

January 1969

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Recommended Citation

Robert T. Page, Book Review: Report of the National Advisory Commission on Civil Disorders, 46 Denv. L.J. 172 (1969).

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BOOK REVIEW

REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS

BY THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS
Washington, D.C.: Government Printing Office, 1968. Pp. 425. \$2.00

The format of a book review is, admittedly, a somewhat awkward way to discuss a commission-style report. Yet the *Kerner Report*,¹ almost unique among its government-sponsored fellows, does function relatively well *as a book*.

Its hallmarks are the clarity of its rather dense prose, the thorough indexing and citation of its supporting data, and the undeniable honesty of its reporting. The amount of fact gathering and staff work represented by the resulting 8-month task (the Commission published its report some 5 months early) is staggering. The very bulk of information is one of the few aspects of the *Report* which might be considered a fault. But to err on the side of knowledge and comprehensiveness should be no real detriment; although it does lead to picking and choosing by the press, political leaders, and, alas, by book reviewers.

The news media took particular issue with two of the many topics of headline interest: the costs, and the "two nations divided" warning. This reviewer feels the most valuable section was Chapter One, "Profiles of Disorders," which is a cogent and well-organized description of the events during the summer of 1967 in 10 of the 23 affected cities under investigation. Throughout the reporting and analysis of causes, events, and participants which are contained in the first three chapters, what strikes the reader is what did *not* happen. There are critically important findings here which have to some extent been overlooked, or at least have not been as widely understood as they should be.

For example, nearly all reports of the feared sniper fire were convincingly disproven.² Damages to property, especially in Detroit, were shown to have been widely overstated.³ Suspicions of organized

¹ NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968) [hereinafter cited as KERNER REPORT].

² *Id.* at 180.

³ *Id.* at 66.

backing or a conspiracy are dispelled by the *Report*.⁴ Finally, and most important to this reviewer, the *Report* states that the "1967 series" of disorders were by and large not black — white confrontations, not "race riots."⁵

On this last point especially, there has been a distressing but almost predictable failure of understanding. The shouts of Black Panthers and others, along with the socio-geographic prospects of divided cities, a divided country and other factors couldn't help but prompt the retrospective and fearful view among the public that black and white civil war occurred. Other developments since then may have reinforced this belief. The 1968 or "King series" of disorders may have in fact dealt a serious blow to the *Report's* hopeful observation.

Nevertheless, the reporting contained in the "Profiles of Disorders" is in all respects a superior informative basis for understanding and further investigation.⁶

It is as a where-to-go-from-here blueprint for action that the *Report* faces its biggest disappointment. By and large this is not the fault of the Commission nor of its published *Report*, although the document is so fact-filled and presents so many recommendations, subrecommendations, and alternative recommendations that it is truly difficult to sort them out by priority or feasibility. To keep the approaches straight on the questions of public versus private action, which level of government is responsible, and what grant programs need retailoring, would have taken a battery of political analysts much longer than the Commission's 8-month study period. To a certain extent this results from important differences which characterized the disorders in different cities. Compounding the overwhelming nature of the information explosion on the subject of disorder and remedy, at least in the public mind, has been the release of other

⁴ *Id.* at 89.

[T]he Commission has found no evidence that all or any of the disorders or the incidents that led to them were planned or directed by any organization or group — international, national, or local.

Militant organizations . . . and individual agitators, who repeatedly forecast and called for violence, were active in the spring and summer of 1967. We believe that they deliberately sought to encourage violence, and that they did have an effect in creating an atmosphere that contributed to the outbreak of disorder.

⁵ *Id.* at 64.

⁶ In his introduction to the Bantam Books edition of the *KERNER REPORT*, New York Times writer Tom Wicker says:

It is, at the least, an extraordinary document. We are not likely to get a better view of socially directed violence — what underlies it, what sets it off, how it runs its course, what follows. There are novels here, hidden in the Commission's understated prose; there are a thousand doctoral theses germinating in its statistics, its interviews, its anecdotes and "profiles."

Wicker, Introduction to the *KERNER REPORT* at ix (Bantam Books ed. 1968).

official reports, such as the *Walker Report*⁷ on the Chicago riots, and the *Douglas Commission Study*⁸ on city problems.

