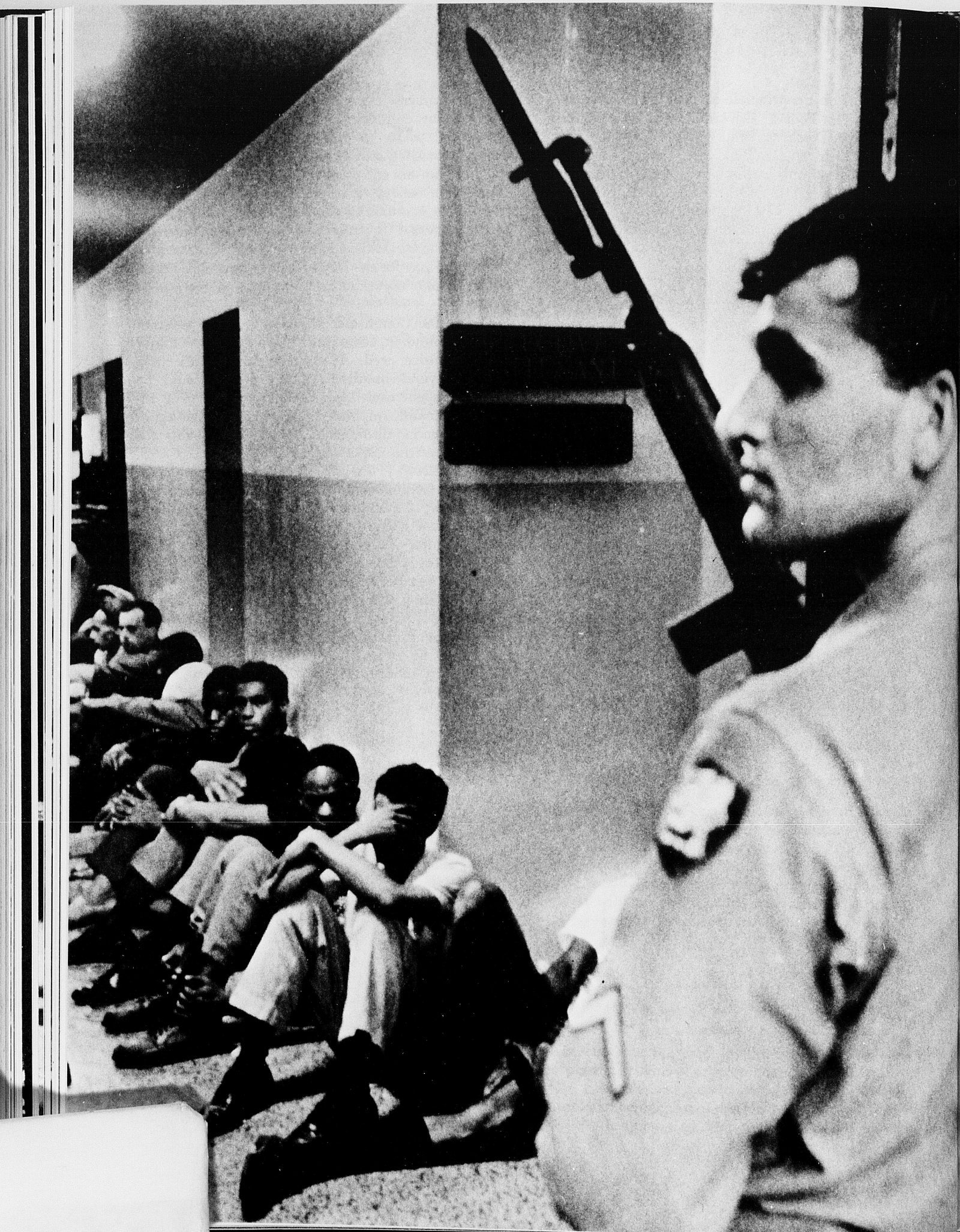

Chapter 13
The Administration of Justice Under Emergency Conditions

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 communities 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.

---

[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.

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 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

[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.

[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.

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 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 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.

---

[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.

[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.

[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.

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 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

[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.

Woman arrestees, Detroit, July 1967

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.

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

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

[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

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 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.

Arrestees, Detroit, July 1967

■ 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 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 process may be preferable—screening for immediate release at the local precinct or neighborhood center with later transportation to a single detention center

[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.

[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.

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 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

[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 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.

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 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 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]

---

[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"

[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

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

[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

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 authorized 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.

[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.

[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.

291-729 O-68—14

Detroit, July 1967

SUMMARY OF RECOMMENDATIONS

The Commission recommends:

- 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.

- 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.