A Judge's View of the Riots

by Harold H. Greene*

I have the dubious and perhaps somewhat melancholy distinction of having had to preside over the court proceedings of two separate civil disorders in 1968. The first one occurred in connection with the riots in April, and the second arose out of the Poor Peoples' Campaign in June.

Judge Greene

I think it is likely that no matter what you do, no matter how you handle your duties in a major civil disorder, your efforts are unlikely to be widely appreciated. These situations are most untidy and they are not easily manageable within the framework of our judicial system.

One typical example will perhaps illustrate this point. If arrested persons are moved through the judicial process speedily and efficiently, critics are very likely to charge that the courts engaged in assembly-line justice—a practice universally considered to be obnoxious and undesirable. On the other hand, should you proceed carefully and with due caution, not only will the public think that the courts are inefficient and moving at their usual snail's pace, but imaginative lawyers will soon charge denials of the right to a speedy trial and breakdowns in the machinery of justice. If you think that I am exaggerating, let me assure you that both sets of charges were made against us in Washington, sometimes by the same people. And these critics failed completely to appreciate either the irony or the inconsistency of complaining at the same time of assembly-line procedures and of justice that was moving too slowly.

On April 4 of this year, Dr. Martin Luther King was assassinated in Memphis, Tennessee. I remember being told of this event by a friend very shortly after it happened. Upon bringing the news, my friend added that he thought there would be trouble, perhaps a great deal of trouble. I must confess that I did not agree with him, and that I lacked the imagination or perhaps the sensitivity to the attitudes of the people involved so as to be able to predict the events which were about to unfold.

Together with many others, I was particularly confident

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about the situation in Washington, D.C. The population of the city is on the whole not as poor as in some metropolitan areas, and it has many government workers and families of government employees. We have little or no industry, and the citizenry of Washington, both white and black, is considered to be sophisticated politically, and presumably not given to extremism. In any event, that is what we thought.

The next morning, Friday, April 5, the first reports began to come in of looting and burning, but not on large enough a scale to be considered alarming. At that stage, the court simply continued business as usual, one judge handling the so-called criminal assignment branch, where defendants are arraigned, counsel is appointed, and bail is set.

But as the day wore on, the situation deteriorated rapidly. First by way of rumor, then by way of reports from the Police Department and the prosecutor's office, the widespread nature and the extent of the disorder became more and more apparent.

Our court building is located in the downtown area, and some of the looting was visible from the very windows of the courthouse. At the same time, a cloud of smoke settled over the central city, and the stench soon penetrated the courthouse, the courtrooms, and the judges' chambers.

It was around that time that I made my one and only personal inspection of the situation. Motivated by nothing more than sheer curiosity, the Clerk of the Court and I walked about 2 or 3 blocks to an area where, according to reports, there had been trouble but where the situation was supposed to be relatively calm once more. As we were approaching our destination, a group of men turned the corner in front of us, running and shouting that a mob was coming down the street, throwing rocks and bricks at everyone in sight. Upon hearing this news, the Clerk and I retreated to the courthouse at a rather undignified and unjudicial pace; and from that time on I decided to obtain my reports of the situation from the lips of witnesses rather than by first-hand observation.

With the tremendous number of riot cases which quickly began to flow in, the court decided to postpone all routine business, and to concentrate exclusively on cases arising out of the disorder. We also decided, then and there, to remain open 24 hours a day, with judges sitting in 12-hour shifts throughout the day and night until all cases had been processed. We kept this up from Friday morning until midnight Monday when the last of the arrested persons were brought before a judge.

At the time we were finished, we had processed some 2,000 cases, not counting about 5,000 curfew violators who were not brought to court immediately but were given a summons for a later court appearance. The principal cases were divided about equally between felonies and misdemeanors. As of today, most of the misdemeanors have been finally disposed of. About 40% of the cases were simply dismissed by the prosecution, usually because of difficulties in identification. Almost all of the others resulted in judgments of guilty with no more than about 10% acquittals. As for the felonies, again the prosecutor dropped close to one half of the cases, and practically all of the remainder were held for the action of the grand jury. The number of felony cases actually tried is not sufficiently large to permit a prediction as to the ratio between acquittals and convictions. So much for the April riots.

