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CIVIL STRIFE AND THE LAW:
AN OVERVIEW*

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MY INSTRUCTIONS FROM THE PROGRAM CHAIRMAN ARE TO PRESENT AN OVERVIEW OF THE KINDS OF PROBLEMS THAT ARISE FOR THE LAW ENFORCEMENT SYSTEM DURING PERIODS OF CIVIL DISORDER, WITH PARTICULAR EMPHASIS ON THE PROBLEMS OF JUDICIAL ADMINISTRATION. AGAINST THIS BACKGROUND, FRED VINSON WILL DEAL WITH THE SPECIFIC LAW ENFORCEMENT PROBLEMS FACED BY POLICE AND PROSECUTORS, AND PROFESSOR MICHAEL SOVERN OF COLUMBIA WILL TAKE UP THE PARALLEL AND HIGHLY RELEVANT PROBLEMS FACED BY UNIVERSITY AUTHORITIES - AS WELL AS BY THE LAW ENFORCEMENT SYSTEM - WHEN STRIFE OCCURS IN ACADEME.

BEFORE TURNING TO THE PROBLEMS OF JUDICIAL ADMINISTRATION, I WANT TO EXERCISE THE PREROGATIVE OF THE FIRST SPEAKER TO TALK A BIT ABOUT THE DIFFERENT VARIETIES OF CIVIL STRIFE, THE STRATEGY AND TACTICS ADOPTED BY THOSE WHO ATTACK OR DEFEND THE SOCIAL ORDER, AND THE VITAL BEARING THAT THESE STRATEGIC AND TACTICAL DECISIONS CAN HAVE UPON THE OUTCOME OF THE BATTLE.

I USE THE TERM "BATTLE" DELIBERATELY. CIVIL STRIFE IS A PHYSICAL STRUGGLE BETWEEN CONTENDING FORCES. AS IN ANY OTHER BATTLE, THE RESULT DEPENDS ON THE RESPECTIVE STRENGTH OF THE FORCES ARRAYED ON EITHER SIDE. THE MANNER AND THE PURPOSES OF THEIR DEPLOYMENT, AND THE MYRIAD OF CHANCE OCCURRENCES THAT ARE INEVITABLE WHEN

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HUNDREDS OR THOUSANDS OF PEOPLE ARE MILLING ABOUT, AND THAT NO DEGREE OF ADVANCE PLANNING CAN FULLY ANTICIPATE.

A GREAT DEAL OF CIVIL STRIFE STARTS SPONTANEOUSLY, AS IN THE CASE OF THE URBAN RIOTS LAST SUMMER AND THOSE WHICH FOLLOWED THE ASSASSINATION OF DR. MARTIN LUTHER KING. A SECOND TYPE - ILLUSTRATED BY RESURRECTION CITY - BEGINS WITH A DELIBERATELY PLANNED EVENT, SUCH AS A MEETING OR MARCH, THAT IS INTENDED BY ITS ORGANIZERS TO BE PEACEFUL, BUT WHICH GENERATES EITHER A VIOLENT OUTBREAK BY SOME OF THE PARTICIPANTS OR A VIOLENT RESPONSE BY THE FORCES OF LAW AND ORDER. A THIRD TYPE - TYPICAL OF CURRENT STUDENT PROTESTS - GROWS OUT OF DELIBERATE CIVIL DISOBEDIENCE - SUCH AS A BLOCKADE OF A STREET OR THE OCCUPATION OF A BUILDING IN THE TRADITION OF THE SUFFRAGETTES. MAHATMA GHANDI AND THE LABOR SITDOWN - AND THE EFFORTS OF THE AUTHORITIES TO REMOVE THE OFFENDERS. AND THERE IS A FOURTH TYPE - THE MOST VIRULENT OF THEM ALL - THAT ARISES FROM A PLANNED DEMONSTRATION, PURPOSELY INTENDED BY ITS ORGANIZERS TO PROVOKE THE MOST VIOLENT POSSIBLE RESPONSE FROM THE AUTHORITIES, IN THE EXPECTATION THAT MANY OF THE MORE PASSIVE PARTICIPANTS AND INNOCENT BYSTANDERS WILL BE ABUSED IN A MANNER THAT POLARIZES A SUBSTANTIAL BODY OF OPINION TO SYMPATHIZE WITH THE LEADERS AND THEIR CAUSE. IN SUCH A DEMONSTRATION, THE LEVEL OF DISORDERLY CONDUCT IS PURPOSELY ACCELERATED FROM PEACEFUL DEMONSTRATION TO THE TAUNTING AND VERBAL ABUSE OF THE POLICE AND THE THROWING OF ROCKS AND OTHER OBJECTS, UNTIL THE DESIRED DEGREE OF VIOLENT RESPONSE IS OBTAINED. THIS, BY ALL

ACCOUNTS, IS THE STRATEGY THAT SUCCEEDED SO BRILLIANTLY IN CHICAGO.

