

Denver Law Review

Volume 46
Issue 1 *Symposium - Riots and the Law*

Article 9

April 2021

Detroit: 1967

Alfonso R. Harper

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Alfonso R. Harper, *Detroit: 1967*, 46 *Denv. L.J.* 48 (1969).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

DETROIT: 1967

By ALFONSO R. HARPER*

RECALLING July 23, 1967, I would ask you to imagine, if you will, hundreds and hundreds of men and women shoved together in a concrete masonry building, standing shoulder to shoulder without room to fall down even if they fainted, not to mention sitting if they become weary, all in the middle of their own waste for any number of hours — 14 to 28. Imagine rows and rows of buses — dozens of them — around the police headquarters, the criminal courts building, and the county jail, packed with as many as 2,000 men who remained in these vehicles for as long as 48 hours with little opportunity to have sanitation relief except through some improvised facility within the vehicle.

All of this happened in Detroit during the week following July 23, 1967. Despite the fact that these events would appear unusual and abnormal, I submit that the method for handling mass arrests in Detroit in July of 1967, and the methods employed during all of the past half-century for handling individual arrests or arrests in small numbers, differed only in terms of magnitude rather than in terms of attitude. There has never been any consideration to speak of for prisoners in the city of Detroit, particularly when those prisoners happen to be Negro. I know this because I have been one of those prisoners; thus, my knowledge in this regard has not come vicariously. Indeed, I have been one of the people grabbed up, shoved into a scout car, taken to the police headquarters without even the inquiry usually expected, and then later released upon discovery that I was a practicing attorney.

What causes this situation? It emanates from a virtual lack of consideration for people who happen to be Black, as, in this case, the overwhelming majority of those arrested in July 1967 were. Of course, a handful of White persons were arrested during the disturbance — probably 75 or 100 out of approximately 7,000 persons arrested. Yet I have not heard one word from officialdom in Detroit to the effect that the public would not stand for this kind of practice again.

Like many other people, I could not predict the disturbance of July 1967. I'm just not sophisticated enough to predict such a radical change. But, I wasn't the only one who was caught off

*Attorney, Legal Aid and Defender Association, Detroit, Michigan.

guard. The criminal courts of Detroit were also obviously unprepared to handle the situation.

The technical charge on which most of the several thousands of arrested persons were brought before the courts was that of entering without breaking, which carries statutory punishment just below that for the common law crime of burglary or the statutory crime of breaking and entering. Yet, bail bonds were fixed at \$10,000 to \$25,000, and a day or so later, bail bonds ran as high as \$10,000 for alleged curfew violaters.

Oddly enough, of the more than 7,000 people who were arrested, the number that were eventually convicted of a felony was negligible. Many were convicted of, or pleaded guilty to, a misdemeanor known, under our statute, as entry without permission of the owner, carrying a 90-day maximum sentence. Within 4 or 5 days after the commencement of the disturbance, the courts seemed to recover their reason, and, in many instances where they were able, corrected their errors and released on personal recognizance many of the people who had been held on high bond. By that time, however, many had already posted bonds. I recall, particularly, one case where a 48-year-old prisoner, who had no prior criminal record, was charged with entering without breaking. The specific facts alleged were that he was discovered coming out of an already vandalized and open grocery store with merchandise valued, by police accounting, at \$2.08. His bail was set at \$10,000. His very elderly parents mortgaged their home to raise the \$1,000 premium necessary to pay that bond. A few days later, when the man was brought before the court, the judge was asked to reduce the bond and, although he obliged by changing the bond to one of personal recognizance, the premium had already been paid and no recovery of this money was possible. This man was later convicted of the misdemeanor of entry without permission of the owner and sentenced to exactly those 4 or 5 days he served in jail, but his parents' thousand dollars was already gone.

The entire administration of justice in this country is affected to a greater or lesser extent by race. Even when Blacks sit on the judiciary, they too, to a great extent, represent "the establishment." Their strong desire to belong to the establishment sometimes keeps them from being as merciful and equitably judicious with their fellow Black citizens as they might otherwise be. We are not, therefore, speaking merely about a group of White judges who administer justice; we are talking about judges who administer justice or something that is described in terms of justice.

The courts of Detroit have shown some signs of improvement since the disturbance of 1967. A number of measures have been

instituted in the Recorder's Court that should result in an improvement of justice. The Detroit Bar Association deserves some credit for urging these improvements, but I would indict the group we normally refer to as the Clinton Street Bar Association, consisting of that small group of lawyers who practice exclusively in the criminal courts. Much of what happened in June was the fault of that Clinton Street Bar, whose members, virtually without exception, walked into the courts with their clients and waived their right to a preliminary examination. Thus, even if the judge might have been inclined to dismiss the charge for lack of proof or probable cause, waiver of the hearing by the attorney meant that the defendant would automatically be bound over for trial on the felony.

The best representation that was obtained for defendants came from volunteer members of the Detroit Bar Association, many coming from "blue stocking" firms that practice principally in the civil area. These volunteers were "bright-eyed" young chaps who handled their cases generally with the same zeal with which they would handle a negligence case in circuit court. In many instances, they seemed a bit odd when compared to the Clinton Street Bar members who so often literally waltzed their clients through the courts without protecting their rights. Thus, if I would indict the police, and to some extent the bench, I certainly would do the same for that small segment of the bar which mishandled their clients' cases.

