

COMMISSION STATEMENT -

"GROUP VIOLENCE" (Vol. 5)

NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE

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November 25, 1969

MEMORANDUM FOR THE COMMISSIONERS

Attached is a draft insert for the Group Violence Statement dealing with Civil Disobedience. It would go at the end of Section II (The Rationale of Group Violence) following the quotation from John Gardner.

The insert is based on Mr. Jaworski's draft and the discussion of the subject at the last Commission meeting on November 21. It distinguishes among the various types of non-violent disobedience, listing those points on which all Commissioners agree and those on which the Commission is divided. It also states the central arguments on both sides of each division. If thought desirable, the references to the various divisions could identify the majority and the minority. It would also be possible for the names of the Commissioners taking each side to be listed in appropriate footnotes (together with individual comments), but we would hope this could be avoided.

LNC
Lloyd N. Cutler

November 25, 1969

There remains the vexing question of non-violent civil disobedience. While the members of this Commission unanimously condemn group violence - even when committed in the name of civil disobedience* - we do not wholly agree as to non-violent acts of conscious disobedience to law. We all recognize that any willful violation of law - particularly by a large group or by a prominent public official or private person - strains the entire fabric of legal order, and that strains of sufficient magnitude can encourage group violence.** But whether such strains may be morally justified under particular circumstances is a close and complex question.

For example, we would all draw a distinction between deliberate disobedience of the racial laws of the Third Reich and willful violation of a law enacted by our own elected Congress and upheld by the Supreme Court. All of us would also recognize the right of any citizen to disobey a law he believes invalid for the purpose of making a judicial test of the law's constitutionality, so long as he is willing to abide by the result. But for hundreds or thousands to engage in

* - As noted at the beginning of this statement, we define group violence to include such acts as the threat or use of force to seize or destroy property in violation of valid laws such as those against the obstruction of streets or buildings.

** - One university president who appeared before us saw a direct connection between the spread of non-violent civil disobedience and the subsequent development of group violence on his campus.

repeated violations of such laws, in the view of some Commission members, goes beyond the making of a good faith judicial test; it approaches instead an effort to paralyze the procedures of law enforcement and thus to seek its goal by force instead of by reasoned advocacy.

Other Commission members would place a higher value on non-violent group disobedience; they point to Mahatma Gandhi and the suffragettes, and would accept non-violent disobedience as a means of persuasion legitimate in a cause of sufficient fundamental importance for groups who cannot prevail by the ballot or by less forceful means. All would agree, however, that such tactics are too dangerous to tolerate as routine methods **in** pursuit of less fundamental goals. We also agree unanimously in condemning those who seek to escape punishment for their acts of conscious disobedience on the ground that their cause is just or that the legal system is illegitimate.

There is still another type of deliberate civil disobedience - the refusal to obey an admittedly valid law (such as the Selective Service Act) on grounds of moral repugnance, coupled with willing acceptance of the prescribed punishment. Some Commissioners believe that the moral justification for such action can conceivably outweigh the injury done to respect for law; others take the contrary view, pointing out that once each citizen is allowed to obey only

those laws he considers moral, no law can command general respect.*

The following summary of this complex question comes closest to satisfying most Commissioners:

"Possibly there are a few rare occasions on which the goal would be so important and so plainly right as to outweigh the price which a challenge to the rule of law exacts from the community. I know of none today. The argument is probably strongest where one refuses to do what he believes is a direct moral wrong to others. In all other cases, it would seem to me that the man who is willing to damage the processes of constitutionalism, which guarantee liberty and the chance of repeated change without force, in order to impose his views upon society, must be either peculiarly self-confident or extremely shortsighted.

"Even then the wrong is not the challenge to existing society. Past generations have made a mess of things, ours no less than our fathers'. The hope of mankind is always that a new generation may begin to make the world over quickly. The wrong, in the simplest terms, is the damage to the foundation upon which rests the best, if not the only real, opportunity for the making-over."**

* - As the Supreme Court has noted: "No man can be judge in his own case, however exalted his station, however righteous his motives One may sympathize with the petitioners' impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom." Walker v. City of Birmingham, 388 U.S. 307, 321 (1967).

** - Professor Archibald Cox in Civil Rights, The Constitution and the Courts, p. 29. (Harvard 1967)

of protest with constitutional status. The very first Amendment to the Constitution protects freedom of speech and press and "the right of the people peaceably to assemble and to petition the Government for a redress of grievances." The Amendment protects much more than the individual right of dissent; it guarantees the right of groups to assemble and petition, or, in the modern phrase, to demonstrate.

Group violence, on the other hand, is dangerous to a free society. It has no protected legal status; indeed, one purpose of law is to prevent and control it. Nor is group violence a necessary consequence of group protest. The violence of the Ku Klux Klan - the lynching of Negroes at the rate of almost 100 per year from 1890 to 1910 - had little to do with protest; if anything it was more a cause of protest than a response. The same may be said of the harsh treatment of Orientals on the Pacific frontier and the common use of violence to settle property and political disputes among competing groups in the early days of the American West.

It is true, of course, that group protest sometimes results in group violence. Violence may be committed by groups opposed to the aims of the protestors (as in the Southern murders of civil rights workers by groups of white militants); excessive force may be used by the public authorities, as in Selma in 1965; violence may be committed by some within

the protesting group itself (as in the case of the Weatherman faction of the SDS). But the widely held belief that protesting groups usually behave violently is not supported by fact. Of the multitude of occasions when protesting groups exercise their rights of assembly and petition, only a small number result in violence.

Thus, our Task Force Report on Historical and Comparative Studies reports that over the five year period from mid-1963 to mid-1968, protests or counter-protests and ghetto riots involved more than 2 million persons. Civil rights demonstrations mobilized 1.1 million, anti-war demonstrations 680,000, and ghetto riots an estimated 200,000. Nine thousand casualties resulted, including some 200 deaths.* Ghetto riots were responsible for most of these casualties, including 191 deaths. Almost all other deaths, an estimated 23, resulted from white terrorism against blacks and civil rights workers. These casualty figures are for a five year period, and apart from the ghetto riots, they are comparatively infinitesimal. While they are not to be condoned, in a country with 250,000 aggravated assaults and 12,000 homicides per year, group protest cannot be

* Task Force Report, Violence in America, Vol. 2, pp. 445-6. Similarly, while most of the nation's 2,300 college campuses probably experienced some kind of demonstrative protest during the academic year 1968-1969, the American Council of Education has found that only about 6% of the colleges experienced any violence. [Cite.]

considered as accounting for a major part of the deliberate violence we experience.*

Do we have a greater amount of group violence today than in earlier periods of our history? While a precise quantitative answer cannot be provided, we may conclude with confidence that several earlier decades of American history were marked by higher levels of group violence - in terms of casualties per 100,000 population - than has been true of the decade now ending.

Ever since the Boston Tea Party, occasional group violence has been a recurring - though not a continuing - feature of American political and social history:

. From 1740 to 1790, Appalachian farmers, protesting against debt and tax collectors from the seaboard centers of political and economic power, engaged in a series of violent disorders, of which the Whiskey Rebellion in Pennsylvania is best known.

. Southern landowners and northern abolitionists engaged in a variety of skirmishes, from "bleeding Kansas" to John Brown's raid on Harper's Ferry, that were the violent prelude to the Civil War.

* Comparative figures for property damage as the result of group protests are not available. But when measured against property damage the more than 1,000,000 annual robberies and burglaries reported in crime statistics, it also seems likely that group protest accounts for a very small part of the deliberate property damage we experience.

. During Reconstruction, the Ku Klux Klan and other elements of the defeated white majority in the South conducted a campaign of terrorism against the freed blacks, government officials and southerners who cooperated with them.

. So-called "Native Americans" of the original colonial stocks resorted to group violence when they perceived their status as threatened by European Catholic Irish, Italian and Jewish immigrants in the East and Orientals in the West; the immigrant groups occasionally engaged in counter-violence such as the New York Draft Riots in 1863.

. As the freed Negro migrants from the South began settling in border and Northern cities after the Civil War, white residents (including the most recent of the European immigrants) launched occasional attacks on black sections of the city.

. The growth of organized labor in the half century from 1880 to 1930 was marked by unusually severe episodes of violence in which employers, workers and public authorities were all occasional aggressors. In the three year period 1902-1904, about 200 persons were killed and 2,000 injured

in the violence accompanying various strikes and lockouts.

During each of these episodes, most of the community continued to live in peace. The violent episodes themselves were sporadic. At any given time they probably involved minor percentages of the total population - certainly not more than a small fraction of the number who were then engaging in various sorts of group protest.

While it is probably true that protest by one or more groups seeking to advance or defend its status in society has been a continuous feature of American life, group violence has not. Indeed, it is group protest, not group violence, that is as American as cherry pie.

Do we have more group violence than other modern nations? Comparisons with other countries are difficult. Our Task Force Report shows a group violence casualty rate in 17 other industrially advanced nations for the first half of this decade that is only one-fourth the United States rate.* (The average for all nations, however, was 40 times the United States rate.) Yet few advanced democratic nations are free from group violence, as the riots in France, Germany, Italy, Canada and Japan during the past two years and the continuing strife in Northern Ireland remind us. Unlike many other countries, (including some advanced ones) strife in the United States is usually aimed at particular policies

* Violence in America, p. 448. This comparison is based on available data that may not be fully comparable on a cross-national basis.

conditions or groups rather than at overthrow of the Government; indeed, the United States has been free of anything resembling insurrection for more than a century. Except for Great Britain, this country has the longest record of government continuity in the world.

Why does group violence occur in an advanced democratic society? We may accept that men naturally possess aggressive tendencies without concluding that group violence is inevitable. Nature provides us with the capacity for violence; material, social and political circumstances are the determinants of whether and how we exercise that capacity. Men's frustration over some of these circumstances is a necessary precondition of group protest. Whether that frustration will erupt into violence depends largely on the degree and consistency of social control and the extent to which social and political institutions afford peaceful alternatives for the redress of group grievances.

All societies generate some discontent because organized life by its very nature inhibits most human beings. Group violence occurs when expectations about rights and status are continually frustrated, when peaceful efforts to press these claims yield inadequate results. It also occurs when the claims of groups who feel disadvantaged are viewed as threats by other groups occupying a higher status in society.

Greater expectations and frustrations for disadvantaged groups, and greater fears of threatened groups, are more likely to occur in times of rapid social change than in times of social stability.

America has always been a nation of rapid social change. We have proclaimed ourselves a modern promised land, and have brought millions of restless immigrants to our shores to partake in its fulfillment. Persistent demands by these groups - by the Western farmers of the revolutionary period, later by the Irish, the Italians and the Slavs, and more recently by Puerto Rican, Mexican, and Negro Americans - and resistance to these demands by other groups, have accounted for most of the offensive and defensive group violence that marks our history.

This analysis, however, does not adequately explain why some upper class and middle class students engage in group violence. Some affluent students doubtless perceive themselves as disadvantaged - by the draft and forced service in the Vietnam war, by their small voice in college governance, by their lack of identity and purpose in what they perceive as a complex, computerized and highly materialistic urban society. But for many students, the causes that attract them most are not their own grievances, but those of the other groups and problems of the society as a whole.

To a high degree, they are motivated by a sense of guilt for being privileged, and by the desire of many young people to share with others in the experience of serving a noble cause. For most of those so motivated, participation in peaceful protest fulfills this need. Those few who are particularly impatient or cynical about the "system" or are committed to revolution resort to violence.

As we have noted, discontent is only one prerequisite of ^{group} / violence. Whether violence actually occurs also depends on popular attitudes and how effectively political institutions respond to the threat of violence and to demands for the redress of group grievances. Although we have an open political and social system, more dedicated than most to the dream of individual and group advancement, the majority are sometimes unwilling either to hear or to redress the just grievances of particular minorities until violent advocacy or repression calls them to the forefront of our attention.

And for all our rhetoric to the contrary, we have never been a fully law-abiding nation. For example, some measure of public sympathy has often been with the nightriders who punished the transgressor of community mores, and with the disadvantaged who sought to remedy obvious injustices by violent means. Lack of full respect for law and at least

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tacit support for violence in one's own interest have helped to make the United States, in the past as at present, somewhat more tumultuous than we would like it to be.

II.

The Rationale of Group Violence

Those who engage in group violence as a political tactic advance several reasons to support it. Some of the current justifications, have been summarized by our Task Force on Violent Aspects of Protest and Confrontation.* They are stated as the militants themselves might make them.

1. Militants argue that the creation of turmoil and disorder can stimulate otherwise quiescent groups to take more forceful action in their own ways. Liberals may come to support radical demands while opposing their tactics; extreme tactics may shock moderates into self re-examination

2. Militants point out that direct action is not intended to win particular reforms or to influence decision makers, but rather to bring out a repressive response from authorities - a response rarely seen by most white Americans. When confrontation brings violent official response, uncommitted elements of the public can see for themselves the true nature of the "system." Confrontation, therefore, is a means of political education

3. Militants believe that if the movement really seriously threatens the power of political authorities, efforts to repress the movement through police-state measures are inevitable. The development of resistant attitudes and action toward the police at the present time is a necessary preparation for more serious resistance in the future

4. Militants state that educated, middle-class, non-violent styles of protest are poorly understood by working-class youth, black youth, and other "drop-outs." Contact with these other sectors of the youth population is essential and depends upon the adoption of a tough and aggressive stance to win respect from such youth

* - See The Politics of Protest at 81-82 (U.S. Government Printing Office: Washington, D.C., 1969).

5. Militants recognize that most middle class students are shocked by aggressive or violent behavior. This cultural fear of violence is psychologically damaging and may be politically inhibiting. To be a serious revolutionary, one must reject middle-class values, particularly deference toward authority. Militant confrontation gives resisters the experience of physically opposing institutional power, and it may force students to choose between "respectable" intellectual radicalism and serious commitment to revolution, violent or otherwise.

6. Militants respond to those who point to the possibility of repression as a reaction to confrontation tactics by accusing them of wishing to compromise demands and principles and dilute radicalism. Militants believe that repression will come in any case, and to diminish one's efforts in anticipation is to give up the game before it starts.

Somewhat different arguments are advanced by those among threatened groups to justify defensive private violence and the use of excessive force by public authorities. They believe that the disadvantaged group will cease to exert pressure only if protesters are firmly and decisively repressed, and that strong evidence of superior force and willingness to use it will succeed in defending the status quo.

These arguments for group violence - offensive or defensive* - are not sustained by history contemporary reality, logic or law. They are inconsistent with the basic principles

* - We use the term "offensive" violence as violence used to advance the cause of a protesting group, and the term "defensive" violence to defend the position of the group threatened by protest. Occasionally, a peacefully protesting group met with defensive violence as so defined may engage in counter-violence as a means of self defense, as is true of the Negro Deacons for Defense in Mississippi and Alabama.

of democratic government.

We put to one side the efficacy of violence in overturning a government or maintaining it in power, for this has not been the main thrust of American group violence. The thornier question - one that is more pertinent to American practitioners of group violence who usually aim not at seizing or defending the government but at altering or continuing its policies - is whether group violence is an effective tactic for winning or preventing a significant change of status.

History provides no ready answer to this question. Among many, which have failed, there have been a great many protest movements, some marked by violence, which eventually achieved some of their aims. But whether offensive violence by the protesting group helped or hindered the subsequent achievement remains a matter of conjecture, as does the question of whether defensive violence by the threatened group hindered or helped the eventual change. In the history of the American labor movement, for example, violence persistently accompanied the struggle of workingmen to gain decent working conditions and recognition for their unions; both ends were eventually achieved, but there are differences of opinion

whether pro-labor violence helped the cause or whether anti-labor violence hindered it. * Labor leaders themselves doubted the effectiveness of violence, and no major labor organization in American history advocated violence as a policy. Typically, pro-labor violence was a response to the use of excessive force by militia or private police or strikebreakers. While violence proved to be a better short-run weapon for employers than for workers, the escalation of counter-violence it produced was a factor in the passage of the laws that eventually established the rights of labor.

It is no doubt true that in the 1960's policy changes advantageous to dissident groups have sometimes followed in the wake of urban riots and campus disturbances. These gains, however, may have been attributable more to the validity of the protest goals than to the violent outbreaks when they came. Moreover, to the extent violence may have contributed to these gains, the use of excessive force against peaceful demonstrators - as in Birmingham - may have been more decisive

* In Violence in America: Historical and Comparative Perspectives, a Task Force report to this Commission, Philip Taft and Philip Ross conclude: "The effect of labor violence was almost always harmful to the unions. There is little evidence that violence succeeded in gaining advantages for strikers."

than any violence by the demonstrators themselves. No one will ever know whether as much or more might have been won without resort to violence by either side. The advocacy and practice of deliberate violence by some radical black militants and some student and antiwar activists has certainly created antagonism and resulted in the loss of sympathy for these causes among large sectors of the public. Leaders of many protesting groups recognize the counter-productivity of violence; before the November Peace Mobilization in Washington, many of the protest leaders sought diligently to discourage violence by such groups as the Weatherman faction and the Youth International Party. When these factions did resort to violence, leaders of the Mobilization expressly disavowed and condemned them.

If the lessons of history are ambiguous on the short-term effectiveness of violence as a political tactic, they are clear on its long-term dangers. As we noted in our Statement on Campus Disorders, violence tends to feed on itself, with one power group imposing its will on another until repressive elements succeed in reestablishing order. The violent cycles of the French and Russian Revolutions and the decade resulting in the Third Reich are dark abysses of history to ponder. Violence tends to become a style, with many eager

followers. German students setting fire to cars in West Berlin chanted in English "Burn, baby, burn." When students last year violently took control of the telephone system at Brandeis University, within ten days British, French, German and Italian students attempted to do the same thing. Violently disruptive tactics that began inappropriately in universities have been copied even more inappropriately in high schools and churches.

As our Task Force on Law and Law Enforcement has found, the danger of this contagion is that extreme, unlawful tactics will replace normal legal processes as the usual way of pressing demands. Given present trends, it is not impossible to imagine an America in which the accepted method for getting a traffic light installed will be to disrupt traffic by blocking the intersection, where complaints against businessmen will call for massive sit-ins, where unsatisfactory refuse collection will cause protesting citizens to dump garbage in the street. We do not believe that a healthy society can result from the widespread use of such techniques.

As our Task Force concluded, group violence as a tactic to advance or restrain protest by discontented groups does not

contribute to the emergence of a more liberal and humane society, but produces an opposite tendency. The fears and resentments created by these tactics have strengthened the political power of some of the most destructive elements in American society. We commend and attach as an appendix to this Chapter a more detailed discussion of the subject contained in the Report of our Task Force on Law and Law Enforcement.

As one of this nation's most thoughtful leaders has observed:

No society can live in constant and destructive tumult. . . . The anarchist plays into the hands of the authoritarian. Those of us who find authoritarianism repugnant have a duty to speak out against all who destroy civil order. The time has come when the full weight of community opinion should be felt by those who break the peace or coerce through mob action.*

* John Gardner [Citation]

III.

Elements of Prevention and Control

What steps should a representative constitutional society take to prevent and control group violence? Our political institutions should be so framed and managed as to make violence as a political tactic both unnecessary and unrewarding. To make violence an unnecessary tactic, our institutions must be capable of providing political and social justice for all who live under them, and of correcting injustice against any group by peaceful and lawful means. To make violence an unrewarding tactic, our political and social institutions must be able to cope with violence when it occurs, and to do so firmly, fairly, and within the law.

Our Constitution was written after the violent overthrow of a colonial government which followed one of these imperatives, but ignored the other. Its preamble does not speak merely of justice, or merely of order; it embraces both. Two of the six purposes set forth in the Preamble are to "establish justice" and to "insure domestic tranquility." The First Amendment sets forth a third and closely related goal - to protect the rights of free speech and peaceable assembly, and the right to petition the Government for redress of grievances. If we are to succeed in controlling group violence, we must navigate by all three of these stars.

History is full of violent disasters that occurred because channels for peaceful presentation of grievances were blocked and because governments did not or could not act to correct the underlying injustices or to control disorder; history also contains examples of disasters that were averted by governments which kept the channels of protest open and applied a judicious combination of reform and control.

The French and Russian Revolutions reached extraordinary peaks of violence because absolutist governments concentrated on efforts to restore order and refused to redress grievances or transfer a sufficient share of power to the emerging lower classes. The British, on the other hand, averted a similar disaster by judicious measures of control and by more flexible development of their political institutions to accommodate the rights and needs of all their people.* In Germany, after World War I, the Weimar Republic was too weak either to control street fighting between right wing and left wing students and workers or to remedy their grievances; the emergence of Hitler to "restore order" proved to be a disaster for the entire world.

In our own country, we have on some occasions failed to take the necessary measures of reform and control; on other occasions we have succeeded. We proved unable to abolish the

* fn. Task Force cite.

injustice of Negro slavery without a bloody war - a conflict which released currents of violence that continue to flow a century later. The Reconstruction governments in the Southern States were too weak to enforce the newly won rights of black people against a hostile community or to prevent the Ku Klux Klan from reestablishing white supremacy by violence. The struggle of the labor unions was marked by extensive restrictions on peaceful protest and by repressive violence in the absence of laws to provide minimum standards of justice for working people and legal machinery for the resolution of disputes; the violence largely subsided after such laws were enacted. And in the wake of the Great Depression, after relatively few violent incidents such as the Bonus March and the farmers' defense of their lands against foreclosure, we averted further violence by fashioning major alterations in the rights of individuals to government assistance, and in the responsibilities of government for directing the course of our private enterprise economy.

When group violence occurs, it must be put down by lawful means, including the use of whatever force may be required. But when it occurs - better still before it occurs - we must permit aggrieved groups to exercise their rights of protest and public presentation of grievances; we must have the perception to recognize injustices when they are called to our attention, and we must have the institutional flexibility to correct those injustices with at least deliberate speed.

We do not mean of course that the mere making of a demand entitles it to be granted, or that the particular remedy proposed by those aggrieved should be adopted. Some "non-negotiable" demands by students, by radical black militants, by anti-war demonstrators and others are unrealistic and unfair to the rights of others; some proposed remedies are self-defeating or administratively unworkable. What is essential is that when the basic justice of the underlying grievance is clear, an effort to take suitable measures of accommodation and correction must be made. The effort must be made even though other groups feel threatened by the proposed correction, and even though they may resort to violence to prevent it. We cannot "insure domestic tranquility" unless we "establish justice" - in a democratic society one is impossible without the other.

We therefore put forth our suggestions as to how these three goals - controlling disorder, keeping open the channels of protest, and correcting social injustices - can be more successfully pursued.

