physician, also urged Negroes to settle elsewhere.

Equality of treatment and acceptance by the society at large were myths, and Negro protest during the first half of the 19th century took the form of rhetoric, spoken and written, which combined denunciation of undemocratic oppression together with pleas to the conscience of white Americans for the redress of grievances and the recognition of their constitutional rights.

A few Negroes joined white Americans who believed that only Negro emigration to Africa would solve racial problems. But most Negroes equated that program with banishment and felt themselves "entitled to participate in the blessings" of America. The National Negro Convention Movement, formed in 1830, held conferences to publicize on a national scale the evils of slavery and the indignities heaped on free Negroes.

The American Moral Reform Society, founded by Negroes in 1834, rejected racial separatism and advocated uplifting "the whole human race, without distinction as to * * * complexion." Other Negro reformers pressed for stronger racial consciousness and solidarity as the means to overcome racial barriers. Many took direct action to help slaves escape through the underground railroad. A few resisted discrimination by political action, even though most Negroes were barred from voting.

Frustration, disillusionment, anger, and fantasy marked the Negro's protest against the place in American society assigned to them. "I was free," Harriet Tubman said, "but there was no one to welcome me in the land of freedom. I was a stranger in a strange land."

When Frederick Douglass, the distinguished Negro abolitionist, addressed the citizens of Rochester on Independence Day, 1852, he told them:

> The Fourth of July is *yours*, not mine. *You* may rejoice, *I* must mourn. To drag a man into the grand illuminated temple of liberty, and call upon him to join you in joyous anthems, were inhuman mockery and sacrilegious irony. * * * Fellow citizens, above your national tumultuous joy, I hear the mournful wail of millions, whose chains, heavy and grievous yesterday, are today rendered more intolerable by the jubilant shouts that reach them. * * *

THE PATH TOWARD CIVIL WAR

The 1850's brought Negroes increasing despair, as the problem of slavery was debated by the Nation's leaders. The Compromise of 1850 and the Kansas-Nebraska Act of 1854 settled no basic issues. And the

Dred Scott case in 1857 confirmed Negroes in their understanding that they were not "citizens" and thus not entitled to the constitutional safeguards enjoyed by other Americans.

But the abolitionist movement was growing. "Uncle Tom's Cabin" appeared in 1852 and sold more than 300,000 copies that year. Soon presented on the stage throughout the North, it dramatized the cruelty of slave masters and overseers and condemned a culture based on human degradation and exploitation. The election of Abraham Lincoln on an antislavery platform gave hope that the end of slavery was near.

But by the time Lincoln took office, seven Southern states had seceded from the Union, and four more soon joined them.

The Civil War and Emancipation renewed Negro faith in the vision of a racially egalitarian and integrated American society. But Americans, having been aroused by wartime crisis, would again fail to destroy what abolitionists had described as the "sins of caste."

CIVIL WAR AND EMANCIPATION

Negroes volunteered for military service during the Civil War—the struggle, as they saw it, between the slave states and the free states. They were rejected.

Not until a shortage of troops plagued the Union Army late in 1862 were segregated units of "United States Colored Troops" formed. Not until 1864 did these men receive the same pay as white soldiers. A total of 186,000 Negroes served.

The Emancipation Proclamation of 1863 freed few slaves at first but had immediate significance as a symbol. Negroes could hope again for equality.

But there were, at the same time, bitter signs of racial unrest. Violent rioting occurred in Cincinnati in 1862 when Negro and Irish hands competed for work on the riverboats. Lesser riots took place in Newark, and in Buffalo and Troy, N.Y., the result of combined hostility to the war and fear that Negroes would take white jobs.

The most violent of the troubles took place in the New York City draft riots in July, 1863, when white workers, mainly Irish-born, embarked on a 3-day rampage.

> Desperately poor and lacking real roots in the community, they had the most to lose from the draft. Further, they were bitterly afraid that even cheaper Negro labor would flood the North if slavery ceased to exist.

> All the frustrations and prejudices the Irish had suffered were brought to a boiling point. * * * At pitiful wages, they had slaved on the railroads and canals, had been herded into the most menial jobs as carters and stevedores. * * * Their crumbling frame tenements * * * were the worst slums in the city.[1]

Their first target was the office of the provost marshal in charge of conscription, and 700 people quickly ransacked the building and set it on fire. The crowd refused to permit firemen into the area, and the whole block was gutted. Then the mob spilled into the Negro area where many Negroes were slain and thousands forced to flee town. The police were helpless until Federal troops arrived on the 3d day and restored control.

Union victory in the Civil War promised the Negroes freedom but not equality or immunity from white aggression. Scarcely was the war ended when racial violence erupted in New Orleans. Negroes proceeding to an assembly hall to discuss the franchise were charged by police and special troops who routed the Negroes with guns, bricks, and stones, killed some at once, and pursued and killed others who were trying to escape.

Federal troops restored order. But 34 Negroes and four whites were reported dead, and over 200 people were injured. General Sheridan later said:

> At least nine-tenths of the casualties were perpetrated by the police and citizens by stabbing and smashing in the heads of many who had already been wounded or killed by policemen * * * it was not just a riot but "an absolute massacre by the police * * *" a murder which the mayor and police * * * perpetrated without the shadow of necessity.

RECONSTRUCTION

Reconstruction was a time of hope, the period when the 13th, 14th, and 15th Amendments were adopted, giving Negroes the vote and the promise of equality.

But campaigns of violence and intimidation accompanied these optimistic expressions of a new age. The Ku Klux Klan and other secret organizations sought to suppress the emergence into society of the new Negro citizens. Major riots occurred in Memphis, Tennessee, where 46 Negroes were reported killed and 75 wounded, and in the Louisiana centers of Colfax and Coushatta, where more than 100 Negro and white Republicans were massacred.

[1] Ladler, *New York's Bloodiest Week,* American Heritage, June, 1959, p. 48.

Nevertheless, in 1875, Congress enacted the first significant civil rights law. It gave Negroes the right to equal accommodations, facilities, and advantages of public transportation, inns, theaters and places of public amusement, but the law had no effective enforcement provisions and was in fact poorly enforced. Although bills to provide Federal aid to education for Negroes were prepared, none passed, and educational opportunities remained meager. But Negroes were elected to every Southern legislature, 20 served in the U.S. House of Representatives, two represented Mississippi in the U.S. Senate and a prominent Negro politician was Governor of Louisiana for 40 days.

Opposition to Negroes in state and local government was always open and bitter. In the press and on the platform, they were described as ignorant and depraved. Critics made no distinction between Negroes who had graduated from Dartmouth and those who had graduated from the cotton fields. Every available means was employed to drive Negroes from public life. Negroes who voted or held office were refused jobs or punished by the Ku Klux Klan. One group in Mississippi boasted of having killed 116 Negroes and of having thrown their bodies into the Tallahatchie River. In a single South Carolina county, six men were murdered and more than 300 whipped during the first 6 months of 1870.

The Federal Government seemed helpless. Having withdrawn the occupation troops as soon as the Southern states organized governments, the President was reluctant to send them back. In 1870 and 1871, after the 15th Amendment was ratified, Congress enacted several laws to protect the right of citizens to vote. They were seldom enforced, and the Supreme Court struck down most of the important provisions in 1875 and 1876.

As Southern white governments returned to power, beginning with Virginia in 1869 and ending with Louisiana in 1877, the process of relegating the Negro to a subordinate place in American life was accelerated. Disfranchisement was the first step. Negroes who defied the Klan and tried to vote faced an array of deceptions and obstacles: Polling places were changed at the last minute without notice to Negroes, severe time limitations were imposed on marking complicated ballots, votes cast incorrectly in a maze of bal-

lot boxes were nullified. The suffrage provisions of state constitutions were rewritten to disfranchise Negroes who could not read, understand or interpret the Constitution. Some state constitutions permitted those who failed the tests to vote if their ancestors had been eligible to vote on January 1, 1860—a date when no Negro could vote anywhere in the South.

In 1896, there were 130,344 Negroes registered in Louisiana. In 1900, after the state rewrote the suffrage provisions of its constitution, only 5,320 remained on the registration books. Essentially the same thing happened in the other states of the former Confederacy.

SEGREGATION BY LAW

When the Supreme Court in 1883 declared the Civil Rights Act of 1875 unconstitutional, Southern states began to enact laws to segregate the races. In 1896, the Supreme Court in *Plessy* v. *Ferguson* approved "separate but equal" facilities; it was then that segregation became an established fact, by law as well as by custom. Negroes and whites were separated on public carriers and in all places of public accommodation, including hospitals and churches. In courthouses, whites and Negroes took oaths on separate Bibles. In most communities, whites were separated from Negroes in cemeteries.

Segregation invariably meant discrimination. On trains all Negroes, including those holding first-class tickets, were allotted seats in the baggage car. Negroes in public buildings had to use freight elevators and toilet facilities reserved for janitors. Schools for Negro children were at best a weak imitation of those for whites as states spent 10 times more to educate white youngsters than Negroes. Discrimination in wages became the rule, whether between Negro and white teachers of similar training and experience or between common laborers on the same job.

Some Northern states enacted civil rights laws in the 1880's, but Negroes in fact were treated little differently in the North than in the South. As Negroes moved north in substantial numbers toward the end of the century, they discovered that equality of treatment did not exist in Massachusetts, New York, or Illinois. They were crowded by local ordinances into sections of the city where housing and public services were generally substandard. Overt discrimination in employment was a general practice and job opportunities

apart from menial tasks were few. Most labor unions excluded Negroes from membership—or granted membership in separate and powerless Jim Crow locals. Yet when Negroes secured employment during strikes, labor leaders castigated them for undermining the principles of trade unionism. And when Negroes sought to move into the mainstream of community life by seeking membership in the organizations around them—educational, cultural, and religious—they were invariably rebuffed.

By the 20th century, the Negro was at the bottom of American society. Disfranchised, Negroes throughout the country were excluded by employers and labor unions from white-collar jobs and skilled trades. Jim Crow laws and farm tenancy characterized Negro existence in the South. About 100 lynchings occurred every year in the 1880's and 1890's; there were 161 lynchings in 1892. As increasing numbers of Negroes migrated to Northern cities, race riots became commonplace. Northern whites, even many former abolitionists, began to accept the white South's views on race relations.

That Northern whites would resort to violence was made clear in anti-Negro riots in New York City, 1900; Springfield, Ohio, 1904; Greensburg, Ind., 1906; and Springfield, Ill., 1908.

The Springfield, Ill., riot lasted three days. It was initiated by a white woman's charge of rape by a Negro, inflamed by newspapers, and intensified by crowds of whites gathered around the jail demanding that the Negro, arrested and imprisoned, be lynched. When the sheriff transferred the accused and another Negro to a jail in a nearby town, rioters headed for the Negro section and attacked homes and businesses owned by or catering to Negroes. White owners who showed handkerchiefs in their windows averted harm to their stores. One Negro was summarily lynched, others were dragged from houses and streetcars and beaten. By the time National Guardsmen could reach the scene, six persons were dead—four whites and two Negroes. Property damage was extensive. Many Negroes left Springfield, hoping to find better conditions elsewhere, especially in Chicago.

PROTEST IN THE EARLY 1900'S

Between his famous Atlanta Exposition Address in 1895 and his death in 1915, Booker T. Washington, principal of the Tuskegee Normal and Industrial In-

stitute in Alabama and the most prominent Negro in America, privately spent thousands of dollars fighting disfranchisement and segregation laws; publicly he advocated a policy of accommodation, conciliation, and gradualism. Washington believed that by helping themselves, by creating and supporting their own businesses, by proving their usefulness to society through the acquisition of education, wealth, and morality, Negroes would earn the respect of the white man and thus eventually gain their constitutional rights.

Self-help and self-respect appeared a practical and sure, if gradual, way of ultimately achieving racial equality. Washington's doctrines also gained support because they appealed to race pride: If Negroes believed in themselves, stood together, and supported each other, they would be able to shape their destinies.

In the early years of the century, a small group of Negroes led by W. E. B. Du Bois formed the Niagara Movement to oppose Washington's program. Washington had put economic progress before politics, had accepted the separate-but-equal theory and opposed agitation and protest. Du Bois and his followers stressed political activity as the basis of the Negro's future, insisted on the inequity of Jim Crow laws and advocated agitation and protest.

In sharp language, the Niagara group placed responsibility for the race problem squarely on the whites. The aims of the movement were voting rights and "the abolition of all caste distinctions based simply on race and color."

Although Booker T. Washington tried to crush his critics, Du Bois and the Negro "radicals" as they were called, enlisted the support of a small group of influential white liberals and socialists. Together, in 1909–10, they formed the National Association for the Advancement of Colored People.

The NAACP hammered at the walls of prejudice by organizing Negroes and well-disposed whites, by aiming propaganda at the whole Nation, by taking legal action in courts and legislatures. Almost at the outset of its career, the NAACP prevailed upon the Supreme Court to declare unconstitutional two discriminatory statutes. In 1915, the Court struck down the Oklahoma "grandfather clause," a provision in several Southern state constitutions that, together with voting tests, had

the effect of excluding from the vote those whose ancestors were ineligible to vote in 1860. Two years later, the Supreme Court outlawed residential segregation ordinances. These NAACP victories were the first legal steps in a long fight against disfranchisement and segregation.

During the first quarter of the 20th century, the Federal Government enacted no new legislation to ensure equal rights or opportunities for Negroes and made little attempt to enforce existing laws despite flagrant violations of Negro civil rights.

In 1913, members of Congress from the South introduced bills to federalize the Southern segregation policy. They wished to ban interracial marriages in the District of Columbia, segregate white and Negro Federal employees and introduce Jim Crow laws in the public carriers of the District. The bills did not pass, but segregation practices were extended in Federal offices, shops, restrooms and lunchrooms. The Nation's Capital became as segregated as any in the former Confederate States.

EAST ST. LOUIS, 1917

Elsewhere there was violence. In July 1917, in East St. Louis, a riot claimed the lives of 39 Negroes and nine whites. It was the result of fear by white working men that Negro advances in economic, political, and social status were threatening their own security and status.

When the labor force of an aluminum plant went on strike, the company hired Negro workers. A labor union delegation called on the mayor and asked that further migration of Negroes to East St. Louis be stopped. As the men were leaving City Hall, they heard that a Negro had accidentally shot a white man during a holdup. In a few minutes rumor had replaced fact: the shooting was intentional—a white woman had been insulted—two white girls were shot. By this time, 3,000 people had congregated and were crying for vengeance. Mobs roamed the streets beating Negroes. Policemen did little more than take the injured to hospitals and disarm Negroes.

The National Guard restored order. When the Governor withdrew the troops, tensions were still high, and scattered episodes broke the peace. The press continued to emphasize Negro crimes. White pickets and Negro workers at the aluminum company skirmished and, on July 1, some whites drove through the

main Negro neighborhood firing into homes. Negro residents armed themselves. When a police car drove down the street, Negroes riddled it with gunshot.

The next day a Negro was shot on the main street, and a new riot was underway. The area became a "bloody half mile" for 3 or 4 hours; streetcars were stopped, and Negroes, without regard to age or sex, were pulled off and stoned, clubbed, and kicked. Mob leaders calmly shot and killed Negroes who were lying in blood in the street. As the victims were placed in an ambulance, the crowds cheered and applauded.

Other rioters set fire to Negro homes, and by midnight the Negro section was in flames, and Negroes were fleeing the city. There were 48 dead, hundreds injured and more than 300 buildings destroyed.

WORLD WAR I AND POSTWAR VIOLENCE

When the United States entered World War I in 1917, the country again faced the question whether American citizens should have the right to serve, on an equal basis, in defense of their country. More than 2 million Negroes registered under the Selective Service Act, and some 360,000 were called into service.

The Navy rejected Negroes except as menials. The Marine Corps rejected them altogether. The Army formed them into separate units commanded, for the most part, by white officers. Only after great pressure did the Army permit Negro candidates to train as officers in a segregated camp. Mistreated at home and overseas, Negro combat units performed exceptionally well under French commanders who refused to heed American warnings that Negroes were inferior people. Negro soldiers returning home were mobbed for attempting to use facilities open to white soldiers. Of the 70 Negroes lynched during the first year after the war, a substantial number were soldiers. Some were lynched in uniform.

Reorganized in 1915, the Ku Klux Klan was flourishing again by 1919. Its program "for uniting native-born white Christians for concerted action in the preservation of American institutions and the supremacy of the white race," was implemented by flogging, branding with acid, tarring and feathering, hanging, and burning. It destroyed the elemental rights of many Negroes—and of some whites.

Violence took the form of lynchings and riots, and major riots by whites against Negroes took place in

1917 in Chester, Pa., and Philadelphia; in 1919 in Washington, D.C., Omaha, Charleston, Longview, Tex., Chicago, and Knoxville; in 1921 in Tulsa.

The Chicago riot of 1919 flared from the increase in Negro population, which had more than doubled in 10 years. Jobs were plentiful, but housing was not. Black neighborhoods expanded into white sections of the city and trouble developed. Between July 1917, and March 1921, 58 Negro houses were bombed, and recreational areas were sites of racial conflict.

The riot itself started on Sunday, July 27, with stone-throwing and sporadic fighting at adjoining white and Negro beaches. A Negro boy swimming off the Negro beach drifted into water reserved for whites and drowned. Young Negroes claimed he had been struck by stones and demanded the arrest of a white man. Instead, police arrested a Negro. Negroes attacked policemen, and news spread to the city. White and Negro groups clashed in the streets, two persons died and 50 were wounded. On Monday, Negroes coming home from work were attacked; later, when whites drove cars through Negro neighborhoods and fired weapons, Negroes retaliated. Twenty more were killed and hundreds wounded. On Tuesday, a handful more were dead, 129 injured. Rain began to fall; the mayor finally called in the state militia. The city quieted down after nearly a week of violence.

THE 1920'S AND THE NEW MILITANCY

In the period between the two World Wars, the NAACP dominated the strategy of racial advancement. The NAACP drew its strength from large numbers of Southern Negroes who had migrated to Northern cities and from a small but growing Negro group of professionals and businessmen. It projected the image of the "New Negro," race-proud and self-reliant, believing in racial cooperation and self-help and determined to fight for his constitutional rights. This was reflected in the work of writers and artists known as the "Harlem Renaissance," who drew upon the Negro's own cultural tradition and experience. W. E. B. Du Bois, editor of the "Crisis," the NAACP publication, symbolized the new mood and exerted great influence.

The NAACP did extraordinary service, giving legal defense to victims of race riots and unjust judicial proceedings. It obtained the release of the soldiers who had received life sentences on charges of rioting against intolerable conditions at Houston in 1917. It success-

fully defended Negro sharecroppers in Elaine, Ark., who in 1919 had banded together to gain fairer treatment. They had become the objects of a massive armed hunt by whites to put them "in their place," and who were charged with insurrection when they resisted. It secured the acquittal, with the help of Clarence Darrow, of Dr. Ossian Sweet and his family. The Sweets, who had moved into a white neighborhood in Detroit, shot at a mob attacking their home and killed a man. The Sweets were eventually judged to have committed the act in self-defense.

Less successful were attempts to prevent school segregation in Northern cities. Gerrymandering of school boundaries and other devices by boards of education were fought with written petitions, verbal protests to school officials, legal suits, and, in several cities, school boycotts. All proved of no avail.

The thrust of the NAACP was primarily political and legal, but the National Urban League, founded in 1911 by philanthropists and social workers, sought an economic solution to the Negroes' problems. Sympathetic with Booker T. Washington's point of view, believing in conciliation, gradualism, and moral suasion, the Urban League searched out industrial opportunities for Negro migrants to the cities, using arguments that appealed to the white businessman's sense of economic self-interest and also to his conscience.

Another important figure who espoused an economic program to ameliorate the Negro's condition was A. Philip Randolph, an editor of the "Messenger." He regarded the NAACP as a middle-class organization unconcerned about pressing economic problems. Taking a Marxist position on the causes of prejudice and discrimination, Randolph called for a new and radical Negro unafraid to demand his rights as a member of the working class. He advocated physical resistance to white mobs, but he believed that only united action of black and white workers against capitalists would achieve social justice.

