

Saunders

April 30, 1969

TO: Richard V. Marks, Secretary-Director
Commission on Community Relations

FROM: Lonnie Saunders, Supervisor
Field Investigation Division

SUBJECT: Field Investigation Division Report on the March 29, 1969 Shooting at New Bethel Baptist Church and Subsequent Events.

I Summary

On March 29, 1969 one policeman was slain on the sidewalk outside of New Bethel Baptist Church, another was seriously wounded, several persons within the church were wounded by gunfire, and 142 persons were taken into custody in a mass arrest. An appreciable number of women and a few children, including infants, were among those arrested and conveyed to the First Precinct for detention and investigation. A full account of the many details secured by CCR staff from all sources (witnesses, news accounts, the tapes of police radio calls, police department personnel, etc.) is attached hereto to provide as nearly complete a picture as is possible at present.

Because of everpresent conflicts in accounts given to CCR staff, it has proved impossible to recreate with complete accuracy the course of events of this date. A truly thoughtful review of available facts, however, elicits reasonable questions about all phases of this incident and its subsequent effect on the community.

The health of the Detroit community and its success or failure in striving to achieve the goal of fruitful peace and racial harmony may well be determined by the quality of the answers that result. The Detroit Free Press editorial of April 16, 1969 states the issue credibly: "The issue is whether the police were right in arresting some 142 people, and whether the events that followed in the next 12 hours conformed both to the reasonable rights of the state to protect itself and the reasonable rights of individuals to their civil liberties."

A. The Shooting

Our Staff interviewed only one eye-witness to the actual shooting. This witness, Max Hardeman, together with his wife, viewed the shooting from a point almost directly across Linwood Avenue from where it occurred--turning toward the scene when they heard a shot from a low caliber firearm. The husband informed our staff that he observed a legionnaire fire several blasts at a police officer who was 4 to 5 feet from the legionnaire. The officer fell. The other officer was crouched near the rear of the parked scout car on the side away from the church. Because the bodies of both officers, with backs to the witness, were between him and the legionnaire, the witness was unable to see clearly the object that each held in his hand. Subsequently, the witness observed the second officer move into the scout car, radio for help, and attempt to drive away. The car crashed into the cleaners. The position of the surviving officer with reference to the car differs from that given in any of the police accounts, or in that of Attorney Milton Henry's (see more detailed account). Contrary to the substance of the police accounts, this witness, like all witnesses interviewed by CCR staff, failed to see the legionnaire or any other armed person flee into the church. He saw only one legionnaire, only one assailant.

Observations: 1. The right of the officers to question an armed man or men in the above circumstances is unchallenged. 2. There appears to be real doubt that police intelligence and/or officers in command positions had informed the Czapski-Worobec team adequately, if at all. 3. The presence of such an inexperienced team of officers in this critical area at this critical time raises serious questions regarding the quality of departmental planning.

B. Response of the Police

The tapes of police radio calls reveal that within 5 minutes of officer Worobec's call officers in scout car 10-4 reported they were taking an injured officer to Ford Hospital. One minute later, at 11:48, officers in scout car 10-6 reported that the "officer was shot from the church." The latter report was repeated at 11:49, and again at 11:50 with the added information that "between 10 and 12 of them" armed with carbines were inside the church.

Police accounts assert that officers approaching the church in response to the call for help were met with "a hail of gunfire" and were forced to return fire to gain entrance and make arrests. This explanation is given also in answer to inquiries concerning the reason for failure of the police to call for those inside the church to come out and surrender. At this point it is unclear whether the considerable gunfire of the police was actually in response to firing from the church.

A painstaking examination of the church interior, exterior, and the immediate surroundings, however, does not reveal any physical evidence to support this claim. Command officials admit that few shells casings were found inside or outside. The form and location of all but two of the many bullet holes inside the church indicate clearly that the firing came from the outside (see detailed description). Chip markings in the sidewalk and curb near the Linwood Avenue side front entrance, 3 to 4 in number, were not conclusive as to source or origin (see detailed description). There was no other visible physical evidence--in the walls of buildings nearby, in the streets, in the bodies of automobiles, etc.

Most of those persons present escaped injury by crawling beneath church pews or running to the basement. Members of CCR staff were provided with detailed accounts of expressions of verbal epithets and commission of physical brutality in considerable amounts by the police inside the church. The verbal epithets were predominantly racial. The physical brutality allegedly included two unprovoked shootings of unarmed persons and menacing of individuals with ends of rifle and pistol barrels against their heads. Some of the victims were standing; others were in prone positions. Prisoners allegedly were forced to stand "for hours" with hands above their heads and against the wall.

Questions and Observations

1. If shooting at police officers emanated from within the church, why is the supporting evidence virtually non-existent?
2. Why were church records and money confiscated? What was its importance in building a legal case?

