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SCRUGGS, DONALD LEE

LYNDON BAINES JOHNSON AND THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (THE KERNER COMMISSION): A STUDY OF THE JOHNSON DOMESTIC POLICY MAKING SYSTEM

The University of Oklahoma PH.D. 1980

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THE UNIVERSITY OF OKLAHOMA

GRADUATE COLLEGE

LYNDON BAINES JOHNSON AND THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (THE KERNER COMMISSION): A STUDY OF THE JOHNSON DOMESTIC POLICY MAKING SYSTEM

A DISSERTATION

SUBMITTED TO THE GRADUATE FACULTY

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BY

DONALD LEE SCRUGGS

Norman, Oklahoma

1980

LYNDON BAINES JOHNSON AND THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (THE KERNER COMMISSION): A STUDY OF THE JOHNSON DOMESTIC POLICY MAKING SYSTEM

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I am solely responsible for the text which follows.

Columbia, Missouri, 1979 D.L.S.

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LYNDON BAINES JOHNSON AND THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (THE KERNER COMMISSION): A STUDY OF THE JOHNSON POLICY MAKING SYSTEM

PREFACE

This study seeks to accomplish four goals: to describe the political uses of ad hoc advisory groups in the advisory systems created by twentieth century American presidents;[1] to detail the unique contri-

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[1] The phrase "presidential advisory system" as used throughout this study connotes the network of individuals, boards, commissions, committees and task forces officially appointed by the president and serving him as channels of information about public policy matters, the administration of which he is charged by statute, constitution, tradition and/or in which he has developed an interest out of personal concern or political necessity. While this study deals with ad hoc advisory groups, the phrase "presidential advisory system" is meant to include the cabinet officers, all senior members of the Executive Office of the President and those persons, in and outside the national government to whom a particular president may regularly turn for policy advice. Obviously the constituent parts of a particular advisory system are administration-specific and vary over time within a particular administration. "Ad hoc" carries its dictionary definition throughout this work: "for this special purpose." The word "system" is being used here as a classification device rather than as a theoretical framework. It is meant to describe an arena of political action, a concrete setting in which a political process can be investigated. This use of the concept "system" is indebted to Lawrence K. Pettit. See his The Policy Making Process in Congress: Passing the Higher Education Academic Facility Act of 1963. (Ph.D. dissertation, University of Wisconsin, 1965. Ann Arbor: Michigan University Microfilms, 1966.)

butions of President Lyndon Baines Johnson to this pattern of political behavior; to advance an original interpretation of the work of one of Johnson's most important advisory groups, the National Advisory Commission on Civil Disorders (the Kerner Commission); to draw conclusions useful in enhancing the theoretical interpretation of the practice of American presidential politics.

B) The Presidential Advisory Commission

Information is the capital of modern politics. Its acquisition and use is a major source of political power. American presidents have been particularly adept information entrepreneurs, acquiring, investing and monopolizing the information necessary for the creation and execution of national policy.[2] Development and perfection of an elaborate system of advisors and advisory groups following World War II

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[2]Gene M. Lyons, "The President and His Experts," The Annuals of the American Academy of Political and Social Science 394 (March 1971): 36-38.

has been a principal means by which this monopoly has been achieved.

Presidential advisory commissions are both a product of and a tool in the development of the presidential advisory system. The presidential advisory commission is unique among the public policy mechanisms used by presidents. As Frank Popper has said:

> ...none of these (other) advisory mechanisms are (sic) really comparable to the Presidential Commission. None are (sic) so prestigious, none evolve such massive effort, none deal with such broad problems, and none so publicly advise the president. Indeed, no other advisory mechanism of the American government can be considered a true alternative to the presidential commission.[3]

It is important at this point to have in mind four characteristics of presidential advisory commissions which mark them as unique, significant tools in the evolution of presidential dominance of national policy making in the United States. First, the creation of an advisory commission is not dependent on the existence of a major political crisis. Presidents more often create commissions to head off perceived threats than as a response to an actual crisis. The distinction here is important for it is the ability of presidents to anticipate a crisis and quickly meet it with an agency of executive power that has been a key weapon in the presidency's winning of the intra-governmental war which has come to characterize post World War II national politics

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[3]Frank Popper, President's Commissions, (New York: Twentieth Century Fund, 1970), p. 6.

in the United States.[4] Second, the creation of a commission by the president is a common, almost routine, part of the political management of complicated and controversial policy issues.[5] Thomas R. Wolanin has summarized the number of commissions, commissioners and the duration of their service for the administrations of Presidents Truman, Eisenhower, Kennedy and Johnson. The pattern reflected in his work confirms the observation that presidents more and more routinely turn to these ad hoc groups for special help in times of political trouble.

TABLE 1: Frequency of Commissions by Administration

	HST	DDE	JFK	LBJ	OVERALL
Number of Commissions	17	9	12	28	66
Number of Commissions/Year	2.5	1.1	4.2	5.4	2.9

TABLE 2: Number of Members/Commission, by Administration

	HST	DDE	JFK	LBJ	OVERALL
Mean	9.2	12.1	12.0	15.7	13.1
Median	7	8	11	14.5	10.5

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[4]See Thomas R. Wolanin, "Presidential Advisory Commissions: 1945-1968" (Ph.D. dissertation, Harvard University, 1971), p. 6 for a similar development of this point. Wolanin's dissertation has been published as Presidential Advisory Commissions: Truman to Nixon. (Madison: University of Wisconsin Press, 1975).

[5]See Michael Lipsky and David Olson, MSS, III, p. 1. The manuscript was furnished to the author by Professors Lipsky and Olson. The published version of the manuscript is Commission Politics: The Processing of Racial Crisis in America (New Brunswick, N.J.: Transaction Books, 1979).

TABLE 3: Duration of Commissions in Months, by Administration

	HST	DDE	JFK	LBJ	OVERALL
Mean	8.7	7.1	12.5	15.1	11.9
Median	8	5	11	14.5	10.5

Source: Wolanin, "Presidential Advisory Commission," p. 259[6]

Third, presidential advisory commissions are intended to have a variety of positive impacts on the various elite leadership groups to whom the presidents think they must turn to enable them to secure policy support; they are not appointed, as often pictured, just to enable a president to avoid doing anything about a critical policy issue, or to confuse the public, the congress or other political elites about the nature of the problem.[7] Wolanin's work has shown that presidential advisory commissions have had significant effect on presidents, executive agencies, elite publics and, overall, have had marked, if marginal, impact on the

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[6]Since these data only represent presidential advisory commissions, it is not surprising to learn that during his first year in office President Richard M. Nixon's staff found one-hundred and sixty-nine distinct advisory bodies in the federal government, some of whose origins could be traced as far back as the Truman and Eisenhower administrations. (Jack Rosenthal, "Study Panels in the Capital," New York Times December, 12, 1969)

[7]Obviously, some presidents have appointed advisory commissions for these purposes and some commissions have accomplished these ends regardless of the purpose of the appointing president. The point here is that there is much more political and policy making intent and outcome to the appointment and work of presidential advisory commissions than the conventional wisdom allows us to believe. For the traditional point of view, see Andrew Kopkin, "White on Black: The Riot Commission and the Rhetoric of Reform," Hard Times 44 (September 15-22, 1969); George T. Sulzner, the "United States Commission on Civil Rights: A Study in Incrementalism in Policy Making," (Ph.D. dissertation, University of Michigan, 1967); Carl Marcy, Presidential Commissions (New York: Kings Court Press, 1945).

development of national policy.

> My research and analysis indicate that contrary to the conventional wisdom, commission reports and recommendations are responded to by governmental officials, in particular the President, and they do have an important impact in other areas, particularly as educators of the general public and specialized segments of it. The impact that commissions do have compares quite favorably with reasonable expectations of what impact they ought to have...overall, commissions have had significant marginal impact on the course of public policy in the period 1945-1969. That is, if no commissions had been created in this period, the general course of public policy probably would not have been altered in any major way, but would have been altered in innumerable lesser ways. This is not an inconsequential impact...[8]

Finally, as the substance of the following chapters will confirm, advisory commissions have been skillfully used by the presidents of the twentieth century as a gatekeeping device to thwart access by presidentially defined "non-representative" interest groups to the policy making councils of the presidency. Analysis of this use of ad hoc advisory groups to affect national policy making by enhancing some interest groups and inhibiting others, by granting and withholding access to the inner-councils of the presidential advisory system is a major theme running through the following chapters.

C) The Johnson Advisory System

The analysis of the uses of task forces and commissions in the domestic policy making system of the Johnson administration undertaken in this work has a three-fold purpose: 1) to demonstrate the major contributions made by the Johnson administration to the development

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[8]Wolanin, Presidential Advisory Commissions: Truman to Nixon, pp. 1-2 and p. 13.

of the dominance of the presidency in the initiation and implementation of national domestic policy making; 2) to analyze critically the use of task forces and commissions in the Johnson domestic policy making system and thereby provide a frame of reference for the case study of the Kerner Commission; 3) to substantiate the proposition discussed in Part IV that hegemonic rule by elites is a valid concept to use in describing the politics of the American presidential advisory system.

Lyndon Johnson brought to the presidency thirty years of Washington political experience during which he took his unique political background of New Deal liberalism and west Texas hill country populism and created an unsurpassed record of liberal legislative accomplishments.[9] The major consequences of this blend for Johnson needs to be identified if his development and use of of ad hoc advisory groups in his domestic policy making system is to be understood.

First is the importance of the nation's capital as a referential symbol in the political perception of Johnson and the other inheritors of the Roosevelt New Deal.[10] Washington was the locus of national politics and policy making leadership for New Deal liberals since Roosevelt first mobilized its latent resources for his attack on the economic depression of the 1930's and then for the allied effort against the Axis powers in World War II. Johnson and his

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[9]A variety of scholars have isolated these two factors in developing portraits of Johnson the man and the politician. The most important for this study is that of Doris Kearns, Lyndon Johnson and the American Dream, (New York: Harper and Row, 1976).

[10]J. Murray Edleman, Symbolic Uses of Politics (Urbana: University of Illinois Press, 1964), p. 6.

generation of Washington New Deal Democrats saw American political leadership as Washington based, national in character, and consequently in essential control of what they came to regard as the lesser political structures of the country. They held the presidency for all but the eight years of the Eisenhower administration and controlled the congress for all but four years since the first election of FDR; they created the New Deal-Fair Deal-New Frontier reforms and prosecuted two major wars; they had good reason, therefore, to assume that the public policy consensuses reached in Washington on major issues were by definition representative of the best interests of the people. All the major interests of the nation delegated to official Washington's inhabitants the right and responsibility to advocate, bargain, compromise and reach legitimate and binding agreements on policy matters of common concern. At the apex of this pyramid of popular representation was the president, the one person vested with a national mandate to govern; the president's task was to draw together the divergent public policy interests, and lead the congress in particular and the nation in general. Being, at least in part, what McPherson calls a Washington provincial,[12] Johnson throughout was a firm believer in this conventional wisdom of the New Deal establishment. He entered the presidency determined to strengthen it as the policy making center and to leave at least as great a personal imprint on the office as did his political patron and model, FDR.

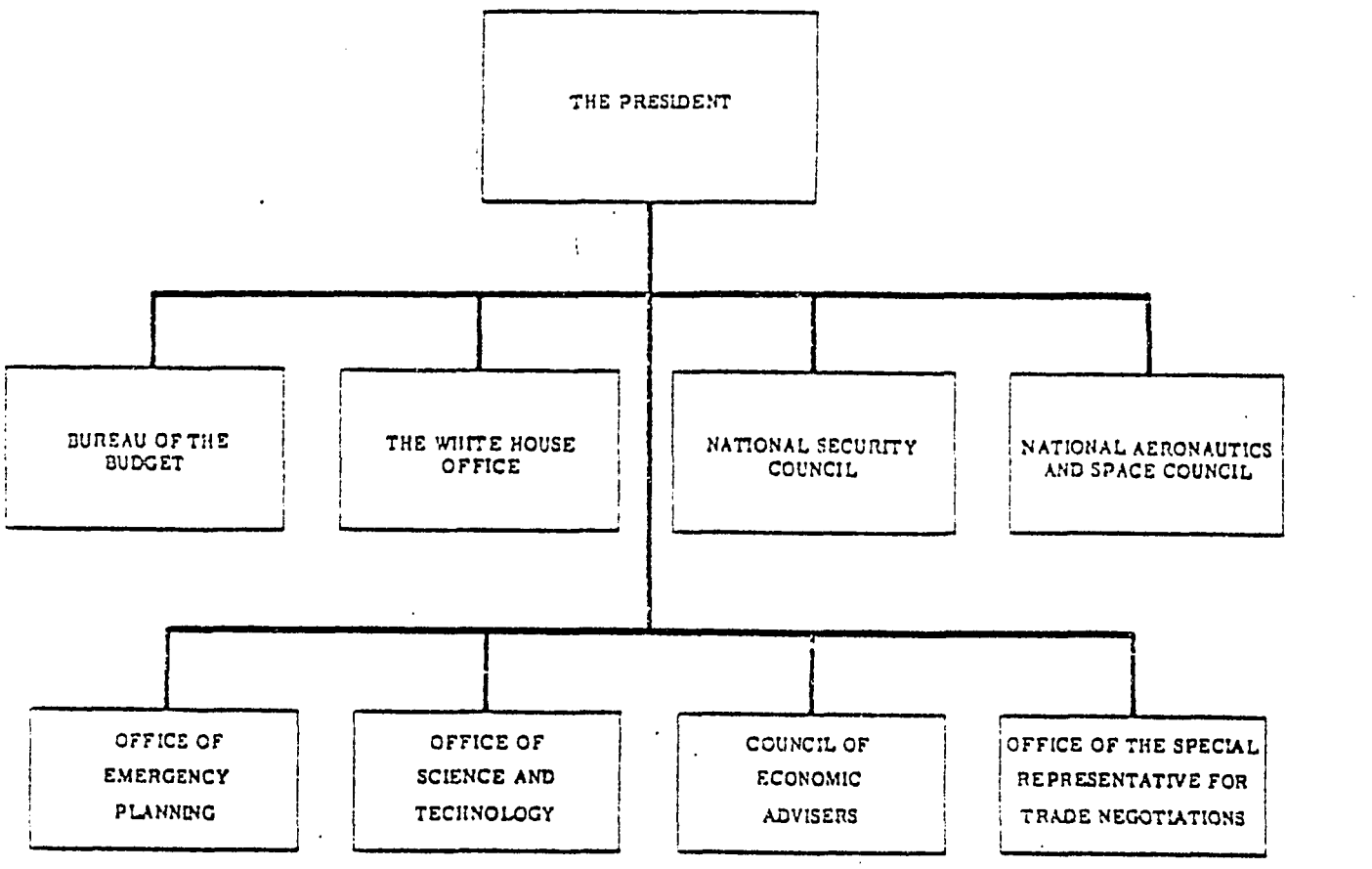
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[11] Harry McPherson, A Political Education (Boston: Little, Brown and Co., 1972), p. 176 - 178. Johnson lived out his whole political life in the cauldron of national politics.

A major illustration of Johnson's dedication to the expansion of the power of the presidency can be seen in the additions he made to tne Executive Office of the President (EOP). Created by FDR in 1935 as a means for overseeing and controlling the New Deal programs and agencies, the EOP grew under succeeding presidents until in 1963, when Johnson became the chief executive, it had the form represented below.

FIGURE 1

EXECUTIVE OFFICE OF THE PRESIDENT



Source: General Services Administration, Office of Federal Register, National Archives and Records Service, U.S. Government Organization Manual - 1963, p. 587.

To this Johnson added six major offices: Office of Economic Opportunity-1965, Office of Emergency Preparedness-1965, National Council on Marine Resources and Energy Development-1966, Council on Environmental Quality-1969, Council on Urban Affairs-1969, Office of Intergovernmental Relations-1969. Each was created to aid the president in developing and guiding through congress domestic policies regarded as critical areas facing the nation in the immediate future. These additions to the EOP reflected not only Johnson's sense of the priorities for the nation but also his concern for presidential control over the development of policy making and its administration.[12] The establishment of these offices also gives evidence of congressional agreement, or at least acquiescence, in the judgments of the president.

