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STUDENT RESPONSE TO THE URBAN CRISIS

BY PHILLIP H. GINSBERG*

Professor Ginsberg suggests some novel approaches for students to legal participation in the problems created by urban riots. Recognizing the simple fact that one of the best ways to remedy the destruction caused by riots is to prevent them from occurring, he proposes a concept of preventive legal service in the ghettos, staffed by law students, assisted by law school faculties and volunteer practitioners, with emphasis on empirical data collection and community participation. At the conclusion of Professor Ginsberg's formal remarks, a panel composed of Judge Alvin Rubin, U.S. District Court, Eastern District of Louisiana, Professor Dallen Oaks, University of Chicago Law School, John Britton, Howard Law School, Richard Doyle, Assistant General Counsel, Office of Economic Opportunity, and Professor Ginsberg discussed some of the issues raised in the formal presentation. The author's summary of the panel discussion follows the text of the major article.

THE topic of proper legal response to the problems posed by civil disorders has been widely discussed. Most of us have some familiarity with the *Kerner Report*,¹ specifically Chapter 13, as well as the ABA's publication, *Bar Leadership and Civil Disorders*,² dealing with this topic. Although the question of the involvement of law students may not have received as much attention, it would seem that the contributions which law students can make may be readily set forth. Consequently, while devoting some portion of my remarks to the general area of civil disorders, I would like to address myself primarily to the more basic question of what law students can do in response to the legal crises affecting all of our institutions, and what effect students can have not only on the seasonal disturbances, "but on the 'riots,' if my peculiar definition of the term be interpreted as the wholesale disregard of due process, which occurs in the lives of ghetto residents. The term includes not merely the riot of destruction, but the 'riots' which produce the frustration and alienation in our cities."³

One of the few beneficial consequences of the April 1968 disturbances in Chicago was that law students who were members

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¹ THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968) [hereinafter cited *Kerner Report*].

² ABA SECTION ON CRIMINAL LAW, BAR LEADERSHIP AND CIVIL DISORDERS (1968).

³ Although written more than a year before the Chicago Democratic Convention disturbances, the author's use of the word "riot" is not unlike that used in D. WALKER, RIGHTS IN CONFLICT: THE VIOLENT CONFRONTATION OF DEMONSTRATORS AND POLICE IN THE PARKS AND STREETS OF CHICAGO DURING THE WEEK OF THE DEMOCRATIC NATIONAL CONVENTION OF 1968 1,5 (1968).

of the University of Chicago's Legal Aid Association obtained an invaluable insight into the mechanical functioning of the judiciary and enforcement agencies during a time of crisis. The spectacle of approximately three thousand arrestees deprived of most of the essentials of due process constituted an important ingredient in one's law school education.

During the height of the riot, students were present in each of the courtrooms where so-called bond hearings were held and they assisted in the preparation for the hearings. Where possible, students interviewed defendants and relayed information obtained to the defendants' families (a process that otherwise would not have been undertaken).

After the mass arrests and mass hearings, law students interviewed defendants in the Cook County Jail and the House of Correction in order to prepare motions for bond reductions. In the absence of court personnel, students also served as unofficial employees of the state in the Criminal Court Building and tried to facilitate the bonding procedure. By means of this exposure the students were able to ascertain the extreme conditions prevalent in the detention centers, and the inordinate delays to which defendants and those attempting to assist them were subjected in attempting to post bond.

In addition to these functions, law students also had a hand in seeking to force the judiciary and other governmental agencies to rectify the abuses of due process. Approximately 15 of the law students, who attended the abbreviated bond hearings and observed the conditions in jail, prepared affidavits which were attached as exhibits to a petition seeking *mandamus* against the Chief Judge of the Circuit Court of Cook County and other responsible officials.⁴

From these experiences, it is clear that there are many roles for a law student to play in times of disorder. Ideally, in communities like Chicago, in the event of future disturbances, the role of the law student will not be as significant as it was in April — assuming the organized bar fulfills its responsibilities — however, the law student can still perform significant tasks. Briefly, these include the following:

1. Drafting model statutes, ordinances, and plans to deal with emergency situations. For example, law students in Chicago have helped to coordinate plans in the event of a further riot;
2. Acting as observers at various levels including the precinct station, the courtroom and the centers of detention;

⁴ See Ginsberg, *Volunteer Lawyers Retrieve Due Process in Chicago*, 26 LEGAL AID BRIEFCASE 207 (1968).

