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November 18, 2016

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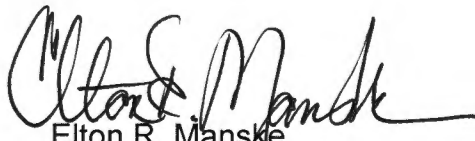
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[REDACTED]

Dear Mr. Greenewald:

This is a response to your Freedom of Information Act request, FP-17-003871, for a copy of the Individual Research Report titled "Civil Disturbances and Demonstrations: To Arrest or Not?" dated February 1972.

If you have any questions, please feel free to write: usarmy.carlisle.imcom-atlantic.mbx.foia@mail.mil or USAWC & Carlisle Barracks, FOIA Officer, 122 Forbes Avenue, Carlisle, PA 17013-5222.

Sincerely,


Elton R. Manske
Director, Human Resources

Enclosures

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28 FEBRUARY 1972

CIVIL DISTURBANCES AND DEMONSTRATIONS:
TO ARREST OR NOT?

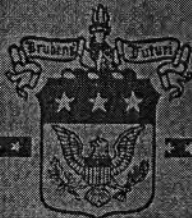
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by Dir. USAMHI
17 NOV 2016

BY

LIEUTENANT COLONEL THOMAS W. ADAIR
MILITARY POLICE CORPS

JUN 21 1972
ARMY WAR COLLEGE



US ARMY WAR COLLEGE, CARLISLE BARRACKS, PENNSYLVANIA

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USAWC RESEARCH PAPER

CIVIL DISTURBANCES AND DEMONSTRATIONS:
TO ARREST OR NOT?

AN INDIVIDUAL RESEARCH REPORT

by

Lieutenant Colonel Thomas W. Adair
Military Police Corps

Approved for Public Release

By Dir. USAMHI

17 NOV 2016

US Army War College
Carlisle Barracks, Pennsylvania
28 February 1972

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AUTHOR: Thomas W. Adair, LTC, MPC

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The central question is: What implications do recent mass arrests during civil disorders have for military forces? The criminal justice system has faltered during disorders with the result that the guilty were often acquitted and innocent persons were arrested. Arrests must be accomplished properly or the judicial process which follows will be adversely affected. Military policy emphasizes that civilian police should take custody of offenders. This is a proper policy; however, it has resulted in a paucity of guidance for military personnel to carry out this mission. The Army should: attach greater importance to the possibility that military personnel will be required to apprehend civilians; develop detailed procedures for the military to accomplish this mission; acquaint military personnel with offenses commonly committed in disorders, their authority to take action, and the degree of force permissible; train personnel in the care and preservation of evidence; develop a proper form for use in apprehending offenders; take photographs of offenders and the soldiers apprehending them; train teams in advance for mass arrest situations; and revise Army publications to implement these recommendations.

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CHAPTER I

INTRODUCTION

BACKGROUND

In late April and early May 1971, large groups of demonstrators came to the Nation's Capital to protest continued American involvement in the war in Southeast Asia. Under the leadership of the Mayday Collective¹ a significant number of the demonstrators vowed to bring activities of the Federal government to a standstill by engaging in massive civil disobedience. The Metropolitan Police Department and other police agencies in Washington, the District of Columbia National Guard, and Federal troops were employed to maintain order and to assure continued functioning of government agencies and services.²

During the confrontations which followed over 14,000 persons were arrested by the police, almost 8,000 in one day alone. In making these arrests the Washington Metropolitan Police Department temporarily suspended procedures established for taking custody of large numbers of persons during demonstrations and disorders. These procedures involved use of a simplified field arrest form, photographs, and other measures designed to facilitate identification and prosecution of those arrested.³ This action was justified by Washington Chief of Policy Jerry V. Wilson as essential to maintenance of order: ". . . there was no alternative to abandoning the process. . . . If we had not, the city would have been shut down. . . ." ⁴

STATEMENT OF THE PROBLEM

Chief Wilson's actions are at the center of a continuing controversy between proponents of "law and order" and those claiming that constitutional rights were disregarded and many innocent persons were illegally arrested. President Nixon praised the police, saying they performed "with great restraint, and with necessary firmness;"⁵ Attorney General John N. Mitchell said, "Nothing else could have been done unless the police were to let the mob rule the city;"⁶ and the United States Senate adopted a resolution commending the police.⁷ On the other hand, former Attorney General Ramsey Clark referred to the government's action as "lawless;"⁸ anti-war leaders likened President Nixon to Hitler;⁹ and Senator Edward M. Kennedy asserted that the Federal government ordered mass arrests in an effort to reduce effectiveness of future demonstrations.¹⁰

STATEMENT OF THE PURPOSE

It is the purpose of this paper to examine the problems related to arrests during civil disorders and to determine their implications for the Armed Forces. The effort will concentrate principally on issues arising from the mass arrests in Washington and will address the philosophical, legal, and tactical considerations involved. Other situations resulting in the arrest of significant numbers of persons also will be examined for their relevance to this effort. The results of these undertakings will be compared

with plans, programs, and policies applicable to military forces engaged in civil disorder control missions. Finally, recommendations will be made for changes in military doctrine where applicable. While Federal forces must be prepared to perform a variety of functions in civil disorder control, the scope of this paper is necessarily limited to the general area of arrests.

CHAPTER I

FOOTNOTES

1. The Mayday Collective was a coalition of a number of groups opposed to the Vietnam War. Most prominent among them were the National Peace Action Coalition and the Peoples Coalition for Peace and Justice. Discussed in: US Congress, House, Committee on Internal Security, National Peace Action Coalition (NPAC) and Peoples Coalition for Peace and Justice (PCPJ), Hearings, 92d Congress, 1st Session, 1971.
2. John Neary, "The President Wants Firm Law Enforcement," Life (13 May 1971) pp. 33-39.
3. Owen W. Davis, Metropolitan Police Department, Washington, letter to author, 7 February 1972.
4. "Beleagured Washington: Only Recourse was Mass Arrests," U.S. News and World Report (24 May 1971), p. 54.
5. "Nixon Backs D. C. Police on Mayday," The Washington Post (11 May 1971), p. A-1.
6. William L. Claiborne, "Mitchell Warns on Protest," The Washington Post (11 May 1971), p. A-1.
7. Ibid., p. A-8.
8. "Clark Hits Handling of Protests," The Washington Post (24 May 1971), p. A-3.
9. Paul W. Valentine, "War Foes Call Nixon 'Hitler' for Backing Mass Arrests," The Washington Post (3 June 1971), p. A-2.
10. Fred P. Graham, "Mitchell Urges All Police Copy Capital's Tactics," The New York Times (11 May 1971), pp. 1, 20.

CHAPTER II

THE MAYDAY CONFRONTATIONS

The arrest of almost 8,000 persons in Washington on 3 May 1971 is the largest number made in one day during civil disorders in American history. While significant numbers have been arrested in previous disorders in Washington and other cities, never before have the numbers so overwhelmed the resources of a city's police, courts, and detention facilities. Nor have arrest policies ever resulted in such a storm of legal and philosophical debate centering around the paradox of protecting individual rights and, at the same time, the rights of government.

This chapter will briefly review the motives, objectives, and tactics of the participants in the Mayday activities and the countermeasures taken by the police. Major issues arising from the confrontations will be surfaced for more detailed examination in subsequent chapters.

