Riot Control Legislation: A Necessary Evil

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INTRODUCTION

As many of the other articles in this issue have suggested, the only true solution to the problem of riots and other racial disorders is the elimination of the root causes of racial tension. To this author's way of thinking, riots are a fruit of racial prejudice, a state of mind. Prejudice is outwardly manifested in the wide variety of forms of discrimination which appear in American society today and which have been discussed at some length in other articles in this issue. To be sure, the government has placed, and undoubtedly will continue to place, legal limitations and restraints on discriminatory practices. Unfortunately, since prejudice exists only in the mind, it has been and will continue to be impossible to cleanse the nation of all prejudice and discrimination with one whisk, or for that matter, a multitude of whisks, of the legislative or judicial broom. Ridding the country of prejudice will be a painfully slow process. Consequently, there remains the ugly reality of possible racial disorders in the years to come.

Once the possibility of rioting is admitted, the only logical conclusion is that a comprehensive program for riot control is needed. As the Kerner Commission reported: "Prevention is paramount, but the experience has shown that refusal to plan is foolhardy and can only compound the human agonies of civil outbreak." Although reactionary riot control plans are a distinct possibility, an intelligent plan can be developed if the purposes and effects of the control measures are carefully examined.

Essential to the sensible planning for any riot control is the placing of riots in their proper perspective. Contrary to what the


3 See, e.g., Virginia House Bill No. 365, § 18.1-254.10 (1968), which would have required authorities to arrest any persons in a riotous assembly who failed to disperse when ordered to do so. This proposal would also have permitted authorities to form a posse to deal with rioters when authorities merely expected a riot. Fortunately, the final bill, Va. Code Ann. § 18.1-254-8 (Supp. 1968), provides discretionary arrest power and permits the organization of private citizens to help disperse riotous crowds only after such crowds have formed and failed to disperse.

news media have often suggested, riots, even as serious as Watts, Newark, and Detroit, are neither insurrection\(^5\) nor guerilla warfare.\(^6\)

The notion of an insurrection has little meaning, for snipers have no intention or capability for holding territory, nor are they part of a scheme to do so even temporarily. . . . The guerilla concept is also not relevant since guerillas are part of an organization, proceed with a plan, prepare paths of withdrawal and develop sanctuaries.\(^7\)

The current type of riot is more an emotional outlet of the hate and disgust which the generally law-abiding rioters\(^8\) feel toward a society which has treated them unfairly. "Riots . . . may involve large numbers of people, many of whom are usually law-abiding . . . . [This is] because acts of rioting are irresistible elements of contagious emotion rooted in commonly shared and commonly expressed feelings of frustration and rage."\(^9\) Another related fact about riots is that they are presently a much different breed of disorder than the "race riots" of the first half of this century.\(^10\) No longer do riots consist of violent confrontations between masses of private black and white citizens. The confrontation is now between the authorities and black rioters bent upon looting and destroying property. Consequently, any plan for control of rioting should not, as some authorities have suggested, treat the riot area as a war zone;\(^11\) it should be treated as a part of the city in which angry citizens are venting their emotions. "We have a very special situation here in America. We’re not just fighting an alien conspiracy; we are up against some of our own citizens . . . who have many complaints about their lot in life."\(^12\)

A final and vitally important consideration in planning for the control of riots should be the realization that only a very small portion of the citizenry of a riot-torn area actively participates in the riot. This portion has been variously estimated at between

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\(^7\) M. JANOWITZ, SOCIAL CONTROL OF ESCALATED RIOTS 15 (1968).

\(^8\) *California Governor’s Commission on the Los Angeles Riots, Violence in the City — An End or a Beginning 24* (1965) [hereinafter cited as CALIFORNIA RIOT REPORT]; *The Real Tragedy of Newark*, U.S. NEWs & WORLD REP., July 31, 1967, at 31 [hereinafter cited as Newark].


\(^10\) M. JANOWITZ, supra note 7, at 9-10.


\(^12\) *Insurrection: Outlook in U.S.*, U.S. NEWs & WORLD REP., Apr. 29, 1968, at 41.
2\textsuperscript{13} and 11\textsuperscript{14} percent of the population. In addition, only one out of every four persons in the riot area approves of the rioting.\textsuperscript{15} Therefore, riot control planners must be extremely careful to avoid the overreaction which could harm and alienate non-participants.

With the foregoing principles in mind, the planners of riot control can develop a more effective program which will afford a maximum amount of riot control with the creation of a minimum of friction between the authorities and the residents of the riot area. Forward-looking riot control planning must necessarily consist of two elements: planning of the actions of the personnel who will be deployed to control the riot and legislation to provide both authority for and limitations upon the control procedures employed. This article suggests various provisions which might be included in such legislation.