I HAVE REFERRED TO FOUR VARIETIES OF STRATEGY AND TACTICS BY THOSE ATTACKING THE PREVAILING SOCIAL ORDER, RANGING FROM THE SPONTANEOUS AND TOTALLY UNPLANNED EVENT TO THE MOST DELIBERATE EFFORTS TO COMMIT PROVOCATIVE ACTS OF VIOLENCE IN ORDER TO INDUCE AN EXCESSIVELY VIOLENT RESPONSE. THE FORCES OF LAW AND ORDER HAVE SIMILAR CHOICES OF STRATEGY AND TACTICS WHICH I HOPE MR. VINSON WILL DESCRIBE IN SOME DETAIL. THEY, TOO, AS IN MOST OF THE 1967 SUMMER RIOTS, CAN REACT IN A TOTALLY UNPLANNED MANNER, LEAVING EACH SERGEANT AND PATROLMAN TO DO WHAT HE THINKS BEST WITH THE FORCES ROUTINELY AT HIS DISPOSAL. OR, GIVEN SUFFICIENT ADVANCE PREPARATION AND WARNING, AS IN THE CASE OF RESURRECTION CITY, THEY CAN DEPLOY MASSIVE FORCES, AUGMENTED BY MILITARY RESERVES, THAT MAY BE ABLE TO DEFUSE THE SITUATION BY THEIR MERE PRESENCE. AS IN WASHINGTON DURING THE PEACE MARCH LAST YEAR, THEY CAN GRANT LEGITIMATE DEMANDS INCIDENTAL TO PEACEFUL ASSEMBLY AND PETITION, SUCH AS THE RIGHT TO CONDUCT MEETINGS IN PARKS AND OTHER PLACES, TO HOLD PARADES OF REASONABLE DURATION, AND EVEN TO CAMP OVERNIGHT IN OPEN SPACES FOR REASONABLE PERIODS OF TIME. WHEN UNLAWFUL ACTS ARE COMMITTED, THEY CAN RESORT TO THE MINIMUM LEVEL OF FORCE NECESSARY TO DISPERSE THE ASSEMBLED GROUP - BY THE USE OF WARNINGS TO LEAVE, ARREST OF RINGLEADERS, USE OF TEAR GAS AND SIMILAR DEVICES. LASTLY, AS IN CHICAGO, THEY CAN RESORT TO THE EARLY AND VIGOROUS USE OF PHYSICAL FORCE FOR THE PURPOSE OF DISCOURAGING AND

DISPERSING THE CROWD BEFORE IT CAN BUILD UP ITS OWN MOMENTUM TOWARD VIOLENCE.

THE CHOICE AMONG THESE STRATEGIES IS FAR FROM EASY. IT DEPENDS, AMONG OTHER THINGS, UPON CORRECTLY IDENTIFYING THE MOTIVES AND STRATEGY OF THOSE WHO ARE ATTACKING THE SOCIAL ORDER, UPON THE STRENGTH AND DISCIPLINE OF THE FORCES AVAILABLE, AND UPON A JUDICIOUS APPRAISAL OF HOW THE ATTACKERS AND THE PUBLIC AT LARGE WILL RESPOND TO THE MEASURES SELECTED. IF WE ARE TO PRESERVE THE BASIC VALUES OF OUR SOCIETY, THE GUIDING STANDARD SHOULD BE TO SELECT THE METHOD WHICH DOES NOT INFRINGE THE RIGHTS OF PETITION AND ASSEMBLY, BUT WHICH WILL MAINTAIN ORDER WITH THE SMALLEST ACTUAL EXERCISE OF VIOLENT FORCE, AND THUS WITH THE SMALLEST DANGER OF CREATING AN INCIDENT OF SO-CALLED POLICE BRUTALITY THAT WILL POLARIZE SIGNIFICANT PUBLIC SENTIMENT IN FAVOR OF THOSE ATTACKING THE SOCIAL ORDER.

HOW TO MAKE THESE NICE JUDGMENTS - PARTICULARLY IN THE HEAT OF A BATTLE FULL OF UNPREDICTABLE CIRCUMSTANCES - IS AN ART WE ARE ONLY BEGINNING TO LEARN. THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE IS NOW ENGAGED IN STUDYING THE STRATEGIES OF ATTACK AND DEFENSE ADOPTED IN ALL THE RECENT EPISODES OF CIVIL STRIFE, FROM BERKELEY IN 1964 TO CHICAGO IN 1968. IT IS FAR TOO EARLY TO DRAW ANY MEANINGFUL CONCLUSIONS, EXCEPT THAT WHILE NO SET OF AUTHORITIES HAS YET FOUND ALL THE KEYS TO WISDOM, THE DEFENDERS OF THE SOCIAL ORDER SEEM TO HAVE DONE BETTER IN THEIR LATER BATTLES THAN IN THEIR EARLIER ONES. WE ARE LEARNING.

MOST OF US, TO MANAGE CIVIL STRIFE BETTER THAN WE DID ONLY A YEAR OR TWO AGO.

IN OUR WORK AT THE COMMISSION WE HAVE BEEN STRUCK BY THE VARIETY OF RESPONSES ADOPTED BY AUTHORITIES DEALING WITH ESSENTIALLY SIMILAR EPISODES AND BY THE WIDE DIFFERENCE IN RESULTS ACHIEVED. IN THIS CONNECTION WE HAVE BEEN PARTICULARLY IMPRESSED BY THE WIDE VARIETY OF RESPONSES ADOPTED AMONG OUR UNIVERSITY AUTHORITIES, AND THE MEASURABLE DIFFERENCES IN THE OUTCOME. UNIVERSITIES - NO MATTER HOW RIGID THEY MAY APPEAR TO THOSE WHO INHABIT THEM - HAVE FAR MORE FLEXIBILITY IN RESPONSE AND IN INSTITUTIONAL REFORM THAN FEDERAL, STATE OR LOCAL GOVERNMENTS. THEIR ABILITY TO EXPERIMENT AND INNOVATE MAKES THEM AN EXTREMELY USEFUL LABORATORY FOR STUDYING HOW AND WHY SOME METHODS WORK BETTER THAN OTHERS. AS PROFESSOR SOVERN WILL TELL YOU, WHAT THE UNIVERSITIES ARE NOW SO PAINFULLY LEARNING WILL PROVIDE THEM WITH MUCH TO TEACH US ABOUT THE MANAGEMENT OF SOCIAL DISORDER, AS WELL AS IN THE MORE CONVENTIONAL FIELDS OF SCHOLARSHIP.

