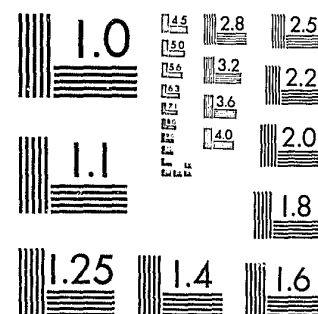


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REMARKS BY MR. CYRUS R. VANCE  
BEFORE THE NATIONAL CONFERENCE OF BAR PRESIDENTS  
PALMER HOUSE, CHICAGO  
FEBRUARY 17, 1968

I am honored to have the opportunity to speak to you today.

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The subject of my remarks this afternoon is the administration of justice in times of civil disorder. I selected this topic not only because I believe it to be of pressing importance, but also because it is the special responsibility of the organized Bar. Indeed, the success or failure of our system of criminal justice under such conditions, will, in large measure, depend upon the actions we - the members of the organized Bar - take or fail to take.

Last summer, domestic tranquility - one of the goals set out in the Preamble of the Constitution - was shattered by mob action, by arson and by wanton looting. Not since the Civil War have disorders of such frequency and ferocity flared in our cities.

I shall not attempt to discuss the underlying causes, which are many and intertwined. That is a task beyond the compass of my time here today, and one which is beginning to be addressed by many individuals and groups - local, state and federal.

Let me only say that we must pursue the root causes which led to the outbreaks of last summer and take the

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necessary actions to remove these causes. We should not delude ourselves, however, that this is a task which can be accomplished overnight. It is immensely complex and difficult of resolution. And, in the interim, there is danger that violence may occur again. Although we hope and pray that this will not happen, we would be unwise indeed not to prepare for such contingency.

Our society is based upon respect for, and observance of, law and order. Mob violence, burning and looting cannot be condoned, no matter the reason. And, should they occur, they must be stopped immediately, effectively and fairly. For if they are not, we revert to the law of the jungle, and the rights of all citizens are placed in jeopardy.

We operate then under two mandates. First, to ensure that law and order are maintained; and second, to ensure that the individual rights of all our citizens are preserved and protected at all times. As lawyers, we know only too well the absolute necessity of fulfilling both these mandates if our legal institutions are to survive. In fact, we have the responsibility of insuring that survival.

Our system of criminal justice - which includes the police, the courts, and the correction machinery - is the means for carrying out both these mandates. But that system, which operates somewhat alike in every

village, town, county, city and state, but not precisely alike in any two of them, has become so outmoded and imperfect that it is currently unable adequately to maintain law and order or safeguard our individual liberties.

There are two problems which arise from this fact. The first is of immediate urgency and will take considerable time to solve. The second problem, although of equal urgency, can be resolved in a few months.

The first problem has been clearly identified in the report of the President's Commission on Law Enforcement and the Administration of Justice where it found "overwhelming evidence of institutional shortcomings [in the system] in almost every part of the U.S." and "assembly line justice".

In summing up its findings, the Commission said:

" \* \* \* America's system of criminal justice is overcrowded and overworked, undermanned, underfinanced, and very often misunderstood. It needs more information and more knowledge. It needs more technical resources. It needs more coordination among its many parts. It needs more public support. It needs the help of community programs and institutions in dealing with offenders and potential offenders. It needs, above all, the willingness to reexamine old ways of doing things, to reform itself, to experiment, to run risks, to dare. It needs vision."

The responsibility to re-examine old ways of doing things, to reform the system, and to risk experimentation

is, in my judgment, that of the local organized Bar in each state and community. It is only the local Bar which has the knowledge, the power and influence to assure that the necessary studies will be started, and that the resulting recommendations will be implemented. I recognize that committees on criminal administration have been set up in many states, and I recommend your active support of them. But, in addition, I urge that you make sure that action is taken now to study and reform the system on every level from the village up. As members of the organized Bar, that is our challenge, our opportunity and our responsibility. That is our job, not the job of the federal government.

But, there is an even more pressing task facing us - that of insuring that the current system of criminal justice will operate with reasonable effectiveness and fairness in times of civil disorder. This is a particularly difficult task because the inherent weaknesses of the criminal justice system are magnified as extraordinary strains are placed upon it. It is not surprising, then, that the experience of last summer's riots showed that in almost every case the fabric of the system was strained beyond the breaking point.

This was revealed in numerous ways: in inadequate arrest and booking procedures; in insufficient and inadequate detention facilities; in uneven and unfair bail practices; in shortages of professional and non-professional personnel



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required to keep the system operating effectively - all of these resulting in delays and hardships, both for those dealt with by the system, and those responsible for its administration.

The sad result of these deficiencies is two-fold. First, it places an intolerable burden on those who are trying to make the system operate fairly and efficiently; and second, its failure to operate satisfactorily works injustice on many individuals and their families. This, in turn, tends to undermine confidence in the fairness of our criminal justice and provides a breeding ground for further disorder.

The blunt question is - can anything be done? The answer is yes. What is required immediately is that each city prepare contingency plans, which would permit the almost instantaneous expansion of the system of criminal justice during times of crisis. Once this is done, it should be possible to insure that justice is effectively and fairly administered despite the great strains which will be imposed.

As many of you heard yesterday, steps have already been taken along these lines. The American Bar Association has established a special sub-committee under Mr. Thomas Sheridan, which is working in this area, and the Lawyers' Committee for Civil Rights Under Law is assisting several cities in the preparation of such plans. But more needs to be done and done promptly.