I. SCOPE OF THE LEGISLATION

A learned student of the riots which have racked this country in the past 5 years has suggested that riots develop in four distinct stages.\textsuperscript{16} The first stage consists of a precipitating incident, which is most often an innocuous confrontation between the police and a member of the black community. This incident, usually an arrest, would go unnoticed except that it occurs at a time and place when many members of a minority group are present. As these people gather with others who have received the rapidly spreading word of the arrest, the second stage of the riot ensues. This is a confrontation between minority agitators and more respectable minority leaders. The former group denounces and shouts obscenities at the white community, particularly the police, while the latter group attempts to calm the situation. If the crowd is not dispersed peacefully, the third stage develops. It is characterized by window breaking, rock throwing, and widely scattered looting, all carried out by the rioters in a carefree, holiday spirit. If the authorities turn a deaf ear to grievances or use too much force in an attempt to suppress the rioters, the disorders will progress to the fourth stage. This is the hard-core riot with widespread looting, destruction of property, and incidents of sniping like that seen in Watts, Newark, and Detroit.

A single article could not possibly survey legislation covering all phases of riot control. Consequently, suggestions herein will

\textsuperscript{13} \textsc{California Riot Report} 1.
\textsuperscript{14} \textsc{Kerner Report} 73.
\textsuperscript{15} \textsc{Ransford, Attitudes of Negroes Toward the Los Angeles Riot}, 3 \textsc{L. in Trans. Q.} 191-92 (1966).
\textsuperscript{16} \textsc{Conant, supra note 9, at 420}.
concentrate on control of the third and fourth stages, emphasizing provisions which might prevent the transition from the third to the fourth stage.\textsuperscript{17}

II. PROPOSED LEGISLATION

\textit{When the Mayor or, in his absence from the city, a city official determines that twenty or more persons are engaged in illegal activity which seriously threatens the public peace and safety, and that these people cannot be controlled by usual police methods, he may declare a state of emergency to exist in the city. Such state of emergency shall remain in effect for a period not to exceed 2 days after the cessation of conditions under which the state of emergency was declared. For the duration of such state of emergency, the following emergency provisions shall be effective.}

This provision is the grant of authority to invoke extraordinary measures in the face of a developing riot situation. It involves the admission that the riot has progressed beyond the point at which ordinary police measures can be effective.

The fact that this provision is worded in the form of a city ordinance granting power to a city official rather than a state law granting power to the governor warrants comment. It may be argued that governors, having a broader base of experience, should be the ones to make the delicate decision of when excess police power should be authorized. However, a city official, from a strictly time—distance perspective, is closer to the riot. Furthermore, a mayor will probably have a more intimate knowledge of the riot area and of the capabilities of his own police force. For these reasons the mayor of a riot city, rather than the governor, is the official who should have the authority to invoke emergency powers.

Although mayors or other local officials should have the power to declare a state of emergency, it must not be forgotten that during a major riot cooperation and coordination of effort among local, state, and federal officials will be vital to successful riot control. Legislation to facilitate these efforts is discussed \textit{infra}.

Although a city rather than a state official may be the best qualified to act in a riot situation, any city which considers the passage of a riot control ordinance must first determine whether it has been granted such power by the state. "\textquote{[M]unicipal corporations possess and can exercise such powers only as are granted by the legislature in express words . . . .}"\textsuperscript{18} Consequently, if a state

\textsuperscript{17}A discussion of California's legislative effort to prevent riots from progressing from the second stage to the third, \textit{Cal. Penal Code} § 404.6 (West Supp. 1968), may be found in Note, \textit{The Elements of Section 404.6—Urging to Riot Law}, 4 \textit{San Diego L. Rev.} 118 (1967).

\textsuperscript{18}Pittsburgh, C.,C. & St. L. Ry. v. Town of Crown Point, 146 Ind. 421, 45 N.E. 587 (1896).
statute does not grant to the city the requisite authority, any power invoked by the mayor would be invalid and any action taken pursuant thereto would be *ultra vires.* However, state statutes generally give cities the power either specifically to suppress riots or, more generally, to preserve the peace and good order of the city.

The final consideration of this provision is whether or not the authority to invoke extraordinary police powers violates personal freedoms guaranteed by the United States Constitution. There are three possible ways to avoid conflict with the Constitution.

The quick, extreme method for justifying excessive police powers is a declaration of martial law. However, in an area under martial law the authorities have the power to deny all Constitutional rights and literally wage war against the rioters. As stated earlier, violently suppressive measures may only add fuel to a riot and create animosity in the minority community. Consequently, it is hoped that the emergency powers proposed herein would be used to control the riot before it becomes necessary to wage war in the riot area.

At the opposite end of the scale, it has been suggested that the present constitutional standards could be re-examined and broadened in the light of riot situations. It is unlikely that some of the extreme measures required for dealing with rioters could be brought within the purview of normal constitutional standards, even when expanded, without completely destroying the standards themselves. Even if they could, such a broadening would be a dangerous precedent to set. It could very easily lead to a sliding scale of constitutional standards dependent upon the facts of each individual situation. Such standards might very well provide no protection.