THE COMMISSION IS ALSO ATTEMPTING TO MAKE HISTORICAL AND COMPARATIVE ANALYSES THAT MAY ILLUMINATE THE VALIDITY OF VARIOUS POPULAR THEORIES OF HOW CIVIL STRIFE ARISES AND HOW TO DEAL WITH IT. ONE SUCH THEORY - HELD BY MANY MEMBERS OF THE INTELLIGENTSIA - MILITANT AND OTHERWISE - IS THAT VIOLENCE IS A NECESSARY AND CAUSATIVE FACTOR IN THE PROCESS OF ACHIEVING SOCIAL CHANGE. IN THEIR VIEW, SLAVERY WOULD NOT HAVE BEEN ABOLISHED WITHOUT THE

CIVIL WAR; GHETTO REFORMS WOULD NOT HAVE BEEN BEGUN WITHOUT THE NEWARK AND DETROIT RIOTS; AND CAMPUS REFORMS WOULD NOT HAVE BEEN REALIZED WITHOUT THE BERKELEY AND COLUMBIA DISORDERS. UNDOUBTEDLY, THERE ARE CASES IN WHICH VIOLENT ACTION BY THOSE SEEKING SOCIAL CHANGE HAS BEEN FOLLOWED BY SUCCESSFUL ACCOMPLISHMENT OF THEIR OBJECTIVES. BUT WE MAY FIND - I SUSPECT EQUALLY AS OFTEN - THAT VIOLENCE COMMITTED OR PROVOKED BY THOSE SEEKING SOCIAL CHANGE HAS FREQUENTLY DEFEATED OR GREATLY DELAYED THEIR OBJECTIVES. THIS WAS APPARENTLY TRUE OF THE SLAVE REBELLIONS IN THIS COUNTRY AND OTHER SLAVE-HOLDING NATIONS. THE HUNGARIAN REVOLUTION OF 1956, THE ELAS MOVEMENT IN GREECE, AND THE POST-WAR COMMUNIST RIOTS IN WESTERN EUROPE. IT MAY PROVE TO BE A CORRECT READING OF HISTORY THAT VIOLENT ADVOCACY OF SOCIAL CHANGE, WHILE SOMETIMES EFFECTIVE, IS ALWAYS DANGEROUS AND RESULTS IN DEFEAT AS FREQUENTLY AS IN VICTORY. AND MANY OF THE VICTORIES, OF COURSE, ARE SHORTLIVED BECAUSE ONCE THE OLD SOCIAL ORDER IS DESTROYED THE NEW ONE PROVES TOO WEAK TO DEFEND ITSELF AND ACHIEVE ITS OBJECTIVES, AND IS OFTEN SUPPLANTED BY AN EVEN MORE VIOLENT AND TOTALITARIAN SUCCESSOR. THE FRENCH AND RUSSIAN REVOLUTIONS ARE PERHAPS THE MOST OBVIOUS EXAMPLES.

AN EQUALLY PREVALENT AND POPULAR THEORY IS THAT FORCEFUL REPRESSION OF VIOLENT GROUP OUTBURSTS IS THE BEST METHOD OF PREVENTING ADDITIONAL OUTBURSTS FROM OCCURRING, AND THAT RESPONSES OR CONCESSIONS IN THE DIRECTION OF SOCIAL CHANGE WILL "MAKE VIOLENCE PAY" AND ENCOURAGE ADDITIONAL OUTBURSTS. VIOLENT CON-

DUCT MUST, OF COURSE, BE REPRESSED AND CONTROLLED IF THE SOCIAL ORDER IS TO SURVIVE. BUT WE MAY FIND GOOD HISTORICAL AND COMPARATIVE EVIDENCE THAT FORCEFUL REPRESSION UNACCOMPANIED BY CONCESSIONS TOWARD SOCIAL CHANGE ULTIMATELY RESULTS IN EVEN MORE VIOLENT OUTBURSTS AND MORE RADICAL SOCIAL CHANGE. THIS WOULD APPEAR TO BE A VALID INTERPRETATION OF THE REPRESSIVE DECADES PRECEDING THE FRENCH AND RUSSIAN REVOLUTIONS, AND THE HALF-CENTURY OF REPRESSION PRECEDING THE SUCCESS OF THE CIVIL RIGHTS MOVEMENT IN THE SOUTH. WE MAY ALSO FIND COMPARABLE CASES WHERE A JUDICIOUS COMBINATION OF LAW ENFORCEMENT AND CONCESSIONS TOWARD WIDELY SUPPORTED SOCIAL CHANGE RESULTED IN SIGNIFICANTLY LESS VIOLENCE -- FOR EXAMPLE, THE VERY DIFFERENT BRITISH EXPERIENCE DURING THE PERIOD OF THE FRENCH REVOLUTION, AND, MORE RECENTLY, THE DECOLONIZATION EXPERIENCE OF THE BRITISH EMPIRE, AS COMPARED TO THAT OF THE FRENCH AND DUTCH EMPIRES.