3. Acting as liaison between the volunteer lawyers and the various social agencies;
4. Assisting in the researching and drafting of suits seeking relief in cases where defendants were denied basic rights.

As I indicated at the outset, my definition of the term "riot" has more than seasonal significance. It also embodies the concept of constant turmoil for the ghetto dweller. Equally, the opportunities for law student involvement are present not only at times of dramatic conflagration, but on a day-to-day basis when the courts and other institutions are engaged in "business as usual." The law student in the poverty or legal aid program who seeks effective involvement in our urban problems will concern himself with those institutions whose policies and practices represent the other side of the coin in the issue of "law and order." He will insist that those who seek to enforce the law must also respect it.⁵

For example, it might be fruitful to compare the standards and attitudes of justice which one finds in Traffic Court with that found in the Misdemeanor Courts. Without unduly prejudging the inquiry it might not be surprising to determine that in Traffic Court, where a broad spectrum of the citizenry encounters "justice," the posture of the law is distinguishable from that in the Misdemeanor Courts, where thousands of ghetto residents have their sole or most meaningful contact with justice. Based on such a comparison, suggestions might be forthcoming on measures which would improve the quality of justice in the lower criminal courts.

Another institution where the law student in the poverty law program could document the phenomenon of the daily riot is that of housing. Current statistics reveal that approximately 15 million urban Americans live in substandard housing.⁶ The relative lack of progress in this area is demonstrated by the complaints expressed almost 30 years ago by Richard Wright's fictional character, Bigger Thomas, in *Native Son*:

He knew that empty flats were scarce in the black belt . . . whenever his mother wanted to move she had to put in requests long months in advance . . . He remembered that his mother had once made him tramp the streets for two whole months looking for a place to live . . . He had heard it said that black people even though they could not get good jobs paid twice as much rent as whites for the same kind of flats . . . He knew that black people could not go outside the black belt to rent a flat . . . they had to live on their own side of the line . . . No white real estate man

⁵ See Oaks, *Law and Order — A Two-Way Street*, 3 DIALOGUE 59 (1968).

⁶ Note, *Tenant Unions: Collective Bargaining and the Low-Income Tenant*, 77 YALE L.J. 1368 (1968).

would rent a flat to a black man other than in the section where it had been decided that black people might live.⁷

In addition to representation aimed at code enforcement, law school poverty law programs should consider representing tenant unions in collective bargaining, as well as the possibility of assisting community groups in obtaining public and private funds for new housing.

Another institution where the incidence of frustration and alienation cumulatively equals the intensity of the seasonal outburst is the ghetto school. The nature of the problem is well documented in studies such as the *Havighurst Report*⁸ and *Death at an Early Age*.⁹ A former Chicago school principal, Barbara Sizemore, ironically points out that the neighborhood school so fervently defended in certain sections of our cities is irrelevant in the ghetto where the doors are locked, the telephone is not answered, the education is inferior and, not surprisingly, the drop-out rate is high.¹⁰ An education expert, Dr. Arthur Pearl of the University of Washington, has commented that if the Marquis De Sade could have administered a ghetto school, he would never have taken to beating women.¹¹ Meaningful participation by the law student might include representing an aggrieved student before the appropriate agency or conducting classroom discussion and mock trials on the relevance and meaning of the law to the teenager.

What I am recommending is not merely a law school response to the most violent indication of the turmoil in our cities, but to the institutions which control the lives of ghetto residents. By influencing such factors as equality of ghetto justice, education, and housing, it may be that the efforts of law school poverty programs can help to facilitate a process so desperately needed to reverse the separatist pattern articulated in the *Kerner Report* and its supplemental studies,¹² and in the recent *Douglas Report*.¹³

In order to make such a vital contribution to our society, I am urging not only a broader concept of legal aid services in law reform, but a new approach in the method of delivery of these services. If the concept of remedial law is now insufficient, so too is the attitude with which such services have often been administered.

⁷ R. WRIGHT, *NATIVE SON* 210-11 (1940).

⁸ R. HAVIGHURST, *THE PUBLIC SCHOOLS OF CHICAGO: A SURVEY FOR THE BOARD OF EDUCATION OF THE CITY OF CHICAGO* (1964).