Although Randolph addressed himself to the urban working masses, few of them ever read the "Messenger." The one man who reached the masses of frustrated and disillusioned migrants in the Northern ghettos was Marcus Garvey.

Garvey, founder in 1914 of the Universal Negro

Improvement Association (UNIA), aimed to liberate both Africans and American Negroes from their oppressors. His utopian method was the wholesale migration of American Negroes to Africa. Contending that whites would always be racist, he stressed racial pride and history, denounced integration, and insisted that the black man develop "a distinct racial type of civilization of his own and * * * work out his salvation in his motherland." On a more practical level, he urged support of Negro businesses, and through the UNIA organized a chain of groceries, restaurants, laundries, a hotel, printing plant, and steamship line. When several prominent Negroes called the attention of the Federal government to irregularities in the management of the steamship line, Garvey was jailed and then deported, for having used the mails to defraud.

But Garvey dramatized, as no one before, the bitterness and alienation of the Negro slumdwellers who, having come North with great expectations, found only overcrowded and deteriorated housing, mass unemployment, and race riots.

THE DEPRESSION

Negro labor, relatively unorganized and the target of discrimination and hostility, was hardly prepared for the depression of the 1930's. To a disproportionate extent, Negroes lost their jobs in cities and worked for starvation wages in rural areas. Although organizations like the National Urban League tried to improve employment opportunities, 65 percent of Negro employables were in need of public assistance by 1935.

Public assistance was given on a discriminatory basis, especially in the South. For a time, Dallas and Houston gave no relief at all to Negro or Mexican families. In general, Negroes had more difficulty than whites in obtaining assistance, and the relief benefits were smaller. Some religious and charitable organizations excluded Negroes from their soup kitchens.

THE NEW DEAL

The New Deal marked a turning point in American race relations. Negroes found much in the New Deal to complain about: discrimination existed in many agencies; Federal housing programs expanded urban ghettos; money from the Agricultural Adjustment Administration went in the South chiefly to white landowners, while crop restrictions forced many Negro sharecroppers off the land. Nevertheless, Negroes shared in relief, jobs and public housing, and Negro

leaders, who felt the open sympathy of many highly placed New Dealers, held more prominent political positions than at any time since President Taft's administration. The creation of the Congress of Industrial Organizations (CIO), with its avowed philosophy of nondiscrimination, made the notion of an alliance of black and white workers something more than a visionary's dream.

The depression, the New Deal and the CIO reoriented Negro protest to concern with economic problems. Negroes conducted "Don't-Buy-Where-You-Can't-Work" campaigns in a number of cities, boycotted and picketed commercial establishments owned by whites and sought equality in American society through an alliance with white labor.

The NAACP came under attack from some Negroes. Du Bois resigned as editor of the *Crisis* in 1934 in part because he believed in the value of collective racial economic endeavor and saw little point in protesting disfranchisement and segregation without more actively pursuing economic goals. Younger critics also disagreed with NAACP's gradualism on economic issues.

Undeterred, the NAACP broadened the scope of its legal work, fought a vigorous though unsuccessful campaign to abolish the poll tax, and finally won its attack on the white primaries in 1944 through the Supreme Court. But the heart of its litigation was a long-range campaign against segregation and the most obvious inequities in the Southern school systems: the lack of professional and graduate schools and the low salaries received by Negro teachers. Not until about 1950 would the NAACP make a direct assault against school segregation on the legal ground that separate facilities were inherently unequal.

WORLD WAR II

During World War II, Negroes learned again that fighting for their country brought them no nearer to full citizenship. Rejected when they tried to enlist, they were accepted into the Army according to the proportion of the Negro population to that of the country as a whole—but only in separate units—and those mostly noncombat. The United States thus fought racism in Europe with a segregated fighting force. The Red Cross, with the government's approval, separated Negro and white blood in banks established for wounded servicemen—even though the blood banks

were largely the work of a Negro physician, Charles Drew.

Not until 1949 would the Armed Forces begin to adopt a firm policy against segregation.

Negroes seeking employment in defense industries were embittered by policies like that of a West Coast aviation factory which declared openly that "the Negro will be considered only as janitors and in other similar capacities. * * * Regardless of their training as aircraft workers, we will not employ them."

Two new movements marked Negro protest: the March on Washington and the Congress of Racial Equality (CORE). In 1941, consciously drawing on the power of the Negro vote and concerned with the economic problems of the urban slumdweller, A. Philip Randolph threatened a mass Negro convergence on Washington unless President Roosevelt secured employment for Negroes in the defense industries. The President's Executive Order 8802, establishing a federal Fair Employment Practices Commission, forestalled the demonstration. Even without enforcement powers, the FEPC set a precedent for treating fair employment practice as a civil right.

CORE was founded in 1942–43, when certain leaders of the Fellowship of Reconciliation, a pacifist organization, became interested in the use of nonviolent direct action to fight racial discrimination. CORE combined Gandhi's techniques with the sit-in, derived from the sit-down strikes of the 1930's. Until about 1959, CORE's main activity was attacking discrimination in places of public accommodation in the cities of the Northern and Border states, and as late as 1961, two-thirds of its membership and most of its national officers were white.

Meanwhile, wartime racial disorders had broken out sporadically—in Mobile, Los Angeles, Beaumont, Tex., and elsewhere. The riot in Detroit in 1943 was the most destructive. The Negro population in the city had risen sharply and more than 50,000 recent arrivals put immense pressures on the housing market. Neighborhood turnover at the edge of the ghetto bred bitterness and sometimes violence, and recreational areas became centers of racial abrasion. The Federal regulations requiring employment standards in defense industries also angered whites, and several unauthorized walkouts had occurred in automobile plants after

Negro workers were upgraded. Activities in the city of several leading spokesmen for white supremacy—Gerald L. K. Smith, Frank J. Norris and Father Charles Coughlin—inflamed many white southerners who had migrated to Detroit during the war.

On Sunday, June 20, rioting broke out on Belle Isle, a recreational spot used by both races but predominantly by Negroes. Fist fights escalated into a major conflict. The first wave of looting and bloodshed began in the Negro ghetto "Paradise Valley" and later spread to other sections of the city. Whites began attacking Negroes as they emerged from the city's all-night movie theatres in the downtown area. White forays into Negro residential areas by car were met by gunfire. By the time Federal troops arrived to halt the racial conflict, 25 Negroes and nine whites were dead, property damage exceeded $2 million and a legacy of fear and hate descended on the city.

Again, in 1943, a riot erupted in Harlem, New York, following the attempt of a white policeman to arrest a Negro woman who was defended by a Negro soldier. Negro rioters assaulted white passersby, overturned parked automobiles, tossed bricks and bottles at policemen. The major emphasis was on destroying property, looting and burning stores. Six persons died, over 500 were injured and more than 100 were jailed.

THE POSTWAR PERIOD

White opinion in some quarters of America had begun to shift to a more sympathetic regard for Negroes during the New Deal, and the war had accelerated that movement. Thoughtful whites had been painfully aware of the contradiction in opposing Nazi racial philosophy with racially segregated military units. In the postwar years, American racial attitudes became more liberal as new nonwhite nations emerged in Asia and Africa and took increasing responsibilities in international councils.

Against this background, the growing size of the Northern Negro vote made civil rights a major issue in national elections and, ultimately, in 1957, led to the establishment of the Federal Civil Rights Commission, which had the power to investigate discriminatory conditions throughout the country and to recommend corrective measures to the President. Northern and Western states outlawed discrimination in employment, housing and public accommodations, while

the NAACP, in successive court victories, won judgments against racially restrictive covenants in housing, segregation in interstate transportation and discrimination in publicly-owned recreational facilities. The NAACP helped register voters, and in 1954, *Brown* v. *Board of Education* became the triumphant climax of the NAACP's campaign against educational segregation in the public schools of the South.

CORE, which had been conducting demonstrations in the Border states, its major focus on public accommodations, began experimenting with direct-action techniques to open employment opportunities. In 1947, in conjunction with the Fellowship of Reconciliation, CORE conducted a "Journey of Reconciliation"—what would later be called a "Freedom Ride"—in the states of the upper South to test compliance with the Supreme Court decision outlawing segregation on interstate buses. The resistance met by riders in some areas and the sentencing of 2 of them to 30 days on a North Carolina road gang dramatized the gap between American democratic theory and practice.

The Montgomery, Ala., bus boycott of 1955–56 captured the imagination of the nation and of the Negro community in particular, and led to the growing use of direct-action techniques. It catapulted into national prominence the Reverend Martin Luther King, Jr., who, like the founders of CORE, held to a Gandhian belief in the principles of pacifism.

Even before a court decision obtained by NAACP attorneys in November, 1956, desegregated the Montgomery buses, a similar movement had started in Tallahassee, Fla. Afterward, another one developed in Birmingham, Ala. In 1957, the Tuskegee Negroes undertook a 3-year boycott of local merchants after the state legislature gerrymandered nearly all of the Negro voters outside of the town's boundaries. In response to a lawsuit filed by the NAACP, the Supreme Court ruled the Tuskegee gerrymander illegal.

These events were widely heralded. The "new Negro" had now emerged in the South—militant, no longer fearful of white hoodlums or mobs and ready to use his collective strength to achieve his ends. In this mood, King established the Southern Christian Leadership Conference in 1957 to coordinate direct-

action activities in Southern cities.

Nonviolent direct action attained popularity not only because of the effectiveness of King's leadership, but because the older techniques of legal and legislative action had had limited success. Impressive as the advances in the 15 years after World War II were, in spite of state laws and Supreme Court decisions, something was still clearly wrong. Negroes remained disfranchised in most of the South, though in the 12 years following the outlawing of the white primary in 1944, the number of Negroes registered in Southern states had risen from about 250,000 to nearly a million and a quarter. Supreme Court decisions desegregating transportation facilities were still being largely ignored in the South. Discrimination in employment and housing continued, not only in the South but also in Northern states with model civil rights laws. The Negro unemployment rate steadily moved upward after 1954. The South reacted to the Supreme Court's decision on school desegregation by attempting to outlaw the NAACP, intimidating civil rights leaders, calling for "massive resistance" to the Court's decision, curtailing Negro voter registration and forming White Citizens' Councils.

REVOLUTION OF RISING EXPECTATIONS

At the same time, Negro attitudes were changing. In what has been described as a "revolution in expectations," Negroes were gaining a new sense of self-respect and a new self-image as a result of the civil rights movement and their own advancement. King and others were demonstrating that nonviolent direct action could succeed in the South. New laws and court decisions and the increasing support of white public opinion gave American Negroes a new confidence in the future.

Negroes no longer felt that they had to accept the humiliations of second-class citizenship. Ironically, it was the very sucesses in the legislatures and the courts that, more perhaps than any other single factor, led to intensified Negro expectations and resulting dissatisfaction with the limitations of legal and legislative programs. Increasing Negro impatience accounted for the rising tempo of nonviolent direct action in the late 1950's, culminating in the student sit-ins of 1960 and the inauguration of what is popularly known as the "Civil Rights Revolution" or the "Negro Revolt."

Many believe that the Montgomery boycott ushered in this Negro Revolt, and there is no doubt that, in its

importance, by projecting the image of King and his techniques, it had great importance. But the decisive break with traditional techniques came with the college student sit-ins that swept the South in the winter and spring of 1960. In dozens of communities in the upper South, the Atlantic coastal states and Texas, student demonstrations secured the desegregation of lunch counters in drug and variety stores. Arrests were numbered in the thousands, and brutality was evident in scores of communities. In the Deep South, the campaign ended in failure, even in instances where hundreds had been arrested, as in Montgomery, Orangeburg, South Carolina, and Baton Rouge. But the youth had captured the imagination of the Negro community and to a remarkable extent of the whole Nation.

STUDENT INVOLVEMENT

The Negro protest movement would never be the same again. The Southern college students shook the power structure of the Negro community, made direct action temporarily preeminent as a civil rights tactic, speeded up the process of social change in race relations, and ultimately turned the Negro protest organizations toward a deep concern with the economic and social problems of the masses.

Involved in this was a gradual shift in both tactics and goals: from legal to direct action, from middle and upper class to mass action, from attempts to guarantee the Negro's constitutional rights to efforts to secure economic policies giving him equality of opportunity, from appeals to the sense of fair play of white Americans to demands based upon power in the black ghetto.

ORGANIZATIONAL DIFFERENCES

Disagreement over strategy and tactics inevitably became intertwined with personal and organizational rivalries. Each civil rights group felt the need for proper credit in order to obtain the prestige and financial contributions necessary to maintain and expand its own programs. The local and national, individual and organizational clashes stimulated competition and activity that further accelerated the pace of social change.

Yet there were differences in style. CORE was the most interracial. SCLC appeared to be the most deliberate. SNCC staff workers lived on subsistence allow-

ances and seemed to regard going to jail as a way of life. The NAACP continued the most varied programs, retaining a strong emphasis on court litigation, maintaining a highly effective lobby at the national capital and engaging in direct-action campaigns. The National Urban League under the leadership of Whitney M. Young, Jr., appointed executive director in 1961, became more outspoken and talked more firmly to businessmen who had previously been treated with utmost tact and caution.

The role of whites in the protest movement gradually changed. Instead of occupying positions of leadership, they found themselves relegated to the role of followers. Whites were likely to be suspect in the activist organizations. Negroes had come to feel less dependent on whites, more confident of their own power, and they demanded that their leaders be black. The NAACP had long since acquired Negro leadership but continued to welcome white liberal support. SCLC and SNCC were from the start Negro-led and Negro-dominated. CORE became predominantly Negro as it expanded in 1962 and 1963; today all executives are Negro, and a constitutional amendment adopted in 1965 officially limited white leadership in the chapters.

A major factor intensifying the civil rights movement was widespread Negro unemployment and poverty; an important force in awakening Negro protest was the meteoric rise to national prominence of the Black Muslims, established around 1930. The organization reached the peak of its influence when more progress toward equal rights was being made than ever before in American history, while at the same time the poorest groups in the urban ghettos were stagnating.

The Black Muslims preached a vision of the doom of the white "devils" and the coming dominance of the black man, promised a utopian paradise of a separate territory within the United States for a Negro state, and offered a practical program of building Negro business through hard work, thrift and racial unity. To those willing to submit to the rigid discipline of the movement, the Black Muslims organization gave a sense of purpose and dignity.

"FREEDOM NOW!" AND CIVIL RIGHTS LAW

As the direct-action tactics took more dramatic form, as the civil rights groups began to articulate the

needs of the masses and draw some of them to their demonstrations, the protest movement in 1963 assumed a new note of urgency, a demand for complete "Freedom Now!" Direct action returned to the Northern cities, taking the form of massive protests against economic, housing and educational inequities, and a fresh wave of demonstrations swept the South from Cambridge, Maryland, to Birmingham, Alabama. Northern Negroes launched street demonstrations against discrimination in the building trade unions, and, the following winter, school boycotts against de facto segregation.

In the North, 1963 and 1964 brought the beginning of the waves of civil disorders in Northern urban centers. In the South, incidents occurred of brutal white resistance to the civil rights movement, beginning with the murders of Mississippi Negro leader Medgar Evers, and of four Negro schoolgirls in a church in Birmingham. These disorders and the events in the South are detailed in the introduction to Chapter 1, the *Profiles of Disorder*.

The massive anti-Negro resistance in Birmingham and numerous other Southern cities during the spring of 1963 compelled the nation to face the problem of race prejudice in the South. President Kennedy affirmed that racial discrimination was a moral issue and asked Congress for a major civil rights bill. But a major impetus for what was to be the Civil Rights Act of 1964 was the March on Washington in August, 1963.

Early in the year, A. Philip Randolph issued a call for a March on Washington to dramatize the need for jobs and to press for a Federal commitment to job action. At about the same time, Protestant, Jewish and Catholic churches sought and obtained representation on the March committee. Although the AFL–CIO national council refused to endorse the March, a number of labor leaders and international unions participated.

Reversing an earlier stand, President Kennedy approved the March. A quarter of a million people, about 20 percent of them white, participated. It was more than a summation of the past years of struggle and aspiration. It symbolized certain new directions: a deeper concern for the economic problems of the masses, more involvement of white moderates and

new demands from the most militant, who implied that only a revolutionary change in American institutions would permit Negroes to achieve the dignity of citizens.

President Kennedy had set the stage for the Civil Rights Act of 1964. After his death, President Johnson took forceful and effective action to secure its enactment. The law settled the public accommodations issue in the South's major cities. Its voting section, however, promised more than it could accomplish. Martin Luther King and SCLC dramatized the issue locally with demonstrations at Selma, Alabama, in the spring of 1965. Again the national government was forced to intervene, and a new and more effective voting law was passed.

FAILURES OF DIRECT ACTION

Birmingham had made direct action respectable; Selma, which drew thousands of white moderates from the North, made direct action fashionable. Yet as early as 1964, it was becoming evident that, like legal action, direct action was of limited usefulness.

In Deep South states like Mississippi and Alabama, direct action had failed to desegregate public accommodation in the sit-ins of 1960–61. A major reason was that Negroes lacked the leverage of the vote. The demonstrations of the early 1960's had been successful principally in places like Atlanta, Nashville, Durham, Winston-Salem, Louisville, Savannah, New Orleans, Charleston, and Dallas—where Negroes voted and could swing elections. Beginning in 1961, Robert Moses, of SNCC, with the cooperation of CORE and NAACP, established voter registration projects in the cities and county seats of Mississippi. He succeeded in registering only a handful of Negroes, but by 1964, he had generated enough support throughout the country to enable the Mississippi Freedom Democratic Party, which he had created, to challenge dramatically the seating of the official white delegates from the state at the Democratic National Convention.

In the black ghettos of the North, direct action also largely failed. Street demonstrations did compel employers, from supermarkets to banks, to add Negroes to their work force in Northern and Western cities, and even in some Southern cities where the Negroes had considerable buying power. However, separate and inferior schools, slum housing, and police hostility proved invulnerable to direct attack.

NEW DIRECTIONS

Although Negroes were being hired in increasing numbers, mass unemployment and underemployment remained. As economist Vivian Henderson pointed out in his testimony before the Commission:

> No one can deny that all Negroes have benefited from civil rights laws and desegregation in public life in one way or another. The fact is, however, that the masses of Negroes have not experienced tangible benefits in a significant way. This is so in education and housing. It is critically so in the area of jobs and economic security. Expectations of Negro masses for equal job opportunity programs have fallen far short of fulfillment.
>
> Negroes have made gains. * * * There have been important gains. But * * * the masses of Negroes have been virtually untouched by those gains.

Faced with the intransigence of the Deep South and the inadequacy of direct action to solve the problems of the slumdwellers, Negro protest organizations began to diverge. The momentum toward unity, apparent in 1963, was lost. At the very time that white support for the protest movement was rising markedly, militant Negroes felt increasingly isolated from the American scene. On two things, however, all segments of the protest movement agreed: (1) Future civil rights activity would have to focus on economic and social discrimination in the urban ghettos; and (2) while demonstrations would still have a place, the major weapon would have to be the political potential of the black masses.

By the middle of the decade, many militant Negro members of SNCC and CORE began to turn away from American society and the "middle-class way of life." Cynical about the liberals and the leaders of organized labor, they regarded compromise, even as a temporary tactical device, as anathema. They talked more of "revolutionary" changes in the social structure and of retaliatory violence, and increasingly rejected white assistance. They insisted that Negro power alone could compel the white "ruling class" to make concessions. Yet they also spoke of an alliance of Negroes and unorganized lower class whites to overthrow the "power structure" of capitalists, politicians, and bureaucratic labor leaders who exploited the poor of both races by dividing them through an appeal to race prejudice.

At the same time that their activities declined, other

issues, particularly Vietnam, diverted the attention of the country, and of some Negro leaders, from the issue of equality. In civil rights organizations, reduced financing made it increasingly difficult to support staff personnel. Most important was the increasing frustration of expectations that affected the direct-action advocates of the early 1960's—the sense of futility growing out of the feeling that progress had turned out to be "tokenism," that the compromises of the white community were sedatives rather than solutions and that the current methods of Negro protest were doing little for the masses of the race.