SO MUCH FOR AN AMATEUR'S SPECULATION ABOUT THE THEORIES AND STRATEGIES OF CIVIL STRIFE AND OF THE RESPONSES AVAILABLE TO THE SOCIAL ORDER. LET ME NOW TURN TO MY OWN ASSIGNMENT, THE MANNER IN WHICH THE JUDICIAL SYSTEM HAS RESPONDED AND SHOULD RESPOND TO CIVIL DISORDERS. NO JUDICIAL SYSTEM, NO MATTER HOW EFFICIENT AND WISE IT MAY BE, CAN DO MUCH TO PREVENT THE OUTBREAK OF CIVIL DISTURBANCE. WHAT IT CAN DO IS TO ADMINISTER JUSTICE UNDER EMERGENCY CONDITIONS IN A MANNER THAT HELPS TO DIMINISH RATHER THAN AGGRAVATE DISORDER, TREATS ALL PERSONS FAIRLY, AND EARNS THE RESPECT FOR THE ENTIRE COMMUNITY FOR THE RULE OF LAW AND THE INSTITUTIONS THAT ENFORCE IT.

I RECENTLY SERVED AS THE CHAIRMAN OF A COMMITTEE IN THE DISTRICT OF COLUMBIA, APPOINTED BY THE ATTORNEY GENERAL, THE MAYOR AND THE PRESIDING JUDGES, TO STUDY THE ADMINISTRATION OF JUSTICE UNDER THE EMERGENCY CONDITIONS OF LAST APRIL, AND TO RECOMMEND CHANGES IN THE SYSTEM FOR DEALING WITH FUTURE EMERGENCIES. WE HAVE SO FAR PUBLISHED TWO REPORTS THAT HAVE BEEN WIDELY DISTRIBUTED IN THIS AND OTHER CIRCUITS, AND I WILL NOT BORE YOU WITH THE DETAILS. IT MAY BE INFORMATIVE, HOWEVER, TO SUMMARIZE OUR PRINCIPAL FINDINGS AND CONCLUSIONS.

THE NORMAL NUMBER OF ARRESTS IN THE DISTRICT OF COLUMBIA IS ABOUT 100 PER DAY. BUT DURING THE TWELVE-DAY PERIOD FROM APRIL 4TH THROUGH APRIL 15TH THERE WERE OVER 8,500 ARRESTS, INCLUDING MORE THAN 500 WOMEN AND 1100 JUVENILES. OF THE 7400 ADULTS ARRESTED 1650 WERE HELD FOR ARRAIGNMENT OR PRESENTMENT BEFORE A JUDGE. MORE THAN 900 WERE CHARGED WITH LOOTING, WHILE THE BALANCE WERE CHARGED WITH LESSER OFFENSES, SUCH AS CURFEW VIOLATIONS, DISORDERLY CONDUCT, OFFENSES INVOLVING STOLEN PROPERTY, AND THE LIKE.

THE NORMAL SYSTEM OF ARREST, CONFINEMENT, PREPARATION OF CHARGES, ASSIGNMENT OF COUNSEL, AND APPEARANCE BEFORE A JUDGE WAS NOT GEARED TO COPE WITH THESE LARGE NUMBERS. THE RECORDS KEPT BY THE METROPOLITAN POLICE AND THE DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS DO NOT PERMIT A PRECISE MEASUREMENT OF THE TIME BETWEEN ARREST AND INITIAL APPEARANCE BEFORE A JUDGE, EITHER FOR PARTICULAR INDIVIDUALS OR ON THE AVERAGE FOR ALL THOSE ARRESTED DURING THE CRISIS. FOR MANY INDIVIDUALS THE

TIME INVOLVED WAS PROBABLY NOT EXCESSIVE. BUT WE HAVE REASON TO BELIEVE THAT A SIGNIFICANT NUMBER WERE CONFINED FOR MORE THAN TWO DAYS BEFORE THEIR INITIAL COURT APPEARANCE.

ONE IMPORTANT OBJECTIVE OF OUR RECOMMENDATIONS IS TO REDUCE THE TIME BETWEEN ARREST AND ARRAIGNMENT OR PRESENTMENT IN EMERGENCY SITUATIONS. WHILE NO ONE WOULD EXPECT NORMAL STANDARDS TO BE ACHIEVED UNDER CRISIS CIRCUMSTANCES, OUR COMMITTEE CONCLUDED THAT IT SHOULD BE POSSIBLE, EVEN UNDER MASS ARREST CONDITIONS, TO REDUCE THE AVERAGE PROCESSING TIME BETWEEN ARREST AND ARRAIGNMENT OR PRESENTMENT TO LESS THAN 12 HOURS.

SWIFTER PROCESSING, OF COURSE, IS NOT THE ONLY OBJECTIVE THAT A SYSTEM OF JUSTICE MUST BE DESIGNED TO ACHIEVE. ITS SUCCESS CANNOT BE MEASURED MERELY BY THE NUMBER OF PERSONS PROCESSED PER HOUR. IN MR. JUSTICE STEWART'S PHRASE, "SWIFT JUSTICE DEMANDS MORE THAN JUST SWIFTNESS." A SYSTEM OF TRUE JUSTICE MUST BE FAIR AS WELL AS EFFICIENT. AND EQUALLY IMPORTANT, IT MUST APPEAR FAIR, BOTH TO THOSE PERSONS WHO FACE IT FROM THE PRISONER'S DOCK AND TO THOSE IN THE COMMUNITY WHO LOOK TO IT TO UPHOLD THE LAW.