The proper justification for the exercise of extraordinary police powers lies somewhere between these two extremes. It is based on the principal that there is a higher state interest in preserving the peace and order of the city which will justify the usurpation of certain constitutional rights. It is the underlying reason for limiting the first amendment freedom of speech and expression when the

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20 OHIO REV. CODE ANN. § 715.49 (Page 1953); TEX. REV. CIV. STAT. ANN. art. 1015(21) (Vernon 1963).

21 MASS. GEN. LAWS ANN. ch. 40 § 21 (1958); WASH. REV. CODE ANN. § 35.27.372 (1965).


speech presents a "clear and present danger" to the public peace and order.\textsuperscript{25} The higher state interest can also be seen in laws regulating automobile traffic\textsuperscript{26} and the sale of liquor.\textsuperscript{27} Although there is no case which expressly permits the use of such extraordinary police powers as envisioned by this legislation, the case of \textit{Hague v. Committee for Industrial Organization}\textsuperscript{28} comes very close to doing so by way of inference. In that case union organizers entered Jersey City, New Jersey, which had, until that time successfully avoided extensive unionization. The union began peacefully distributing union literature and encouraging workers to join unions. Under orders from the mayor, police illegally searched union halls, seized union handbills, and expelled union organizers from the city. The court said: "The evidence is not entirely clear as to how many persons came to Jersey City . . . attempting to take part in CIO activities upon the morning of November 29th, but an examination of it indicates that . . . [w]hat they had planned to accomplish presented no serious threat to the peace and good order of [the city]."\textsuperscript{29} The court further stated:

The reason given by Mayor Hague and certain of the other appellants in their testimony for such acts upon the part of the police was the necessity of preserving peace and good order in Jersey City and obviating the possibility of riot, strife, and injury to the speakers and citizens of Jersey City. It in no way appears, however, from the record before us that the police of Jersey City would have been powerless to maintain order . . . . \textsuperscript{30}

These two excerpts would seem to indicate that, had there been a real threat of an incident in which the police could not maintain order through ordinary measures, police action violating the individual's rights would have had some justification.

The procedures provided in the following proposed sections (A through H) are commonly employed by authorities in a time of riot. They are mentioned here for two reasons — to emphasize their wide use and, more importantly, to embody all powers necessary to riot control in a single city official. Persons preparing riot control ordinances should give careful consideration to the necessity for unified control. In this regard, one decision must be made: Which city official is to hold the emergency powers hereinafter proposed? The mayor,\textsuperscript{81} as the chief executive officer of the city,  

\textsuperscript{25} Gitlow v. New York, 268 U.S. 652 (1924).
\textsuperscript{26} Koplovitz v. Jensen, 197 Ind. 475, 151 N.E. 390 (1926).
\textsuperscript{27} People v. Frangadakis, 184 Cal. App. 2d 579, 7 Cal. Rptr. 776 (1960).
\textsuperscript{28} 101 F.2d 774 (3d Cir. 1939).
\textsuperscript{29} Id. at 778.
\textsuperscript{30} Id. at 779.
\textsuperscript{81} In some cities the chief executive officer may hold some other title such as City Manager. In any event, he is the official who should have the authority.
is the logical choice. Likewise, who is to have the emergency powers in the event that the mayor is absent from the city when a riot develops? It is likely that city charters provide a city official to be acting mayor in the mayor's absence. However, this official, because of the nature of his regular duties, may not be the best qualified to declare a state of emergency and exercise emergency powers. For example, in Denver, Colorado, the deputy mayor is the Manager of Public Works. Consequently, if nothing to the contrary were provided in a riot control ordinance, the Manager of Public Works would possess the emergency powers in the mayor's absence. However, either the Manager of Safety and Excise or the Chief of Police would be better qualified to decide when to declare a state of emergency and what powers to invoke.

A. The Mayor or, in his absence from the city, a city official may suspend the sale of alcoholic beverages in the city or any part thereof.

The reasons for this provision are readily apparent. The holiday spirit which prevails during the third stage of a riot can only be increased by the addition of drunken persons to the scene. Furthermore, sociological studies indicate that rioters whose inhibitions are released by intoxication will be more likely to take actions which will propel the riot from the third stage to the fourth.

Unfortunately, this section has one serious drawback. It may have the least effect in the riot area where it is most needed because liquor stores are generally among those looted. Rioters bent on destruction and looting will not be deterred by this section. However, many less eager residents of the city who would be drawn into the riot under the influence of alcohol may not participate.

Local officials preparing an ordinance which includes this provision must determine whether the mayor has the authority to temporarily suspend liquor licenses. In some cases, this power may be reserved to a state official. In others, a local official, other

32 Charter of the City and County of Denver, Colorado, § A2.2-1.
33 Id. at § A9.2.
34 Id. at § A9.4.
35 Kerner Report 49-50.
38 Kerner Report 24; California Riot Report 46, 47.
than the mayor, may possess the power. In either event, legislation would have to be enacted to enable the official holding the power to delegate it to the mayor when a state of emergency is declared.