...the use of excessive and illegal force ... a more targeted and usually ineffective tactic for ... to quell unrest. Both in the short and in

IV.

Strategies of Control

Many feel that rioters should be dealt with harshly. At least two-thirds of white Americans, according to one poll, believe that looters and fire-bombers should simply be shot down in the streets.* Many believe that even peaceful demonstrators are "agitators" or "anarchists," and that they should be dealt with harshly, especially if they taunt or abuse policemen. In a poll conducted for this Commission, 56 percent agreed that "Any man who insults a policeman has no complaint if he gets roughed up in return."

As recent history illustrates, the prompt, prudent deployment of well-trained law enforcement personnel can extinguish a civil disorder in its incipiency. But history also demonstrates that excessive use of force is an unwise tactic for handling disorder. To the generalization made earlier, that violence is an always dangerous and sometimes ineffective tactic for dissident groups pressing their demands or for threatened groups resisting those demands, may be added this corollary: the use of excessive and illegal force is an always dangerous and usually ineffective tactic for authorities seeking to quell unrest. Both in the short and in

* Cite source.

the long run, the use of excessive force to repress group violence often has the effect of magnifying turmoil, not diminishing it.

It is useful to contrast the official response to the antiwar protest in Chicago during the Democratic National Convention of 1968, and the "counter-inaugural" in Washington on January 20, 1969. These two events were organized by many of the same protesting groups and attended by many of the same individuals, in roughly equal numbers. Yet the results of these events were markedly different. In Chicago, the authorities were restrictive in granting demonstration permits; some of the police, deliberately goaded by verbal and physical attacks of small militant groups, responded with excessive force not only against the provocateurs but also against peaceful demonstrators and passive bystanders. Their conduct, while it won the support of the majority, polarized substantial and previously neutral segments of the population against the authorities and in favor of the demonstrators.*

* The ongoing Democratic Convention and the possible desire of some demonstrators to influence its outcome by violence may have intensified the disorder in Chicago - a circumstance absent during the Washington Inaugural.

In Washington demonstration permits were liberally issued. Although there was also provocative violence by some of the demonstrators, the police used only that force clearly necessary to maintain order. As a result, there was little criticism of police behavior. Our analysis leads to the conclusion that the amount of violence that occurred during these demonstrations and the resulting effects on public opinion were directly related to the kind of official response that greeted them.*

In both instances a small number -- no more than a few hundred in either case -- intended to provoke a "confrontation" with authorities by provocative acts, aimed especially at policemen. A majority of the participants intended to demonstrate peacefully and in fact did so.

In response to reports that violence and disruptive conduct would occur, Chicago authorities adopted tight, well-publicized security measures designed to dissuade protesters from coming to the city. To discourage the protesters further, they prolonged the negotiations for

* The Washington authorities had also dealt successfully with the large-scale antiwar march on the Pentagon in October 1967, before the Chicago experience the following summer.

demonstration permits and exercised their discretionary powers restrictively. The limited, begrudging dialogue with protesting groups reduced the opportunity of the authorities to assess and separate the component groups in the demonstration (many of which intended to demonstrate peacefully), and to learn the details of their plans. This resistant posture served to discourage more mature and responsible protesters from coming, while firing the determination of young militants to attend and confront. To some of the police and some Chicago citizens, the official posture of resistance signified that the protest activities as such were dangerous or illegitimate; they tended to view protesters as troublemakers and law-breakers, thus failing to discriminate between the small number of radicals seeking trouble and the great majority of peaceful citizens exercising their constitutional rights.

In preparation for the Inaugural in Washington five months later, intelligence reports were carefully evaluated. Genuine threats were sorted from theatric exaggerations. Troublemakers were identified and watched closely, but no attempt was made to interfere with the activities of the majority of peaceful demonstrators. Authorities negotiated

conscientiously with protest leaders and arrived at agreements on the scope of permits for parades and meetings that were acceptable to all parties. The protest leaders, impressed with the reasonableness of the government spokesmen, made substantial efforts to cooperate with officials and ensure peace.

As the Chicago and Washington events differed in preparation, they differed in outcome. After minor skirmishes, trouble in Chicago escalated when throngs of demonstrators, having been denied permits to remain overnight, refused to leave Lincoln Park, their main gathering place. Dozens of police attempted to clear the Park on three successive nights. In response to serious and deliberate provocations but without coherent planning, some policemen clubbed and tear-gassed guilty and innocent alike, chasing demonstrators through streets some distance from the Park. Particularly on the side streets, some bystanders who had taken no part in the demonstrations were attacked by police officers. Several media representatives were clubbed and had their cameras smashed. Predictably, tensions and anger rose. Extremists who would otherwise have been ignored began to attract audiences. They urged demonstrators to fight back. The police were exposed to more and more jeers and obscenities and had to withstand

heavier barrages of rocks and other missiles. During one of the first nights, 15 policemen were injured; two nights later, 149 were injured.

In Washington, the cycle of escalating violence never got started. Provocation by demonstrators was met with restraint. Provocation by policemen was rare; when it occurred it was terminated by police and city officials who intervened quickly to restore discipline. In general, police withstood physical and verbal abuse with great calm. In the end, the behavior of Washington officials and the police won praise in newspaper editorials and from leaders of the demonstration.

There were some radical leaders, however, who were more grateful for the official response in Chicago, for it appeared to validate their characterizations of government as being "reactionary" and "repressive" and to increase support from other protesting groups. The chaos at Chicago also gave solidarity to the ranks of those who regard all demonstrators, however peaceful, as irresponsible "punks." The overall effect was to increase polarization and unrest, not diminish them.

This comparison between Chicago in August of 1968 and Washington last January can be closed on two encouraging notes. Permits for peace marches in Chicago were sought and granted in

October 1969. The marches were organized by the "Weatherman," an extremely militant faction of the Students for a Democratic Society. In the course of the demonstrations, Chicago police had to face four days of intense provocation and wanton violence. This time, however, the police acted with calm and restraint. No injuries to residents, bystanders or newsmen were reported; on the contrary, the police took steps to safeguard bystanders from the violence. As a result of the professional conduct of Chicago police, violence was effectively contained, and blame for the damage and injuries that did occur fell squarely upon the violent group among the demonstrators, many of whom were arrested.

The Peace Moratorium Parade and assembly in Washington on November 15 was another example of intelligent and restrained official response. Although the government had reason to expect that some elements among the protesting groups were bent on violence, reasonable permits were ultimately negotiated with the responsible demonstration leaders, and ample police and military force was provided to preserve order if necessary. In the largest single protest demonstration in American history, the overwhelming majority of the participants behaved peacefully. Their activities were facilitated rather than restrained by the police. When the few extremists did attempt violent attacks on two occasions, the police responded

quickly and firmly, but on the whole without excessive force.* As a result, order was maintained, the right to protest was upheld, and it was possible to judge both the peaceful and the violent aspects of the protest in their true proportion.

Civil governments must, of course, act promptly and decisively against threats to public order. As the National Advisory Commission on Civil Disorders stated, "Individuals cannot be permitted to endanger the public peace and safety, and public officials have a duty to make it clear that all just and necessary means to protect both will be used."**

A parallel duty exists for colleges and universities: they must have firm, well-publicized plans for dealing swiftly and decisively with campus disorders. The practice of keeping rules fuzzy so that dissident groups are "kept off balance" has failed demonstrably. In our Statement on Campus Disorders of June, 1969, we recommended that students, faculty and administrators develop acceptable standards of conduct and responses appropriate to deviations from those standards, including the circumstances under which they will

* [See next page]

** [Cite]

resort to (i) campus disciplinary procedures, (ii) campus police, (iii) court injunctions, (iv) other court sanctions, and (v) the city police. We believe genuine progress is being made in this direction.

Police manuals recognize that when the police are needed - as in urban riots, demonstrations that threaten violence, and campus disorders in which court injunctions must be enforced - their behavior must be calm and impartial, however intense the provocation. Panic, overt expressions of anger, and inflammatory use of force are serious breaches of police discipline. The FBI riot control manual states that:

The basic rule, when applying force, is to use only the minimum force necessary to effectively control the situation. Unwarranted application of force will incite the mob to further violence, as well as kindle seeds of resentment for police that, in turn, could cause a riot to recur.

The National Advisory Commission on Civil Disorders has provided excellent, detailed prescriptions for improving police practices, especially in handling urban riots.* Despite notable progress since the Commission issued its report in March, 1969, many police departments in American cities are still ill-prepared to handle riots and other civil disorders.

* [footnote]

In a survey of 16 major cities, this Commission's Task Force on Law and Law Enforcement found that few city governments had established formal, dependable communication links with dissident groups. Few had adequate plans for dealing with disorders, and effective planning staffs were rare. Though all have added riot control to the curriculum of police training, the number of hours devoted to training per man has not increased significantly.

We therefore urge police departments throughout the nation to improve their preparations for anticipating, preventing and controlling group disorders, and to that end to study the approaches that have been employed successfully on the three most recent occasions in Washington and Chicago.*

* [Cite to Law Enforcement TF Rept. generally, to Sahid chapters.]

V.

Keeping Open the Channels of Peaceful Protest

We have pointed out the fundamental distinction between protest and violence, the fact that there is no necessary connection between them, and the need to vindicate the former while opposing the latter. As we have noted, the First Amendment to the Constitution protects freedom of speech, freedom of the press, and "the right of the people peaceably to assemble and to petition the Government for a redress of grievances." In the Supreme Court's words, the First Amendment entails a "profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open." */

Obstructions to peaceful speech and assembly - whether by public officials, policemen, or unruly mobs - abridge the fundamental right to free expression. On the other hand, speech, assembly and other forms of conduct that become coercive or intimidating invade the fundamental First Amendment rights of other citizens. When a mob forces a university to suspend classes, the right of teachers to teach and students to learn are abridged; when a speaker is shouted down or forced from a platform he is deprived of freedom to speak, and the great majority of the audience is deprived of freedom to listen.

*/ [Cite]

Society's failure to afford full protection to the exercise of these rights is probably a major reason why protest sometimes results in violence. Although these rights are expressly safeguarded by the federal constitution, the existing remedies available to aggrieved persons are not adequate. The only approximation to an effective remedy at the federal level is a court injunction authorized under 42 U.S.C. sec. 1983, a Reconstruction era civil rights statute that creates a private cause of action for the "deprivation of any rights, privileges, or immunities secured by the Constitution" by any person acting "under color of" state law. The relative ineffectiveness of this private remedy is indicated by the rarity with which injunctions have been sought in the thirty years since the statute was first interpreted to apply to interference with First Amendment rights. Moreover, state officials acting under color of state law are not alone in posing threats to First Amendment rights; on college campuses, for example, the protestors themselves have obstructed free speech, peaceful assembly, and petition. No present federal law affords a remedy for private abridgement of First Amendment rights.*

*/ The Supreme Court has suggested that federal statutory remedies against such private acts of interference are constitutional, but that no statute yet enacted provides them. United States v. Guest, 383 U.S. 745.

Accordingly, we recommend that the President seek legislation that would confer jurisdiction upon the United States District Courts to grant injunctions, upon the request of the Attorney General or private persons, against the threatened or actual interference by any person, whether or not under color of state or federal law, with the rights of individuals or groups to freedom of speech, freedom of the press, peaceful assembly and petition for redress of grievances.

Under present law private citizens can seek federal injunctions in instances where the complainant alleges unreasonable denial of permits for parades or meetings by state or federal officials, or their issuance only on excessively restrictive conditions. Private persons can also obtain federal injunctive relief on proof of suppression by government agencies or their employees of publications or communications (including the seizure or destruction of newsmen's cameras or film), or the use by law enforcement officials of excessive or unauthorized force to arrest or disperse individuals who seek to make lawful expressions of their views. Our proposal would authorize the Attorney General, as well as private persons, to initiate such proceedings in appropriate cases involving state or federal action. It would also authorize suits for injunctions, both by the Attorney General and by private persons, against private obstruction of the exercise of free expression by pushing speakers off platforms, by the making of deliberately

excessive noise, or by seizure of or denial of access to buildings or other facilities, streets and public areas - a type of interference with First Amendment rights not now covered by any federal statute.

The statute should also authorize suits for either damages

or an injunction by the persons aggrieved and allow the Attorney General to intervene in such suits on request of the parties or the court or on his own motion. State and federal courts should be given concurrent jurisdiction to enforce the statute.

Our proposal suggests a greater federal role in preserving freedom of expression. We do so because federal district courts, which often deal with somewhat comparable provisions in other areas of federal law, are experienced in handling requests for injunctions expeditiously and fashioning careful and effective decrees. The use of federal court injunctions would also provide for greater uniformity in the judicial treatment of those infringing the constitutional rights of others. It would increase the likelihood that the experience of one community or institution would be readily available and useful in handling subsequent problems in others.

State remedies against private misconduct involving infringement of First Amendment rights are usually based not on the First Amendment but on trespass statutes or disorderly conduct ordinances. Such laws were not written to deal with acts of physical obstruction, particularly those committed for demonstrative purposes, and are not always effective in handling

such conduct. Moreover, where acts of violence or obstruction are committed in the name of righting fundamental grievances, those engaging in such conduct may find it harder to justify disobedience of court orders issued to uphold the First Amendment than would be true of orders based upon the laws against trespass and disorderly conduct.

In recent legislation, Congress has given the Attorney General an increasingly active role in protecting certain vital individual rights. This approach seems particularly appropriate for the protection of First Amendment rights, since the mechanism of peaceful dispute, debate, compromise, and change is so essential to the preservation of a just and orderly society and since private persons are often unable to protect their First Amendment rights without some assistance.

For speech, petition and assembly to be effective, they must be heard and seen. In 1789 this was a regular consequence of exercising one's First Amendment rights. In today's crowded and complex society, however, being seen and heard depends almost entirely upon the printed and electronic news media, which are necessarily selective in picking out the relatively few items in a day's or a week's events that can be fitted into the space or time available for reporting "news." The New York Times daily receives 1.25 to 1.5 million words of news material from its correspondents and news services; of that amount, only about one-tenth is printed.

Moreover, the number of separate, independent news "voices" has not kept up with the growing size and diversity of the nation. Economic factors have forced down the number of regularly published daily newspapers and weekly magazines despite substantial population increases. The number of radio and television stations in any area is greater but still relatively small; more importantly, there is little difference among them in their reporting of the "news." Protesting groups can and do print their own newspapers and handbills, but their circulation is rarely extensive. All in all, the number of efforts

to gain attention through the exercise of free speech and assembly far exceeds the number that impact upon the public consciousness as news. For example, the New York Times received over 37,000 letters to the editor last year; only six percent were published, though at least 85 percent were, in the words of the Times motto, considered "fit to print." Had they all been printed, they would have completely filled 135 daily issues of the newspaper.

The difficulties presented by today's society for those who want their protests and demonstrations to be seen and heard leave most people unaware of how deeply felt many grievances have become. As the early Christians showed, a prophetic minority may have more to tell us than a silent majority. A decade ago it would have been fair to say - as many thoughtful journalists have since admitted - that the press did too little reporting of the existence of social injustice and of the grievances of protesting groups. It was generally thought that open conflict - especially violent conflict - was the most important kind of news. Too few news reports went beyond a description of "who-what-when-where" into the "why" of social and political analysis. The national press, for example, has acknowledged its past shortcomings in covering the life and the problems of our black, Indian and Latin American minorities and their efforts to redress their grievances.

Today in-depth analysis of underlying social conditions - especially of aggrieved minorities - is now a regular and welcome part of the best of our print and broadcast media. Many responsible journalists now recognize more fully the challenge of their crucial role in creating the public understanding of complex modern problems that is a necessary pre-condition for informed democratic decisions on the timing and content of peaceful social and institutional change. Indeed, some critics - wrongly in our opinion - complain that the media now go too far in reporting protests and in commentary on their causes.

Like the Kerner Commission before us, this Commission has struggled with the question of what public or private measures a governmental body might recommend to improve the efforts of the press to report on the problems facing individuals and groups in American society and alternative means proposed for solving them, as well as on protest and its underlying causes. We have concluded that the indispensable element of a free press is pluralism and diversity: we need more effective and different voices, not fewer and fewer standardized or homogenized ones.

Accordingly, we recommend that private and governmental institutions encourage the development of competing news media and discourage increased concentration of control over existing media.

Apart from such strictly limited measures of government intervention as the "fairness doctrine" for broadcasters who operate under public license - which deals not with the substance of broadcast speech but only with the broadcaster's duty to present all sides - we oppose official attempts to control how the media present and interpret the news. Governmental interference with the free press is no way to cure its defects. The need is rather for constant self-appraisal and for responsible, effective criticism of the media by private entities such as university schools of journalism and by any group or individual, public or private, aggrieved by any aspect of media performance.

We recommend that the members of the journalism profession themselves continue to re-evaluate and improve their standards and practices, and to strengthen their capacity for creative self-criticism, along the lines suggested in the staff report of our Media Task Force.*

* These suggestions include more attention to in-depth, interpretive news reporting; hiring and training newsmen from minority groups and providing equivalent regular coverage of minority group activities including births and deaths, business promotions, and social functions as well as larger issues; and creation of vehicles for responsible criticism of news media performance, including internal grievance machinery within news organizations, community press councils, professional journalism reviews, and a national center for media study. [Cite to Media Task Force Report]

An observer of the current journalistic scene has recently observed:

It ought to be plain, but seemingly it is not, that the quality of journalism depends primarily on journalists - not on government and not on the legal owners of media...

Journalism will always need artistry to reach the public's mind and heart. Indeed, what is now required is a higher level of art, a boldness that will get journalism unstuck from forms of communication developed in and for a social context very different from the present. Nobody except journalists can develop such forms.*

* "What's Wrong with News? It Isn't New Enough" by Max Ways, Fortune Magazine, October, 1969.

VI.

ESTABLISHING JUSTICE

The third element in any program for reducing group violence is to see to it that our political and social institutions "establish justice," and that valid grievances of disadvantaged groups of citizens are redressed in a timely manner.

Man's progress has reached a stage in which several forces combine to create critical stresses in our social and political structure. First, technological advances and population growth have wrought profound and complex changes in our physical environment and our ability to control it so as to meet basic human needs. Second, an extended period of considerable progress in raising standards of living and education for all and in providing greater social justice for disadvantaged groups -- however unevenly -- has created rising expectations of still further progress and demands that it be brought about. Third, our political and social institutions and the programs they manage are not changing rapidly enough to keep up with the speed of change in the environment they are intended to control. Although we now have the technological and economic capability of releasing all our citizens from poverty and social deprivation, we have not been willing or able to fashion the changes in our political institutions and public programs that will bring to the disadvantaged the liberation that is almost within their grasp. This combination of forces creates demands for change that are not being met, and leads to protests that sometimes result in group violence.

To appreciate the magnitude of these forces and the stresses that result, we need look back no further than the beginning of this century. In 1900, within the memory of men still alive, we were a nation of 75 million people, of whom less than forty percent lived in metropolitan areas. We rode in carriages or trains. We communicated by mail and the printed word.

Today, within the same land space, we have almost tripled our number. Two-thirds of us live in urban concentrations. We motor at high speeds over a nation paved with freeways. We fly across and between the continents. We communicate by telephone, **radio** and television. Our resources and the demands we place upon them have increased enormously; so has our individual specialization of function and our **dependence on one another for shelter** and food, for personal safety, and even for the purity of the air we breathe.

But our political and social institutions and programs have not kept pace. We have achieved the phenomenal forward leap to the moon, but we have not managed the flow of traffic in New York. Most of us now live in metropolitan areas, but as noted in our statement on Violent Crime, we have made few if any advances in the art of governing the urban environment. We desire peace, but we are now engaged in the fourth war of this century. Science has shown us how to produce so much food that surpluses embarrass us economically, yet millions are hungry. We boast of our dedication

to the concept that all men are created equal, yet inequality of opportunity remains our most persistent problem.

Despite our special penchant for economic and technological innovation, we tend like other peoples to resist political and social change. Thomas Jefferson noted this phenomenon and its relationship to violence. After a lifetime of public service, he observed:

. . . .I am certainly not an advocate for frequent and untried changes in laws and constitutions. . . . But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors. It is this preposterous idea which has lately deluged Europe in blood. Their monarchs, instead of wisely yielding to the gradual change of circumstances, of favoring progressive accommodation to progressive improvement, have clung to old abuses, entrenched themselves behind steady habits, and obliged their subjects to seek through blood and violence rash and ruinous innovations, which, had they been referred to the peaceful deliberations and collected wisdom of the nation, would have been put into acceptable and salutary forms.

We strongly urge all Americans to reflect upon Jefferson's observations, and their special relevance to the causes and prevention of group violence. Today the pace of change has become far more rapid than when Jefferson wrote, and the need for adapting our institutions to the changing environment has become greater still. Today, more than ever before, we need to strengthen and

utilize our institutions for peaceful redress of grievances
and peaceful accommodation to the quickening pace of
social change.*

* In other chapters of this Report, we have presented
and will present our recommendations as to how this
goal can be achieved.

Attachment

CHAPTER 2
DISOBEDIENCE TO LAW*

Over the past two decades increasing numbers of people seem to have embraced the idea that active disobedience to valid law—perhaps even violent disobedience—is justified for the purpose of achieving a desirable political goal. This idea found widespread support in the South as the white majority in that region resisted enforcement of the constitutionally defined rights of Negroes, and some such notion was probably not far from the minds of the Alabama State Troopers when they attacked Dr. King's peaceful demonstration at Selma in 1965. No doubt it was also prominent in the thinking of the Chicago policemen who administered punishment to the demonstrators in Chicago during the Democratic Convention of 1968.

The same idea—that disobedience to law is justified in good cause which can be furthered in no other way—is also widely held by many students, black citizens and other groups pressing for social change in America today. It is the illegal and sometimes violent activities of these groups that have been most perplexing and disturbing to the great majority of Americans. Their actions have prompted the most intense interest in the ancient philosophical question of man's duty of obedience to the state. Business lunches and suburban cocktail parties have come to sound like freshman seminars in philosophy, as an older generation has argued back and forth over the rightness and the wrongness of "what the kids and the Negroes are doing."

When deliberate, active disobedience to duly enacted, constitutionally valid law is widely engaged in as a political tactic, and when "civil disobedience" is a topic hotly debated on every side, it is impossible for a Task Force on Law and Law Enforcement to file a report that does not discuss this age-old subject, however briefly.

* This chapter was prepared by the Co-Directors of the Task Force, based in part on contributions by Francis A. Allen, Dean of the Law School, University of Michigan, Charles Monson, Associate Academic Vice President, University of Utah, and Eugene V. Rostow, Professor of Law, Yale University.