AT THE TIME OF THE APRIL EMERGENCY ALL THE AGENCIES CONCERNED WERE PLANNING TO DEAL WITH THE POSSIBLE EMERGENCIES LATER THIS YEAR. HOWEVER, THIS PLANNING DID NOT COME TO FRUITION BEFORE THE UNEXPECTED MURDER OF DR. KING AND ITS AFTERMATH. IN SPITE OF THIS, OR PERHAPS BECAUSE OF THE PARTIAL PLANNING, THE SYSTEM FUNCTIONED CONSIDERABLY BETTER THAN THOSE OF OTHER CITIES IN THE CRISES OF THE PRECEDING SUMMER. BUT THE SYSTEM SHOWED

SUBSTANTIAL DEFECTS UNDER STRESS, AND UNQUESTIONABLY CAN BE IMPROVED.

WE FOUND SERIOUS SHORTCOMINGS IN THE BASIC LEGAL AUTHORITY OF THE CITY GOVERNMENT TO ESTABLISH A CURFEW AND PROHIBIT THE SALE OF FIREARMS AND GASOLINE, IN THE ARREST, BOOKING AND PRECINCT OPERATIONS OF THE POLICE, IN THE HANDLING OF WOMEN AND JUVENILES, IN THE FACILITIES FOR TRANSPORTATION AND INTERIM DETENTION, IN THE CHARGING AND PAPERING OF ARRESTED PERSONS, IN THE APPOINTMENT OF DEFENSE COUNSEL, IN THE BAIL POLICIES RECOMMENDED BY THE UNITED STATES ATTORNEY AND FOLLOWED BY THE JUDGES, IN THE COLLECTION OF INFORMATION ABOUT THE IDENTITY, LOCATION AND STATUS OF ARRESTED PERSONS AND THE DISSEMINATION OF THIS INFORMATION TO THE GENERAL PUBLIC, AND IN THE ARRANGEMENTS FOR COORDINATING THE EFFORTS OF THE MANY OFFICIAL AGENCIES INVOLVED IN THE PROCESS OF ADMINISTERING JUSTICE, EVEN WITHIN THE CONFINES OF THE BUILDING OCCUPIED BY THE COURT OF GENERAL SESSIONS OF THE DISTRICT OF COLUMBIA.

I WOULD SUSPECT THAT MANY OF THESE SAME DEFICIENCIES EXIST IN THE COURTS OF THE LARGE CITIES OF THIS CIRCUIT, AND THAT THE WEAKNESSES OF OUR ADVANCE PLANNING IN THE DISTRICT OF COLUMBIA WOULD BE MATCHED IN MOST OF THOSE CITIES TODAY. WE MADE 74 SPECIFIC RECOMMENDATIONS FOR CHANGES AND THESE RECOMMENDATIONS ARE NOW BEING PUT INTO EFFECT BY THE AGENCIES CONCERNED. IN THOSE CITIES WHERE YOU HAVE NOT ALREADY DONE SO, I EARNESTLY SUGGEST THAT SIMILAR COMMITTEES BE APPOINTED AND THAT THEIR RECOMMENDATIONS BE ADOPTED BEFORE ANOTHER SUMMER

ROLLS BY.

OUR INITIAL REPORT WAS CONCERNED PRIMARILY WITH THE PROCESSING OF ARRESTED PERSONS UP TO THE TIME OF ARRAIGNMENT. WE ARE NOW CONDUCTING A STUDY IN GREATER DEPTH, NOT ONLY OF THE POLICIES FOLLOWED IN ARREST, CHARGING AND BAIL, BUT ALSO IN THE CONDUCT OF THE TRIALS AND IN THE SENTENCING. THIS WILL NECESSARILY BE A LENGTHY PROCESS, SINCE THE COURT LOAD DURING THE EMERGENCY COMPRISED SOME 2,000 CASES, NOT COUNTING APPROXIMATELY 5,000 CURFEW VIOLATORS WHO WERE GIVEN CITATIONS UNDER OUR NEW D.C. CRIME LAW AND NOT BROUGHT TO COURT IMMEDIATELY, BUT WERE GIVEN A SUMMONS FOR A LATER COURT APPEARANCE. YOU MAY BE INTERESTED TO KNOW THAT MOST OF THE MISDEMEANOR CASES - ABOUT HALF OF THE TOTAL - HAVE ALREADY BEEN DISPOSED OF. ABOUT 40% WERE DISMISSED BY THE PROSECUTION, WHILE MOST OF THE BALANCE RESULTED IN PLEAS OR CONVICTIONS. ABOUT HALF OF THE FELONY CASES WERE ALSO DISMISSED BY THE PROSECUTION. THE TRIALS OF THE BALANCE BEGAN THIS SUMMER AND, FOR REASONS I WILL GET TO SHORTLY, ARE LIKELY TO CONTINUE FOR SOME TIME.

ONE OF THE MOST PERPLEXING QUESTIONS THAT THE JUDICIAL SYSTEM MUST RESOLVE IN A PERIOD OF CIVIL STRIFE IS WHETHER TO VARY ITS NORMAL STANDARDS FOR ARRAIGNMENT AND BAIL OF ARRESTED PERSONS IN ORDER TO ASSIST IN THE CONTROL OF THE EMERGENCY - PUTTING IT BLUNTLY, TO HELP KEEP POTENTIAL OFFENDERS OFF THE STREETS. HERE IS WHAT A COURT OFFICIAL IN ANOTHER CITY HAD TO SAY ABOUT THIS ISSUE LAST APRIL:

"THERE ARE TWO SCHOOLS OF THOUGHT AS TO THE COURT'S ROLE IN A CIVIL DISTURBANCE. THERE IS THE VIEW THAT THE COURT CANNOT BECOME INVOLVED IN WHAT IS GOING ON AND IS THERE SOLELY TO PUT INTO EFFECT ALL OF THE JUDICIAL PROCEDURES AS IF THIS WERE ANY OTHER SITUATION. THERE IS ALSO THE OTHER ATTITUDE THAT THE COMMUNITY IS GOING UP IN FLAMES, THAT ALL OF THE PROCESSES OF LAW AND ORDER WHICH ARE NECESSARY TO THE GUARANTEE OF INDIVIDUAL RIGHTS ALSO ARE GOING UP IN FLAMES ALONG WITH IT, AND UNLESS YOU TAKE AN ACTIVE PART IN THE CONTROL OF THE SITUATION THEN YOU ARE NOT SERVING YOUR FUNCTION. OURS WAS THE LATTER, AS YOU CAN SEE."