The civil disorder in June, in connection with the Poor Peoples' Campaign under the leadership of the Rev. Ralph David Abernathy was quite different in many ways. The June disturbances stretched out over a considerable period of time, but every one of these disturbances was confined to one geographic area and was therefore much more easily controllable by the police. By and large, the June demonstrations, while disruptive in many ways, were completely non-violent and non-destructive either as to persons or as to property.

As you may remember from news reports, the campaign ultimately dissolved when the permit for Resurrection City expired. At that time, Rev. Abernathy and most of his remaining followers were arrested, and for all practical purposes that ended the police and law enforcement phase of that particular disorder.

One interesting aspect of the mass arrests on the last day of the Poor Peoples' Campaign is that none of Rev. Abernathy's followers was willing to enter a plea of any kind, or even to appear voluntarily in a courtroom, unless a decision on litigation strategy had first been made for the entire movement by its leaders. I suppose we could have forced the issue, brought the defendants before a judge, and entered not guilty pleas for them over their objection. But, I preferred the more pragmatic approach of waiting a few hours—actually until the next morning—to get the matter resolved peacefully. As it turned out, the high command of the Southern Christian Leadership Conference decided on nolo contendere pleas which we accepted over the objection of the United States Attorney. Judg-

ments of guilty were entered and sentences were imposed immediately.

I sentenced Rev. Abernathy to imprisonment for 20 days on an offense which carries a possible maximum of 90 days. Most other sentences ranged between 10 and 25 days. One woman, a repeater, was given 60 days, and one or two judges exceeded the informal 25 days in individual instances, but by and large, the sentences were remarkably uniform.

Altogether, there were approximately 500 cases resulting from the campaign, about 20% of which were dismissed by the prosecution or by the court. The remaining 80% of the defendants were found guilty and sentenced along the lines I just described.

As you can see from this brief survey of our two civil disorders this year, not all of these situations are alike or can be treated on the same basis. The geographic range of the disorder, its intensity, the presence or absence of violence, the militancy of the participants, their amenability to instructions from a central leadership, and many other factors will determine the practical problems you have to face, such as the need or lack of need for additional judges, prosecutors, and clerical personnel; the question of detention facilities and means of transportation; problems of identification of arrested persons; recruitment of lawyers and bondsmen; streamlining of paperwork; and many others.

But there are certain principles that apply alike to all civil disorders. When violations of the law are committed, it matters not that the violation was not accompanied by violence, or that the motives of those committing the acts were pure or their objectives noble. What may be morally justified to one may be totally abhorrent to another. The courts certainly cannot weigh the purity of one man's conscience against that of another, and when the rules of law are infringed upon, punishment must follow, if we are to live in a civilized society.

The alternative advocated by some that they should be permitted with impunity to interfere with or to disrupt governmental activity of one kind or another because their conscience commands them to do so could only lead to chaos and anarchy.

The role of the Judiciary in this kind of situation seems to me to be clear—to uphold and enforce the law regardless of personal predilections or prejudices. I have watched federal judges in the deep South apply and enforce the *Brown* decision with vigor and determination when I knew that to some

of these judges the mixing of the races was totally contrary to all of their experience and to the convictions of a lifetime.

Similarly, some of the judges on my court may well have felt that it was quite important and necessary for an appeal to be made to the conscience of America on the issue of poverty and the continued co-existence of hunger with affluence and luxury. I am quite sure also that some were deeply moved by individual stories told by several of the defendants.

I remember particularly a group of Quaker ladies who left a convention of the Society of Friends in New Jersey to come to Washington to show their solidarity with the poor and the hungry. They acted out of the purest of motives; yet, when they assembled on the grounds of the United States Capitol in violation of the law, they had to be convicted and sentenced, many of them to terms in jail. I remember also Negro families who left behind conditions of the bitterest poverty in Mississippi to protest in Washington the claimed refusal to distribute available surplus food. They, too, had to be, and they were, convicted and sentenced when they sought to dramatize their plight by blocking the entrances to the Department of Agriculture. Not one of our judges flinched from his duty to convict and to punish those who chose to make their appeal in a manner which organized society had decreed to be unlawful.