THE AMERICAN IDEAL

In a democratic society, dissent is the catalyst of progress. The ultimate viability of the system depends upon its ability to accommodate dissent; to provide an orderly process by which disagreements can be adjudicated, wrongs righted, and the structure of the system modified in the face of changing conditions. No society meets all these needs perfectly. Moreover, political and social organizations are, by their nature, resistant to change. This is as it should be, because stability—order—is a fundamental aim of social organization. Yet stability must not become atrophy, and the problem is to strike the proper balance between amenability to change and social stability.

Every society represents a style of living. The style is represented by the way in which people relate to the social structure, the way in which social decisions are made, the procedures which govern the ways people in the society relate to each other. In a democratic society such as ours, the governing ideals are government by the rule of law, equality before the law, and ultimate control of the law-making process by the people. We depend upon these principles both to accommodate and to limit change, and to insure the style of living we prefer.

As Tocqueville observed, America is peculiarly a society of law. The law has played a greater part among us than is the case in any other social system—in our restless and jealous insistence on the utmost range of freedom for the individual; in our zeal to confine the authority of the state within constitutional dikes; and in our use of law as a major instrument of social change. The practice of judicial review in the United States has had an extraordinary development, with no real parallels elsewhere. It has kept the law a powerful and persistent influence in every aspect of our public life.

We believe with Jefferson that the just powers of government are derived—and can only be derived—from the consent of the governed. We are an independent, stiff-necked people, suspicious of power, and hardly docile before authority. We never hesitate to challenge the justness and the constitutional propriety of the powers our governments and other social institutions assert. In the robust and sinewy debates of our democracy, law is never taken for granted simply because it has been properly enacted.

Our public life is organized under the explicit social compact of the Constitution, ratified directly by the people, not the States, and designed to be enforced by the Courts and by the political process as an instrument to establish and at the same time to limit the powers of government. As Justice Brandeis once observed, "[t]he doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to

avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy. . . . And protection of the individual . . . from the arbitrary or capricious exercise of power . . . was believed to be an essential of free government."

The social contract of our Constitution goes beyond the idea of the separation of powers, and of enforceable limits on the competence of government. The governments established by the national and state constitutions of the United States are not omnipotent. A basic feature of the Constitution, made explicit in the Ninth and Tenth Amendments, is that rights not delegated to governments are reserved to the people. The Amendments may not be directly enforceable in the Courts, but the idea they represent animates many judicial decisions, and influences the course of legislation and other public action.

In a multitude of ways, the Constitution assures the individual a wide zone of privacy and of freedom. It protects him when accused of crime. It asserts his political rights—his right to speak, to vote, and to assemble peaceably with his fellows to petition the Government for a redress of his grievances. Freedom of speech and of the press are guaranteed. Religious liberty is proclaimed, and an official establishment of religion proscribed. And the Constitution seeks assurance that society will remain open and diverse, hospitable to freedom, and organized around many centers of power and influence, by making the rules of federalism and of liberty enforceable in the Courts.

The unwritten constitution of our habits is dominated by the same concern for preserving individual freedom against encroachment by the State or by social groups. The anti-trust laws; the rights of labor; the growing modern use of state power to assure the equality of the Negro; the wide dispersal of power, authority, and opportunity in the hands of autonomous institutions of business, labor, and education—all bespeak a characteristic insistence that our social arrangements protect liberty, and rest on the legitimacy of consent, either through the Constitution itself, made by the people, and capable of change only by their will, or through legislation and other established methods of social action.

In broad outline, such is the pluralist social compact which has evolved out of our shared experience as a people. It has its roots in our history. And it grows and changes, in accordance with its own rules and aspirations, as every generation reassesses its meaning and its ideals.

OUR CONTEMPORARY DISCONTENTS

Today there are many who maintain that these ideals, and the institutions established to maintain them, no longer operate prop-

erly. In recent years, increasing numbers of Americans have taken to the streets to express their views on basic issues. Some come to exercise their right to dissent by parades and picketing. Some dramatize their causes by violating laws they feel to be wrong. Some use the issues being protested as drums to beat in a larger parade. For example, the Vietnam war has been used on one side as a dramatic moment in the ubiquitous, always evil Communist conspiracy; on the other as an exemplar of the fundamental diabolism of western capitalist nations. Some take to the streets in the belief that the public, if made aware of their grievances, will institute the necessary processes to correct them. Others come in anger; not hopeful, but insistent; serving notice, not seeking audience. Finally, there are even a few who take to the streets to tear at the fabric of society; to confront, to commit acts of violence, to create conditions under which the present system can be swept away.

Out of the widening protest, one disturbing theme has repeatedly appeared. Increasingly those who protest speak of civil disobedience or even revolution as necessary instruments of effecting needed social change, charging that the processes of lawful change built into the system are inadequate to the task.

The American response to this disobedience to law—to events which are contrary to our fundamental beliefs about the mode of social and political change—has been ambivalent. The reason lies in the fact that the American people are going through a crisis of conscience. The issues in whose name violence has been committed have deeply disturbed and divided the American people. The tactics of the demonstrators have encountered angry opposition, but many Americans continue to sympathize with some or all of the goals sought by the demonstrators. After all, although one might argue that the Negro has advanced in the last ten years, few would maintain he has attained full first-class citizenship. And who would say the ghettos are not an agonizing disgrace? Similarly, Vietnam is hardly an open-and-shut case. The only point of view from which it is clearly praiseworthy is the self-interest of ourselves and our allies. The draft, another key issue, is at best a regrettable and clumsily administered system. Finally, when the young charge that our system—political and social—is shot through with hypocrisy, only the most fanatic feels no twinge.

We must, of course, realize that civil rights demonstrations arise from great suffering, disappointment and yearning. We must recognize the importance to the democratic process, and to the ultimate well-being of our nation, of young people combatting hypocrisy and indifference. But when these emotions become a basis for action and when that action creates social disorder, even the most sympathetic are forced to judge whether and to

what extent the ends sought justify the means that are being used.

The difficult problem in this endeavor is to maintain perspective. The issues have reached a stage of polarization. Partisans on each side constantly escalate the rhetorical savagery of their positions, adding nothing but volume and abuse. There is a great temptation to take sides without thoughtful inquiry—if for no other reason than because it is simpler. What are some of the considerations which should guide us in this inquiry?

MORAL JUSTIFICATIONS FOR DISOBEDIENCE TO LAW: THE NEEDS OF THE INDIVIDUAL

The idea that men have the right to violate the law under certain circumstances is not new. The oldest justification for such action seems to have been through appeal to a higher "natural law" which is the only proper basis of human law. This theory, which dates at least as far back as Plato, and which is in our own Declaration of Independence,¹ has recently found expression in the thought of Martin Luther King:

A just law is a man-made law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of Saint Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law.²

For St. Thomas political authority was derived from God and hence binding in conscience, but where authority was defective in title or exercise, there was no obligation of conscience.³ Such a condition arose in the case of a ruler who had either usurped power or who, though legitimate, was abusing his authority by ruling unjustly. Indeed, when the ruler contravened the very purpose of his authority by ordering a sinful action, the subject was under an obligation *not* to obey. In the case of abuse of authority, St. Thomas apparently endorsed nothing more than passive resistance by the citizen; but where the ruler illegitimately possessed himself of power through violence, and there was no other recourse for the citizen, then St. Thomas allowed active resistance and even tyrannicide.

Later Catholic thinkers, such as the Jesuit Francis Suarez denied the divine right of kings, holding that the ruler derives his authority immediately from the people and only ultimately from God. These doctrines led logically to the conclusion that in any circumstances in which a ruler turns into a tyrant, whether originally a legitimate ruler or not, he may be deposed by the people, by force if necessary. This conclusion became, of course, the generally accepted view in the secular world, with the theories of Locke and Jefferson and the American and French

Revolutions in the eighteenth century and the rise of liberal democracy in the nineteenth.

The notion of a "social compact" was always closely bound up with the emerging ideas of popular sovereignty.⁴ This theory, especially prominent in John Locke, expresses the view that governments evolve by the consent of the governed and that the constitution establishing a government is a contract or agreement which, once it is established, is binding upon all men, both those opposed to it and those who favor it. When government's laws are consistent with terms of the covenant, then the people must obey them. But the people "are absolved from obedience when illegal attempts are made upon their liberties or properties, and may oppose the unlawful violence of those who were their magistrates when they invade their properties contrary to the trust put in them. . . ."⁵

Most of the unlawful opposition today to the Vietnam war is justified on the ground that the war⁶ is itself immoral and "unlawful" in various respects. Since it is immoral, the argument goes, there is no moral duty to obey those laws which are in the aid of the conduct of the war. Indeed, the argument continues, one's true moral duty is to resist the war and to take affirmative action to impede its prosecution. On theories of this kind, Americans have refused to be drafted; they have disrupted selective service facilities and destroyed selective service records; they have vilified the President, the Secretary of State and the Secretary of Defense and attempted to disrupt their public speeches; they have attempted to bar companies and governmental agencies participating in the war effort from university campuses and to disrupt the universities that refused to accede to that demand.

At the level of individual morality, the problem of disobedience to law is wholly intractable. One is tempted to suggest that even if the war is immoral, the general level of morality of the country is not much improved by the conduct described above. Moreover, if we allow individual conscience to guide obedience to the law, we must take all consciences. The law cannot distinguish between the consciences of saints and sinners. As Burke Marshall has said:

If the decision to break the law really turned on individual conscience, it is hard to see in law how Dr. King is better off than Governor Ross Barnett of Mississippi, who also believed deeply in his cause and was willing to go to jail.⁶

Where issues are framed in purely moral terms, they are usually incapable of resolution by substantially unanimous agreement. Moral decisions are reached by "individual prudential application of principle, with the principles so general as to be only

of minimal assistance and with almost the whole field thus left to prudence.⁷⁷ This fact is illustrated by the story of the exchange that occurred between Emerson and Thoreau, the latter of whom had in 1845 personally seceded from the United States in protest against slavery. As part of his anti-slavery campaign, Thoreau was spending a night in jail. Emerson paid him a visit, greeting him by saying, "What are you doing in there, Henry?" Thoreau looked at him through the bars and replied, "What are you doing out there, Ralph?"⁷⁸

But the issue raised by conscientious disobedience to law also has some more tractable social dimensions. What is the effect upon our society of this kind of conduct? For instance, how does it affect the people who engage in the disobedience? Does it have an effect upon other people? What does it do to our system of laws?

THE PROBLEM OF CONTAGION: THE NEEDS OF SOCIETY

Although there are some who argue that tolerating any form of law violation serves as an encouragement of other forms of anti-social or criminal behavior by the violators, some research in this area suggests precisely the opposite. A series of studies of approximately 300 young black people who engaged in a series of acts of civil disobedience were undertaken in a western city. On the basis of their observations, the authors concluded: "[T]here have been virtually no manifestations of delinquency or anti-social behavior, no school drop-outs, and no known illegitimate pregnancies. This is a remarkable record for any group of teen-age children of any color in any community in 1964."⁷⁹

In any event the evidence is insufficient to demonstrate that acts of civil disobedience of the more limited kind inevitably lead to an increased disrespect for law or propensity toward crime. In fact, some experts have argued that engaging in disciplined civil disobedience allows people to channel resentment into constructive paths, thereby reducing the propensity for engaging in antisocial behavior.

But the fact that disobedience to law does not appear adversely to affect the attitudes of the people who engage in it is only one small part of the problem. For such conduct does have a serious adverse effect both upon other people in the society, and, most importantly of all, upon the system of laws upon which society must inevitably depend.

The effect of civil disobedience upon others in the community is clear. Except in the case of those acts designed solely to appeal to the conscience of the community, the purpose of much contemporary disobedience to law is to influence community action by harassing or intimidating the members of the community into

making concessions to a particular point of view. In the case of the opposition to the Vietnam war, for example, those engaged in acts of disobedience are largely bent upon making miserable the lives of public officials who support the war, upon bringing economic pressure to bear on commercial enterprises participating in the war effort, and upon generally inconveniencing the public to dramatize a disaffection for war and convince others that the war is not worth the trouble it is causing. To the extent that these efforts succeed, others are obviously adversely affected.* But the most serious effect of all is suggested in the following question:

[W]hat lesson is being taught to the wider community by the precept and example of civil disobedience? Is it tutelage in nonviolence or in defiance of authority, in rational confrontation of social ills or in undisciplined activism?¹⁰

There is every reason to believe that the lesson taught by much of the current disobedience to law is disastrous from the standpoint of the maintenance of a democratic society.

The experience of India in this regard is instructive because that country has had such a long and widespread familiarity with the practice of civil disobedience:

The fact is that the effect of protest behavior on the functioning of the political system has been palpable. We have already seen that Indians compel official attention and constrain decision-making by deliberately engaging in activities that threaten public order. Violence or the threat of violence has become an important instrument in Indian politics. Public protests involving a threat to public order and non-violent civil disobedience have become habitual responses to alleged failures by government to do what a group of people want. While it is true that political accommodation is real in India, it is achieved at a higher level of political disorder than in any other of the world's democracies.¹¹

The experience of India seems to indicate that civil disobedience has a strong tendency to become a pattern of conduct which soon replaces normal legal processes as the usual way in which society functions. Put in American terms, this would mean, once the pattern is established, that the accepted method of getting a new traffic light might be to disrupt traffic by blocking intersections, that complaints against businessmen might result in massive sit-ins, that improper garbage service might result

*Even in the narrowly defined situation of acts designed solely to appeal to the conscience of the community, adverse effects frequently flow to others. Thus a refusal to accept induction into the armed services means that someone else must serve.

in a campaign of simply dumping garbage into the street, and so on. Of course, these kinds of actions are not unknown in America today, but in India they have become a necessary part of the political system. Without a massive demonstration to support it, a grievance simply is not taken seriously because everyone knows that if the grievance were serious, there would be a demonstration to support it.

The adverse effect upon normal democratic processes is obvious. Though not intended to destroy democratic processes, civil disobedience tends plainly to impair their operation. This is a fact to which those who engage in civil disobedience should give consideration lest, in seeking to improve society, they may well seriously injure it.

This observation, however, will not answer the arguments of those who believe that the urgency of their message is so strong that illegal tactics are weapons that must be used—whatever the risks that such use may entail. But even urgent messages too frequently repeated lose their appeal. Where once people at least listened patiently, now only deaf ears are turned. Moreover, as Martin Luther King recognized, violence against an oppressor only tends in the long run to justify the oppression. Repeatedly putting one's body "on the line" does not enhance, but diminishes, the worth of that body to the dominant society. Those militants who now advocate revolution as the only alternative have recognized this truth.

The belief that a violent revolution is necessary to achieve social justice depends on the assumption that certain injustices are intrinsic to our system and therefore not amenable to change within the system. For revolution is justified only as a last resort, when justice is achievable by no other means.

We agree with the overwhelming majority of the people in this country that our problems, serious as they are, are not of the kind that make revolution even thinkable, let alone justifiable. We believe that political and social mechanisms do exist and have produced significant change in recent years. The remedy for the discontented, we believe, is to seek change through lawful mechanisms, changes of the kind that other chapters of this report suggest.

But our beliefs and our words are really beside the point. What is important is rather the beliefs of those diverse, alienated groups in our society for whom the political and social mechanisms do not seem to work. We can only hope that the majority will respond convincingly to the needs of the discontented, and that the discontented will remain open to the possibility of achieving this response through peaceful means.

CONCLUSION

Official lawlessness—by some southern governors, by some policemen, by corrupt individuals in positions of public trust—is widely recognized as intolerable in a society of law, even if this recognition is too infrequently translated into effective action to do something about the problem. We believe that the time has also come for those participating today in the various protest movements, on and off the college campuses, to subject their disobedience to law to realistic appraisal. The question that needs to be put to young people of generous impulses all over the country is whether tactics relying on deliberate, symbolic, and sometimes violent lawbreaking are in fact contributing to the emergence of a society that will show enhanced regard for human values—for equality, decency, and individual volition.

For some in the protest movement, this is not a relevant inquiry: their motivations are essentially illiberal and destructive. But this is not descriptive of most of those engaged today in social protest, including most who have violated the law in the course of their protest: their intention is to recall America to the ideals upon which she is founded.

We believe, however, that candid examination of what is occurring in the United States today will lead to the conclusion that disobedience to valid law as a tactic of protest by discontented groups is *not* contributing to the emergence of a more liberal and humane society, but is, on the contrary, producing an opposite tendency. The fears and resentments created by symbolic law violation have strengthened the political power of some of the most destructive elements in American society. Only naive and willful blindness can obscure the strength of these dark forces, which, but for the loosening of the bonds of law, might otherwise lie quiescent beneath the surface of our national life. An almost Newtonian process of action and reaction is at work, and fanaticism even for laudable goals breeds fanaticism in opposition. Just as "extremism in defense of liberty" does not promote liberty, so extremism in the cause of justice will extinguish hopes for a just society.

REFERENCES

1. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."—
2. King, "Letter from the Birmingham Jail" (1963).
that among these are Life, Liberty and the pursuit of Happiness."
3. See generally the illuminating article by MacGuigan, "Civil Disobedience and Natural Law," 11 *Catholic Lawyer* 118 (1965).

4. See vol. 3 Copleston, *History of Philosophy*, (Westminster, Md., 1953), at 348-49.
5. Locke, *Second Treatise on Civil Government*, ch. 19, "Of the Dissolution of Government," sec. 228.
6. Marshall, "The Protest Movement and the Law," 51 *U. Va. L. Rev.* 785, 800 (1965).
7. MacGuigan, *supra* note 3, at 125.
8. *Id.*
9. Pierce and West, "Six Years of Sit-Ins: Psychodynamics Causes and Effects," 12 *Int'l J. of Social Psychiatry* 30 (Winter 1966).
10. Allen, "Civil Disobedience and the Legal Order," Part 1, 26 *U. Cin. L. Rev.* 1, 30 (1967).
11. Bayley, *Non-violent Civil Disobedience and the Police: Lesson to be Learned from India*, at 15.

Rider for the Group Violence Chapter

[As the early Christians showed, a prophetic minority
may have more to tell us than a silent majority.*]

* LNC suggested insert.

NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE

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November 18, 1969

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MEMORANDUM FOR THE COMMISSIONERS

Attached is a revised draft of the proposed
group violence statement, which will be discussed at
the Commission meeting on November 20 and 21.

JSC
James S. Campbell
General Counsel

Attachment

*Attach Xerox
Chap 2 of Law Enforcement (Vol. 10)*

hip

per

~~James S. Campbell~~



Department of Justice

~~THE~~
SAS

ADVANCE FOR RELEASE 8 PM, EST

JSC
WG McD

ADDRESS

BY

HONORABLE JOHN N. MITCHELL
ATTORNEY GENERAL OF THE UNITED STATES

Note p. 3 -
Circulate to
Commissioners
LSC

THE ARENA
MILWAUKEE, WISCONSIN

NOVEMBER 11, 1969

1. INTRODUCTION

I would like, for a few moments, to address you on a general topic that is causing me increasing concern. It is the problem of cynicism in America. This is an attitude which I think encompasses many other problems--such as crime and civil disorders and Vietnam and inflation--and which is rooted in the nature of our society.

We are, as you know, a pluralistic nation and we are proud of it. Since 1820, nine foreign nations have each sent us one million or more immigrants. Our citizens belong to at least 80 separate religious groups which have memberships of 50,000 or more.

But this easily identifiable pluralism--by religion and by national origin--is cross-cut by geographical regionalism (such as the north and the south); by economic classification (such as blue collar worker and white collar worker); and by area differences (such as the city dweller, the suburbanite and the rural resident).

But perhaps most importantly, we boast the pluralism of ideas--of permitting opinion which ranges from the extreme right to the extreme left; and of assimilating these ideas on national issues into two large areas of agreement which are then reinterpreted into the two-party national political system.

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The strength of our form of government was immediately recognized very early in our history. A late 18th Century French political analyst commented:

"It is in the enjoyment of a dangerous freedom--(the freedom of ideas)--that Americans have learned the art of rendering the danger of freedom less formidable."

2. DISEASE OF CYNICISM

And yet, an excess of political diversity can be as dangerous as the absence of it. In our representative system, national government cannot act decisively without a national consensus. This continued inaction by government breeds the disease of cynicism which seems to be so alarmingly prevalent in our nation today--a cynicism that duly elected government, particularly the federal government, has lost its relevance to the aspirations of our society.

There are the under-privileged minorities, especially the poor and the black, who had relied on Utopian promises and now distrust the government's ability to act on their behalf.

There are the middle class working man and housewife who had unquestioningly accepted the government's ability to control the economy and then found themselves caught in increasing inflation.

There are the dissatisfied youth who reject the established political processes and who turn to violence and confrontation.

And then, of course, there are the rich and the poor, the black and the white, the city dweller and the suburbanite who are frustrated and terrorized by the inability of government to immediately solve the crime problem in the streets and the Vietnam War on the otherside of the world.

A recent survey conducted by the National Violence Commission proves the point.

In 1952, 81 percent of the persons surveyed said they thought that voting was the most efficient way to influence governmental action. In 1968, only 55 percent felt that way.

In 1952, 35 percent said that government officials did not pay much attention to them. In 1968, 43 percent felt that way.

How have we come to this state of affairs? How has the most prosperous nation in the world come to the point where many of its citizens doubt the ability of its governmental institutions to solve pressing issues?

I believe the fault, in great part, lies with the deception which was practiced over the last few years.

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The prior Administration attempted to solve problems through the illusion of words--through the projection of succeeding images of impossible dreams which were replaced by more impossible dreams when previous commitments could not be met.

This rhetorical device worked for quite awhile, mainly, I suppose, because the human mind likes to dramatize. Men are, by their very nature, intellectually attracted by the bright uniforms and loud trumpets of new ideas.

But what does one have after the parade has passed--an empty street littered with handbills and the memory of what might have been. Of course it is healthy, ever so often, to have a burst of color and imagination. But this is no replacement for well conceived and well funded programs.

It is for this reason that this Administration has been purposely low key in its public statements and in the presentation of its new programs. We do not want to offer more hope than we can realistically deliver. We do not want to create expectations based on mere words.

In evaluating the methods that this Administration should use, we came to the conclusion that we ought to emphasize some of the simple precepts of American government about which most citizens agree--fundamental concepts of governmental action which this Administration believes should be retained.

The methods that we are using to achieve social and economic progress are the methods which I think this mid-west audience understands better than most. We believe in common sense, in hard work and in quiet diligence. We believe that individuals and government should carefully plan and finance each step of the way.