It should be noted that "arrest" as used in this paper is a civilian law enforcement term defined as: "To deprive a person of his liberty by legal authority. Taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand."¹

~~"Arrest" has the same meaning as the military term "apprehension:"~~

"The taking of a person into custody."² Since they are identical legal processes, arrest and apprehension will be used interchangeably throughout this paper.

OBJECTIVES AND TACTICS OF THE PROTESTORS

The 1971 Spring Offensive against the war in Southeast Asia began in April and culminated with massive civil disobedience in Washington in early May. The schedule of events, objectives, and tactics to be employed were published in the Mayday Tactical Manual, widely distributed at \$5.00 per copy.³ While demonstrations were scheduled for other cities, major activities of the offensive were to occur in Washington. The most significant initial event in the Nation's Capital was a protest demonstration by an estimated 175,000 persons. This was classified as "almost totally peaceful" by Washington Chief of Police Jerry V. Wilson, except for some relatively minor incidents during a rock concert on the Washington Monument grounds.⁴ The peaceful nature of this mass protest followed the scenario developed in the tactical manual, which called for a "mass, legal, peaceful anti-war demonstration."⁵

The scenario also was followed by the demonstrators during the massive civil disobedience phase which began on 3 May. The objective during this phase was to seal off the City of Washington so that "white racist" federal officials living in the Maryland and Virginia suburbs could not reach their offices. The actions were planned as attacks on the Federal government, not its employees. It was emphasized that this was to be carried out with minimum interference with the activities of the city's majority black population.⁶

The tactical manual contained pictures and descriptions of twenty target areas for disruptive activities. These were bridges,

traffic circles, key intersections, and vital highways used by commuters to reach the Pentagon and the Federal Triangle area of Washington.⁷ The leadership planned to concentrate one to three thousand demonstrators at each of the twenty target areas depending on its perceived importance to their objective. Such concentrations were viewed to be necessary to defeat the tactics of the police to divide them into small isolated groups.⁸ It was expected that most of the participants would be arrested and hoped that thousands of protesters in jail would "make the choices painfully clear to America's rulers; end the war or face social chaos."⁹ While in jails and other detention facilities the demonstrators were to maintain their solidarity and refuse to be released on bail. Rather, all would be released as a group when Mayday was completed.¹⁰

POLICE PLANS

As a result of problems associated with the large number of persons arrested during the riots of April 1968 the Washington Metropolitan Police Department prepared plans for mass arrests and provided instructions to members of the department on how they were to be implemented. The policy of the department was to arrest and secure the necessary evidence to prosecute all persons engaged in unlawful activities during a civil disturbance. A field arrest form designed to facilitate arrest and prosecution was to be completed for each person arrested regardless of the offense he committed. Use of the form permitted the appearance of an

accused in the District of Columbia Court of General Sessions without the arresting officer present. The form was also designed to record information concerning property or evidence related to the offense or offender. The field arrest form was to be completed as soon as practical after an arrest was made, and, in all cases, it was to be prepared before the prisoner was removed from the scene of arrest. The prisoner and the policeman who arrested him were to be photographed by an officer assigned to transport the prisoner to the police station with a copy of the photograph attached to the field arrest form. Transporting officers were instructed not to take custody of an arrested person unless a field arrest form had been completed.¹¹

A somewhat more flexible policy applied to actions to be taken in the event persons committed offenses of a non-violent nature, such as blocking traffic, during large demonstrations. In these situations the demonstrators were to be informed they were violating the law and afforded an opportunity to cease their illegal activities before action was taken to arrest them. If they persisted in their actions, specially trained arrest teams were to take custody of the offenders using the procedures described in the preceding paragraph.¹²

The tactical manual clearly revealed that the Mayday leadership was thoroughly familiar with control measures to be employed by the police and military forces and the procedures developed for arresting and processing large numbers of persons. The dissidents intended to achieve their objective of disrupting the

Federal government by taking advantage of the rather slow and deliberate nature of these procedures to overwhelm the police, courts, and detention facilities. They intended to deliberately violate the law by massive civil disobedience, but were careful to insure the presence of sympathetic legal advisers to protect their rights. Participants were cautioned to seek counsel only from Mayday lawyers who are "aware of the politics and purposes of Mayday."¹³

CONFRONTATIONS END WITH MASS ARRESTS

An estimated 50,000 demonstrators were camped in Washington's West Potomac Park on Saturday night, 1 May 1971, preparing for the disruptions planned for the following Monday. Many of them were not dedicated to the objectives of paralyzing the Federal government. Some had remained after the previous large scale demonstrations; others were there because they were attracted by rock music, drugs, and the excitement of the situation.¹⁴

Faced with a much larger crowd than anticipated, District of Columbia officials revoked the permit granted previously to the encampment. The demonstrators were directed to leave the park by noon on Sunday or face arrest. Most departed before the deadline leaving only a few who apparently desired to be arrested.¹⁵

~~This action was viewed as a tactical victory for the police,~~
as it reduced significantly the size and cohesion of the large crowd of demonstrators. Many of the less dedicated and curious left the city. The remainder was dispersed throughout the city

preventing the leadership from conducting the organizing and training sessions scheduled for Sunday. However, as events on Monday showed, enough sufficiently committed persons remained to be a potential threat to the peace and tranquility of the Capital. The demonstrators finally had reorganized after being dispersed from the park, and by Monday morning, about 12,000 were in the city. Although the police, national guard, and federal troops were deployed to key areas in the city and on bridges across the Potomac River, the demonstrators persisted in trying to carry out their plans to disrupt traffic. They employed a variety of hit-and-run tactics and were successful in blocking or slowing traffic at several locations. Their successes were short lived, for the control forces would generally disperse them rather quickly. The police were unable to effect any significant number of arrests at that time because of the guerrilla type attacks, after which the demonstrators would soon regroup to resume their disruptive activities. It became apparent that the situation could not be brought under control merely by continuing to disperse the participants and taking a small number into custody. It was at this point, that Chief of Police Wilson ordered that normal field arrest procedures be suspended.

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This change in policy resulted in "quantity arrests" designed to clear the streets of demonstrators and replaced the "quality arrest" technique which has been developed to satisfy requirements for subsequent legal proceedings. The police were eminently successful in thwarting the demonstrators' attempts to paralyze

the Federal government; traffic was moving freely in a few hours after the change in arrest policy.¹⁷ Throughout Monday almost 8,000 persons were arrested. There was little effort on the following days to block traffic. Instead, the protesters reverted to more orderly demonstrations and civil disobedience at the Department of Justice and Capitol Building.¹⁸

Only a few of the over 14,000 persons arrested during the fifteen-day Spring Offensive were convicted of an offense. District of Columbia judges directed that all arrests made during the period on 3 May when field arrest procedures were suspended, be voided. Further, of the 9,867 persons formally charged with an offense in court, only 757 were found guilty.¹⁹

The many difficult issues arising from the Spring Offensive revolve around this low ratio of convictions to arrests. The most pervasive issue is the alleged violation of constitutional rights by indiscriminate and illegal arrest of any person "with a youthful face or lengthy hair." Closely related were the accusations that many arrests were made without any intent of subsequent prosecution.²⁰