There was also a common cultural dimension which Johnson shared with other New Deal liberals which must be delineated before the full political import of ad hoc advisory bodies in the Johnson administration can be appreciated.[13] Johnson and the other leaders of "official"

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[12]It is interesting to note that the creation of a Domestic Council within the EOP, with duties parallel to those of the National Security Council, was carried out by the Nixon administration. In the Johnson administration all senior members of the executive branch were expected to further the Great Society goals and legislative program as part of their responsibilities. Johnson's senior White House staff, especially those related to the work of the task forces, served as an unofficial domestic council. Joseph Califano, in retrospect, however, saw the need for the Johnson administration to formally institutionalize its de facto domestic council. (See his comments on this, LBJ Library oral history tape and the transcript of the "Conference on Presidential Advising in the United States," in the possession of the Politics Department of Princeton University. Notes taken from Califano's remarks at the Princeton Conference are the possession of the author.)

[13]The insights developed in the following paragraphs are primarily drawn from Kearns, Lyndon Johnson and the American Dream.

Washington developed their leadership style and perfected their abilities in the period immediately following World War II - the decade of the 1950s. The style depended upon a mutual, intimate interplay of persons and groups who not only knew one another but who shared political and cultural values. Though the official bureaucracy was swollen by World War II, never to return to its pre-war size, official political Washington was composed of a relatively small group of persons. The values they shared were shaped by their common experience of the two world wars and the economic depression of the 1930s.[14] They developed what they defined as a realistic (derived from the work of Hans Morganthau and George Kennan) view of international politics upon which they developed policies designed to use American economic and military power to contain and control what they perceived to be the expansionist designs of the communist powers in the 1950s as they had those of European fascism and Japanese imperialism in the 1940s. They also drew upon a personal appreciation of the impact of a national economic collapse on persons and social institutions. For Johnson, in particular, the Depression was a normative event. His commitment to his Great Society programs was grounded on his personal experience with the privation of the Depression and the

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[14]They obviously differed on specific interpretations and formed into various shifting political blocks accordingly, but there was no disagreement about the value of the Depression and World Wars I and II to the political world in which they now lived. Each was able to call upon regionally and personally specific events which shaped individual values; but the point to be emphasized here is that all shared these three events in common, a phenomenon which would separate them from those who would contest them for national leadership in the 1960s and 1970s.

personal and political responses to it developed by his family and neighbors in the area of Texas in which he was raised. These two events conditioned the ways in which the products of the New Deal saw the world, the lenses through which political reality was refracted for them.

The post-World War II cultural-political context has been ably analyzed in detail by, among others, Daniel Bell and Richard Neustead.[15] They saw the political culture of the 1950s as one in which the political-ideological struggles of the 1930s and the 1940s had given way to political battles over very concrete, tangible political goals and goods.[16] The basic values of the society were assumed, not contested. A discussion of the question of whether or not there were real value conflicts going on in the society during the period of the 1950s is beyond the scope of this study; what is relevant to this discussion, however, is the fact that the political

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[15]Daniel Bell, The End of Ideology (New York: The Free Press, 1960). Richard E. Neustadt, Presidential Power: The Politics of Leadership (New York: Wiley Press, 1960).

[16]In terms recently developed by James MacGregor Burns, the leadership style perfected by the inheritors of the New Deal was transactional, an exchange of valued things in which "Each party to the bargain is conscious of the power resources and attitudes of the other. Each person recognizes the other as a person. Their purposes are related at least to the extent that the purposes stand within the bargaining process and can be advanced by maintaining the process. But beyond this the relationship does not go. The bargainers have no enduring purpose that holds them together; hence they go their separate ways. A leadership act took place, but it was not one that binds leader and follower together in a mutual and continuing pursuit of a higher purpose." (Emphasis in the original) James MacGergor Burns, Leadership (New York: Harper and Row, 1978), pp. 19-20.

leadership and the major academic observers of the time understood these struggles to be over and acted and wrote accordingly.

Consequently, Johnson and his political contempories justified their positions and power by pointing to their successful experience in conducting the necessary transactions to deliver the payoffs of the political system to their constituents and the nation as a whole over a period of three decades of war and peace. If they would not or could not deliver, they expected to be replaced by someone who would and could. Theirs was a government of circulating elites; citizen participation in the national policy making process was limited to voting for those persons who would be a part of governmental Washington and membership in groups whose leaders were recognized as being part of the non-governmental establishment. In this scheme, votes for or against a particular candidate or the decision to take membership in groups with political influence was based on two criteria: 1) past ability to deliver or obtain political benefits for constituents or members, and 2) confidence in the view of the political future generated by the politician or the interest group. Politics for Johnson and his peers, then, was a contest within and between groups of political elites who struggled over who would distribute the political goods of the society; the selection of the nation's political leadership from among the competing elites was the essence of the democratic process. Further, and most important for this study, Johnson saw the president as the person who determined the character and the boundaries of the contest.

In this scheme the major interests and the groups representing

them within the nation were seen to be fixed. Innovative interpretations of those interests or challenges to interest group leadership were to be carried out "within the system" (i.e. within and between the established groups themselves). In theory, the evolution of new groups representing novel expressions of the major interests was tolerated and systemically absorbed, but it was assumed that no challenge to the values underlying the system would be tolerated. All such challenges were by definition subversive.

The conventional New Deal wisdom faltered and eventually broke in the Johnson administration under the pressure of two issues which refused to be resolved by the political and administrative methods of the 1950s: Vietnam and the domestic racial turmoil. Johnson firmly believed that his ability to advance his domestic programs through the congress with the support of a majority of the major interests of the nation depended on his and the nation's ability to be "tough" on what he defined as communist aggression abroad. He thought that any hint of "softness" toward Russian and Chinese expansionistic designs not only endangered the country, but eroded the political support he needed to enact and implement legislation aimed at domestic social change.[17] Thus the conventional wisdom which dictated Johnson's actions allowed debate and difference on domestic policy as long as a firm hand was held on the accepted general lines of foreign policy. As long as significant numbers of persons in the

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[17]McPherson, A Political Education, p. 19.

nation accepted the conventional wisdom and its rules for the political game Johnson could and did attempt to provide "guns and butter." When, however, the challenge came from representatives of emerging domestic interests in the society who attacked the goals (victory in Vietnam and an integrated society planned by the Washington leadership) and the means (unlimited use of American military and economic power and administrative, legislative and court decisions) used to achieve them, the governing elite reacted by refusing admission of the new interest representatives to the management of the polity and by expunging those whose dissent to official policy went beyond the levels of their tolerance. When Johnson was unable to resolve this conflict, rather than further threaten the presidency itself, he abdicated his option to run for a second term. Burns well states Johnson's dilemma.

> ...in meeting to some degree the economic needs of blacks and others he had unwittingly aroused higher needs and values that he could neither comprehend fully nor gratify. On the other hand, in not meeting the demands of the anti-Vietnam militants he had generated new dimensions and intensities of conflict, thereby producing a whirlwind he could not control. His "abdication"...was a simple recognition of the fact.[18]

It was in the summer of 1967 while the city of Detroit was in flames that Johnson thrust the Kerner Commission into the political mix developing around the disorders. Appointed to the task was a group of eleven persons each chosen because she/he was a significant person in one or more of the major interest groups which the White House determined had a significant interest in the civil

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[18]Burns, Leadership, p. 424.

disorders.[19]

The analysis of the Kerner Commission undertaken in this work has three objectives: 1) to provide evidence to support the thesis that presidential advisory commissions are effective tools for gaining presidential advantage over the congress, the executive branch, and particular non-elite groups in the acquisition and dissemination of information on contested public policy issues; 2) to reinforce the contention that the Johnson administration contributed significantly to this pattern of dominance; 3) to provide a case study of the ability of non-established elites to obtain access to the public policy making system through presidentially established political channels.

D) Resources and Methodology

This study is unique in two ways. First, the previous work done on the Kerner Commission reflects the point of view of the commission's senior executive staff members and the White House staff members whose work assignments directly involved them in the work of the commission. This analysis adds a new perspective--that of the commissioners, the commission's senior executive staff members and the White House staff members whose work assignments directly involved them in the work of the

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[19]Chairman, Otto Kerner, Governor of Illinois; Vice Chairman, John V. Lindsay, Mayor of New York City; Fred R. Harris, United State Senator, Oklahoma; Edward W. Brooke, United States Senator, Massachusetts; James C. Corman, United States Representative, 22nd District of California; William M. McCulloch, United States Representative, 4th District of Ohio; I.W. Abel, President, United Steelworkers of American (AFL-CIO); Charles B. Thornton, Chairman of the Board and Chief Executive Officer, Litton Industries, Inc.; Roy Wilkins, Executive Director, National Association for the Advancement of Colored People; Katherine Graham Peden, Commissioner of Commerce, State of Kentucky (1963-67); Herbert Jenkins, Chief of Police, Atlanta, Georgia.

commission. The incorporation of this perspective into existing studies of the commission completes the scholarly treatment of its work.[20] Second, the work of Lipsky and Olson, the best of the studies done on the commission to date, concludes in part that the nation as a whole reacted more favorably to the report of the commission than did the officials in the executive and congressional branches of the government. The method of analysis used in this study is similar to theirs, but developed independently of them. The text to follow reveals considerably more positive response from the Washington political establishment then theirs or any other of the studies on the commission carried out to date. The findings of this study present students with a more comprehensive picture of the political importance of the commission in the context of the Johnson administration and provides the basis for drawing more comprehensive theoretical inferences.

Part I contains a review of the published literature on presidential advisory commissions. In it also will be found reference to previously unpublished material obtained from the Hoover, Truman, Eisenhower and Johnson presidential libraries. An addendum gives attention to the development and use of state and local riot commissions--a unique genre of American advisory commissions, the understanding of which is necessary for complete comprehension of presidential advisory commissions. Part II details how Johnson used his ad hoc advisory system to control the flow of public policy making information in the

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[20]A major work overlooked by other students of the Kerner Commission is Robert Shallow, "Social Scientists and Social Action from Within the Establishment," Journal of Social Issues 26 (Winter, 1970).

national government. Part III contains a case study of the political role played by the Kerner Commission in the Johnson Administration. Part IV contains concluding observations and suggestions for future study.

All the papers open to scholars pertaining to the Kerner Commission on deposit with the National Archives in Washington, D.C. and in the Lyndon Baines Johnson Library in Austin, Texas, were examined for this study. Interviews with all members of the commission and its senior staff were solicited and were conducted with those willing to be interviewed and whose schedules permitted it.[21] Fred R. Harris, then junior Senator from Oklahoma, and a member of the commission, introduced the author to members of the commission staff who in turn were helpful in getting interviews with others. The interview schedule was dictated by the research funds available and the schedules of the potential interviewees. The methodology of the individual interviews followed, in general, that of Dexter Lewis with personal modifications based on a number of years experience in verbatim recording of counseling interviews.[22] Each of these interview sessions was structured as a casual conversation. Key questions, constructed during the initial research period at the National Archives, were held in mind and inserted in the conversation when it seemed appropriate. No attempt was made to make any notes while the

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[21] See bibliography for list of interviewees.

[22] Lewis A. Dexter, Elite and Specialized Interviewing (Evanston, Ill.: Northwestern University Press, 1970).

conversation was taking place. Immediately following the interview, however, the conversation was recorded in as nearly a verbatim manner as possible, keeping in mind the respondent's comments on the subject matter of the key questions. Those comments were recorded separately and in the context of the place they occurred in the total interview. Each interviewee requested that he not be quoted directly.

Presidential archival research and elite interviewing constitute an exceedingly dangerous data base upon which to develop a scholarly explanation of a major political event. A variety of problems plagues the researcher who must use such materials and methods: the possibility of missing documents, copies of which will probably be found by some enterprising historian in the future; the frustration of finding files closed by what appears to be a capricious and self-serving decision made by members of the president's family or one of the agencies of his administration; the haunting fear that despite weeks of reading files, some important set has been overlooked; the equally haunting feeling that follows the recurring thought that if the "right" question had been asked at the right time new information might have been forthcoming; and the more realistic thought that the interviewees had working at the time of the interview that selective memory process which seems to be an innate component of the psychological make-up of American politicians. Verification of the data gathered for this study was done by the standard means of checking interview data and documentary evidence against one another and the two against the work of other scholars and observers. Where the latter was not available logical inferences were made from the two primary sources. Follow-up

interrogations of selected interviewees were conducted. In the end, alas, one must make those educated guesses which seem to make the most sense given the material at hand and accept with equanimity that the historian will have the final say on these matters.

One final word of caution is necessary. This study is not a study of the civil disorders of 1967 (i.e. with the ways in which they were handled by the various governmental bodies and the degrees to which the findings of the Kerner Commission were accurate reflections of the systemic problems of the cities in which the disorders occurred). Rather, to repeat what has been said above, it aims at explaining the place of the Kerner Commission in the policy making politics of the Johnson administration, exploring the implications that role may have had on the crisis of public order which eventually forced the President to step down, and explaining the development of the uses of presidential advisory commissions to expand the power and influence of the presidency.

PART I

POLITICAL USES OF THE AD HOC ADVISORY GROUP IN THE PRESIDENTIAL ADVISORY SYSTEM: AN OVERVIEW

CHAPTER I

THE AD HOC ADVISORY GROUP IN THE PRESIDENTIAL ADVISORY SYSTEM

A) Major Contributors: A Short History

The discussion which follows traces the development of ad hoc groups within the presidential advisory system and links that development to the expansion of presidential power. Because the use of such groups is relatively new and every administration is idiosyncratic by definition, there is a great variety and unevenness in the story. The choice of a selective chronological approach to this discussion, therefore, has been dictated both by the data and a desire to display the major contributions of particular administrations to the evolution of the presidential advisory commission.[1]

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[1] An important caution must be observed before proceeding. The word commission as used by various presidents, and in the scholarly literature prior to Carl Marcy's Presidential Commissions, was not precisely defined. It usually meant any ad hoc group chosen by a president to advise him on a particular policy matter. During the Truman administration the term began to be used more carefully as will be demonstrated in the text which follows. A precise definition for this study is presented on page 52.

In arguing before the congress on behalf of the establishment of the United States Commission on Civil Rights, then Attorney General Tom Clark described governmental advisory bodies as a natural development accompanying the complex expansion of the presidency:

> The establishment of an advisory commission or board to advise and assist the President is, of course, not an unusual action. With the growth of the Nation and the increases in the complexities of life and civilization, it has become increasingly necessary to make available expert agencies to handle the highly technical and involved programs naturally resulting... Advisory commissions and boards not charged with the administration of a statute have also been created, serving the President, the Congress and the Nation in the formation of policies and programs...[2]

The beginning of this pattern of development, which some have called "government by commission",[3] can be traced to the administration of George Washington. Alexander Hamilton's use of studies of the manufacturing capacity and potential of the new nation[4] and the President's appointment of a commission to advise him on ways to settle the Whiskey Rebellion of 1794[5] are perhaps the earliest examples we have of the use of such advisory bodies by a president. But, these earliest instances are isolated ones. We must look to the early years of the twentieth century for the beginning of the patterns to which we

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[2]Sulzner, "The U.S. Commission on Civil Rights," p. 9-10.

[3]For instances see George B. Galloway, "Presidential Commissions," Editorial Research Reports 20 (May 1931) and Daniel Bell, "Government by Commission," The Public Interest 3 (Spring 1966).

[4]James Macgregor Burns, Presidential Leadership: The Crucible of Leadership, (Boston: Houghton Mifflin, 1965), p. 10.

[5]Lipsky and Olson, MSS, III, 1.

have become accustomed.[6]

Vigorous development of the presidential advisory system as a major tool in the expansion of presidential power began with President Theodore Roosevelt.[7] As part of his desire to make the presidency a steward of the nation's political power and natural resources, Roosevelt appointed ten commission-type advisory bodies between 1901-1909[8] to aid him in developing an adequate data base which he planned to use in helping him secure support for the public policies in which he had special interest.[9] Roosevelt wanted specialized information to strengthen his appeals for support from the elites with particular interests in his conservation and pet political projects. The possession of specialized information put him in a commanding position in the competition with congress for leadership in these areas of public policy. Taft and Wilson accelerated this development. Taft appointed sixty-three boards,

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[6]The Civil Service Commission (1887) and the Interstate Commerce Commission (1887) were the first of many stationary commissions established by the federal government for the purpose of policy making, regulation and limited adjudication of legally defined disputes. The oldest appointed advisory commission still functioning is the Board of Visitors of the Bureau of Standards, established by Congress in 1901. (James A. Couture, "Public Advisory Boards in the Executive Branch of Government" (M.A. thesis, American University, 1953)). During the first thirty years of the twentieth century (Roosevelt through the Coolidge administrations) five hundred federal executive agency advisory commissions were appointed (Galloway, "Presidential Commissions," p. 353), a significant fact to add to the catalogue documenting the expansion of the federal government in American politics and the rise of the political dominance of the executive branch.

