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White communities, and solicits suggestions for procedural improvements in the Detroit judicial system.

Although the articles presented in this section deal with riots in only two American cities, it is felt that the attitudes, criticisms, and suggestions they contain are representative.

CHICAGO: 1968

BY FRANK JONES*

THERE are those who say that there was in the city of Chicago between April 13 and April 15, 1968, a total breakdown in the system for the administration of criminal justice. There are those who say that there was a cleverly calculated plan of conspiracy to make it appear that the system had broken down, that the system was used (in setting bail, for example) to keep masses of people — guilty and innocent alike — incarcerated. Still others say that there was no breakdown at all, that the courts functioned very well, and that everything went quite smoothly.

It doesn't really matter which one of these alternatives is subscribed to; the fact is that the effect on the lives and the families of the hundreds of arrestees was identical: Justice, fairness, and, in some instances, judicial integrity seemed to have taken a holiday.

When I was asked to speak about the Chicago experience, not only from the vantage point of a black lawyer, but also as a black person who grew up in the neighborhood that was destroyed, my first thought was that to come to this conference was a waste of time — mine and yours. Did people really want to hear the truth, especially if that truth underscored the apathy and the sluffing off of responsibilities and hypocrisies — yes, and hostilities? It then occurred to me that even if only one person here began to recognize the significance of the recommendations for the administration of criminal justice as outlined by the National Advisory Commission on Civil Disorders[1] and began to push for a committee to oversee the implementation of these recommendations in every major city in this country, then my speech here would have been well worthwhile.

It is known that the discretionary enforcement power of police officers, jail officers, and court officials increases during periods of riots or civil disorders and that the adversary procedures for the protection of the rights of the accused give way to the discretion of the administrators. Abuses are compounded, arbitrariness and

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[1] NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS: REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (KERNER REPORT) (1968).

unfairness increase, and an already distrustful, suspicious, and anxious mass of poor people become even more convinced that the system is designed to emasculate them. This did and continues to happen in the ghettos of Chicago — and, I suspect, in every city throughout this country.

Let me review my own experience during the April riot in Chicago. On Friday, April 5, after the death of Dr. Martin Luther King, I left my office as administrative lawyer for the Legal Aid Bureau in the downtown section and headed for one of our West Side offices in the Lawndale district, which was in the heart of the riot area. High school students from two West Side high schools, Crane and Farragut, were roaming or parading through the City's downtown area when I left the office. There were policemen present, who, I might add, acted in a responsible, professional manner — Mayor Daley's statement to the contrary notwithstanding.

By the time I reached West Madison Street, parts of it were burning, and looting had begun to occur. For fear of personal injury to themselves and at the suggestion of the director of the Urban Progress Center, the personnel at the Lawndale office had left. We had reports that burning and looting were taking place near the Midwest office, another legal aid office on the West Side.

When I arrived at the Midwest office, the lawyers were still working. One of the lawyers had gone to the Fillmore District Police Station, at the request of a parent of a juvenile who had been detained. Youth officers had asked the parent to come to the station — a normal procedure. Our lawyer was able to get what is called a station adjustment — a procedure by which a juvenile is released to the custody of his parents. At that point, normal procedures were still in effect. The system had not yet collapsed.

As the night wore on and as more and more arrests were made, the distinction between the treatment of juveniles and adults became much more blurred. Detention hearings for juveniles were dispensed with. The Audy Home, a juvenile detention home, became filled and juveniles were being detained in quarters with adults. The argument was advanced that this was happening because the juveniles had, in fact, lied about their ages. This argument was erroneous. I personally handled four cases involving 15-year-old boys who were arrested for curfew violations. They were incarcerated in County Jail, even though the officials knew their ages. I was told simply that there was no place else for them to go (incidentally, they stayed in jail for three days because the officials in the County Jail couldn't locate them and didn't know they were there).

