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MOB VIOLENCE AND THE PROSECUTING ATTORNEY

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The author is an Assistant State's Attorney, Cook County (Chicago), Illinois. He received his LL.B. from De Paul University in 1965, and joined the State's Attorney's staff soon thereafter.

Since July, 1966, Mr. Karton has handled all the civil disorder-mass arrest cases which arose in Cook County during the Summer of '66, the Winter of '67, and the Summer of 1967. This included his on-the-scene presence to advise law enforcement officers, and his participation in law enforcement planning in anticipation of the violence. It also involved the supervision of the preparation of complaints, the evaluation of evidence, and the presentation of evidence to the Grand Jury. He also prosecuted many of the cases.

Mr. Karton is presently assigned to the Criminal Trial Division of the State's Attorney's Office.

The concept of civil disobedience is generally one which refers to the use of non-violent tactics used by large groups of people during which a specific law is violated to test its constitutionality or to protest an alleged injustice resulting from some governmental or quasi-governmental policy. However, civil disobedience today often manifests itself violently. Too often, ostensibly non-violent protests degenerate into riots in spite of the professed abhorrence of violence by some more notable "protest" leaders.

Whether a demonstration is non-violent or violent, demonstrators cannot engage in tactics which are physically coercive, destructive to public or private property, dangerous to life or in complete disregard for existing laws. No matter how laudable the aim or commendable the goal, disregard for law and wilful disobedience of social regulation results only in anarchy.

Essential concepts in riot control and mass arrest situations are: (1) legal action, (2) proper action that gives no cause for charges of "police brutality" and "two standards of justice", (3) confident action, (4) quick action, and (5) preparedness.

SUGGESTIONS FOR PROCEDURE

The problems of arrest, police cooperation, and processing arrestees in any mass disturbance are

immeasurably complicated by local problems such as availability of facilities, police vehicles, and numbers of available men. Because of these and other problems which are best known to the law enforcement officers and prosecuting attorneys locally, the writer shall deal with the problems presented only in a general way and leave specific solutions to be worked out by the localities themselves.

In order to insure properly coordinated efforts by law enforcement officers, it is advisable that the prosecuting attorney arrange for meetings among them to outline procedures before a need arises. At such meetings, instructions can be given to insure an orderly and effective *modus operandi*.

A tactical plan should be arranged so that all law enforcement officials and officers are well acquainted with transportation facilities and routes, communication procedure and command headquarters.

The police should be instructed in the use of Polaroid cameras (which should be made available to them) to photograph arrestees and arresting officers at the time of arrest. Instructions should be issued that notations should be made on the photo regarding time, place, and circumstances of the arrest. News media photographers should be noted so that their photographs and video-tapes will be available for use at the time of trial. Trans-

portation personnel should be instructed not to accept an arrestee without an accompanying photograph and the name of the arresting officer.

Law enforcement officers should be equipped with tape recorders and bull horns, particularly if the demonstration is a non-violent one. This can be of great value in preserving warnings given at the scene for future use in court. Furthermore, to prevent or minimize injury, the bull horn can be used to warn demonstrators of intent to use tear gas or the chemical MACE.

Law enforcement officers can familiarize themselves with the appropriate statutory provisions and the use of the form complaints which should be prepared and provided by the prosecutor's office well in advance of a meeting with the law enforcement officers. Some of the statutory provisions that have been generally applied in one jurisdiction (Illinois) are: (1) Solicitation, (2) Battery, (3) Aggravated Battery, (4) Burglary, (5) Arson, (6) Criminal Damage to Property, (7) Unlawful Use of Weapons, (8) Mob Action, (9) Disorderly Conduct and (10) Resisting or Obstructing a Peace Officer.

A charge of criminal trespass to land is most useful. I would suggest that a criminal trespass to land statute include the following provisions:

1) Whoever enters or remains upon public or private land or enters into or remains in public or private buildings or public or private structures erected on the real property, whether such real property is enclosed or unenclosed, and intentionally interferes with, obstructs, or injures a lawful business, occupation or a governmental or public function carried on by the owner of such land, building or structure, his agent or the person or agency in lawful possession of such land, building or structure shall be fined not to exceed \$1000 or imprisoned in a penal institution other than the penitentiary not to exceed one year or both. Failure to depart from such land, building or structure after being informed by one known to the person to be the owner of such land, building or structure, his agent, or one known to the person to be the person, his agent, or the agent of the agency in lawful possession of such land, building or structure, or known to the person to be a law enforcement officer that such entry or remaining interferes with, obstructs or injures a lawful business, occupation or governmental

or public function is prima facie evidence of intention to interfere with, obstruct or injure a lawful business, occupation, governmental or public function.

2) Whoever refuses to leave a building of a public agency during those hours of the day or night when the building is regularly closed to the public, upon being requested to do so by one known to the person to be a guard, watchman or custodian of the public agency owning or occupying or maintaining the building or one known to the person to be a law enforcement officer shall be fined not to exceed \$500 or imprisoned in a penal institution other than the penitentiary not to exceed six months or both.