We believe in consistency and in that great American genius for compromise. We believe that the extremists on both ends of the spectrum will be isolated by the great majority of Americans and that the middle course is generally the best course for this nation to pursue.

And finally, we believe that the Republican Party can prove to doubting citizens that government can be relevant to their aspirations and can produce a stable and prosperous society.

In the next few minutes, I would like to give you some examples of current problems and explain to you how we are attempting to solve them.

3. VIETNAM DEMONSTRATIONS

This week we expect upwards of 100,000 persons to appear in Washington to stage demonstrations against the war in Vietnam. The announced purpose of this group is to exert pressure on the President in order to achieve the immediate

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unilateral withdrawal of American troops and the abandonment of the government and peoples of South Vietnam.

This Administration clearly recognizes the right of these people under our First Amendment to peacefully congregate in Washington and to petition the government with respect to their grievances--assumed or otherwise.

But it is the responsibility of government to see that such congregations are conducted in a peaceful and orderly fashion, uninterrupted by militant factions who would use such an occasion to foment violence.

We propose to honor our obligations in both directions. We will support the peaceful assembly and we will likewise curtail the militant factions whose sole aim is the creation of a violent confrontation.

The foreign policy of this government cannot--and will not--be formulated in the streets of Washington--or in any other street of this nation.

The President in his talk to the nation of November 3rd has reviewed the Vietnam problem with the American people and has received the backing of a substantial majority. The President does have a plan to end our involvement in the Vietnam war and it will work. This twofold plan will produce more rapid results if our peace negotiations with the other side--which will continue--are fruitful. In any event, the second part of the plan--Vietnamization of the war--is already underway with the withdrawal

of American troops. This process will continue, as circumstances permit, and end with the South Vietnamese handling their own security.

The negative cynicism of demonstrators cannot be allowed to replace the affirmative programs of those in government charged with conducting our foreign policy and carrying out our national security.

4. CRIME

Of course, I am a lawyer and not a political philosopher. But today, even the law is beginning to suffer from the popular cynicism about governmental institutions.

More particularly, there is the criticism that our system of law enforcement and criminal justice has failed to meet the problems of crime in our society.

The seriousness of the problem cannot be doubted.

The latest FBI Uniform Crime Reports show that in 1968 there were 4.5 million serious crimes committed in the United States, a 17 percent increase over 1967.

From 1960 to 1968, the volume of serious crime has risen 122 percent, while the population has increased only 11 percent. The citizen risk of becoming a victim of a crime has nearly doubled from 1960 to 1968.

In recognition of this national tragedy, we launched a comprehensive anti-crime program last January as a first priority of the Administration.

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It is a program which stresses the practical aspects of criminal justice--apprehension and arrest, the prosecution of suspected criminals and the rehabilitation of convicted persons.

It is a program which stresses obtaining results as soon as possible. For while crime may or may not be solved a generation from now by the implementation of enormously expensive and radically new social concepts, the nation cannot afford to wait.

We must start and start now to get down to the dry mechanics of fighting crime on a practical level. We need more and better trained police. We need more efficient court systems. We need new corrections facilities and more rehabilitation programs.

5. AID TO STATES

President Nixon has said that "The public climate with regard to law is a function of national leadership."

Basically, the federal government has very limited legal jurisdiction over street crime--the type of crime that affects most of us more directly than others. We can set the tone for leadership. We can initiate pilot projects. We can offer financial and technical assistance. But the primary responsibility is still with the state and local governments.

Our most ambitious program to combat local street crime is the Law Enforcement Assistance Administration of the Department of Justice. LEAA is the federal government's major commitment to help states and local communities to improve their police, their criminal justice systems, their juvenile programs, and their correctional institutions.

For the current fiscal year, we may receive as much as \$275 million for the Law Enforcement Assistance Administration. If appropriated, \$225 million of this is scheduled to go to cities and states for action programs.

The greatest single emphasis in the LEAA program has been and will continue to be the funding of police efforts to decrease street crime.

But police action alone cannot solve the total problem. We must bear in mind that about 45 percent of the persons who serve prison terms are subsequently arrested for additional offenses; and that more than half our crimes against property are now committed by youths under 21.

Accordingly, the LEAA action programs also contain substantial plans to increase the efficiency of the criminal courts, to improve rehabilitation efforts in our prisons and initiate and expand corrective programs for our youth.

I hope that Congress will pass the \$275 million appropriation. Law enforcement agencies in this state and in every state

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must have sufficient funds. If not, the national effort against crime will merely be another rhetorical ruse.

6. NARCOTICS

Another area in which the federal government has substantial jurisdiction involving street crime is the battle against illegal narcotics and dangerous drugs. Between 1967 and 1968, there was a 64 percent increase in arrests for narcotics and marijuana. Half of those now being arrested for drug abuse are under 21 years of age.

The battle against narcotics is an integral part of the Administration's anti-street crime program. A narcotics addict may need \$70 or \$80 a day to satisfy his habit. Thus, he turns to robbery, mugging and burglary in order to obtain money. A reduction in addicts will result directly in the reduction of crime.

One of the most significant parts of the program so far has been a landmark proposal called the Controlled Dangerous Substances Act of 1969, which would consolidate and reorganize all the existing drug laws--some of which date back to 1914. It would expand federal authority to control not only narcotics and marijuana, but also many new drugs which come on the market. It would also substantially expand federal law enforcement power to search for illegal narcotics and to arrest suspected violators.

In addition, we have launched the first major search and seizure border operation in history aimed at stopping the importation of illegal drugs from Mexico.

It is estimated that the Mexican border traffic accounts for 80 percent of the illegal marijuana in this country, 20 percent of the heroin and large amounts of other dangerous drugs. So far this operation has been highly successful. We have evidence to indicate that Mexican marijuana is in very short supply in many areas of the country and that the price of Mexican marijuana, where available, has risen substantially.

We have also stepped up our narcotics enforcement program and we are in the process of training 22,000 state and local law enforcement officers to combat the local narcotics operations.

7. ORGANIZED CRIME

Another aspect of crime where the federal government has broad jurisdiction is organized crime.

Relying on the hopelessness of ghetto residents, organized criminals sell heroin and cocaine; playing on insecure credit, they loanshark the honest working man; recognizing elector indifference, they corrupt labor unions and political leaders.

The core of the federal effort against organized crime has been to reorganize the Strike Forces. They are interagency

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teams designed to throw a whole net of federal law enforcement over an organized crime family in a particular city. We have expanded the number of these teams and we plan to reach 20 Strike Forces by the end of fiscal 1971.

In addition, we have set up an experimental federal-state racket squad in New York City. If this joint venture proves to be successful (and current activities indicate it will be), we plan to organize others in an effort to cooperate with state and local authorities in our Strike Force assault.

We have also asked for additional legislation to help us in the battle against the organized gangster.

Among the bills we have proposed or supported are laws designed to offer a broad immunity for many potential witnesses against organized crime; to expand our current ability to prosecute gambling; and to make it a federal crime to corrupt local police and other public officials.

In order to mount this broad attack on organized crime, the Administration has asked for a record \$25 million increase in funds for all government agencies involved in this effort--a 40 percent increase over the previous Administration request.

The result of our activities so far has been promising. A total of 71 organized crime figures were either indicted or convicted in the last fiscal year, as compared with only 48 the previous year.

Furthermore, we have arrested a number of crime figures who are members of the ruling commission of the organized crime syndicate in Buffalo, in Newark, in New Orleans, in Rhode Island and in Chicago. We think that this new assault shows great hope of success against this difficult problem.

8. CONCLUSION

This is just a brief outline of three of our major proposals, three which we believe are most promising.

This Administration has presented a great many other anti-crime proposals. They range from a comprehensive program for the capital City of Washington to some highly technical but very important legislation aimed at utilizing antitrust laws against organized crime.

We have also taken a number of important executive decisions. We have authorized court approved wiretapping against organized crime. We have authorized the admission in evidence of voluntary confessions complying with the guidelines approved by Congress. We have proposed pre-trial detention for dangerous suspects.

I know, and you know, that we must solve our crime problem. Economic prosperity and political stability have little meaning if our citizens are afraid to freely move about their neighborhoods. As this Administration's anti-crime program

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moves forward through Congress and into operation, the mood of the nation will change from cynicism to optimism and confidence in the law will be restored.

This Administration is committed to the success of its program. We are going to restore civil tranquility to the streets of this nation. We are going to restore confidence in elected governments' ability to act--and to act now.

JUSTICE
ERNEST W. McFARLAND

Supreme Court

STATE OF ARIZONA

Phoenix

November 17, 1969

AIR MAIL TO:

Dr. Milton S. Eisenhower, Chairman
National Commission on the Causes
and Prevention of Violence
726 Jackson Place, Northwest
Washington, D. C. 20506

Dear Dr. Eisenhower:

I regret that I had to leave during the discussion in regard to the proposed report on "Dissent and Disorder."

I know how anxious you are that our reports not contain dissents. I therefore feel that I should make a constructive suggestion before writing my dissent. If it is adopted, I am willing to go along with the report, although I have serious doubts in regard to the comparison.

You probably saw the article in the U. S. News and World Report for November 17th on the riot-conspiracy trial in Chicago, but in order to be sure that you have the benefit of it I am enclosing a copy of the same. I personally feel that you have to go behind the charge of conspiracy to find the "cause or start of a riot."

The next question, of course, is the reason as to why they wanted to start a riot. It is charged by many that the real purpose was to break up our democratic process and show that our government is not functioning - that we are unable to conduct even a convention of one of our major political parties! Another charge is that it was for the purpose of preventing the nomination of a candidate by the majority! In any event the Walker report was based upon hearsay on hearsay, and, in my judgment, this Commission should not even in the slightest degree give aid and comfort to those who are on trial. Furthermore, the Walker report seems to be in direct conflict with that made by the House Commerce Committee. It would certainly be regrettable for this Commission to attempt to contradict even in the slightest degree a report of the House Committee which was based upon sworn testimony!

The only thing that I have done in this suggested modification is strike out that part of the report which is based solely upon the findings of the Walker report, and all inferences to the Walker

Dr. Eisenhower, 11/17/69 - p. 2

report. It is to be regretted when people cannot peaceably demonstrate without there being violence injected - contrary to the announced purpose - as occurred in Washington last Saturday - when the office of the Attorney General of the United States is stoned and an American flag is taken down from in front of one of our public buildings. This presents a sad state of affairs - one which would not have been tolerated a few years ago, and had it occurred in another country we would have looked upon it as evidence that that government was not functioning properly.

I personally feel that our report will be just as effective if it eliminates all references to the Walker report, and all findings based thereon. I believe it will be just as effective without it.

A revised page 25 is enclosed along with the page of notes for suggested changes, and pages 26 and 27 showing deletions.

With kindest personal regards, I am

Sincerely yours,


Ernest W. McFarland

CC Members of the Commission

Encs. Copy U.S. News article
Revised p. 25 & pp. 26, 27
Notes on changes



A mob protesting the trial battles police.



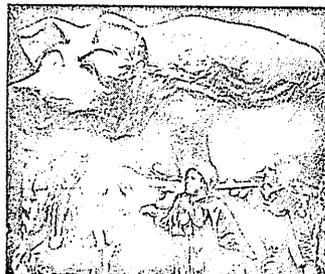
Flags swirl at noisy rally for "Chicago 8."

HOW MILITANTS TRY TO DESTROY A COURT

When wholesale introduction of revolutionary tactics hits a courtroom, a bizarre spectacle ensues. The conspiracy trial of the "Chicago 8" shows what guerrilla techniques can do to the judicial process.



"New Left" mocks gagging of defendant.



Pig symbolizes a much-used epithet.

CHICAGO

Tactics of turmoil have carried the guerrilla warfare of the radical "New Left" into the courtroom.

On November 5, the disorder reached a point at which a trial judge declared a mistrial in the case of one of eight defendants and sentenced him to four years' imprisonment for contempt.

Before that, however, one incredible incident after another turned the riot-conspiracy trial of the so-called "Chicago 8" into an assault on the judicial process unparalleled in U. S. history.

Similar tactics have been used to disrupt campuses, legislative chambers, city halls, welfare offices, school boards, even congressional hearings.

But seldom if ever has an American court of law been the scene of such sustained chaos—weeks of tumult fomented by defendants determined to make a shambles of the proceedings.

The trial has seen a federal judge obscenely reviled in court, vilified as a "rotten, racist, fascist pig," subjected to a relentless barrage of harassing antics.

A central figure in the case—Bobby C. Seale, 33, Black Panther leader—went so far in his disruptive onslaught that he was ordered gagged and shackled. The restraints were removed after three days. But defendant Seale ignored the warnings of Judge Julius J.

Hoffman and resumed his disruptions. This finally provoked the mistrial ruling in his case.

Judge Hoffman imposed 16 consecutive three-month jail terms as punishment for Mr. Seale's repeated outbursts.

The judge said that the trial of the other seven defendants would continue.

Battle in the streets. From its beginning, the "Chicago 8" trial has been a raucous exercise. It took on aspects of pandemonium on its opening day, September 24. On that day, in streets outside the Federal Building, a mob of hundreds battled with police.

Inside the courtroom, day after day, commotion kept mounting. Spectators fueled the confusion by roaring their support of the eight men accused of conspiring to incite riots at last year's Democratic National Convention here.

The defendants made no secret of their aim to turn into a farce the first court test of a federal law against crossing State lines with an intent to trigger riots.

All eight refused to rise when Judge Hoffman entered the courtroom. This set the tone for their conduct. Meanwhile, there were other distractions.

When the judge ordered a pair of defense lawyers jailed for contempt after they failed to show up, a group of 150 lawyers concerned over the action protested by marching on the court and denouncing the 74-year-old jurist as "not fit to sit in a federal district court."

"Pig." Compared with what came later in court, that was mild. The defendants hurled the word "pig" at the judge again and again. Obscenities were bellowed at Judge Hoffman whenever he ruled against the defense. A jury of 10 women and two men—impaneled over defense objections—looked on in amazement. The defense objected to the jury because—although it contained two Negroes—it included no black militants or other radicals.

The spotlight was grabbed quickly



—Illustrations: Howard Brodie—CBS-TV News
Bobby Seale's outbursts brought forcible restraint, later a mistrial and prison sentence for contempt.

by Mr. Seale, national chairman of the Black Panthers. He was the only one of the eight not free on bond. His nights were spent in the Cook County jail as a federal prisoner on a fugitive warrant charging him with complicity in the kidnaping and murder of a Black Panther member in New Haven, Conn.

Mr. Seale demanded the right to defend himself and cross-examine witnesses because his own attorney was unable to be present, having undergone surgery. When Judge Hoffman ruled that Mr. Seale was represented by William M. Kunstler, chief defense counsel, Mr. Seale assailed the jurist as a "racist, bigot and fascist."

In daily outbursts, Mr. Seale screamed unprintable accusations — interspersed with repeated cries of "pig"—at the judge. The defendant climaxed one outburst by lunging at an assistant U.S. attorney and calling him a "rotten, fascist pig."

As he had repeatedly warned that he would do, Judge Hoffman ordered the Black Panther gagged and shackled hand and foot to his chair.

Precedent for shackles. The law says that a defendant must be present at his trial. Restraints such as gags and shackles are not unprecedented. Such action was taken against two men in a 1963 New York narcotics case and was upheld by the appellate court.

When, after the three days of constraint, the gag and shackles were removed, Mr. Seale told the judge:

"I wasn't shackled because I called you a pig, a fascist and a racist—which

I still think you are—but because I was demanding my rights."

The mistrial ruling came after Mr. Seale, defying new warnings and admonitions, had persisted in attempting to cross-examine a witness.

Time and time again, the other seven defendants have joined in attempts to upset decorum with grunts, shouted protests and derisive actions.

For example, Thomas E. Hayden, 29, a founder of the Students for a Democratic Society, responded to mention of his name by leaping to his feet and shaking his clenched fist at the jury—a gesture he called his "customary greeting."

The other defendants are: David Dellinger, 53, head of the National Mobilization Committee to End the War in Vietnam; Rennie Davis, 29, an SDS founder who, with Mr. Dellinger, has visited North Vietnam, ostensibly to seek release of U.S. prisoners of war; Abbie Hoffman, 32, the founder of the Youth International Party—the "Yippies"; Jerry Rubin, 31, a "Yippie" leader; Lee Weiner, 30, a Northwestern University sociologist, and John R. Froines, 30, former University of Oregon chemistry professor.

Backers of the "Chicago 8" who were unable to enter the courtroom staged sporadic demonstrations—including obscene lyrics sung to the tune of the national anthem—in the plaza outside the Federal Building.

The bizarre spectacle went on even when court was not in session. For instance, defendant Hoffman showed up



Judge Julius J. Hoffman, target for vituperation.



William M. Kunstler, the chief defense counsel at turbulence-marred trial.

in Washington one day, wearing boxer's trunks and hammering on the doors of the Department of Justice, "challenging" U.S. Attorney General John N. Mitchell to "come out and fight."

Defense demands included one that members of the accused group should be allowed to go to Paris to confer with North Vietnamese Communists. This was rejected, but defense counsel Kunstler did go to Paris for a week-end. On his return, he said he had conferred with North Vietnamese delegates about U.S. prisoners of war.

One of the trial's more sinister overtones was receipt by two jurors of cryptic notes saying, "We are watching you" and signed "The Black Panthers." This led to an order for protective confinement of the jury.

The eight accused men made no bones about their view of the trial as a political confrontation, pitting their revolutionary tantrums against the traditions and customs of the "establishment."

Attacking George Washington. As a sample, defendant Seale at one point gestured toward a picture of George Washington on the wall behind the judge and poured invective at the jurist for displaying portraits of "slave owners" such as Washington and Thomas Jefferson. Appalled, Judge Hoffman said he had never thought that he would sit in a federal court and hear a defendant revile "the father of our country."

Government attorneys—themselves subjected to streams of vituperation—complained that the defense was attempting to provoke Judge Hoffman into actions that might result in reversal by a higher court if the defendants were convicted on the conspiracy charge, for which maximum penalty is 10 years' imprisonment and a fine of \$20,000.

Raised by the weird events in Judge Hoffman's courtroom was this question: How is a jurist to deal with such persistent abuse without opening the way for the defense to cry "error" and "persecution" in arguing for a new trial if the accused men are convicted?

Frank Greenberg, president of the Chicago Bar Association, said on November 5 that he would ask the American Bar Association for a study of what is needed to cope with "revolutionary tactics in the courtroom."

Seasoned lawyers say that the obstructive antics here in Chicago have gone far beyond the disruptive techniques resorted to in 1949 by 11 U.S. Communist leaders who were tried before Federal Judge Harold R. Medina and convicted of advocating the violent overthrow of the Government.

Judge Medina never was taunted as a "fascist pig" nor was his courtroom thrown into turmoil. Tactics of the New Left, as seen in Judge Hoffman's court, "make the old-time Reds look like amateurs," a veteran lawyer said.

Supreme Court

STATE OF ARIZONA

Phoenix

JUSTICE
ERNEST W. McFARLAND

NOTE:

I want to make my position plain in regard to the enclosed suggestions. The men charged with conspiracy are being tried in a court of law. I do not believe a report of this Commission should either assist them or incriminate them. The people already have had enough of the Chicago affair, and have made up their minds. I do not feel any good can come from our re-hashing this whole thing by what may be construed as an endorsement of the Walker report.

E.W.M.

p. 25, line 6 -- Strike the words "This Commission sponsored studies of two major demonstrations: the anti-war protest in Chicago during the Democratic National Convention of 1968," and insert in lieu thereof the following:

"The handling of the demonstration in Chicago during the Democratic National Convention of 1968 was in contrast to the 'counter-inaugural' in Washington on January 20, 1969."*

Strike in line 12, beginning "In Chicago, etc." through line 15.

For footnote* --

"All reports on the handling of the demonstrators at the National Democratic Convention in Chicago, while differing as to who should bear the blame for the violence, agree that it resulted in bloodshed both on the part of the police and the protesters. The statements in regard to the handling of the protests at the "inaugural" in Washington on January 20, 1969, are based on this Commission's own report."

p. 26 - Strike words "a majority of" in line 1, and "peacefully" in line 2.

p. 27 - Strike beginning with line 9 from bottom the word "Without" to end of page, through the first five lines on page 28.

and illegal force is an ineffective tactic for authorities seeking to quell unrest. As before, the reference is to long-term effectiveness. But even in the short run, the use of illegal violence to repress illegal violence may have the effect of magnifying unrest, not diminishing it.

The handling of the demonstration in Chicago during the Democratic National Convention of 1968 was in contrast to the 'counter-inaugural' in Washington on January 20, 1969.* These two events were organized by many of the same groups and attended by many of the same people, in roughly equal numbers. Yet the results of these events were markedly different. Violence in Washington, on the other hand, was minimal, and there was general public approval of the manner in which the police used force when necessary. Our studies lead to the conclusion that the amount of violence that occurred during these demonstrations and the resulting effects on public opinion were directly related to the kind of official response that greeted them. More specifically, repressive measures proved self-defeating: when officials decided to "get tough," chaos rather than order resulted.

* All reports on the handling of the demonstrators at the National Democratic Convention in Chicago, while differing as to who should bear the blame for the violence, agree that it resulted in bloodshed both on the part of the police and the protesters. The statements in regard to the handling of the protests at the "inaugural" in Washington on January 20, 1969, are based on this Commission's own report.

In both instances, a ~~majority of~~ participants came to protest ~~peacefully~~ American policies, especially in Vietnam, or simply to participate in a festive political occasion. A small number--no more than 200 in either case--intended to provoke a "confrontation" with authorities by provocative acts, aimed especially at policemen.

In response to reports that violence and disruptive conduct would occur, Chicago authorities implemented very tight, well-publicized security measures designed to dissuade protesters from coming to the city. To further discourage the protesters, they engaged in extended negotiations for demonstration permits and exercised their discretionary powers in a restrictive manner. The limited nature of the dialogue with protesting groups deprived the authorities of a full opportunity to assess the groups carefully, establish rapport with them, and learn their plans. The resistant posture also had the effect of discouraging mature, responsible protesters from attendance while firing the determination of young militants to attend and confront. To the police and many Chicago citizens, the official posture of resistance signified that the protest activities themselves were illegitimate. They viewed protesters as troublemakers and law-breakers rather than as citizens exercising constitutional rights.