On Saturday, April 6, arraignments and bail hearings were held at Central Police Headquartaers. Only attorneys from agencies such

as the Legal Aid Bureau, the ACLU, and the Public Defender's Office were present. Volunteer lawyers from the Black bar association, that is, the Cook County Bar Association, were being stopped at the door by policemen (who, incidentally, were guarding all entrances to the building) and were being asked what their business was. In several instances the lawyers were not allowed to go up to the courtrooms.

The agency lawyers, with the exception of the Public Defender, were relegated to the task of trying, as best they could, to get information from the accused to their relatives about where they were being taken. This was unfortunate, because the lawyers were being given incorrect information by court officials, either inadvertently or purposely — I can't say which. Thus, those persons who were detained in jail were unable to make bail because their relatives were unable to locate them.

By Monday morning, April 8, there was a line of people two blocks long outside the Criminal Courts Building. They had been there since very early in the morning. They were trying to put up bail, or at least to locate their relatives, and they stayed there all day long. Many of them told me that when they finally talked to an official, they were told to come back the next day, Tuesday.

The issuance of misinformation was not the only mishap that occurred in the courtrooms on Saturday, April 6. Attorneys were harrassed by the bailiffs, and at least one judge threatened them with contempt of court when they objected to the courtroom chaos. Even though bail was being set at a production-line rate and no meaningful hearings were being held, there appeared to be some modicum of reason for a short period of time in the amount of bail being set — from $1,000 to $5,000 for an offense that constituted a felony — unlike the bail set during previous riots, which ran from $10,000 to $25,000.

Thus, initially, the bail was reasonable. Then, across the board, from Saturday until Easter Sunday, a week later, no bail was set below $10,000. Clearly, this high bail was being used for detention purposes.

Bail was set regardless of individual circumstances. No meaningful hearings were held. A case in point: On Easter Sunday, I represented a man whose bail had been set a week before at $5,000. Undisputed testimony brought out that this man had been on the same job for 13 years, had lived in this community for 20 years, had a wife who had been blind for several years, had eight children, and had no police record of any kind. The facts of the case (not relevant in a bail hearing, since the amount of bail set is simply for the purpose of insuring that the accused appears in court) are

that on April 6 this man had taken his wife to church at about 7:30 p.m., and had returned home to prepare and eat dinner with his children. He then left his home at 8:30 p.m. to walk the three blocks to the church to pick up his wife. About a block from his home, he encountered teenagers running down the street. Policemen accosted him, arrested him, and charged him with looting. I asked that the judge release this man on his own recognizance. The judge graciously reduced bail to $2,500 and informed me that if I wasn't satisfied with that, he would raise it back to $5,000. This example illustrates the incredible insensitivity shown by the judges toward the problems of the people arrested. Many more such cases can be documented in the files of the Cook County Bar Association.

On Monday, April 8, the scene shifted to the Criminal Courts Building, Cook County Jail, and the House of Correction. First, it was impossible to locate any prisoners. Even if they could have been located, a hearing for reduction of bail could not have been held. The vestibules of the jails were crammed with people, the corridors of the Criminal Courts Building were crammed, and people who were trying to locate their relatives and friends were standing outside in lines. Emergency detention camps had been set up at the Navy Pier, which was the old University of Illinois campus. In the bullpens behind the courtrooms, 180 people were locked up, but the County Jail officials didn't know they were there.

On that Monday, parents of a juvenile asked me to locate him and try to effectuate his release. He had been charged with looting. On the prior Saturday night, his mother had received a phone call from a legal aid lawyer who was at the central police station where they were holding the "bail hearings." He had informed her that her son had been arrested and was being taken to the County Jail. Since he was a juvenile, a youth officer would have called her under normal circumstances, and the hearing would have been held in the Audy Home or Family Court.

I went to the County Jail, checked the register, and talked with the officials who also checked the register. There was no record of the boy. I went to the House of Correction and checked the register. I went to the Audy Home and checked the register. I went to the central police station lockup and checked the register. I went to the District Police Station where he had been taken immediately after he was arrested. There *was* a record there, but it revealed only that he had, in fact, been arrested. Because the boy's mother was fearful that something on the order of the Algier's Motel incident[2] had happened to her son and was understandably

[2] *See* J. HERSEY, THE ALGIERS MOTEL INCIDENT (1968) for a factual account of that incindiary incident.

anxious, I doublechecked all of these places again. I was unable to find her son.