As frustration grew, the ideology and rhetoric of a number of civil rights activists became angrier. One man more than any other—a black man who grew up believing whites had murdered his father—became a spokesman for this anger: Malcolm X, who perhaps best embodied the belief that racism was so deeply ingrained in white America that appeals to conscience would bring no fundamental change.

"BLACK POWER"

In this setting, the rhetoric of Black Power developed. The precipitating occasion was the Meredith March from Memphis to Jackson in June, 1966, but the slogan expressed tendencies that had been present for a long time and had been gaining strength in the Negro community.

Black Power first articulated a mood rather than a program: disillusionment and alienation from white America and independence, race pride, and self-respect, or "black consciousness." Having become a household phrase, the term generated intense discussion of its real meaning, and a broad spectrum of ideologies and programmatic proposals emerged.

In politics, Black Power meant independent action—Negro control of the political power of the black ghettos and its use to improve economic and social conditions. It could take the form of organizing a black political party or controlling the political machinery within the ghetto without the guidance or support of white politicians. Where predominantly Negro areas lacked Negroes in elective office, whether in the rural Black Belt of the South or in the urban centers, Black Power advocates sought the election of Negroes by voter registration campaigns, by getting out the vote, and by working for redrawing electoral districts. The basic belief was that only a well-

organized and cohesive bloc of Negro voters could provide for the needs of the black masses. Even some Negro politicians allied to the major political parties adopted the term "Black Power" to describe their interest in the Negro vote.

In economic terms, Black Power meant creating independent, self-sufficient Negro business enterprise, not only by encouraging Negro entrepreneurs but also by forming Negro cooperatives in the ghettos and in the predominantly black rural counties of the South. In the area of education, Black Power called for local community control of the public schools in the black ghettos.

Throughout, the emphasis was on self-help, racial unity, and, among the most militant, retaliatory violence, the latter ranging from the legal right of self-defense to attempts to justify looting and arson in ghetto riots, guerrilla warfare, and armed rebellion.

Phrases like "Black Power," "Black Consciousness," and "Black is Beautiful," enjoyed an extensive currency in the Negro community, even within the NAACP and among relatively conservative politicians, but particularly among young intellectuals and Afro-American student groups on predominantly white college campuses. Expressed in its most extreme form by small, often local, fringe groups, the Black Power ideology became associated with SNCC and CORE.

Generally regarded today as the most militant among the important Negro protest organizations, they have developed different interpretations of the Black Power doctrine. SNCC calls for totally independent political action outside the established political parties, as with the Black Panther Party in Lowndes County, Ala.; rejects the political alliances with other groups until Negroes have themselves built a substantial base of independent political power; applauds the idea of guerrilla warfare; and regards riots as rebellions.

CORE has been more flexible. Approving the SNCC strategy, it also advocates working within the Democratic Party, forming alliances with other groups and, while seeking to justify riots as the natural explosion of an oppressed people against intolerable conditions, advocates violence only in self-defense. Both groups favor cooperatives, but CORE has seemed more inclined toward job-training programs and developing

a Negro entrepreneurial class, based upon the market within the black ghettos.

OLD WINE IN NEW BOTTLES

What is new about Black Power is phraseology rather than substance. Black Consciousness has roots in the organization of Negro churches and mutual benefit societies in the early days of the Republic, the antebellum Negro convention movement, the Negro colonization schemes of the 19th century, Du Bois' concept of Pan-Africanism, Booker T. Washington's advocacy of race pride, self-help, and racial solidarity, the Harlem Renaissance, and the Garvey Movement. The decade after World War I—which saw the militant, race-proud "new Negro," the relatively widespread theory of retaliatory violence and the high tide of the Negro-support-of-Negro-business ideology—exhibits striking parallels with the 1960's.

The theme of retaliatory violence is hardly new for American Negroes. Most racial disorders in American history until recent years were characterized by white attacks on Negroes. But Negroes have retaliated violently in the past.

Black Power rhetoric and ideology actually express a lack of power. The slogan emerged when the Negro protest movement was slowing down, when it was finding increasing resistance to its changing goals, when it discovered that nonviolent direct action was no more a panacea than legal action, when CORE and SNCC were declining in terms of activity, membership, and financial support. This combination of circumstances provoked anger deepened by impotence. Powerless to make any fundamental changes in the life of the masses—powerless, that is, to compel white America to make those changes, many advocates of Black Power have retreated into an unreal world, where they see an outnumbered and poverty-stricken minority organizing itself entirely separately from whites and creating sufficient power to force white America to grant its demands. To date, the evidence suggests that the situation is much like that of the 1840's, when a small group of intellectuals advocated slave insurrections, but stopped short of organizing them.

The Black Power advocates of today consciously feel that they are the most militant group in the Negro protest movement. Yet they have retreated from a direct confrontation with American society on the issue of integration and, by preaching separatism, uncon-

sciously function as an accommodation to white racism. Much of their economic program, as well as their interest in Negro history, self-help, racial solidarity and separation, is reminiscent of Booker T. Washington. The rhetoric is different, but the ideas are remarkably similar.

THE MEANING

By 1967, whites could point to the demise of slavery, the decline of illiteracy among Negroes, the legal protection provided by the constitutional amendments and civil rights legislation, and the growing size of the Negro middle class. Whites would call it Negro progress, from slavery to freedom and toward equality.

Negroes could point to the doctrine of white supremacy, its persistence after emancipation and its influence on the definition of the place of Negroes in American life. They could point to their long fight for full citizenship when they had active opposition from most of the white population and little or no support from the Government. They could see progress toward equality accompanied by bitter resistance. Perhaps most of all, they could feel the persistent, pervasive racism that kept them in inferior segregated schools, restricted them to ghettos, barred them from fair employment, provided double standards in courts of justice, inflicted bodily harm on their children and blighted their lives with a sense of hopelessness and despair.

In all of this and in the context of professed ideals, Negroes would find more retrogression than progress, more rejection than acceptance.

Until the middle of the 20th century, the course of Negro protest movements in the United States, except for slave revolts, was based in the cities of the North, where Negroes enjoyed sufficient freedom to mount a sustained protest. It was in the cities, North and South, that Negroes had their greatest independence and mobility. It was natural, therefore, for black protest movements to be urban-based—and, until the last dozen years or so, limited to the North. As Negroes migrated from the South, the mounting strength of their votes in northern cities became a vital element in drawing the Federal Government into the defense of the civil rights of Southern Negroes. While rural Negroes today face great racial problems, the major unsolved questions that touch the core of Negro life

stem from discrimination embedded in urban housing, employment, and education.

Over the years the character of Negro protest has changed. Originally, it was a white liberal and Negro upper class movement aimed at securing the constitutional rights of Negroes through propaganda, lawsuits, and legislation. In recent years, the emphasis in tactics shifted first to direct action and then—among the most militant—to the rhetoric of "Black Power." The role of white liberals declined as Negroes came to direct the struggle. At the same time, the Negro protest movement became more of a mass movement, with increasing participation from the working classes. As these changes were occurring, and while substantial progress was being made to secure constitutional rights for the Negroes, the goals of the movement were broadened. Protest groups now demand special efforts to overcome the Negro's poverty and cultural deprivation—conditions that cannot be erased simply by ensuring constitutional rights.

The central thrust of Negro protest in the current period has aimed at the inclusion of Negroes in American society on a basis of full equality, rather than at a fundamental transformation of American institutions. There have been elements calling for a revolutionary overthrow of the American social system or for a complete withdrawal of Negroes from American society. But these solutions have had little popular support. Negro protest, for the most part, has been firmly rooted in the basic values of American society, seeking not their destruction but their fulfillment.

CHAPTER 11. POLICE AND THE COMMUNITY

INTRODUCTION

We have cited deep hostility between police and ghetto communities as a primary cause of the disorders surveyed by the Commission. In Newark, Detroit, Watts, and Harlem—in practically every city that has experienced racial disruption since the summer of 1964, abrasive relationships between police and Negroes and other minority groups have been a major source of grievance, tension and, ultimately, disorder.

In a fundamental sense, however, it is wrong to define the problem solely as hostility to police. In many ways, the policeman only symbolizes much deeper problems.

The policeman in the ghetto is a symbol not only of law, but of the entire system of law enforcement and criminal justice.

As such, he becomes the tangible target for grievances against shortcomings throughout that system: Against assembly-line justice in teeming lower courts; against wide disparities in sentences; against antiquated correctional facilities; against the basic inequities imposed by the system on the poor—to whom, for example, the option of bail means only jail.

The policeman in the ghetto is a symbol of increasingly bitter social debate over law enforcement.

One side, disturbed and perplexed by sharp rises in crime and urban violence, exerts extreme pressure on police for tougher law enforcement. Another group, inflamed against police as agents of repression, tends toward defiance of what it regards as order maintained at the expense of justice.

The policeman in the ghetto is the most visible symbol, finally, of a society from which many ghetto Negroes are increasingly alienated.

At the same time, police responsibilities in the ghetto are even greater than elsewhere in the community since the other institutions of social control have so little authority: The schools, because so many are segregated, old and inferior; religion, which has become irrelevant to those who have lost faith as they lost hope; career aspirations, which for many young Negroes are totally lacking; the family, because its bonds are so often snapped. It is the policeman who must deal with the consequences of this institutional vacuum and is then resented for the presence and the measures this effort demands.

Alone, the policeman in the ghetto cannot solve these problems. His role is already one of the most difficult in our society. He must deal daily with a range of problems and people that test his patience, ingenuity, character, and courage in ways that few of us are ever tested. Without positive leadership, goals, operational guidance, and public support, the individual policeman can only feel victimized. Nor are these problems the responsibility only of police administrators; they are deep enough to tax the courage, intelligence and leadership of mayors, city officials, and community leaders. As Dr. Kenneth B. Clark told the

Commission:

> This society knows * * * that if human beings are confined in ghetto compounds of our cities and are subjected to criminally inferior education, pervasive economic and job discrimination, committed to houses unfit for human habitation, subjected to unspeakable conditions of municipal services, such as sanitation, that such human beings are not likely to be responsive to appeals to be lawful, to be respectful, to be concerned with property of others.

And yet, precisely because the policeman in the ghetto is a symbol—precisely because he symbolizes so much—it is of critical importance that the police and society take every possible step to allay grievances that flow from a sense of injustice and increased tension and turmoil.

In this work, the police bear a major responsibility for making needed changes. In the first instance, they have the prime responsibility for safeguarding the minimum goal of any civilized society: Security of life and property. To do so, they are given society's maximum power: Discretion in the use of force. Second, it is axiomatic that effective law enforcement requires the support of the community. Such support will not be present when a substantial segment of the community feels threatened by the police and regards the police as an occupying force.

At the same time, public officials also have a clear duty to help the police make any necessary changes to minimize so far as possible the risk of further disorders.

We see five basic problem areas:

- The need for change in police operations in the ghetto, to insure proper conduct by individual officers and to eliminate abrasive practices.
- The need for more adequate police protection of ghetto residents, to eliminate the present high sense of insecurity to person and property.
- The need for effective mechanisms for resolving citizen grievances against the police.
- The need for policy guidelines to assist police in areas where police conduct can create tension.
- The need to develop community support for law enforcement.

Our discussion of each of these problem areas is followed by specific recommendations which relate directly to achieving more effective law enforcement

and to the prevention and control of civil disorders.[1]

POLICE CONDUCT AND PATROL PRACTICES

In an earlier era, third-degree interrogations were widespread, indiscriminate arrests on suspicion were generally accepted and "alley justice" dispensed with the nightstick was common.

Today, many disturbances studied by the Commission began with a police incident. But these incidents were not, for the most part, the crude acts of an earlier time. They were routine police actions such as stopping a motorist or raiding an illegal business. Indeed, many of the serious disturbances took place in cities whose police are among the best led, best organized, best trained and most professional in the country.

Yet some activities of even the most professional police department may heighten tension and enhance the potential for civil disorder. An increase in complaints of police misconduct, for example, may in fact be a reflection of professionalism; the department may simply be using law enforcement methods which increase the total volume of police contacts with the public. The number of charges of police misconduct may be greater simply because the volume of police-citizen contacts is higher.

Here we examine two aspects of police activities that have great tension-creating potential. Our objective is to provide recommendations to assist city and police officials in developing practices which can allay rather than contribute to tension.

POLICE CONDUCT

Negroes firmly believe that police brutality and harassment occur repeatedly in Negro neighborhoods. This belief is unquestionably one of the major reasons for intense Negro resentment against the police.

The extent of this belief is suggested by attitude surveys. In 1964, a New York Times study of Harlem showed that 43 percent of those questioned believed in the existence of police "brutality."[2] In 1965, a nationwide Gallup poll found that 35 percent of Negro men believed there was police brutality in their areas;

[1] We wish to acknowledge our indebtedness to and reliance upon the extensive work done by the President's Commission on Law Enforcement and Administration of Justice (the "Crime Commission"). The reports, studies, surveys, and analyses of the Crime Commission have contributed to many of our conclusions and recommendations.

[2] The "brutality" referred to in this and other surveys is often not precisely defined and covers conduct ranging from use of insulting language to excessive and unjustified use of force.

7 percent of white men thought so. In 1966, a survey conducted for the Senate Subcommittee on Executive Reorganization found that 60 percent of Watts Negroes aged 15 to 19 believed there was some police brutality. Half said they had witnessed such conduct. A University of California at Los Angeles study of the Watts area found that 79 percent of the Negro males believed police lack respect for, or use insulting language to, Negroes, and 74 percent believed police use unnecessary force in making arrests. In 1967, an Urban League study of the Detroit riot area found that 82 percent believed there was some form of police brutality.

The true extent of excessive and unjustified use of force is difficult to determine. One survey done for the Crime Commission suggests that when police-citizen contacts are systematically observed, the vast majority are handled without antagonism or incident. Of 5,339 police-citizen contacts observed in slum precincts in three large cities, in the opinion of the observer only 20—about three-tenths of 1 percent—involved excessive or unnecessary force. And although almost all of those subjected to such force were poor, more than half were white. Verbal discourtesy was more common—15 percent of all such contacts began with a "brusque or nasty command" on the part of the officer. Again, however, the objects of such commands were more likely to be white than Negro.

Such "observer" surveys may not fully reflect the normal pattern of police conduct. The Crime Commission Task Force concluded that although the study gave "no basis for stating the extent to which police officers used force, it did confirm that such conduct still exists in the cities where observations were made." Our investigations confirm this conclusion.

Physical abuse is only one source of aggravation in the ghetto. In nearly every city surveyed, the Commission heard complaints of harassment of interracial couples, dispersal of social street gatherings and the stopping of Negroes on foot or in cars without objective basis. These, together with contemptuous and degrading verbal abuse, have great impact in the ghetto. As one Commission witness said, these strip the Negro of the one thing that he may have left—his dignity, "the question of being a man."

Some conduct—breaking up of street groups, indiscriminate stops and searches—is frequently directed at

youths, creating special tensions in the ghetto where the average age is generally under 21. Ghetto youths, often without work and with homes that may be nearly uninhabitable, particularly in the summer, commonly spend much time on the street. Characteristically, they are not only hostile to police but eager to demonstrate their own masculinity and courage. The police, therefore, are often subject to taunts and provocations, testing their self-control and, probably, for some, reinforcing their hostility to Negroes in general. Because youths commit a large and increasing proportion of crime, police are under growing pressure from their supervisors—and from the community—to deal with them forcefully. "Harassment of youths" may therefore be viewed by some police departments—and members even of the Negro community—as a proper crime prevention technique.

In a number of cities, the Commission heard complaints of abuse from Negro adults of all social and economic classes. Particular resentment is aroused by harassing Negro men in the company of white women—often their light-skinned Negro wives.

"Harassment" or discourtesy may not be the result of malicious or discriminatory intent of police officers. Many officers simply fail to understand the effects of their actions because of their limited knowledge of the Negro community. Calling a Negro teenager by his first name may arose resentment because many whites still refuse to extend to adult Negroes the courtesy of the title, "Mister." A patrolman may take the arm of a person he is leading to the police car. Negroes are more likely to resent this than whites because the action implies that they are on the verge of flight and may degrade them in the eyes of friends or onlookers.

In assessing the impact of police misconduct, we emphasize that the improper acts of a relatively few officers may create severe tensions between the department and the entire Negro community. Whatever the actual extent of such conduct, we concur in the Crime Commission's conclusion that:

> * * * all such behavior is obviously and totally reprehensible, and when it is directed against minority-group citizens, it is particularly likely to lead, for quite obvious reasons, to bitterness in the community.

POLICE PATROL PRACTICES

Although police administrators may take steps to eliminate misconduct by individual police officers,

many departments have adopted patrol practices which in the words of one commentator, have "* * * replaced harassment by individual patrolmen with harassment by entire departments."

These practices, sometimes known as "aggressive preventive patrol," take a number of forms, but invariably they involve a large number of police-citizen contacts initiated by police rather than in response to a call for help or service. One such practice utilizes a roving task force which moves into high-crime districts without prior notice and conducts intensive, often indiscriminate, street stops and searches. A number of obviously suspicious persons are stopped. But so also are persons whom the beat patrolman would know are respected members of the community. Such task forces are often deliberately moved from place to place making it impossible for its members to know the people with whom they come in contact.

In some cities, aggressive patrol is not limited to special task forces. The beat patrolman himself is expected to participate and to file a minimum number of "stop-and-frisk" or field interrogation reports for each tour of duty. This pressure to produce, or a lack of familiarity with the neighborhood and its people, may lead to widespread use of these techniques without adequate differentiation between genuinely suspicious behavior and behavior which is suspicious to a particular officer merely because it is unfamiliar.

Police administrators, pressed by public concern about crime, have instituted such patrol practices often without weighing their tension-creating effects and the resulting relationship to civil disorder.

Motorization of police is another aspect of patrol that has affected law enforcement in the ghetto. The patrolman comes to see the city through a windshield and hear about it over a police radio. To him, the area increasingly comes to consist only of lawbreakers. To the ghetto resident, the policeman comes increasingly to be only an enforcer.

Loss of contact between the police officer and the community he serves adversely affects law enforcement. If an officer has never met, does not know and cannot understand the language and habits of the people in the area he patrols, he cannot do an effective police job. His ability to detect truly suspicious behavior is impaired. He deprives himself of impor-

tant sources of information. He fails to know those persons with an "equity" in the community—homeowners, small businessmen, professional men, persons who are anxious to support proper law enforcement—and thus sacrifices the contributions they can make to maintaining community order.

RECOMMENDATIONS

Police misconduct—whether described as brutality, harassment, verbal abuse or discourtesy—cannot be tolerated even if it is infrequent. It contributes directly to the risk of civil disorder. It is inconsistent with the basic responsibility and function of a police force in a democracy. Police departments must have rules prohibiting such misconduct and enforce them vigorously. Police commanders must be aware of what takes place in the field and take firm steps to correct abuses. We consider this matter further in the section on policy guidelines.

Elimination of misconduct also requires care in selecting police for ghetto areas, for there the police responsibility is particularly sensitive, demanding and often dangerous. The highest caliber of personnel is required if police are to overcome feelings within the ghetto community of inadequate protection and unfair, discriminatory treatment. Despite this need, data from Commission investigators and from the Crime Commission disclose that often a department's worst, not its best, are assigned to minority group neighborhoods. As Prof. Albert Reiss, director of the Center for Research on Social Organization, University of Michigan, testified before the Commission:

> I think we confront in modern urban police departments in large cities much of what we encounter in our schools in these cities. The slum police precinct is like the slum schools. It gets, with few exceptions, the worst in the system.

Referring to extensive studies in one city, Professor Reiss concluded:

> In predominantly Negro precincts, over three-fourths of the white policemen expressed prejudice or highly prejudiced attitudes towards Negroes. Only one percent of the officers expressed attitudes which could be described as sympathetic towards Negroes. Indeed, close to one-half of all the police officers in predominantly Negro high-crime-rate areas showed extreme prejudice against Negroes. What do I mean by extreme racial prejudice? I mean that they describe Negroes

> in terms that are not people terms. They describe them in terms of the animal kingdom. * * *

Although some prejudice was displayed in only 8 percent of police-citizen encounters:

> The cost of such prejudiced behavior I suggest is much higher than my statistics suggest. Over a period of time, a substantial proportion of citizens, particularly in high-crime-rate areas, may experience at least one encounter with a police officer where prejudice is shown.