CHAPTER II

FOOTNOTES

1. Henry Campbell Black, Black's Law Dictionary (1968), p. 140.
2. Manual for Courts-Martial United States 1969 (Revised edition), p. 3-1.
3. US Congress, House, Committee on Internal Security, National Peace Action Coalition (NPAC) and Peoples Coalition for Peace and Justice (PCPJ), Hearings, 92d Congress, 1st Session, 1971, pp. 1601-1624. (Hereafter referred to as "Congressional Hearings"). (The Mayday Tactical Manual is reprinted as Exhibit 3 to the report.)
4. Ibid., pp. 1463-1464.
5. Ibid., p. 1603.
6. Ibid., p. 1606.
7. Ibid., pp. 1610-1623.
8. Ibid., p. 1606.
9. Ibid., p. 1624.
10. Ibid., p. 1624.
11. Government of the District of Columbia, Metropolitan Police Department General Order No. 6: Procedures for Handling Prisoners and Property During Civil Disturbances (16 August 1968), pp. 1-5.
12. Government of the District of Columbia, Metropolitan Police Department General Order No. 8: Utilization of Arrest Teams at the Scene of Non-Violent Demonstrations Where Unlawful Acts are Committed (16 August 1968), pp. 1-4.
13. Congressional Hearings, p. 1624.
14. "Self Defeat for the 'Army of Peace'," Time (17 May 1971), p. 13.
15. John Neary, "The President Wants Firm Law Enforcement," Life (14 May 1971), pp. 33-39.
16. "The Biggest Bust," Newsweek (17 May 1971), p. 25D.

17. Ibid., pp. 27-28.

18. Ibid.

19. Owen W. Davis, Metropolitan Police Department, Washington,
letter to author, 7 February 1972.

20. Newsweek, pp. 25-27.

CHAPTER III

REGULATION OF DISSENT, DISORDERS AND DEMONSTRATIONS

To what extent may a citizen protest the policies of his government? How far may a democratic government go in controlling dissent and disorder? The growing controversy over the answers to these questions was inflamed by the confrontations between the Mayday demonstrators and the police and the widespread publicity given them. Decisions to arrest can be made in disorders and demonstrations only after balancing a number of difficult considerations which impinge on these questions. This chapter will discuss these considerations commencing with those having a philosophical and legal basis and ending with those of a more pragmatic nature.

DISSENT AND THE BILL OF RIGHTS

Dissent against the government has been a tradition cherished in America long before the Declaration of Independence; it has been expressed in a variety of ways. The objective of the Spring Offensive was to dramatically show disagreement with the government's involvement in the war in Southeast Asia. The Boston Tea Party was a manifestation of dissent by the Colonists against British taxation laws.¹ The Revolutionary War itself can be considered an extreme form of protest against established order.

In one author's view, the revolution was fought for more than simply achieving for the Colonists the traditional rights of Englishmen. "The world the Founding Fathers felt ripe for was

something bolder than one more England in approximate replica on the western shores of the Atlantic."² The perplexing question was to find the appropriate constitutional means to guarantee this ideal. From their experience with the English Bill of Rights they felt the American Constitution must be able to withstand "the passion of the people, the arrogance of officials, or the insensibility of both."³

The Constitution was originally submitted to the states without a Bill of Rights. A number of states refused to ratify it without an express provision limiting the power of the national government. This ideal was referred to as "the genesis of the Bill of Rights," and was felt necessary to protect the states against encroachment on their sovereignty by the Federal government. Under this concept the Bill of Rights included in state constitutions was to provide for the rights and liberties of citizens.⁴

The United States Supreme Court affirmed the doctrine of state sovereignty in a number of early decisions and declined to make the Bill of Rights applicable to the relationship between states and local governments and their citizens. After the Civil War a demand arose for Federal legislation to protect citizens against violation of their rights by the states, but serious questions were posed concerning the constitutionality of such laws. The need for constitutional authority became apparent, and the Fourteenth Amendment was passed.⁵ There was considerable sentiment among members of the Supreme Court that the intent of the Fourteenth Amendment was to apply the entire Bill of Rights against the states.

While the Court has repeatedly rejected this view, it has gradually and selectively applied most of the Bill of Rights to the states. Through a series of judicial decisions beginning in 1925, the provisions of the First, Fourth, Fifth, and Eighth Amendments have been made applicable to the states through the Due Process Clause of the Fourteenth Amendment.⁶

FIRST AMENDMENT RIGHTS

The principal issues raised by the Mayday confrontations involved rights guaranteed by the First Amendment. The First Amendment provides:⁷

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

In essence, the First Amendment protects the rights of persons to freely think, believe, and communicate. While this is simply stated, ascertaining the manner, conditions, and circumstances in which these rights may be exercised or restricted is far more difficult. This is complicated further by the variety of means of communications viewed as falling under the umbrella of protection provided by the First Amendment.⁸ Freedom of expression is commonly thought of as pertaining only to verbal and written communications, but many other methods of conveying thoughts and opinions have been given protection. Among these are television, radio, motion pictures, and certain actions such as peaceful picketing, demonstrations, and symbolic expressions.⁹

Conversely, the Supreme Court has consistently recognized that freedom of expression is not absolute and may be regulated. While a clear line has not been drawn between conduct which is permissible and that which can be regulated, the underlying philosophy of many of the Court's decisions has tended to be one of weighing individual rights against community interests. The approach recently has been to strike a balance between the competing interests involved in individual cases before the Court.¹⁰ The precedent for subsequent decisions balancing these interests was a case heard by the Court in 1939 dealing with a local prohibition against disseminating handbills. In establishing this precedent the Court asserted that in cases where it was alleged that legislative acts abridged individual rights to freedom of expression, it would examine the nature and consequences of the legislation. Further in each case, the Court would weigh the circumstances and evaluate the reasons offered in support of the law.¹¹

Certain tests have been developed by the Supreme Court to determine whether specific acts are included in the range of protection of the First Amendment. The first is the "Clear and Present Danger" test which had its genesis in the Alien and Sedition Acts of 1798. These laws were passed by Congress to counter a threat of subversion from France and were used to incarcerate critics of the President and outspoken journalists. The laws were repealed in 1806 without having come before the Supreme Court for a determination of their constitutionality. After World War I Congressional acts limiting free speech during national

emergencies were heard by the Court. In its decision in a case involving distribution of leaflets encouraging resistance to the draft the Court stated:¹²

The question in every case is whether the words are used in such circumstances and are of such nature as to create a clear and present danger that they bring about the substantial evil that Congress has a right to prevent.

While the "Clear and Present Danger" test was used in deciding a number of subsequent cases, it did not receive approval of the entire Court until 1937.¹³

Another test was developed in 1925 which restricted free speech to a much greater degree than the "Clear and Present Danger" test. Known as the "Bad Tendency" test, it was established in a case involving acts allegedly in support of Communism. Although a "clear and present danger" was not involved, the Court declared that a state could legislate against certain acts if they had a tendency to bring about such results. This test was followed in a few subsequent cases; however, the Court reverted to the "Clear and Present Danger" test in 1937.¹⁴

The "Preferred Position" test is the third type used by the Supreme Court in deciding cases involving First Amendment rights. The rationale for this test was based on the philosophy that freedoms guaranteed by the First Amendment were so fundamental to all other freedoms that they occupied a preferred status. Therefore, the Court would examine such questions more carefully than those involving other rights. This philosophy was viewed as a

rejuvenated form of the "Clear and Present Danger" test and continues to guide the court in many of its contemporary decisions.¹⁵

~~Other tests have been used to determine the constitutionality~~ of attempts to regulate First Amendment rights. In the "Sliding Scale" test a determination is made if the dangers of a particular situation are sufficient to justify limiting the guarantees of the First Amendment. In the "Evil Intent" doctrine the Court considered the state of mind of the speaker in deciding if he actually intended the "substantive evil" which resulted from his acts or expressions.¹⁶

PRACTICAL CONSIDERATIONS IN ARRESTS

While the legal and constitutional mandates discussed above must be considered in formulating arrest policies, there are more practical factors which determine if arrests can or will be made. These include available police manpower, attitude of the public, temperament of the police, and tactics.