In preparation for the Inaugural in Washington five months later, intelligence reports were more carefully evaluated, and genuine threats were sorted from theatric exaggerations. Troublemakers were identified and watched closely, but no attempt was made to interfere with the activities of the majority of peaceful demonstrators. Authorities negotiated conscientiously with protest leaders and arrived at agreements on the scope of permits for parades and meetings that were acceptable to all parties. The protest leaders, impressed with the reasonableness of the government spokesmen, made every effort to cooperate with officials and ensure peace.

As the Chicago and Washington events differed in preparation, they differed in outcome. After minor skirmishes, trouble in Chicago escalated when dozens of policemen cleared Lincoln Park, the protestors' main gathering place, on three successive nights. (Without coherent planning, policemen clubbed and teargassed innocent and guilty alike, chasing demonstrators through streets some distance from the park. Particularly on the side streets, bystanders who took no part in the demonstrations were attacked by the police. Media representatives were clubbed and had their cameras smashed. Predictably, tensions and anger rose. Extremists who had earlier been ignored began to attract audiences. They urged demonstrators to resist being trampled on and to fight back. The

out

but police were exposed to more and more jeers and obscenities and had to withstand heavier barrages of rocks and other missiles. During one of the first nights, 15 policemen were injured; two nights later, 149 were injured. The same escalation occurred in injuries to demonstrators.)

In Washington, the cycle of escalating violence never got started. Provocation by demonstrators was met with restraint. Provocation by policemen was rare; when it occurred it was terminated by police and city officials who intervened quickly to restore discipline. In general, police withstood physical and verbal abuse with great calm. In the end, the behavior of Washington officials and the police won praise in newspaper editorials and from leaders of the demonstration.

There were some radical leaders, however, who were more grateful for the official response in Chicago, for it served to validate their preconceptions of government as "reactionary" and "repressive" and to increase solidarity within their dissident groups. The chaos at Chicago also gave solidarity to the ranks of those who regard all demonstrators, however peaceful, as irresponsible "punks." The overall effect was to increase unrest, not diminish it.

This comparison between Chicago in August of 1968 and Washington last January can be closed on an encouraging note. Permits for peace marches in Chicago were sought and granted in

NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE

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November 18, 1969

MEMORANDUM FOR THE COMMISSIONERS

Attached is a revised draft of the proposed group violence statement, which will be discussed at the Commission meeting on November 20 and 21.


James S. Campbell
General Counsel

Attachment

Draft
11/17/69

GROUP VIOLENCE

I.

Causes: Historical and Comparative Aspects

We tend to think of group violence as a major aberration in a democratic society, as a sickness that comes only in very extraordinary times. A deeper reading of the past belies this notion. In man's political history, group violence has accompanied periods of serious social stress from Homer to this morning's newspaper. Between vigilantes and Negroes, employers and strikers, white man and Indians, farmers and their commercial and political exploiters, group violence runs back through the American experience, as it always has, in varying degrees and manifestations, for every society. Violence has been used by groups seeking power, by groups holding onto power, and by groups in the process of losing power. Violence has been pursued in the search for justice by the oppressed, in the defense of order by the contented, and in fear of displacement by the threatened.

At the outset of this chapter, it is essential to define the distinctions as well as the relationships between group protest and group violence. The right to protest is an indispensable element of a free society; the regular exercise of that right is essential to the health of the body politic and its ability to adapt itself to a changing environment. In this

country, we have endowed the right of protest with constitutional status. The very first Amendment to the Constitution, adopted to achieve its initial ratification by the states, protects freedom of speech and press and "the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

Group violence, on the other hand, is far from indispensable to a free society. It has no protected legal status; indeed, one purpose of law is to prevent and control it. Nor is group violence simply a consequential phenomenon of group protest. The violence of the Ku Klux Klan - the lynching of Negroes at the rate of almost 100 per year from 1890 to 1910 - had little to do with group protest; if anything it was more a cause of protest than a response. The same may be said of the harsh treatment of Orientals on the Pacific frontier and the common use of violence to settle property and political disputes among competing groups in the early days of the American West.

It is true, of course, that group protest sometimes results in group violence. Excessive force may be used by the public authorities, as in Selma in 1965; violence may be committed by other groups opposed to the aims of the protest (as in the Southern murders of civil rights workers by groups of white militants); violence may be committed by some within the protesting group itself (as in the case of the Weatherman faction of the SDS). But the common public belief that protesting groups

usually behave violently is greatly overemphasized. Of the multitude of occasions when protesting groups exercise their rights of assembly and petition, only a small number result in violence.

Thus, our Task Force Report on Historical and Comparative Studies reports that over the five year period from mid-1963 to mid-1968, more than two million Americans engaged in demonstrative protests or counter-protests, but only 9,000 injuries (including only 200 deaths) resulted. Stated another way, on an annual basis one out of every five hundred Americans engaged in a protest or counter-protest, but only one out of every 100,000 suffered any resulting injury, and only one out of every five million suffered death.* In a country with 250,000 aggravated assaults per year (over one per thousand) and more than 12,000 homicides (over one per 20,000), group protest can hardly be considered as accounting for a major part of the deliberate violence we experience.

Do we have a greater amount of group violence today than in earlier periods of our history? While a precise quantitative answer cannot be provided, we may conclude with confidence that

* - Task Force Report, Violence in America, Vol. 2, pp. 445-6. Similarly, while virtually everyone of the nation's 2,300 college campuses probably experienced some kind of demonstrative protest during the academic year 1968-1969, the American Council of Education has found that only about 6% of the colleges experienced any violence. [Cite.]

several earlier decades of American history were marked by higher levels of group violence - in terms of casualties per 100,000 population - than has been true of the decade now ending.

Ever since the Boston Tea Party, occasional group violence has been a recurring - though not a continuing - feature of American political and social history:

The Indian inhabitants of this continent resorted to violent "rebellions" to defend their lands and liberty against the advancing tide of white settlers, first east and later west of the Mississippi.

From 1740 to 1790, Appalachian farmers, protesting against debt and tax collectors from the seaboard centers of political and economic power, engaged in a series of violent disorders, of which the Whiskey Rebellion in Pennsylvania is best known.

Southern landowners and northern abolitionists engaged in a variety of skirmishes, from "bleeding Kansas" to John Brown's raid on Harper's Ferry, that were the violent prelude to the Civil War.

During Reconstruction, the Ku Klux Klan and other elements of the defeated white majority in the South conducted a campaign of terrorism against the freed blacks, "carpetbagger" officials and their "scalawag" collaborators.

So-called "Native Americans" of the original colonial stocks resorted to group violence when they perceived their status as threatened by Irish, Italian and Jewish immigrants in the East and Orientals in the West; the immigrant groups occasionally engaged in counter-violence such as the New York Draft Riots in 1863.

As the freed Negro migrants from the South began settling in border and Northern cities after the Civil War, white residents (including the most recent of the European immigrants) launched occasional defensive attacks on black sections of the city.

The growth of organized labor in the half century from 1880 to 1930 was marked by unusually severe episodes of violence in which employers, workers and public authorities were all occasional aggressors. In the three year period 1902-1904, about 200 people were killed and 2,000 injured in the violence accompanying various strikes and lockouts.

During each of the above episodes - except for the Revolution and the Civil War - most of the community continued to live in peace. The violent episodes themselves were sporadic, not continuous. At any given time they probably involved relatively minor percentages of the total population - certainly not more than a small fraction of the number who were then engaging in

various sorts of group protest.

While it is probably true that protest by one or more groups seeking to advance or defend its status in society has been a continuous feature of American life, group violence has not. Indeed, one would be justified in concluding that group protest, more than group violence, is as American as cherry pie.

Do we have more group violence than other modern nations? Comparisons with other countries are difficult, but group violence does appear to occur more frequently in the United States than other industrially advanced nations. Our Task Force Report shows a group violence casualty rate in 17 such nations for the first half of this decade that is only one-fourth the United States rate.* (The average for all nations, however, is 40 times the United States rate.) Yet few advanced democratic nations are free from group violence, as the student riots in France, Germany, Italy and Japan during the past two years and the continuing strife in Northern Ireland remind us. Unlike many other countries, (including some advanced ones) strife in the United States is usually aimed at particular policies or groups rather than at overthrow of the Government; indeed, the United States has been free of anything resembling insurrection for more than a century. Except for Great Britain, this country has the longest record of government continuity in the entire world.

* - Violence in America, p. 448.

Why does group violence occur in an advanced democratic society? We may accept that men naturally possess aggressive tendencies without concluding that group violence is therefore inevitable. Nature provides us only with the capacity for violence; it is social circumstance that determines whether and how we exercise that capacity. Men's frustration over some of the material and social circumstances of their lives is a necessary precondition of group protest and of the defensive or offensive group violence that occasionally results. Its extent is determined by the degree and consistency of social control and the extent to which social and political institutions afford peaceful alternatives for the redress of group grievances.

All societies generate discontent because organized life by its very nature inhibits most human beings. Group violence occurs when their expectations about the goods and status they claim by right are continually frustrated, despite their peaceful efforts to press these claims. It also occurs when the claims of groups who feel disadvantaged are viewed as threats by other groups occupying a higher status in society. New expectations and new frustrations for disadvantaged groups, and new fears of threatened groups are more likely to occur in times of rapid social change than in times of social stability.

America has always been a nation of rapid social change. We have proclaimed ourselves a modern promised land, and have

brought millions of destitute immigrants to our shores to partake in its fulfillment. Progressive demands by these groups - by the Western farmers of the revolutionary period, later by the Irish, the Italians and the Slavs, and most recently by the Puerto Rican, Mexican, and emancipated Negro Americans - have accounted for most of the offensive and defensive group violence that marks our history.

The above analysis, however, does not adequately explain why some upper class and middle class students do likewise. Some affluent students doubtless perceive themselves as disadvantaged - as to the draft and forced service in the Vietnam war, as to a greater voice in college governance, as to their lack of future identity and purpose in what they perceive as a complex, computerized and highly materialistic urban society. But for many students, the causes that attract them most are not their own grievances, but those of the less fortunate. To a high degree, they are motivated by a sense of guilt for being privileged, and by the desire of all young people to share with others in the experience of serving a noble cause. For most of those so motivated, participation in peaceful protest fulfills this need and benefits us all. Only the few who are particularly impatient or cynical about the "system" resort to violence.

This is neither a new nor a disturbing phenomenon. Throughout the world, at least since the turn of the century, a substantial percentage of students have espoused the causes of the underprivileged. The quickening pace of social change has vastly increased both the total number of students and the percentage with strong sympathy for the disadvantaged.

As we have noted, discontent is only one prerequisite of group violence. Whether it actually occurs depends also on popular attitudes and on political institutions for the control of violence and the redress of group grievances.

For all our rhetoric, we have never been a very law-abiding nation, and we have sometimes permitted group violence to be rewarded. Some measure of public sympathy has often been with the lawbreaker - sometimes with the nightriders who punished the transgressor of community mores, sometimes with the disadvantaged who sought to remedy obvious injustices by violent means. Lack of full respect for law and support for violence in one's own interest have helped to make the United States, historically as at present, somewhat more tumultuous than we would like it to be. And while we have an open political and social system, more dedicated than most to the American dream of individual and group advancement, the majority are sometimes unwilling either to hear or to redress the just grievances of particular minorities until violent advocacy or repression calls them to the forefront of our attention.

II.

The Rationale of Group Violence

Those who engage in group violence as a political tactic advance several reasons to support it. Some of the current justifications, as the militants themselves might make them, have been summarized by our Task Force on Violent Aspects of Protest and Confrontation as follows:

1. The creation of turmoil and disorder can stimulate otherwise quiescent groups to take more forceful action in their own ways. Liberals may come to support radical demands while opposing their tactics; extreme tactics may shock moderates into self re-examination

2. Direct action is not intended to win particular reforms or to influence decision makers, but rather to bring out a repressive response from authorities - a response rarely seen by most white Americans. When confrontation brings violent official response, uncommitted elements of the public can see for themselves the true nature of the "system." Confrontation, therefore, is a means of political education

3. If the movement really seriously threatens the power of political authorities, efforts to repress the movement through police-state measures are inevitable. The development of resistant attitudes and action toward the police at the present time is a necessary preparation for more serious resistance in the future

4. Educated, middle-class, non-violent styles of protest are poorly understood by working-class youth, black youth, and other "drop-outs." Contact with these other sectors of the youth population is essential and depends upon the adoption of a tough and aggressive stance to win respect from such youth

* - See The Politics of Protest at 81-82 (U.S. Government Printing Office: Washington, D.C., 1969).

5. Most middle class students are shocked by aggressive or violent behavior. This cultural fear of violence is psychologically damaging and may be politically inhibiting. To be a serious revolutionary, one must reject middleclass values, particularly deference toward authority. Militant confrontation gives resisters the experience of physically opposing institutional power, and it may force students to choose between "respectable" intellectual radicalism and serious commitment to revolution, violent or otherwise.

6. Those who point to the possibility of repression as a reaction to confrontation tactics wish to compromise demands and principles and dilute radicalism. Repression will come in any case, and to diminish one's efforts in anticipation is to give up the game before it starts.

Somewhat different arguments are put forth by those among threatened groups to justify defensive private violence and the use of excessive force by public authorities. They believe that the disadvantaged group will continue to exert pressure unless it is firmly and decisively repressed, and that only the strongest evidence of superior force and willingness to use it will succeed in defending their status.

In this Commission's view, these arguments for group violence - offensive or defensive - are not sustained by history or by contemporary reality. They are also inconsistent with the basic principles of democratic government.

We may put to one side the efficacy of violence in overturning a government or maintaining it in power; fortunately this has not been the main thrust of American political violence.

The thornier question - one that is more pertinent to American practitioners of group violence who usually aim not at seizing or defending the government but altering or continuing its policies - is whether violence is an effective tactic for winning or preventing a significant change of status.

History provides no ready answer to this question. There have been a great many minority protest movements, some of them marked by violence, which have eventually succeeded in achieving at least some of their aims. But whether group violence by any protesting group helped or hindered the subsequent achievement remains a matter of conjecture, as does the question of whether defense group violence by the threatened group hindered or helped the eventual change. In the history of the American labor movement, for example, violence persistently accompanied the struggle of workingmen to gain decent working conditions and recognition for their unions; both ends were eventually achieved, but there are differences of opinion whether pro-labor violence helped the cause or whether anti-labor violence hindered it.* Labor leaders themselves doubted the effectiveness of violence, and no major labor organization in American history advocated violence as a policy. Typically pro-labor violence was a response

* - In Violence in America: Historical and Comparative Perspectives, a task force report to this Commission, Philip Taft and Philip Ross conclude: "The effect of labor violence was almost always harmful to the unions. There is little evidence that violence succeeded in gaining advantages for strikers."

to the use of excessive force by militia or private police or strikebreakers. While violence proved to be a better short-run weapon for employers than for workers, the escalation of counter-violence it produced was a major factor in the passage of the laws that eventually established the rights of labor.

It is no doubt true that in the 1960's policy changes advantageous to dissident groups have followed in the wake of some urban riots and a few campus disturbances. These gains, however, may have been attributable more to the validity and strength of the protests that preceded violence than they were to the violent outbreaks when they came. Moreover, to the extent violence may have contributed to these gains, the excessive force used by police against peaceful demonstrators may have been more important than violence by the demonstrators themselves. No one will ever know whether as much or more might have been won, just as quickly, without resort to violence by either side. The advocacy of deliberate violence by radical black militants and some student and antiwar activists may have lost more sympathy than it has gained. Leaders of many protesting groups recognize the counter-productivity of violence; before the November Peace Mobilization in Washington, many of the protest leaders sought diligently to discourage violence by such groups as the Weatherman and the Youth International Party. When these factions did resort to violence, leaders of the mobilization expressly disavowed and condemned them. At Rutgers, militant black students have

refrained from disruptive tactics because a state-supported program for students from the ghetto would be jeopardized.

If the lessons of history are ambiguous on the short-term effectiveness of violence as a political tactic, they are clear on its long-term dangers. As we noted in our Statement on Campus Disorders, violence tends to feed on itself, with one power group imposing its will on another until repressive elements succeed in reestablishing order. The violent cycles of the French and Russian Revolutions and the decade resulting in the Third Reich are stark summits of history to ponder. Hatred, bitterness, fear of one's fellow man are feelings that individual human beings would be better off without, quite apart from the consequences of these feelings for the social order. Violence itself is unbecoming in a species that prides itself in ability to reason and that has constructed codes of conduct and social mechanisms for solving grievances peaceably.

The dynamics of collective violence hardly provide ground for pride in human behavior. Once ignited, violence feeds upon the thirst for excitement, then inflames the passions of those who feel they are the targets of the original violence.

If ever violence had justification in human history, its value has been cheapened by wide popular acceptance in the contemporary marketplace. Violence tends to become a style, with

many eager followers. Thus, for example, when students last year violently took control of the telephone system at Brandeis University, within ten days British, French, German and Italian students attempted to do the same thing. Violently disruptive tactics that began in universities have been transferred to high schools and churches.

As our Task Force on Law and Law Enforcement has found, the danger of this contagion, of course, is that extreme, unlawful tactics will replace normal legal processes as the usual way of redressing grievances. Given present trends, it is not impossible to imagine a future America where the accepted method for getting a traffic light installed will be to disrupt traffic by blocking the intersection, where complaints against businessmen will call for massive sit-ins, where unsatisfactory garbage collection will cause protesting citizens to dump garbage in the street.

As our Task Force concluded, group violence as a tactic to advance or restrain protest by discontented groups does not contribute to the emergence of a more liberal and humane society, but is producing an opposite tendency. The fears and resentments created by these tactics have strengthened the political power of some of the most destructive elements in American society. Only naive and wilful blindness can obscure the strength of these dark forces which, but for the loosening of the bonds of law, might otherwise lie quiescent beneath the surface of our national life.

Al almost Newtonian process of action and reaction is at work. Fanaticism even for laudable goals breeds fanaticism in opposition. Just as extremism in defense of liberty does not promote liberty, so extremism in the cause of justice will extinguish hopes for a just society.

As one of this nation's most thoughtful leaders has observed:

No society can live in constant and destructive tumult The anarchist plays into the hands of the authoritarian. Those of us who find authoritarianism repugnant have a duty to speak out against all who destroy civil order. The time has come when the full weight of community opinion should be felt by those who break the peace or coerce through mob action.

Space does not permit further discussion of this critical issue of deliberate and violent group disobedience of valid law as an offensive or defensive political tactic. We therefore adopt and attach as an appendix to this Chapter an excellent and more detailed discussion of the subject contained in the Report of our Task Force on Law and Law Enforcement.

[Alternate paragraph: We therefore attach as an appendix to this chapter a more detailed discussion of the subject, based on Chapter 2 of the Report of our Task Force on Law and Law Enforcement.] [The Commission would then edit and attach this Chapter.]

* - John Gardner [Citation]

III.

Elements of Prevention and Control

What steps should a representative constitutional society take to prevent and control group violence? Our political institutions should be so framed and managed as to make violence as a political tactic both unnecessary and unrewarding. To make violence an unnecessary tactic, our institutions must be capable of providing political and social justice for all who live under them, and of correcting injustice against any group by peaceful and lawful means. To make violence an unrewarding tactic, our political and social institutions must be able to cope with violence when it occurs, and to do so firmly, fairly, and within the law.

Our Constitution was written after the violent overthrow of a colonial government which followed one of these imperatives, but ignored the other. Its preamble does not speak merely of justice, or merely of order; it embraces both. Two of the six purposes set forth in its Preamble are to "establish justice" and to "insure domestic tranquility." The First Amendment, adopted shortly thereafter, sets forth a third and closely related goal - to protect the rights of free speech and peaceable assembly, and the right to petition the Government for redress of grievances. If we are to succeed in controlling group violence, we must navigate by all three of these stars.

History is full of violent disasters that occurred because channels for peaceful presentation of grievances were blocked and because governments did not or could not act to control the underlying injustices or to control disorder; history also contains examples of disasters that were averted by governments which kept the channels of protest open and applied a judicious combination of control and reform.

The crumbling of feudalism and the beginnings of agrarian reform and industrial revolution led to great waves of discontent in France and Great Britain in the late 18th century and in Czarist Russia a century later. The French and Russian Revolutions reached extraordinary peaks of violence because absolutist governments concentrated on efforts to restore order and refused to redress grievances or transfer a sufficient share of power to the emerging lower classes. The British averted a similar disaster by more judicious measures of control and by more flexible development of their political institutions to accommodate the rights and needs of all their people. In Germany, after World War I, the Weimar Republic was too weak either to control street fighting between right wing and left wing students and workers or to remedy their grievances; the emergence of Hitler to "restore order" proved to be a disaster for the entire world.

In our own country, we have on some occasions failed to take the necessary measures of prevention and control; on other occasions we have succeeded. We proved unable to abolish the

injustice of Negro slavery without a bloody war - a conflict which released currents of violence that continue to flow a century later. The Reconstruction governments in the Southern States were too weak to enforce the newly won rights of black people against a hostile community or to prevent the Ku Klux Klan from reestablishing white supremacy by violence. The struggle of the labor unions was marked by extensive restrictions on peaceful protest and by repressive violence in the absence of laws to provide minimum standards of justice for working people and legal machinery for the resolution of disputes; the violence largely subsided after such laws were enacted. And in the wake of the Great Depression, after relatively few violent incidents such as the Bonus March and the farmers' defense of their lands against foreclosure, we averted further violence by fashioning major alterations in the rights of individuals to government assistance, and in the responsibilities of government for directing the course of our private enterprise economy.

When group violence occurs, it must be put down by lawful means, including whatever minimum force may be required. But when it occurs - better still before it occurs - we must permit aggrieved groups to exercise their rights of protest and public presentation of grievances; we must have the perception to recognize injustices when they are called to our attention, and we must have the institutional flexibility to correct those

injustices.

We do not mean of course that the mere making of a demand entitles it to be granted, or that the particular remedy proposed by those aggrieved should be adopted. Some current demands made by students, by black militants, by anti-war demonstrators and others are unrealistic and unfair to the rights of others; some proposed remedies are self-defeating or administratively unworkable. What is essential is that when the basic justice of the underlying grievance has become clear to the majority, an effort to take suitable measures of accommodation and correction must be made. The effort must be made even though other minority groups feel threatened by the proposed correction, and even though they resort to violence to prevent it. We cannot "insure domestic tranquility" unless we "establish justice" - in a democratic society one is impossible without the other.

In the following sections of this Chapter, we put forth our suggestions as to how these three goals - controlling disorder, keeping open the channels of protest, and correcting social injustices - might be more successfully pursued.