To insure assignment of well-qualified police to ghetto areas, **the Commission recommends:**

- Officers with bad reputations among residents in minority areas should be immediately reassigned to other areas. This will serve the interests of both the police and the community.
- Screening procedures should be developed to ensure that officers with superior ability, sensitivity and the common sense necessary for enlightened law enforcement are assigned to minority group areas. We believe that, with proper training in ghetto problems and conditions, and with proper standards for recruitment of new officers, in the long run most policemen can meet these standards.
- Incentives, such as bonuses or credits for promotion, should be developed wherever necessary to attract outstanding officers for ghetto positions.

The recommendations we have proposed are designed to help insure proper police conduct in minority areas. Yet there is another facet of the problem: Negro perceptions of police misconduct. Even if those perceptions are exaggerated, they do exist. If outstanding officers are assigned to ghetto areas, if acts of misconduct, however infrequent, result in proper—and visible—disciplinary action and if these corrective practices are made part of known policy, we believe the community will soon learn to reject unfounded claims of misconduct.

Problems stemming from police patrol cannot, perhaps, be so easily resolved. But there are two considerations which can help to allay such problems. The first relates to law enforcement philosophy behind the use of techniques like aggressive patrol. Many police officials believe strongly that there are law enforcement gains from such techniques. However, these techniques also have law enforcement liabilities. Their employment therefore should not be merely automatic but the product of a deliberate balancing of pluses and minuses by command personnel.

We know that advice of this sort is easier to give than

to act on. The factors involved are difficult to weigh. Gains cannot be measured solely in the number of arrests. Losses in police protection cannot be accepted solely because of some vague gain in diminished community tension. The kind of thorough, objective assessment of patrol practices and search for innovation we need will require the best efforts of research and development units within police departments, augmented if necessary by outside research assistance. The Federal Government can also play a major role in funding and conducting such research.

The second consideration concerning patrol is execution. There is more crime in the ghetto than in other areas. If the aggressive patrol clearly relates to the control of crime, the residents of the ghetto are likely to endorse the practice. What may arouse hostility is not the fact of aggressive patrol but its indiscriminate use so that it comes to be regarded not as crime control but as a new method of racial harassment. All patrol practices must be carefully reviewed to insure they are properly carried out by individual officers.

New patrol practices must be designed to increase the patrolman's knowledge of the ghetto. Although motorized patrols are essential, means should be devised to get the patrolman out of the car and into the neighborhood and keeping him on the same beat long enough to get to know the people and understand the conditions. This will require training the patrolman to convince him of the desirability of such practices. There must be continuing administrative supervision. In practice as well as theory, all aspects of patrol must be lawful and conform to policy guidelines. Unless carried out with courtesy and with understanding of the community, even the most enlightened patrol practices may degenerate into what residents will come to regard as harassment. Finally, this concept of patrol should be publicly explained so that ghetto residents understand it and know what to expect.

THE PROBLEM OF POLICE PROTECTION

The strength of ghetto feelings about hostile police conduct may even be exceeded by the conviction that ghetto neighborhoods are not given adequate police protection.

This belief is founded on two basic types of complaint. The first is that the police maintain a much less rigorous standard of law enforcement in the ghetto, tolerating there illegal activities like drug addiction,

RECOMMENDATIONS

The Commission believes that police cannot, and should not, resist becoming involved in community service matters.[6] There will be benefits for law enforcement no less than for public order.

First, police, because of their "front line position" in dealing with ghetto problems, will be better able to identify problems in the community that may lead to disorder. Second, they will be better able to handle incidents requiring police intervention, particularly marital disputes that have a potential for violence. How well the police handle domestic disturbances affects the incidence of serious crimes, including assaults and homicides. Third, willing performance of such work can gain police the respect and support of the community. Finally, development of nonadversary contacts can provide the police with a vital source of information and intelligence concerning the communities they serve.

A variety of methods have been devised to improve police performance of this service function. We comment on two of special interest. The first is the New York Police Department's experimental "Family Crisis Intervention" program to develop better police response to marital disputes; if results develop as expected, this may serve as a model for other departments.

Second, neighborhood service centers have been opened in some cities. These centers typically are established in tense, high-crime areas, in easily accessible locations such as store-fronts or public housing projects. Staffed by a civilian city employee as well as a police officer, their task is to provide information and service—putting a citizen in touch with the right agency, furnishing general advice. This gives the beat patrolman somewhere to refer a marital dispute. It gives the local resident a clear, simple contact with official advice. It gives the police in general the opportunity to provide services, not merely to enforce the law. The needed additional manpower for such centers could be provided by the community service aides recommended earlier or by continuing to employ experienced policemen who have reached the age of retirement.

[6] We join in the Crime Commission's caveat that police should not become involved in service tasks which involve neither policing nor community help (such as tax collection, licensing, and dog-pound duties).

Ghetto residents, however, see a dual standard of law enforcement. Particularly because many work in other areas of the city and have seen the nature of police responsiveness there, they are keenly aware of the difference. They come to believe that an assault on a white victim produces one reaction and an assault on a Negro quite another. The police, heavily engaged in the ghetto, might assert that they cannot cover serious offenses and minor complaints at the same time—that they cannot be two places at once. The ghetto resident, however, often concludes that the police respond neither to serious offenses nor to minor complaints.

Recent studies have documented the inadequacies of police response in some ghetto areas. A Yale Law Journal study of Hartford, Conn., found that:

> [T]he residents of a large area in the center of the Negro ghetto are victims of over one-third of the daylight residential burglaries in the city. Yet during the daytime, only one of Hartford's 18 patrol cars and none of its 11 foot patrolmen is assigned to this area. Sections in the white part of town about the same size as the central ghetto area receive slightly more intensive daytime patrol even though the citizens in the ghetto area summon the police about six times as often because of criminal acts.[4]

In a United States Commission on Civil Rights study, a review of police communications records in Cleveland disclosed that police took almost four times as long to respond to calls concerning robbery from the Negro district as for the district where response was next slowest. The response time for some other crimes was at least twice as long.

The Commission recommends:

■ Police departments should have a clear and enforced policy that the standard of law enforcement in ghetto areas is the same as in other communities; complaints and appeals from the ghetto should be treated with the same urgency and importance as those from white neighborhoods.

■ Because a basic problem in furnishing protection to the ghetto is the shortage of manpower, police departments should review existing deployment of field personnel to ensure the most efficient use of manpower. The Police Task Force of the Crime Commission stressed the need "to distribute patrol officers in accordance with the actual need for their presence." Communities may have to pay for more and better policing

[4] "Program Budgeting for Police Departments," 76 Yale L.J. 822 (1967).

for the entire community as well as for the ghetto.

In allocating manpower to the ghetto, enforcement emphasis should be given to crimes that threaten life and property. Stress on social gambling or loitering, when more serious crimes are neglected, not only diverts manpower but fosters distrust and tension in the ghetto community.

THE PROBLEM OF GRIEVANCE MECHANISMS

A third source of Negro hostility to police is the almost total lack of effective channels for redress of complaints against police conduct. In Milwaukee, Wis., and Plainfield, N.J., for example, ghetto residents complained that police reject complaints out of hand. In New Haven, a Negro citizens' group characterized a police review board as worthless. In Detroit, the Michigan Civil Rights Commission found that, despite well-intentioned leadership, no real sanctions are imposed on offending officers. In Newark, the mayor referred complaints to the FBI, which had very limited jurisdiction over them. In many of the cities surveyed by the Commission, Negro complaints focused on the continued presence in the ghetto of officers regarded as notorious for prejudice and brutality.

The 1967 Report of the Civil Rights Commission also states that a major issue in the Negro community is inadequate investigation of complaints against the police. It even reports threats of criminal actions designed to discourage complainants. A survey for the Crime Commission found substantial evidence that policemen in some cities have little fear of punishment for using unnecessary force because they appear to have a degree of immunity from their departments.

RECOMMENDATIONS

Objective evaluation, analysis and innovation on this subject are vitally necessary. Yet attention has been largely and, unfortunately, diverted by protracted debate over the desirability of "civilian review boards." Research conducted by the Crime Commission and others shows that the benefits and liabilities of such boards have probably both been exaggerated.

In the context of civil disorder, appearances and reality are of almost equal importance in the handling of citizen complaints against the police. It is not enough that there are adequate machinery and procedures for handling complaints; it is also necessary that citizens believe these procedures are adequate. Some citizens will never trust an agency against which they have a grievance. Some irresponsible citizens will attempt to

provoke distrust of every agency. Hence, some police administrators have been tempted to throw up their hands and do nothing on the ground that whatever they do will be misunderstood. These sentiments may be understandable, but the police should appreciate that Negro citizens also want to throw up their hands. For they believe that the "police stick together," that they will cover up for each other, that no officer ever receives more than token punishment for misconduct and that even such expensive legal steps as false arrest or civil damage suits are foredoomed because "it is the officer's word against mine."

We believe that an internal review board—in which the police department itself receives and acts on complaints—regardless of its efficiency and fairness, can rarely generate the necessary community confidence or protect the police against unfounded charges. We also believe, as did the Crime Commission, that police should not be the only municipal agency subject to outside scrutiny and review. Incompetence and mistreatment by any public servant should be equally subject to review by an independent agency.

The Crime Commission Police Task Force reviewed the various external grievance procedures attempted or suggested in this country and abroad. Without attempting to recommend a specific procedure, our Commission believes that police departments should be subject to external review. We discussed this problem in Chapter 10, The Community Response. Here, we highlight what we believe to be the basic elements of an effective system.

The Commission recommends:

- Making a complaint should be easy. It should be possible to file a grievance without excessive formality. If forms are used, they should be easily available and their use explained in widely distributed pamphlets. In large cities, it should not be necessary to go to a central headquarters office to file a complaint, but it should also be possible to file a complaint at neighborhood locations. Police officers on the beat, community service aides or other municipal employees in the community should be empowered to receive complaints.

- A specialized agency, with adequate funds and staff, should be created separate from other municipal agencies, to handle, investigate and to make recommendations on citizen complaints.

- The procedure should have a built-in conciliation process to attempt to resolve complaints without the need for full investigation and processing.

- The complaining party should be able to participate in the investigation and in any hearings, with right of representation by counsel, so that the complaint is fully investigated and findings made on the merits. He should be promptly and fully informed of the outcome. The results of the investigation should be made public.

- Since many citizen complaints concern departmental policies rather than individual conduct, information concerning complaints of this sort should be forwarded to the departmental unit which formulates or reviews policy and procedures. Information concerning all complaints should be forwarded to appropriate training units so that any deficiencies correctable by training can be eliminated.

Although we advocate an external agency as a means of resolving grievances, we believe that the basic need is to adopt procedures which will gain the respect and confidence of the entire community. This need can, in the end, be met only by sustained direction through the line of command, thorough investigation of complaints, and prompt, visible disciplinary action where justified.

THE NEED FOR POLICY GUIDELINES

How a policeman handles day-to-day contacts with citizens will, to a large extent, shape the relationships between the police and the community. These contacts involve considerable discretion. Improper exercise of such discretion can needlessly create tension and contribute to community grievances.

Formally, the police officer has no discretion; his task is to enforce all laws at all times. Formally, the officer's only basic enforcement option is to make an arrest or to do nothing. Formally, when a citizen resists arrest, the officer's only recourse is to apply such reasonable force as he can bring with his hands, nightstick and revolver.

Informally—and in reality—the officer faces an entirely different situation. He has and must have a great deal of discretion; there are not enough police or jails to permit the levels of surveillance that would be necessary to enforce all laws all the time—levels which the public would, in any event, regard as intolerable.

Patrick V. Murphy, now Director of Public Safety in the District of Columbia, told the Commission:

> The police, of course, exercise very broad discretion, and although in many states the law says or implies that all laws must be enforced and although the manuals of many police departments state every officer is responsible for the enforcement of all laws, as a practical matter it is impossible for the police to

> enforce all laws and, as a result, they exercise very broad discretion. * * * [B]y failing to understand the fact that they do exercise important discretion every day, some police do not perceive just how they maintain the peace in different ways in different sections of a city.

The formal remedies of law, further, are inappropriate for many common problems. A family quarrel or a street fight, followed by an arrest, would give the parties a record and, typically, a suspended sentence; it would not solve the problem. And the appropriate legal grounds for making an arrest are often not present, for the officer has not witnessed the incident nor does he have a sworn complaint from someone who has. Pacifying the dispute may well be the best approach, but many officers lack the training or experience to do so effectively. If the parties resist pacification or arrest, the officer, alone on the street, must either back down or use force—sometimes lethal.

Crime Commission studies and our police survey show that guidance for the exercise of discretion in many situations is often not available to the policeman. There are guidelines for wearing uniforms—but not for how to intervene in a domestic dispute; for the cleaning of a revolver—but not for when to fire it; for use of departmental property—but not for whether to break up a sidewalk gathering; for handling stray dogs—but not for handling field interrogations.

RECOMMENDATIONS

Contacts between citizens and the police in the ghetto require discretion and judgment which should be based upon carefully-drawn, written departmental policy. The Report of the Crime Commission and the Police Task Force Report considered this problem in detail and recommended subjects for policy guidelines.

The Commission recommends the establishment of guidelines covering, at a minimum:

- The issuance of orders to citizens regarding their movements or activities—for example, when, if ever, should a policeman order a social street gathering to break up or move on.

- The handling of minor disputes—between husband and wife, merchant and customer or landlord and tenant. Guidelines should cover resources available in the community—family courts, probation departments, counseling services, welfare agencies—to which citizens can be referred.

- The decision whether to arrest in a specific situation involving a specific crime—for example, when police should

arrest persons engaged in crimes such as social gambling, vagrancy and loitering and other crimes which do not involve victims. The use of alternatives to arrest, such as a summons, should also be considered.

- The selection and use of investigating methods. Problems concerning use of field interrogations and "stop-and-frisk" techniques are especially critical. Crime Commission studies and evidence before this Commission demonstrate that these techniques have the potential for becoming a major source of friction between police and minority groups. Their constitutionality is presently under review in the United States Supreme Court. We also recognize that police regard them as important methods of preventing and investigating crime. Although we do not advocate use or adoption of any particular investigative method, we believe that any such method should be covered by guidelines drafted to minimize friction with the community.
- Safeguarding the constitutional right of free expression, such as rights of persons engaging in lawful demonstrations, the need to protect lawful demonstrators and how to handle spontaneous demonstrations.
- The circumstances under which the various forms of physical force—including lethal force—can and should be applied. Recognition of this need was demonstrated by the regulations recently adopted by the City of New York further implementing the state law governing police use of firearms.
- The proper manner of address for contacts with any citizen.

The drafting of guidelines should not be solely a police responsibility. It is the duty of mayors and other elected and appointed executive officials to take the initiative, to participate fully in the drafting and to ensure that the guidelines are carried out in practice.

Police research and planning units should be fully used in identifying problem areas, performing the necessary studies and in resolving problems. Their product should be reviewed by the chief of police and city executives, and by representatives of the prosecution, courts, correction agencies and other criminal-justice agencies. Views of ghetto residents should be obtained, perhaps through police-community relations programs or human relations agencies. Once promulgated, the guidelines should be disseminated clearly and forcefully to all operational personnel. Concise, simply worded and, if necessary, foreign language summaries of police powers and individual rights should be distributed to the public. Training the police to perform according to the guidelines is essential. Although conventional instruction is a minimum requirement, full understanding can only be achieved by intensive small-group training, involving simulation.

Guidelines, no matter how carefully drafted, will have little effect unless the department enforces them. This primarily requires command supervision and commitment to the guidelines. It also requires:

- A strong internal investigative unit to enforce compliance. Such a unit should not only enforce the guidelines on a case-by-case basis against individual officers but should also develop procedures to deter and prevent violations. The Crime Commission discussed the various methods available.
- A fair and effective means to handle citizen complaints.

Finally, provision should be made for periodic review of the guidelines, to ensure that changes are made to take account of current court rulings and new laws.

COMMUNITY SUPPORT FOR LAW ENFORCEMENT

A fifth major reason for police-community hostility—particularly obvious since the recent disorders—is the general breakdown of communication between police and the ghetto. The contacts that do occur are primarily adversary contacts.

In the section on police patrol practices, we discussed one basic aspect of this problem. Here we consider how police forces have tried, with varying degrees of success, to deal with three issues underlying relations with ghetto communities.

RECRUITMENT, ASSIGNMENT, AND PROMOTION OF NEGROES

The Crime Commission Police Task Force found that for police in a Negro community, to be predominantly white can serve as a dangerous irritant; a feeling may develop that the community is not being policed to maintain civil peace but to maintain the status quo. It further found that contact with Negro officers can help to avoid stereotypes and prejudices in the minds of white officers. Negro officers also can increase departmental insight into ghetto problems and provide information necessary for early anticipation of the tensions and grievances that can lead to disorders. Commission witnesses confirm these conclusions.

There is evidence that Negro officers also can be particularly effective in controlling any disorders that do break out. In studying the relative performance of Army and National Guard forces in the Detroit disorder, we concluded that the higher percentage of Negroes in the Army forces contributed substantially to their better performance. As a result, last August, we recommended an increase in the percentage of Negroes in the National Guard. The need for increased Negro

participation in police departments is equally acute.

Despite this need—and despite recent efforts to hire more Negro police, the proportion of Negroes on police forces still falls far below the proportion of Negroes in the total population. Of 28 departments which reported information of this kind in a Commission survey of police departments, the percentage of Negro sworn personnel ranged from less than 1 percent to 21 percent. The median figure for Negro sworn personnel on the force was 6 percent; the median figures for the Negro population was approximately 24 percent. In no case was the proportion of Negroes in the police department equal to the proportion in the population.[5] A 1962 survey of the United States Civil Rights Commission, as reported in the Crime Commission Police Task Force Report, shows correspondingly low figures for other cities.

There are even more marked disproportions of Negro supervisory personnel. Our survey showed the following ratios:

- One in every 26 Negroes is a sergeant; the white ratio is one in 12.
- One in every 114 Negroes is a lieutenant; the white ratio is one in 26.
- One in every 235 Negroes is a captain or above; the white ratio is one in 53.

Public Safety Director Murphy, testifying before the Commission, described the problem and at least one of its causes:

> I think one of the serious problems facing the police in the nation today is the lack of adequate representation of Negroes in police departments. I think the police have not recruited enough Negroes in the past and are not recruiting enough of them today. I think we would be less than honest if we didn't admit that Negroes have been kept out of police departments in the past for reasons of racial discrimination.

In a number of cities, particularly larger ones, police officials are not only willing but anxious to appoint Negro officers. There are obstacles other than discrimination. While these obstacles cannot readily be measured, they can be identified. One is the relatively high standards for police employment. Another is pay; better qualified Negroes are often more attracted by

[5] The data from this survey can be found in Table A at the end of this chapter, p. 169.

other, better paying positions. Another obstacle is the bad image of police in the Negro community. There also are obstacles to promotion apart from discrimination, such as the more limited educational background of some Negro officers.

RECOMMENDATIONS

The Commission recommends:

- Police departments should intensify their efforts to recruit more Negroes. The Police Task Force of the Crime Commission discussed a number of ways to do this and the problems involved. The Department of Defense program to help police departments recruit returning servicemen should be fully utilized. An Army report of Negro participation in the National Guard and Army reserves may also provide useful information.

- In order to increase the number of Negroes in supervisory positions, police departments should review promotion policies to ensure that Negroes have full opportunity to be rapidly and fairly promoted.

- Negro officers should be so assigned as to ensure that the police department is fully and visibly integrated. Some cities have adopted a policy of assigning one white and one Negro officer to patrol cars, especially in ghetto areas. These assignments result in better understanding, tempered judgment and increased ability to separate the truly suspect from the unfamiliar.

Recruiting more Negro officers, alone, will not solve the problems of lack of communication and hostility toward police. A Negro's understanding of the ghetto is not enough to make him a good officer. He must also meet the same high standards as white officers and pass the same screening process. These requirements help create a dilemma noted by the Crime Commission. The need to develop better relations with minority group communities requires recruitment of police from these groups—groups handicapped by lack of educational opportunities and achievement. To require that police recruits have a high school diploma sets a standard too low in terms of the need for recruiting college graduates and perhaps too high in terms of the need for recruiting members of minority groups.