[7]Couture, "Public Advisory Boards," p. 25 and Wolanin, "Presidential Advisory Commissions," pp. 6-7.

[8]Galloway, "Presidential Commissions," p. 352.

[9]Couture, "Public Advisory Boards," p. 25.

commissions and committees and Wilson kept pace by naming sixty-four in his first administration. Close to one-fifth of all the commission-type bodies appointed during the 1901-1929 period (ninety-six) were named by Wilson during his term in office.[10] An examination of President Herbert Hoover's imaginative use of advisory bodies provides evidence supporting Gordon Hoxie's observation that "...the Hoover presidency marks the transition from the old presidency to the new." However, as often happens with political innovators, the results of his efforts were quite different from his intent.

Important to this study, but not a characteristic use of commissions by the Hoover administration, was the creation of the National Commission on Law Observation and Enforcement (the Wickersham Commission). Established in the context of the Prohibition period, this commission was created to focus authority and responsibility for developing national policy, consistent with the Eighteenth Amendment to the Constitution, in the executive branch of the national government. The commission was successful in realizing this goal. It fixed the locus

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[10]The Wilson administration also made a significant contribution to the development of the statutory commission by sponsoring the passage of legislation establishing the Federal Trade Commission, the Federal Reserve Board and the U.S. Tariff Commission. (Galloway, "Presidential Commissions," p. 352.)

[11]Gordon R. Hoxie, "The Presidency in the 1970's", Proceedings of the 1971 Montauk Symposium on the Office of the President of the United States, ed. Gordon R. Hoxie (New York: Center for the Study of the Presidency, 1971), p. 1. Hereafter cited as the Montauk Symposium, 1971.

of authority and policy-making in matters pertaining to national law enforcement in the executive branch.

More representative of the Hoover style was the Research Commission on Social Trends headed by Wesley G. Mitchell which produced numerous social and policy studies designed to aid the nation in dealing with the Depression. The commission and its reports were harbingers of the policy research and development advisory system which was more fully developed by his successors; in particular, many of the New Deal social policy innovations were indebted to the method and product of Mitchell's work. The commission was composed of experts from business and the academy, freely giving of their skill and time for the common good, as President Hoover might express it.

The development of the President's Emergency Committee on Employment (PECE) and the President's Organization on Unemployment Relief (POUR) were most representative of the kind of advisory body with which Mr. Hoover felt comfortable and mark his major contribution to the development of the use of presidential ad hoc advisory commissions. Hoover wanted the presidency to facilitate a truly national effort aimed at developing a wide range of socio-economic policies to confront the Depression. By combining, through PECE and POUR, the resources of the private sector of the economic and voluntary social service organizations, Hoover expected a plan and a proposed procedure to be produced to stablize the economy and build a basis for recovery from the ravages of the Depression. Each advisory group was composed of large numbers of presidentially appointed persons representative of the major national

interest groups, loosely coordinated by a small national staff, and charged with making policy recommendations to themselves which would be facilitated, but not regulated and administered, by the federal, state and local governments.[12]

Hoover's PECE/POUR model for dealing with critical domestic policy issues was supposed to move the locus of authority and responsibility for such matters from Washington. What these groups did was to focus attention on the president as the initiator of such efforts to deal with those kinds of problems; the effort produced little in the way of achievment of its goals regarding the Depression, but contributed to a public and congressional demand that the president do more than provide facilitation and administration. Regulation and coordination were demanded.

Franklin D. Roosevelt continued the policy of Hoover of naming commissions and other advisory groups to aid him in dealing with thorny domestic issues arising in both war and peace.[13] But, he also used them to strengthen his presidency as the center of political-policy action in the nation. Roosevelt's development of the presidential advisory system was central to his development of presidential power. "He sought to maximize the office as a vehicle for him. His interest lay in

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[12]Lists of the members of POUR, its staff, statements of purpose, minutes of meetings and adopted policy resolutions can be found in the Herbert Hoover Library PACE/POUR papers, Appendix I, #40-47.

[13]By 1940 over 100 boards and commissions had been established by the president, cabinet members and congress. (See Marcy, Presidential Commissions, p. 4).

strengthening his hold over policy."[14] Neustadt identifies four principles underlying FDR's administrative style as president. First, he was "...concerned for his position as the man in the White House". The second principle was closely related. He assumed persons around him to be ambitious and under constant pressure to "go into business for themselves." He saw this temptation becoming particularly strong when the presidential aide thinks, or knows, that he is dealing regularly with business the president feels to be "his". Third, Roosevelt saw the need for many advisers, multiple antennae, as Neustadt defined them. Fourth, FDR could find no place in the White House for a strong chief of staff such as Sherman Adams or H. R. Haldeman. He constantly shifted appointments and assignments to minimize the temptation inherent in the second principle and to provide himself with constantly changing sources of information.[15] Neustadt's four principles provide valuable insights into how Roosevelt maintained control over his administration and the intra-Administration politics of his tenure of office and moved the presidency to a position of dominance in national policy-making. Advisory groups were a central factor in that development. A good example of his use of advisory commissions, taken from his first administration, was the President's Committee on Administrative Management (the Brownlow Committee), 1939.[16] This committee recommended and Roosevelt

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[14]Richard C. Neustadt, "Approaches to Staffing the Presidency," The Presidential Advisory System, ed. Thomas E. Cronin and Sanford D. Greenberg, (New York: Harper and Row, 1969), p. 18.

[15]Ibid., pp. 12-16.

[16]See Wolanin,"Presidential Advisory Commissions" pp. 6-7, and Neustadt, "Approaches to Staffing the Presidency," p. 12 for similar discussion of the Brownlow Committee.

approved a reorganization of the White House staff.[17] It provided for substantial staffing for the president, distinct from the other parts of the executive establishment.[18] A major product of the Brownlow Commission work was the establishment of the Baruch Commission which studied and reported on the supply and strategic importance of rubber in World War II. Baruch's group firmly established in the public's mind and that of the rest of the government that the presidency had command of the problems of supply and demand of rubber and was justified in the demands it was making on the public and private sector of the economy concerning its conservation, production and use.

Harry Truman contributed most to the pattern of expanding the policy-making power of the Office of the President by revising and enlarging the presidential advisory system, particularly the use of advisory commissions. He distinguished between agency committees, private inter-agency task forces and public presidential advisory commissions. The title, advisory commission, was reserved for those bodies charged with consideration of highly visible, complex policy issues in which Truman had a personal interest. During the Truman period, presidential advisory commissions were instrumental in the president's attempts to achieve two basic policy goals: secure the domestic advances of the Roosevelt New Deal through implementation of the Fair Deal program and secure the office of the president from encroachments (particularly from Congress) upon his position of political

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[17]Neustadt says that the committee wrote and FDR edited the report. See his "Approaches to Staffing the Presidency," p. 12

[18]Ibid.

dominance in the initiation and implementation of public policy. In the Cold War political ethos in which the Truman Administration existed, defense and related matters provided the greatest challenge to the president's actualization of the latter goal.[19]

Truman used advisory bodies to aid him and his cabinet on those matters he saw to be of serious import to the security of the nation, and the economy and the social well-being of the population. The ways in which he balanced the political demands implicit in these goals can be seen in his approach to the development of national policy regarding women in the post-World War II-early Cold War period. Truman's support of civil rights is well known and documented. His concern for the rights of women in particular is not as well recorded. The president and his advisors realized that if the nation was to mobilize large numbers of troops for the Korean War and generally to implement the policies implicit in the Cold War containment policy, significant numbers of women would have to be re-introduced to the armed forces and the defense industry labor force. The Labor Department was directed to appoint a Women's Advisory Committee on Defense Manpower and a special consultant to the Secretary of Labor for the recruitment of women into the defense labor force.[20]

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[19]Examples of Commissions designed to achieve both goals were the President's Advisory Commission on Universal Training (1946-47), the President's Committee on Civil Rights (1946-47), the President's Committee on Equality of Treatment and Opportunity in the Armed Services (1949-50), the President's Commission on Migratory Labor (1950-51), the President's Commission on Internal Security and Individual Rights (1951), the President's Commission on the Health Needs of the Nation (1951-52), and the President's Commission on Immigration and Naturalization (1952-53).

[20]See "Mrs. Norton Takes Post as Tobin Aide," New York Times, March 20, 1951, found in Official File, 151, Harry S. Truman Library.

Further, the Defense Department was directed to establish the Defense Advisory Committee on Women in the Armed Services.[21] These two bodies informed the executive branch of the various problems encountered when large numbers of women were re-introduced to the defense industries and the armed forces. They also were useful in developing a public concern for special problems of women and thereby creating some sensitivity to women's problems in general.

Truman's efforts to protect the presidency from encroachment by the congress can be seen in the life and work of the President's Commission on Internal Security and Individual Rights (the Nimitz Commission) in 1951. This commission's efforts to educate the public and congress about the character of the controversies over loyalty oaths raging in 1950-1951 and their impact on domestic politics is well known. However, documentation of the intent of the president in appointing the commission and his seeming refusal to back it, thus forcing the resignation of its membership, has been hard to come by. The public materials appearing to date have been predictably self-serving.[22] The records of the commission available at the Truman Library shed some light on the presidential intent in appointing it.[23] The president

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[21]See Official File 1285-FF, Defense Advisory Committee on Women in the Armed Services, Harry S. Truman Library.

[22]e.g. Harry S. Truman, Memoirs of Harry S. Truman, 2 Vols., (New York: Doubleday, 1956), II:283-285. Truman fails to note that in the face of mounting pressure on him and the members of his commision he agreed to amend Executive Order 9835 in a way that made it easier to dismiss civil service employees for loyalty reasons.

[23]The file Minutes of the President's Commission on Internal Security and Individual Rights (The Nimitz Commission) 1951 contains the most helpful information.

appointed the commission as an aid to him in his struggle with the congress over the internal security program. The McCarren Act[24] which provided for a federal employees' loyalty oath, had been passed over a presidential veto. The House Committee on Un-American Activities and the Senate Committees on Appropriations and the Judicary, together with the Loyalty Review Board of the Civil Service Commission, were demanding the removal from office of "subversive" employees of the various agencies of the executive branch. The Nimitz Commission was an attempt to put a prestigious group of citizens into this struggle to pursue presidential concerns over the civil rights of government employees and to help him protect his branch of the government from encroachment by the legislature. Truman, on his authority as chief executive, gave the commission direct access to the security files of the attorney general, the Federal Bureau of Investigation and the various executive department loyalty boards. In doing this he provided the commission with access to information committees of both houses of congress desired and to which they had been denied access by the White House. Truman ordered the Bureau of the Budget to give the commission a thorough briefing on the background of the McCarren Act and the reasons for the presidential veto of it.[25] The exchange of letters between Admiral Nimitz and Senator McCarren reveals the extent of the struggle and how a commission can

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[24] Internal Security Act of 1951, PL 81-831, 50 USCA 781.

[25] See Minutes of Nimitz Commission, February 13, 1951. Also see Truman, Memoirs, II:284 for the president's explanation of his veto. He maintained that his intelligence agencies recommended against signing the bill, saying its enforcement would complicate their work.

stand between the president and his opponents and, if nothing else, buy time for the president to find another way of approaching the problem. McCarren wanted to see the executive department security files to which the commission had access.[26] The commission refused, standing on the constitutional ground of separation of powers. In retaliation McCarren blocked a request by the commission to have conflict of interest regulations waived for the members of the commission and the senior members of its staff.[27] Faced with a conflict which they had no chance of winning and finding a decreasing amount of room available to them in which to work, the members of the commission resigned en masse. While the Nimitz Commission was unable to accomplish all the president wanted from it, it did make a strong attempt to maintain the prerogatives of the executive branch and did provide the president with time to develop a strategy for engaging congress on this issue on different grounds.[28]

President Eisenhower developed an advisory system which used fewer commissions than any other of the post-World War II presidents.[29] The commissions he did appoint were far-reaching and instrumental in focusing attention on the White House as the place where all determinations are made in national policy making. A good example is the Commission on Governmental Organization. It was appointed to enhance the authority

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[26]Ibid. Letters of February 15 and 21, 1951 between McCarren and Nimitz.

[27]A privilege granted earlier by congress to the staffs and members of the Kefauver and Hoover Commissions.

[28]See Truman, Memoirs, II:288-290.

[29]See Table 1, p. 4.

and responsibility of the presidency. Eisenhower's first objective for the commission, set out in his mandate to it, stated this intention firmly: "Strengthen(ing) the executive authority of the president and of the heads of the Departments and Agencies (in order to) facilitate administration within the executive branch."[30]

Eisenhower, like Roosevelt before him, was conscious of the temptation of cabinet officers and others to use advisory bodies to their political advantage, which was not necessarily to his. In February 1955 he had the Secretary of the Cabinet, Maxwell M. Rabb, send a note to three cabinet officers (Douglas McKay of Interior, Sinclair Weeks of Commerce, Arthur Flemming of the Office of Defense Mobilization), with copies to all members of the cabinet, informing them that all advisory groups established to study matters which had a clear inter-departmental concern (e.g. water, transportation, telecommunications and energy) were to be referred to in the future as "Presidential Advisory Committees" rather than the previous title "Cabinet Committees."[31] Such a change in name for these "in-house" groups allowed the president to secure credit for their works by making them public whenever it was to his advantage to do so and to free members of such groups from parochial departmental concerns by affirming a personal interest in their work; by Eisenhower's action they became instruments of presidential purpose.

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[30]Accession Document, President's Advisory Commission on Governmental Organizations: Records, 1953-61, p. 2. Dwight David Eisenhower Library.

[31]Rabb memo to the above cabinet officers, February 5, 1955. Found in James Mitchell papers, 1954 White House, Misc., Dwight David Eisenhower Library.

Eisenhower commented on his style of gathering advice from non-governmental persons in a letter to the then Senate Majority Leader Lyndon B. Johnson during the controversy which developed over the Gaither Commission Report:

> ... from time to time the President invites groups of specifically qualified citizens to advise him on complex problems. These groups give this advice after intensive study, with the understanding that their advice will be kept confidential. Only by preserving the confidential nature of such advice is it possible to assemble such groups or for the President to avail himself of such advice.[32]

A more detailed critique of values and handicaps of secret task force reports can be found in Chapter 5. At this point it is important to note that the Gaither Committee was an important tool for President Eisenhower in maintaining his position of dominance in the intra-governmental struggle over defense policy. Halperin succinctly described the result of the struggle when he noted that the Gaither Committee

> ... fulfilled its primary purpose of providing an additional source of information for the President unencumbered by future and past policy responsibility. The operating agencies can only view such committees as threats to their prerogatives. But to a strong, vigorous President they could prove to be a powerful tool for overcoming bureaucratic and political opposition to the implementation of vitally needed programs.[33]

Like his predecessor, but more like the pattern which will be seen in the Johnson Administration, President Kennedy relied heavily upon private task forces. This was a pattern he had developed while

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[32]Letter, the President to Senator Lyndon B. Johnson, January 21, 1958, Official File, 133R, Dwight David Eisenhower Library.

[33]Morton H. Halperin, "The Gaither Committee and the Policy Process," The Presidential Advisory System , eds. Thomas E. Cronin and Sanford D. Greenberg, (New York: Harper and Row, 1969), p. 208.

in the Senate.[34] He, like many other Senators, had informal groups of advisors funneling policy suggestions to him which he and his senior staff would evaluate in terms of political and legislative potential. He established twenty-nine such task forces to function between the time of his election and inauguration as president. He continued this use of task forces throughout his administration.[35] Because of the close connection between this modus operandi and that of the Johnson Administration, careful examination of the system will be saved for Chapter 5. Suffice it to say at this point that the members of the Kennedy Administration were not ignorant of the value of a carefully expanded advisory system in the strengthening of their president's overall political position.

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[34]Charles L. Capp, Montauk Symposium, 1971, p. 80-83.

[35]Lee C. White describes how the Kennedy White House staff normally went about this task. Theodore Sorensen had been named by the president to head an informal White House domestic policy program group. The group's responsibilities included the preparation of legislation, the preparation of special messages for Congress in support of those programs, to work with the congressional liasion office in the movement of these pieces of legislation, to concern themselves with the policy issues that arose out of existing programs as well as those arising from the proposed programs. This group never grew larger than four persons. Many of the programs during the first months of the administration came from ideas generated during the campaign, especially from the task forces set up to advise the candidate. The Sorensen group served as the filter for the various policy recommendations coming from within and outside the administration. The group gave special attention to matters initiated by Congress. The Sorensen group was commissioned to make such proposals a part of the president's program. It was this "filtering" process which became one of the major parts of the Kennedy administration's efforts to maintain presidential dominance in policy matters. The Montauk Symposium, pp. 69-70.