On Wednesday, the boy's mother called me and said, "My son has got to be in the County Jail. I just got a letter from them." I went over, armed with this letter; they did, in fact, find that he was there.

These kinds of experiences were multiplied twenty, thirty, and fortyfold by the lawyers of the Cook County Bar Association who later gathered together and related their experiences. There were lawyers who were not allowed into courtrooms. There were lawyers who couldn't find their clients. There were lawyers who had gone to the jails again and again, but the jail officials were not able to determine where their clients were — or even if, in fact, their clients were being held at all.

On Wednesday morning, April 10, a woman came to me and said her sister was being held in the House of Correction on a $5,000 bail, and she wanted me to try to get her out. The sister had only one kidney and lived with her mother who was afflicted with a very serious heart ailment. I went to the chief judge of the Criminal Division, and he informed me that two judges were sitting for bail hearings. I went to the courtroom. The clerks, the bailiffs, and the assistant state's attorney were having a kind of rotating conversation about fishing and golf. The judges were in the backroom, also having a conversation. I went into the judge's chambers, told the judge what the problems were, and asked to have an immediate hearing for this particular person. One of the judges informed me that hearings couldn't be held and bring-back orders couldn't be signed because there weren't any files. Nobody knew where the files were, or even if any files were in existance. I contacted the chief clerk who said in effect that he didn't know where the files were either.

I was finally able to convince the judge that he had the power to order a clerk to prepare what is called a corrected minimus, which, when presented to the bail official, is in fact a reduction of bail. He signed such an order on the basis of my explanation concerning the circumstances of the detained woman. That done, the judge went back to his conversation!

Although the chief judge had indicated that hearings would begin on Wednesday with 400 people being presented, none were held. Thus, for three days, while people were being arrested in droves, no hearings were held.

On Wednesday night, I attended a meeting of the Cook County Bar Association. We found that each of us had encountered comparable experiences, and we resolved to send a telegram to the chief

judge demanding a conference with him for the purpose of ironing out some kind of procedure in order to eliminate these abuses. We were also anxious to effectuate the release of some of these detained people because they had jobs and because they had families who were concerned about them; moreover, they were, for the most part, innocent and without criminal records. The judge told us to tell our problems to his administrative assistants and left the room. Because we felt that the administrative assistants were at least partially responsible for some of the chaos, we filed a petition for habeas corpus instead. This was denied.

Again, volunteer lawyers were told by the judges that hearings would be held for 400 prisoners on Thursday. In fact, only 20 hearings were held by one judge, in one courtroom, and even that judge packed up and left at 2:30 p.m.

On Friday, still no hearings were held, and on Saturday, 30 hearings were held with the judge leaving at 3:30 p.m. Meanwhile, hundreds of people were languishing in the County Jail in unsanitary and unsafe conditions.

Significantly, throughout the week, the only lawyers that showed up in the Criminal Courts Building were from the Legal Aid Bureau, the ACLU, Northwestern University Law School, and the Cook County Bar Association. Conspicuously absent were lawyers from the Chicago Bar Association. The Cook County Bar Association lawyers were there because they were informed each day that hearings would be held. Did the lawyers from the Chicago Bar Association know that there wouldn't be any hearings? In fact, several of my friends who are members of the Chicago Bar Association and who work in large law firms in Chicago told me that they had tried to volunteer their services to the courts earlier in the week. Court officials had told them, in effect, "We will call you when we need you."

The argument will undoubtedly be tendered that hundreds of people were released on recognizance bonds throughout the week. While this is true, the hundreds that were released were people arrested for curfew violations — teenagers for the most part. They were released through the efforts of the Civil Legal Aid who had prepared sheets of recognizance bonds and presented them to one of the judges. However, no hearings were held in these cases.