B. The Mayor or, in his absence from the city, a city official may:

1. Suspend the sale of gasoline and other inflammable liquids in the city or any part thereof; and
2. Make it a misdemeanor to carry gasoline or other inflammable liquids on one's person or in a vehicle in the city or any part thereof except such as is contained in the gasoline tank of the vehicle.

The obvious reason for this section lies in the necessity of removing the supply of gasoline from which molotov cocktails and other fire bombs are made. These are the popular and widespread tools of the arsonists who have caused much damage in recent riots. However, curtailing the sale of gasoline can have other desirable effects. It would limit civilian traffic in the riot area; thereby restricting the mobility of rioters and increasing the mobility of law enforcement officials. It would also limit traffic in parts of the city which are not involved in the riot. This would release more policemen from traffic control duties for service in the riot area.

C. The Mayor or, in his absence from the city, a city official may:

1. Suspend the sale of firearms, ammunition, and explosives in the city or any part thereof; and
2. Make it a misdemeanor to carry firearms, ammunition, or explosives on one's person or in a vehicle in the city or any part thereof except that firearms and ammunition may be carried by persons on their own property.

Like the provision for the suspension of the sale of alcoholic beverages, this section may have little effect in the riot area because of looting and overt defiance of the law. However, it could have pronounced effects in other parts of a riot-torn city. Members of the rioting minority who live outside the riot area might be discouraged from spreading the unrest by arming themselves. Other persons, disgusted with the rioters or fearing that the riot might spread, would be discouraged from forming armed groups of vigilantes to provide "protection" for their neighborhoods or to carry out attacks on the rioting minority — a very real possibility. Even if this section does not discourage the formation of such groups,

41 Charter of the City and County of Denver, Colorado, § A9.8.
42 Kerner Report 25, 27.
43 G. Wills, supra note 11, at 57-58.
subsection 2 will provide authority for the arrest of and confiscation of weapons from such groups.

D. The Mayor or, in his absence from the city, a city official may impose a curfew on the city or any part thereof.

This measure serves a number of very useful purposes in riot control. In theory, at least, a curfew keeps the vast majority of the population of the riot area, who do not participate in the riot, off the streets.\footnote{Conant, supra note 9, at 430; M. Janowitz, supra note 7, at 9-10.} It can generally be assumed that the persons in the streets during the curfew period are the troublemakers, although this theory may not be true in all cases. The curfew decreases the chance of orderly bystanders being injured by police action against rioters and avoids the possibility of police action inciting non-participants to join the disorder. Furthermore, the imposition of a curfew provides a readily available and easily proven charge for which arrests of rioters may be made—curfew violation. For these reasons, the declaration of a curfew is a most effective measure for riot control.

E. The Mayor or, in his absence from the city, a city official may cordon off and isolate the city or any part thereof, in which event:

1. Everyone except authorities, members of the news media, and residents of the cordoned off area may be excluded from such area;

2. Everyone except authorities and members of the news media may be prohibited from leaving the cordoned area; and

3. Any member of the news media who incites any person to riot may be excluded from the cordoned area.

The most essential purpose of this provision is to contain the rioters, thereby preventing the riot from spreading. In Watts and Detroit, effective measures were not taken early in the riot to isolate the trouble when the violence was not widespread.\footnote{Kerner Report 49-50; California Riot Report 20.} Had those riot areas been sealed off from the remainder of their respective cities, it is quite likely that the violence, loss of life, and property damage would have been greatly decreased.

A second purpose of this section is to prevent persons outside the riot area from entering and participating in the riot.\footnote{Kerner Report 74; An American Tragedy, 1967—Detroit, Newsweek, Aug. 7, 1967, at 77.} Outside
agitators have also been reported in the riot area. Such activity can only increase the burden of riot control.

This will also provide protection for the residents of the area by excluding outsiders bent on retribution. Snipers and vigilante groups seeking to "even the score" have been uncovered in these areas. Also, armed, self-appointed guards of riot area business establishments have been encountered. Such persons present a serious threat to the lives of the residents of these areas, both rioters and nonparticipants alike. Moreover, such activities by outsiders can only increase the rage of the rioting minority, thereby increasing the task of riot control.

Cordonning the area would also protect curious and unsuspecting passers-by from being caught and beaten. These tragic incidents only provide another opportunity for escalation of the riot.

As important and helpful as sealing off the area from the remainder of the city is, it may create two serious problems. First, residents who are employed outside the area may be prevented from going to work. Second, because of the widespread destruction of buildings which has often occurred during riots, many persons may be rendered homeless. Cordonning may prevent these persons from getting to friends or relatives with whom they could stay. These two problems must be considered by local officials and provision made for their solution if many nonrioters are not to be alienated by this riot control measure.

It is hoped that subsection three of this section, permitting authorities to exclude from the area newsmen who incite rioters, would not have to be used. However, it is provided because at least one incident has been reported in which it would have been useful.

A newsmen reporting on a disturbance, repeatedly encouraged a black youth to throw a rock at passing cars for the purpose of being filmed by the newsmen. Eventually, the newsmen got his wish. Such positive efforts to incite riotous conduct cannot be tolerated. Unfortunately, there appears to be no way to prevent the passive encouragement provided by the mere presence of the newsmen at the scene of a disturbance without curtailing news coverage in riot areas.

