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Yale Kamisar, the Clarence Darrow Distinguished University Professor of Law Emeritus at the Law School, is a nationally recognized authority on constitutional law and criminal procedure. A graduate of New York University and Columbia Law School, he has written extensively on criminal law, the administration of criminal justice, and the "politics of crime." He is author of *Police Interrogation and Confessions: Essays in Law and Policy* and co-author of *Criminal Justice in Our Time*, and *The Supreme Court: Trends and Developments* (five annual volumes). He wrote the chapter on constitutional criminal procedure for *The Burger Court: The Counter-Revolution That Wasn't*, *The Warren Court: A Retrospective*, and wrote the chapter on police interrogation and confessions for *The Rehnquist Legacy*. He is also co-author of two widely used casebooks: *Modern Criminal Procedure: Cases, Comments & Questions*, all 11 editions, and *Constitutional Law: Cases, Comments & Questions*, all 10 editions. In addition, he has written numerous articles on police interrogation and confessions; right to counsel; search and seizure; and euthanasia and assisted suicide and is widely quoted on these subjects. Professor Kamisar taught at the University of Minnesota Law School from 1957-64 and joined the University of Michigan law faculty in 1965. Although he retired from teaching at Michigan Law in 2004, he continues to teach at the University of San Diego School of Law in California.

Criminal justice and the 1967 Detroit 'riot'



by Yale Kamisar

Forty years ago the kindling of segregation, racism, and poverty burst into the flame of urban rioting in Detroit, Los Angeles, Newark, and other U.S. cities. The following essay is excerpted from a report by Professor Emeritus Yale Kamisar filed with the National Advisory Commission on Civil Disorders (the Kerner Commission) regarding the disorders that took place in Detroit July 23-28, 1967. The report provided significant material and was the subject of one article in the series of pieces on the anniversary of the disturbances that appeared last summer in The Michigan Citizen of Detroit. Immediately after the disturbances ended, Kamisar urged the Michigan Law Review to do a comprehensive study of the administration of justice, or lack of it, during the Detroit civil disorders. When the editors of the Review agreed to undertake the project, Kamisar coordinated his findings with their study. Thus, he refers to students' findings at various places in his report. The Law Review's comprehensive study appears in 66 Michigan Law Review, 1544-1630 (1968). African Americans were referred to as Negroes at the time of the report and study, and this usage has been retained in this excerpt.

The incident which “set off” the riot was the arresting of some 80 people in a “blind pig” raid in the early hours of July 23, Sunday morning. The police did not have adequate facilities to whisk off so many arrestees and in the considerable time it took to do so a crowd gathered. This incident illustrates the value of the summons over arrest. The police should have anticipated that congregating scores of arrestees in the street would attract many bystanders—and that if they arrested only one or two and handed out “tickets” to the rest—trouble would have been avoided.

Arrest, search, and seizure

Once the “riot” began, police spread a huge net over the riot area and more or less pulled in everyone on the street, including many in moving cars. It is clear that an appreciable number of Negro citizens uninvolved in the riot were swept up and subjected to degrading conditions in jails for periods up to several weeks before being released. The Governor’s Emergency Proclamation imposed a nighttime curfew except for “emergency,” but left “emergency” undefined.

Police attempted to standardize a search procedure whereby special “search units” (acting without warrants) allegedly acted on tips pouring in about the location of stolen property. There is reason to think that some units used so-called “tips” as an excuse for systematic searching of certain areas. It is doubtful that very many, if any, of the “waivers” obtained by heavily armed law enforcement officers operating in a “war atmosphere” were valid. After a few days, the officers had “available” printed forms which consenting occupants had to sign when giving permission. On August 7, these forms were amended to make it clear occupants could refuse permission.

Bail and detention conditions

The most flagrant abuses probably occurred with respect to bail. The Recorder’s Court acted as a “law enforcement agency” determined to keep the arrested Negroes off the

streets. With the exception of one or two judges, even bond for curfew violators was rarely, if ever, set at less than \$10,000 and sometimes at \$15,000 or \$25,000. Judge George Crockett, who is one of the 13 judges of Recorder’s Court, stated publicly at an NAACP state convention held on September 30 that most of the judges instructed the sheriff not to release an arrestee even if he could meet this high bond, but to check back with the judge who had set the bail, “presumably so that he could raise it still higher.”

Also contributing to prolonged detention was the apparent policy of the Governor, prosecutors—and most judges—to release no one until records were checked with the FBI to ascertain whether any prisoners were connected with Watts, Newark, or other riot spots (apparently none were) and hence “ringleaders” or “outside agitators.”

For the first five days after the riots began the majority of judges made no allowance for individual factors affecting the likelihood of the prisoner’s appearance for trial. Not infrequently, husband and wife were remanded to the sheriff’s custody with high bonds when their children were home alone. Five days after the riots began, the prosecutor started to move to reduce bail—on the basis of only one factor: “previous arrest” record.