3. Information from several sources alleged that a "stake-out" of the church was in effect. Command officers denied this. Also, there was denial that any real surveillance of the meeting existed--or that there was knowledge that the meeting was being held at the church rather than at Dexter Avenue and Waverly Street above a supermarket where it had originally been scheduled. However, the police arrived within 5 minutes of officer Worobec's call; the TMU knew that it should follow Attorney Milton Henry's car and stopped it at the Lodge and Webb Avenue in 10 minutes; and scout car 11-70 from Davison Precinct arrived within 11 minutes and established the need for a bus to transport prisoners.

C. The Processing and Detention of Prisoners

Staff had no opportunity to view this process in operation. Testimony from persons who were imprisoned and later informed staff of conditions that characterized the detention process suggest appreciable lack of concern for minimum attention to certain basic human needs. To begin with, a considerable amount of testimony indicates that there was open and unrestrained searching of females by male police officers at the church. If this was done, such acts should be condemned. Some information states that there was refusal of toilet privileges. There was much overcrowding. Finally, charges indicate there was wilful denial of opportunity to use the telephone.

Question

All of these charges pose these important questions: 1. Were basic constitutional rights flouted by acts of reprisal generated from uncontrolled anger over the slaying of a fellow officer? 2. Were police officers acting consistent with a comprehensive departmental plan for handling mass arrests? Was the plan adequate? Was there a breakdown in execution? Why?

D. News Media Treatment of the Event

In most respects, consideration of this area reveals the most flagrant errors committed by the institutional forces impinging on this issue, i.e., metropolitan area newspapers, the weekly press, the wire services, and radio and TV reporting.

It must be asserted forcefully and with crystal clarity that the right of the news media (editorially), or any individual, or any group (as reported upon in the news columns) to state a conviction concerning the merits of any facet of this incident is indisputable. The point at issue here is whether in the treatment of the news the media exercised reason and care with a view to avoiding the arousing of passion and undue emotionalism. Clearly, reasonable men, whether black or white, can all agree that the killing of a policeman and the wounding of another was tragic and senseless. The reaction of the community was one of horror, and people hungered for a factual and unbiased relating of information.

Our conclusion is that as the events unfolded daily undue distortions in treatment of the news by mass media resulted in confusion and emotionalism that rendered informed judgment difficult, if not impossible.

The essential facts in the New Bethel Baptist Church incident are as follows:

Judge Crockett was awakened at 5:00 a.m. March 30 by Representative Del Rio and Rev. C. L. Franklin, the church's pastor, and was informed that a large number of prisoners were being held incommunicado at First Precinct. They requested that a writ of habeas corpus be issued, as the constitutional rights of the prisoners were thus being violated. Judge Crockett proceeded forthwith to police headquarters set up court and heard the cases of 39 arrestees, making determinations as follows: 16 were released on \$100 bond to reappear at noon, 1 man (the church trustee-janitor) was discharged with the consent of the Prosecutor, and 22 were remanded to police custody until noon. Further hearings were terminated by the appearance of Prosecutor Cahalan who, in the presence of the Court, issued verbal orders to the police preventing them from producing further arrestees for the hearing. This action countermanded a court order. At or before the noon session, more than 100 persons were released by police with Prosecutor Cahalan's consent.

For several days following the action in Judge Crockett's court on Sunday, March 30, much of the news media continued to report that Judge Crockett had released virtually all of those arrested, when, in fact, all but eight (nitrate test powers) had been released directly by the Police Department or by request and consent of the prosecutor in open court. First reports by radio indicated that Mr. Rafael Viera, later charged with murder and now awaiting extradition from New York, had been released by Judge Crockett. The Prosecutor's staff was responsible, instead.

Using the general chronology of only one newspaper account the interpretation of events unfolds in the following manner, with appropriate questions of judgment:

March 30, 1969, The Detroit News: "Officer Killed, 2nd Wounded in Ambush on Westside." The report said, "They were ambushed by a gang of 10 or 12 men on Linwood near Philadelphia." The language is inflammatory; there was no known ambush.

April 1, 1969, The Detroit News, an editorial captioned, "Judge's Conduct Questioned." "An Abuse of Power?" In the body of the April 1 issue, the News says, "Recorder's Judge George W. Crockett has become the target of criticism for his freeing of 140 persons arrested after the slaying of a policeman and the wounding of another Saturday night near the New Bethel Baptist Church."

The editorial questioned Judge Crockett's issuance of a writ of habeas corpus as a legal basis for his action and also his release of prisoners (8) who had positive nitrate tests. As a "refutation" of Judge Crockett's opinion, The News cites, "Heretofore, the police have regarded nitrate tests in the same light as fingerprinting, which does not require the presence of an attorney for the arrested person.