Many localities do not have a central detention center large enough and secure enough to house large numbers of arrestees. Plans must be made regarding locations for detention of arrestees with adequate facilities for clerical help and courtroom facilities. Judges and Magistrates must be placed on notice for immediate call so that arrestees may have prompt hearings. Of course, law enforcement officers must also have lists of available personnel to complete the courtroom complement of clerical help, court reporters, and bailiffs.

If there are not sufficient police officers and regular clerical personnel to handle the preparation of complaints, court sheets, orders and arrest reports, arrangements should be made for temporary clerical help who must be carefully instructed in their duties.

The prosecuting attorney's role as advisor to the police and as prosecutor is extremely important. He should have prepared form complaints prior to any meetings and should have instructed law enforcement officers as to their proper use. He should also be present at the detention center so he will be in a position to supervise the activity and make evaluations of arrests to determine the proper charges. I do not recommend his being present at the actual scene of a large scale, violent disturbance because his lack of experience in actual police work may only hamper the efforts of professional police officers and his objectivity is apt to be lost. However, if the disturbance is non-violent, his presence on the scene can be valuable insofar as advising the law enforcement officers as to what warnings should be given, etc.

The prosecuting attorney's presence at the detention center, where the clerical personnel are

preparing the complaints, can also insure that all necessary preliminary information is preserved so that there will be no delay in his post-disturbance review of the evidence. The longer the delay before an in-depth review, the greater the chances that he will be unprepared when he goes to trial.

At the detention center he should also make spot determinations as to whether an arrestee has been swept up by over-worked and over-zealous police, or has been properly arrested. This function is particularly important to promote public confidence in law enforcement agencies.

Since everyone's main aim is to restore order as soon as possible without sacrificing the constitutional rights of the arrestees, a public defender, who must be present at the time of hearings before the court, should work closely with the prosecuting attorney and the court to insure a proper balance between the public safety and individual rights.

Juveniles arrested during the disorder should be held in custody if they are charged with felonies. Those charged with misdemeanors should not be released to their parents until a careful evaluation of their cases is made by the prosecutor's office. In all cases involving juveniles, the parents of the arrestees are to be notified as soon as possible as to the location of the child and the charge against him.

It is extremely important to plan procedure thoroughly before trouble occurs. Every area has its own unique problems of command when different police departments are called upon to cooperate, e.g., liability when police from neighboring municipalities or counties are required, payment of wages to "borrowed" police officers, etc. These problems are not insurmountable if discussed and aired well in advance of an emergency.

Where to put arrestees after arrest and arraignment is another important consideration. Most localities are limited by jail facilities able to hold at most fifteen to fifty people. In January, 1967, in Chicago, over 400 people were arrested for crimes directly attributable to the "great snow" in a period of only four days. This was in addition to those arrested for "normal crime activity" not connected with the weather. The time to plan for jail security and transportation is before the disorder.

Since it is necessary in many jurisdictions to present a felony charge to a grand jury, arrange-

ments should be made to convene one as soon after the restoration of order as possible.

After order has been re-established, the prosecuting attorney's staff will find that for a time considerable effort must be devoted to reviewing the evidence, presenting cases to the grand jury, and preparing for trial. If the staff is small, there may be a need for the retention of special assistance to handle this monumental task.

The police also have a difficult assignment after order has been restored. They must return to the scene of the disturbance in an effort to maintain what too often is an uneasy calm in an attempt to restore normalcy. This task is made especially difficult because the police were only recently staunch enforcers of the law—enforcing the law against their friends and neighbors. To prevent this additional problem, open lines of communication with the Governor's office should be maintained to enable the National Guard to be on the alert and to provide for speedy mobilization by the Guard in case they are needed.

Some of the advantages of the National Guard are: (1) They are properly armed to face *any* situation; (2) They are available in large numbers; (3) They are responsible under a specified chain of command; (4) They remain relatively anonymous after order has been restored and merely blend back into the community or return to their homes in other parts of the State.

However, if the Guard is called, it is important to instruct them as to arrest procedure. For instance, a complaint signed "National Guard" is a nullity. Moreover, the very fact that Guardsmen blend back into the community or return to their homes in other parts of the State when order has been restored requires greater pains to be taken in the procurement of names and addresses of arresting Guardsmen, photographs for identification purposes, if possible, and evidence. During the massive disturbance in Chicago in July, 1966, several dozen arrestees were summarily released because Guardsmen had not been sufficiently instructed and transportation personnel accepted arrestees without first procuring names and addresses of the arresting Guardsmen. Many of those released because of this deficiency had been caught looting or had been particularly violent in their resistance to arrest.

When arrestees are being processed prior to arraignment, at least two pictures of the arrestee should be taken; one for the police records and the

second to accompany the court papers in order to eliminate identification problems in court if the arrestee gave a false name.

In summary, it is essential to:

- (1) act within the law
- (2) act properly under the circumstances

in an effort to avoid charges of "police brutality" and "two standards of justice";

- (3) act confidently
- (4) act quickly *before* the situation gets out of control; and
- (5) be prepared