That is as it must be. Those who clamor for an exemption from the law because of what they feel is the high moral necessity of their cause fail to realize that this principle, once established, would also protect the scoundrel whose views they detest and who might invoke the cloak of conscience to bring down democracy and liberty itself.

What I have been saying is perhaps self-evident to all of you. But when faced with a mass civil disorder, there will be great pressure to disregard the particular violation—especially if the activity is non-violent; especially when it is in support of a cause which is obviously just; and especially when you happen personally to agree with some of the basic aims of the demonstrators. We, the judges, cannot afford to succumb to that kind of temptation.

At the same time, there will be another kind of pressure, perhaps even stronger and more all-pervasive. The public gets quickly exasperated with mass civil disorders, particularly if they involve any degree of violence or disruption. The cry is then heard that the courts must be tough and even ruthless in order to assist in bringing the situation under control.

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 to 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.

These kinds of measures are not only foreign to the spirit of a society based on law and individual justice, but they are also likely to be self-defeating in the long run. To give way to what might appear to be the necessities of the moment would only prove the claims of those who believe that our system is evil, our institutions corrupt, and that they work only for the rich, not the poor, only for those who are satisfied, and not those who have grievances.

This does not mean that we must not punish violations of law, that sentences must not be meted out which are appropriate to the individual case, and which act as deterrents to unlawful conduct by others. But it does mean that our procedures must be just, whatever the cost in effort, in manpower, and possibly in public disapproval.

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 con-

tinuance, and ultimately as to guilt or innocence. With police and troops all around us, there were none in the courtroom, and none were needed at any time.

The central policy we determined was that, nothwithstanding 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.

Again, let me emphasize that this can be done without jeopardizing public safety. Under the Federal Bail Reform Act, if a defendant is likely to appear at the trial, he is entitled to be released on personal recognizance. Yet, while the riot was at its peak, financial bond was set in our court for most of the defendants, and they were successfully kept from returning to the scene of the disorder. This action was challenged in a lawsuit brought in federal court by the American Civil Liberties Union, but the suit was speedily dismissed because of the self-evident reasonableness of our action under the circumstances.

But we did not rest on that. As soon as some degree of calm was restored, within 72 hours of the first arrests, our court reviewed all of the bonds set over the weekend and released on their personal recognizance those whose eligibility for release could then be established and verified.

If only because of sheer volume, the courts cannot operate during a period of civil disorder as they would in normal times. Pragmatic decisions may have to be made concerning procedures, and these decisions will sometimes differ from those made during calm days of routine judicial business. But what is important is attitude. The attitude of the courts must be that we will do all we can, and that we will walk the extra mile to assure to every defendant his constitutional and legal rights.

The members of the mobs who burn and loot do not care about the rights which slowly, painfully, over a period of hundreds of years, have become a part of our tradition and heritage. Nor are these mobs the guardians of these rights. But we care about these rights, and we are their guardians.

Especially during periods of stress and strain on the system, let it be said that the courts continued to operate a system of justice which conforms to American standards. Let us not play into the hands of those who believe that they can overwhelm

the judicial process as perhaps they may overwhelm other institutions in our public or political life. During 1967 and 1968, there were civil disorders in hundreds of major cities and smaller population centers. For the courts in all of these places to have abandoned judicial procedures for the sake of expediency would have been a major stain on our American system of justice and of law.

Justice, like liberty, is indivisible. Justice, like liberty, cannot be cast away in times of crisis, particularly since unfortunately we seem to be living in an age of almost continuing crisis. Justice, like liberty, exists for the good as well as the bad, for those with whom we agree as well as for those extremists who do their utmost to aggravate and to exasperate us. If we permit them to goad us into abandoning justice and liberty because we are exasperated, they will have won and America will have lost. We must not, and we should not, permit this to happen.