To meet this problem, the Crime Commission recommended creation of a new type of uniformed "community service officer." This officer would typically be a young man between 17 and 21 with the "aptitude, integrity and stability necessary to perform police work." He would perform a variety of duties short of exercising full law enforcement powers, with primary emphasis on community service work. While so serving,

he would continue his studies in order to be promoted as quickly as possible to the status of a police officer.

The Commission recommends:

■ The community service officer program should be adopted. Use of this program to increase the number of Negroes in police departments will help to establish needed channels of communication with the Negro community; will permit the police to perform better their community service functions, especially in the minority group neighborhoods; and will also create a number of badly needed jobs for Negro youths.

The standards of selection for such community service officers or aides should be drawn to insure that the great majority of young Negro males are eligible to participate in the program. As stated in the Crime Commission Task Force Report, selection should not be based on inflexible educational requirements, but instead "* * * should be made on an individual basis with priority being given to applicants with promising aspirations, honesty, intelligence, a desire and a tested capacity to advance his education and an understanding of the neighborhood and its problems." An arrest record or a minor conviction record should not in itself be a bar to employment.

The Commission recommends:

■ The Federal Government should launch a program to establish community service officers or aides in cities with populations over 50,000. Eligible police departments should be reimbursed for 90 percent of the costs of employing one aide for every 10 full-time police officers.

We emphasize, however, that recruitment of community service aides must complement, not replace, efforts to recruit more Negroes as police officers.

COMMUNITY SERVICE FUNCTIONS

Because police run almost the only 24-hour-a-day, 7-day-a-week emergency service, they find it very hard not to become involved in a host of nonpolice services. Complaints about a wide range of matters, from noisy neighbors and deteriorated streets to building code violations, at best are only peripheral to police work. Because these are often not police matters and because police increasingly face serious shortages of manpower and money, police administrators have resisted becoming involved in such matters. This resistance, coupled with centralization and motorization of the police, has resulted in the police becoming more distant from the people they serve.

prostitution, and street violence that they would not tolerate elsewhere. The second is that police treat complaints and calls for help from Negro areas much less urgently than from white areas. These perceptions are widespread. As David Hardy, of the staff of the *New York Daily News,* testified:

> To put it simply, for decades little if any law enforcement has prevailed among Negroes in America, particularly those in the ghettos. If a black man kills another black man, the law is generally enforced at its minimum. Violence of every type runs rampant in a ghetto.

A Crime Commission study found that Negroes in Philadelphia and San Diego are convinced that the police apply a different standard of law enforcement in the ghettos. Another Crime Commission study found that about one white person in two believes police provide very good protection in his community; for Negroes, the figure is one in five. Other surveys have reported that Negroes in Harlem and south central Los Angeles mention inadequate protection more often than brutality or harassment as a reason for their resentment toward the police.

The report of a New Haven community group summarizes the complaints:

> The problem of the adequacy of current police protection ranked with "police misconduct" as the most serious sore points in police-community relations. * * * When calls for help are registered, it is all too frequent that police respond too slowly or not at all. * * * When they do come, [they] arrive with many more men and cars than are necessary * * * brandishing guns and adding to the confusion.[3]

There is evidence to suggest that the lack of protection does not necessarily result from different basic police attitudes but rather from a relative lack of police personnel for ghetto areas, considering the volume of calls for police. As a consequence, the police work according to priorities. Because of the need for attention to major crimes, little, if any, attention can be accorded to reports of a suspicious person, for example, or a noisy party or a drunk. And attention even to major crimes may sometimes be routine or skeptical.

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[3] "In Search of Fair and Adequate Law Enforcement," report of the Hill-Dwight Citizens Commission on Police Community Relations, June 1967, pp. 12–13.

COMMUNITY RELATIONS PROGRAMS

Many police departments have established programs to deal specifically with police-community relations. The Crime Commission recommended a number of such programs, and Federal funds have been made available for putting them into operation. Although of great potential benefit, the results thus far have been disappointing. This is true partly because the changes in attitude sought by such programs can only be achieved over time. But there are other reasons, as was shown by Detroit's experience with police-community meetings: Minimum participation by ghetto residents; infrequent meetings; lack of patrolmen involvement; lack of attention to youth programs; lack of coordination by police leadership, either within the department or with other city programs.

More significantly, both the Detroit evaluation and studies carried on for the Commission show that too often these are not community-relations programs but public-relations programs, designed to improve the department's image in the community. In one major city covered by the Commission's study, the department's plan for citizen observers of police work failed because people believed that the citizen observer was allowed to see only what the police thought he should see. Similarly, the police chief's "open house," an opportunity for discussion, was considered useless by many who regarded him as unsympathetic and unresponsive.

Moreover, it is clear that these programs have little support among rank and file officers. In Detroit, more than a year after instructions were sent out to establish such programs, several precincts still had failed to do so. Other cities have had similar experiences. On the command level, there is often little interest. Programs are not integrated into the departments; units do not receive adequate budgetary support.

Nevertheless, some programs have been successful. In Atlanta, a Crime Prevention Bureau has within 2 years established a good relationship with the community, particularly with the young people. It has concentrated on social services, persuading almost 600 dropouts to return to school, assisting some 250 hardship cases with food and work, arranging for dances and hydrant showers during the summer, working quickly and closely with families of missing persons.

The result is a close rapport with the community—and recruits for the department. Baltimore and Winston-Salem are reported to have equally successful programs.

RECOMMENDATIONS

Community relations programs and training can be important in increasing communication and decreasing hostility between the police and the ghetto. Community relations programs can also be used by police to explain new patrol practices, law enforcement programs, and other police efforts to reduce crime. Police have a right to expect ghetto leaders to work responsibly to reduce crime. Community relations programs offer a way to create and foster these efforts.

We believe that community relations is an integral part of all law enforcement. But it cannot be made so by part-time effort, peripheral status or cliche methods.

One way to bolster community relations is to expand police department award systems. Traditionally, special awards, promotional credit, bonuses, and selection for special assignments are based on heroic acts and arrest activity. Award systems should take equal cognizance of the work of officers who improve relations with alienated members of the community and by so doing minimize the potential for disorder.

However, we see no easy solution to police-community relations and misunderstandings, and we are aware that no single procedure or program will suffice. Improving community relations is a full-time assignment for every commander and every officer—an assignment that must include the development of an attitude, a tone, throughout the force that conforms with the ultimate responsibility of every policeman: Public service.

TABLE A

NONWHITE PERSONNEL IN SELECTED POLICE DEPARTMENTS

Name of department	Number[5] police officers	Number[5] Nonwhite police officers	Percent nonwhite population	Percent nonwhite police officers
Atlanta, Ga.	968	98	[1] 38	10
Baltimore, Md.	3,046	208	[1] 41	7
Boston, Mass.	2,508	49	[1] 11	2
Buffalo, N.Y.	1,375	37	[1] 18	3
Chicago, Ill.	11,091	1,842	[1] 27	17
Cincinnati, Ohio	891	54	[1] 28	6
Cleveland, Ohio	2,216	165	[1] 34	7
Dayton, Ohio	417	16	[1] 26	4
Detroit, Mich.	4,326	227	[1] 39	5
Hartford, Conn.	342	38	[2] 20	11
Kansas City, Mo.	927	51	[1] 20	6
Louisville, Ky.	562	35	[1] 21	6
Memphis, Tenn.	869	46	[1] 38	5
Michigan State Police	1,502	1	[3] 9	[4]
New Haven, Conn.	446	31	[2] 19	7
New Orleans, La.	1,308	54	[1] 41	4
New York, N.Y.	27,610	1,485	[1] 16	5
New Jersey State Police	1,224	5	[3] 9	[4]
Newark, N.J.	1,869	184	[1] 40	10
Oakland, Calif.	658	27	[1] 31	4
Oklahoma City, Okla.	438	16	[1] 15	4
Philadelphia, Pa.	6,890	1,377	[1] 29	20
Phoenix, Ariz.	707	7	[1] 8	1
Pittsburgh, Pa.	1,558	109	[1] 19	7
St. Louis, Mo.	2,042	224	[1] 37	11
San Francisco, Calif.	1,754	102	[1] 14	6
Tampa, Fla.	511	17	[1] 17	3
Washington, D.C.	2,721	559	[1] 63	21
Total	80,621	7,046		

[1] Percent Negro population figures, 1965 estimates by the Center for Research in Marketing, Cong. Quarterly, Weekly Report, No. 36, Sept. 8, 1967.

[2] Percent Negro population figures, 1966 estimates, Office of Economic Opportunity.

[3] Percent Negro population figures for States of Michigan and New Jersey, 1960 Census

[4] Less than ½ of 1 percent.

[5] All police data from a survey conducted for the Commission by the International Association of Chiefs of Police in October 1967.

CHAPTER 13. THE ADMINISTRATION OF JUSTICE UNDER EMERGENCY CONDITIONS

THE CONDITION IN OUR LOWER COURTS

A riot in the city poses a separate crisis in the administration of justice. Partially paralyzed by decades of neglect, deficient in facilities, procedures and personnel, overwhelmed by the demands of normal operations, lower courts have staggered under the crushing new burdens of civil disorders.

Some of our courts, moreover, have lost the confidence of the poor. This judgment is underwritten by the members and staff of this Commission, who have gone into the courthouses and ghettos of the cities torn by the riots of 1967. The belief is pervasive among ghetto residents that lower courts in our urban com-

munities dispense "assembly-line" justice; that from arrest to sentencing, the poor and uneducated are denied equal justice with the affluent, that procedures such as bail and fines have been perverted to perpetuate class inequities. We have found that the apparatus of justice in some areas has itself become a focus for distrust and hostility. Too often the courts have operated to aggravate rather than relieve the tensions that ignite and fire disorders.

The quality of justice which the courts dispense in time of civil crisis is one of the indices of the capacity of a democratic society to survive. To see that this quality does not become strained is therefore a task of critical importance.

"No program of crime prevention," the President's Commission on Law Enforcement and the Administration of Justice found, "will be effective without a massive overhaul of the lower criminal courts." [1] The range of needed reforms recommended in their report is broad: Increasing judicial manpower and reforming the selection and tenure of judges; providing more prosecutors, defense counsel and probation officers and training them adequately; modernizing the physical facilities and administration of the courts; creating unified State court systems; coordinating statewide the operations of local prosecutors; improving the informational bases for pretrial screening and negotiated pleas; revising the bail system and setting up systems for station-house summons and release for persons accused of certain offenses; revising sentencing laws and policies toward a more just structure.

If we are to provide our judicial institutions with sufficient capacity to cope effectively with civil disorders, these reforms are vitally necessary. They are long overdue. The responsibility for this effort will rest heavily on the organized bar of the community. The prevalence of "assembly-line" justice is evidence that in many localities, the bar has not met its leadership responsibilities.

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[1] The President's Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society*, A Report, 1967, p. 128; and Task Force on Administration of Justice, *Task Force Report: The Courts*, 1967, p. 29.

THE EXPERIENCE OF SUMMER 1967

In the cities shaken by disorders during the summer of 1967, there were recurring breakdowns in the mechanisms for processing, prosecuting, and protecting arrested persons. In the main, these resulted from the communities' failure to anticipate, and plan for, the emergency judicial needs of civil disorders and from longstanding structural deficiencies in criminal court systems distended grotesquely to process a massive influx of cases. In many instances, tensions and hostilities from the streets infected the quality of justice dispensed by the courts.

While final information on the processing of riot offenders is not yet assembled, the information presently available provides valuable guidelines for future planning.

The goals of criminal justice under conditions of civil disorder are basic:

- To insure the apprehension and subsequent conviction of those who riot, incite to riot or have committed acts of physical violence or caused substantial property damage.
- To insure that law violators are subjected to criminal process and that disposition of their cases is commensurate with the severity of the offense; to provide, at the same time, for just but compassionate disposition of inadvertent, casual or minor offenders.
- To provide prompt, fair judicial hearings for arrested persons under conditions which do not aggravate grievances within the affected areas.

In the summer of 1967, these goals too often were disregarded or unattainable.

FEW SUCCESSFUL PROSECUTIONS FOR SERIOUS CRIMES COMMITTED DURING THE RIOT PERIOD

In Detroit, 26 alleged snipers were charged with assault with intent to commit murder. Twenty-three of those charges were subsequently dismissed. As of September 30, 1967, one out of seven homicide arrests had resulted in conviction; two were still pending. Of 253 assault arrests, only 11 convictions were produced; 58 were still pending. Twenty-one out of 34 arrests for arson and 22 of 28 arrests for inciting to riot, had been dropped by the prosecution.[2]

Three elements impaired successful prosecution of persons arrested for major offenses.

[2] In the 1965 Watts riot, of seven persons arrested on homicide charges, five were subsequently released. None has yet been convicted. A total of 120 adult arrests for assault produced only 60 convictions; 27 adult arson arrests: Seven convictions. In Newark, one homicide indictment and 22 assault indictments (none for sniping) have been returned.

First, the technique of mass arrest was sometimes used to clear the streets. Those arrested often included innocent spectators and minor violators along with major offenders. In Newark and Detroit, mass street arrests were made in sectors where sniping was reported and extensive looting occurred.

Second, the obstacles to deliberate, painstaking, on-the-scene investigations during a riot are formidable. Thus, insufficient evidence was obtained to insure conviction on many of the most serious charges.

Third, the masses of arrestees in the major riots so overwhelmed processing and pretrial procedures that facilities and personnel were not free to deal adequately with serious offenders or with evidence of their crimes. Personnel in police stations were overwhelmed by the sheer numbers of accused persons to be booked, screened, detained and eventually brought to court. Minor and major offenders were herded through the process.[3]

Assembly-line booking operations in the Detroit precincts and at the jail—20 to 30 employees assigned to 12-hour shifts—proved inadequate. Records necessary to identify defendents or to check for past criminal records could not be obtained. Follow-up investigation, essential to secure convictions in serious cases, proved difficult or impossible.

With lesser crimes as well, the system displayed an inability to produce successful prosecutions. Looting charges comprised 84 percent of the felony arrests in Detroit.[4] Yet almost half of the felony charges that went to court were dismissed at preliminary hearing for lack of evidence.[5]

SERIOUS OVERCROWDING OF FACILITIES

After arrest, accused persons in Detroit and Newark suffered the abuses of an overtaxed and harassed system of justice. In Detroit, inability to maintain a centralized system of arrest records meant that families

[3] In Detroit, 7231 arrests were made during the 9-day riot; in Newark, 1510 in 5 days. In 1 week, the Detroit Recorder's Court handled a month's quota of misdemeanor cases and a 6 months' quota of felony cases.

[4] Fifty-five percent of all prosecuted arrests were for looting. Twenty-four percent of all riot arrests for felonies were not prosecuted.

[5] Sixty percent of felony riot charges went to preliminary hearing. At this stage, 49 percent of those charges were dismissed, as compared with only 23 percent of felony charges dismissed during 1966.

and defense attorneys could not locate arrested persons confined in widely scattered emergency detention facilities. In 1 day alone, 790 persons were booked at the Wayne County jail and 1,068 sent on to other detention facilities, usually without opportunity to notify or consult family or counsel.

Regular detention facilities were swamped. Detroit's main city jail, built for 1,200 persons, was crammed with over 1,700. Precinct lockups, built for 50 prisoners, received 150 or more. The juvenile detention home, built for 120, held over 600 during the riot. Makeshift detention facilities were commandeered; 1,000 arrestees were held in an underground police garage for several days, many without adequate food or water. Others were held for over 24 hours in city buses. Adults of both sexes were sometimes locked up together. In Newark, a large portion of those arrested were held in an armory without proper food, water, toilet, or medical facilities. Prisoners had no way to contact lawyers or relatives. Members of the press or official observers were unable to reassure those on the outside. In the absence of information about arrestees, new rumors, and fears added to the tensions of the riot.

JUDICIAL PROCEDURES ORIENTED TO MASS RATHER THAN INDIVIDUALIZED JUSTICE

Normal screening procedures were overrun in the chaos of the major disorders. Rational decisions to prosecute, to delay prosecution on good behavior, to dismiss, to release with or without bail pending trial, to accept a plea to a lesser charge or to press for conviction on the original charge, and to impose a just sentence require access to a comprehensive file of information on the offender contributed by police, prosecution, defense counsel, bail interviewers, and probation officers. Orderly screening requires time, personnel, deliberation. These elements were absent in the court processing of those arrested in the major riots.

ARRAIGNMENTS AND BAIL SETTINGS

In Detroit defendants were herded to arraignment in groups.[6] There was little chance to screen out those

[6] One thousand defendants were arraigned in a single day in the Detroit Recorder's Court (250 per 6-hour shift). Information usually available to the judge at arraignment on the warrant—i.e., fingerprint checks, interviews, investigative reports, formal complaints—was often missing due to the logjam in the warrant clerk's office. Grand jury proceedings suffered similarly. Mass indictments naming 100 or more defendants were handed down in all-day sessions in Newark after average deliberation of less than 2 minutes per case.

cases that could best be handled out of court or that could not survive trial. Defense counsel were not allowed to represent defendants at this stage in Detroit. Some judges failed to advise the defendants of their legal rights. After one group arraignment, a Detroit judge told the next group of defendants, "You heard what I said to them. The same things apply to you."

Arraignments in the major riot cities were often delayed several days, thus denying defendants the right to prompt bail. In Detroit, many persons arrested for minor ordinance violations were jailed for a number of days before going to court. When the judicial process was finally activated for them, most judges tended to set inordinately high bail in order to frustrate release.[7] Pressure on detention facilities thus remained at intolerable levels for several days. Bail for offenses such as looting and property destruction was set as high as $50,000; for assault up to $200,000. Bond for curfew violation was rarely set at less than $10,000—often as high as $15,000 to $25,000.[8] In Newark, bail was uniformly set at $500 for curfew offenses, $250 for loitering, and at $2,500 and up for property offenses. No attempt was made in most cases to individualize the bail-setting process. Pressured by unattainably high bail, many indigent defendants pleaded guilty or accepted immediate trial when offered.

In both Newark and Detroit, detention pressures finally forced a more lenient bail policy. In what were essentially duplications of earlier bail hearings, prisoners were interviewed and released without bail in

[7] In Detroit, the prosecutor announced this policy publicly, and most of the judges acceded. The Recorder's Court in 1966 released 26 percent on their own bond. During the riot, the figure was 2 percent. Acceptance of money bonds in any amount was suspended during one 24-hour period. Offers of defense counsel to represent defendants at bail hearings were rejected.

[8] A survey of Detroit riot defendants held in Jackson State Prison for lack of bail, showed only 9 percent with bond set below $1,500; 14 percent with bond set between $1,500 and $2,500; 20 percent between $5,000 and $10,000; 44 percent between $10,000 and $25,000. Another survey of defendants imprisoned in Milan Federal Penitentiary, who were arrested on the first day of the riot for property offenses, showed 90 percent with bond set between $10,000 and $50,000.

large numbers.[9] In Newark, an ROR (release on the defendant's own recognizance) program initiated in the last days of the riot interviewed over 700 prisoners (at least half of all those arrested) and secured the release of between 65 and 80 percent.

Courts in several of the smaller cities successfully experimented with releasing offenders on their own recognizance from the beginning of the riot. Dayton continued its release-on-recognizance policy during its September disorder. Most of the 203 people arrested were released without money bail. In New Haven, out of 550 arrested, 80 percent were released on their own recognizance.