Strategies of Control

Rioters should be dealt with harshly, many feel. At least two-thirds of white Americans, according to one poll, believe that black looters and fire-bombers should simply be shot down in the streets. Many believe that even peaceful demonstrators are "agitators" or "anarchists," and that they should be dealt with harshly, especially if they taunt or abuse policemen. In a poll conducted for this Commission, 56 percent agreed that "Any man who insults a policeman has no complaint if he gets roughed up in return." Nearly half the respondents felt it is all right for police to "beat up unarmed protestors . . . when these people are rude and call them names."

As recent history illustrates, the swift, prudent deployment of well-trained law enforcement personnel can extinguish a civil disorder in its incipiency. But history also demonstrates that massive and excessive use of force is an unwise tactic for handling disorder. To the generalization made earlier, that violence is an always dangerous and sometimes ineffective tactic for dissident groups pressing their demands or for threatened groups resisting those demands, may be added this corollary: the use of excessive and illegal force is an always dangerous and sometimes ineffective tactic for authorities seeking to quell unrest. Both in the short and in the long run, the use of excessive force to repress group violence may have the effect of magnifying turmoil, not diminishing it.

It is useful to contrast the official response to the anti-war protest in Chicago during the Democratic National Convention of 1968, and the "counter-inaugural" in Washington on January 20, 1969. These two events were organized by many of the same protesting groups and attended by many of the same individuals, in roughly equal numbers. Yet the results of these events were markedly different. In Chicago, the authorities were restrictive in granting demonstration permits; the police were deliberately goaded by verbal and physical attacks of small militant groups, they responded with excessive force not merely against the provocateurs but also against peaceful demonstrators and passive bystanders. Their conduct, while it won the support of the majority, polarized substantial and previously neutral segments of the population against the authorities and in favor of the demonstrators. In Washington demonstration permits were liberally issued. Although there was also provocative violence by a few of the demonstrators, there was general public approval of the restraint with which the police used force when force became necessary to maintain order. Our analysis leads to the conclusion that the amount of violence that occurred during these demonstrations and the resulting effects on public opinion were directly related to the kind of official response that greeted them. Repressive measures proved self-defeating: when officials decided to "get tough," chaos rather than order resulted.

In both instances a small number -- no more than a few hundred in either case -- intended to provoke a "confrontation" with authorities by provocative acts, aimed especially at policemen.

A majority of the participants intended to demonstrate peacefully and in fact did so.

In response to reports that violence and disruptive conduct would occur, Chicago authorities implemented very tight, well-publicized security measures designed to dissuade protestors from coming to the city. To further discourage the protestors, they engaged in extended negotiations for demonstration permits and exercised their discretionary powers in a restrictive manner. The limited nature of the dialogue with protesting groups reduced the opportunity of the authorities to assess the carefully separate components of the demonstration (many of which intended to demonstrate peacefully), and learn the details of their plans. This resistant posture may have had the intended effect of discouraging more mature and responsible protestors from coming while firing the determination of young militants to attend and confront. To some of the police and many Chicago citizens, the official posture of resistance signified that the protest activities as such were dangerous or illegitimate. They tended to view protestors as troublemakers and law-breakers, thus failing to discriminate between the small number of radicals seeking trouble and the great majority of peaceful citizens exercising their constitutional rights.

In preparation for the Inaugural in Washington five months later, intelligence reports were carefully evaluated. Genuine threats were sorted from theatric exaggerations. Troublemakers were identified and watched closely, but no attempt was made to interfere with the activities of the majority of peaceful demonstrators. Authorities negotiated conscientiously with protest

leaders and arrived at agreements on the scope of permits for parades and meetings that were acceptable to all parties. The protest leaders, impressed with the reasonableness of the government spokesmen, made substantial efforts to cooperate with officials and ensure peace.

As the Chicago and Washington events differed in preparation, they differed in outcome. After minor skirmishes, trouble in Chicago escalated when throngs of demonstrators, having been denied permits to remain overnight, refused to leave Lincoln Park, their main gathering place. Dozens of police attempted to clear the Park on three successive nights. In response to serious and deliberate provocations but without coherent planning, policemen clubbed and teargassed built and innocent alike, chasing demonstrators through streets some distance from the park. Particularly on the side streets, some bystanders who took no part in the demonstrations were attacked by the police. Media representatives were clubbed and had their cameras smashed. Predictably, tensions and anger rose. Extremists who would otherwise have been ignored began to attract audiences. They urged demonstrators to fight back. The police were exposed to more and more jeers and obscenities and had to withstand heavier barrages of rocks and other missiles. During one of the first nights, 15 policemen were injured; two nights later, 149 were injured. The same escalation occurred in injuries to demonstrators.

In Washington, the cycle of escalating violence never got started. Provocation by demonstrators was met with restraint. Provocation by policemen was rare; when it occurred it was terminated by police and city officials who intervened quickly to restore discipline. In general, police withstood physical and verbal abuse with great calm. In the end, the behavior of Washington officials and the police won praise in newspaper editorials and from leaders of the demonstration.

There were some radical leaders, however, who were more grateful for the official response in Chicago, for it served to validate their characterizations of government as being "reactionary" and "repressive" and to increase solidarity within their dissident groups. The chaos at Chicago also gave solidarity to the ranks of those who regard all demonstrators, however peaceful, as irresponsible "punks." The overall effect was to increase unrest, not diminish it.

This comparison between Chicago in August of 1968 and Washington last January can be closed on two encouraging notes. Permits for peace marches in Chicago were sought and granted in October 1969. The marches were organized by the "Weatherman," an extremely militant faction of the Students for a Democratic Society. In the course of the demonstrations, Chicago police had to face four days of intense provocation and wanton violence. This time, however, the police acted with calm and restraint. No injuries

to residents, bystanders or newsmen were reported; on the contrary, the police took steps to safeguard bystanders from the violence. As a result of the professional conduct of Chicago police, violence was effectively contained, and blame for the damage and injuries that did occur fell squarely upon the violent group among the demonstrators, many of whom were arrested.

The Peace Moratorium Parade and assembly in Washington on November 15 was another example of intelligent and restrained official response. Although the Government had reason to expect that some elements among the protesting group were bent on violence, reasonable permits were negotiated with the responsible demonstration leaders, and ample police and military force was provided to preserve order if necessary. In the largest single protest demonstration in American history, the overwhelming majority of the participants did behave peacefully. The performance of their program was assisted rather than restrained by the police. When the few extremists did attempt violent attacks on two occasions, the police responded quickly and firmly but without excessive force. As a result, order was maintained, the right to protest was upheld, and the general public was enabled to judge both the peaceful and the violent aspects of the protest in their true proportion. [This paragraph to be checked in the light of Clark Committee report.]

Civil governments must, of course, act promptly and decisively against threats to public order. As the National Advisory Commission on Civil Disorders stated, "Individuals cannot be permitted to endanger the public peace and safety, and public officials have a duty to make it clear that all just and necessary means to protect both will be used."

A parallel duty exists for colleges and universities: they must have firm, well-publicized plans for dealing swiftly and decisively with campus disorders. The tactic of keeping rules fuzzy and options flexible so that dissident groups are "kept off balance" has failed demonstrably. In our Statement on Campus Disorders of June, 1969, this Commission recommended that colleges and universities develop plans to spell out, as much as possible, the circumstances under which they will resort to (i) campus disciplinary procedures, (ii) campus police, (iii) court injunctions, (iv) other court sanctions, and (v) the civil police. We believe genuine progress is being made in this direction.

As all police manuals recognize, when the police are needed -- as in urban riots, demonstrations that threaten violence, and campus disorders in which court injunctions must be enforced -- their behavior must be calm and impartial, however intense the provocation. Panic, overt expressions of anger, and inflammatory use of force are serious breaches of police discipline. The FBI riot control manual states that:

The basic rule, when applying force, is to use only the minimum force necessary to effectively control the situation. Unwarranted application of force will incite the mob to further violence, as well as kindle seeds of resentment for police that, in turn, could cause a riot to recur.

The National Advisory Commission on Civil Disorders has provided excellent, detailed prescriptions for improving police

practices, especially in the area of handling urban riots. Despite notable progress since the Commission issued its report in March, 1968, many police departments in American cities are still ill-prepared to handle riots and other civil disorders. In a survey of 16 major cities, this Commission's Task Force on Law and Law Enforcement found that few city governments had established formal, dependable communication links with dissident groups. Few had adequate plans for dealing with disorders, and effective planning staffs were rare. Though all have added riot control to the curriculum of police training, the number of hours devoted to training per man has not increased significantly.

We therefore urge law officers throughout the nation to intensify their preparations for controlling group disorders, and to study the tactics that have been successfully applied on the three most recent occasions in Washington and Chicago during 1969.

V.

Keeping Open the Channels of Peaceful Protest

We have pointed out the fundamental distinction between peaceful protest and the violence which sometimes results, the fact that there is no necessary connection between them, and the need to vindicate the former while opposing the latter. As we have noted, the First Amendment to the Constitution protects freedom of speech, freedom of the press, and "the right of the people peaceably to assemble and to petition the Government for a redress of grievances." As the Supreme Court has remarked, the First Amendment entails a "profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open."

Obstructions to peaceful speech and assembly - whether by public officials, policemen, or unruly mobs - abridge the fundamental right to free expression. On the other hand, speech assembly and other forms of conduct that become coercive or intimidating invade the fundamental First Amendment rights of other citizens. When a mob forces a university to suspend classes, the right of teachers to teach and students to learn are plainly abridged; when a speaker is shouted down or forced from a platform he is deprived of freedom to speak, and the great majority of the audience is deprived of freedom to listen.

Society's failure to afford full protection to these complementary rights is probably a major reason why protest often results in violence. Since these rights are guaranteed by the federal Constitution, and since states are unlikely to defend them in an equally vigorous and consistent manner, we believe the duty of providing further safeguards devolves upon the federal government.

When First Amendment rights are impaired by state action, the only approximation to an effective remedy at the federal level is a court injunction authorized under 42 USC § 1983, a REconstruction Era civil rights statute that creates a private cause of action for the "deprivation of any rights, privileges, or immunities secured by the Constitution" by any person acting "under color of" state law. The relative ineffectiveness of this private remedy is indicated by the rarity with which injunctions have been sought in the thirty years since the statute was first interpreted to apply to interference with First Amendment rights. Moreover, as we have seen, state officials are not alone in posing threats to First Amendment rights; on college campuses, for example, the protestors themselves have obstructed free speech, peaceful assembly, and petition. No present federal law affords a remedy for private abridgement of First Amendment rights.*

* - The Supreme Court has suggested that federal statutory remedies against such private acts of interference are constitutional, but that no statute yet enacted provides them. United States v. Guest, 383 U.S. 745.

Accordingly, we recommend that the President seek legislation that would empower the Attorney General to seek an injunction in the United States District Courts against the threatened or actual interference by any person, whether or not under color of state law, with the rights of individuals or groups to freedom of speech, freedom of the press, peaceful assembly and petition for redress of grievances.

Such a statute would allow injunctions in instances of the unreasonable denial of permits, or their issuance only on excessively restrictive conditions, the suppression by government agencies or their employees of publications or communications (including the seizure or destruction of newsmen's cameras or film), and the use by law enforcement officials of excessive or unauthorized force to arrest or disperse individuals who seek to make lawful expressions of their views. It would allow injunctions against private obstruction of the exercise of free expression by pushing speakers off platforms, by the making of deliberately excessive noise, or by seizure of or denial of access to buildings or other facilities, streets and public areas. It would allow injunctions against public or private school officials who deny permission to conduct lawful meetings at appropriate places on school grounds.

The statute should also allow suits for either damages or an injunction by the persons aggrieved and allow the Attorney General to intervene in such suits on request of the parties or the court or on his own motion. It may also be desirable to give

state as well as federal courts concurrent jurisdiction to enforce the statute, and to limit federal suits to a showing that the state court has failed to grant prompt and adequate relief.

Our proposal suggests a greater federal role in preserving freedom of expression. We do so for several reasons. Federal district courts, because they often deal with somewhat comparable provisions in other areas of federal law, are experienced in handling requests for injunctions expeditiously and fashioning careful and effective decrees. Federal judges are free of the local pressures which might handicap elected local judges. Federal marshals could enforce federal court orders free of local pressures on local and state police. Persons aggrieved by state or city authorities may well be more inclined to seek judicial relief instead of confrontation when the availability of a federal remedy makes it unnecessary to rely for enforcement upon the very officials whose actions are contested. The use of federal court injunctions would also provide for greater uniformity in the judicial treatment of those infringing the rights of others. It would increase the likelihood that the experience of one community or institution would be readily available and useful in handling subsequent problems in others.

State remedies against private misconduct involving infringement of First Amendment rights are usually based not on the First Amendment but on trespass statutes or disorderly conduct ordinances. Such laws were not written to deal with

acts of physical obstruction, particularly those committed for demonstrative purposes, and are not always effective in handling such conduct. Moreover, where acts of violence or obstruction are committed in the name of righting fundamental grievances, those engaging in such conduct may find it harder to justify disobedience of court orders issued to uphold the First Amendment than would be true of orders based upon the laws against trespass and disorderly conduct.

In recent legislation, Congress has given the Attorney General an increasingly active role in protecting certain vital individual rights. This approach seems particularly appropriate for the protection of First Amendment rights, since the mechanism of peaceful dispute, debate, compromise, and change is so essential to the preservation of a just and orderly society. Incident to the broad authority to commence or intervene in civil actions to protect freedom of expression, the Justice Department would automatically have the authority to investigate alleged interference with First Amendment rights. The Department would become a powerful force seeking immediate, informal resolution of potential confrontations involving freedom of expression. Where confrontation appears inevitable, the Department would be able to resort to the courts promptly, provide essential factual material and help in other ways to make the courts an effective forum for resolving First Amendment conflicts.

For speech, petition and assembly to be effective, they must be heard and seen. In 1789 this was a regular consequence of exercising one's First Amendment rights. In today's crowded and complex society, however, being seen and heard depends almost entirely upon the printed and electronic news media, which are necessarily selective in picking out the relatively few items in a day's or a week's events that can be fitted into the space or time available for reporting "news." The New York Times daily receives 1.25 to 1.5 million words of news material from its correspondents and news services; of that amount, only about one-tenth is printed.

Moreover, the number of separate, independent news "voices" has not kept up with the growing size and diversity of the nation. Economic factors have forced down the number of regularly published daily newspapers and weekly magazines despite substantial population increases. The number of radio and television stations in any area is greater but still relatively small; more importantly, there is little difference among them in their judgments as to what constitutes "news." Protesting groups can and do print their own newspapers and handbills, but their circulation is rarely extensive. All in all, the number of efforts to invoke First Amendment rights far exceeds the number that impact upon the public consciousness as news. For example, the

New York Times received over 37,000 letters to the editor last year; only six percent were published, though at least 85% were, in the words of the Times motto, considered "fit to print." Had they all been printed, they would have completely filled 135 daily issues of the newspaper.

The difficulties today's society present for those who want their protests and demonstrations to be seen and heard leaves the majority unaware of how deeply felt many grievances have become. It also may tend to make the protests themselves more violent. A reasoned explanation of a problem or a condition may not be "news" because it is not a "good story" - while a violent confrontation over the same problem or condition may have great "news value." Those interested in the tactics of persuasion sometimes conclude that making protest violent helps to raise it above the general noise level and increases the likelihood that the press will notice and report it. More importantly, those whose patience is not unlimited sometimes conclude that peaceful protest produces no results and that only violence and the fear it induces will move the majority toward change.

A decade ago it would have been fair to say - as many thoughtful journalists have since admitted - that the press did too little reporting of the existence of social injustice and of the grievances of protesting groups. It was generally thought that open conflict - especially violent conflict - was the most

important kind of news. Too few news reports went beyond a description of "who-what-when-where" into the "why" of social and political analysis. The national press, for example, has acknowledged its past shortcomings in covering the life and the problems of our black and Latin American minorities and their efforts to redress their grievances.

Today this is changing. In-depth analysis of underlying social conditions - especially of aggrieved minorities - is now a regular part of the best of our print and broadcast media. Many responsible journalists now recognize more fully the challenges of their crucial role in creating the public understanding that is a necessary pre-condition for informed democratic decisions on the timing and content of peaceful social and institutional change. Indeed, some public and private critics - wrongly in our opinion - complain that the media now go too far in reporting protests and in commentary on their causes.

Like the Kerner Commission before us, this Commission has struggled with the question of what public or private measures a governmental body might recommend to improve the efforts of the press to report on protest and interpret its underlying causes. We have concluded that the indispensable element of a free press is pluralism and diversity: we need more effective and different voices, not fewer and fewer standardized or homogenized ones.

Accordingly, we recommend that government should be alert to prevent all avoidable concentration of control in the existing media and to encourage diversity of control in the emerging media (such as CATV).

Apart from such strictly limited measures of government intervention as the "fairness doctrine" for broadcasters who operate under public license - which deals not with the substance of broadcast speech but only with the broadcaster's duty to present all sides - we oppose official attempts to control how the media present and interpret the news. History amply demonstrates that governmental interference with the free press is no way to cure its defects. The need is rather for responsible, effective criticism of the media by private entities such as university schools of journalism and by any group or individual, public or private, aggrieved by any aspect of media performance.

We recommend that the members of the journalism profession themselves continue to re-evaluate and improve their standards and practices, and to strengthen their capacity for creative self-criticism, along the lines suggested in the staff report of our Media Task Force.*

* These suggestions include more attention to in-depth, interpretive news reporting; hiring and training newsmen from minority groups and providing equivalent regular coverage of minority group activities including births and deaths, business promotions, and social functions as well as larger issues; and creation of vehicles for responsible criticism of news media performance, including internal grievance machinery within news organizations, community press councils, professional journalism reviews, and a national center for media study. [Cite to Media Task Force Report]

An observer of the current journalistic scene has recently observed:

It ought to be plain, but seemingly it is not, that the quality of journalism depends primarily on journalists - not on government and not on the legal owners of media...

Journalism will always need artistry to reach the public's mind and heart. Indeed, what is now required is a higher level of art, a boldness that will get journalism unstuck from forms of communication developed in and for a social context very different from the present. Nobody except journalists can develop such forms.*

* "What's Wrong with News? It Isn't New Enough" by Max Ways, Fortune Magazine, October, 1969.

To appreciate the magnitude of these forces and the stresses that result, we need look back no further than the beginning of this century. In 1900, within the memory of men still alive, we were a nation of 75 million people, of whom less than forty percent lived in metropolitan areas. We rode in carriages or trains. We communicated by mail and the printed word.

Today, within the same land space, we have almost tripled our number. Two-thirds of us live in urban concentrations. We motor at high speeds over a nation paved with freeways. We fly across and between the continents. We communicate by telephone and television. Our resources and the demands we place upon them have increased enormously; so has our individual specialization of function and our mutual interdependence on one another for shelter and food, for personal safety, and even for the purity of the air we breathe.

But our political and social institutions and programs have not kept pace. We have achieved the phenomenal forward leap to the moon, but we have not managed the flow of traffic in New York. Most of us now live in metropolitan areas, but as noted in our statement on Violent Crime, we have made few if any advances in the art of governing the urban environment. We desire peace, but we are now engaged in the fourth war of this century. Science has shown us how to produce so much food that surpluses embarrass us economically, yet millions are hungry. We boast of our dedication

to the concept that all men are created equal, yet inequality of opportunity remains our most persistent problem.

Despite our special penchant for economic and technological innovation, we tend like other peoples to resist political and social change. Thomas Jefferson noted this phenomenon and its relationship to violence. After a lifetime of public service, he observed:

. . . .I am certainly not an advocate for frequent and untried changes in laws and constitutions. . . . But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors. It is this preposterous idea which has lately deluged Europe in blood. Their monarchs, instead of wisely yielding to the gradual change of circumstances, of favoring progressive accommodation to progressive improvement, have clung to old abuses, entrenched themselves behind steady habits, and obliged their subjects to seek through blood and violence rash and ruinous innovations, which, had they been referred to the peaceful deliberations and collected wisdom of the nation, would have been put into acceptable and salutary forms.

We strongly urge all Americans to reflect upon Jefferson's observations, and their special relevance to the causes and prevention of group violence. Today the pace of change has become far more rapid than when Jefferson wrote, and the need for adapting our institutions to the changing environment has become greater still. Today, more than ever before, we need to strengthen and

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utilize our institutions for the peaceful redress of grievances and the peaceful accommodation to the quickening pace of social change. In other chapters of this Report, we have presented and will present our recommendations as to how this goal can be achieved.

Submitted by Mr. Jaworski

DRAFT

(To be inserted on Page 17 of Report on "Dissent and Disorder" immediately following the period in line 2)

Civil Disobedience

In the Staff Report on "Law and Order Reconsidered", it was noted that the authors found it impossible to present a discourse on law and law enforcement without incorporating a discussion of civil disobedience as contemporarily practiced. Similarly, this Commission regards the impact of civil disobedience practices so harmful to the maintenance of a society obedient to law, that, in addition to adopting the Staff Report^{*}, it is impelled to amplify that report.

Our concern with civil disobediences is not because they involve acts of violence per se; most of them do not. The grave consequences of law erosion that follow the wake of such practices, especially when widespread, give rise to our deepest concern.

As observed by a legal scholar¹, "..... it is necessary to persuade those bent on civil disobedience that their conduct is fraught with danger, that violation of one law leads to violation of other laws, and eventually to a climate of lawlessness that by easy stages leads to violence."

^{*}Chapter 2 of the Staff Report entitled "Disobedience to Law" is attached as an appendix hereto.

¹Norman Dorsen, Professor of Law and Director of the Arthur Garfield Hays Civil Liberties Program, New York University School of Law.

We heard the testimony of a number of noted educators describe their experiences with campus strife and express their views on the primary and contributing causes of these eruptions. At the conclusion of the testimony of a panel of university presidents and chancellors, one of them, the head of one of the nation's largest universities summed up his views on causation with this terse comment:

"I think that civil disobediences are mainly responsible for the present law-breaking on university campuses".

A fair analysis of the highly publicized defiances of law antecedent to the eruption of campus disorders lends support to that conclusion. For several years, our youth had been exposed to dramatic demonstrations of disdain for law by those from whom exemplary conduct was to be expected. Segregationist governors had disobeyed court orders and proclaimed their defiance of judicial institutions; leaders of civil rights movements flagrantly disobeyed court injunctions and implored their followers to do likewise; representatives of teachers' unions on strike contemptuously ignored judicial decrees. In the light of such examples, the home and the classroom are placed at great disadvantage to instill in the child a high regard for law and order.