IN THE DISTRICT OF COLUMBIA, THE OTHER VIEW PREVAILED. THE CHIEF JUDGE OF OUR COURT OF GENERAL SESSIONS, HAROLD GREENE, KEPT HIS COOL, AS OUR YOUNG WOULD SAY TODAY. LET ME READ TO YOU WHAT HE HAS SAID IN A RECENT ADDRESS BEFORE THE JUDICIAL CONFERENCE OF INDIANA:

"A MASS ARREST SITUATION, LIKE NO OTHER WE ARE LIKELY TO BE CONFRONTED WITH, IS A TEST OF OUR COMMITMENT TO THE RULE OF LAW. EVERY EFFORT MUST BE MADE TO ACCORD TO THE CITIZENS INVOLVED IN THESE SITUATIONS THEIR FULL AND COMPLETE RIGHTS, JUST AS AT ANY OTHER TIME. THE COURTS, RATHER THAN PARTICIPATE IN THE SYMBOLIC BURNING OF INDIVIDUAL RIGHTS,

SHOULD BE ISLANDS OF CALM IN THE MIDST OF THE HYSTERIA, THE BURNING, THE LOOTING, AND THE VIOLENCE. I KNOW THIS WILL NOT BE EASY IN TIME OF CRISIS, BUT I VENTURE TO SUGGEST TO YOU THAT THIS IS THE PROPER ROLE OF THE JUDICIARY. WHENEVER AMERICAN INSTITUTIONS HAVE PROVIDED A HYSTERICAL RESPONSE TO AN EMERGENCY SITUATION, WE HAVE COME LATER TO REGRET IT. ONE EXAMPLE THAT COMES READILY TO MIND IS THE EVACUATION OF AMERICANS OF JAPANESE ANCESTRY FROM THE WEST COAST AT THE BEGINNING OF WORLD WAR II.

"THE JUDICIARY MUST BE ESPECIALLY CAREFUL AND VIGILANT IN THIS REGARD, BUT UNFORTUNATELY THIS HAS NOT BEEN THE RESPONSE OF THE COURTS IN ALL OF THE CITIES WHERE MAJOR CIVIL DISORDERS HAVE OCCURRED. IN SOME PLACES, ARRAIGNMENTS WERE HELD ON A MASS BASIS; IN OTHER CITIES ARRESTED PERSONS WERE HELD FOR LONG PERIODS OF TIME IN TOTALLY INADEQUATE FACILITIES; DEFENDANTS HAVE BEEN DENIED ACCESS TO LEGAL COUNSEL OF THEIR CHOICE; RIDICULOUSLY HIGH BONDS HAVE BEEN SET; PROSECUTION EVIDENCE HAS BEEN DISPENSED WITH ALTOGETHER AND DEFENDANTS HAVE BEEN CONVICTED ON THEIR OWN TESTIMONY ALONE.

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"WHEN OUR PARTICULAR COURT WAS FACED WITH THE MASS ARRESTS IN APRIL, EVERY ONE OF THE CLOSE TO TWO THOUSAND DEFENDANTS APPEARED WITH AN INDIVIDUALLY

APPOINTED LAWYER, BEFORE A JUDGE WHO INDIVIDUALLY ADVISED HIM OF HIS RIGHTS, AND AN INDIVIDUAL DETERMINATION WAS MADE AS TO THE QUESTION OF BAIL, TO A CONTINUANCE, AND ULTIMATELY AS TO GUILT OR INNOCENCE. WITH POLICE AND TROOPS ALL AROUND US, THERE WERE NONE IN THE COURTROOM, AND, MIGHT I SAY, NONE WERE NEEDED AT ANY TIME.

"THE CENTRAL POLICY WE DETERMINED UPON WAS THAT, NOTWITHSTANDING THE CLOUD OF SMOKE AROUND US, OUR COURT WOULD FUNCTION AS A COURT OF LAW IN THE AMERICAN TRADITION. IF THE DISORDER BECOMES SO WIDESPREAD THAT NORMAL JUDICIAL PROCESSES BREAK DOWN, LET THOSE WHO HAVE THE POWER TO DO SO DECLARE MARTIAL LAW. BUT AS LONG AS THE CIVIL COURTS OPERATE, THEY MUST OPERATE AS COURTS, NOT AS ADJUNCTS OF THE POLICE DEPARTMENT OR THE NATIONAL GUARD."

WHEN YOU EXAMINE HOW YOUR OWN JUDICIAL SYSTEMS HAVE FUNCTIONED OR MAY FUNCTION IN THE EMERGENCY CREATED BY A CIVIL DISORDER, I BELIEVE YOU WILL BE STRUCK, AS OUR COMMITTEE WAS STRUCK, BY THE CRITICAL NEED FOR IMPROVING THE SYSTEM OF ADMINISTERING JUSTICE UNDER NORMAL NON-CRISIS CONDITIONS. MANY OF THE DIFFICULTIES ENCOUNTERED DURING THE EMERGENCY EXPOSED COMPONENTS OF THE NORMAL PROCESSING SYSTEM THAT WERE SIMPLY UNABLE TO WITHSTAND THE GREATER STRESS OF THE CRISIS, EVEN WHEN ADDITIONAL FISCAL AND HUMAN RESOURCES WERE ADDED. BEFORE THE SYSTEM CAN BE EXPECTED TO WORK WELL IN A CRISIS, IT MUST BE MADE TO WORK BETTER ON A NORMAL DAY.