COUNSEL

The riots underscored other deficiencies in local court systems. Most prominent in the major outbreaks was the shortage of experienced defense lawyers to handle the influx of cases in any fashion approximating individual representation. Even where volunteer lawyers labored overtime, the system was badly strained. Individual counsel was rarely available. Inexperienced lawyers in Detroit were given briefings by experienced criminal attorneys and were handed procedural handbooks before entering the court rooms.[10] They had no opportunity to bargain for pleas before arraignment—or even to see police files before preliminary hearings. In several cities (Detroit, Newark, and New Brunswick), volunteer attorneys were denied access to prisoners in jail—in one case because they did not know the prisoners' names. While individual lawyers and legal organizations in several cities provided

[9] The prosecutor finally initiated the lenient bail policy in Detroit. (One judge, however, used bail examiners throughout the riot and released 10 percent of defendants who came before him on their own recognizance.) Over 3,000 were released within a few days through bail review; by August 4, only 1,200 remained in detention. Files were flown to the FBI for checking to expedite release. Only one known rearrest (for curfew violation) was reported from among such persons released. When preliminary examinations began on August 1, most defendants were released on $500 personal bond, except in violent crimes or cases of serious prior records.

In Newark, on the Sunday following the Wednesday when the riot began, the judges went into the jails to conduct bail review hearings.

[10] The Detroit Bar Association mustered over 700 lawyers (10 to 15 percent of its membership) to serve as defense counsel. They were used primarily at preliminary hearings and arraignments on the information, not at initial bail hearings.

counsel to represent minor violators (Milwaukee, the Legal Services program; New Haven, the Legal Assistance Association; Cincinnati, the American Civil Liberties Union, National Association for the Advancement of Colored People, and Legal Aid Society); in others (Rockford, Ill., Atlanta, Ga., and Dayton, Ohio), those defendants normally not eligible for assigned counsel went unrepresented.

The need for prompt, individual legal counsel is particularly acute in riot situations. This is because of the range of alternative charges, the severity of penalties that may be imposed in the heat of riot, the inequities that occur where there is mass, indiscriminate processing of arrested persons, and the need for essential information when charges are made by the prosecutor and bail is set. The services of counsel at the earliest stage, preferably at the precinct station, are essential. Provision of effective counsel at an early stage will also protect against a rash of post-conviction challenges and reversals.

SENTENCING

Trial and sentencing proved equally vulnerable to the tyranny of numbers. Sentences meted out during the riots tended to be harsher than in those cases disposed of later. Some judges in the early days of the riots openly stated that they would impose maximum penalties across-the-board as deterrents. One Cincinnati judge announced that any person brought before him on a riot-connected offense would receive the maximum penalty. Circumstances of the arrest, past record, age, family responsibilities, or other mitigating factors were not considered.

The burden of this policy fell on the poorest defendants—those unable to raise bail—who agreed to immediate trials. Those who could raise bail and wait out the riot often received more lenient sentences. Once the riots were over, defendants were frequently sentenced to time already spent in detention, if they consented to plead guilty.

In those cities where the riots were less extensive and the number of arrests allowed normal trial procedures to remain largely intact, sentences did not markedly vary from the norm. In Dayton, where most of the 203 law violators were charged with minor offenses such as disorderly conduct and destruction of property, the standard penalty was a fine of $15 to $50. In Rockford, Ill., where all arrests were for disorderly conduct

or curfew violations, fines were assessed within a $20 to $250 range, according to the individual's ability to pay.

A primary function of criminal justice in a riot situation is effectively to apprehend, prosecute, and punish the purposeful inciters to riot and to assure the community at large—rioters and nonrioters alike—that law violators will be prosecuted and sentenced according to an ordered system of justice. Dispassionate objectivity on the part of both the bench and the bar—always required and always difficult—becomes even more necessary when civil disorders occur. The passions of the street must not enter the courtroom to affect any step in the administration of justice, particularly sentencing. During a riot emergency, it is highly important that courts adhere to established criteria for sentencing. This did not always occur in Detroit and Newark in the summer of 1967. In smaller disorders, such as Dayton, Atlanta, and New Haven, arrests were fewer, arraignments were prompt, release policies were fair, and sentences were within normal ranges.

GUIDELINES FOR THE FUTURE

In a period of civil disorder, it is essential that our judicial system continue firmly to protect the individual constitutional rights upon which our society is based.

Our criminal jurisprudence has developed important safeguards based on the arrest process as the mechanism which activates the full judicial machinery. Thus, arrest brings into play carefully developed procedures for the protection of individual rights.

Some suggest that the judicial system must respond to the riot emergency by short-cutting those procedures. Such suggestions, usually referred to as "preventive arrest" or "preventive detention," involve extending the police power to include detention without formal arrest, broadening summary enforcement procedures, and suspending bail hearings and pretrial procedures for sorting out charges and defendants.

We reject such suggestions. Rather, we urge each community to undertake the difficult but essential task of reform and emergency planning necessary to give its judicial system the strength to meet emergency needs. We make the following recommendations.

A comprehensive plan for the emergency operation of the judicial system during a riot should involve many

THE COMMUNITY SHOULD PREPARE A COMPREHENSIVE PLAN FOR EMERGENCY OPERATION OF THE JUDICIAL SYSTEM

public and private agencies in the community. It must include:

- A review of applicable statutes and ordinances (and their amendment and revision if necessary) to ensure that there are well drawn, comprehensive laws sufficient to deter and punish the full range of riot behavior.[11]
- Compilations and interpretations of the laws relied on to control such an emergency must be made available to police, prosecutors and, through the press, to the community at large well in advance. When a disorder arises, there must be no doubt what citizens are supposed to do and not do. Citizens are more likely to remain calm and resist the provocations of unfounded rumors if they are already familiar with the laws applicable to riot conditions.
- Regulatory guidelines should be drawn in advance detailing interaction of police with other law enforcement personnel (such as state police and National Guard), specifying who can make arrests and how they should be handled,[12] the charges to enter for prohibited acts, and how certain minor violations may be handled without formal arrest and detention. Booking, screening, and bail setting will proceed more efficiently when there are established guidelines for processing large numbers of cases.
- Basic policy decisions for each step in the judicial process must be made: Which charges will become eligible for summons and release after arrest, with trial postponed until the emergency is over? Will any defendants be released during a riot and on what conditions? Which charges require immediate court processing? Which charges require an immediate follow-through investigation in order to support subsequent prosecution?
- Bail and sentencing policies applicable during emergencies should be defined by the judiciary with consistency and justice as a goal. Bail interviewers and probation officers should be

[11] For example, it has been suggested that rather than relying on vague disorderly conduct or loitering statutes in riot situations, specific laws or ordinances be enacted which, upon declaration of emergency, deal with possession of incendiary devices (even before they are used), interference with police, firemen, or other emergency workers, storage of firearms, restrictions on access to riot areas, restrictions on sale of liquor or firearms during emergencies, imposition of curfews and crowd dispersal. Laws designed to meet such emergency circumstances must be specific and uniform regarding conditions which must exist to invoke their application, who may proclaim such an emergency and what activities or powers such a declaration limits or permits. Provision should also be made for judicial review of the invocation of such emergency laws. See Supplement on Control of Disorder, pp. 288–91.

[12] During the Detroit riot, processing difficulties arose because National Guardsmen, who could not make arrests under state law, handed prisoners over to local police without sufficiently recording circumstances of the arrests.

instructed as to the kind of information required for release or sentencing decisions in a riot situation.

■ Administrative techniques should be established by the court to insure that eligible indigent defendants will be represented by counsel at the earliest stage.

■ Arrangements for night and weekend court sessions should be made.

■ Public and volunteer defenders can be more effectively utilized if there are prior allocations to each group of specific classes of cases and if there are agreed procedures for assigning counsel to each defendant and for determining how long such counsel will remain on the case. For instance, volunteer lawyers may be provided to represent riot participants who normally would not be eligible to obtain public defenders because of the minor nature of their violations. The entire organized bar of the city and even the state—and particularly Negro or other minority members of the bar—should be involved in emergency planning. Adequate provision must be made for individual counseling of clients in order that effective representation does not deteriorate, as it did in many cities last summer. There must be training courses in advance to insure that all participating lawyers are prepared for the task. Defense strategy on such basic issues as plea negotiation, bail review, and habeas corpus needs to be planned ahead of time. A control center where volunteer lawyers may get advice and investigative help during a riot is an essential component of planning.

■ Sufficient facilities as near as possible to the court must be found to house, in a humane fashion, those detained during riots. Civic and service groups have vital roles to play in this aspect of riot planning. Temporary detention centers can generate terrible conditions if proper medical care, communication with the outside, food, and sanitary facilities are not provided. Juveniles require special handling aimed usually toward early return to their parents. Community organizations and volunteers willing to temporarily shelter or supervise juveniles and adults from the riot area must be enlisted, coordinated, and assigned according to plan.

■ Press coverage and impartial observers to report to the community on all stages of processing should be provided. Information centers, accessible by a well-publicized phone number, must be set up to locate defendants promptly and to assure continual contact with their families.

■ Emergency planning should also include agreements between different levels of courts and among courts in different jurisdictions to facilitate emergency transfers of judges, prosecutors and probation officers. Where necessary, laws should be passed allowing the appointment of members of the bar as special judges during such an emergency. Auxiliary courtrooms need to be readied. A master list of all competent clerical personnel in the area to help process defendants' records quickly is needed.

We think it probable that a highly visible plan, in

which basic procedures for handling riots are established and publicized beforehand and in which ghetto leaders and citizens are full participants, will have a reassuring effect during a disorder. People need to know where they stand—what they can and cannot do and what will happen to them if they are arrested in a riot situation.

Prevention is paramount, but experience has shown that refusal to plan is foolhardy and can only compound the human agonies of civil outbreak.

The organized bars of our cities and states have a special responsibility in planning for the administration of justice during a riot. Their responsibility does not stop with providing defense counsel for rioters; they must assist the overloaded prosecutors as well. Their participation cannot be confined to a small segment—the defense bar or legal aid lawyers; it must also include the large law firms, the corporate counselors and those who are leaders in the local bar. Lawyers must take the lead in showing the community that orderly justice is a priority item in any plan for riot prevention and control.

RECOMMENDED POLICIES IN PROCESSING ARRESTED PERSONS

ARREST

Alternatives to arrest. In any riot, the first priority is to enforce the law. This may require clearing the streets and preventing persons from entering or leaving the riot area. The authority of local police and other law enforcement officials should be spelled out in carefully drawn laws with a range of alternatives to arrest. Persons in the riot area should be permitted to "move on" or "out"—to go back to their homes voluntarily before police resort to arresting them. Discriminating use of such options by the police would tend to reduce the number of innocent bystanders or minor curfew violators picked up, and thereby alleviate congestion of judicial machinery.[13]

There are other situations during a riot when alternatives to arrest and detention may prove useful. One such alternative is a summons or notice to appear (like a traffic ticket). It may be handed to a citizen on the spot and requires him to appear later for processing at the police station or in court. Situations do arise, such as curfew violations or where the act of arrest

[13] In Detroit, there were 935 adult arrests for curfew violations; 570 in Milwaukee; 335 in New Haven; 95 in Newark; 264 in Watts. A survey of 1,014 males in Detroit's Jackson Prison who had been arrested for riot offenses showed 120 were there for curfew offenses.

itself threatens to set off a new chain of violence, when the police should be given the discretionary power to issue on-the-street notices to minor violators. The primary advantage of the summons is that it avoids congestion of facilities and frees police personnel to remain on the street.

Guidelines for police discretion to use the summons must be drawn up in advance and the police instructed in proper exercise of such discretion. The summons will be most useful in emergencies if the police are already accustomed to using it as a routine law enforcement tool.

Follow-up in serious arrests. Just as essential as avoiding unnecessary arrests is the formulation of special measures to insure the effectiveness of arrests for serious violations. On-the-spot photos have been found useful in some jurisdictions. They fix the accused's identity and help to refresh the police officer's recollection after he has made scores of arrests for different offenses within a matter of hours.

In the serious case, the arresting officer should fill out a reasonably detailed incident report as soon as feasible. At the station house, serious offenders might be turned over to a special follow-up detail which can conduct early interrogation, check fingerprints and police records or even revisit the scene for additional necessary evidence. Thus, serious cases will be separated at the outset for special processing designed to produce effective prosecution.[14]

POST-ARREST PROCESSING

Processing facilities. Some experts have suggested that all persons arrested during a riot be taken to a central processing center, preferably near the court, where available resources can most efficiently be used and intelligence activities can be coordinated. Lawyers and relatives looking for arrested persons would then at least know where to start. Others point out that a single location would impose a hardship on residents of widely dispersed communities, and that neighborhood processing centers should be used. A two-step

[14] Fifty-seven percent of adults booked on felonies in the Watts riots were convicted as compared with 72 percent on misdemeanors. A total of 732 were given jail sentences, only 36 of which exceeded 6 months. According to the report of the California Bureau of Criminal Statistics, "These case dispositions have * * * suggested that there was little before the court in the form of evidence or positive proof of specific criminal activity." P. 37.

process may be preferable—screening for immediate release at the local precinct or neighborhood center with later transportation to a single detention center for those who are not released or who cannot be taken immediately to court.

The proper choice of single or multiple-processing centers will be determined by community size, location of available facilities in relation to the courts, the dimensions of the disturbance and the number of arrested persons. But the facilities themselves must be arranged in advance and equipped for emergency conversion. Alternate plans may be necessary since many factors cannot be predicted in advance. If multiple-detention or processing centers are used, a central arrest and disposition record system is essential, so that prisoners can be located by their families and lawyers. The phone number of the central information post should be well publicized, and the telephone should be manned on a 24-hour basis. In Detroit there were nine separate detention centers; in Newark there were five. No centralized arrest-record system was maintained. Confusion and distress over "lost" persons were widespread.

Screening for release. The most important function of post-arrest screening is to separate promptly different classes of offenders so they can be treated on rationally different bases: some summoned and released at the station house; some released on their own recognizance for later prosecution; some held until arraignment and further disposition by a judicial officer. It is therefore critically important that prosecutors, defense counsel and bail interviewers be present in sufficient numbers at the initial processing center. Serious violators accused of murder, arson, sniping, aggravated assault, robbery, possession of explosives or incitement to riot must be separated at this early point, necessary followup investigations begun and preparations made for prompt presentment in court. Most minor offenders swept up in dragnet arrests should be issued a summons and released. Curfew offenders or hotheads picked up for failure to disperse at the scene, but now cooled down and cooperative, might be released without further detention, postponing a decision whether later to prosecute. Juveniles should be immediately separated for disposition by juvenile judges or by probation officers authorized under local law to release

them to parents or to place them in separate juvenile facilities.[15]

Between the innocent person and the dangerous offender lies a mass of arrestees, brought in on felony charges relating to offenses against property—breaking and entering, burglary, looting.[16] Handling these cases requires broad and sensitive discretion. Some looters may be professional thieves systematically exploiting the riot chaos. Some looters are normally law-abiding citizens. In Detroit, after the riot subsided, many persons returned looted merchandise. These people usually have no significant prior criminal records.[17] Although prosecution may still be justified, in most instances they may safely be released back into the community to pursue their livelihood and prepare their defense.[18] According to predetermined standards agreed upon by police, courts and prosecutors, they should be interviewed promptly for issuance of a summons and release at the station house. Where they have solid roots in the community[19] and no serious

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[15] In the Watts riot, 556 juveniles (14 percent of all arrests) were taken into custody: 448 (16 percent) in Newark; 105 (20 percent) in New Haven; 62 (30 percent) in Dayton; 23 (6 percent) in Cincinnati; 703 (10 percent) in Detroit.

[16] In Detroit, 84 percent of felony charges were for forms of looting. In Watts, 82 percent were arrested on felony charges, most of them "burglary."

[17] Statistics on arrested persons in the Watts riots show that 38 percent had no major record (i.e., they had never been sentenced to more than 90 days, and 27 percent had no record at all). In Detroit, 51 percent of the arrestees had no arrest records. A sample of those arrested on the first day of the riot—76 percent for looting—showed 41 percent with no record at all and only 17 percent with any felony record. In Newark, less than 45 percent of the arrestees had any police record.

[18] It has been pointed out by defense counsel in Detroit that in widespread searches in private homes, any new goods found were often confiscated as loot. The accused looters' defense would be to produce a bill of sale or, in some cases, alibi witnesses as to his whereabouts at the time of the alleged looting. In either event, the accused was severely prejudiced if he could not return to his home or neighborhood before trial.

[19] Analysis of 1,057 convicted Watts arrestees referred for presentence reports showed 85 percent lived with family or friends; 73 percent were employed; 75 percent had lived in the community 5 years or more. In Jackson State Prison near Detroit, a survey of riot defendants showed 83 percent charged

criminal record, they should be allowed to return to their homes and jobs. The station-house summons after arrest might also be reinforced by a law providing more severe penalties for those who commit new violations while awaiting their court appearances.

Several cities have had favorable experience in using station-house summonses in nonriot situations and in small-scale demonstrations. This technique, pioneered by the Vera Institute of Justice in New York City in conjunction with the New York City Police Department, permits the police to release defendants after booking and station-house processing with a summons to appear in court at a later time. The summons is issued on the basis of information about the defendant—obtained from an interview and verified only in exceptional cases—showing that he has substantial roots in the community and is likely to appear for trial. Station-house summonses are now used in all New York City precincts and have measurably improved police efficiency—an average of 5 man-hours saved in every case—while 94 percent of defendants summoned have appeared voluntarily in court.[20] New Haven, where the station-house summons was routine under nonriot conditions, employed the technique during the riot with notable success. At least 40 percent of all arrestees were released in this manner, including some charged with felony offenses.

Successful employment of this technique requires a corps of bail interviewers and procedures for checking

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with some form of breaking, looting, or larceny; 73 percent had lived at the same address over a year; 80 percent were employed; 47 percent had no arrest record and 67 percent no conviction record. In Detroit, 887 females were arrested, mostly for looting; 74 percent of the females had no prior record. Many had young children to care for. The Newark analysis of arrestees showed only 10 percent from out of the city.

[20] In its first 6 months of citywide operations, New York City police issued more than 5,500 station-house summonses to about 25 percent of all persons arrested for summonsable offenses. The default rate was below 6 percent. The police have not issued summonses in some cases of picketing or protests because they were able to centrally book and arraign the number involved immediately. On the other hand, they cite marked success in summonsing up to 100 demonstrators in a school busing protest and report that "further use of the summons process will be made in like instances."

quickly into an arrestee's past record.[21] It also means providing transportation to deliver defendants back to their homes or to shelters outside the riot area. With adequate planning, there will be a registry of churches, civic organizations, neighborhood groups, and poverty centers to supervise persons released or to provide temporary shelter if necessary.

In using these procedures at the station house or screening center, wide discretion must be left to police and prosecution to refuse to summons and release riot participants who appear to pose a substantial risk to the community. Persons rearrested after release for any but the most trivial violations should be disqualified from further summons and release without judicial sanction.

The desirability of using defense lawyers in the station house screening process is suggested by the New Haven experience. The lawyers can contribute information about the defendants; help to make release arrangements; negotiate on the charges with the prosecutors and guard against any overcharging which would prevent early release; and insure that the defendants understand their legal rights and the reason for cooperation in summons interviews.

Booking procedures. The ordinary mechanics of booking and record keeping must be simplified at the emergency screening center. Special techniques must

[21] During the riots, some cities such as Cincinnati which already had ROR programs, suspended them because of the difficulty of identifying and verifying information about arrested persons. Other cities such as Dayton continued to use the program. In Newark, which began releasing persons in large numbers toward the end of the riot, verification of interview information was not required. The New York City station-house summons program does not ordinarily verify interview information; as a result, the average time expended on a summons case is only 1 hour. While checks of local criminal records might be necessary, FBI fingerprint checks delay any release process for a considerable time and are not required in present station-house summons procedures. In the riot situation, such requirement should be confined to serious cases where false identity is strongly suspected.

The shortage of police trained in identification procedures at the Detroit processing centers has been commented upon by the judges there. It has been suggested that a list of all such trained ID officers be drawn ahead of time for emergency use. Such help is needed so that arrest records, fingerprint checks, photo identifications and other information can be provided quickly for use in station-house summons interviews and court bail hearings.

be devised to record necessary information about arrestees. The multiple-use form devised by the United States Department of Justice for large protest demonstrations may provide a prototype.

Single copies of this form are sent to key points in the process through which arrestees pass. One copy is sent to the Bureau of Prisons where a central record of arrested persons is kept. Another is sent to the detention center where arrestees are taken. The first copy contains all information necessary to present a formal charge against a defendant in a hearing before a United States Commissioner: defendant's name, basic facts of the alleged offense, time and date of the offense, name of the arresting officer.