April 2, 1969, The Detroit News, an editorial captioned, "The Silence on the Shoot-Out." "Is it Intimidation." It reads, "Unfortunately, there is also a sad failure on the part of local Negro leaders to express what so many responsible but lesser known black citizens feel about this case." Was this intimidation or wise avoiding of prejudgement--until all facts were in? Was this harmful sensationalism?

April 4, 1969, The Detroit News: "Judge's Defense Questioned." "He's Not Convincing." Also, "We doubt that Recorder's Court Judge George W. Crockett, Jr., could find unanimous support in the legal profession for his claim that his actions last Sunday in the New Bethel Church affair were legal and proper." How many legal decisions on appeal result in a unanimous decision? Did The News take cognizance of the appreciable legal support that was expressed in support of Judge Crockett?

April 6, 1969, The Detroit News, an editorial, "Crockett's role--Advocate or Judge?" It states: "This sad state of affairs (polarization) can be blamed largely on the hostile and inflammatory conduct of Recorder's Judge George Crockett, Jr., who proved in his hasty release of prisoners and in his subsequent statements on the case that he should not be in charge of a court of justice." It reminded the public that The News had declined to endorse Judge Crockett, "for we realized that he considered the job of a judge to be that of advocate, a pleader of cases, rather than that of objective jurist." It continues, "Instead of feeding fuel to the flames of consuming racism, he should take the lead in quenching them."

April 9, 1969, The Detroit News, an editorial, "Race Not the Issue." "It's Right vs. Wrong." "Like Judge Crockett, Garrett is making statements that tend to polarize black and white citizens on this issue, whether or not that is his intent." Mr. Garrett (Board Chairman of the Cotillion Club) was said to have reported that the entire black community feels highly incensed over the "reckless attack" on New Bethel Church and payment requested for damages, etc. On these issues representatives of SCLC and New Detroit, Inc., subsequently proposed a similar plan.

Observations:

The impact of The News and editorial treatment of this tragic event as it unfolded in both major Detroit daily newspapers can only be described as contributing to the active polarizing of the community. Whether these were conscious acts is open to debate. The resulting product absorbed by the community as its main basis of knowledge, was a result of several factors.

In this situation the press has failed in its duty to keep the public accurately informed so that it can make decisions on the basis of fact and clear procedure in law and has led a frightened public down a path to further polarization and hatred.

For its part, as early as April 2, in its editorial, the Detroit Free Press tried to place the entire episode in perspective: "If we are not wary, though, this event--which should simply be an isolated human tragedy--will become larger than life. A white man's special truth will butt head on into a black man's special truth, and peace will be lost somewhere in the no-man's-land between... But we can--we must--overcome them (the wrongs), do a little forgiving and try to make our city work."

The Detroit Free Press fully corrected its position on April 16 and appeared to be making an honest effort to establish communication by keeping an open news and editorial position: "Detroit Cannot Afford to Follow DPOA Lead." (See reference in opening summary) "In the confusion that swirled around the courtroom proceedings that day, the facts of what took place were reported

inaccurately by many media, including this newspaper. We have since corrected those errors and we think there are human factors which explain them, but the original inaccuracy cannot be excused. In part, the error was ours and we regret it."

Staff has seen no admission of error on the basic facts by The Detroit News, however.

E. Legal Issues

"What is important in this time and circumstance is that the debate not become irrational, and that light, not heat, be cast upon it." (Detroit Free Press - 4/16/69). On the legal issue, ample professional judgments of legal experts provide appreciable of full measure of support of Judge Crockett's interpretation of the constitutional issues. Among these are included: Michigan Trial Lawyers Assoc., The Detroit Chapter of National Lawyers Guild, five Metropolitan area Bar Associations, the deans of Wayne State University and U. of D. Law Schools, Michigan Supreme Court Justice Thomas Brennan, and New Detroit, Inc., Law Committee. Also the April 22 issues of The Detroit News and The Detroit Free Press outline the days-old landmark decision of the U.S. Supreme Court which places new limits on investigative arrests, drawing a distinction between getting identifying information and getting information from a defendant for use against him at trial.

Even if legal error was made in this case, the courts, not the Judicial Tenure Commission, are the proper authority to make the determination. The issue does not appear to be one of judicial misconduct (non-feasance, misfeasance, or malfeasance) but judicial interpretation.

The conflict between Judge Crockett and police over release of prisoners arrested at New Bethel Baptist Church has raised these serious legal and factual issues:

Issue #1: Judge Crockett's quick arrival at police headquarters some six hours after police had arrested 142 persons in the aftermath of the shooting outside New Bethel Baptist Church.

Observation: Judge Crockett's quick intervention caused the prosecutor's office to decide to voluntarily discharge over 100 suspects for want of cause. This appears to prove the salutary effect of the judge's actions.

Issue #2: Was Judge Crockett's writ of habeas corpus legal?