⁹ J. KOZOL, *DEATH AT AN EARLY AGE* (1967).

¹⁰ Address by Barbara Sizemore before the Chicago Law Forum, Apr. 18, 1968.

¹¹ Address by Dr. Arthur Pearl before Chicago Area Lay Movement, Mar. 20, 1967.

¹² Kerner Report, *supra* note 1.

¹³ THE NATIONAL COMMISSION ON URBAN PROBLEMS, *REPORT OF THE NATIONAL COMMISSION ON URBAN PROBLEMS [Douglas Report]* (1969).

Clearly the spirit of black pride and the philosophy of self-help dictate the manner in which reform as well as remedial representation by primarily white lawyers and students must be offered. An illustration of the sensitivity and perception required by the poverty lawyer is given us by the leader of the Black Consortium, a political action group in Chicago, who recently stated that at one time the white volunteer condescendingly remarked to the ghetto community, "Here is what I am going to do for you." When the black resident rejected this attitude, the next phase was, "What can I do for you?" This, too, was unacceptable. Today, to establish his good faith, the community practitioner must speak in terms of "Tell me what you want me to do."¹⁴

Having outlined the nature of the challenge and suggested the method for the response, I should also enumerate the availability of resources. Initially the law school poverty program enjoys the expertise of its faculty (for example, encourage your professor of commercial transactions to refine your defense of unconscionability). Similarly we should enlist the experience and influence of the local bar.

Second, since questions of law are inherent in every aspect of ghetto life, all the resources of the university should be utilized. For example, a program sponsored by law and business school students could facilitate the development of indigenous businessmen; cooperation with the medical school could lead to a community health project dealing with such problems as lead poisoning and drug abuse; and a joint effort with the school of social work could deal with the imperfections of the various welfare agencies.

Finally, as is true with all attorneys, our value as practitioners will be measured by the results we achieve for our clients. This fact, in turn, is governed by the relationship the program enjoys with the community. There are several steps we can take to enhance this relationship and attract the type of clients and cases which lend themselves to improving ghetto institutions.

First, carefully scrutinize the remedial case load for common adverse parties and hidden issues. Law schools which are not located in or close to inner city areas should consider the creation of store front offices which would assure a more truly representative case load.

Second, we should acquaint ourselves with community personalities and discuss our programs with them. In communities where there are no effective indigenous organizations we must be

¹⁴ Interview with Calvin Lockridge, Leader of the Black Consortium of Chicago, in Chicago, Illinois, June 18, 1968.

flexible and innovative. The assistance of churchmen and sympathetic community workers and politicians should be solicited.

Third, the professional personnel who staff our volunteer programs can be an effective link to the community. Since it is likely that there are as yet an insufficient number of black attorneys to staff and direct our programs, strong consideration should be given to employing and training indigenous legal assistants and other paraprofessionals.

Finally, we should invite the community's participation in the determination of policy and priorities. The formation of a representative community advisory board might prove an important factor in establishing community rapport. For example, the board might advise that in the remedial area resources should be allocated to criminal or domestic representation, or that a reform program should concentrate on such issues as consumer credit or police practices.

In conclusion, in our brief discussion of riots and the institutions which provoke them, we have proposed techniques and approaches that to some may appear radical. Indeed, to stress representation of the client *qua* community ahead of the significance of legal aid involvement as a part of one's law school education may be regarded as heresy. In my opinion, we cannot regard our law school legal aid program as primarily a component of the curriculum; rather the emphasis must be placed on the *value* of the services rendered to the community. The urgency of the urban situation precludes the more traditional approach. To rely once again on a contemporary authority, W. H. Ferry, of the Center for the Study of Democratic Institutions, in an article entitled "Will Black Colonies Be the Final Solution to the Failure of Integration?" states:

[B]lacktown now will never accept the token of integration for the reality. Its dreams of princes and dominions are no longer related to Whitetown. Blacktown is tired and fed up with waiting. It will not immigrate into Whitetown with its passport stamped "conditional on good behavior as determined by white authorities." What it will do instead is unclear . . . its options are limited. What's certain is that it cannot any longer be expected to deceive itself with illusions of integration. Blacktown is destined to exist separately from Whitetown.¹⁵

Although one may reject Ferry's grim conclusions, his appraisal of the ghetto attitude may well be accurate. We, in our profession, both lawyers and law students, cannot expect to resolve the racial dilemma; however, we must confront it.