The Nixon Administration was wed to the task force method of getting innovative ideas into its policy making process. Nixon, following the Kennedy model developed ten years earlier, created sixty-eight task forces to advise him on major policy issues during the campaign. After assuming office Nixon used a variation of this scheme as a way of gathering data for his annual State of the Union message. In the preparation of the 1970 message, for instance, he appointed seventeen task forces composed of 225 individuals drawn from those parts of the "private" domestic sector to which the administration intended to direct parts of the message. These groups were set to work in the early fall and expected to report by December 1. They were each assigned a small budget and a small group of executive department personnel whose task it was to provide administrative help, and to inform members of the task force of existing administration policies and the prevailing budgetary constraints accepted by the White House in the areas under consideration. Following the pattern developed in the campaign, the names of task force members were made public, but the particular work assigned to individuals was not. Minority reports were encouraged by the administration. Because there was no announced White House policy concerning reports "going public" (in practice, this decision was arrived at through a bargaining process between the members of the task force and a White House representative) the number of dissenting opinions increased when the work of the task force was made public. Many members felt the need to file minority reports in public even though they were in the majority throughout the private discussions, writing and voting

on the document. The resulting documentation was then processed through the White House to become part of the data input for the development of the speech.[36]

A second and more important intention and consequence of this way of structuring the presidential advisory system was that it became a vehicle for enabling the White House and the major executive agencies to communicate existing and future administrative policies to the interested elite publics. Given the time constraints on these State of the Unions task forces, the small budgets allocated them, and their dependence on the executive department for staff and vital information, it can reasonably be concluded that the Nixon administration found this consequence of its advisory system to be of great value; the exposure of the representatives of significant private interest groups to the present policies and future plans of the administration not only created better lines of communication between the two, but also allowed the development of the patterns of cooperation and support essential to the president's ability to maintain his primary role in policy development and implementation.

In summary, these ad hoc advisory bodies within the presidential advisory system fulfilled the major political task for which they were appointed; they were successful agents in the attempt by particular presidents to establish the presidency as the primary locus of policy information, expertise and development for the nation. Because of the

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[36]Ibid., see pp. 81-82 for a general discussion of the Nixon method of using such advising groups.

stature conferred on them by virtue of presidential appointment and enforcement and the degree to which they were perceived to be representative, these advisory bodies reinforced in the minds of the public and Congress the president's contention that he commanded not only legal authority but also the knowledge, expertise and the necessary political skill to cope with the policy problems facing the nation. National policy making is then in the hands of the presidency at least in part because the White House has been successful in mastering the sources and flow of information. The ad hoc advisory groups within the presidential advisory system have played a large part in the total development of this situation.[37]

B) Classification of Presidential Advisory Groups

The discussion which follows takes the various classification schemes developed in the existing literature on executive branch advisory groups and harmonizes them into a typology which allows the distinguishing characteristics of advisory commissions in the presidential advisory system to be seen.

Executive branch advisory bodies should be classified first by their tenure and authority for existence-they are either permanent

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[37]The development of executive government at the expense of representative parlimentary bodies is a regularly reported political phenomenon. Karl Lowenstein's contention that in the western constitutional governments the division of state power into executive, legislative and judicial functions has been replaced by three phases of political power-decision making, decision executing and decision controlling-is consistent with the pattern sketched above. See his Political Power and Governmental Process (Chicago: University of Chicago Press, Phoenix Book, 1965), p. 390.

or temporary, appointed either on an ad hoc basis by the president or a department head on the authority inherent in their respective offices, or by that granted in a specific statute — and second, by the composition of their membership — the membership of these bodies is drawn either from governmental or private sources or by means of a mixture of the two.

In this classification scheme, permanence connotes stability, i.e. an administrative directive, an executive order or a statute brings the group into existence with a staff and budget adequate to accomplish the mandated objectives of the group. The Council of Economic Advisors and the National Security Council are examples of permanent advisory bodies established by statute and placed within the White House structure. The U.S. Commission on Civil Rights and the Federal Reserve Board are examples of permanent advisory bodies, established by statute to exist outside the White House and which have executive as well as advisory functions. Permanent advisory bodies are delegated policy problems which are perceived to be of some lasting concern to the polity.

Temporary advisory groups, on the other hand, are appointed by an executive branch agency, tend to have relatively small staffs and budgets and have a narrow field of focus, the bounds of which are very difficult to overstep. Literally hundreds of these kinds of advisory bodies are appointed each year by the various executive agencies of national government. The presidential advisory commission is the best known of this type of advisory group.

When advising bodies are classified by their membership they are titled either official, private or mixed. Official and private advisory groups are, as the names imply, made up either of persons drawn exclusively from within or outside the government. Both groups are usually concerned with problems and disputes which are technical in nature to which persons of recognized competence are appointed to address the issue at hand. The decision of whether to appoint government employees or persons from the private sector hinges on the intensity of the controversy and the degree of public perception of the problem; the more controversial and the more public the problem the more the likleihood of the appointment of a private advisory group.

Mixed advisory groups are generally subject to greater public scrutiny and are concerned with broader policy concerns. The latter is particularly true when the group is appointed by the president. If the effort at classification ends here, serious analytical problems remain. Is, for instance, the membership of the advisory group mixed if all the members who supposedly represent the private sector have had extensive professional experience as employees of the government in the subject area in which the advisory body is to give its attention? A recent example demonstrates the problem. The composition of the commission appointed by President Ford to investigate charges that the CIA had violated the law defining its work was mixed in that some of its members occupied government positions when appointed and others

were private citizens.[38] But all the representatives from the "private" sector had held public office and some had held high executive department offices (some directly related to the CIA).[39] It is well to mention at this point that the membership of presidential advisory commissions is always mixed and, as will be seen, generally is composed of persons whose professional backgrounds make this classification ambiguous, if it is not refined as is done in the following paragraphs.

Classification and definition by functions yield more valuable information. Marcy has the least complicated functional definition; governmental advisory bodies are either fact finding or administrative.[40] They secure information or aid in the execution of policy. Hoover's Commission on Social Trends is an example of the former and the U.S. Commission on Civil Rights an illustration of the latter. This definition is too broad for the purpose of this study and needs to be made more specific. Other students of the presidential advisory system have seven more specific categories or classifying the various functions served by executive department advisory bodies.[41]

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[38]Commission on CIA Activities in the United States (The Rockfeller Commission).

[39]The members of the Rockfeller Commission were: Nelson A. Rockfeller, John T. Conner, C. Douglas Dillon, Erwin S. Griswold, Lane Kirkland, Lyman L. Lemnitzer, Ronald Reagan, Edgar Shannon, Jr.

[40]Marcy, Presidential Commissions, p. 23.

[41]See Galloway, "Presidential Commissions," pp. 351-353; Daniel Bell, "Government by Commission," p. 120; Lipsky and Olson, unpublished MSS, III, p.6; Wolanin, "Presidential Advisory Commissions," pp. 217-218.

First they are fact finders; they gather information, analyze and interpret it in the ways directed in their mandates. Most of the advisory bodies mentioned thus far have had information gathering as one of their functions. Since the control of the flow of information is the primary source of political power, it is the most important reason why any executive officer or agency appoints a commission, committee or board, be it in-house or composed of persons outside government service. Sulzer observes that the process of investigation is at least as important as any recommendations produced by it.[42] When the evidence gathered is made public it is usually given close attention by concerned elites in both the private and public sector if for no other reason than that it was gathered and disseminated by a group appointed by the president.[43] One type of executive department fact-finding body which re-appears frequently in American politics is the board or commission of inquiry appointed to investigate a matter of public concern perceived as having serious political consequences. The Wickersham Commission (Hoover Administration), the Roberts Commission (Roosevelt Administration, which studied the Japanese attack on Pearl Harbor), the Warren Commission (Johnson Administration, which investigated the assassination of President Kennedy), the Scranton Commission (Nixon Administration, named following the killings at Kent State University), and the more recent Rockefeller Commission (Ford Administration, named to investigate charges of illegal activity in the Central Intelligence

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[42]Sulzner,"U.S. Commission on Civil Rights," p. 17.

[43]Ibid.

Agency), are examples of the more dramatic types of commissions of inquiry. Each was a successful attempt by the White House to head-off congressional investigations and action by pre-empting access to the relevant information. In doing so the president, together with the various interest groups represented on the advisory body, went a long way toward defining the controversy and the terms of the ensuing debate. The fact that the advisory body is appointed by and reports to the president is the critical political point to be kept in mind at this stage of the discussion.

Second, participation in the development and execution of policy within the confines of the presidential mandate is a function of most presidential advisory bodies. Some are appointed specifically with very narrow policy functions in mind.[44] Such are usually appointed under the emergency powers of the president and draw statutory authorization from a 1933 law which authorizes the president to "... establish such agencies ... as he may find necessary..."[45] to carry out functions he defines as falling under his emergency powers. In most cases, however, a president establishes an advisory body to exercise what he regards as executive functions on little or no statutory grounds. When a legal rationale is needed, presidents base their actions on the inherent powers of the office. The limits of such power have not been clearly defined in case or statutory law.[46] Here, as in the examination of the other facets of this functional

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[44]Marcy, Presidential Commissions, pp. 54-55.

[45]15 USCA 702 (June 16, 1933).

[46]See the discussion of the legal basis for presidential advisory commissions, pp. 66-69 below.

typology, an examination of the exercise of presidential power reveals its scope, not its limits. The most common type of commission given power to carry out executive functions in the development of policy is the diplomatic mission authorized by a president to carry out tasks in his name. Theodore Roosevelt's Schurman and Taft commissions to the Philippines, following its acquisition by the United States as a consequence of the Spanish-American War, the commission sent by President Hoover to supervise the elections in Nicarauga in 1929 and the group President Johnson sent to supervise and report to him on the election in South Vietnam, are of this type. The first two had more clearly defined policy making roles, but the latter was expected to and did make general policy recommendations upon the completion of its more formal task of representing the chief executive. A commission whose responsibilities were more clearly defined as policy making was the Isthmian Canal Commission (1904-05) through which President Roosevelt was able to construct the Panama Canal on his own authority. Later the Alaskan Engineering Company (1914) was used to construct railroads in Alaska, essentially by executive order.[47] In these latter two illustrations, an executive commission functioned as policy maker and administrator under the authority of the president; each reported to him, was protected by him, and obviously served his political purposes. Presidents have also used commissions in times of emergency, particularly war, to carry out other types of executive policy making functions. The War Industries Board (1917-18) was essentially responsible for developing national industrial policy

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[47]Marcy, Presidential Advisory Commission, p. 62.

during World War I. The New Deal spawned a number of executive agency policy making groups during the Depression and World War II. The Executive Council and the National Emergency Council (1933) attempted to deal with some of the domestic problems of the New Deal. The Office of Emergency Management (1940) was a presidentially appointed commission-like group responsible to him for developing administration policy for the nation as it entered the war.[48] The more recent Wage and Price Stabilization Board is an example of a presidential design, concurred in by congress, to develop economic policy through a body in which is vested executive policy-making responsibility. In each case the president perceived the need for an adjunct policy-making group, created it and endowed it with authority, often based on tenuous legal grounds, and either gained the approval or the acquiescence of the congress in its creation.

Third, all such executive advisory bodies evaluate policy and/or procedural alternatives.[49] Evaluation is the logical result of the acquisition of policy-making information. It is in this aspect of their work that presidential advisory commissions most threaten other presidential agencies. By periodically receiving reasonably objective evaluations of the work of executive departments/agencies, a president and his White House staff are able to identify those which are straying too far from the administration's policy positions. Such actions by the president make it difficult for the department/agencies to avoid

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[48]Ibid., p. 55.

[49]Lipsky and Olson, MSS, III-6.

the policy-making lead of the White House.

Fourth, and perhaps most obvious, executive advisory bodies are appointed to provide advice; development and evaluation of policies and procedures leads logically to recommendations.[50] Popper feels that the most common type of advice given by governmental advisory bodies is technical.[51] Commissions and task forces of specialists are frequently called in by all executive agencies to offer expert advice on difficult technical problems before them. The technical character of their work does not diminish their political usefulness to their appointer.

Marcy contends that mediation is a function particularly suited to presidential commissions.[52] He notes that presidents charge many commissions with the responsibility of mediating a political dispute as a part of their total assignment. They are given problems which inevitably involve conflict between parts of the federal government or between the federal, state, and local governments. The commission can then function as a conciliator, arranger of compromise, arbitrator and/or public educator. In the role of mediator the commission has the choice of presenting the facts it has gathered in a way that allows the president and the public to choose between the contending parties, present recommendations in such a way that pressure is brought to bear on one set of the participants,[53] or, after efforts at quiet mediation of

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[50] Ibid.

[51] Popper, President's Commissions, pp. 9-11.

[52] Marcy, Presidential Advisory Commission, p. 50.

[53] Ibid. As will be discussed below, the Kerner Commission played a mediating role in the controversy over whether or not there was a conspiracy in the disorders of 1967. See pp. 447-450.

the dispute, lay the information obtained and its considered judgement based on it before the president and the public and allow its argument to be accepted, rejected or modified on its merits.

Fifth, it is characteristic of such advisory bodies that they provide the president with a constant flow of information. They seldom wait until their report is due to communicate their findings, give advice and recommend policy. There are two ways presidents have guaranteed this constant flow of information. First, by appointing "his" person to membership on the advisory panel or by arranging to have such a person named to a key position on the advisory group's staff, preferably as executive director. Some variation of this tactic has been commonly employed by presidents when naming an advisory commission to deal with highly sensitive political issues; this is particularly the case when the appearance of commission independence from the White House is politically necessary for the sake of establishing commission credibility. Being certain that the "right" person(s) is on the commission provides the president with a means of ongoing communication with the appointed body. The second and more common way of maintaining this flow of information is to appoint a member of the White House staff as liaison person with the commission. Such a person is usually responsible for keeping the president or one of his chief assistants informed of the on-going work of the commission. If these means of providing for a continuous flow of information between the White House and the commission break down, the stage is set for a situation which presidents and White House staff members want to avoid: being surprised by the final report of their appointed body. Such a circumstance puts the president in a

dependent, and most often in a defensive position - a predicament which presidents and White House aides will go to great lengths to avoid.

Sixth, advisory bodies in the executive branch always fulfill a public relations function. They promote and stimulate concern in the policy issue on which they have been appointed to work. Presidents can draw public attention to any policy issue by the appointment of an advisory group.

Lastly, such advisory bodies serve as public educators. The more public the proceedings and the more representative the membership of the advisory group is of key interest groups, the larger the public education task it can accomplish with its work; public hearings in Washington or elsewhere, investigative field trips, speeches by members of the commission or its staff, interim reports, normal press releases, planned "leaks," the final report and the continuing concern for its work shown by members of the commission, its staff, the White House staff and the president himself, are the common methods of public education used by these advisory bodies. It is the combination of this function with that of information gathering that brings the American executive ad hoc advisory body nearest to the British Royal Commission and the congressional investigating committee; each has as part of its responsibility the education of the general public about evolving public policy.

CHAPTER II

THE PRESIDENTIAL ADVISORY COMMISSION: A POLITICAL ANALYSIS

A) Definition

The discussion to this point demonstrates the need for a precise definition of the term presidential advisory commission; two reasons stand out. First, the too casual use of the words, "boards," "committee," and "commission" by the White House and other executive departments/ agencies and the congress, has robbed each of any unique meaning. Second, the political importance of the presidential advisory commission cannot be appreciated until it can be distinguished from these other groups in the presidential advisory system.[1] The following operational definition accomplishes that goal.[2]

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[1] In particular the independent regulatory commission and those other commission-type advisory bodies in the appointment of which congress shares (e.g. the U.S. Commission on Civil Rights), White House, cabinet and agency advisory groups and task forces. Lyndon Johnson's use of task forces is discussed in Chapter 5.

[2] For similar efforts see Wolanin, "Presidential Advisory Commission," pp. 57-62; Allan L. Dean, "Ad Hoc Commissions for Policy Formulation," Thomas E. Cronin and Sanford D. Greenburg, eds., The Presidential Advisory System (New York: Harper and Row, 1969), p. 105; Popper, The President's Commissions, p. 10; Thomas Corcoran, Montauk Symposium, 1971, p. 163.

> A presidential advisory commission is an ad hoc, representative body of technically competent and highly prestigious persons, the majority of whom are not at the time of their appointments governmental officials, appointed and publically charged by the president to independently study and report on what she/he perceives to be a highly sensitive national political-policy issue which cannot be managed by the regular administrative devices created for that purpose by his/her administration.