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48 Id. at 207; G. Wills, supra note 11, at 57-58.
49 G. Wills, supra note 11.
51 Kernor Report 61.
52 Id. at 205.
F. The Mayor or, in his absence from the city, a city official may empower police and other authorities to order crowds of more than five persons to disperse, and, upon failure of a crowd, so ordered to disperse, to arrest those failing to disperse.

It should be noted that this proposal is different from the usual unlawful assembly statutes. These statutes are employed under ordinary circumstances to prevent riots from materializing, and their application is limited to assemblies which are riotous or engaging in unlawful activity. Section F is not so limited in its applicability. Any assembly in a riot area presents a threat to the public order.

As previously mentioned, the foregoing provisions authorize powers which most mayors or governors presently possess or can exercise in times of civil disorder. The following powers and restrictions are suggested as valuable additions to the present powers.

G. Deadly force may be employed by police and other authorities to effect arrests only in the event that:

1. Deadly force is necessary to effect the arrest;
2. The criminal to be arrested poses a serious threat of death or serious bodily harm to the arresting officer or others;
3. The arresting officer can see the criminal to be arrested and reasonably believes that the use of deadly force will create no unreasonable danger to other persons; and
4. The arresting officer has made known his intent to arrest or reasonably believes it is known to the criminal.

This section provides a radical departure from common law and from some statutory provisions. Under common law, law enforcement officials are permitted to use deadly force to arrest any person reasonably expected of having committed a felony. However, deadly force may never be employed in the arrest of a suspected misdemeanant. Some states permit more liberal use of deadly force in riot situations. In these states officials are exonerated from culpability for any death of a rioter or bystander which results

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54 For an excellent discussion of a similar proposal to be in effect in both riot and non-riot situations, see Rhine, *Kill or Be Killed?: Use of Deadly Force in the Riot Situation*, 56 Calif. L. Rev. 829 (1968).
55 Stinnet v. Virginia, 55 F.2d 644 (4th Cir. 1932); State v. Smith, 127 Iowa 534, 103 N.W. 944 (1905).
during the dispersal of a riotous crowd.\textsuperscript{57} Such measures as these cannot be realistically employed during riots without resulting in wholesale slaughter of the type which took place in Watts, Detroit, and Newark.

Even ignoring humanitarian arguments, widespread indiscriminate use of deadly force except under the conditions prescribed by this section is senseless. It does not accomplish its purpose of riot control. In one 14 block area of Watts, four rioters were killed; yet, 37 buildings were damaged and 30 stores were looted.\textsuperscript{58} In another nine block area, three rioters were killed; yet, 35 buildings were destroyed and 39 stores were looted.\textsuperscript{59} In Detroit, it has generally been acknowledged that the Army paratroopers, who killed only one rioter,\textsuperscript{60} were far more effective in controlling the riot than were the police and National Guardsmen\textsuperscript{61} who accounted for most of the other deaths.\textsuperscript{62}

The apparent failure of deadly force to suppress riots should, in itself, be reason enough to severely restrict its use. However, there are three other advantageous reasons.

In the first place, deadly force, especially where unnecessary, enrages nonparticipants as well as rioters.\textsuperscript{63} This can greatly increase the difficulty of post-riot reconciliation efforts.

Secondly, gunfire from authorities often ricochets for many blocks.\textsuperscript{64} As a result, officers blocks away from the firing often believe themselves to be under fire from snipers, which causes them to begin shooting back at imaginary snipers and delays their riot control activities.\textsuperscript{65}

The third, and most important reason, is that many innocent persons, not even part of the activity from which the shooting stems, are killed or injured.\textsuperscript{66} Such injuries and deaths stem in part from errant gunshots and in part from random shooting by authorities who do not have their targets in sight. Two of the more outstanding examples should suffice to demonstrate this point. In Atlanta, police attempted to disperse a protest rally. As two of the officers chased a group of black youths, a cherry bomb exploded at the officers' feet. In response, the police fired several shots. Some of these struck

\textsuperscript{58} California Riot Report, app., map enclosed.
\textsuperscript{59} Id.
\textsuperscript{60} Kerner Report 61.
\textsuperscript{61} Id. at 36.
\textsuperscript{62} Id. at 61.
\textsuperscript{63} Id. at 36.
\textsuperscript{64} Id. at 37-38.
\textsuperscript{65} Id. at 37, 45, 57.
\textsuperscript{66} Id. at 35-38; G. Wills, supra note 11, at 52.
a group of persons sitting peacefully on a front porch, killing a man and injuring a young boy. In Detroit, National Guardsmen manning a tank heard gunshots and thought themselves to be under fire from snipers. On the suspicion of one of the guardsmen that the fire was from an apartment building, the building was sprayed with machinegun fire. A 4-year-old girl was killed and her 21-year-old aunt was critically injured.