Ability to Make Arrests

In the view of O. W. Wilson, former Chicago Police Chief, the police role in civil disturbances is to "arrest all persons who violate the law if it is within our power to do so."¹⁷ He stated further:¹⁸

A delay in effecting arrests or taking decisive action . . . is justifiable only if, in the judgment of the ranking officer, sufficient manpower is not on hand to assure that law and order will prevail.

In some instances the police have been physically unable to arrest violators even though they observe crimes being committed. During the early stages of the riots in Washington in April 1968, the police were accused of failing to take action to stop widespread lawlessness. Officers were pictured as turning their backs to many persons openly looting furniture, liquor, clothing, and grocery stores. From a practical standpoint, the police were greatly outnumbered by the looters and were incapable of effectively taking into custody any significant number of violators. Once the entire police force was mobilized and the national guard and federal troops were brought on duty, the incidence of arrests increased markedly.¹⁹

A similar situation prevailed during the riots in Chicago in April 1968 following the assassination of Doctor Martin Luther King, Jr. Only a few arrests were made during the first few days of the disorders. Due to hit-and-run type tactics employed by the rioters, there were few identifiable crowds the police could concentrate against. They were unable to effect symbolic arrests²⁰ of leaders of the disorders because many citizens were hostile to the police and would not identify leaders. The police were also aware that aggressive acts on their part could aggravate an already explosive situation. Since they could not effectively use the symbolic arrest technique, the police had to weigh the time they were required to be absent to arrest and dispose of individual violators against the preventive value of their continued presence in the disorder area. Consequently, many felt they could better contribute to the mission of restoring order

disorders and demonstrations where emotions can overcome judgment. In the view of one police official, arrests during confrontations often reflect the mental state of the police officer:²⁴

He gets carried away in the action and makes arrests in a retaliatory frame where in an everyday type of situation he probably wouldn't make such an arrest. This action increases the number, increases the violence, and increases the number of subsequent court ordered dismissals.

Similarly, the emotional state of police officers in Chicago during the disorders of April 1968 was considered as a major factor in determining whether a person was arrested. When sufficient police manpower finally was accumulated to begin arrests of large numbers of offenders, the policemen had been on duty for extended periods and were tired. Indiscriminate arrests were reportedly made and attributed to fear and frustration on the part of the police. Because they were unable to identify "real rioters," they arrested "all in sight."²⁵

Probably the most serious charges of police emotionalism in large scale disorders were made as a result of activities of the police during the 1968 Democratic Party Convention in Chicago. According to a highly controversial study made of the disorders and events preceding them, a "police riot" occurred. During the convention Chicago policemen were subjected to severe provocation by demonstrators ranging from obscene verbal abuse to physical assaults. Additionally, the police had been made uneasy by widely publicized threats of the dissidents to disrupt the convention. The result of these provocations "was unrestrained and

indiscriminate police violence on many occasions." This violence was directed not only at law violators but also toward innocent spectators, residents of the area, and particularly against newsmen and photographers. Throughout the activities emotions were so strong that police training was ignored, and supervisors were unable to control their men.²⁶

Alternative to Arrests

In many large demonstrations the police generally have two major alternative courses of action they can take when protesters become disorderly or commit other violations of the law. They can attempt either to arrest them or disperse them. Tear gas has been frequently used as a means of dispersing a disorderly group and reducing significantly the ability and determination of the participants to engage in further disorders. However, in the view of Chief of Police Jerry V. Wilson, tear gas was ineffective in many situations during large demonstrations in Washington. Demonstrators expected that tear gas would be used and many arrived equipped with masks, handkerchiefs, or other means of decreasing the effects of the gas. Others have developed a degree of immunity and are not incapacitated sufficiently by tear gas to reduce their resistance. Still others view exposure to tear gas as a status symbol and want to brag about being "gassed" when they return home. Therefore, according to Chief Wilson, the only course of action available to a police administrator in restoring

order and protecting persons and property in many situations is to arrest as many violators as possible.²⁷

This chapter has shown that before decisions can be made by police administrators and individual policemen to make arrests during civil disorders and demonstrations, they must weigh many factors. Constitutional and legal rules determine whether an offense has been committed and if an arrest will be valid. More practical factors determine if arrests can or should be made. The policy of government officials may state that all persons violating the law will be taken into custody. However, this policy may not be able to be implemented because the police are unable to make arrests or arrests are inappropriate in specific situations.

CHAPTER III

FOOTNOTES

1. M. Cherif Bassiouni and Eugene M. Fisher, "The Changing Times: A Basic Survey of Dissent in American Society," in The Law of Dissent and Riots (1969), ed. by M. Cherif Bassiouni, p. 26.
2. Edmond Cahn, "A New Kind of Society," in The Great Rights (1961), ed. by Edmond Cahn, p. 3.
3. Ibid.
4. William J. Brennan Jr., "The Bill of Rights and the States," in The Great Rights (1961), ed. by Edmond Cahn, pp. 67-85.
5. Fred E. Inbau and Claude R. Sowle, Criminal Justice (1964), p. 1126.
6. Sydney H. Asch, Civil Rights and Responsibilities Under the Constitution (1968), pp. 32-34.
7. Inbau and Sowle, p. 1126.
8. Robert L. Cord, Protest, Dissent and The Supreme Court (1971), pp. 2-4.
9. Asch, pp. 58-59.
10. Laurent B. Frantz, "The First Amendment in the Balance," in The Law of Dissent and Riots (1969), ed. by M. Cherif Bassiouni, pp. 67-68.
11. Ibid., p. 68.
12. Asch, pp. 59-60.
13. Ibid., p. 61.
14. Ibid., pp. 61-62.
15. Ibid., pp. 62-63.
16. Ibid., p. 64.
17. O. W. Wilson, "Civil Disturbances and the Rule of Law," Journal of Criminal Law, Criminology, and Police Science (March 1967), p. 156.

18. Ibid., p. 157.
19. Ben W. Gilbert, Ten Blocks from the White House (1968), pp. 75-87, 192-193.
20. "Criminal Justice in Extremis: Administration of Justice During the April 1968 Chicago Disorder," The University of Chicago Law Review (Spring 1969), p. 478. (Hereafter referred to as "Chicago Study"). (Symbolic arrest is defined as: "Arrests of persons in clear violation of the law who are in leadership positions and who are arrested under circumstances which may have a sobering or subduing effect on numbers of other persons in the area.")
21. Ibid., pp. 477-480.
22. George L. Halverson, Michigan State Police, East Lansing, letter to author, 28 December 1971.
23. Report of Baltimore Committee on the Administration of Justice Under Emergency Conditions (31 May 1968), p. 18.
24. Halverson.
25. Chicago Study, p. 479.
26. Daniel Walker, Rights in Conflict (1968), pp. 1-11.
27. Interview with Jerry V. Wilson, Chief of Police, Metropolitan Police Department, Washington, 14 January 1972.

CHAPTER IV

ADMINISTRATION OF JUSTICE UNDER EMERGENCY CONDITIONS

The manner in which the criminal justice system operates during civil disorders and demonstrations has received considerable attention in recent years. A number of studies have been made of the functioning of the police, courts, and detention facilities during crisis situations. While pertaining principally to civil agencies, they have relevance to military forces in such situations.

THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS

The National Advisory Commission on Civil Disorders was highly critical of the manner in which the criminal justice system operated during disorders occurring in the United States during the summer of 1967. In the words of the Commission "there were recurring breakdowns in the mechanisms for processing, prosecuting and protecting arrested persons."¹ As a result, there were few successful prosecutions of serious crimes committed during the riots. Most of those charged with serious offenses, such as sniping, looting, and arson, were freed because of lack of evidence. The Commission attributed these unfavorable results to three principal causes. First, mass arrest techniques were used to clear the streets, resulting in the arrest of many innocent spectators and minor violators along with persons committing serious crimes. Second, the inability to conduct

adequate investigations at the scene of serious crimes resulted in a failure to produce sufficient evidence for conviction at subsequent judicial proceedings. Third, the large number of persons arrested so overwhelmed the processing and detention capabilities of the police that sufficient attention could not be paid to major offenders.²

In formulating its recommendations for corrective measures, the Commission emphasized that the judicial system must continue to protect individual rights during emergency conditions. They rejected suggestions that short cuts be established in the name of judicial efficiency which would infringe on the constitutional rights of those arrested. Specifically, the Commission objected to any concept of preventive detention which would detain a person without formal arrest procedures. Rather the Commission recommended that the criminal justice system be reformed thoroughly and that planning be conducted by all agencies involved to insure that the judicial system is capable of functioning properly under emergency conditions.³

The Commission suggested that measures be implemented to reduce the number of persons arrested with the resultant overcrowding of detention and court facilities. They recommended that the authority of the police and other agencies involved in controlling disorders be completely defined and that legal alternatives to arrest be provided. Police should be permitted discretion in deciding whether to arrest minor violators or to employ other acceptable means of dealing with a particular situation.

One alternative suggested was the use of a summons for minor offenders similar to that normally employed for traffic violators. This form would be completed at the scene of an offense, and the offender released with an admonition to appear later at a judicial hearing. This procedure not only would reduce congestion at police stations and detention facilities, but would allow the citizen to return to his home while the policeman could quickly resume his important duties on the street. The Commission also recommended the formulation of procedures to insure the effectiveness of arrests of persons for serious crimes. Suggestions included the use of photographs to assist the arresting officer to refresh his memory concerning persons he had arrested and the establishment of separate facilities for processing serious offenders.⁴

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

The International Association of Chiefs of Police (IACP) has developed guidelines for use by law enforcement agencies in preparing for civil disorders and other emergency situations. In examining the problems of mass arrest the IACP focused on two sub-problems: (1) The prisoner handling capacity of a city. Outnumbered police officers faced with widespread disorders are responsible for arresting persons who commit violations of the law whenever action is possible. If arrests of large numbers of persons can be accomplished efficiently, the prisoner processing and detention capabilities are soon overwhelmed with the resultant confusion affecting the proper administration of justice. (2) The

necessity of identifying each person arrested with a specific violation of the law. In a civil disorder environment policemen are tempted to arrest persons in order to remove them from the streets with little or no concern for the outcome of subsequent legal proceedings. This effectively copes with an immediate problem, but results in severe criticism and "creates more problems than it solves."⁵

Having the officer accompany each person he arrests to the police station for processing in the standard manner results in a higher conviction rate. However, this procedure removes the officer from his place of duty for extended periods of time and acts to reduce the police manpower available to control disorders. The IACP recommended use of a field booking station. Under this concept a reasonably secure facility is established near the disorder area where policemen may escort their prisoners for processing. The station is staffed with police technicians and persons to guard and transport prisoners.⁶ The initial step in the field booking procedure is to photograph the arresting officer with the prisoner. The photograph should be taken with a Polaroid camera; the picture should also depict any physical evidence connecting the prisoner with a particular crime.⁷ After the photograph, the arresting officer will complete an arrest form, release his prisoner to a member of the booking team, and return to his assigned post. He retains one copy of the arrest form; the second copy is attached to the photograph; and the third copy is

placed with the container holding all evidence pertaining to that particular offense.⁸

The IACP recognized that completion of the standard arrest form may be too time consuming for use under emergency conditions and recommended an abbreviated form be developed for arrests of persons for minor offenses. However, the continued use of the standard arrest form for serious crimes was suggested, regardless of the time required to enter the detailed information.⁹

VIEWS OF DISTRICT ATTORNEYS

The importance of assuring that proper legal actions are taken by all agencies involved in the administration of justice during disorders was also recognized by the National District Attorneys Association (NDAA). The NDAA appointed a special committee of prosecutors to study the legal implications of disorders and to make recommendations on measures to be taken in accomplishing the dual purpose of maintaining order and protecting the rights of citizens. The committee's report was published in June 1968 and provided guidelines for planning for legal problems in emergency situations. It emphasized that advanced planning is essential to insure that legal guidelines are observed during disorders by saying: "During widespread rioting and violence, there is little time for reflection and cool analysis of legal problems."¹⁰ The formation of a committee composed of all agencies who have a role in controlling emergencies

was recommended. The committee would formulate a plan for disorder control and coordinate the implementation of the plan. Membership of the committee would include senior officials from the police department, judiciary, national guard, sheriff's office, fire department, district attorney's office, and other governmental agencies as appropriate to each locale.¹¹

Of particular importance to this paper were the portions of the report devoted to police procedures and to prosecution and trial of offenders. In the committee's view, "The Police Department must be ready for an awesome strain on its resources."¹²

The police must be capable of processing many persons who have been arrested in a minimum amount of time. To do this, it recommended that personnel be standing by to photograph and fingerprint prisoners and that streamlined procedures be established to insure that administrative requirements do not unduly delay processing. The use of an abbreviated arrest form was recommended; the report included sample forms to be used for this purpose.¹³

BALTIMORE EXPERIENCE

A committee appointed to study the administration of justice during the disorders of April 1968 in Baltimore recommended sweeping changes in police arrest and booking procedures during times of emergency. The committee found that measures employed by the police were totally inadequate and "caused the system to stammer, stall, and finally collapse."¹⁴ During the first days of the riots the police attempted to continue their normal arrest and booking

practices. If the offense committed was other than drunk or disorderly conduct, the arresting officer was required to go to the police station to prepare an Arrest Report and a Complaint Report for each offense charged against the offender. Thus, if a person was arrested for curfew violation, looting, and resisting arrest, the officer completed three of each of these forms. These are rather lengthy forms and require detailed information to be entered. The officer was not able to return to his post until the forms were all properly completed.¹⁵

As the riot progressed, the Baltimore Police Department instituted a number of procedural changes in an attempt to overcome the difficulties they were encountering with mass arrests of violators. But, in the view of the committee, they were inadequate to insure that the criminal justice process was properly carried out.¹⁶

The committee recommended that simplified and decentralized procedures be established for relatively minor offenses during emergency conditions. For the more serious crimes, the normal booking procedures would be followed. Decentralized Booking Command Posts would be established near the scene of disorders to process those arrested for curfew violations and other minor offenses. An abbreviated arrest report form would be employed for minor offenses rather than the more detailed standard Arrest Report and Complaint Report. To expedite processing the committee recommended that stenographers and typists be available at Booking Command Posts and police stations. These persons would

be trained in advance to quickly fill out forms so that policemen could be relieved of clerical duties and assigned to more important posts.¹⁷

It is apparent from these studies that the criminal justice system has been severely strained during major civil disorders and demonstrations. If the judicial processes are to be effectively completed, it is essential that there be detailed planning and coordination by all concerned agencies in advance of emergencies. This must apply as well to military units who have civil disturbance contingency missions.