In passing, it would be only fair to state, that at least one member of the Recorder's Court bench was untouched or little affected by the apparent hysteria by which most of his fellow judges seemingly were influenced to varying degrees.

Given the knowledge in advance that a civil disorder such as that which occurred in Detroit was going to take place (and I had no such knowledge), I could have predicted that a tremendous number of people would be arrested without the police or any citizen observing the crimes supposedly committed by them. I would also have been able to predict that a significant number of those people would be beaten and abused — as they in fact were — because this has been happening in Detroit for a long, long time, and it has occurred in all of our major cities.

The permissive attitude of the public is one possible explanation for this recurring abuse. We have always accepted the explanation for police brutality — that the Negro arrestee had resisted arrest or had in some way interfered with the police officer in the performance of his duty (in 99 percent of the established instances, Negroes are the victims of the brutality and White police officers are the perpetrators). It should be understood that this Negro, in

almost every case, is the same one who, until after World War II, was too cowardly, according to official reports, to walk armed into battle during wartime. For reasons that I cannot possibly understand, the police officers are always able to convince the general public and officialdom that this same Negro, from some unknown source, has a terrific amount of courage and bravery in the face of the police billyclub and will, in almost every instance, fight back and resist arrest. I say he probably ought to, but the facts are that he does not.

I wish I could say something of value about what we really can do in the event of mass arrests in the future. My attitude is very pessimistic. We all hope that there will be no further occasion for conducting mass arrests, certainly not on the magnitude experienced in July 1967; but, actually to avoid it calls for a change of attitude on the part of almost everyone concerned. There must be an absolute rejection of the nice little explanations when incidents do occur.

Some might be so naive as to believe that justice is administered irrespective of race, creed, or color. If so, I would point out the following: A few years ago, some of us tried to discover how many Whites, who had been actively involved in the hundreds of violent deaths of Negroes in Wayne County (where Detroit is located), had been convicted of first-degree murder. We could not determine this from any documents; we could not gather all of the hundreds of transcripts where trials were held to determine the respective races of the parties involved. We did, however, ask several judges and lawyers who had practiced in that county for 40 years or more. In not a single instance were we able to uncover any information indicating that any White person who had slain a Negro had ever been convicted of first-degree murder in Wayne County, at least not in this century. At the same time, any number of Negroes have been found guilty of first-degree murder where Whites were the victims. Indeed, the records also indicate that offenses committed by Negroes against other Negroes invariably carry lower penalties following conviction than similar convictions where a Negro is the offender and a White person is the victim. Is this coincidental — or is there a factor at work that many would rather ignore?

Let me give still another illustration: In many instances, it is very difficult for Negroes to have their complaints of law violation heard. Last year, I spent the major part of 10 working days trying to assist a 14-year-old girl in obtaining a recommendation for a warrant in a statutory rape case in which all the evidence had been documented. I actually had to invoke the assistance of the mayor's office and the chief prosecutor before I could obtain this recommendation. The case was so strong that, although the trial lasted

five days, the jury stayed out less than an hour and brought back a verdict of guilty as charged. Does an incident such as this indicate an equality of justice?

Perhaps we should first examine ourselves. Those of us who have considered ourselves virtually free from prejudice would bear some self-examination. The emotional content, mixed with a bitter bigotry, that makes one man move out of his home when a Negro moves next door drives another man to participate in the lynching of a Negro. The difference is only one of degree; it was this same emotional content that glaringly showed itself in the conduct of those engaged in so-called law enforcement and so-called administration of justice in the city of Detroit before and during the 1967 disturbance.

If any point of value can be made on the subject of mass arrests, it must be that the rights of the individual must be protected. First and foremost, those who, by virtue of position or office, are charged with the administration of our laws must be constrained to the utmost to avoid the influence of racial prejudice. Then, perhaps, the question of "how to handle mass arrests" will become moot.

DETROIT: 1967—A RESPONSE

By JUDGE VINCENT J. BRENNAN*

I AM not prepared at this time to accept my good friend Alfonso Harper's statistics on the method and the selection of cases and how they were handled in the Detroit riot of 1967, but I intend to look into it, because he did point out certain interesting facts. He said it was odd that, during the riots, some 99 percent of those arrested were Negro. The reason for this phenomenon is very simple: At that time, the incidents occurred in a predominantly Negro neighborhood—the 12th Street area, similar to the North Clark or Rush Street areas in Chicago. Twelfth Street is lined on both sides by pawnshops, bars, nightclubs, cheap rooming houses, cheap markets, and places where prices are high, services slight, and quality virtually negligible. The street is inhabited by pimps, prostitutes, and dope peddlers. It is a street any city could do without. The riot began on 12th Street and became uncontrollable within hours. Since the area was from 97 to 99 percent Negro, the arrestees were also 97 to 99 percent Negro.

We in the judiciary were trying to do our best during this time, but we were harrassed from all sides. We had no plan or

*Former Chief Judge, Recorder's Court, Detroit, Michigan. Presently, Judge, Michigan Court of Appeals.