The citizen's inability to make sense of all this, no matter how clearly and convincingly it were to be presented, is excusable. The failure of his political leaders to rationalize it for him is surely not.⁹ The cold shoulder given the *Report* by our statesmen, right up to the White House, might have been expected. In an otherwise violent and strange election year, there was no productive way after the death of Senator Kennedy for the voter to speak for or against the *Report*, other than through the rejectionism of a George Wallace.

Yet this political vacuum reflects the core difficulty which stands in the way of seeing anything substantial done along the lines of the *Report's* call for action. That difficulty is in many ways connected to a sense of frustration and alienation felt by the white middle class. One commentator has pictured with particular insight the painful, ironic position of the middle-class city dweller:

[H]is discontent is fed both by envy of the more prosperous and by anger at the blacks — not just because he fears the blacks but also because their problems, and not his, seem to be the focus of national concern

The unexciting and envy-producing tone of the non-poor citizen's private life is heightened by the growing remoteness of public life. The air around him is poisoned, parkland disappears under relentless bulldozers, traffic stalls and jams, airplanes cannot land, and even his own streets are unsafe and, increasingly, streaked with terror. Yet he cannot remember having decided that these things should happen, or even having wished them. He has no sense that there is anything he can do to arrest the tide. He does not know whom to blame. Somehow, the crucial aspects of his environment seem in the grip of forces that are too huge and impersonal to attack. You cannot vote them out of office or shout them down.¹⁰

Indeed there are, as the quote above would indicate, any number of these impersonal and unseen enemies of a quality life which impinge on both ghetto and suburb.

Education, jobs, and equality may remain big issues in the Negro ghetto. But it is well worth nothing that a surprising number of basic everyday concerns, such as places for recreation, good transportation, refuse removal, consumer protection, and reasonably accessible health care are themselves, and in the aggregate, serious problems to the slum dweller.

⁷ 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* (1968).

⁸ NATIONAL COMMISSION ON URBAN PROBLEMS, *BUILDING THE AMERICAN CITY: THE REPORT OF THE NATIONAL COMMISSION ON URBAN PROBLEMS* (1968).

⁹ See Note, *Aftermath of the Riot: Balancing the Budget*, 116 U. PA. L. REV. 649 (1968).

¹⁰ Goodwin, *Reflections: Sources of the Public Unhappiness*, NEW YORKER, JAN. 4, 1969, at 40, 41.

Apparently our political leadership, at least on the national level, feels there is more to be gained by avoiding the middle-class voter's resentment, than in pointing out the commonality of city problems among black and white and then leading the hard way toward some solutions. Perhaps, too, if the authors of the *Report* had been in a position to analyze and emphasize like problems, drawn from some of the intricate programming required for better urban life in America, a base might have been presented for meaningful political decision-making.¹¹

So, where are those who seek action on the insights and pleas of the *Kerner Report* to turn? More important, where do we turn for a unifying treatment of common problems whose solutions would benefit us all?

Some would be hopeful of the lawyer in society fulfilling this role, providing the time-honored, "generalist's" leadership in all manner of public affairs for which the profession has been known. Robert Kennedy wrote, in a slightly different connection:

[I]n the long quest for solutions, lawyers have a good deal to offer. We are part of an intricate system that has developed over the centuries as man's best hope for resolving disputes and appraising policies, for working out solutions to problems.

If this system of law . . . can be kept viable, and if people of all backgrounds and of all races and creeds can begin fully to understand and to take advantage of it, then, and only then, will we stand to realize the promise of democracy, both for ourselves and for the world.¹²

And that:

No generation of lawyers has yet failed its responsibility to the law or to our society. The role of the lawyer in de Tocqueville's time prompted him to say that "I cannot believe that a republic could hope to exist at the present time if the influence of lawyers in public business did not increase in proportion to the power of the people."¹³

It seems certain that there will be no easy approach to the lawyer's responsibility, as there will be no easy answers to any of the *Report's* findings. Understanding and attention to the plight of our cities, humanism and heart, these are the needed skills. Hardly any job for advocates, the legally-trained may be discomforted by the

¹¹ As Richard Goodwin points out:

[T]hese questions can be seen most acutely among those who are neither poor nor black — the American middle class, or the American majority. Their psychological plight is both worse and more dangerous than that of the black militant leading a slum riot. For he at least has a cause and a purpose, an enemy, and comrades in the struggle. No such outlets and no human connections so satisfying are available to the man who lives in a middle-class suburb or a lower-income city apartment. *And his discontents, unlike those of the poor, have real political weight.* (emphasis added).