CHAPTER IV

FOOTNOTES

1. Report of the National Advisory Commission on Civil Disorders, Otto Kerner, chairman (1 March 1968), p. 184. (Hereafter referred to as "Kerner Report").
2. Dean Smith and Richard W. Kobets, Guidelines for Civil Disorder and Mobilization Planning (September 1968), p. 48. (Hereafter referred to as "IACP Guidelines").
3. Kerner Report, p. 184.
4. Ibid., pp. 186-187.
5. Ibid., pp. 188-189.
6. IACP Guidelines, p. 49.
7. Ibid.
8. Ibid., pp. 49-51.
9. Ibid., pp. 51-52.
10. National District Attorneys Association, Guidelines for Prosecuting Criminal Cases During Civil Disorders (June 1968), Introductory page.
11. Ibid., p. 13.
12. Ibid., p. 14.
13. Ibid., pp. 14, 31-32.
14. Report of Baltimore Committee on the Administration of Justice Under Emergency Conditions, George L. Russell, Jr., chairman (31 May 1968), p. 12.
15. Ibid., pp. 10-12.
16. Ibid., pp. 12, 15-16.
17. Ibid., pp. 21, 24.

CHAPTER V

MILITARY FORCES IN CIVIL DISORDERS

Thus far this paper has discussed problems related to mass arrests by civilian police during disorders, the issues raised by these arrests, and some suggestions for improved procedures in the administration of justice under emergency conditions. This chapter will focus on the military role in civil disorders, discuss rules applicable to military personnel taking custody of civilians, and address problems encountered by military personnel engaging in this activity.

THE ROLE OF THE MILITARY

The maintenance of law and order and the protection of citizens and property are responsibilities of state and local authorities. The Armed Forces of the United States are employed in this duty only upon the request of a state or when state and local governments are incapable of or unwilling to act. The Secretary of the Army has been designated as Executive Agent for the Department of Defense in all matters pertaining to planning and employment of Department of Defense resources in civil disorders. The other services are charged with furnishing assistance as requested by the Secretary of the Army.¹

Title 10, United States Code, Chapter 15, authorizes the national guard to be called to Federal Active Duty to suppress insurrection, rebellion or interference with Federal and state

law.² When on Federal Active Duty, national guardsmen become subject to the orders of the President and may be employed in civil disorder missions throughout the United States in the same manner as regular forces. Federal forces, including the national guard in a federal status, are under the command of and directly responsible to their military and civilian superiors in the chain of command. They may not be placed under the command of state defense forces, or national guard not on Federal duty, or any state or local official.³

While Federal military forces have been employed in civil disturbances throughout the history of the United States, their recent involvement in this activity beginning in Oxford, Mississippi, in 1962 is of principal concern to this study. Since then, Federal troops have aided civil authorities in controlling disorders in a number of the larger United States cities including Detroit, Washington, Baltimore, and Chicago. Additionally, they have been alerted or prepositioned, but not committed to duty, in New Haven, Connecticut, and other cities when it appeared probable that civil authorities could not maintain order. Units of the national guard have also been employed by state governors on numerous occasions to restore order. In a limited number of cases national guard units have been called to Federal duty for civil disturbance missions.⁴

The national guard, as a member of the reserve components, is organized and equipped in a similar fashion to the regular components and must undergo civil disturbance training prescribed

by Department of Defense.⁵ Since there is a high degree of commonality in organization and training, comments concerning one component are equally applicable to the other in most aspects of civil disturbance operations. Therefore, this discussion will apply both to the regular military forces and the national guard unless otherwise indicated.

TAKING CIVILIANS INTO CUSTODY

A recent study concerning the authority of Federal troops to take custody of civilian offenders during civil disorders concluded:⁶

That no statutes exist which specifically provide arrest powers for Federal troops; that powers possessed by Federal forces deployed in civil disorders are unclear; and that police powers to include arrest, search, and detention are needed to properly carry out tasks assigned during the riot and post riot phases of civil disturbances.

The author opined further that military regulations fail to specify the authority of Federal troops in such situations and that this omission tends to neutralize any power that may exist.⁷

An examination of Army doctrine confirms the lack of specific guidance concerning the authority of military personnel assigned to civil disturbance duty. The principal Army publication on civil disorders⁸ emphasizes crowd control, dispersal of rioters, and protection of critical areas or facilities. This is accomplished by a series of progressively more severe measures of force beginning with a show of force accompanied by an order to disperse. If this is ineffective, troops are employed in riot control formations to

disperse the crowd or mob. This may be followed by other measures such as the use of high pressure water or chemical riot control agents. While there are references to the capture of ring leaders, snipers, arsonists, looters and rioters, only cursory attention is given to the general subject of arrests of individuals or groups of persons.⁹ Further, military personnel are not encouraged to take custody of civilians:¹⁰

The occasion may arise when it is necessary to detain or take into temporary custody civilians involved in the disturbance. . . . Whenever possible, however, civilian authorities (police, sheriff, U.S. Marshal) should make the apprehension.

Army doctrine recognizes that situations may arise in civil disorders where large numbers of offenders must be taken into custody and that commanders must be prepared for this eventuality. However, the probabilities of military involvement in this activity are minimized by the caveat, "this problem normally is the primary concern of civil authorities."¹¹ Even so, some basic procedures are prescribed for the handling of detained persons, processing evidence, and identifying witnesses.¹² Additional guidance is contained in the sample Letter of Instructions to military task force commanders published in the Department of the Army Civil Disturbance Plan.¹³ Here again, however, it is emphasized that civilian authorities, not soldiers, should take action with respect to civilians: "When assistance is necessary, or in the absence of civilian police, Federal military forces have the responsibility to detain or take into custody rioters, looters, and others committing offenses."¹⁴

In such cases, military personnel must insure that sufficient data concerning the offense is furnished the police to permit preparation of an arrest form. To facilitate this process Department of the Army Form 3316-R, Detainee Turnover Record, has been developed and is included as an appendix to the plan. This form is to be completed on each offender and delivered to the police when the prisoner is released to them. No detailed instructions are published concerning the manner in which the form is to be completed, number of copies to be prepared, or disposition of copies other than to the police. Further, there is no mention of the value of photographs to supplement the form in facilitating subsequent prosecution of the prisoner.¹⁵ An additional reference to soldiers taking custody of civilians is found in special orders which must be in the possession of military personnel employed in civil disturbance duties. The policy that civilian police should arrest civilians is included in the special orders:¹⁶

When possible, let civilian police arrest lawbreakers. But when assistance is necessary or in the absence of the civil police, you have the duty and authority to take lawbreakers into custody. . . . Cooperate fully with the police by safeguarding evidence and completing records as instructed.

Military personnel must receive a briefing prior to movement from home station for employment in civil disturbance duties. Among the subjects required to be discussed during the briefing are the role of the serviceman in civil disorders and a review of the

special orders. Yet, no reference to the procedures involved in mass arrests of civilians is specifically included.¹⁷

MANNER OF PERFORMANCE

In view of the emphasis on police arresting civilians and the lack of detailed procedural guidance for military personnel to perform this function in Army doctrine, a question arises as to the record of performance of the military in this important area of civil disturbance operations. Generally, Federal troops have performed well in these assignments and have been of material assistance in restoring order. However, their actions have received general condemnation by some persons and specific criticism by others. Former United States Attorney General Ramsey Clark is an outspoken critic of the recent tendency to use federal troops in civil disorders. He views the military as being eager for this duty and spending vast amounts of money planning and preparing for it. He would rather see the funds used to improve the capability of police forces.¹⁸ Further, he is concerned with the lack of regard of military commanders for the legal and constitutional rights of citizens:¹⁹

Generals resent civilian presence and legal guidance. Their business is war. War knows few rules and forgets them when need arises. Attorneys from Justice concerned about civil liberties, excessive force, and the rights of the civilian population and prisoners find it hard to influence military commanders on the scene.