Some officials, such as Mayor Daley of Chicago, have expressed the view that all looters, arsonists, and snipers must be shot. Mayor Daley's feeling was that police must use firepower because restriction of such a practice would tie the hands of police attempting to control rioters. Such comment indicates a lack of knowledge on the part of the officials. Use of tear gas and the more potent gas CS has proven to be a very effective riot control measure. A few cannisters of gas have dispersed large angry crowds. Additionally, gas can temporarily discourage would-be looters and disable escaping looters.

Elimination of excessive use of deadly force might have a tremendous favorable psychological impact on the rioting minority community. Ghetto residents would see that "believe it or not, 'whitey' would sooner save colored lives than white-owned buildings." Hopefully, future riots would be lessened because minority communities would have reason to accept the proposition that not all whites are merely interested in exploiting minorities.

H. The Mayor or, in his absence from the city, a city official may suspend the privilege of bail for all persons arrested for inciting to riot and crimes of violence. However, reasonable bail shall be set for all other rioters.

This provision is suggested as a sensible alternative to the bail procedures instituted by most cities during past riots. In many cases, astronomical bail was set even for such minor infractions as curfew violation. Such unrealistic bail practices, based on the theory that everyone even remotely connected with the riot should be kept out of the area for the duration of the riot, led to unhealthy overcrowding of established jail facilities and use of emergency facilities

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67 Kerner Report 36.
68 Id. at 57.
69 'Shoot to Kill!' — Daley, 206 The Nation 554 (1968); To Shoot or Not to Shoot, U.S. News & World Rep., Apr. 29, 1968, at 36.
70 G. Wills, supra note 11, at 41.
72 Kerner Report 185.
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wholey unsuited for use as detention centers. Consequently, there is a desperate need for a realistic bail system during riots.

This section retains the necessary controls of past systems by permitting authorities to detain without bail those rioters who, for lack of a better expression, may be called the hardened criminal participants. These are the persons who have been arrested for serious crimes such as inciting to riot, arson, and assault. There are two reasons for detaining such persons during a riot, both of which facilitate riot control. First, it must be assumed that any rioter brazen enough to commit one of the serious crimes anticipated by this section would be likely to return to participation in the riot upon his release. Second, such rioters, by their bold defiance of the law, may provide moral support and encouragement for the more timid rioters. In either instance, the release of the hardened criminal rioter would increase the burden of riot control.

While providing a necessary and sensible method for detaining dangerous rioters, this section also attempts to avoid the creation of the problems of the past by requiring that reasonable bail be set for persons arrested for minor violations. The persons so treated would be largely petty looters, curfew violators, and members of crowds who failed to disperse when ordered to do so. These people would be caught up in and carried along by the holiday spirit of the riot rather than actually fomenting the riot. They are, therefore, unlikely to rejoin the riot after their release. Much would be accomplished by taking these people off the streets for a short time to make them aware of their wrongdoing until they can be released on bail. Such a practice would have the advantage of providing a cooling-off period without the disadvantage of forcing minor rioters to remain indefinitely in overcrowded jails—an experience which could only increase hostility toward the police. This practice would have the added advantage of reducing the number of rioters detained to a workable volume.

Unfortunately, this procedure cannot eliminate the problems of temporary overcrowding and delays in bail hearings caused by the great increase in influx of arrestees during riots.

I. Search and seizure:

1. A warrant may be issued authorizing a reasonable search of an area of the city limited to four blocks upon the

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73 Id. at 182-85.
74 Id. at 185.
75 More than 75 percent of the rioters arrested would be entitled to demand reasonable bail under the system suggested in the text. See CALIFORNIA RIOT REPORT; Newark, supra note 8.
76 KERNER REPORT 184.
reasonable suspicion of a policeman that the area holds a named fugitive or specified weapons, explosives, or incendiary devices.

2. Police may stop and search in a reasonable manner any person or vehicle without a warrant or probable cause.

This provision is suggested with much hesitation for the reason that it might be used to justify a search of the type which was conducted in Plainfield, New Jersey, in the summer of 1967. During the riot which took place in that city, 46 carbines were stolen from an arms manufacturer and were reportedly distributed in the riot area. When the carbines were not turned over to authorities pursuant to an agreement between city officials and black leaders, a house-by-house search of the black ghetto was ordered. A massive convoy of Plainfield police, New Jersey State Police and National Guardsmen carried out the search which uncovered none of the missing carbines. Instead, ghetto homes were left in shambles which added to the bitterness in the black community.\textsuperscript{77}

Another inflammatory and completely unnecessary practice for which this section might be used would be to justify the harassment of ghetto residents. During the riot in Newark, two black residents of the riot area were returning from a grocery store with bags of food which they had purchased. An unmarked car stopped beside the two men, and five policemen got out. Accusing the two of being looters, the policemen threw the bags of groceries onto the ground and kicked their contents into the street. The police then drove away.\textsuperscript{78}

Such practices as mentioned above serve no useful purpose in riot control and can only further enrage rioters and nonrioters alike. However, during a riot, authorities may need extraordinary search and seizure power. Section I authorizes much broader search and seizure powers than are normally permissible. Under nonriot conditions, authorities are required to have probable cause before they can search a building for contraband or a fugitive, or stop an individual and search him for contraband.\textsuperscript{79} While the power granted here is not an absolute power, it does greatly reduce the evidentiary standard required to justify a search to that required in ordinary situations to justify a stop and frisk.\textsuperscript{80} An even greater power is granted to stop and search individuals and vehicles. Here no justification for the search is required, the search authorized is limited to that which is reasonable.