From capitols and highways, the cancerous growth of disobediences spread to the college campuses and, if recent press reports are correct, has reached the high school and junior high school classrooms.

Pointing out that force and repression are not the only threats to the rule of law, the Dean³ of one of the nation's largest law schools observed:

"The danger also arises from those groups whose commitments to social reform and the eradication of injustice lead to the defiance of law and the creation of disorder. We are learning that the rule of law can be destroyed through lack of fidelity to the law by large numbers of citizens as well as through abuses of authority by governmental officials".

In our democratic society, techniques of lawlessness cannot be justified on the grounds of individual beliefs. The spectrum of individual consciences usually encompasses social and political beliefs replete with discordant views. If self-serving selectivity of laws and decrees to obey as well as to defy is to be the yardstick, the rule of law will be emasculated and give way to the course of individual choice.

Those who rest their argument on the right to follow their conscience must realize that there exists no exclusive claim to such a right. If the civil libertarian in good conscience becomes a disobedier of law, why is not the segregationist endowed with the same choice of conscience? If this reasoning is to be carried to its logical conclusion, we must also make allowance for the grievances of numerous groups of citizens who regard themselves shackled by laws in which they do not believe. Is each group to be free to disregard due process and to violate laws considered objectionable with impunity?

³Francis A. Allen, Dean of the Law School and Professor of Law, University of Michigan.

It requires little imagination to foresee, once a society is beset with organized defiance of law -- no matter how conscientiously motivated -- that its institutions and the liberties they protect, are imperiled.

We regard as fundamental the right of peaceful dissent, not only to the individual freedoms we enjoy, but as well to the social progress so essential to our nation's growth and development. Yet, just as fundamental are the disciplines that must control our actions individually and collectively and without which, individual freedoms will be threatened and social progress retarded.

The United States Supreme Court in upholding convictions for contempt of court of civil rights leaders admonished the citizens of this nation in these words:

"No man can be judge in his own case, however exalted his station, however righteous his motives, and irrespective of his race, color, politics or religion... One may sympathize with the petitioners' impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom".

Every time a court order is disobeyed, each time an injunction is violated, each occasion on which a court decision is flouted, the effectiveness of our judicial system is challenged. How many challenges can it tolerate? It takes no prophet to know that the judicial institution cannot face wholesale violations of its orders and still retain its efficacy. It must be remembered by the disobeyers that once their practices have weakened the judicial system, the very ends they sought to attain and may have attained cannot then be

protected for their preservation. Thus, the ends of the disobeyer have been gained only temporarily for if the power of the judicial institution is decimated in the process, the battle has been won but the war has been lost. This is clearly so because the antagonist of the disobeyer's attained objectives may proceed to violate them and if there no longer are judicial institutions with authority and power effectively to enforce the rights so gained, the victory is an empty one, indeed. Thus, their conscientious violations were self-defeating.

It is argued that in instances where disobeyers seek to test the constitutionality of a legislative enactment or a court decree and are willing to accept their punishment in the end, their acts should be condoned. It is apparent that if wholesale violations were to take place, there would not be enough places of confinement to punish the disobeyers, aside from the burdens such a result would otherwise impose upon local communities. To this argument, we suggest that if there be an interest to challenge in good faith the constitutionality of a statute, an ordinance or a court decree, this can be done adequately and effectively by one individual and while the judicial test is in progress, all other dissenters should abide by the law involved until it is declared unconstitutional. Any other course is a strain on the bonds of law and law enforcement, which once they become frayed because of tear and wear of disobediences, soon will fail to hold together.

We commend to our fellow citizens the words of Richard Cardinal Cushing:

"... observance of law is the eternal safeguard of liberty, and defiance of law is the surest road to tyranny.... Even among law-abiding men, few laws are loved, but they are uniformly respected and not resisted".

If we are to continue our democratic society, the government must have the respect and the loyalty of its citizens. Disobedience to law, regardless of the motivation, is a mark of disrespect for and an evidence of disloyalty to the government under which we live.

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For all of these reasons, some Americans who seek or fear social change have come to believe in the efficacy of violence to serve their ends. We therefore turn to the merits of the rationale for group violence.

THE NEW REPUBLIC - 11/15/69

TRB[®]

from Washington

The Bowie Knife

Mr. Nixon's chin slowly moistens as he speaks from the Oval Room in the White House. He talks quickly and fervently. You note the cleft in his nose and the shadows under his eyes. You feel some sympathy for him. He is frighteningly earnest. The "great silent majority" is for fighting on, he says, and yet, if he had ended the war at once, "this would have been a popular and easy course." Isn't that inconsistent somehow? But never mind - skip it! He wipes his upper lip with the knuckles of his right hand in a gesture that wins compassion. Some people, he says, disagree with him on Vietnam, but they are honest and patriotic citizens. Well, that's generous. Of course such dissent, such division, only means the war lasts longer. He is humble. "I know it may not be fashionable to speak of patriotism or national destiny," he says. But he is courageous enough to be patriotic. He sternly warns Hanoi. "This is not a threat," he threatens. He fluffs "Woodrow Wilson," but - so what? Could you speak half as well? Next day Gallup finds that 77 percent approved the speech.

It happens that TRB is deeply concerned about the Nixon Administration but not, curiously enough, over Vietnam. Some liberals will disagree, no doubt, but we think Mr. Nixon is boxed in on Vietnam. That great silent majority of his, we think, wants two different and probably contradictory things: it wants to save face . . . and it wants out. Oh, how it wants out. We can't prove it, of course, but our hunch is that Mr. Nixon has got the word, as his preliminary troop withdrawals indicate. It used to be the thin magazines of the Left that demanded departure. Yet now here's LOOK, fat with advertising,

carrying an article by Bob Moskowitz, its foreign editor - "Vietnam: Get out Now." He returns from Vietnam "with a sense of hopelessness," a feeling of "personal despair." Politically and militarily, he says, after all these years, Vietnamese still can't "take care of themselves." The US should quit the experiment and leave - now. The LOOK editors agree.

Our sense of values may be distorted but we are more concerned (for the minute anyway) by two other developments. First of all, there can be no possible doubt any longer that Mr. Nixon has authorized Spiro Agnew to go out and inflame the nation. High White House staff members quietly admit it, or proclaim it. The "lower-our-voices" motto is bunk. Agnew was pretty funny as a foot-in-his mouth figure; Agnew as Mr. Nixon's alternate voice is not funny at all.

Gene McCarthy said the other day that Agnew is trying to be Nixon's Nixon. It recalled old times. Mr. Nixon was the hatchetman for Ike and that wasn't so bad because the General knew little of politics, and wanted to play golf. But Mr. Nixon is different. First, because he does know the political score and, second, because Agnew recalls the Nixon past which everybody tries to forget.

We read the Agnew speech at Harrisburg, Pennsylvania, Oct. 30, and it was one of the worst we ever encountered. This was no campaign utterance in the final throes; this came as the jittery nation tried to unwind a war and needed every bit of unity and self-control it could muster: "Arrogant, reckless, inexperienced . . . destroying the fabric of American democracy . . . political hustlers . . . self-righteous, guilty of history's worst atrocities . . . glib, activist element . . . duplicity . . . avowed anarchists and communists . . . sick and rancid . . . vultures . . . merchants of hate . . . parasites of passion . . . Judas goats . . . home grown menace."

This is the man the President picked to succeed him if he dies in office. We turned back curiously to what Mr. Nixon himself said in past campaigns. What was his standard of values? Adlai Stevenson - a "Ph.D. from the Acheson college of Cowardly Communist Containment"; Truman's Administration - the "four-headed monster that was Korea, Communism, corruption and controls." Also - "When the Eisenhower Administration came to Wash-

ington on January 20, 1953, we found in the files a blueprint for socializing America." And - "The Eisenhower Administration has kicked out the Communists and fellow travelers and security risks not by the hundreds but by the thousands."

Well, it is easier to snicker and say, "Poor old Ted Agnew will never come up to that!" But unleashing Agnew shows a weakness, a defensiveness, a kind of hysteria, right in the Administration. We want to believe that Mr. Nixon has put aside his old nastiness, but how can we when he turns his bowie knife over to his second-in-command?

There is a second point that fits into this, in a way. Anxiety grows here that angry elements in the Administration and angry elements in this week's big war protest are sparring for position to spring at each other's throat. A few days ago the Eisenhower Commission on Violence published an absorbing staff report that might have been labeled, "How to prevent bloodshed at mass demonstrations" but was titled, "A Tale of Two Cities" - Chicago and Washington. Why did the crowd riot at the Chicago Convention last year, and why didn't it in Washington in the Counter-Inaugural demonstration of January, 1969? The two crowds had about the same leadership, the same type of youths, and the same size?

Well, says the Report, in Washington there wasn't any hysterical advance alarm (that frightened off the stable elements), there was differentiation between radicals and moderates, there was early agreement on permits and the right to march, and there was cooperation and sympathy by authorities. In Chicago the lid blew; in Washington it was a safety valve.

Some militants coming to Washington are hoping for trouble. Some always are. But they need a Mayor Daley. What worries us is the way the Commission's advice is being ignored - permits, marching privileges, planning. Attorney General Mitchell's Justice Department has taken over and he is uttering veiled but grim warnings. If they want a showdown, he seems to say, this is the time for it. Some officials would probably not mind a confrontation; they believe it is time for a parental government to crack down. A riot, some believe, would help the troubled Administration.

The new 'peace' march

By Richard L. Strout

Washington

"Do you agree with Vice-President Agnew's characterization of the leaders of these demonstrations as effete snobs and vultures and so on?" Carl Stern, NBC News, asked the Attorney General on "Meet the Press" last Sunday.

"... If you are talking about the prospects of the second week in November," Mr. Mitchell replied, referring to the forthcoming peace march in Washington, "I would be even stronger than Vice-President Agnew. . . . Some of the stated, known members of the Coordinating Committee . . . are more than snobs. They are active militants who want to destroy some of the processes and some of the institutions of our government."

Washington braces itself for the November 14-15 gathering, and can study a staff report prepared for the National Commission on the Causes and Prevention of Violence. The study (not a report of the commission itself) is entitled "A Tale of Two Cities." The National Mobilization Committee to End the War in Vietnam (MOBE) helped organize demonstrators both for the Chicago Democratic Convention in August, 1968, it notes, and for the counterinaugural activities in Washington in January, 1969.

"These demonstrations were organized by many of the same groups and attended by many of the same people," the study says.

"Most participants did not desire confrontation in any form," according to the new study. However, "scattered throughout both these groupings of participants were those who desired 'confrontation' with the authorities." Some militants wanted to excite policemen and officials, but this last group, the report says, "was indeed small." It puts them as "no more than 100-200."

The average demonstrator arrested at Chicago, it says, came from Illinois or close by, was a white male, 21, who had nearly completed his college education, and came from the upper-middle or upper class.

Intelligence reports at Chicago and Washington, the report says, indicated that violence was likely. Chicago authorities lacked a mechanism for distinguishing between serious and ludicrous reports (like poisoning the water supply).

"The spectre of assassination was advanced to justify the use of tear gas and Mace to clear the parks and streets of non-violent demonstrators, including clergymen at prayer," the study says. By contrast, in Washington, authorities evaluated the intelligence reports they received. In Washington there was no talk of an "armed camp prepared for battle," nor was there a "massive publicity campaign" regarding security.

Chicago, the report continues, made "no real effort" to reach an understanding regarding permits; it obstructed or delayed negotiations; failed to answer correspondence; refused to schedule meetings and set impossible conditions for parade permits like a \$100,000-\$300,000 liability bond.

Refusal to grant a permit meant that demonstrators had no focal point for guidance or negotiation, the report says, and angered protesters. Some of the "more staid and responsible groups" decided to stay away but this, says the report, meant there were fewer restraining influences when escalation began.

The mood in Chicago, says the report, was "calm on Saturday and Sunday. Escalation soon took place as dozens of policemen, using tear gas and clubs, cleared Lincoln Park after curfew on Sunday, Monday, and Tuesday nights.

"Without coherent plans, policemen chased and clubbed innocent and guilty alike through the quiet streets of the Old Town, often great distances from the park. . . . Extremists who had earlier been ignored began to attract audiences. . . . The demonstrators' chief 'weapon' was obscenity. . . . Each day and night the police responded with even more venom, sowing the seeds of even more anger. . . ."

So how about Washington?

In Washington, authorities "negotiated conscientiously and arrived at an agreement acceptable to both sides," the report says. Parade permits were given. Demonstrators were allowed to construct a huge circus tent near the Washington Monument. They were permitted to stage a parade down Pennsylvania Avenue.

"The leaders of the protest, impressed with the forthrightness of the government spokesmen, made every effort to cooperate with city officials." Rennie Davis, a MOBE official who figured prominently at Chicago, told the press that because of cooperation he did not expect physical confrontations.

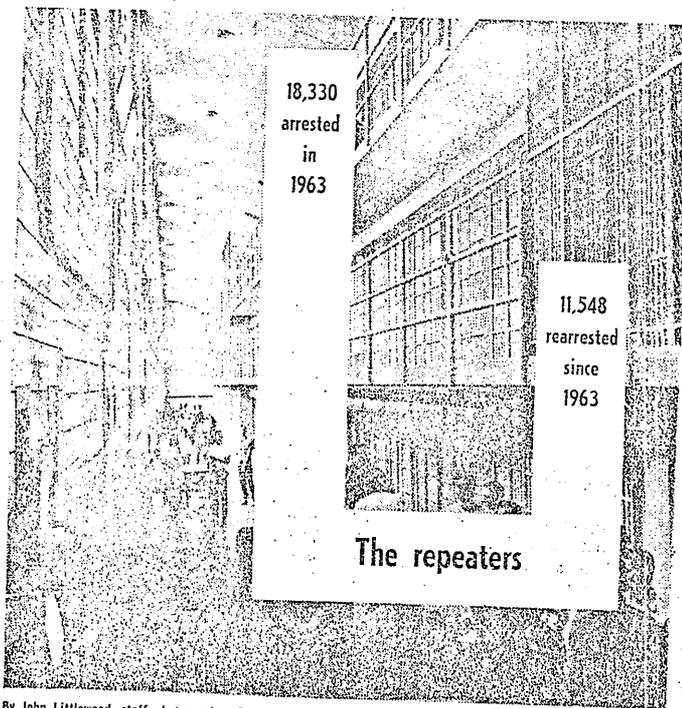
The city supplied MOBE with direct communications links including walkie talkies. During one scuffle police were kept away while MOBE officials restored order.

In Washington the cycle of disorder "was never allowed to complete itself. Provocation by demonstrators was met with restraint. Provocation by policemen was terminated by police and city officials who intervened quickly to restore discipline. As a result, escalation never took place."

Here in Washington next week militant activists will undoubtedly be present. But in spite of Mr. Mitchell's ominous words it is to be hoped that the new "peace" march will be as peaceful as before.

How to fight crime

Nixon, Milton Eisenhower anticrime packages differ sharply in estimated cost and timing



By John Littlewood, staff photographer; Federal Bureau of Investigation data

*In, out—
and in again*

Of 18,333 persons released to the community from federal criminal courts in 1963, 63 percent were rearrested within five years. In the under-20 age group, 72 percent were repeaters.

By Richard L. Strout
Staff correspondent of
The Christian Science Monitor

Washington

The big difference between the Nixon anti-crime package and the program just offered by the commission under Dr. Milton S. Eisenhower is that the latter would cost a lot more money.

Another difference is time.

President Nixon and Attorney General John N. Mitchell indicate they can get quick results. The Eisenhower report says that crime control will take years.

Mr. Nixon ran on a 1968 law-and-order program, in which he charged the Supreme Court with coddling criminals, and he promised to make crime control a national priority.

The Eisenhower approach has a longer range:

"We should give concrete expression to our concern about crime by a solemn national commitment to double our investment in the administration of justice and the prevention of crime. . . ."

How much would this be? The report adds:

"When the doubling point is reached, this investment would cost the nation an additional \$5 billion dollars per year—less than three-quarters of 1 percent of its national income and less than 2 percent of its tax revenues."

Budget squeeze

The Eisenhower group (National Commission on the Causes and Prevention of Violence) feels that the fight against crime needs primarily more money, more police, more judges, quicker justice, and time.

The Nixon approach is not necessarily in conflict. He also favors more and better police and faster trials. With a budget limited by Vietnam, the administration is chary of big new social commitments and is eager to find more immediate remedies. Some of these have run into hot opposition.

An 11-point package of Nixon-Mitchell proposals would include, among other things, "preventive detention" (holding suspects without trial), compulsion of witnesses in federal criminal cases to testify in return for immunity from prosecution, stiffer penalties for certain organized-crime offenses, and extension of federal authority in states and localities by making it a federal crime for a local authority to take bribes from gamblers. There is also an extension of wiretapping and bugging.

Congress balks

Some of these proposals have been attacked, but one thing at least can be said for them — none would cost very much money. Dr. Eisenhower's plan, by contrast, would cost billions.

"Congress is stalling the administration's efforts to implement a national anticrime campaign by failure to act," Mr. Mitchell complained in a recent speech.

On a "Meet the Press" show Nov. 2, a questioner noted that in the first six months

of 1969 major crimes in Washington (over which the federal government has jurisdiction) increased 22 percent in contrast to 9 percent for the country. Armed robberies reached a new record.

Mr. Mitchell warmly replied that the administration had made anticrime recommendations but "that we have not had one of those pieces of legislation come out of Congress."

Many here wish Congress would act. Some congressmen, however, call the proposals gimmicks or, perhaps, unconstitutional.

Sen. Sam J. Ervin Jr. (D) of North Carolina, a former judge and a conservative, says preventive detention is unconstitutional. In the campaign Mr. Nixon charged that judges are turning criminal suspects loose on the

community. The Mitchell solution for this, in essence, is to refuse bail under judicial discretion.

A staff report to the Eisenhower commission attacks the proposal, and notes that the house of delegates of the American Bar Association also questions it.

"Pretrial detention should not be permitted to serve as a substitute for an adequately staffed and efficient system of justice," the staff report says.

As observers here note, "an efficient system of justice" would cost a good deal of money.

Courts are clogged with cases and some suspects out on bail commit more crimes. Two methods might deal with this: keeping suspects in jail longer without trial or speeding up trials.

Former Chief Justice Earl Warren in an interview with Anthony Lewis of the New York Times, Oct. 19, said the causes of crime are "very deep, indeed."

President Nixon has had other frustrations with election promises dealing with the courts:

- The Senate holds up confirmation of Mr. Nixon's nomination of Judge Clement F. Haynsworth to the Supreme Court. A conservative Republican, Jack Miller of Iowa, is the latest to announce opposition.

- Mr. Nixon's new Chief Justice, Warren Burger, joins with seven other members of the court in a unanimous decision slapping down Mr. Mitchell's effort to hold back school integration of 33 districts in Mississippi.

- A staff report to the Eisenhower commission, prepared by Dorsey D. Ellis Jr., University of Iowa Law School, declares: "The charge that the Supreme Court's decisions 'cause violence' is unwarranted, and, insofar as it diverts our concern away from the real causes of violence, it is harmful to society."

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Budget squeeze

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Incitement to nonviolence

THE CHRISTIAN SCIENCE MONITOR

Third Section

Peaceful protests depend on restrained police and orderly demonstrators. A staff report to the National Commission on the Causes and Prevention of Violence, just published, details mutual responsibilities. This weekend's antiwar protest in Washington may be a test case.

By Richard L. Strout

Staff correspondent of
The Christian Science Monitor

Washington

NOBODY OF COURSE KNOWS whether the giant antiwar protest in Washington this weekend—extending Thursday through Saturday—will result in violence. But explosive elements will almost certainly be present.

Why was the antiwar confrontation in Chicago at the Democratic Convention in August, 1968, the terrifying explosion it was, whereas the antiinaugural march in Washington in January, 1969, was quiet and orderly?

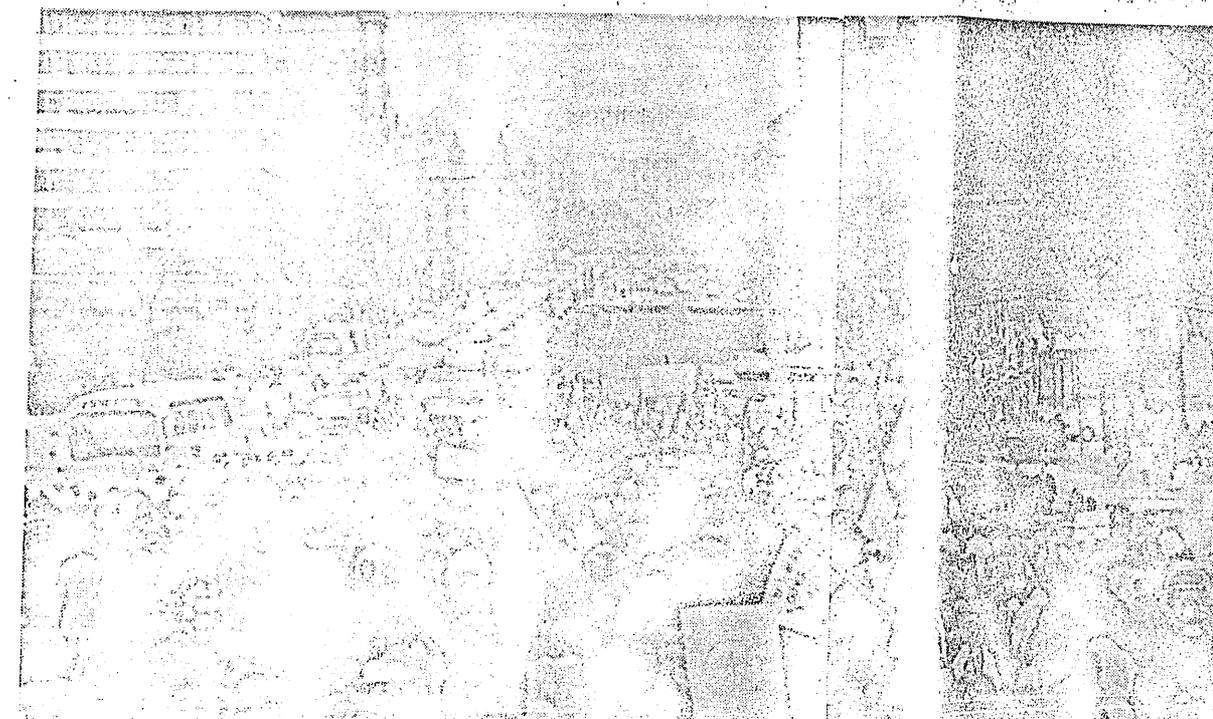
An answer to this question, with possible relevance to the new situation, is attempted in a staff report submitted to the National Commission on the Causes and Prevention of Violence, just published. The report also tries to lay down a body of rules to prevent big gatherings of determined citizens from erupting into disorder.