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I should like to turn now to a brief discussion of areas in which advance planning is required. Time will not permit a full discussion, but it may prove illuminating to mention a few where experience has shown that, without such planning, the system will simply break down.

The first is arrest and booking procedures. The purpose of such procedures is to provide an adequate record so that the guilty can be prosecuted and the innocent protected. The identification of suspects and the recording of alleged unlawful acts present, as you might expect, special problems in a riot, where as many as a thousand people may be arrested in a 24-hour period. Normally, each precinct has its own headquarters which includes booking and detention facilities and independent investigative facilities operated by detectives assigned to the precinct. Under ordinary circumstances, prisoners are brought to the precinct station by the arresting officer for booking, fingerprinting and interrogation. But during riots, the normal procedures and techniques have proved inadequate to cope with the number of persons arrested. The result has been that the precincts became a bottleneck with resultant delays and injustice to many of those detained, and an almost intolerable strain on those responsible for operating the system.

There are a number of techniques and procedures which have been developed to meet this problem. They include: augmenting personnel at the precinct station; using

short-form arrest and booking forms which contain all essential information but which can promptly be filled out; using Polaroid cameras at the time of booking to take pictures of the suspect and arresting officer; and, of particular importance, using mobile booking stations. The cities of Los Angeles and Washington, to mention but two, have pioneered such techniques and much can be learned from their work.

The second problem area is providing adequate detention facilities. A major riot will probably require facilities which far outrun a city's normal capacity. In Detroit, for example, the city had to accommodate some 5,000 prisoners in 5 days. Indeed, there were more prisoners processed in this 5-day period than the city would ordinarily process in 3 months. Understandably, this greatly overtaxed the city's jails and required the use of state and federal buildings. And even these proved inadequate.

If facilities are not available, people become backed up in the precinct stations or have to be housed in inadequate locations, such as buses, for periods of up to 36 hours. This can only result in embittering those who have been arrested.

This problem can be solved readily by earmarking, in advance, structures which can be used for immediate expansion. If, however, that task is left until the time

that a crisis actually occurs, it will be virtually impossible to identify and make ready facilities which meet adequate standards.

Third, there is the problem of prompt arraignment. The arraignment of suspects apprehended during a riot should be done promptly, both as a matter of fairness and because of the sheer physical problem of overcrowded jails. Experience has shown that, without prior planning, arraignments are seriously delayed due to the absence of necessary records and a shortage of judges and other court personnel. In an attempt to solve these problems, judges and other regular personnel have worked around the clock only to find themselves faced with an ever-increasing backlog of unarraigned prisoners.

This contingency can also be effectively attacked by advance planning. For example, a city can easily prepare a plan which designates specific additional judges to augment the normal panel. In like fashion, specific individuals with the necessary competence can be required to be on call to assist in the processing of records. This having been done, an alerting system can be set up which will use either telephone, radio, television, or all three, to notify these people to report for duty.

Fourth, is the need for additional prosecutors and defense counsel. Last summer's experience has shown there is a need for a substantial number of additional prosecutors

and defense attorneys. Without such extra personnel, it is simply impossible to process expeditiously the tremendous case load. Here again, advance planning should ameliorate the problem. To this end, a list of special prosecutors, preferably lawyers with prior experience in the District Attorney's or U.S. Attorney's office, should be prepared, and the consent of those individuals to serve should be obtained in advance. A similar list of defense counsel with litigation experience should be drawn up. These people can then be called to duty rapidly by the alerting system to which I have referred.

Fifth, is the very difficult matter of bail. There is an understandable tendency during a riot for very high bails to be set to make sure that persons arrested are not back on the streets in a position to resume unlawful activities. Such a procedure, however, is not only inequitable but also may be self-defeating in that it tends to overtax already crowded detention facilities, and to create apprehension and hardship among community residents whose relatives are in custody for minor offenses. In terms of equity, we must bear in mind that the purpose of bail is not to keep a defendant from committing more crimes before trial by setting a bail so high that he cannot obtain his release; its purpose is rather to free an untried defendant and, at

the same time, make sure he appears for trial. That is the sole-stated legal purpose of bail.

A procedure, which has been used effectively in limited circumstances, is the release of an individual arrested for a misdemeanor on his own recognizance on condition he not return to the area of rioting. Obviously, this procedure would not work where the individual lives in the riot area, but it suggests that there may be similar imaginative approaches to the problem.

In sum, bail policy should be discussed in advance by those who will be required to set bail in times of civil disorder so that there will be fair and uniform action when a crisis arises.

Sixth, officials charged with the administration of criminal justice must be cognizant of the fact that tension, fear and fatigue create the danger that law enforcement personnel may act unwisely. Accordingly, it is necessary to set up, ahead of time, a method whereby those in supervisory positions may keep themselves informed and in a position to minimize such occurrences. This is particularly important at the precinct level. And it must be done in advance, as it will be virtually impossible to improvise an adequate plan under stress.

As I have indicated, the foregoing is by no means an exhaustive list. There are many other areas which

should be covered in any proper plan, as, for example, the drafting of a model proclamation and executive order and the establishment of a central booking file for expediting the identification and locating of prisoners who have been arrested.

Finally, there is the question of what is the best method of developing such contingency plans. It goes without saying, that such planning should be orderly and deliberate and should be carried out quietly and calmly. Specifically, I would suggest that the local bar association in the community involved form a committee consisting of private practitioners and appropriate representatives of the city government designated by the mayor. Such a small working group, with all the knowledge, resources and influence of the organized Bar behind it, can develop a practical and effective plan within a relatively short time.

I urge that you give this matter prompt and favorable consideration. It can be done. What we have to do is make a start.

**END**