Again, on Saturday, only one judge sat for hearings, and he left at 2:30 p.m. Members of the Cook County Bar Association and the volunteers from the legal services programs went to the Assistant State's Attorney in charge of the riot procedures and asked him why there hadn't been more hearings. His answer was that nobody had ordered these people over from the jail, and he couldn't.

Another curious fact now emerged. The Public Defender had indicated that he had filed appearances in every case in which rioters were involved. Since hearings could not be held for the reduction of bail, because nobody had ordered the people over from the jail, we asked the Assistant State's Attorney at 4:00 p.m. on Saturday night: "Why don't you let us go into the jail, take the names of the people tier by tier, and give the names to you? Then you can get an order entered to have them brought over for hearing on Sunday." To my amazement, he agreed.

At 8:00 p.m., the chief judge was called. Four judges were sent over for Easter Sunday; four courtrooms were in operation; 400 bail hearings were then held — hearings that should have been held on Monday the week before. Even then, out of 400 hearings, there were not more than five people who were released on recognizance bonds. That is an incredibly low percentage when one considers the fact that most of the people who were arrested were, in fact, family people who had lived in the community for long periods of time and who had no prior arrest records.

There are a few observations I would like to make before I close. If there wasn't a conspiracy, as some people have charged, there was at least a great amount of conscious parallelism. Otherwise, how, after nothing had been done from one Friday to the following Saturday, could an arrangement be made on Saturday night at 8:00 p.m. for four judges, four courtrooms, and a bevy of public defenders and state's attorneys to be present and available by Sunday morning, and Easter at that? How could this sudden decision come about?

There have been many discussions about what happened and why it occurred. The Cook County Bar Association says: "Well, it occurred because we were so persistent and worked so hard all week long." The Legal Aid Bureau and the Cook County Legal Service Program says: "Well, it occurred because we filed a writ of mandamus to the supreme court." I don't subscribe to either of these theories. I think the logjam broke because it was scheduled to break at that time, because those who make the decisions with respect to when and how hearings are to be held in Cook County decided that there were not going to be any hearings during the week of April 8 through 12, that people were going to be locked up and were going to stay locked up until things cooled off. By Easter Sunday, things had cooled off and hearings were begun. Thus, I subscribe to the proposition that the Cook County courts ran very smoothly during the riot period: They ran exactly according to plan.

If people really care about solving the conditions that breed

riots and want to obtain some profound insight into the riots — why they are occurring and how or if there is anything that can be done about them — I would suggest reading *Black Rage*,[3] an excellent and recent book co-authored by professors at the University of California at Los Angeles.

In addition, there is the study that has been released by the National Advisory Commission on Civil Disorders,[4] containing some interesting and valuable statistics. Finally, the implications of what happened in Chicago seem to me very clear. God help us if we don't cure the actual ills that we endure.

CHICAGO: 1968—A RESPONSE

BY BENJAMIN S. MACKOFF*

THE recent outbreak of rioting in our cities and the mass arrests which follow present new challenges to our legal system for which we as lawyers receive little formal training. Even those of us directly concerned with the administration of justice have not had sufficient experience in contending with the added burdens imposed on the courts by the arrest and detention of large numbers of persons to qualify as experts. We in Cook County, however, are constantly striving to develop procedures which will insure that justice is fairly and effectively administered despite the increased pressures; and, therefore, we welcome suggestions from others who have our same objectives. I would have been especially pleased if the previous speaker had thought to make such a contribution because of his experience during the April riots in Chicago.

But, sometimes we lawyers are the victims of an advocatory style of thinking which makes us so identify with those we represent that we are led to attack the people they oppose rather than the practices we condemn. This type of thinking and the statements which it provokes only tend to polarize the various segments of the community and prevent the kind of inquiry which we as lawyers are dedicated to pursue. Therefore, rather than respond to such statements, I submit for your attention a procedure for use in mass arrest situations which was developed by our court in cooperation with the organized bar of Cook County. This procedure is based upon our experience during the April riots in Chicago which I shall

[3] P. COBBF & W. GRIER, BLACK RAGE (1968).

[4] NATIONAL ADVISORY COMMISSION REPORT, *supra* note 1.

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