MANY OF THESE WEAKNESSES AND THE CHANGES NECESSARY TO IMPROVE THE SYSTEM ARE KNOWN TO ALL OF YOU. THEY HAVE BEEN CALLED TO PUBLIC ATTENTION THROUGH THE EFFORTS OF THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE AND, IN OUR DISTRICT, BY THE EFFORTS OF THE PRESIDENT'S COMMISSION ON CRIME IN THE DISTRICT OF COLUMBIA. OUR OWN JUDICIAL COUNCIL HAS MADE CONSIDERABLE PROGRESS IN CARRYING OUT THESE REFORMS THROUGH ITS COMMITTEE ON THE ADMINISTRATION OF JUSTICE. SIMILAR EFFORTS ARE UNDERWAY IN YOUR CIRCUIT. BUT NO RESPONSIBLE MEMBER OF THE BAR -- INDEED, NO CITIZEN OF THIS COUNTRY -- CAN POSSIBLY BE SATISFIED WITH THE MANY INEFFICIENCIES AND DELAYS THAT STILL PLAGUE THE FEDERAL, STATE AND LOCAL JUDICIAL SYSTEMS -- SYSTEMS WHICH ARE PROBABLY THE WEAKEST AND LONGEST NEGLECTED BUREAUCRACIES IN THE LAND. IT IS STILL REGRETTABLY TRUE THAT MOST OF THOSE ARRESTED AND INDICTED FOR FELONY OFFENSES COMMITTED DURING THE APRIL RIOTS IN WASHINGTON HAVE NOT YET BEEN TRIED. MOST OF THE JUVENILE OFFENDERS HAVE WAITED MONTHS BEFORE THEIR JUVENILE COURT HEARINGS. AND THE ELAPSED TIME BETWEEN INITIAL ARREST AND THE TRIAL OF A CRIMINAL FELONY CASE IN THE DISTRICT OF COLUMBIA, WHICH HAD RECENTLY BEEN BROUGHT UNDER ONE YEAR BY GREAT EFFORT, IS NOW EXPECTED TO SLIP BACK TO MORE THAN ONE YEAR AS A RESULT OF THE ADDITIONAL LOAD CREATED BY THE DISTURBANCES.

THIS IS, OF COURSE, AN INTOLERABLE SITUATION, PARTICULARLY IN A NATION SO DISTURBED ABOUT THE SPREAD OF CRIME AND DISORDER. YET IT IS A SITUATION ALL OF US HAVE CONTINUED TO TOLERATE DAY AFTER DREARY DAY, YEAR AFTER DREARY YEAR.

I WONDER HOW MANY OF YOU REALIZE HOW LITTLE OF THE RESOURCES OF THIS COUNTRY ARE COMMITTED TO LAW ENFORCEMENT AND ESPECIALLY TO THAT COMPONENT OF LAW ENFORCEMENT ENTRUSTED TO THE COURTS. IT SHOCKED ME, AND I THINK IT WILL SHOCK YOU, TO REALIZE THAT THE ENTIRE AMOUNT WE SPEND ON LAW ENFORCEMENT, INCLUDING ALL POLICE, COURTS AND CORRECTIVE INSTITUTIONS, FEDERAL, STATE AND LOCAL, IS LESS THAN 1/2 OF 1% OF OUR NATIONAL INCOME, AND LESS THAN 2% OF OUR TAX REVENUES. THE ENTIRE AMOUNT WE SPEND ON OUR COURTS IS LESS THAN 1/32 OF 1% OF OUR NATIONAL INCOME AND LESS THAN 1/8 OF 1% OF OUR TAX REVENUES.

THERE IS NOTHING NEW ABOUT THESE FIGURES. YOU WILL FIND ALL OF THEM IN THE REPORT OF THE PRESIDENT'S CRIME COMMISSION, NOW A YEAR AND A HALF OLD. YET THERE WAS NO GREAT PUBLIC OUTCRY ABOUT THIS TRULY STARTLING REVELATION, AND LITTLE HAS SINCE BEEN DONE TO ALLOCATE SIGNIFICANT ADDITIONAL RESOURCES. PERHAPS ANOTHER STARTLING SET OF FIGURES, RELEASED BY THE FBI LAST WEEK WILL HAVE SUFFICIENT SHOCK VALUE TO CONVINCED THE PUBLIC OF THE INEFFICIENCIES AND INADEQUACIES OF OUR LAW ENFORCEMENT SYSTEM, AND THE COMPELLING NEED TO CORRECT THEM.

OF ALL THE SERIOUS CRIMES REPORTED IN THE FBI INDEX FOR 1967, ONLY 22.4% WERE CLEARED BY AN ARREST. ONLY 16.4% RESULTED IN A CHARGE. LESS THAN 10% RESULTED IN A GUILTY PLEA OR CONVICTION. AND, ALTHOUGH THE FBI FIGURES DO NOT COVER THE POINT, ONLY ABOUT 1% RESULTED IN AN INCARCERATION OF THE PERSON CONVICTED.