Some of these precepts are being followed here in Washington as an apprehensive city braces itself for the ordeal. But some of them appear to be ignored as, for example, an early agreement on routes of march and permits and a mutual atmosphere of cooperation.

Outcome differed

The new report, written by staff member Joseph R. Sahid and others for the national commission of which Dr. Milton S. Eisenhower is chairman, observes of Chicago and Washington:

"These demonstrations were organized by



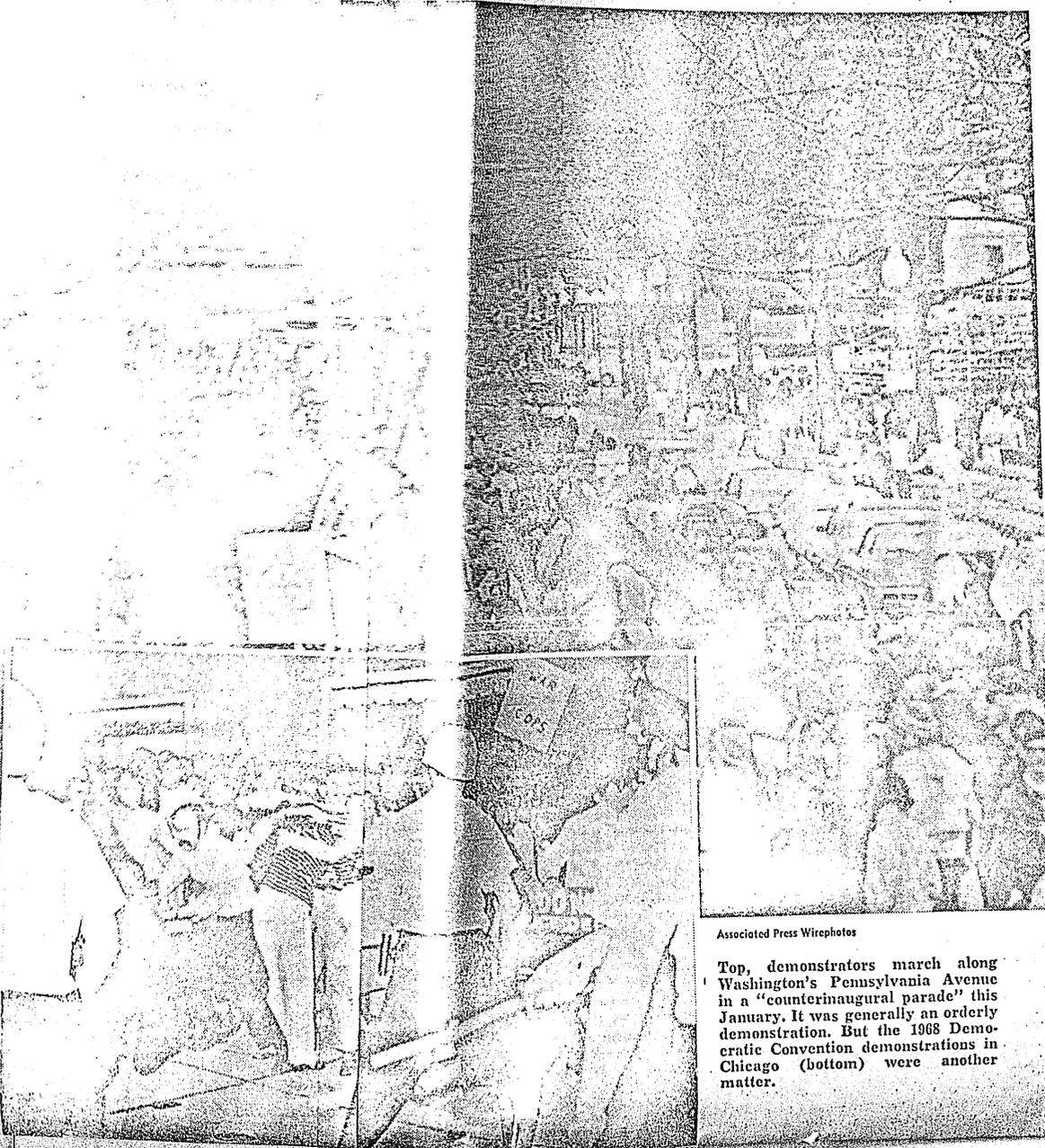
from the ludicrous and unreliable: Implementing the tightest security measures ever witnessed at a national convention, no attempt was made to tailor those measures to the type of threat received nor to distinguish those who were likely to engage in violence from those who presented no threat.

The specter of assassination was advanced

nonviolence

THE CHRISTIAN SCIENCE MONITOR

Third Section • Thursday, November 13, 1969



Associated Press Wirephotos

Top, demonstrators march along Washington's Pennsylvania Avenue in a "counterinaugural parade" this January. It was generally an orderly demonstration. But the 1968 Democratic Convention demonstrations in Chicago (bottom) were another matter.

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Outcome differed

The new report, written by staff member Joseph R. Sahid and others for the national commission of which Dr. Milton S. Eisenhower is chairman, observes of Chicago and Washington:

"These demonstrations were organized by many of the same groups and attended by many of the same people.

"The conventional activities (Washington) involved about the same number of protesters and centered around major national events."

Yet, says the report, the results of these events "were markedly different."

"In Chicago, large-scale violence marred both activities. The violence in Washington, on the other hand, was minimal.

"The convention and the inaugural protest activities prompted us to examine these two demonstrations in detail.

"We have concluded that the amount of violence that occurred during these demonstrations was directly related to the type of official response that greeted them.

"More specifically, repressive measures proved self-defeating; when officials decided to 'get tough,' chaos rather than order resulted."

The primary organizing force for the Washington affair this weekend is the National Mobilization Committee to end the war in Vietnam (Mobe). It was also the central group in the Chicago 1968 protest and the Washington protest in January, 1969.

The same group played a part just last month here in Washington at the Oct. 15 moratorium. There was friendly liaison between the police and the younger generation who participated. To the surprise and pleasure of many critics the Oct. 15 affair was dignified, impressive, and peaceable.

Report summarized

Here is a condensed version of what the Sahid staff group reported about Chicago (the Eisenhower commission publishes the report but does not specifically accept the material as its own):

Most participants did not desire confrontation in any form. Scattered throughout the participants were those who desired "confrontation" with the authorities. Some intended to provoke confrontation if necessary by exciting policemen and officials by their conduct. This last group was small. No more than 100-200 people were committed to this philosophy at any time during either event.

Intelligence reports for both events (Chicago and Washington) indicated that violence and disruptive conduct were likely to occur. Chicago authorities "lacked any mechanism" for distinguishing the serious

from the ludicrous and unreliable. Implementing the tightest security measures ever witnessed at a national convention, no attempt was made to tailor those measures to the type of threat received nor to distinguish those who were likely to engage in violence from those who presented no threat.

The spoiler of assassination was advanced to justify use of tear gas and Mace to clear the parks and streets of nonviolent demonstrators, including clergymen and prayer.

Permits disputed

Chicago authorities failed to make "a real effort" to reach an understanding regarding permits to engage in peaceful demonstrations requested by the demonstrators. They failed to answer correspondence, refused to schedule timely meetings with the proper officials, and imposed conditions which could not be fulfilled.

Refusal to grant a permit meant that for the greater part of the time they were present, the demonstrators would have no focal point of activity. Random groups were forced to remain random.

The most serious result of the permit denial was to polarize further the attitudes of the protesters and the larger community. Angered by refusal of what they considered their right to a permit many demonstrators came to Chicago determined to protest without a permit.

It is impossible to know who struck the first blow. What is clear is that a few policemen and a few protesters began engaging in provocative conduct as soon as affairs started. But the mood remained calm on Saturday and Sunday.

Park cleared

Escalation took place as "dozens of policemen using tear gas and clubs" cleared Lincoln Park after curfew on Sunday, Monday, and Tuesday nights. Without coherent plans policemen chased and clubbed innocent and guilty alike through the quiet streets of Old Town, often great distances from the park. Extremists who had earlier been ignored began to attract audiences. The demonstrators' chief "weapon" was obscenity.

Policemen, the report says, do not operate in a vacuum, but in a context of strong human emotions. It is easy to understand, the report continues, how members of a police force can get angry after having people swear and throw rocks at them.

But few law-and-order advocates take the time to imagine how they would react if policemen clubbed and beat their friends, wives, or daughters, the report adds.

By contrast, here is the story of Wash-

ington, similarly condensed from the Sahid report:

In Washington authorities carefully evaluated the intelligence reports they received. No attempt was made to interfere with the great majority of the demonstrators who presented no threat. Massive security measures were not employed in an attempt to intimidate participants who had no desire to engage in a confrontation. As a result, the suggestion of an "armed camp" prepared for battle never greeted the Washington protesters.

'Entitled to permit'

"No massive publicity campaign," the report notes, "regarding security ever detracted from the major scheduled event."

Washington authorities "negotiated conscientiously" and arrived at an agreement acceptable to both sides.

The Deputy Mayor declared: "We felt they were entitled to a permit."

A high-ranking federal official met almost daily with the same demonstration leaders who had been denied an audience in Chicago, driving with them in his car to examine the various proposed sites for rallies.

Demonstrators were allowed to construct a huge circus tent near the Washington Monument to serve as a focal point for their activities. They were not prohibited from sleeping in the tent.

They were permitted to stage a parade along Pennsylvania Avenue the day before the inaugural parade. Liability bonds were not required.

Leaders of the protest, "impressed with the forthrightness of the government spokesmen," made every effort to cooperate with city officials. Mutual cooperation characterized the resulting activities.

So, in Washington, the "cycle was never allowed to complete itself.

"Provocation by demonstrators was met with restraint." Provocation by policemen was terminated by police and city officials who intervened quickly to restore order.

"As a result, escalation never took place."

That is the story of the rival handling of somewhat similar (but not identical) situations in Chicago and Washington.

How does this bear on the protest meetings in Washington this week?

The Sahid report quotes with approval the FBI manual on riot control:

A peaceful or lawful demonstration should not be looked upon with disapproval by a police agency; rather it should be considered as a safety valve possibly serving to prevent a riot.

The police agency should not countenance violations of law. However, a police agency does not have the right to deny the demonstrator his constitutional rights.

On the eve of the new Washington demonstrations there are these factors to be considered.

Washington has just experienced a quiet, dignified and impressive Oct. 15 moratorium. In that moratorium agreement was achieved in advance for the meeting and permits were issued.

Control taken

In the present situation control has been taken from city authorities and assumed by John N. Mitchell, the Attorney General, and the Department of Justice.

There has been delay over the permits. The original request came to city authorities early in October. After delay the organization was informed that John W. Dean III, associate deputy attorney general and Kenneth Tapman, Interior Department lawyer, would handle negotiations for the federal government, rather than local city officials.

The demonstrators wanted a mass march down Pennsylvania Avenue, from the Capitol past the White House and to the ellipse, a park behind the White House.

Government negotiators wanted a march down the mall from the Capitol to the monument grounds. This would avoid government buildings and the White House. They agreed to a small, symbolic parade on Pennsylvania Avenue, limited to around

How television voted in the last election

The Selling of the President 1968, by Joe McGinniss. New York: Trident Press.

By William H. Stringer

"The Selling of the President 1968" is in some respects a hatchet job on Richard M. Nixon. Sharp dialogue. Shrewd instancing. Those who don't like the President, who revel in sardonic situations, will be delighted with Joe McGinniss' thesis, which is, that television sold Nixon to the country—and almost didn't.

The TV merchants, he says, dressed up a cold, humorless, "grumpy" individual, who was "afraid of television"—taught him to smile, provided good lighting, bland statements, prefabricated questions, pre-selected audiences, and put on shows and spots which made candidate Nixon palatable, almost likable.

Here are hectic conversations, resembling

something out of the Broadway show "The Front Page." Joe McGinniss attached himself to the Nixon entourage early in the pre-nomination campaign. He either carried a pocket tape recorder or possesses a Macaulay sense of total recall, or else has dressed up (or down) the dialogue. Hardly anybody speaks with such devastating self-revealingness. The Nixon-handlers—Harry Treleaven, Roger Ailes, Frank Shakespeare (now heading the U.S. Information Agency!)—are seen and quoted—huckstering, commercializing, merchandizing a product. If one TV format didn't work, they tried another. The result—a narrow victory.

Still, this is a hatchet job, as much so as the spectacle of Charlie Michaelson rattling away at his typewriter with that torrent of publicity which built up F.D.R. and tore down Herbert Hoover. For the book tells only one side of the situation. The rest of the Nixon entourage—from John Mitchell to

William Rogers to a half dozen more who determined campaign strategy—do not appear. Nor is it mentioned that a very great number of Americans who voted for Mr. Nixon didn't watch his TV performances. Their minds were made up long before that last lengthy question-and-answer marathon, which wasn't particularly dramatic or effective anyway.

If all the rushing around and playing with lighting and finding audiences (a few black faces always needed!) did anything for Mr. Nixon, they at least made him at ease before the ultimate cameras. Note his performance at White House conferences; hardly the behavior of a man who is afraid of television.

What Mr. McGinniss does not stress is that most candidates, from Dwight Eisenhower on, have resorted to television stratagems. Lyndon Johnson turned to a New York agency in 1964, and didn't need its

advice to defeat Barry Goldwater. Rosser Reeves wrote material for both Ike and Adlai Stevenson. There are times when television can be determinative, as when one candidate needs exposure and the other doesn't. Richard Nixon probably lost the presidency in 1960 because he agreed to those TV debates with John Kennedy.

The Nixon team, Mr. McGinniss tells us, was worried and disgruntled when, as the campaign neared the finish, Hubert Humphrey began to close the gap. Commented one analyzing expert: "Nixon is hiding behind his communications effort, Humphrey, because he doesn't have one, is out front. . . . I don't think it's possible to merchandise a vegetable."

Says Mr. McGinniss himself: "No wonder they were bitter as well as scared. The American people had been presented with the supercandidate, the supercampaign, yet—even faced with the sweaty, babbling al-

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To grant a permit meant that for part of the time they were demonstrators would have no activity. Random groups were formed in a random manner.

A serious result of the permit was to polarize further the attitudes of demonstrators and the larger community. The refusal of what they considered to be a permit many demonstrators in Chicago determined to protest without a permit.

It is possible to know who struck the blow. What is clear is that a few demonstrators and a few protesters began provocative conduct as soon as the permit was granted. But the mood remained calm Saturday and Sunday.

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Police took place as "dozens of police officers" cleared the area of tear gas and clubs" cleared the area after curfew on Sunday, Monday and Tuesday nights. Without coherent command, policemen chased and clubbed innocently alike through the quiet Old Town, often great distances away. "Extremists who had earlier begun to attract audiences. The demonstrators' chief "weapon" was ob-

scen, the report says, do not operate in a context of strong emotions. It is easy to understand, the report says, how members of a police force get angry after having people throw rocks at them. Law-and-order advocates take the opportunity to imagine how they would react if they were clubbed and beat their friends, the report adds. In contrast, here is the story of Wash-

ington. Similarly condensed from the Sahid report:

In Washington authorities carefully evaluated the intelligence reports they received. No attempt was made to interfere with the great majority of the demonstrators who presented no threat. Massive security measures were not employed in an attempt to intimidate participants who had no desire to engage in a confrontation. As a result, the suggestion of an "armed camp" prepared for battle never greeted the Washington protesters.

'Entitled to permit'

"No massive publicity campaign," the report notes, "regarding security ever detracted from the major scheduled event."

Washington authorities "negotiated conscientiously" and arrived at an agreement acceptable to both sides.

The Deputy Mayor declared: "We felt they were entitled to a permit."

A high-ranking federal official met almost daily with the same demonstration leaders who had been denied an audience in Chicago, driving with them in his car to examine the various proposed sites for rallies.

Demonstrators were allowed to construct a huge circus tent near the Washington Monument to serve as a focal point for their activities. They were not prohibited from sleeping in the tent.

They were permitted to stage a parade along Pennsylvania Avenue the day before the inaugural parade. Liability bonds were not required.

Leaders of the protest, "impressed with the forthrightness of the government spokesmen," made every effort to cooperate with city officials. Mutual cooperation characterized the resulting activities.

So, in Washington, the "cycle was never allowed to complete itself.

"Provocation by demonstrators was met with restraint." Provocation by policemen was terminated by police and city officials who intervened quickly to restore order.

"As a result, escalation never took place."

That is the story of the rival handling of somewhat similar (but not identical) situations in Chicago and Washington.

How does this bear on the protest meetings in Washington this week?

The Sahid report quotes with approval the FBI manual on riot control:

A peaceful or lawful demonstration should not be looked upon with disapproval by a police agency; rather it should be considered as a safety valve possibly serving to prevent a riot.

The police agency should not countenance violations of law. However, a police agency does not have the right to deny the demonstrator his constitutional rights.

On the eve of the new Washington demonstrations there are these factors to be considered.

Washington has just experienced a quiet, dignified and impressive Oct. 15 moratorium. In that moratorium agreement was achieved in advance for the meeting and permits were issued.

Control taken

In the present situation control has been taken from city authorities and assumed by John M. Mitchell, the Attorney General, and the Department of Justice.

There has been delay over the permits. The original request came to city authorities early in October. After delay the organization was informed that John W. Dean III, associate deputy attorney general and Kenneth Tapman, Interior Department lawyer, would handle negotiations for the federal government, rather than local city officials.

The demonstrators wanted a mass march down Pennsylvania Avenue, from the Capitol past the White House and to the ellipse, a park behind the White House.

Government negotiators wanted a march down the mall from the Capitol to the monument grounds. This would avoid government buildings and the White House. They agreed to a small, symbolic parade on Pennsylvania Avenue, limited to around

Associated Press Wirephotos

Top, demonstrators march along Washington's Pennsylvania Avenue in a "counteraugural parade" this January. It was generally an orderly demonstration. But the 1968 Democratic Convention demonstrations in Chicago (bottom) were another matter.

100. (Estimates of the crowd range from 100,000 to half a million.)

Permission was given for a two-day march, starting Nov. 18, from Arlington National Cemetery past the White House to the Capitol, in single file or by couples.

Permission was also given late Tuesday for a mass march Saturday, Nov. 15, along Pennsylvania Avenue to 15th Street, where the demonstrators would turn away from the White House toward the rally site at the Washington Monument.

Explosive element present?

Observers here agree that explosive elements probably exist in every protest march of this sort. For example, the Weatherman faction of Students for a Democratic Society, which has just been involved in violent demonstrations in Chicago, will be represented. They are outside the New Mobilization Committee, the umbrella organization running the show.

For whatever reason, tension has grown over peace marches. Mr. Nixon said of the Oct. 15 moratorium: "Under no circumstances will I be affected whatever by it" and added, "There is nothing new" to be learned from it. Vice-President Spiro T. Agnew has characterized some leaders as "effete snobs," "vultures," and the like. Attorney General Mitchell charges that some promoters of the Nov. 15 march are avowed members of the Communist Party and hard-core militants "whose sole interest is the destruction of the country." Leaders of the demonstration have responded with criticism in turn.

The Sahid report, published Nov. 1, hailed the control of local Washington government as a model for dealing with situations like this. However, this was prior to the intervention of the Justice Department.

The report said: "Washington, D.C., has made significant strides toward centralizing in the hands of its Mayor the responsibility for dealing with civil disorders. . . . The result of this planning has been heartening. Despite the underlying tension [racial] in the community, Washington has enjoyed a year of relative calm. Disorders have been handled effectively and with moderation."

How well the Justice Department handles the matter remains to be seen.

d in the last election

out of the Broadway show "The Nixon entourage" early in the pre-campaign. He either carried a recorder or possesses a Macaulay of total recall, or else has dressed in the dialogue. Hardly anybody with such devastating self-revelation. The Nixon-handlers—Harry Treloar, Ailes, Frank Shakespeare (the U.S. Information Agency!) and quoted—huckstering, conning, merchandizing a product. If that didn't work, they tried another result—a narrow victory.

is a hatchet job, as much so as the role of Charlie Michaelson rattling his typewriter with that torrent of which built up F.D.R. and tore Bert Hoover. For the book tells the side of the situation. The rest of the entourage—from John Mitchell to

William Rogers to a half dozen more who determined campaign strategy—do not appear. Nor is it mentioned that a very great number of Americans who voted for Mr. Nixon didn't watch his TV performances. Their minds were made up long before that last lengthy question-and-answer marathon, which wasn't particularly dramatic or effective anyway.

If all the rushing around and playing with lighting and finding audiences (a few faces always needed!) did anything for Mr. Nixon, they at least made him at ease before the ultimate cameras. Note his performance at White House conferences; hardly the behavior of a man who is afraid of television.

What Mr. McGinniss does not stress is that most candidates, from Dwight Eisenhower on, have resorted to television stratagems. Lyndon Johnson turned to a New York agency in 1964, and didn't need its

advice to defeat Barry Goldwater. Rosser Reeves wrote material for both Ike and Adlai Stevenson. There are times when television can be determinative, as when one candidate needs exposure and the other doesn't. Richard Nixon probably lost the presidency in 1960 because he agreed to those TV debates with John Kennedy.

The Nixon team, Mr. McGinniss tells us, was worried and disgruntled when, as the campaign neared the finish, Hubert Humphrey began to close the gap. Commented one analyzing expert: "Nixon is hiding behind his communications effort, Humphrey, because he doesn't have one, is out front. . . . I don't think it's possible to merchandise a vegetable."

Says Mr. McGinniss himself: "No wonder they were bitter as well as scared. The American people had been presented with the supercandidate, the supercampaign, yet—even faced with the sweaty, babbling al-

. . . From the bookshelf

ternative of Humphrey—they showed signs of discontent."

Televized promotions tend to cancel each other out. This happens even with detractors. But the book does stress, for us to beware and bewail, the oversized role that the promotional media can attempt to play in presenting a candidate. It has even been suggested, in some quarters of expertise, that a presidential candidate need no longer stump the country; he need simply create a semblance of travel, issue radio and TV commentaries, produce contrived Q-and-A sessions, and get on "Meet the Press" in the closing hours.

Mr. Nixon overdid the personal-effort travelogue in 1960. Tired and worn, he even flew to Alaska. The 1968 operation was far smoother. Mr. McGinniss dramatizes the griminess and gameyness of television promotion. But readers must be naive to think huckstering is confined to the Republican Party.