Apparently it was easier to find “previous arrests” data than “conviction” data. It is unclear what arrests were included, e.g., drunken driving. But apparently “arrest for investigation of . . .” was included. Our students’ findings disclose that slightly over 3,000 of the 6,000 prisoners had a “previous arrest” record.

The process of reviewing bail went on slowly for several weeks and many were in jail for a full month.

Those in charge of the custody of the prisoners were extremely inefficient and much confusion reigned. Prisoners frequently were not transported to the court on time. There were many reports of “lost” prisoners. Mrs. Claudia Marcom, Program Administrator, Neighborhood Legal Services, stated at the NAACP convention that thousands of phone calls to the

police or the sheriff's office were made by those trying to locate missing relatives or friends, and all these calls were referred to her office.

There were horribly inadequate detention facilities. For example, some 1,000 prisoners were housed in an underground police garage for at least several days. There was bitter comment at the NAACP meeting about Negro prisoners being "herded like cattle," about degrading, brutalizing experiences, about Negroes being forced to stand for many hours or even days, and about men, women, and the elderly all being incarcerated together.

Judge Crockett (and perhaps one other judge) departed from the general pattern, releasing about 10 per cent of the prisoners before him on personal recognizance, otherwise frequently setting bail of \$500-\$1,500. He had volunteer lawyers interview prisoners about their roots in the community, etc., and relied on their recommendations. Apparently, he processed about as many prisoners about as rapidly as his "mechanical" brethren.

The Wayne County Circuit Court, whose regular activities had ceased and whose 27 judges amounted to double the judicial manpower in the Recorder's Court, offered judicial and clerical help for bail-setting and other matters, but this offer was refused, apparently on the ground that it wasn't needed.

Another unheeded suggestion was the use of federal probation personnel and possibly Wayne County probation staff to interview prisoners and on the basis of certain factors release some on personal recognizance. Judge Wade McCree of the U.S. Court of Appeals for the Sixth Circuit (widely regarded as an outstanding judge) whose chambers are in Detroit, proposed that those with two or more "favorable criteria" (considering residence, property, job with seniority, children, no prior record) be released on personal recognizance.

Just prior to the preliminary examinations, many prisoners had their high bonds reviewed. Apparently this was often done by the prosecutor's office and the judges working in concert.

In addition, the writ of habeas corpus was in effect "suspended" for at least the first week after the riots began. Several lawyers involved in the processing insist that various judges simply announced and/or put up signs that they would not entertain the writ. They were also told of the great difficulties involved in trying to find the prisoners. Apparently some judges did state that "they would hear no petitions for a week."

The right to counsel—and to 'effective' counsel

At the preliminary examination stage, there was a massive effort by members of the bar to organize volunteer attorneys to provide free defense for those in need. Several hundred attorneys turned out. Headquarters were set up in an empty Recorder's Court courtroom and before each session volun-

teers with little or no criminal law experience were instructed as to law and practice.

One administrative point should be made. After a volunteer completed an examination he usually left the court, period.

At the "arraignment on the information" stage—the last step prior to the trials scheduled to begin in January, 1968—probably about 80 percent were assigned counsel. Many observers report that most judges made too much use of the criminal lawyer "regulars" and little or no use of volunteer lawyers. There is reason to think this was for "patronage" purposes, and/or because the regulars would more often cop a plea and the volunteers would more often demand a trial. (Assigned counsel is paid on a "straight fee" basis and therefore it is against his economic interests to go to trial.)

Typically only one or two attorneys were appointed at the rate of \$200 per day to represent all the defendants needing counsel in a given courtroom on a given day, probably 70-100 defendants. (The days our students were there, only one assigned counsel was working in a given courtroom.) The only reason advanced in support of this practice was economy. If individual lawyers had been assigned to represent individual defendants at the standard fee of \$25 or \$30 per "arraignment on the information," this would have cost the county an estimated additional \$1500-\$2000 per day.

Because a great deal of "plea bargaining" occurred at this point, it was a most "critical stage." It appears that in many cases the prosecutor's office exercised plenary power in deciding whether or not to reduce a charge from a felony, often "entering without breaking with intent to commit larceny" (carrying a five-year maximum) to a misdemeanor, say "entering without permission" (carrying a 90-day maximum) and frequently did so solely on the basis of one factor—prior criminal record.

The lack of justice, or at least the lack of "appearance of justice" was aggravated by judicial practice. For example, several justices mechanically sentenced every "guilty plea defendant" to time he "already served" up to that point and gave him credit for that time, so that he could walk out free—but with a misdemeanor conviction. In effect, these judges communicated to defendants with no prior records "waiting on line" the quid pro quo for pleading guilty. These tactics exerted enormous pressure on these defendants to plead guilty to a misdemeanor "just to get it over with" and "get out."

Whatever can be said by way of mitigation of the deficiencies in the early stage because of the "war atmosphere" is inapplicable to the "arraignment on the information" stage. The "assembly line" methods at this relatively late step in the criminal process seem least defensible of all.