IMAGINE A SOCIETY AS DEEPLY CONCERNED WITH DISORDER AS OURS, THAT INVESTS LESS THAN ONE HALF OF ONE PERCENT OF ITS NATIONAL INCOME AND LESS THAN 2% OF ITS TAX REVENUES IN LAW ENFORCEMENT ACTIVITIES, AND TOLERATES A SYSTEM THAT OBTAINS CONVICTIONS IN ONLY 10%, AND INCARCERATIONS IN ONLY 1%, OF ALL REPORTED SERIOUS CRIMES. IT WOULD BE HARD TO PERSUADE ANYONE IN SUCH A SOCIETY THAT CRIME DOES NOT PAY. YET THIS IS AN ACCURATE PORTRAYAL OF LAW ENFORCEMENT IN THE UNITED STATES OF AMERICA TODAY.

IN FACT, THE SITUATION IS PROBABLY EVEN WORSE. MANY SERIOUS CRIMES STILL GO UNREPORTED, SO THAT THE TRUE PERCENTAGE OF CONVICTIONS AND INCARCERATIONS IS PROBABLY EVEN LOWER THAN THE 10% AND THE 1% I HAVE MENTIONED. MOREOVER, AS THE FBI REPORTS SHOW, A HIGH PERCENTAGE OF THOSE CONVICTED, ESPECIALLY IN THE YOUNGER AGE GROUPS, ARE REARRESTED WITHIN FOUR YEARS. OUTSTANDING AMONG THE WEAKNESSES OF OUR LAW ENFORCEMENT SYSTEM IS THE POOR JOB ITS CORRECTIONAL INSTITUTIONS DO IN REHABILITATING THE OFFENDER, PARTICULARLY THE YOUNG OFFENDER. MUCH OF THIS IS ATTRIBUTABLE TO SOCIAL PROBLEMS, ESPECIALLY IN THE URBAN SLUMS, THAT CORRECTIONAL CARE CAN DO LITTLE ABOUT. BUT A SUBSTANTIAL PART IS CERTAINLY ATTRIBUTABLE TO THE PITIFULLY SMALL AMOUNT OF RESOURCES WE HAVE INVESTED IN THE CORRECTIONAL PART OF THE LAW ENFORCEMENT SYSTEM, ESPECIALLY IN THE PSYCHIATRIC AND SOCIOLOGICAL REHABILITATION OF THE YOUNG.

YOU MAY WELL ASK WHAT ALL THIS HAS TO DO WITH CIVIL STRIFE AND THE LAW. I WOULD SUBMIT THAT A LAW ENFORCEMENT SYSTEM WHICH

IS NOT EQUIPPED AND STAFFED TO COPE WITH DAY-TO-DAY CRIME IN OUR STREETS, OUR HOMES AND OUR TAVERNS IS NOT CAPABLE OF EVEN BEGINNING TO COPE WITH CIVIL STRIFE. AND I WOULD SUGGEST TO THE PUBLIC THAT IS SO RIGHTFULLY CONCERNED WITH THE MAINTENANCE OF LAW AND ORDER THAT ONE OF THE ROOT CAUSES OF THE DISORDER WE HAVE IS OUR FAILURE TO ALLOCATE SUFFICIENT FINANCIAL AND HUMAN RESOURCES TO THE EQUIPPING AND STAFFING OF AN EFFECTIVE LAW ENFORCEMENT SYSTEM.

I DO NOT MEAN, OF COURSE, THAT BETTER LAW ENFORCEMENT IS THE ONLY STEP NECESSARY TO ACHIEVE A SIGNIFICANT REDUCTION IN VIOLENT CRIME AND CIVIL STRIFE. AS JOHN GARDNER SO VIVIDLY DESCRIBED IN PHILADELPHIA A MONTH AGO, WE HAVE ENTERED AN ERA OF INCREASINGLY RAPID TECHNOLOGICAL, ECONOMIC AND SOCIAL CHANGE, AS A RESULT OF WHICH WE NOW HAVE THE CAPABILITY OF RELEASING ALL OUR CITIZENS FROM THE POVERTY AND SOCIAL DEPRIVATION THAT THE MULTITUDES HAVE HITHERTO BEEN FORCED TO ACCEPT AS THE INEVITABLE LOT OF MANKIND. THE POOR, THE BLACK, THE OTHER MINORITIES AMONG US KNOW VERY WELL FROM WHAT THEY OBSERVE ON THEIR TELEVISION SETS THAT ALL OF THIS IS POSSIBLE, AND THEIR EXPECTATIONS ARE RISING FASTER THAN THE VERY REAL PROGRESS ALREADY BEING ACHIEVED. BUT WE MOVE MUCH MORE SLOWLY IN DEVISING AND ADOPTING THE NECESSARY CHANGES IN OUR SOCIAL AND POLITICAL INSTITUTIONS -- CREATED WHEN OUR SOCIETY WAS VERY DIFFERENT FROM WHAT WE KNOW TODAY -- THAT WILL BRING TO THE POOR AND THE DISADVANTAGED THE LIBERATION THAT IS ALMOST WITHIN THEIR GRASP. TO DEVISE THESE CHANGES, AND TO PERSUADE OUR FELLOW CITIZENS OF THE NEED FOR THEIR ADOPTION, IS

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ALSO A CRITICAL TASK FOR LAWYERS -- ONE FOR WHICH MR. GARDNER BELIEVES WE ARE UNIQUELY ADAPTED. ONLY IN THIS WAY, AS MAC BUNDY SO BRILLIANTLY ARGUED LAST NIGHT, CAN WE MAINTAIN THE MINIMUM LEVEL OF SOCIAL JUSTICE UPON WHICH LAW ENFORCEMENT IN A SOCIETY WITH OUR VALUES MUST ULTIMATELY DEPEND.