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TWO POUNDS OF FLESH

BY ENE-MALLE LAURITIS*

The National Legal Aid and Defender Association, an organization concerned since the early 1900's with providing effective legal advice and representation for the poor, sponsored the Conference "Winter Rights — Summer Riots" reported in this symposium issue. Mrs. Lauritis, editor of the NLADA publication, Legal Aid Briefcase, critically evaluates what happened at the Conference and suggests that the problems that confronted Conference speakers are reflected in the actions and attitudes of lawyers throughout the country.

THE Conference was convened on August 4, 1968, by the National Legal Aid and Defender Association in conjunction with the American Bar Association's annual convention. The topics to be considered were built around the most burning issues of the time: riots, their handling, and their prevention.

Printed herein are the edited remarks of eight Conference participants. Professor Philip Ginsberg of the University of Chicago begins the discussion with an examination of the function law schools and students have regarding riots and slums. Mr. Sterling Tucker from the National Urban League follows with an interpretation of the black viewpoint of law and order. The riot experiences of two cities, Detroit and Chicago, are then related from opposing perspectives: Judge Vincent Brennan, Recorder's Court, Detroit, and Benjamin Mackoff, Administrative Director of the Circuit Court of Cook County, Chicago, represent the courts; the perspective of defense counsel is articulated by legal aid attorneys Mr. Alphonso Harper and Mr. Frank Jones from Detroit and Chicago, respectively.

Mr. Nathaniel Jones who served as counsel for the National Advisory Commission on Civil Disorders gives his impression of the *Kerner Report*, which was produced by the Commission. Finally, Mr. Burt Griffin, from the Office of Economic Opportunity, predicts a new form of disruption in the ghetto.

The significance of "Winter Rights — Summer Riots," however, lies not so much in the formal contents of the papers presented as in the overall situation that ultimately developed, a situation indicative of what is going on in our country today. The panel members were eager to participate in what was presumably to be a dialogue

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between black and white. The people who attended¹ were all men of good will, concerned about what is taking place in our society.

Yet, what happened?

No dialogue took place.

There were black spokesmen. "Look," they said. "There is a grave problem. The problem is created by white people. Since they created it, they must do something to alleviate it. In the name of our common humanity, in the name of justice, *you* must begin to do something now!"

And there were white spokesmen. Their response was less clear cut. Some chose to close their eyes. "There is no problem," they said. The phrase "God's in his heaven and all's right with the world" exemplified their position. Others, though they recognized the existence of a problem, felt that they were unable to do anything about it. Their denial of involvement took two different tacks: Some saw it as not their problem and of no immediate concern to them as to whose problem it might be; others saw it as not their problem but were willing to put the onus of responsibility on another group (the police, for example).

The problem is amorphous. Its essentials, however, are relatively simple to enumerate: Blacks view themselves as pariahs of the white community. They feel that the weight of this ostracism pervades all institutions in America — the schools, the job markets, the police stations, the availability of decent housing, the welfare agencies, the law schools, the churches, the credit agencies, the bar association, the shops, and the courts. Many black people believe that everywhere they go, since they are black, they are automatically suspect, they are automatically second-rate. In school, if a person is black, he is automatically ignorant. On the job market, if one is black, he is automatically incompetent, unreliable, and untrustworthy. If people are looking for a place to live, their blackness automatically disqualifies them from anything decent. Their list of grievances goes on and on — all the way to the courts where equal justice for all is the watchword but where equal justice does not always prevail.

Mr. Alphonso Harper says that in Detroit 99 percent of the arrestees during the riots of 1967 were black. He adds that he knows of no one in a position to do something about it — not the sheriff's office, not the judges, not the bar associations, not

¹ Several panelists commented on the sparse attendance at this session. Of thousands of lawyers attending the ABA Annual Meeting, a sorry few made the minimal effort to attend the panel. One would like to think that these thousands of lawyers were so well acquainted with the problems of the poor that any further enlightenment would prove superfluous. Yet, despite the profession's recent activist role in matters that affect the poor, the lack of concern demonstrated on the part of the vast majority of attorneys in Philadelphia is all too indicative of where we now stand — at the very beginning.

the public — who proclaimed that the detention facilities these blacks had to endure were and are intolerable. Judge Vincent Brennan counters that Mr. Harper must remember that it was impossible to bus in white people to be arrested. A witty remark, no doubt, but it misses the entire thrust of Mr. Harper's statement. The issue is *not* that more blacks than whites were arrested but that, because the arrestees were overwhelmingly black in number, few people cared whether their condition was tolerable or intolerable. The corollary to Mr. Harper's point is that, had the arrestees been white, a great outcry would have arisen concerning the inhuman conditions they had to endure in the criminal court building and in the buses.

If Detroit misses the boat, what can be said about Chicago? It is hard to believe that Mr. Jones and Mr. Mackoff were talking about the same city, the same conditions, the same people.

Yesterday, I saw some signs being peddled. One of them read: "I love humanity. It's people I can't stand." It's a terse way of saying that, although we subscribe to noble principles, when the time comes to apply them to a concrete individual case, the principles are ignored. Equal justice under law is such a noble principle. Yet when we examine what actually occurs in our courts, we see that principle violated time and again.

The problem is one of poor; the problem is one of black. If you are black, you are poor — unless you can prove that you are more competent than a white man when you are in school or when you are looking for a job and, sadly, twice as innocent as a white man when you are facing a court justice. How else can we interpret the impression given by judges who seem to be more worried about police morale than about the trampling of individual rights and liberties? If I were raped and the jury brought in a not-guilty verdict for the defendant, it would be bad for my morale to have the defendant freed. It would also be bad for the morale of the district attorney who prosecuted the case and the police investigators who tracked down the defendant. But is this any reason to detain the defendant? I see no difference between this hypothetical situation and the one in Detroit where outrageously high bail was set, expressly to protect the morale of the police.

Mr. Whitney Young, Executive Director of the National Urban League, had a conversation with a white man about attitudes. The white man said he used to be sympathetic to the black cause, but with all the hullabaloo the blacks were creating nowadays, he wasn't so sure anymore. When Mr. Young asked him what he had done about the problem when he was still sympathetic, all the man was able to say was, "Well, I must admit I was never involved."

Mr. Young's response was: "Well, nothing from nothing leaves nothing."

The point is that, unless we act upon our attitudes, upon our convictions, we might as well not have them at all. If I were to proclaim that I was all for the cause of the black man and then I headed for the suburbs the moment a black man moved next door to me, what good would proclamation be?

As lawyers, our major concern is equal justice, and we must strive to act on that concern now. Mr. Young's comment was a call for all of us to become activists — the law schools, the bar associations, the NLADA, the individual lawyer, and the individual citizen.

President Richard M. Nixon discredits the conclusion of the *Kerner Commission Report* — that the American society is a racist society — because, he feels that "this talk . . . doesn't help in terms of breaking down the prejudices."² He seems to miss the elementary proposition that, unless one recognizes the existence of a problem, one cannot begin action to solve it. It would be my guess that those of us who play ostrich and ignore the indications that we do indeed harbor a racist society in these United States will be of even less assistance in breaking down the prejudices.

Because we lawyers are involved with all aspects of life, we soon begin to assume that we know more about medicine than the physician, more about budgeting than the CPA. Let us not then make an exception of racism. If we as lawyers would be counted as people concerned with and involved in the mainstream of American life, racism is precisely what we must know about and act upon. The time to begin is now. The place to begin is with ourselves, individually and collectively.

This is the message that "Winter Rights — Summer Riots" brings. The time is now. The person is you.

² Chicago Daily News, Nov. 7, 1968 at 1.