\textsuperscript{77} Newark, supra note 8, at 31.
\textsuperscript{78} Kerner Report 38.
\textsuperscript{80} Terry v. Ohio, 392 U.S. 1 (1968).
J. Censorship.

The possibility of granting local officials either the broad power to censor all riot news to be released to the public from the riot area or the more limited power to censor only news concerning the riot to be released by the news media into the riot area has been considered and rejected. These measures would provide a means of preventing the spread of inflammatory stories in the riot area. These stories could provide the incentive for nonrioters to participate in the civil disorders. Although such authorizations might occasionally be useful, they would at best accomplish little. At their worst, such authorizations would provide the basis for the wholesale extinguishment of the freedom of the press.

The grant of censorship power to local officials was considered because the conclusion has been reached that many reports of past riots were untrue, exaggerated, or inflammatory. Examples may be cited to support this conclusion.

One newspaper editor admitted that he wished his paper had not printed some of the stories which it carried during the riots. These were reports of “sniper kings” and “nests of snipers.”

In Tampa, Florida, a deputy sheriff died during the riot. It was immediately reported that he was killed by rioters. Not until later did the true story emerge that he had been stricken by a heart attack.

A major newspaper reported a story of Michigan National Guardsmen storming a house in Detroit under heavy sniper fire to capture three shaggy-haired white youths. The report stated that large stores of arms and ammunition found in the house had been used to supply snipers over the entire West Side. In fact, guardsmen had attacked the house in response to the malicious accusations of the evicted tenants that snipers were in the house. The three persons captured were the owner of the house, his brother, and a friend who had taken over the house to prevent the evicted tenants from returning and to protect it from rioters. The only weapon which the three had was a small rifle to protect themselves.

During the Watts riot, a public meeting between members of the black community and city officials was held after the initial outbreak of the riot but before the worst violence erupted. Many very responsible remarks were made by leaders on both sides including a plea for calm by the mother of the youth whose arrest had triggered the riot. However, the greatest news coverage was given to a black

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81 Kerner Report 205.
82 Id. at 206.
83 Id. at 58.
youth who unexpectedly seized the microphone and told everyone that he and his friends intended to raid white neighborhoods that evening.\textsuperscript{84}

At the time of the riot in Cincinnati, several sources reported the arrest of white youths for possession of a bazooka. Few mentioned that the weapon was inoperable.\textsuperscript{85}

Although stories such as those mentioned above can only serve to increase racial tensions by enraging whites as well as blacks, it is unlikely that the grant of a censorship power to local officials would provide the means for truly solving the problem. The reason is that many of the inflammatory rumors reported during past riots were given to reporters by local officials who had inadequate communication with their riot control personnel.\textsuperscript{86}

Even if censorship would assure that only true and un inflammatory news of the riot would be reported, the mere news that censorship had been imposed would create another problem. The black community is generally hostile toward and places little faith in the news media. The feeling is that the news media are simply tools of the white establishment.\textsuperscript{87} This feeling is more pronounced during riots when blacks believe that the news media fail to adequately report incidents of police brutality or of ghetto residents helping firemen.\textsuperscript{88} News of the imposition of censorship could only increase these beliefs.

The more sensible solution to the problem would appear to be to encourage the news media to improve the quality of their reporting. The results of a meeting of representatives in all fields of reporting indicate that news reporters are making this effort.\textsuperscript{89}

K. Local police, state police, National Guardsmen, and federal soldiers and law enforcement officers deployed in the city may be deputized, so that they shall have the same powers as the police of this city.

This provision is an attempt to alleviate a serious problem which has developed when a number of jurisdictions have provided law enforcement personnel in a single city. These officers have been without authority to arrest except for violations of laws of their own jurisdictions.\textsuperscript{90} This has meant that National Guardsmen have

\textsuperscript{84} \textit{California Riot Report} 13.  
\textsuperscript{85} \textit{Kerner Report} 206.  
\textsuperscript{86} \textit{Id.} at 202.  
\textsuperscript{87} \textit{Id.} at 203.  
\textsuperscript{88} \textit{Id.} at 207.  
\textsuperscript{89} \textit{Id.} at 205-06.  
\textsuperscript{90} \textit{Id.} at 291.
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generally been without authority to arrest unless martial law has been declared. Also, police from cities surrounding the riot area have authority to arrest only for crimes proscribed by state law. Consequently, much effort to control riots has been rendered ineffective by the inability of National Gaurdsmen and non-local police to make arrests unless accompanied by a state policeman or policemen from the riot city. By giving all law enforcement personnel authority to arrest, the number of active riot controllers would be greatly increased.