Other than the obvious need to be appointed by the president there are eight major components of this definition; each needs to be elaborated. First, members of presidential advisory commissions and their staffs must be technically competent to consider the matters given them to study by the president. Presidential appointment gives the commission legitimacy, but its credibility is directly related to the technical competence of its members and senior staff persons to understand and recommend policy for the subject matter assigned them.

Technical competence is inextricably tied to the second component, the representative quality of the commissioners and their senior staff. To be representative of an established group[3] and/or of a broad interest[4] with a vested concern in the matter under consideration is, with few exceptions, for presidential purposes, to be technically competent. But not just any representative of an interest will do to be named a commissioner or a senior member of a commission staff. In addition to competence and representativeness, the person must have had relevant political experience[5]. This does not mean that all appointees will have

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[3] e.g. NAACP, AFL-CIO, the National Association of Manufacturers.

[4] e.g. Being black, a woman, and academic.

[5] i.e. The person must be able to function effectively in Washington politics.

to be politically acceptable to the appointing administration in a narrow partisan sense, though the majority of most commissions is made up of persons of the same political party as the appointing president. It does mean, however, that the administration has confidence in the appointee's ability to behave in Washington in what is commonly regarded as a politically acceptable way. Representativeness is not one-dimensional, only relating the commissioners to their special interests or groups; it catalytically creates a multi-dimensional network of relationships among the variety of groups represented on the commission,[6] among those groups and their executive agency counterparts assigned to monitor the group's interest in national government and among the various "chance" relationships which develop. Therefore, commissioners and members of their staffs must be technically wise, politically experienced and representative of the major interests concerned with the policy issues under consideration. Most former commission participants and members of White House staffs concerned with the work of presidential advisory commissions agree that the fulfillment of these qualities by commissioners and staff members guarantees the democratic character of the commission and thereby is convincing to all who have a concern in the matter that the total public interest has been anticipated in the naming of the commission. As mentioned before, and to be discussed later, it is this claim of representativeness by presidential advisory commission participants which must be closely examined if the political importance of these bodies is to be understood.

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[6]Heinz Eulau, "The Informal Organization of Decision Structures in Small Legislative Bodies," Midwest Journal of Politics 13 (August, 1969): 344, has similar thoughts about these relationships in local political government.

Third, commissioners must be prestigious persons, able to attract the attention of the major political actors on the Washington stage (particularly members of congress), elites of the private sector (particularly those whose interests and orientation they share) and the national media. Attention cannot be focused on the commission and its work unless its members are of such prestige (and technical competence, and political savvy) that they can command that audience.

Visibility, the fourth component, follows from the above. Being named by the president and being prestigious persons in their own right guarantees popular and political visibility. It is important to note, however, that the president has total control over the visibility of a given commission at the time of its appointment; the specifics of the mandate he gives them and the amount of publicity he arranges at the time of the announcement of the appointment are significant measures of the level of concern the president wants to invest in the policy issue consigned to the particular advisory body. During the life of commissions dealing with highly controverisal matters, however, the high level of political sophistication of the commissioners and staff allows them to compete for visibility on relatively equal terms with the White House and other Washington political actors.

Fifth, most persons experienced in the creation and work of presidential advisory commissions have said that a majority of the members of a commission and its staff must be composed of private citizens; government employees must not dominate a commission. Previous government service and/or relevant political experience, as noted above are

necessary qualifications for becoming a nominee, but most of the candidates, at the time of nomination must be clearly identifiable as private citizens; this, White House staff members think, helps insure the objectivity and independence which are the sixth and possibly most controversial set of components of this definition. Political observers and actors agree that publicly perceived objectivity and independence are essential to the desired service of an advisory commission. The real expression of this ideal is not as easily perceived.

Individual presidential advisory commissions are, inevitably, temporary participants in the advisory system of a given administration.[7] Their ad hoc quality is a function of presidential political intent. Most presidential goals for a commission can be achieved very quickly. Further, few voluntary responsibilities, even when assumed because of a request of the president of the United States, can be expected to claim more than a year of the time of the kind of person selected for commission membership.

Finally, to be classified as a presidential advisory commission the group must have as the object of its deliberations a highly sen-

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[7]Wolanin, in measuring the frequency and distribution of presidential advisory commissions, in the administrations of Truman, Eisenhower, Kennedy and Johnson, found a total of sixty-six with a mean time, in months, of 11.9, and a median of 10.5. Except for a small lapse in the Eisenhower administration, each succeeding administration appointed more commissions for longer periods of time. (See Tables 1 through 3 pp. 4-5 above) Wolanin's definition of a presidential advisory commission is somewhat broader than that presented here and he consequently includes more advisory bodies in his study. However, the trends he displays in his work are valid and consequently should be noted.

sitive national public policy issue.[8] The meaning of the phrase "highly sensitive public policy issue" is, of course, relative to the historical context, the character, and the political objectives of the appointing administration.

B) Presidential Purpose in Appointing Advisory Commissions

Why do presidents appoint commissions? The most appropriate means of answering this question for this study is to draw inferences from an analysis of the uses to which presidents have put their commissions. The classification scheme which is developed here is based on the reflections of White House staff members who were close to the commission process in their respective administrations.[9]

There are four (4) broad purposes for appointing a commission which can be divined from presidential practice:

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[8]This phase does not encompass managerial or administration policy concerns. Those are ordinarily assigned to agency task forces, commissions or committees regularly established for much purposes.

[9]See the Montauk Symposium, 1971, the records of presidential aides on deposit in the Truman, Eisenhower and Johnson Libraries, especially the oral history tapes, and the secondary scholarly sources noted in the bibliography. Wolanin, the best of the secondary sources developed six types of commissions which he ordered by the frequency of their use in the administrations he studied: 1) policy analyst, 2) window dressing, 3) to call attention to a particular presidential policy concern and to frame that area as a presidential policy preserve and to direct the content of the public debate about it;) to meet a crisis; 5) to buy time; 6) a category of miscellaneous reasons and purposes. His order is useful but restricting because of its specificity. The scheme presented here is designed to facilitate the pursuit of the illusive presidential purposes by creating more comprehensive categories. See Wolanin, "Presidential Advisory Commission," pp. 23-44.

1) To moderate the pace of the policy-making process.

2) To construct a public policy consensus.

3) To mitigate the systemic impact of a political crisis.

4) To satisfy persistent demands on the president by particular interest groups.

All presidents and their closest advisors experience the anxiety which comes with the realization that they are being overtaken by events and that there is a need for them to respond to the Washington variation on the old adage, "Don't just keep doing something, stand there!.' Commissions are most often appointed by presidents when this state of affairs is reached, when the patterns of policy initation, analysis and refinement which have proved useful in the past are unable to cope with a novel set of circumstances which the White House views as developing too rapidly in a direction not in its interests. In short, they find themselves in possession of an inadequate amount of the information necessary to deal with the matter at hand. An independent gathering and analysis of facts is thought to be needed and an outside group is deemed technically and political able to do the job; at that point the commission appointing process begins.[10]

This attempt by the White House to slow the pace of events is often negatively criticized as an effort to buy time in the hope that

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[10]A good discussion of this pattern of White House behavior can be found in U.S. Congress, House, Committee on Governmental Operations, Presidential Advisory Committees, Parts 1 and 2, Hearings before a subcommittee of the Committee on Governmental Operations. 91st Congress, 2nd Sess., 1970, Part 2, testimony by Howard Schuman, p. 140.

the problem will go away.[11]

Such an explanation is too simplistic. No president has had the luxury of entertaining the illusion, for very long, that major problems will go away if delayed long enough. The dynamics of American interest-group politics will allow him to defer, but not avoid a problem. Postponement then is a much more reliable explanatory category. Presidents do defer their consideration of some major policy decisions by referring the consideration of them to persons outside the "normal" policy-making process of their administration. In this way they aim to redirect a potentially damaging political struggle with Congress and/or other protagonists while maintaining policy initiative and control within the White House. Further a commission in such an environment can provide time for disagreements to be aired, compromises to be reached and political tensions to be reduced. Buying time by the creation of a commission, then, can be understood as a systemic stabilizing effort which, in the minds of the president and his advisors, is a responsible, creative administrative act consistent with traditional patterns of incremental decision-making and clearly within their political self interest. It is an option taken when others have failed or are clearly perceived to have limited value in coming to grips with the matter at hand.

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[11]See Elizabeth Drew, "On Giving Oneself a Hotfoot: Government by Commission," Atlantic Monthly, May 1968, p. 45 for an excellent discussion of this point of view.

Second, each president must develop a majority consensus around his policies if they are to be adopted by the congress and accepted by the people. The presidential advisory commission is one of a variety of means at a president's disposal to achieve and maintain such a consensus. As previously noted,[12] presidential ad hoc advisory bodies perform an educational function broadly useful throughout the presidential advisory system and the total polity. Educating the various publics of the detail and expected consequences of a given administration policy is central to consensus building. Presidential advisory commissions have a clear educational responsibility, the specifics of which are usually laid out in its presidential mandate.[13] In addition, the appointment process, the public hearings, the publication of the commission's report are all educational devices useful in achieving the goal of building a broad consensus for the agreed-upon policy. Consensus building as it is discussed here is not "window dressing"[14] nor necessarily a design for maintenance of the status quo (as in the discussion above of moderating the pace of the policy process), it is the major ingredient in a strategy for changing public policy in the direction desired by the president. Commissions mandated to make proposals for the revision of the executive department's practices and

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[12]See above p. 49.

[13]See Wolanin, "Presidential Advisory Commissions," p. 28, and Drew, "Giving Oneself a Hotfoot," p. 48.

[14]Wolanin, "Presidential Advisory Commissions," p. 28.

structure are the best examples of this effort at education and building of consensus around a policy option decided upon by the president.[15]

Another way commissions are used to educate and develop consensus is to appoint them for the purpose of drawing attention to a policy or set of policy concerns to which the administration has already committed itself.[16] Again, the mandate given the commission always clearly marks the policy options the administration regards as debatable. In doing so, and gauging the response of the concerned elite groups to the creation of the commission, an administration learns quickly the strength of the existing consensus; in addition, the process of determining the terms, agenda and substance of the subsequent debate (ingredients necessary to the developing consensus) have been pre-empted by the action of the White House creating the commission.[17] Daniel Bell, in writing about his experience as a member of the Commission on National Goals and the Future,[18] observed that presidents attempt to control the debate by the appointment of a prestgious group of commissioners and failing there, know that the existence of the presidential

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[15]e.g. The Barlow and Hoover Commissions, each of which was discussed in Chapter 1.

[16]Drew, "Given Oneself a Hotfoot," p. 45 calls this the "lightning rod" function.

[17]Examples are: the Immigration and Naturalization Commission, 1951; the National Commission on Higher Education (the Scranton Commission), 1970, and the President's Commission on the Accident at Three Mile Island, 1979.

[18]Bell, "Government by Commission," p. 120.

group will surely focus public discussions on the issues in ways that are useful and exploitable in the context of the overall strategy regarding the policy.

The third presidential purpose in appointing a commission is to mitigate the impact of a domestic political crisis by pre-empting action by other political actors, in particular congress and the governors of the states, and consequently gaining control of the dissemination of information concerning the crisis.[19]

The appointment of a commission is an effective way of reinforcing the conventional wisdom that the executive branch of the American national government is the best equipped political institution to encounter and contain domestic political events which have reached crisis proportions.[20] The validity of that assumption aside for the present, it is the ability of the presidency to respond quickly to domestic crisis through a variety of means, including that of the creation of an advisory commission, which is a major key to understanding White House control

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[19]The phrase "domestic political crisis" is intended to describe those kinds of events which are preceived by an administration to threaten the socio-political status quo of the government or the nation. For the purpose of this anaylsis, then, a particular political crisis which primarily involves foreign relations can be classified as domestic if is perceived to pose serious threat to domestic political harmony; the Rockefeller Commission charged with the investigation of the work of the CIA is an illustration of a commission appointed to mitigate the impact of a domestic political crisis having its origins in foreign relations; domestic civil disorder, political assassinations, and crime are recent examples of explicitly domestic political crises which provoked the creation of a presidential advisory commission.

[20]See pp. 1-5.

over domestic policy initation.[21] In acting quickly, with its highly credible and visible institutional strengths, the White House engages one of its most potent referential symbolic resources;[22] in a rapidly evolving set of political circumstances the president is often perceived as the necessary alternative to hasty, ill-timed and confused actions of congress and less credible political actors.

Crisis commissions are clearly intended to fulfill a role as educator of the public about what the administration thinks to be important and generally unknown dimensions of the problem precipitating the appointment.[23] A highly credible and representative group of persons appointed to membership on the commission greatly eases not only the distribution and public acceptance of such information, but also makes it very difficult for the interest groups the commissioners

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[21]The contention here is not that crisis commissions are instruments in presidential attempts to control domestic policy making by dominating Congress (as with Aaron Wildasky, "The Two Presidencies", in Thomas E. Cronin and Sanford D. Greenburg, ed., The Presidential Advisory System (New York: Harper and Row, 1969, p. 172-173) but rather, that presidents dominate the process of policy initition, including the forming and focusing of the debates on the issues; they have not been able to dominate, to the point of control (as Wildasky contends), its political process in which the policy output is determined. The advisory commission is a major tool in maintaining the presidential position of pre-eminence in policy initiation and innovation.

[22]Edelman, Symbolic Uses of Politics, pp. 6-7.

[23]U.S. Congress, Senate, Committee on the Judiciary Subcommittee on Administrative Practices and Procedures, Presidential Commissions: Implementation of Recommendations of Presidential and National Commissions. 92nd Congress, 1st Sess., 1971, p. 16. (Hereafter cited as the Kennedy hearings).

represent to question it, its source or the recommendations based upon it.[24]

Finally, presidents appoint presidential advisory commissions in response to persistent demands on them created by the various other actors who participate in the presidential advisory system. First, every administration discovers a need to review and stimulate the work of the executive agencies of the executive department, or to build confidence in a department/agency or program that is under attack. Though rarely central, such review and stimulation can be posited as one reason for the naming of a commission.[25] The Kappel Commission which investigated the Post Office Department and recommended the present administrative structure for that agency is one example of a commission being given serious administrative review as part of its mandate. The appointment of the commission put the department on notice that the administration and congress were seriously considering administrative changes. This allowed the department some time to make what changes it could or wanted to, or to consolidate its internal and external resources for resistence in response. Eisenhower's Commission on National Goals or the commission concerned with the future uses of technology about which Daniel Bell writes are examples of commissions

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[24]See Drew, "Giving Oneself a Hotfoot," p. 46, for a related discussion of this point.

[25]Lyndon Johnson, his closest White House domestic aides and most of his cabinet officers saw agency program review as the major reason for the appointment of outside task forces. See the discussion of Johnson task forces in Chapter 5, below.

one purpose of which was to stimulate various parts of the government into action.[26] By setting certain goals for a commission in its mandate a president clearly signals the federal bureauracy that particular types of programs and issues are high on his planning agenda. Such stimulation of the bureaucracy can, of course, as easily result in negative resistance as positive policy support. That is a risk inherent in the White House-executive department/agency relationship. More important for this discussion, however, is that the appointment of presidential advisory commissions with a charge to help the president develop new policy directions does aid the White House in functioning as policy initiator and administrative overseer of policy development within the executive branch of government. While such oversight is obviously part of good management practice, it is also very useful in establishing in the minds of the general and elite public, the federal bureaucracy, and the congress, the White House view that responsibility for policy initiation belongs primarily to the president. Here can be seen an example of how the White House has established for itself an advantaged position in its persistent struggle with the Congress over a responsibility which in the strict Constitutional sense, belongs primarily, if not exclusively with Congress - oversight and review of the work of administrative department/agencies.

Presidents have a variety of resources for defending a position or executive institution which is undergoing attack by political opponents. When the attacks are perceived to be very serious and when

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[26]See Bell, "Government by Commission."

the president is convinced that some changes in the department's operation are inevitable a commission is often appointed to handle the matter.[27]

All major interest groups place demands on presidents for representation of their concerns in the administration's policy making process. Appointment of representives of key interest groups to membership on advisory commissions is a means used to meet this demand. There are two recurring reasons for making such appointments: to reward friends of the administration,[28] and to appoint the "right" people regardless of the level of their support of the administration.[29] Most administrations have used commissions for these ends. But those near the process agree that the first type of appointment never is made solely for traditional patronage reasons. The administrations they knew had at their disposal a wide range of patronage options from which to choose, appointment to a presidential advisory commission being a relatively minor one. When, however, a president did appoint a person from a particular interest group to a commission as a "reward" he usually had an ulterior motive in mind: a desire to "educate" the interest group through the commission member about the administration's point of view on the policy matter under consideration. Commissioners are always expected to educate their individual constituencies con-

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[27]The Rockefeller Commission (see p. 41-42, above) is a good example.