At the processing station where the arrestee is first detained, the arresting officer fills out the form and swears to its facts. He is then freed to return immediately to his duty station. A notary public is present at the processing station to notarize the forms as required by law.

The arrestee's picture is taken at the time the form is filled out if this has not already been done on the scene. The picture is attached to a copy of the arrest form. Thus, the arrestee can later be identified, even if he refuses to give his name. A docket number is also assigned to the case which is used thereafter throughout each phase of processing. Docket numbers are assigned consecutively. The number of persons arrested can thus readily be ascertained.

The Commission recommends that cities adopt this type of form.

DETENTION AND BAIL SETTING

Court personnel. For those arrested persons who are not considered safe risks for station-house summons and release, detention facilities must be provided until such time as they can be brought to court for arraignment. By means of extra judges and court sessions, arraignments and bail hearings should be arranged as quickly as is consistent with individualized attention.[22]

To meet the extraordinary case load encountered during riots, judges from courts of record can be asked

[22] In many jurisdictions, normal processing time will have to be speeded up to avoid intolerable congestion. The President's Commission on Law Enforcement and Administration of Justice recommended as a norm that first court appearances follow arrest within hours, with preliminary hearings and formal charges 3 days later for jailed defendants, and that

to volunteer for lower court arraignments and bail hearings. Emergency plans should provide for service by out-of-town judges, judges from other courts and, if necessary, specially appointed judges sitting on a temporary basis. A statewide prosecutor system—another recommendation of the Crime Commission—would also be valuable in providing a reserve force of additional proscecutors with experience in local and state law. In the absence of this flexibility, former prosecutors and private attorneys should be specially deputized and trained in advance for emergency service.

Provision should be made for exchange of court personnel among communities in a metropolitan area or in a regional council. Authorities might also provide an emergency corps of court clerical personnel to move swiftly into riot-torn cities for immediate service.

Detention facilities. At the detention centers, teams of defense lawyers, social workers, interviewers and medical personnel should be on hand to gather pertinent information about detainees to present to the judge at bail hearings. Defense counsel should be prepared to propose reasonable conditions for release of each prisoner which will guard against renewal of riot activity.

Bail setting. When the riot defendant comes before the court, he should receive an individual determination of bail. He should be represented by counsel, and the judge should ascertain from counsel, client, and bail interviewer the relevant facts of his background, age, living arrangements, employment, and past record. Uniform bail amounts based on charges and riot conditions alone should be shunned as unfair.

With the constitutional imperatives of bail and preconviction release well in mind, we are fully aware that some rioters, if released, will commit new acts of violence. This is an aggravated extension of a problem

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the delay between arraignment and trial be no longer than 9 weeks. On the other hand, jurisdictions which impose maximum time limits on various stages of the court process for all defendants may want to provide for relaxation during an emergency. As a result of a 10-day preliminary hearing rule in Detroit, defendants freed on bail had to be processed as quickly as those detained in makeshift facilities. Authorization to handle those detained on a priority basis would have alleviated the harsh congestion problem in those facilities.

which has engaged law enforcement officials and criminal law authorities for many years. Although the number of dangerous offenders to be processed, even in a riot,[23] may not be sizable, how to determine and detain them before trial poses a problem of great perplexity. The Commission realizes that in riot situations the temptation is strong to detain offenders by setting money bail in amounts beyond their reach. In the past, such high-money bail has been indiscriminately set, often resulting in the detention of everyone arrested during a riot without distinction as to the nature of the alleged crime or the likelihood of repeated offenses.

The purposes of bail in our system of law have always been to prevent confinement before conviction and to insure appearance of the accused in court. The purpose has not been to deter future crime. Yet, some have difficulty adhering to the doctrine when it results in releasing a dangerous offender back into the riot area.

We point out that, as to the dangerous offender, there already exists a full range of permissible alternatives to outright release as a hedge against his reentry into the riot.

These include: release on conditions of third-party custody; forbidding access to certain areas or at certain times; part-time release with a requirement to spend nights in jail; use of surety or peace bonds on a selective basis.[24] In cases where no precautions will suffice, trial should be held as soon as possible so that a violator

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[23] In the Detroit riot, there were seven arrests and three prosecutions for homicide; nine arrests and two prosecutions for rape; 108 arrested and 18 prosecutions for robbery; 206 arrests and 55 prosecutions for assault; 34 arrests and 13 prosecutions for arson; 28 arrests and six prosecutions for inciting to riot; 21 arrests and 18 prosecutions for possessing and placing explosives. In Newark, there were arrests for one murder, two arsons, 46 assaults, 91 weapons offenses and four robberies. In Watts, there were 120 booked and 60 convicted for aggravated assault; 94 booked and 46 convicted for robbery; 27 arrested and seven convicted for arson; seven booked for homicide, none convicted and two cases pending.

[24] We are aware that predicating the condition of release upon danger of renewed riot activity represents some departure from existing law and may also be challenged in the courts. It has, however, been recommended by the President's Commission on Law Enforcement and Administration of Justic as a preferable alternative to preventive detention. *The Challenge of Crime in a Free Society*—A Report, 1967, pp. 131–2.

can be adjudicated innocent and released or found guilty and lawfully confined pending sentencing. Finally, special procedures should be set up for expedited bail review by higher courts so that defendants' rights will not be lost by default.

RIGHT TO COUNSEL

The right to counsel is a right to effective counsel. An emergency plan should provide that counsel be available at the station house to participate in the charging and screening operations, to provide information for station-house summons and release officers and to guard against allegations of brutality or fraudulent evidence. All accused persons who are not released during post-arrest processing should be represented at the bail hearing, whether or not local law provides this as a matter of right. During any detention period, defense counsel must be able to interview prisoners individually at the detention center: privacy must be provided for these lawyer-client consultations.

The number of lawyers needed for this kind of individual representation is obviously great, thus furnishing another argument for screening out early as many innocent persons and minor offenders as possible and releasing as many of the rest as can be relied upon to create no new disturbance and to return for trial. Local bar associations, public defender offices, legal aid agencies, neighborhood legal services staffs, rosters of court-assigned counsel, law schools and military establishments are sources of manpower. They can be pretrained in the procedures of an emergency plan and called into volunteer service. Assigning one lawyer to a group of defendents should be discouraged. If possible, each defendant should have his own lawyer ready to follow the case to conclusion. Case quotas can be established ahead of time, with teams of lawyers prepared to take over in relays. Law students can be used as investigators and case assistants. Legal defense strategy and sources of experienced advice for the volunteers should be planned ahead of time.

Any community plan must make adequate provision for fair representation whenever the trials are held, whether during the heat of riot or at a later, more deliberate time.

There must be no letdown of legal services when trials and arraignments are postponed until the riot runs its course. The greatest need for counsel may come when the aura of emergency has dissipated. Volunteers

then may be less willing to drop their daily obligations to represent riot defendants. If this occurs, assembly-line techniques may be resorted to in an effort to complete all pending matters cheaply and quickly. In one city, this letdown had unfortunate results: up to 200 post-riot arraignments were assigned to one lawyer each day. Courtroom "regulars" were given such group assignments in preference to the volunteers' more individualized representation.

TRIAL AND SENTENCING

Important policies are involved in deciding whether judicial emphasis during the riot should be placed on immediate trials of minor offenders, prompt trials of serious offenders or arraignment and bail setting only. In the case of some serious offenders, prompt trials may be the only legal route to detention. A defendant, however, will often prefer later trial and sentencing in the post-riot period, when community tensions are eased (if he is not detained during the delay). Witnesses may also be difficult to locate and bring to court while riot controls are in effect. Arresting officers cannot be easily spared from their duty stations. Unprejudiced juries will be difficult to empanel. Prosecutors may be more receptive at a later date to requests for dismissal, reduction of charges or negotiated pleas.[25] The most rational allocation of judicial manpower, as well as basic fairness, suggests that decisions at such vital stages as prosecution, plea negotiation, preliminary examination and trials be postponed until the riot is over in all but the most minor cases. At the same time, it is necessary to avoid congesting the jails and detention centers with masses of arrestees who might safely be released. Both can be accomplished only with a workable post-arrest screening process and pretrial release of all except dangerous defendants.

Trials of minor offenses involving detained defendants should be scheduled quickly, so that preconviction confinement will not stretch jail time beyond au-

[25] For whatever reasons—policy or evidentiary problems—in the Watts riot, 43 percent of adult felony arrests and 30 percent of adult misdemeanor arrests did not result in convictions. In Detroit, 25 percent of all arrests and 24 percent of the felony arrests were not prosecuted, including 57 percent of the homicide arrests, 74 percent of the aggravated assault arrests, 83 percent of the robbery arrests, 43 percent of the stolen property arrests and 62 percent of the arson arrests. Only 29 percent of the curfew arrests were not prosecuted. Reportedly, plea bargaining in Detroit was based almost entirely on a defendant's past record.

thorized penalties. Arraignments and bail hearings for those not summoned and released at the station house should be held as soon as possible. Trials and preliminary examinations of released offenders can be postponed until the emergency ends, unless the defendants pose a present danger to the community.

Sentencing is often best deferred until the heat of the riot has subsided, unless it involves only a routine fine which the defendent can afford. Riot defendants should be considered individually. They are less likely to be hardened, experienced criminals. A presentence report should be prepared in all cases where a jail sentence or probation may result. The task of imposing penalties for many riot defendants which will deter and rehabilitate is a formidable one. A general policy should be adopted to give credit on jail sentences for preconviction detention time in riot cases.

After the riot is over, a residue of difficult legal tasks will remain: proceedings to litigate and compensate for injustices—false arrests, physical abuses, property damage—committed under the stress of riot;[26] actions to expunge arrest records acquired without probable cause; restitution policies to encourage looters to surrender goods. Fair, even compassionate, attention to these problems will help reduce the legacy of post-riot bitterness in the community.

The Commission recommends:

SUMMARY OF RECOMMENDATIONS

- That communities undertake, as an urgent priority, the reform of their lower criminal court systems to insure fair and individual justice for all. The 1967 report of the President's Commission on Law Enforcement and Administration of Justice provides the blueprint for such reform.

- That communities formulate a plan for the administration of justice in riot emergencies. Under the leadership of the organized bar, all segments of the community, including minority groups, should be involved in drawing up such a plan. The plan should provide clear guidelines for police on when to arrest or use alternatives to arrest. Adequate provision must be made for extra judges, prosecutors, defense counsel, court and police personnel to provide prompt processing, and for well-equipped detention facilities. Details of the plan should be publicized so the community will know what to expect if an emergency occurs.

[26] The Newark Legal Services Program reported 29 complaints after the riot from ghetto residents concerning personal indignities, 57 about physical abuses, 104 about indiscriminate shooting and 96 about destruction of property.

- That existing laws be reviewed to insure their adequacy for riot control and the charging of riot offenders and for authority to use temporary outside help in the judicial system.

- That multiple-use processing forms (such as those used by the Department of Justice for mass arrests) be obtained. Centralized systems for recording arrests and locations of prisoners on a current basis should be devised, as well as fast systems to check fingerprint identification and past records. On-the-spot photographing of riot defendants may also be helpful.

- That communities adopt station house summons and release procedures (such as are used by the New York City Police Department) in order that they be operational before an emergency arises. All defendants who appear likely to return for trial and not to engage in renewed riot activity should be summonsed and released.

- That recognized community leaders be admitted to all processing and detention centers to avoid allegations of abuse or fraud and to reassure the community about the treatment of arrested persons.

- That the bar in each community undertake mobilization of all available lawyers for assignment so as to insure early individual legal representation to riot defendants through disposition and to provide assistance to prosecutors where needed. Legal defense strategies should be planned and volunteers trained in advance. Investigative help and experienced advice should be provided.

- That communities and courts plan for a range of alternative conditions to release, such as supervision by civic organizations or third-party custodians outside the riot area, rather than to rely on high money bail to keep defendants off the streets. The courts should set bail on an individual basis and provide for defense counsel at bail hearings. Emergency procedures for fast bail review are needed.

- That no mass indictments or arraignments be held and reasonable bail and sentences be imposed, both during or after the riot. Sentences should be individually considered and presentence reports required. The emergency plan should provide for transfer of probation officers from other courts and jurisdictions to assist in the processing of arrestees.

PART IV. SUPPLEMENT ON CONTROL OF DISORDER

INTRODUCTION

In this supplement we focus principally on controlling disorders that have escalated beyond immediate police capabilities and require a total community response to halt the violence. We also consider the rarer cases where state or Federal forces are necessary to achieve control.

Within this context, we assess the present capabilities and preparedness of public safety forces, military units, civil government, and the community at large, and make recommendations to help insure adequate response at all levels.

POLICE AND CONTROL OF CIVIL DISORDERS

The capability of a police department to control a civil disorder depends essentially on two factors: proper planning and competent performance. These depend in turn upon the quantity and quality of police manpower, the training of patrolmen and police commanders, and the effectiveness of their equipment.

This portion of the Supplement will review the adequacy of police planning, training, and equipment to deal with civil disorders, together with the Commission's recommendations for improvement.

When underlying tensions are present—and they exist in every American city with a large minority population—a minor incident can turn a crowd into a mob. Last summer an appreciable number of incidents were triggered by police actions—some serious, such as the shooting of a suspect, but usually by routine activities such as an arrest.

The way policemen approach an incident often determines whether it is contained or develops into a serious disorder. Experienced police administrators consulted by the Commission repeatedly stressed the need for good judgment and common sense among police officers called to the scene of an incident in a neighborhood where tensions exist. They warned against using sirens and flasher lights in situations that will

attract crowds. They cautioned against over-responding to an incident with too much visible force—riot guns and helmets may only aggravate a tense situation. Yet they also pointed out that control has sometimes been lost because an insufficient number of police were on hand to control a disorder in its initial stages. A major lesson of the 1967 disorders was that it takes a seasoned senior officer to make the all-important initial assessments and decisions that will contain an incident.

If an incident develops, and a crowd begins to threaten lawlessness and acts of violence, the police must act promptly and with a sufficient display of force to make clear their intent and capacity to suppress disorder and insure the public safety.

PLANNING

Effective preparation for disorder requires careful planning. Large numbers of police officers must be mobilized, deployed, and directed by senior officers. They must have adequate logistical support, particularly if extended operations are necessary.

Mobilization planning. To mobilize enough policemen to handle a riot emergency is difficult, even in large cities. In one major city with a population of more than 1 million, an area of 140 square miles, and a police force of nearly 5,000 men, no more than 192 patrolmen were on duty when a major civil disorder erupted. Of these, only 44 were in the riot area. The difficulties in mobilizing additional men were described by the police commissioner:

> It cannot be emphasized too strongly that mobilization is inherently a time consuming operation, no matter how efficient. After a man is notified, he must dress and travel to his reporting point. Once he has checked in and has been equipped, he must be turned around and transported to a command post or an assembly point. There he must be briefed on the situation that exists, the location of the riot area, his duties, and other details required to make him effective once he is deployed. He must then be actually committed to the area of involvement. The time lapse in this entire procedure ranges from 1½ to 2 hours.

By the time sufficient manpower was brought in, the disorder had developed beyond the control capability of the police department.

Adding to this difficulty is the fact that the standard training for police operations is basically different from that required for riot control. Traditional police train-

ing seeks to develop officers who can work independently and with little direct supervision. But the control of civil disturbances requires quite different performance—large numbers of disciplined personnel, comparable to soldiers in a military unit, organized and trained to work as members of a team under a highly unified command and control system. No matter how well-trained and skilled a police officer may be, he will be relatively ineffectual in dealing with civil disturbances so long as he functions as an individual. Thus, a major civil disturbance requires a police department to convert itself, suddenly, into a different type of organization with new operational procedures.

To cope with the difficulties of this transition, a police department needs a plan that can mobilize and deploy needed manpower with a minimum deviation from established operating procedures, and with minimum curtailment of essential police services.

A study conducted for the Commission by the International Association of Chiefs of Police of 30 major police departments found that, while all had some form of written mobilization plan, the quality of the plans varied greatly. Principal defects were in the following areas: procedures for implementing the plan; provision for relief of reserve forces after the plan has been activated; accounting for personnel dispatched to a disorder; predesignation of assembly areas or command posts in the various areas of the cities where trouble might be expected; logistical support of police and other law enforcement officers engaged in control activities; flexibility in planning to cope with disorders of varying natures and magnitudes; and unnecessarily complicated planning that deviated excessively from normal operations.

Because of these deficiencies in the mobilization plans of the leading police departments, and in response to many requests for assistance, the Commission has prepared a model plan, which can be adapted to local requirements. Currently used as training material in the Conferences on the Prevention and Control of Civil Disorders sponsored by the Department of Justice in response to Commission recommendations, the plan will be revised as additional information is developed by these conferences. The ***Commission recommends*** that the Department of Justice disseminate the revised plan to police departments across the

country and make it available in federally sponsored training on riot control methods.

Operational planning. Operational planning is a necessary complement to mobilization planning. It provides guidance to the police command and the men of the steps necessary to control the disorder, and it includes command and control mechanisms, communication, intelligence, means to combat inflammatory rumors, and tactics.

(1) Command and control and communications.— Whether the shift from normal routine police operations to an emergency basis is smooth and effective depends upon the speed with which the police can provide unified command and control. Under ordinary conditions, a police dispatcher controls the movement of men and equipment from a central position to places where they are needed. In most police departments the system works well enough so long as the demands on the dispatcher are within the capabilities of the man and his equipment.

Many local police departments called upon to control civil disorders have had serious problems in commanding and controlling the large numbers of men required to work together as an effective, coordinated team. The problem has been compounded by the shortage of on-duty supervisors and staff at certain periods of the day. It is one thing to assemble a large force; it is quite another to provide appropriate direction and leadership.

Effective command and control in a civil disorder depends upon communications, and communications is a function both of planning and of equipment. Relatively few police departments have adequate communications equipment or frequencies. Forty-two percent of all police departments studied by the Commission had no special radio frequency for emergencies.

The lack of emergency frequencies overloads normal frequencies. This may not only preclude effective command and control of police in the area of a civil disorder but may also undermine the ability of the police to provide vital services to the remainder of the city.

The absence of adequate communication facilities is particularly acute with respect to outside police assistance. Approximately 50 percent of all police

agencies surveyed had inadequate means to coordinate with neighboring jurisdictions. Incompatible radio frequencies were found to have handicapped the effective use of neighboring police departments. When local and state police must cooperate with National Guard units, the need for communications coordination is urgent.

We believe that the critical communications and control problems arising from the present shortage of frequencies available to police departments require immediate attention. Accordingly, ***we recommend*** that the Federal Communications Commission make sufficient frequencies available to police and related public safety services to meet the demonstrated need for riot control and other emergency use.[1]

Miniaturized communications equipment for officers on foot is critically needed for command and control in civil disorders, particularly if the riot commanders are to exercise effective command and control over police units in control operations. At the present time police officers can generally communicate only to headquarters and only from a police vehicle. This Commission, therefore, endorses the recommendations made by the Crime Commission that the Federal Government assume the leadership in initiating and funding portable radio development programs for the police.[2]

(2) Intelligence.—The absence of accurate information both before and during a disorder has created special control problems for police. Police departments must develop means to obtain adequate intelligence for planning purposes, as well as on-the-scene information for use in police operations during a disorder.

An intelligence unit staffed with full-time personnel should be established to gather, evaluate, analyze, and disseminate information on potential as well as actual civil disorders. It should provide police administrators and commanders with reliable information essential for assessment and decisionmaking. It should use un-

[1] This recommendation was previously made to the FCC in a letter from the Commission, a copy of which is included in the appendix. The FCC has taken steps to make additional frequencies available.

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dercover police personnel and informants, but it should also draw on community leaders, agencies, and organizations in the ghetto.

Planning is also necessary to cope with the ever present problem of rumors. A rumor collection center will enable police and other officials to counter false and inflammatory reports by giving accurate information rapidly to community leaders and others in troubled areas. Evaluation of rumors can also provide important information about potential disorders.