Observation: Information of staff is that the prevailing Michigan legal statutes clearly establish that a Recorder's Court judge "shall possess the same power to grant writs of habeas corpus as possessed by the judges of circuit courts of the state." He has the power "to issue all writs."

Issue #3: The release of eight prisoners whom police wanted to continue to detain because, according to police, they had tested positive on nitrate tests.

Observation: During Judge Crockett's two court sessions on March 30 it appears that the prosecution failed to produce any evidence that the shooting of the two police officers was committed by persons inside the church, or any evidence to connect guns or ammunition seized inside the church with any of the 142

arrested persons. On this point, Mallory V. United States, says: "It is not the function of the police to arrest at large and to use an interrogating process at police headquarters in order to determine whom they should charge." Also, the Warren Commission found that the nitrate test is not sufficiently reliable to warrant probable cause to believe a suspect has been involved in a shooting.

On the matter of whether a nitrate test can be given without counsel, it appears that the courts have not fully resolved the issue. However, Judge Crockett's apparent consideration of the well known deficiencies of the test as a relevant factor in his ruling appears to have been consistent with established law in this area and no implication of incompetency or impropriety is supportable. Facts supportive of a change in connection with the shooting of the police officers would have to be developed and verified through other than self incrimination, confession, extended detention, etc. In this connection the prosecutor apparently concurred in the release following interrogation of Rafel Viera, the person subsequently charged with murder.

II Conclusions

A. General

Much of what has been written and said concerning these events had proceeded from assumptions of facts and law which have either not yet been proved or are erroneous. It is to be regretted that so much was said that was not in accord with fact or existing knowledge when reasonable care and/or consultation with appropriate resources would have placed the issues in proper focus. This is especially true of the lay legal judgments that were freely rendered without giving due consideration to responsible sources that held different but equally credible positions, to say the least.

Based on the facts known to CCR staff we would concur in the conclusion of the NAACP president, Mr. Tom Turner, published in the April 12, 1969 issue of the Michigan Chronicle: "Too often in the past, the voice of justice has been silent in order to permit highly questionable police procedures. That these procedures have been in derogation of the basic fundamental constitutional rights guaranteed to every citizen has meant little or nothing if the person detained was either poor, black or ignorant." Also, we would concur in the opinion of the Attorney Ernest Goodman expressed in the April 26, 1969 issue of the Michigan Chronicle: "...the role of the criminal court judge is to act as an independent administrator of justice and not, as has too often been the case, an adjunct of the police and prosecutor's office."

B. The Police Action

1. The attempt of Officers Czapski and Worobec to question an armed man or men was legally proper. There is nothing in the record that would suggest that the killing was anything but cold blooded murder of a young police officer who was performing his often difficult, always complex duty.
2. Information made available to the police by the wounded officer after the slaying provided a sufficient basis for the police to act on the knowledge that a crime had been committed.

3. Reasonable force to effect safe entry into the church was in order if resistance was experienced. There is little, if any, evidence to substantiate the claim of the police that they were met with a hail of gunfire from the church upon arriving. The doors, however, were locked and entry had to be forced whether with gunfire or not.
4. Following the storming of New Bethel Church behind a hail of covering gunfire, it is nothing short of miraculous that only four of the nearly 150 people in the church were wounded, and none of them killed. The public, while aloof to the RNA group, senses the illogic of this strategy of catching a murderer and doubt its use in other settings throughout our city.
5. Police questioning of suspects at the church would normally have revealed probable cause that some might have been involved in commission of the crime. Only these should have been arrested and detained. All others were probably detained illegally and were arrested because they were in the building when a police officer was murdered. In the absence of a criminal charge was there not a right to immediate release and subsequent interview? Police policy on mass arrests must be reviewed.
6. Basic constitutional rights of the prisoners were flouted. All persons so arrested were entitled to be advised of their right to remain silent and to have counsel. Evidence is reasonably clear that the police failed to accord this right. A telephone in any police detention area would be appropriate.
7. The police were apparently guilty of certain inexcusable acts of omission and commission: overcrowding in detention quarters, subjecting prisoners while detained to undue physical strain, unwarranted searching of females by male officers, lack of toilet facilities or permission to use same, etc. It is easy to interpret this as contempt for the innocent as well as the guilty; proper police practices in no way limits police power or function.
8. It is difficult to draw firm conclusions regarding whether surveillance of the meeting at the church existed on March 29 and of what nature. CCR staff are compelled to believe, however, that police intelligence information on all phases of the RNA convention meeting did exist and that some of the appropriate command officers, certainly, were informed. The future challenges to public order to be found in group conflict requires intelligent and enlightened police policy, whether the groups be welfare rights, youth groups, or racial secessionist. This must involve planned, top level police control and communication, not "policing-- as usual."