Id.

¹² R. KENNEDY, *THE PURSUIT OF JUSTICE* 80 (1964).

¹³ *Id.* at 87.

complex messiness of it all. But the lawyer who hasn't been discomfited by the events is at best insensitive — at worst, a derelict of our profession.

For the bar to look at the *Report* and conclude that their *major* obligation was, for example, to produce lawyers for either side of the mass prosecutions which follow civil disorder would be the shallowest kind of ignorance. The job is infinitely bigger than that. Yet this may be a frequent response by the organized bar. Worse still, the inclinations of many who have dedicated their lives to the rule of law is inevitably to look for means of control.

In line with its charge, a major portion of the Commission's work has been analysis and recommendation of control methods. And the *Report* admirably and emphatically distinguishes control from repression. Its findings are for the most part encouraging in respect to devices and techniques of policework (including the Army and National Guard),¹⁴ yet these findings are overshadowed by the very dim prospects for getting at root causes with significant social action. The superficial view — and, it is feared, a likely one by some authority-conscious attorneys — is that control will seem cheaper than cure. Time and again the *Report* speaks of the disastrous consequences of this philosophy.

Deeper than any of these, the penultimate challenge to the profession and its members, and to our society, is in the words of the Commission, simply this:

What white Americans have never fully understood — but what the Negro can never forget — is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it.

It is time now to turn with all the purpose at our command to the major unfinished business of this Nation. It is time to adopt strategies for action that will produce quick and visible progress. It is time to make good the promises of American democracy to all citizens

Our recommendations embrace three basic principles:

To mount programs on a scale equal to the dimension of the problems;

To aim these programs for high impact in the immediate future in order to close the gap between promise and performance;

To undertake new initiatives and experiments that can change the system of failure and frustration that now dominates the ghetto and weakens our society.¹⁵

The *Report*, this review of it, our profession's responsibility, and the condition in which we find ourselves as a nation can be summarized in no better way than the words just set out. The challenge

¹⁴ KERNER REPORT 171-180.

¹⁵ *Id.* at 1, 2.

is there. It calls more for leadership than lawyering. It commands, in a word, citizenship — of the highest and most noble sort. And in the agonizing search for the awaited answers, the *Kerner Report* will stand as a very fine touchstone indeed.

Robert T. Page

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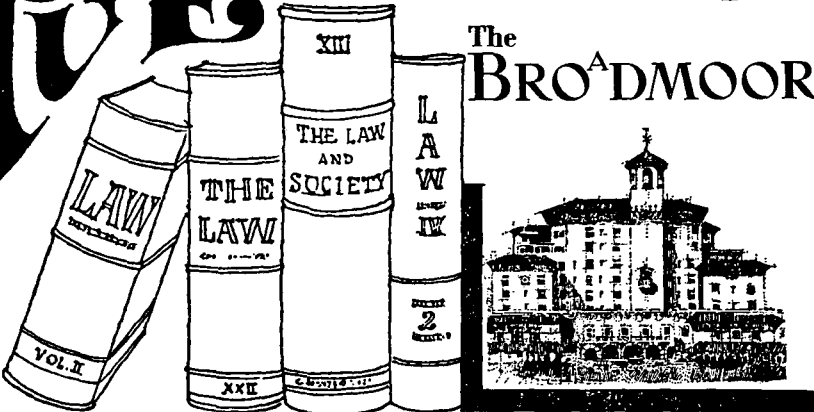
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The illustration shows four law books standing upright. From left to right, the spines are labeled: 'LAWY', 'THE LAW', 'THE LAW AND SOCIETY', and 'LAW'. The first book is tilted. Below the books is a detailed illustration of a large, multi-story building with a central tower and a clock face, identified as 'The Broadmoor'.