In one large city, for example, a "Rumor Central" unit established in the Commission on Human Relations has played an important role in averting trouble. When a Negro, after an argument, was shot to death by a white store owner who was placed in custody by the police, a rumor spread through the neighborhood that the white man would not be arrested. This false information was picked up by a radio station and broadcast. But Rumor Central, which received some 500 telephone calls about the incident, obtained the facts from the police and gave those facts to community leaders and news media. This appreciably assisted the police in alleviating tension.

(3) Tactics.—In dealing with disorders, police have traditionally relied principally on the use of various squad formations and tactics to disperse crowds. These tactics have been of little or no value in some recent disorders marked by roving bands of rioters engaged in window breaking, looting, and firebombing.

Studies made for the Commission indicate that the police are aware of the deficiency. Many police departments admitted that traditional riot control methods and squad tactics were wholly ineffective or only partially useful in the disorders. But no new and practical response to the recent types of disorders has emerged. Few departments have evolved new tactics against rioters. Even fewer have sent trained personnel to consult with officials in cities that have experienced civil disorders.

Tactics recommended for dealing with the type of disorders experienced last summer, as well as those that may develop in the future, are also presented in the model operations plan discussed below.

(4) Recommendations for operational planning.—The Commission believes that model operations plans

are needed now to provide guidelines for police departments in coping with civil disorders, including types of disorders that may develop in the future.

Acting on these convictions, the Commission has developed a model operations plan after consultation with leading police officials. Like the mobilization plan, this plan is also being used in the Department of Justice training conferences and is now undergoing final revision. ***The Commission recommends*** that this plan be distributed to local and state police departments in the same manner as the proposed model mobilization plan.

OBTAINING OUTSIDE ASSISTANCE

When should a mayor or local police chief call for state assistance? The answer is difficult partly because of the problem of determining when outside assistance is actually necessary, and partly because local officials may be understandably reluctant to admit that they cannot control the disorder.

No amount of planning will provide an automatic solution to this problem. Sound judgment on the part of mayors and police chiefs remains the only answer. Yet once the decision has been made, proper advance planning will help speed assistance.

Outside forces will need a relatively long lead time before response. A survey of National Guard capabilities, for example, shows that an average of 4 to 6 hours is required from the time of notification to the time of arrival of an effective complement of men.

Local authorities must not wait until the critical moment to alert a neighboring jurisdiction, the state police, or the National Guard. Outside control forces will then be unable to mobilize and respond on time. All agencies that may be asked to help control a civil disturbance must be alerted at an early stage and kept informed.

These problems will be further discussed in the section on the National Guard and state-local planning.

LOGISTICAL PLANNING

Commission studies disclosed serious deficiencies in police plans for logistical support. Many of these plans appear to assume that supplies and equipment will be on hand or will be available in the amounts required. The moment of need is too late to find out whether they are.

Regular police vehicles are usually inadequate for transporting and supplying large numbers of police, particularly since the men should be moved in units.

Furthermore, a disorder extending over a long period of time will require the resupply of expended items and probably food and shelter for police personnel. In one city, when the failure to plan for these contingencies kept an entire police force on 24-hour duty, physical exhaustion seriously impaired police effectiveness.

A major problem in certain of the 1967 disorders arose from the large number of persons arrested. Facilities to transport, detain, process, feed, and house them were totally inadequate and no emergency or contingency planning had been done. This logistical problem is discussed in Chapter 13, the Administration of Justice Under Emergency Conditions.

TRAINING

The Commission survey on the capabilities and preparedness of selected police departments showed that the most critical deficiency of all is in the area of training. Recruits receive an average of 18 hours of riot-control training; programs range from 62 hours to only 2. Little additional training is provided for supervisory and command officers.

Moreover, although riot control tactics require the work of highly disciplined and coordinated teams, almost all departments train policemen as individuals. Of the 19 departments reporting some post-recruit training for riot-control units, five limit training to the use of firearms and chemicals. In many cases, the training program is built around traditional military formations that have little applicability to the kinds of civil disorders experienced by our cities. Yet 50 percent of all the departments surveyed reported that they were generally satisfied with their training programs and planned no significant changes.

Basic riot control should be taught in recruit school, and intensive unit training should be conducted subsequently on a regular basis. Without this kind of training, police officers cannot be expected to perform effectively in controlling civil disturbances. Training supervisory and command personnel in the control of civil disorders must also be a continuing process.

Emergency plans and emergency operations must be reviewed in the classroom and practiced in the field. Yet few departments test their mobilization and operational plans. As a result, when carefully planned variations from the normal chain-of-command, communications sysems, and unit assignments go into effect at a time of riot emergency, policemen are often un-

familiar with them. The most thoroughly developed emergency plan is useless unless all personnel fully understand it before it is put into operation.

Of the 30 police departments surveyed not a single one reported coordinated training with fire units. Yet recent experience shows a clear need for police-fire teamwork in riots. Even more revealing, only two of the departments surveyed have undertaken coordinated training with other community agencies required in a riot emergency. Only two departments reported coordinating their riot control training with the National Guard and state police.

In order to strengthen police training, the ***Commission recommends:***

- Departments should immediately allocate whatever time is necessary to reach an effective level of riot control capability. The need for training in civil disorder prevention and control is urgent.

- Training must include all levels of personnel within the police agency, especially commanders. Post-recruit riot training must be a continuing process for all personnel which builds upon recruit training rather than duplicates it.

- Riot-control training must be provided to groups expected to function as teams during actual riot conditions. Required levels of teamwork can be achieved only through team training. All special riot-control units must receive additional and intensive training in tactics and procedures, as well as in special equipment and weapons.

- Mobilization plans and emergency procedures must be reviewed in the classroom and practiced in the field. All members of the department must be familiar with riot plans at all times.

- Mayors and other civil officials must recognize the need and accept the responsibility for initiating regional training and coordination with military and state police personnel, as well as with other agencies of local government.

- Police agencies must review and become familiar with recent riot experience so that training programs can be realistically adjusted in the light of anticipated problems.

- In order to help law enforcement agencies improve their knowledge and strengthen their capabilities to prevent and control civil disorders, a national center and clearinghouse should be established to develop, evaluate, and disseminate riot prevention and control data and information. This center should be part of the proposed National Institute for Law Enforcement and Administration of Justice recommended by the President and awaiting action by Congress.

A suggestion has been made that national observer teams be established and assigned to the scene of in-

cipient or developing disorders. These teams would study the effectiveness of control techniques and organization, recommend improvements, and make this information available to public officials. ***The Commission endorses the recommendation*** and suggests further that the disorder observer teams be made an integral part of the proposed national center.

POLICE CONTROL EQUIPMENT

Personal equipment.—A serious hazard faced by police officers during disorders is injury from bottles, rocks, and other missiles thrown by rioters. Yet few police departments can furnish every man assigned to civil disturbance duty with the proper equipment to protect head, face, and eyes. The Commission has found that protective clothing, boots, and gloves are generally not available for the police, although most police administrators recommend their procurement and use. Police officers must have the proper personal equipment and clothing to safeguard them against the threat of bodily harm.

Police weapons.—On the basis of a survey made of 30 major police departments, the Commission found that many police forces are inadequately equipped or trained for use of even conventional riot control weapons and materiel. For example, although the police baton has proven to be a very effective weapon in situations where a low level of physical force will control a disorder, many police departments fail to instruct their men in the proper use of this control weapon. The value of the police baton should not be overlooked and police administrators should assure that proper training in its correct and most effective use is given to all police officers.

The only equipment found to be in adequate supply in police departments was hand guns. Experience has shown that these are relatively poor and ineffective weapons for dealing with a civil disorder.

The most serious deficiencies, however, are in advanced nonlethal weapons. Riot control authorities regard nonlethal chemical agents, such as tear gas, as the single most valuable and effective type of middle-range weapons in controlling civil disorders. In listing the priority of force to be applied in a disorder, the FBI manual on riot control, as well as Army and National Guard doctrine, prescribes the use of tear gas (CS and CN) before resorting to firearms. According to the FBI riot control manual: "They are the most

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trol capability of the police, trained military forces should be called in. We should not attempt to convert our police into combat troops equipped for urban warfare.

The true source of police strength in maintaining order lies in the respect and good will of the public they serve. Great harm is likely to result from the use of military weapons of mass destruction by police forces which lack the command and control and firearms discipline of military units. Improper action could destroy the concept of civilian police as a public service agency dependent for effective operations on community cooperation and support.

Overall recommendations.—The development of modern, nonlethal control equipment has languished because police departments lack the resources for tests and evaluation. The decentralized nature of law enforcement and the absence of standard criteria have also limited market opportunities. As a result, private industry has been reluctant to invest in research and development of new police equipment.

Accordingly, ***the Commission recommends:***

- The Federal Government should undertake an immediate program to test and evaluate available nonlethal weapons and related control equipment for use by police and control forces.
- Federal support should be provided to establish criteria and standard specifications which would stimulate and facilitate the production of such items at a reasonably low cost.
- Federal funds should be used to develop appropriate tools and materiel for local and state law enforcement agencies.

If these recommendations are adopted, the result will be better maintenance of law and order and better control of disorders with fewer risks to police and the public. Use should be made of the technology and resources of the Department of Defense and other appropriate Federal agencies.

LEGAL NEEDS FOR RIOT CONTROL

We emphasize that law, no less than the desire for order, must provide the framework for all control efforts.

Applicable laws relating to control efforts of Federal, state, and local governments fall into two general categories: (1) Laws permanently in effect, primarily the penal laws of a state, supplemented or augmented by municipal ordinances; and (2) special emergency laws put into effect only during a disorder as, for example, curfews, special emergency closing ordinances, and martial law. The Commission will also consider certain legal aspects of the use of state forces to aid local police.

LAWS PERMANENTLY IN EFFECT

Many of the acts committed by rioters are crimes, in violation of long-established penal laws. In the disorders of last summer, arrests were made for crimes ranging from homicide to curfew violations, including for example, robbery, burglary, assault, theft, arson, and disturbing the peace.

A Commission survey of selected police departments revealed no basic lack of legal tools available to control disorders, but the survey and other evidence have, however, indicated five other areas where further legislation may be necessary.

Laws governing the manufacture and possession of incendiary devices.—Watts, Detroit, Newark, and other major disorders have shown a disturbing increase in the possession and use by rioters of a variety of incendiary devices, primarily Molotov cocktails. Although the use of such a device is undoubtedly arson or attempted arson, some jurisdictions have no laws governing manufacture or possession; others seek control through use of inadequate fireworks ordinances.

Forceful interference with the work of firemen and

[8] In preparing this section we have relied upon a study prepared for the Commission by the National League of Cities.

emergency workers.—Firemen and emergency workers have been subjected to physical abuse, and harassed and interfered with in performing their duties. Obviously, violence against any of these persons is a crime, but the experience of some riot-affected communities indicates that additional laws prohibiting forceful interference with the work of firemen and emergency workers may be necessary.

Restrictions on the sale of firearms.—The Crime Commission studied the relationship between violent crime and the easy availability of firearms in the United States. In its report, the Commission pointed out that "During 1965, 5,600 murders, 34,700 aggravated assaults, and the vast majority of the 68,400 armed robberies were committed by means of firearms." The Crime Commission further stated that "All but 10 of the 278 law enforcement officers murdered during the period 1960–65 were killed with firearms."

The Crime Commission surveyed existing Federal, state, and local gun control legislation and concluded: "Since laws, as they now stand, do not accomplish the purposes of firearms control, the Commission believes that all states and the Federal Government should act to strengthen them." The Commission recommended specific Federal and state legislation reasonably regulating the purchase, transportation, sale, and possession of firearms.

The fact that firearms can readily be acquired is an obviously dangerous factor in dealing with civil disorders. It makes it easier for a serious incident to spark a riot and may increase the level of violence during disorders. It increases the dangers faced by police and others seeking to control riots.

We recommend that all state and local governments should enact gun control legislation of the type recommended by the Crime Commission.

We also believe that Federal legislation is essential in order to make state and local laws fully effective, and to regulate areas beyond the reach of state government. ***We therefore support*** the President's call for gun control legislation and urge its prompt enactment.

Restricting possibilities of theft of firearms.—Certain recent disorders were accompanied by a drastic increase in the theft of firearms from stores and manufacturers. The most serious incident reported took

place in Plainfield, N.J., where, during the disorder, 46 carbines were stolen from a local manufacturer.

The Commission recommends that both state and local government should consider enactment of laws or ordinances controlling the storage of firearms and ammunition in order to diminish the possibilities of theft. Such laws could require, for example, that all firearms and ammunition be stored in heavily protected vaults or areas, or that essential parts of the firearms be so stored.

Unlawful assembly, riot, inciting to riot and related legislation; Federal antiriot legislation.—Forty-seven states and the District of Columbia have statutes that either explicitly prohibit participation in or incitement of riots or provide more general control through prohibitions against unlawful assembly. Two other states rely on court decisions based on common law.

The Commission's police survey and other evidence disclosed that many of the statutes need review and revision. Some that deal with incitement to riot are so broad that they may improperly inhibit the constitutional right of free speech. Some that provide no definition of incitement or comparable terms are dangerously vague. Those that define a riot in terms of groups containing as few as three persons may be applied in situations where nothing even approaching truly riotous activity is taking place. These statutes should be revised. In addition, some older statutes require that police officers on the scene literally read the riot act before taking action against rioters. Such legislation should be amended to insure adequate notice without unnecessarily inhibiting police action.

An additional question is whether this network of state legislation should be supplemented by Federal antiriot legislation.

We recognize that criminal law enforcement is principally a matter of local responsibility and that crimes committed during disorders can generally be controlled and should be controlled at a local level. Moreover, the investigations of the Commission and the Federal Bureau of Investigation have so far revealed no national planning or conspiracy behind the disorders of 1967 and few instances of interstate travel which would be subject to Federal control. There is also a risk that too broad a bill would encroach on

the right of free speech and peaceful assembly.

Although no criminal legislation, Federal or state, comes to grips with the underlying causes of disorder, ***the Commission feels*** that a tightly-drawn Federal control statute might play a limited, but important, role in dealing with disorders. Even if there are only a few persons traveling with the intent of precipitating disorders, these few can do great harm.

Federal legislation, if enacted, should be precisely drafted, with a clear definition of all operative terms, so as to preserve scrupulously the constitutional rights of all Americans. Such legislation should be combined, as the President recommended, with the Federal Firearms bill. Both are important means of restricting the interstate movement of forces of destruction.

Whether or not legislation is enacted to deter those who would incite disorders, Congress should affirm now that violence is not to be tolerated in any sphere of our society. The prompt enactment of the pending civil rights legislation—which would make it a Federal criminal offense to use force to prevent the exercise of civil rights—is important for this purpose. This legislation is also central to the long-range goal of ensuring that Americans in all parts of the country enjoy equal rights and opportunities.

LAWS APPLICABLE ONLY IN EMERGENCY SITUATIONS

Effective control of a civil disorder may require special laws in addition to the normal complement of penal statutes and ordinances. Such emergency laws range from street closings to restrictions on sales of certain items. Laws of this sort have been used in practically every control operation.

The Commission recognizes the utility and need for such laws, especially those which provide for a specific, limited response to a particular problem, rather than wide-ranging emergency powers. The Commission cannot consider all such laws, nor can it consider the constitutional restraints that may be involved in the application of particular laws, such as search and seizure in connection with curfew violations. It will instead point to a few instances where the need for special legislation is apparent.

Restricting access to defined geographic areas.—In the early stages of some disorders, failure to seal off some streets had tragic consequences. Unsuspecting motorists drove headlong into barrages of bricks, stones and bottles, cars were set afire, and occupants were

beaten.

Restrictions on access may also be necessary to keep vigilante groups outside the riot area.

The Commission recommends legislation or ordinances to permit disorder areas to be sealed off immediately. Since speed may be necessary the laws should provide that the authority can be delegated to operational levels.

Restriction on sales of particular items.—Of the 26 police departments responding to the portion of the police survey concerning effectiveness of specified control techniques, all replied that closing stores selling firearms and ammunition was effective; 25 replied that closing liquor stores and bans was effective; and 22 favored restrictions on sale of gasoline. ***The Commission recommends*** that laws be enacted to permit closing of potentially dangerous businesses during riot situations. The authority to impose such restrictions would primarily rest with the mayor or city manager. Provisions should be made to ensure that, if necessary, similar restrictions can be imposed in adjoining jurisdictions. An ordinance restricting sale of ammunition in one city would have little effect if the stores in an adjoining city, a block away, remain open. As with the imposition of other emergency measures, notice of these restrictions is of paramount importance, and notification procedures must be integrated into any control plan.

Curfews.—The Commission police survey shows that 23 responding departments favored imposing curfews. ***The Commission recommends*** that states that have not already done so should provide explicit legislative means to enable mayors and other local officials to impose curfews.

The size of the areas covered by curfew restrictions has varied greatly. Milwaukee imposed a citywide curfew restricting all persons to their homes, closing all streets to vehicular and pedestrian traffic, and permitting no one in or out of the city. Other curfew areas have been less restrictive in time and area. Unless care is used, the curfew itself may enable criminal elements to close down a town with minimum effort.

In drafting curfew legislation there are at least two potential problems: (*a*) the need for provisions which enable curfews to be imposed in adjoining cities in order to insure coverage of the entire disorder area; (*b*) the need to insure that notice of the curfew is

given to all who may be affected by its terms.

LEGAL PROBLEMS CONCERNING USE OF STATE FORCES

The relationship among the National Guard, state police, and local police in joint activities has been considered in the portions of the report concerning the National Guard and state-local planning. Although these questions relate primarily to planning, certain legal problems require attention by state and local governments.

Command and call-up procedures for state and National Guard forces.—Most states have laws identifying the state or local officials who have the authority to call up the National Guard; usually only the Governor has this authority, but in some states even a local sheriff may call in the Guard to aid local law enforcement. However, only 20 states have laws specifying the relationship between National Guard forces and the civil police. In other states, the crucial command problem is left to agreements or executive directives.

Although problems of call-up authority and command authority can in part be resolved by proper planning, ***the Commission recommends*** that each state review its laws concerning Guard call-up and command, and make any necessary changes to facilitate adequate planning.

Arrest powers of state police and National Guard forces.—In the absence of martial law, only seven states have laws granting National Guard troops the arrest powers of peace officers. This lack of authority is not critical if police officers have been designated to accompany Guard troops when arrests are to be made. The problem should be reviewed in the planning process, and, if arrest authority is given to National Guard troops, appropriate guidelines for the use of such authority must also be provided.

Responsibility for payment of the cost of using National Guard forces.—Use of National Guard forces to quell a civil disorder may be costly. Whether the state or the local community must bear these costs is a serious policy question.

On one hand, prevention and control of a civil disorder is part of the local responsibility to insure civil peace. If the state is to bear the cost of Guard forces, a local community may limit its efforts to prevent disorders (or its efforts to provide adequate control in the early stages) and rely instead on calling the Guard whenever there is danger that an incident may develop

into a disorder. This attitude may also contribute to the dangers of overreaction.

If costs of using the National Guard are to be assessed against a local community, the mayor or other local officials may unnecessarily delay calling in the Guard.

The Commission recommends that all states consider this problem in advance and pass necessary legislation providing either for the assessment of costs of National Guard forces, or otherwise insuring that the problem is resolved by agreement between the states and local communities.

Liability of Guard officers and men when aiding local law enforcement.—Questions have been raised regarding the legal liability of Guardsmen when assisting local law enforcement officers to control a disorder. ***The Commission recommends*** that each state review its laws on this subject, and make any necessary changes to insure that individual Guardsmen are protected against legal liability when acting pursuant to the valid orders of their superiors.

COMPILATION AND DISTRIBUTION OF LAWS RELATING TO DISORDERS

The people have a right to know precisely what the law requires of them during a disorder, and an equal right to know the legal limits of control activities by law enforcement officers. Certain cities, counties, and states have already prepared booklets containing this information, have distributed these booklets to all police departments and other law enforcement agencies, and have made the booklets available to the public at large. ***We recommend*** adoption of such a policy.

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"Race prejudice has shaped our history decisively in the past; it now threatens to do so again. White racism is essentially responsible for the explosive mixture which has been accumulating in our cities since the end of World War II."

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>
> "Either the United States will destroy ignorance or ignorance will destroy the United States."
>
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