¹⁵ Ferry, *Will Black Colonies be the Final Solution to the Failure of Integration?*, KATALLAGETE: JOURNAL OF THE COMMITTEE OF SOUTHERN CHURCHMEN, Spring 1968, at 16.

PANEL DISCUSSION

The discussion focused on two broad questions generated by the April civil disorders: (1) Should the law schools be formally involved in providing service to the indigent community and if so, to what extent? (2) Has the organized bar, in protecting the rights of mass arrest and ghetto resident defendants, honored its commitment to equal justice?

The law schools' responsibility was initially examined in the context of whether they should formally prepare law students to take part in the legal aftermath of civil disturbances and suspend classes for that purpose. It was agreed that the curriculum should prepare the volunteer law student to provide effective assistance in such an emergency. For example, a course in criminal procedure should deal with the various factors the court must consider in the setting of bond, thereby enabling a law student to assist counsel by soliciting from the defendant information that would facilitate his release on bond. However, despite agreement that the experience which students may obtain, as well as their contribution to the legal process, may outweigh the loss of academic hours, it was felt that formal participation by the law schools to the extent that students be excused from classes is inappropriate. To the contrary, it was observed that if a law school assumed any significant responsibility for providing for the representation of defendants, it would not only testify to the failure of the local organized bar, but would perpetuate that failure.

On a similar note, with respect to the scope of the students' formal court room participation, it was noted that if local rules permit students to represent defendants under normal circumstances, they could also appear in times of disorder; however, absent such a rule the role of the student in the wake of a riot would be confined to interviewing the defendant and otherwise assisting counsel.

From an examination of the position of the law school with respect to student practice during riots, the discussion moved to the question of academic credit for participation in a legal aid clinical program.

Although it was acknowledged that the law school curriculum could profitably include more instruction as to the practical application of the law, there was considerable agreement that it would be inappropriate to grant credit solely for providing clinical legal assistance. While participants in legal aid programs obtain significant educational benefits, this should be regarded as a by-product of a legal education. In addition to the fear that awarding credit might attract students whose commitment and participation would

be minimal, it was observed that the formal role of the law school was not to perform community services.

However, while rejecting credit for purely clinical activity, many asserted that it would be consistent with the "mission" of the law school to include the clinical experience as a component of a formal course. For example, courses are now being taught at Harvard, New York University, George Washington and others which combine an intellectual approach to urban problems with a placement in representative governmental agencies and community organizations.

Similarly, while not involving itself directly in a legal services program, the law school could compliment a "poverty law clinic" by offering courses directly related to such urban problems as housing, employment, and welfare. The relationship between the clinic and the curriculum would be further enhanced by enabling the student, as part of the formal course requirements, to represent or counsel a client faced with a legal problem dealt with in the course. For example, as part of a course dealing with employment or labor, law students could represent complainants before the state Fair Employment Practices Commission of the Federal Equal Employment Opportunities Commission. Similarly, courses in property, criminal law, and administrative law could include clinical components wherein the student would represent clients in housing court or before commissions dealing with charges of discrimination in the sale or rental of property, clients charged with a crime or alleging police misconduct, and clients challenging the administrative decision of the state or federal welfare agencies. Finally, courses dealing with corporate law and business planning could contain a clinical component permitting students to counsel developing minority businessmen. Experimentation in these areas is being conducted at the University of Chicago and other law schools.

Examination of the manner in which the organized bar protected the rights of defendants arrested during the April riots was prompted by a concern that in some areas the law schools and law students were called upon to fill a void created by the inactivity or indifference of the legal profession. It was felt that in those areas where the concern was justified, the bar, in assigning significant responsibilities to students, was offering students educational opportunities in theory but in fact was exploiting them.

While recognizing that the ghetto problems illustrated by the April riots should be of vital concern to the legal profession, members of the audience expressed scepticism that traditional practitioners, because of the exigencies and pressures of their practice, would involve themselves in mass arrests or the institutional im-

balances of the ghetto. Such a reluctance on the part of the profession, to whatever extent it may exist, was regarded as additional reason for student participation and curriculum involvement in the problems of the poor. Presumably, in addition to the educational experience and the opportunity for service, the end result of such activity would be a new generation of lawyers with a broader self-image.