[28]Supporters of the administration who have interest in the public policy issue under consideration by the commission.

[29]This type of appointment is an attempt to shape content and direction of the commission's report through the appointment process.

cerning the administration's position. Such communication of policy information is designed, at the minimum, to politically neutralize the key interest groups and at best to gain their commitment to the policy position the administration expects the commission to produce.

C) The Creation of Commissions

Presidential advisory commissions are created in one of two ways: the formal process of an executive order or by the simple act of presidential announcement.[30]

The political importance the president assigns to the problem to which the proposed commission will be directed, and the anticipated response of the congress to the presidential inititive, determine the method a president will use in appointing the commission.[31] If the problem is perceived to be relatively minor, and/or clearly within the province of the executive branch of the government, the informal method of announcement will be used. If, on the other hand, the problem is politically sensitive and/or one in which significant members of congress have expressed a serious interest, the president is most

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[30]Marcy, Presidential Commissions, p. 21. Wolanin, "Presidential Commission," p. 130 says that sixty presidential advisory commissions have been created in the post-World War II period. Of these, 57 percent have been created by announcement. He also maintains that six commissions were created by statute, a contention which is disputed by Frank C. Carlacci (U.S. Congress, House, Federal Advisory Committee Standards Act, Report No. 92-101F to accompany H.R. 4383, 92nd Congress, 2d Sess., p. 77.) He contends that there was statutory authorizations for fifteen commissions. A difference in definition of what a presidential advisory commission is accounts for the discrepancy. The definition being used here is close enough to Wolanin's to allow acceptance of his figure.

[31]Wolanin, "Presidential Advisory Commission," p. 183.

likely to issue an executive order, thereby drawing on powers exclusively his.[32]

In his power to appoint a commission, therefore, the president is not seriously constrained by other political actors. When a president thinks a problem serious enough to appoint a commission, he will find a way to do it.

D) Presidential Authority for Appointing Presidential Advisory Commissions

Authority for the issuance of an executive order or public announcement of the creation of a commission is based on Article II Section 3 of the Constitution, buttressed by appeals to the tradition of inherent presidential executive power, statutory authorization and court decisions.

Section 3 of Article II has been traditionally invoked when the intended function of the commission is to gather information and/or to conduct investigations:

> He shall from time to time give to the Congress Information of of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient;... he shall take care that the Laws by faithfully executed...

The creation of an advisory commission by executive order is always grounded on expressed or implied statutory authority. As noted

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[32]A major reason for choosing the executive order is that the authority for issuing it is based on statutory law. The use of this option taken makes it more difficult for congress legally to challenge the appointment. See the discussion of the legal limits to a president's ability to appoint a commission, pp. 66-75 below.

in the next section of this chapter, congress has tried on several occasions to circumscribe that authority by use of its power of the purse, but without notable success.[33] Use of the doctrine of inherent executive powers is the device by which presidents have ultimately thwarted all attempts by congress to limit their power and authority to appoint advisory commissions. Wolanin found, for instance, "In the Executive Orders creating twenty-three of the twenty-six commissions created by Executive Order, the only authority cited was his as President."[34]

The question of granting subpoena powers to advisory commissions is more directly dependent on congress than the authority to appoint. Commissions appointed on the sole authority of the president have no power to subpoena witnesses or documentary information unless that power is granted by the congress. Marcy argues, however, that a President under his implied executive powers, might be able to establish a commission with compulsory authority...

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[33]Other challenges by congress to this presidential authority and their equally limited outcomes are worth noting. Tyler was the first president to have to justify to congress the appointment of a commission. Congress challenged his right to have a commission report directly and exclusively to him. In reply he successfully maintained that Article II Section 3 of the Constitution gave him this authority. In signing the Sundry Civil Act of 1909 (Section 8, 35 Stat. 1027, 31 USC 673) President Roosevelt said that he did not feel bound by its limitation on his authority to appoint commissions. His subsequent actions sustained his contention. Marcy Presidential Commissions, pp. 7-9 and Wolanin "Presidential Advisory Commissions," p. 113.

[34]Ibid., p. 136.

> ... by following the reasoning of In re Neagle [135 US 1(1890)] to the effect that the President is charged with the duty of faithfully executing the laws and pursuant to that broad Constitutional guarantee he has an implied power to give compulsive powers to commissions which he may create in the course of faithfully executing the laws.[35]

The constitutional authority of congress to grant compulsory powers to agencies of the executive branch has not been seriously challenged by the courts when the grant is to an advisory commission.[36]

Presidents also skillfully used voluntary personnel and funds to evade congressional restrictions and to strengthen their inherent power to appoint ad hoc advisory groups. There is, no reason to qualify Wolanin's argument that "The President's ability to use voluntary services for advisory purposes has become a Constitutional accretion that supports President Theodore Roosevelt's dictum, 'any future President can do as I have done and ask disinterested men who desire to serve the people to give this service free to the people through these commissions'"[37]

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[35]Marcy, Presidential Commissions, p. 98. He cautions, however, that the expansion of executive government had not proceeded to the point where the courts would accept such reasoning. There is no definitive supreme court ruling on this issue. See also Wolanin "Presidential Commissions," pp. 113-115, for another discussion of inherent executive power. His conclusions are essentially the same as Marcy's. No president since Marcy did his work has found it necessary to invoke he doctrine of implied executive power in this way, as congress has granted most requests for subpoena power for presidential advisory commissions. (See the discussion of the Nimitz Commission above pp. 31-33 for a major exception to this generalization.)

[36]See Marcy, Presidential Commissions, p. 98, for a discussion of what he believes to be potential grounds for qualifying such delegation of subpoena power. He appeals to the dissenting opinions of Justice Cardozo in Jones v Security and Exchance Commission, 298 US 1 (1936) and that of Justice Holmes in Ellis v The Interstate Commerce Commission, 237 US 434 (1915).

[37]For another discussion of this point see Marcy, Presidential Commissions, pp. 17-18.

E) Financing Presidential Advisory Commissions

The authority of a presidential advisory commission ultimately rests on the explicit and inherent authority of the president and his willingness to support the commission and its work.[38] But his means of financial support are severely limited. Funds available to him determine how the commission will come into existence, the number of such bodies existent at any given time, the frequency of their creation and the nature of the congressional-presidential relationship at the time of the commission's creation and during its life-span.

Wolanin succinctly lists four options open to the White House in funding the life of a commission: 1) Comply with or reinterpret congressional restrictions on the funding of commissions, 2) use unrestricted presidential funds, 3) rely on authorizations that allow spending for interagency commissions and consultants, or 4) support commissions from private sources.[39] The importance of the means of funding to the political character and authority of a presidential advisory commission dictates consideration in some detail of each of these methods.

There are three operative provisions of law which reflect congressional attitude concerning the financing of the work of presid-

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[38] See Section d, pp. 66-68.

[39] Wolanin, "Presidential Advisory Commissions," p. 151.

ential advisory commissions and other ad hoc advisory bodies within the executive branch.[40]

The first act was passed during the Tyler administration (1842) and provided that no expense of a commission could be paid without a specific authorization by means of special appropriation. An attorney general's opinion in 1843 defined the intent of congress for this act to include "prohibition of payment of commissioners and agents of executive departments for making investigations required by Congress except from appropriations for that purpose."[41]

The second was an admendment (the Tawney Admendment) to the Sundry Appropriations Act of 1909. It was intended to strengthen the hand of congress in the creation and administration of the work of presidentially appointed commissions:

> No part of the public moneys, or of any appropriation made by Congress, shall be used for the payment of compensation or expenses of any commission, council, board, or other similar body, or any members thereof, or for expenses in connection with any work or the results of any work or action of any commission, council board or any similar body, unless the creation of the same shall be authorized by law; nor should there be employed by detail, hereafter or heretofore made or otherwise personal service from any executive department or other government establishment in connection with any such commission, board or other similar body.[42]

The last major effort by the congress to limit the authority of presidents to appoint and use commissions was an admendment by Senator Richard

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[40]See 31 USCA 672, 673 and 679. Also see Wolanin, "Presidential Advisory Commissions," pp. 138-143, Marcy, Presidential Commissions, p. 5, Dean "Ad Hoc Commissions," p. 106 and Popper, The President's Commissions, pp. 6-7.

[41]1842, 4 Op. Attn. Gen., 106 in 31 USCA 672.

[42]31 USCA 673.

Russell to the 1945 Independent Offices Appropriations Act which effectively limited the life of any presidential advisory commission to one year unless the congress specifically appropriated funds for it or authorized expenditure of previously appropriated public funds by it.[43] This prohibitory act was aimed at a practice of the administration of Franklin Roosevelt of establishing commissions by executive order and financing them with funds appropriated to and authorized for use by particular executive agencies.

While presidents have not always felt restrained by them, these statutory provisions have limited presidential action in the appointment and use of commissions. These legislative restrictions on the use of commissions are not legally dead or politically impotent. As recently as 1970, in congressional hearings, the administration was called upon to explain why these provisions of the law should not apply to its practices in appointing and financing advisory commissions.[44]

However, presidents have not been without resources for circumventing these statutes. A variety of means have been used with the result that congress has been able to qualify but not control the authority of presidents to name and use commissions for policy ends they desire to pursue. The most common way the White House has avoided the restriction of the Tawney Admendment has been to interpret the phrase "authorized by law" broadly enough to permit the appointment of a

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[43] 31 USCA 696

[44] Wolanin, "Presidential Advisory Commissions," p. 151.

commission under any executive function previously enacted by statute. This practice has been supported by at least one attorney general.[45] The more formidable restrictions in the Russell amendment, active until enactment of the Independent Appropriations Act of 1946,[46] were mitigated by a process best described by Comptroller General Elmer Staats:

> As a practical matter, if the expenses of the (commission) are justified in the budget presentation, this is regarded as being adequate for the purpose. When they say specific authorization by Congress, authorization by Congress is usually meant to be approval through the appropriation process if not through the regular legislative authorization process. In other words, it does not have to be specifically authorized by separate statute.[47]

In recent years congress has been willing to pass legislation authorizing the use of public money for the work of commissions. One estimate of the most recent average appropriations for presidential advisory commissions is $10 million a year.[48]

Presidents have further accomodated themselves to congressional restrictions on the use of public money for funding the work of commissions by using unrestricted funds available to them, through the Emergency Fund for the President, the budget for the executive office and various special project funds. While the amount of money available to presidents through this source is large ($1 billion

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[45] Ibid., p. 142. See also, 1909, 27 Op. Atty. Gen. 459; 1909, 27 Op Atty. Gen. 432; 1909, Op Atty. Gen. 301, in 31 USCA 673.

[46] 31 USCA 691, 59 Stat. 134, to be discussed below.

[47] Wolanin, "Presidential Advisory Commissions," p. 143.

[48] Popper, The President's Commissions, p. 7.

in the 1974 budget) the demands on it are also great. In 1946 the Congress gave the President authority to use executive department funds in a flexible manner in the establishment and use of commissions:

> Appropriations of the executive departments and independent establishments of the Government shall be available for the expenses of committees, boards, or other interagency groups engaged in authorized activities of common interest to such departments and establishments and composed in whole or in part of representatives thereof who receive no additional compensation by virtue of such membership; provided, that employees of such departments and establishments rendering services for such committees, boards or other groups, other than as representatives, shall receive no additional compensation by virtue of such services.[49]

This act, obviously, muted the effect of the Russell Amendment. It has been interpreted by recent presidents as allowing them to pool funds and personnel from a variety of executive agencies/departments for purposes unintended by congress when originally authorizing and appropriating the money. As will be seen below this was a familiar tactic of the Johnson administration to provide funds for a commission until a congressional appropriation was made or until private funds became available.

In 1966, responding to the leadership of the administration, the congress provided a firm statutory basis for the third method used to finance commissions: reliance on authorizations that allow spending for interagency commissions and consultants. The acts allowed the White House to pay commission expenses, per diem fees, mileage and other

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[49] 31 USCA 691.

travel expenses, from funds appropriated for expenses incurred by executive agencies, including the White House, in hiring temporary experts and consultants.[50]

From the above it can be concluded that the congressional restrictions on presidential ability to fund the work of commissions is substantial and respected enough by the occupants of the White House to force them to devise a number of ways to qualify congressional intent. It should be clear also that the struggle over control of funds for commissions to a large extent determines the authority of those named; if a president has difficulty providing funds for a commission, or if he chooses to acquiesce to the congressional restrictions, the authority of the commission is thereby limited. On the other hand when the White House aggressively seeks funds for a commission, particularly when it directly challenges with impunity the intent of congress, the prestige and authority of the advisory body is enhanced. Also, until the establishment of unrestricted presidential funds the president had no way to fund what he regarded as legitimate executive fact-finding functions.

The one way presidents can and have avoided direct confrontation with congressional restrictions on the funding of commissions is to seek private money. President Hoover was perhaps the most dedicated user of this method. The Wickersham Commission was financed in this manner and it has been reliably established that Mr. Hoover raised in excess of $2 million in private money to fund the various advisory

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[50] 31 USCA 951-53.

groups which he named during his time in office.[51] Recent presidents have used this device to fund highly visible commissions designed to study and report on very controversial and highly complex matters. The National Commission on the Causes and Prevention of Violence (the Eisenhower Commission) and, as will be seen, the Kerner Commission, were funded in large part by money secured from private sources. There are obvious advantages to this method, as Wolanin points out.[52] It is a way of avoiding congressional restrictions. It allows the White House to get concerned interest groups deeply involved in studying the problem under consideration with mimimal cost to the government, while leaving the administration in a position to reap any benefits accruing from the endeavor. The fact that such organizations often lend staff members to the commission in lieu of money contributions can be beneficial to all concerned.

F) Commission Membership

In naming members to a commission the president intends to accomplish two major political goals: the management of conflict in the contested policy area and the centralization of policy-making initative and control of the issue in the presidency. In the former,

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[51]Marcy, Presidential Commissions, pp. 5 and 18 and Galloway "Presidential Commissions," p. 359. Galloway provides a chart detailing the costs of Hoover's commissions.

[52]Wolanin, "Presidential Advisory Commissions" pp. 151-153.

the president's action can be described as an act of "civil prudence" in which he uses the inherent powers of the office to move into a critical policy area in a way designed to reduce additional conflict.[53] The second goal is yet another illustration of the presidential use of commissions to secure pre-eminence in national policy making. As noted above, the naming of a commission has become almost a reflex action by presidents in their continuing attempt to avoid diffusion of power and responsibility in national policy making. The appointment of an advisory commission is one way of avoiding the granting of carte blanch to particular local vested interests which policy-making de-centralization provides.[54]

Drew lists three basic criteria for selecting the membership of a presidential advisory commission. Members must be, 1) non-controversial, 2) bi-partisan, representative and respectable, 3) the chairperson selected must be able and safe.[55] In this context non-controversial means a person whose pre-commission membership image and reputation will not detract from the work the commission is given to do. In positive terms, the image and reputation of the appointee are intended to enhance the work of the commission.

Representation is inherently the most difficult of the criteria to meet. White House officials express pride in their ability to

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[53]Michael Harrington, Toward a Democratic Left, (New York: Macmillan, 1968), p. 305.

[54]Theodore Lowi, The End of Liberalism: Ideology, Policy and the Crisis of Public Order, (New York: Norton, 1969), p. 268.

[55]Drew, "On Giving Oneself a Hotfoot," p. 47.

"balance" the membership of advisory commissions. Age, sex, region, party, occupation, class, are the major variables always considered when a commission is appointed. Yet the feat of balancing, when examined closely, reveals that the membership of advisory commissions more closely resembles the White House staff which appointed them than any vision of American pluralism the president and his aides might have had when making the appointments. The membership is composed of persons the administration is used to working with; persons used to having their advice sought by the White House, persons who are known and know their way around Washington.[56] They are members of what Wolanin calls "A commission class".[57] As such they have particular socio-economic characteristics.