While commending Federal troops for their recent assistance in cities experiencing disorders, Chief of Police Jerry V. Wilson feels there are drawbacks in efficiently employing military personnel in civil disturbance duties. Aside from the limited number of military policemen, soldiers are not prepared to function as policemen:

20
Soldiers generally are not trained to work as a policeman must, to make judgments as a policeman must, or work in pairs or in small groups as a policeman must.

The ordinary soldier is employed as a part of a platoon-sized organization with an officer or non-commissioned officer immediately available to make all important decisions. Even under these circumstances their mission must be clearly stated and little discretion allowed in the manner in which it is to be carried out.

21
This view of the different capabilities of the police and the military forces in civil disorders was shared by a committee appointed to study the administration of justice in Baltimore during the riots in April 1968. While directed specifically toward the national guard, their comments apply equally to the regular forces. They were critical of the manner in which suspects taken into custody by national guardsmen were processed and charged. National guardsmen were hesitant to make arrests, as they viewed their responsibility principally as being one of crowd control, not law enforcement; they feared they would be required to accompany prisoners to court or return for trials at

a later date. Therefore, they detained suspects and called for policemen to make the formal arrest. The policeman transported the prisoner to a booking station or detention facility and prepared the necessary arrest documents based on information received from the guardsman. On a number of occasions, however, the guardsman did not provide (and the policeman failed to demand) sufficient data for prosecution of an offender. The guardsman was anxious to be relieved of his responsibility for a person in his custody and eager to return to duty in the disorder area as quickly as possible. As a result, the policeman frequently found a person in custody without adequate information concerning the circumstances under which the national guardsman detained him. In many cases it was impossible to determine the name of the guardsman who initially took custody of the subject. Thus, the prisoner could not be charged properly, and prosecutors faced numerous difficulties in bringing him to trial.²² A similar problem was noted during the April 1968 disorders in Chicago.²³

The Baltimore Committee emphasized that the national guard and police have different roles in civil disorders. The national guard should be engaged principally in crowd and riot control, and the police in law enforcement duties. The principal value of the national guard is its capability to disperse crowds, deny access to areas, and to operate detention facilities. Guardsmen should remain on duty on the street instead of being involved in the police booking and subsequent court proceedings. The committee recognized, however, that national guardsmen will take serious

offenders into custody, and on these occasions, they may be required to accompany the prisoner through the booking process to enable successful prosecution of the offender. A recommendation was made that the national guard and the Regular Army be given special training concerning "riot related" offenses and the evidence required to substantiate such offenses. This would enable the proper charge to be placed against an offender detained by a guardsman or member of the Regular Army. Additionally, these personnel should be provided with a supply of forms to be used to record the facts and circumstances of an offense.²⁴

DEPARTMENT OF THE ARMY STUDY

A Department of the Army study group was established in 1970 to make a comprehensive evaluation of the manner in which the Army should approach its civil disturbance mission in the 1970's. The final report contained numerous recommendations impacting on current military doctrine and procedures and requiring major revisions of Field Manual 19-15. Among these only the following are considered to relate directly to the central problem addressed in this chapter--that of military personnel taking civilians into custody. It was recommended that Field Manual 19-15 be revised to include: (1) procedures for apprehension and detention of curfew violators,²⁵ (2) guidance on the employment of joint police-military patrols,²⁶ and (3) doctrine that teams for the apprehension of rioters include policemen to arrest key rioters and general guidance concerning the sizes of these teams.²⁷

The manner in which the criminal justice system operates in emergencies is largely dependent on those performing law enforcement related functions. The initial steps of arresting and processing offenders set the stage for the judicial process which follows. If they are not performed within the prescribed legal and constitutional restraints, two undesirable by-products are likely to result. Persons committing crimes may escape punishment because of flaws in police procedures, or innocent persons are subjected to arrest, and possible conviction, for crimes they did not commit. Either result is unacceptable in a democratic society whose continued existence depends on a firm belief in justice for all--the innocent and guilty alike.

Unfortunately, this ideal was not realized in all recent civil disorders. Routine procedures for arrest and processing offenders have proven inadequate for emergency situations, and ad-hoc revisions instituted as disorders progressed have often been equally ineffective. Only by developing a realistic plan in advance of an emergency can orderly and effective legal processes be achieved. Success will not result if those who must implement the plan have not been fully prepared for their duties. Each individual must have a working familiarity with those functions he is expected to accomplish and be psychologically conditioned to fulfill them under the trying conditions inherent in emergency situations. The importance of strictly adhering to prescribed procedures must be instilled sufficiently in each person to

preclude undesirable individual acts or omissions. Yet, they should not be expected to act as unthinking robots; the need for judgment in these circumstances is patent.

Military forces, including the national guard in a Federal status, must be concerned with the criminal justice system when employed on civil disturbance missions. They, as the police, must be prepared to participate in the initial process of the system--taking custody of persons violating the law and performing the actions necessary for subsequent prosecution. Military doctrine recognizes that this duty may be performed by military personnel, but emphasizes that it is primarily a police responsibility. However desirable this policy may be, it undoubtedly accounts for the lack of procedural guidelines for those occasions when the military may be required to initiate the justice process by detaining civilian offenders. Present doctrine is insufficient to insure that military personnel are aware of their authority in these matters and adequately trained to exercise their authority. This becomes particularly evident when one considers that the police, trained and experienced in enforcing the law, have encountered major problems in insuring that justice prevails in emergency situations.

Therefore, it must be concluded that the Mayday activities in Washington have major implications for military personnel assigned to civil disorder control duties. Military commanders, as their civilian law enforcement counterparts, must make decisions of how to best carry out their missions in a variety of situations.

Choice of the proper tactics to be employed--arrests or dispersal-- can be made only after evaluation of a number of important factors. While it may be desirable that all arrests be made by civilian police, military personnel must be prepared to accomplish this so as to facilitate subsequent prosecution.

RECOMMENDATIONS

From the foregoing it is considered essential that the following recommendations be adopted if military personnel are to properly perform their civil disorder missions:

That policy continue to emphasize the desirability of civilian police arresting and detaining civilian offenders.

That greater importance be attached to the possibility that military personnel will be required to take custody of and detain large numbers of civilian offenders.

That detailed procedural guidance be developed to prepare military personnel to apprehend and detain individual or groups of offenders in conformity with appropriate legal standards.

That military personnel be acquainted with the types of crimes they are likely to encounter in civil disorders. They should be familiar with the elements of these offenses, their authority to take action, and the degree of force they can use in each case to apprehend or to prevent the escape of an offender.

That military personnel be trained in the techniques of identifying, preserving, and safeguarding physical evidence relating to offenders they take into custody.

That the Detainee Turnover Record, DA Form 3316-R, and instructions for its use be examined to insure they are adequate for the intended purpose. The examination should include the content of the form, its preparation and disposition. Consideration should be given to making it a standard form with required number of copies rather than one to be reproduced locally. An evaluation of civilian police field arrest forms should be made an essential part of this process.