L. The Mayor or, in his absence from the city, a city official may appoint members of the local bar to serve as municipal judges, public defenders, and prosecutors.

This proposal is an effort to relieve the logjams which have plagued courts during previous riots. This overcrowding has increased the difficulty of successful prosecution and has eliminated the possibility of fair and expeditious treatment of arrestees. If rioters are not to lose all respect for the law, justice must be properly meted out. Guilty persons must be convicted, and innocent people must be quickly released. Only a great increase in the number of judges, defense attorneys, and prosecutors can assure that the ends of justice will be served by the courts during riots.

This section, like Section A, requires a determination by local authorities of whether the mayor has the requisite power under state and local law. If he does not, changes in state and local law will be necessary before this section will be effective.

M. Sanctions for abuse of emergency powers:

1. Upon a finding by the Mayor that a police officer or public official has abused any emergency power granted by this ordinance, such police officer, or public official shall be relieved of his duties permanently or for a lesser period as the Mayor may determine.

2. This section shall in no way limit criminal sanctions or civil remedies against police officers who abuse the powers granted in this ordinance.

Because very broad extraordinary powers are granted in this proposed ordinance, this section is necessary to discourage overzealous police conduct and to punish it when it occurs. Undoubtedly,
some (notably policemen) will argue that this section will hamper police riot control activities because the threat of suspension will be foremost in the minds of all riot controllers. However, police conduct must conform to statutory standards, especially when police possess powers to violate individuals' rights. Furthermore, the sanction provided in this section would not be applied in cases where a policeman would be culpable only under a very strict interpretation of the power which he abused. This limitation is consistent with the judicial interpretation of §1 of the Civil Rights Act of 1871.\footnote{42 U.S.C. § 1983 (1964), construed in Pierson v. Ray, 386 U.S. 547 (1967); Bowens v. Knazze, 237 F. Supp. 826 (N.D. Ill. 1965).}

Subsection 2 is proposed in order to make it clear that all criminal sanctions and civil remedies are also available when emergency powers are abused. For killing a bystander while shooting at a sniper or an arsonist, a policeman might be guilty of manslaughter. For killing an escaping looter, a police officer might be guilty of murder. For making an unreasonable search of the type reputed to have been made in Plainfield,\footnote{Newark, supra note 8, at 31.} a policeman might be liable for damages under §1 of the Civil Rights Act of 1871.\footnote{42 U.S.C. § 1983 (1964).} These are only a few of the criminal and civil remedies available against police abuse of emergency powers.

No penalties or punishments are suggested here because they are not properly within the scope of this article. By the time a rioter can be tried, convicted, and punished, the riot in which he participated is history. The only riot control purpose which punishment of rioters can serve is as a deterrent to prospective rioters. The likelihood that punishment would have such an effect is small. In the holiday spirit of a riot most participants are generally law-abiding,\footnote{CALIFORNIA RIOT REPORT 24; Newark, supra note 8, at 31.} but are caught up in the excitement of the event and do not consider the illegality or the consequences of their activities. The other rioters, who have previous criminal records, have demonstrated that they are undeterred by the prospect of being punished for their crimes. Consequently, it is doubtful that punishment for violation of any of the proposed sections would have a significant effect on riot control.

**REFLECTIONS**

This proposal is written in light of the riots which have occurred in black ghettos in the past 5 years, and the factual references are drawn from those riots. This is not to say that the applicability of this proposal is limited to riots by blacks. There are many other
minorities which face the same problems which have so enraged blacks. Consequently, these groups are likely to display their discontent in the same manner. Furthermore, some provisions of this proposal may be useful in controlling student demonstrations. Although student riots develop in a different manner from riots by minority groups, and the violence wrought by students is of a different nature, the students are motivated by the same disenchantment with the society in which they live.

As valuable as legislation as this may be in riot control, its effect will be severely limited if there is no cooperation among neighboring municipalities. If adjacent cities do not have and invoke provisions similar to those in force in the riot city, rioters and non-rioters alike need only cross a city line to avoid such provisions as restrictions on the sale of gasoline, firearms, and alcoholic beverages. Furthermore, the sanctions against police abuse of power can only apply to the policemen of the city which has invoked the ordinance. Since police from surrounding cities often aid in riot control, such police would not face the sanctions provided unless the cities from which they come have similar provisions.

The passage of legislation similar to that proposed here would go a long way toward providing a city with a comprehensive plan for riot control. Such legislation would provide cities with authority to carry out activities essential to effective riot control. In addition, it would provide some standards for police conduct. These standards are vitally necessary to assure that riot control measures are not so suppressive that they incite, rather than control rioters.

Unfortunately, however, riot control legislation is not the answer to riot control in itself. No amount of legislation can positively control the actions of individual riot control personnel on the streets. Furthermore, if steps are not taken to eradicate the prejudice and discriminatory practices which breed riots, no amount of legislation or preparation for riots will be successful in controlling them.

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