> They are protected and deprived by social privilege. Moreover their usual mode of analysis is legalistic and rationalistic. Not intellectuals, they are decision makers interested in protecting the record...There are practical limits to the possibility of persuading any of them to a novel position.[58]

In short, they are in the main stream of the major well defined interests in American society; persons experienced in established patterns of problem solving; reformers, not revolutionaries in any but the most general sense. More specifically, they are experts in some aspect of the problem at hand and experienced enough in Washington

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[56]U.S. Congress, House, Committee on Government Operations, Presidential Advisory Committees, Part 1 and 2, Hearings Before a Subcommittee of the Committee of Government Operations. 91st Cong., 2d Sess., 1970, testimony by Thomas D. Cronin, pp. 187-190. See also Popper, President's Commissions, pp. 18-20.

[57]Wolanin, "Presidential Advisory Commissions," pp. 181-182.

[58]Jerome H. Skolnick, The Politics of Protest, (New York: Ballantine Books, 1969), p. 36.

to be able to help the White House move the bureaucracy and the relevant private interest groups to get things done the way the president desires.

It is a common White House point of view that each commissioner must represent a constituency with an established concern with the problem which called the commission into being. In this context, "to be known by the White House" means that the constituency the potential commissioner will represent has commanded sufficient political attention in the past for it to have become a consistent, if not permament, factor in national policy-making regarding the issue at hand. The representation of novel inexperienced (and therefore unestablished) constituencies is not entertained when making up the potential membership of advisory commissions by members of the White House staff and the president himself. Commissions are not, however, packed by the White House with political partisans.[59] If they were, their work could be easily and quickly discounted. Nor is there significant evidence that commissioners see themselves as exclusive representatives of party or interest-groups. Rather, most see themselves as trustees in the Burkean sense of the term; they are technically and politically knowledgeable and experienced persons willing and able to serve the common good, as they see it.

The political importance ascribed to the commission by the White House can be gauged by the presence of congresspersons in its membership. Congresspersons would not accept and would not be seriously

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[59]Popper, President's Commission, p. 15.

considered for membership on a commission perceived to have average political significance. Their presence is intended to guarantee political attention for the commission's work. Their presence does little to guarantee legislative attention to the work of the commission; legislation subsequent to the work of a commission is more a function of presidential support of the final report than congressional representation.

A factor in the determination of the proper balance of interests in commission membership is the potential for commissioner and interest group education. Wolanin cites a candid comment by President Hoover regarding the particular educational purposes underlying many of his choices for advisory commission membership:

> There is no more dangerous citizen than the person with a gift of gab, a crusading complex and a determination to "pass a law" as the antidote for all human ills. The most effective diversion for such an individual to constructive action and the greatest silencer on earth for foolishness is to associate him on a research committee with a few persons who have a passion for truth - especially if they pay their own expenses. I can now disclose the secret that I created a dozen committees for that precise purpose.[60]

Officials of more recent administrations describe their motives with less elegance:

> We rub their noses into the problem and bring them along with the solutions. Hell, some of them, have never seen slums before. We take them into the ghettos and they are amazed that such things can exist. It is surprising how radical some of them become.[61]

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[60]Cited by Wolanin, "Presidential Advisory Commissions," p. 2.

[61]Norman C. Thomas and Harold L. Wolman, "Policy Formulation in the Institutionalized Presidency: The Johnson Task Forces," Thomas E. Cornin and Sanford D. Greenberg, ed. The Presidential Advisory System, pp. 135-136.

Nose rubbing seems not to be confined to Washington and presidential advisory commissions. Lipsky and Olson record the following comments by Winslow Christian, Executive Assistant to Governer Edmund Brown of California, regarding John McCone and the commission (The Governor's Commission on the Los Angeles Riots) he headed which had the responsibility for investigating the 1964 riot in Watts:

> What we needed was to rub the noses of the establishment in some unpleasant facts in order to get their acquiescence in and understanding of the changes that were needed to deal realistically with the problems. And the notion was that McCone was personally a rather conservative sort of man, and we accepted that.[62]

The goal of educating the commissioners is best summarized by Wolanin:

> The education of commission members has several important consequences. Most obviously, it means that the commission member who helps shape the findings and recommendations of the commission is often not the same man who received the call from the White House...The usual consequence of commission education seems to be that more conservative commission members gain an appreciation of the seriousness of the problem and become more willing to entertain innovative policies and more extensive governmental intervention....The education of the commission members thus accounts in part for the frequency with which commission reports are unanimous or contain only a few minority or dissenting opinions...As a result of their education, commissions members often become strongly interested in the subject of the commission beyond the duration of the commission...Thus, by educating the commission members, the commission serves to mobilize elite interest in the commission's problem and elite support for presidential sponsored action to deal with the problem beyond what the President attains by having their name on the commission report...[63]

No commission is appointed by a president without some provision for representation from the White House. This person is often called

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[62]Lipsky and Olson, MSS, II-66, fn. 86.

[63]Wolanin, "Presidential Advisory Commissions," pp. 20-21.

"the president's man"[64]. She/he is most often a commission member, but sometimes is the executive head of the commission's staff. Regardless of the position, the president's person knows one of his/her responsibilities to be to keep the president personally informed of the commission's actions. More often than not this is the only means by which the president can gain reliable, personal, advance information of the character and content of the commission's work and its final report. To function effectively in this role, the person must be able also to serve the constituency he/she was ostensibly appointed to represent. If such a person begins to feel serious stress from being caught between the president, the commission and the interest he/she was appointed to represent, his/her value to the president will diminish accordingly. As with the all members of the commission, there is just so much pressure and arm twisting a president can do, even on a person who supposedly "belongs" to him. The president therefore realistically expects little more than a flow of information from this person. The limited success of this device illustrates another reason why presidents are cautious in the appointment and use of presidential advisory commissions.

Why do persons accept appointments to membership on a presidential advisory commission? The time demands are great, there is no money in it,

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[64]Wolanin, "Presidential Advisory Commissions," p. 170 and Popper, President's Commissions, p. 21.

and more often than not, the report is not well received by the constituencies of the individual commissioners. The commissioners themselves give three simple answers to the question. First, they feel that they can "make a difference" in the way the problem facing the president can be resolved.[65] Second, they rationalize their action by affirming that they accepted appointment "to do a job for the president". Finally, the prestige of the appointment is enough to secure most. Few persons turn down an appointment if for no other reason than that the nomination is a clear indication to peers that one has the ability to command the attention of the White House. The prestige of the appointment is positively linked by Wolanin with the ability of the White House to secure the best persons available (within the limits set by the appointers, and the political system within which they work) for the job.[66]

Students of commissions tend to define commissioner roles in terms of the personal history which each brings to the task.[67]

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[65]Popper, President's Commission, p. 20.

[66]Wolanin, "President Advisory Commissions," pp. 68-69.

[67]See Lipsky and Olson, MSS, VI, p. 11-13 and Wolanin, "Presidential Advisory Commissions," p. 253 for other commissioner role typologies. Both are similar to Neil Reimer's typology of legislators in his book The Representative: Trustee? Delegate? Paritisan? Politico? (Boston: D. C. Heath, 1967).

First, commissioners are political persons and as such are aware of the primary interest, group or institution, they are appointed to represent. In this sense they are classic delegates. They report that they honestly strive to represent that interest in the deliberations of the commission. They know too that they will be expected to communicate to their constituency the interests of the president and those developed by the commission in its deliberations. Further, commissioners try to maintain that objectivity they think worthy of a person willing and able to help the president "do a job". This balancing act, the maintenance of a semblance of equilibrium between private and presidential (or public) interest, is not different from that required of members of congress. This latter role is best described as that of a trustee, a role patterned after that described by Edmund Burke in his Letter to the Electors of Bristol. The White House in appointing a commission most desires to move commissioner's from the former role to the latter; persons of the "commission class", educated by the White House usually see the common good to be that adhered to by the president and become willing to defend it against the narrow concepts of particular interest groups.

Second, they are persons possessing individual expertise in matters of concern to the president and know that its exploitation is a major reason for their appointment to commission membership. Being experienced in Washington politics they value individual specialization. Here too the White House aims at balance by naming people who have a

variety of claims on technical expertise. The commissioner assumes that his/her specialization will be complimented by those of the other commissioners. Skills the members of the commission do not have they expect to be able to call upon from the resources of the executive branch of the federal government or from the private sector, often from the businesses or universities from which the individual commissioners come. This representation of diverse talents is a strong cohesive factor in the life of all successful commissions. This fact helps to explain why the White House staff members express so much concern for "balance" and representativeness in commission membership. If some major interest or talent necessary to understanding the subject matter is omitted or denied the commission, the president's desire for a unamious report, acceptable to him, is highly problematic.[68]

The third role is that of having a continuing responsibility for the work of the commission. Most commissioners willingly accept a responsibility for educating, or shaping, the views of their constituents concerning the issues before the commission. Such a role comes very naturally to the kind of person selected to membership on advisory commissions. If such persons are to retain the leadership positions

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[68]Wolanin, "Presidential Advisory Commissions," pp. 255-256, sees a varity of task leadership functions developing throughout the life of the commission. They fall on different members of the commission at different times depending on the commission's mandate, the political context in which the commissions find themselves and the talents available within the commission and its staff.

which gave them the stature and political visibility to be selected for commission membership in the first place, they must present themselves to their constituents as the persons best informed about the total scope of the policy issue considered by the commission on which they served.

The fourth dimension is more individualistic than the others. Lipsky and Olson note that the roles commissioners play are conditioned by their previous experiences and observations. This is too obvious to belabor. It is well to note, however, that this is another major reason for the White House concern for balance and its desire to "rub the noses" of most the commissioners into facts outside those individual patterns of experience and observation.

The president names the chairperson of most commissions at the time the commission is appointed. These leaders play a specific, if unspectacular, role on most commissions. The chairperson is not always the most illustrious of the members named by the president, but is always one in whom the president has great confidence, particularly as a consensus builder, social and task leader. The production of the commission's report, in addition, is almost always the most serious responsibility laid on the chairperson. He shares the mechanical part of this task with the executive director of the staff, but the political task of holding the commission together and getting a unanimous report favorable to the president is that of the chairperson. The politics of producing such a report is his/hers.

G) The Commission Staff

The staff members of most commissions are organized on a simple three component administrative system: 1) the executive director, and an associate and assistant director, 2) the subordinate staff (professional and clerical), 3) ad hoc consultants.[69] Of the three, the executive staff is the most important. Executive directors are usually secured by the chairperson of the commission with the concurrence of the other members and with the approval of the White House.[70] They are hired more for their political and administrative expertise than any technical competence in the area under study by the commission. Their usual responsibilities include mediating between the members of the commission and the staff, keeping the White House informed of the progress of the work of the commission, doing routine executive tasks and sharing with the chairperson of the commission the responsibility for the production of the final report. When there is trouble with a commission the president if most likely to turn to the commissioner in whom he has the greatest confidence; his White House staff will most likely turn to the executive director.

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[69]Popper, President's Commissions, p. 21-23.

[70]Wolanin, in his "President Advisory Commissions," p. 23 presents evidence of the White House taking a vigorous, but hidden hand in the selection of executive directors. He reports that fourteen of the executive directors of the commissions he studied had very close ties to the White House prior to their appointments.

The size of the membership of the commission will have little to do with the size of the staff,[71] but the size of the staff of a commission is directly related to its political importance. Presidents who make a large political investment in a commission secure the means to enable it to have an adequate staff. A variety of devices are used to accomplish this; statutory appropriations, as possible and necessary will be secured;[72] executive departments/agencies and private institutions with an interest in the policy issue to be studied will be tapped for commissioner and staff personnel; in direct ratio to the political importance of the commission, the president and his staff will secure the contribution of services from those sophisticated political generalists from Washington law firms who have close political ties with the administration. Individual members of the commission always claim the right to name members to the staff. This insures a balanced political character to the commission's staff. Despite a large contribution to the creation of the staff of advisory commissions there is little evidence that the various administrations have tried to exploit this political influence as a way of exercising control over commissions.[73]

The average commission has a small staff, a situation dictated by lack of money and time and the character of the work the commission has to do. Most commissions operate on very small budgets, are given a very short period of time in which to do their work, and seldom know

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[71]Popper, President's Commissions, p. 21.

[72]See Section d, pp. 66-69.

[73]Wolanin, "Presidential Advisory Commissions," p. 183.

what kind of work will be required until well after the staff is secured. These factors dictate the filling of the staff with generalists, most often lawyers, who are flexible in their ability to take on work on short notice in such an environment. Further, because commissions inevitably come into being in the midst of some kind of perceived crisis, take form and begin their work very quickly, academic specialists, who are tied by a contract to their institution through a given academic year, are often precluded from a place on the staff except as ad hoc consultants.

A special, albeit brief, word needs to be added concerning social scientists, a unique group of ad hoc consultants to presidential advisory commissions whose presence and work has stirred some controversy within the academic community.[74] While the problem as related to the Kerner Commission will be dealt with below, it is important to indicate the general nature of the problem here: Lipsky states it well:

> ...just as commissioners were selected by the president, in part to represent diverse constituencies, so the presence of social scientists on the staff provides the impression that relevant professionals were consulted and utilized. (The contributions of the social sciences)... are reduced to three modes: synthesizing existing research and developing new theory according to conventional, professional rates and methods of work; or conducting original research or developing new theory with compromises or work procedures consistent with the needs of commission schedules. Most commissions utilizing social research adopt the first mode... organize work around educating commissioners and affirming existing data and theory.[75]

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[74]See pp. 369-376 below.

[75]Michael Lipsky, "Social Scientists and the Riot Commission," The Annals 394 (March 1971), p. 22.

H) Commission Independence

How independent of the President of the United States can presidential advisory commission be? Paradoxically, the answer is less than some commissioners, many staff members and students of the problem would like, but more than presidents and their staff members desire. The means of presidential control of the work of a commission are few but effective. Commissioners, being experienced political actors, are very aware of the general effect on all parts of the presidential advisory system of his power and determination to set policy goals and be the initiator of the various means necessary for their accomplishment. Thus the political common sense of the commissioners tells them that any efforts at independent actions would be resisted by the White House. The president has ways of thwarting commission independence.

First, the selection of commissioners is the major ingredient in a president's control over the work of the commission. A president is not likely to appoint persons to commissions who have what he perceives as records of maverick political action.[76] While a common strategy in naming commissioners is to appoint some who are representatives of known opposition to presidential policy goals, no president names a

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[76]Johnson's naming of social and intellectual maverick Eric Hoffer to the Violence Commission is consistent with this hypothesis. Hoffer, on the issue of domestic violence from the political left, which the administration feared, was a maverick to Johnson's likeing.

majority of his opponents to a commission. More positively, although commissioners are selected for their representativeness, prestige, and expertise, and not their malleability,[77] the fact that they are selected by the president for purposes he designs, sets serious limits on their independence. More specifically, the president appoints the members of the commission in a particular public political context and gives them a mandate for their work. These actions obviously define the boundaries of their activity. No presidential commission feels free to wander very far from the problems defined for it by the president in his mandate. Presidents are careful in issuing such mandates to delegate only so much authority. Mandates are always framed in issue-specific terms and commissioners respect them for what they are - the limits within which the president expects them to work. When they are cast broadly, as was the Kerner Commission's, the White House expects some independence.

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[77]Wolanin, "Presidential Advisory Commissions," p. 158. It is worth noting here Marcy's contention that independence is directly correlated with the prestige of the commissioners; the lower the stature of the commissioners the less independent the commission (Presidential Commissions, p. 25). Paradoxically, the great efforts to create balanced, representative commission membership, so prized by White House aides, may be counter-productive when weighed by the standard of independence. Cronin found, in studying advisory educational councils in the Department of Health Education and Welfare, the more broadly representative bodies to be the more independent: "... the more prestigious and elitist a council is the more it is likely to be an effective critic and to bring external influence to bear on agency problems..." (Committee on Governmental Operations, Presidential Advisory Committees, p. 195). This dual capacity to focus informed public opinion and expertise on the problem under study by these advisory councils appears to counter Yehezkel Dror's claim that representativeness and expertness are incompatible and counter-productive virtues in policy-making bodies (Public Policy Reexamined [San Francisco: Chandler Publishing Co., 1968] p. 13).

Further, as discussed in Section D above, a commission is dependent on the president for funds, and often for staff personnel. The skillful manipulation of these scarce resources can bring rebellious ad hoc advisory groups to heel. Commissioners do not accept appointment with the thought of a prolonged struggle with the president in mind. Such a struggle, if desired, can be carried on better in another context. In the presidential advisory commission the overriding desire is to get on with the job assigned by the president, publish the report and return to the "normal" work from which the members have come. In short, the political context which led to the creation of the commission and the self-perception of the task brought to it by the commissioners and the environment created by the president leave little room for radical independence on the part of the commissioners.