That photographs be taken of military personnel and persons apprehended by them to facilitate subsequent identification and prosecution of offenders.

That teams be selected and trained in advance to apprehend offenders in mass arrest situations. Each team should include a photographer and be provided with Detainee Turnover Record forms, tags and containers for evidence, and other material essential to the apprehension of offenders.

That Field Manual 19-15, Army Subject Schedule 19-6, Department of the Army Civil Disturbance Plan, and other pertinent publications be revised as required to implement the above recommendations.


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SELECTED BIBLIOGRAPHY

1. Applegate, Rex. Riot Control—Materiel and Techniques. Harrisburg: Stackpole, 1969. (HV6477 H5)
2. Asch, Sidney, H. Civil Rights and Responsibilities Under the Constitution. New York: Arco, 1968. (JC599 U5A8)
3. Bassiouni, M. Cherif, ed. The Law of Dissent and Riots. Springfield: Thomas, 1969. (JC599 U5B33)
4. "Beleagured Washington: Only Recourse Was Mass Arrests." U.S. News and World Report, Vol. 70, 24 May 1971, pp. 53-55.
5. Black, Henry Campbell. Black's Law Dictionary. St. Paul: West, 1968.
6. Cahn, Edmond, ed. The Great Rights. New York: MacMillan, 1961.
7. Claiborne, William L. "Mitchell Warns on Protest." The Washington Post, 11 May 1971, p. A-1.
8. "Clark Hits Handling of Protests." The Washington Post, 24 May 1971, p. A-3.
9. Clark, Ramsey. Crime in America. New York: Simon and Schuster, 1970. (HV6789)
10. Cord, Robert L. Protest, Dissent and the Supreme Court. Cambridge: Winthrop, 1971. (JC599 U5C6)
11. "Criminal Justice in Extremis: Administration of Justice During the April 1968 Chicago Disorder." The University of Chicago Law Review, Vol. 36, Spring 1969, pp. 455-612.
12. Davis, Owen W. Metropolitan Police Department, Washington, Letter to author, 7 February 1972.
13. Friedman, Harvey George. "Contingency Planning for the Administration of Justice During Civil Disorders and Mass Arrests." The American University Law Review, Vol. 18, December 1968, pp. 77-97.
14. Gilbert, Ben W. Ten Blocks From the White House. New York: Praeger, 1968. (HV6483 W3G5)

15. Government of the District of Columbia. Metropolitan Police Department General Order No. 6: Procedures for Handling Prisoners and Property During Civil Disturbances. Washington. 16 August 1968.
16. Government of the District of Columbia. Metropolitan Police Department General Order No. 8: Utilization of Arrest Teams at the Scene of Non-Violent Demonstrations Where Unlawful Acts are Committed. Washington. 16 August 1968.
17. Graham, Fred P. "Mitchell Urges All Police Copy Capital's Tactics." The New York Times, 11 May 1971, pp. 1, 20.
18. Halverson, George L. Michigan State Police, East Lansing, Letter to author, 28 December 1971.
19. Higham, Robin, ed. Bayonets in the Streets. Lawrence: The University Press of Kansas, 1969. (HV6477 H5)
20. Inbau, Fred E., and Sowle, Claude R. Criminal Justice. Brooklyn: Foundation, 1964.
21. Manual for Courts-Martial United States 1969 (Revised Edition). Washington: US Government Printing Office, 1969. (UB853 A3)
22. Murray, Charles R. MAJ. "Civil Disturbance, Justifiable Homicide, and Military Law." Military Law Review, Vol. 54, Fall 1971, pp. 129-167.
23. National District Attorneys Association. Guidelines for Prosecuting Cases During Civil Disorders. Chicago, 1968. 1968
24. Neary, John. "The President Wants Firm Law Enforcement." Life, Vol. 70, 14 May 1971, pp. 33-39.
25. New Jersey State Police. New Jersey State Police Training Regulations 70-1: Civil Disturbances-Riot Control Manual. 1970.
26. "Nixon Backs D.C. Police on Mayday." The Washington Post, 2 June 1971, p. A-1.
27. Report of Baltimore Committee on the Administration of Justice Under Emergency Conditions. George L. Russell, chairman. Baltimore, 1968.

28. Report of the Chicago Riot Study Committee to the Hon. Richard J. Daley. Richard B. Austin, chairman. Chicago, 1 August 1968. (HV6483 C4A4)
29. Report of the National Advisory Commission on Civil Disorders. Otto Kerner, chairman. Washington: US Government Printing Office, 1968. (HV6477 A5)
30. "Self-Defeat for the 'Army of Peace.'" Time, Vol. 97, 17 May 1971, pp. 13-15.
31. Smith, Dean and Kobets, Richard W. Guidelines for Civil Disorders and Mobilization Planning. Washington: International Association of Chiefs of Police, 1968.
32. Stem, David. H., MAJ. A Study of the Need for Arrest Powers by Federal Troops Performing Civil Disturbance Missions. Thesis. Fort Leavenworth: US Army Command and General Staff College, 1970. (CGSC TH - S83).
33. "The Biggest Bust." Newsweek, Vol. 77, 17 May 1971, pp. 24-29.
34. US Congress. House. Committee on Internal Security. National Peace Action Coalition (NPAC) and Peoples Coalition for Peace and Justice (PCJP), Hearings Part 1. 92d Congress, 1st Session, 1971 (KF-71 H488-9)
35. US Department of the Army. Army Regulations 500-50: Emergency Employment of Army and Other Resources, Civil Disturbances. Washington. 14 July 1971.
36. US Department of the Army. Army Regulations 135-300: Mobilization of Army National Guard of the United States and Army Reserve Units, Reserve Components. Washington. 7 August 1969.
37. US Department of the Army. Army Regulations 600-40: Apprehension, Restraint and Release to Civil Authorities, Personnel--General. Washington. 4 November 1971.
38. US Department of the Army. Army Subject Schedule 19-6: Control of Civil Disturbances. Washington. 5 April 1969..
39. US Department of the Army. Department of the Army Civil Disturbance Plan. (U) Washington. 24 June 1970.
CONFIDENTIAL. (O DA DCDPO CDP JE 70)

40. US Department of the Army Study Group. Department of the Army Civil Disturbance Study, Final Report. (U) Washington. 1 April 1971. CONFIDENTIAL. (O DA DOMS CDS)
41. US Department of the Army. Field Manual 19-15: Civil Disturbances and Disasters. Washington. March 1968.
42. US Department of the Army. Operations Report--Lessons Learned 5-67--"Civil Disorders--TF Detroit." Washington. 28 September 1967. (HV6483 D4U48)
43. Valentine, Paul W. "War Foes Call Nixon 'Hitler' for Backing Mass Arrests." The Washington Post. 3 June 1971, p. A-2.
44. Walker, Daniel. Rights in Conflict. New York: Dutton, 1968. (HV6483 C4W3)
45. Wilson, Jerry V. Common Sense in Dealing with Demonstrations. Address. Philadelphia: Philadelphia Bar Association, 7 June 1971. (Cited with special permission of Mr. Wilson.)
46. Wilson, Jerry V. Metropolitan Police Department, Washington: Personal Interview, 14 January 1972.
47. Wilson, O. W. "Civil Disturbances and the Rule of Law." Journal of Criminal Law, Criminology and Police Science, Vol. 58, March 1967, pp. 155-162.