There is evidence, however, of some commission independence. Two major recent examples of what the White House regarded as "run-away" commissions are the pornography and higher education commissions. In each case the commission followed the path dictated by the information it gathered, and wrote a report which was politically unacceptable to the administration receiving it. In each case the administration receiving the report ignored it because it did not fit into the policy plans being projected in the area of commission concern.[78]

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[78]In the case of the Pornography Commission the report was received by an administration which did not appoint it and which tried to influence the character of its report by adding to the commission's membership before its publication. When the Nixon White House failed by these means to change the anticipated substance of its report it simply ignored the commission and its work.

Most White House aides agree with the comment made to Wolanin by one Johnson staff member, "When you establish a commission, there is little you can do but grin and bear it,"[79] Yet there is a legitimate concern among all presidential advisors over the number of commissions that "turn around and bite your ass ..."[80] for it is they who feel the wrath of the president who feels betrayed by a truly run-away commission.

Various factors contribute to the ability of commissions to be reasonably free, if not run-away, from close White House control. In general, the commission members are politically wise persons, highly motivated to do well in such a political environment.[81] They know how to touch all the political bases in gathering support for their findings and recommendations. Further, they know how to create a climate conducive to the adoption of a report when they know they are in the process of producing one which is at variance with White House desires.[82] As described above, they take their total responsibility with great seriousness, feeling the information they are gathering is important and needs to be fed into the presidential advisory system.[83] Being experienced Washington politicians they know that a certain distance from the White House is necessary if their job is to be done

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[79]Wolanin, "Presidential Advisory Commissions," p. 185.

[80]Ibid., p. 196.

[81]Marcy, Presidential Commissions, p. 25.

[82]Wolanin, "Presidential Advisory Commissions," pp. 364-366.

[83]Popper, President's Commissions, p. 16.

well and received in the most favorable political light throughout the government. Such experience also enables them to recognize and resist political pressure when it is applied.

Because they are a homogenous group, the commissioners on a politically controversal advisory body tend to pull together, transcending parochial concerns to support what they see to be the truth in the area under investigation and to rally support to head off excessive congressional or White House pressure. Their visibility, prestige and, in general, widespread public support as an independent body dealing with a sensitive policy issue provide the politically tender commissions with a more than adequate buffer against undue or unseemly interference from the White House.

There are in addition a variety of reasons, indigenous to the structure and work of White House politics, why the White House cannot, even if it desires to, control a commission.[84]

First, in most cases the White House is not at all certain what kind of report it wants from the commission. The appointment of a commission intends at least to preclude congressional action and preserve presidential initiative. Beyond that, a specifically desired White House course of action is stated in very general terms, at best. In this context, most appointments are sincere efforts by the president to obtain some help in charting a new course of action.

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[84]The following is indebted to Wolanin, "Presidential Advisory Commissions," pp. 190-193.

Second, if the president is to get that kind of direction or obtain any of the goals set out in Section B, above, the life and work of the commission must have credibility and integrity. A Truman aide stated it well in noting that non-interference "is the best way to get a strong enough report to be helpful."[85] Third, the White House simply cannot twist enough arms to seriously change the direction a commission may be moving. Finally, the White House has neither the resources, the inclination, nor the need to attempt to "fix" a commission. If they have appointed well there is no need. But if the commission is clearly a run-away and a threat to the president the purgatory of Washington politics will be its fate it and its work will be ignored. The president will then turn to other ways available to him to accomplish his purposes, or to other matters.

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[85]Ibid., p. 191.

CHAPTER III

RIOT COMMISSIONS: A UNIQUE GENRE

A) Introduction

Riots are familar subject matter for the student of American urban history.[1] Common in their frequency, varying in intensity and multi-variable in cause and effect, they have been carefully chronicled since the period immediately preceding the revolution.[2] To paraphrase H. Rap Brown's now proverbial statement about American violence, urban rioting is as American as apple pie.

Common with the urban riots of the twentieth century has been the equally common official response to them of appointing "blue ribbon"

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[1]For the purposes of the discussion in this chapter, "riot" is defined as spontaneous, collective violence, carried out over a relatively short period of time in an urban context by private individuals, directed against other private persons and/or the legally constituted government and/or their/its property, the control of which demands use of the police power of the state.

[2]A representative list detailing our tradition of domestic urban disorder and violence would include, as a minimum, the events constituting the Boston Massacre, the pro and anti-abolition disorders which plagued many American cities from the Jackson administration until the Civil War, the draft riots of the Civil War period, the labor management disorders following the industralization of the nation, and the various urban social disorders from the World War I period to the present.

panels of citizens charged with the responsibility of investigating the causes of the riots and presentation of suggested ways to prevent such future occurrences. Most of these advisory groups have been empaneled by mayors and governors, the officials charged with the immediate responsibility for controlling and explaining the riots.[3] Platt regards the appointment of such groups by state and local governments as a predictable, routine response to civil disorders.[4] They are, therefore, unique in their commonness. Because of their use by all levels of government, students of advisory commissions have begun to see them as useful aides in understanding all ad hoc advisory commissions as policy makers and for testing various hypotheses about their effectiveness and impact on their particular policy making process.

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[3]Rioting has been a major concern of four of the major post-World War II presidential advisory commissions: the President's Commission on Law Enforcement and Administration of Justice, 1967, (The Crime or Katzenbach Commission) the Kerner Commission, 1968, the National Commission on the Causes and Prevention of Violence, 1969, (the Violence or Eisenhower Commission), and the President's Commission on Campus Unrest, 1970, (The Scranton Commission). The major state and local riot commissions usually discussed in the literature are the Chicago Commission on Race Relations (1919), the Mayor's Commission on Conditions in Harlem (1935), the Governor's Committee to Investigate Riot Occurring in Detroit (1943), Governor's Commission on The Los Angeles Riots (1965). For a list of riot commissions somewhat different from the above see Anthony Platt, "Introduction," in Anthony Platt, ed., The Politics of Riots Commissions, (New York: Collier Books, 1971), pp. 8-9.

[4]Ibid., pp. 5-6.

Further, as Platt has shown, examination of riot commissions allows us to better understand the evolution of the relationship of the social sciences to the governmental policy-making process.[5] Riot commissions and the research they generate are the major source of data for government officials responsible for developing policies for prevention and control of future disorders.[6] Finally, riot commissions are an analogous, and in many cases isometric, model to which the presidential advisory commission can be compared for purposes of better understanding.[7]

B) A Definition

Riot commissions can be defined as "... authoritative tribunals, financed and/or supported by a governmental body, established temporarily to investigate and explain specific outbursts of illegal collective violence by private citizens, notably blacks."[8] Their

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[5]Ibid., p. 7.

[6]This presents social scientists working on riot related problems for commissions and other government agencies with serious research problems, as shall be seen.

[7]Obviously, for this essay, such analysis is necessary for a better understanding of the Kerner Commission. Analogous, but peripheral values realized by studying riot commissions are insights into the work of the British Royal Commission, an institution possessing many of the features of the American riot commission.

[8]Platt, "Introduction," p. 4.

membership profile is made-up of middle-class, middle-aged (average age, 54.3 years), white (70 percent) males (94 percent), 57 percent of whom were lawyers and approximately two-thirds of whom were, at the time of their appointment, or had recently served as, elected or employed government officials.[9] In short, they represent the established authority and values of their communities. Thus, if the riot under consideration by a given commission was a political expression of felt grievance against the established socio-political structures of the community, the judges of the validity of the complaint were members of the group which was the object of the accusation.[10] Faced with a shortage of time and resources (a situation endemic to riot commissions) the commissioners are presented with a choice between mutually incompatible options;[11] make as objective a report as possible, describing the riot in terms the subjects as well as the objects of the event will understand but which runs the serious risk of being rejected by both;[12] deliver a politically acceptable re-

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[9]Among the twenty-six black commissioners who have served on riot commissions between 1917-70 only five were active in civil rights organizations (the NAACP and the Urban League). Ibid., pp. 12-17.

[10]See the discussion of civil disorders below, pp. 104-111.

[11]See the discussion of the "commission problem," below, pp. 99-102.

[12]e.g. the report of the Chicago Commission on the Race Relations, 1919, which has become a model of objectivity for such bodies. Governor Frank Lowden of Illinois appointed six white members who themselves recruited an equal number of black members, raised most of their own funds, hired a technically competent staff, produced a politically unacceptable report which was ignored by city and state officials. It was eventually published-Chicago Commission on Race Relations, The Negro in Chicago: A Study of Race Relations and Race Riot (Chicago: University of Chicago Press, 1922).

port which 1) condemns acts of violence 2) seeks to explain their causes within the established values and practices of the society and 3) which recommends action to maintain law and order and social justice. The desire to modify slightly the status-quo is thus combined with a desire to insure that there will be no reward for the rioters and that pre-riot conditions will be corrected (in the established way) in such a manner that the situation will not repeat itself. At best, this type of official response to riots is symbolic politics of the kind which reaffirms and attempts to solidify the established values of the community while rejecting both the form and content of a challenge to them presented by the participants in the disorder.[13] Given the task assigned and the personnel and financial resources provided, it is not surprising that few riot commission reports address themselves to the underlying causes of urban racial violence and few fundamental reforms have been proposed.

C) The Commission Problem

All riot commissions suffer from three seemingly inescapable conditions inherent in their nature which seriously limits their effectiveness by allowing their political credibility to be compromised.

1) The limitations imposed by time and resources
2) How to develop commission integrity (and therefore credibility)
3) How to develop commission legitimacy (and therefore credibility)

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[13]Platt, "Introduction," p. 16

Lipsky and Olson refer to this dilemma as "the commission problem".[14]

The amount of time available to a riot commission to investigate and report on its particular set of circumstances never seems adequate to the major participants in its daily life and work -- commissioners, staff members and consultants. A riot, being a spontaneous event, is soon over and public attention is immediately concerned with control of any such future event. Appointing officials and commissioners, therefore, see time as the most precious commodity they possess if they intend in any way to develop a comprehensive investigation into the causes of the riot as well as make proposals for future control. This is a particular concern heard and recorded by Lipsky and Olson from those members of riot commission staffs and consultants whose "normal" occupation is that of a social scientist[15]. Used to longer periods of time for data collection, analysis, reflection and writing they were virtually unamious in expressions of concern over the lack of time available to do what they regarded as the minimum amount of work necessary to provide government officials and the public with the kind of report which would be, in their terms, useful both as an aid to understanding and dealing with the problems at hand.

The resources for doing the job are also in short supply for most riot commissions. Only the four national riot related commissions mentioned above[16] had the staff and financial resources to do the job

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[14]Lipsky and Olson, MSS, III, pp. 15-18.

[15]Ibid.

[16]The Crime, Kerner, Violence and Scranton Commissions.

participants and observers felt to be necessary. This niggardly allocation of human and financial resources is the strongest evidence which can be mustered to justify the charge that the naming of riot commissions cannot be deemed a serious effort by state and local officials to understand in any depth the dynamics of the causes of the disorders, their effects or the prospects for their control.

The second ingredient in the Lipsky-Olson "commission problem" (the difficulty in developing commission integrity) is obviously related to the first. The time needed to bring together the interests and objectives represented by the commissioners, the staff and the advisory system within which they find themselves, is usually greater than that which is available. Working under the pressures created by an urban riot members of riot commissions and their support staffs feel they need more time to integrate the various facets of their work in order to produce more than a superficial report.

Time and available resources, ability to integrate and give direction to its component interests and objectives creates for the riot commission its third problem: the difficulty in developing political legitimacy. A riot commission can grant and/or withhold legitimacy to the persons and groups involved in the disorders only if it has been able to obtain it for itself. As with presidential advisory commissions, political legitimacy for riot commissions is dependent as much on the intent (inherently difficult if not impossible to discern and evaluate) and support (much easier to measure) of the appointing authority. The time, resources and quality of appointments made to the riot commission together with the mandate and support patterns

developed throughout its lifespan are the key variables in determining the political legitimacy of its work. In developing the "commission problem" Lipsky and Olson have given us a useful conceptual tool for understanding riot commissions.

D) The President and Urban Riots

Urban riots have presented a variety of political problems to American presidents. The presidency has few direct lines of political access to the problem. Presidential activity in urban riots is complicated by the constraints placed on it by the federal character of American government. Presidents have gotten involved in two general ways in what is generally considered to be a state and local governmental concern.[17] First, presidential action is demanded when such disorders clearly violate federal law. Such circumstances occur when the riot is directed at and specifically endangers federal persons and/or property or is in violation of the orders of a federal court. Second, the White House has become directly involved in these local matters when it has been perceived that the power and resources of the federal government have to be placed between the contending parties in the riot because local resources have proven to be inadequate and local

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[17]This discussion is indebted to Bennett M. Rich, The Presidents and Civil Disorder, (Washington: The Brookings Institution, 1941), pp. 212-216.

authorities have requested national help.[18]

The most common first level of presidential involvement in the circumstances of a riot has been as policeman: the restorer of civil order. His actions are usually directed toward confining and ending the riot by the use of either nationalized units of the state's national guard or by the use of federal troops. The restoration of order, once presidential action is deemed legally necessary and politically unavoidable, has been the only goal most presidents have been willing to entertain. Presidents have preferred not to act beyond efforts to control the riot, and have been reluctant to recommend much federal aid, to the personal and property victims of the riot. They wish to avoid any appearance that the president was "rewarding" the behavior of the rioters, and to rigorously avoid any precipitous crossing of the boundary separating federal from state and local responsibilities.[19] This reluctance is one of the primary reasons for the appointment of national advisory commissions to investigate and report on the various forms of riots and the other forms of domestic violence experienced in the post World War II period. The commission, at the very least, could buy time and provide valuable information that would keep

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[18]The sending of paratroopers to Detroit in the summer of 1967 after Governor Romney conceded that his resources were incapable of controlling the riot in that city is an example. A more elaborate discussion of this particular incident is undertaken in the context of the analysis of the Kerner Commission in Chapter 6, pp. 184-201.

[19]Rich, Presidents and Civil Disorders, p. 219.

the president from being put into a situation which could be interpreted as rewarding rioters or local governments for what the White House inevitably interpreted as inept management of local affairs.

E) Riot Commissions and the Causes of Riots

There have been a number of recent studies of the causes, character, and intent of the 1960s' riots conducted independently of the presidency and any of its major commission efforts to gather data on and interpret the same events. These studies shed light on the work of the presidential riot commissions. The work of Robert Fogelson and James Q. Wilson is the most helpful in interpreting the official responses to riots.[20]

Fogelson classifies those American riots which have racial characteristics as either race riots or civil disorders; the former are those which are clearly inter-racial (usually whites attacking blacks), very violent to persons, and reactionary in the sense of being attempts (largely unsuccessful) at maintaining the racial status-quo.

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[20]See also: Lipsky and Olson, MSS; Robert M. Fogelson, Violence As Protest, (Garden City, N.Y.: Double Day, 1971); James Q. Wilson, "Why Are We Having a Wave of Violence," New York Times, May 19, 1968, VI, p. 23; Robert J. McNamara, S.J., "The Ethics of Violent Dissent," Proceedings of the Academy of Political Science XXIX (July, 1968) 140-145; Allan A. Silver, "Official Interpretations of Racial Riots", Proceedings of the Academy of Political Science XXIX (July, 1968) 146-158; H.L. Nieburg, Political Violence: The Behavioral Process (New York: St. Martins Press, 1969).

Civil disorders, on the other hand, are defined by Fogelson, as being intra-racial (blacks centering their wrath on persons and property within the black ghetto), directed more at property than persons and as self-conscious efforts at political protest by blacks directed at a changing socio-political order which they perceive as a negative conditioning factor in their individual and corporate existence.[21]

Wilson implicitly accepts Fogelson's dichotomization of racial riots, but takes a broader view of the total problem by categorizing urban riots as either instrumental or expressive.[22] He, therefore, places Fogelson's race riots into his instrumental category along with the draft riots of the nineteenth century and the labor-management violence of the twentieth; these instrumental riots are actions aimed at changing a very specific public or quasi-public set of circumstances (i.e. the draft laws and the ability of workers to organize and bargain collectively). Wilson's "expressive riots" category is very close to Fogelson's "civil disorders." Wilson sees the urban racial violence of the 1950s and 1960s as political behavior which gives expression to a particular political state of mind (in this case, dissatisfaction with socio-political status); it is a form of play, an intrinsically satisfying experience, a self integrating activity for those who participate in the riots.[23]

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[21]Fogelson, Violence as Protest, pp. 21-25.

[22]Wilson, "Why," p. 24.

[23]For a discussion of play fitting this model see Robert Neale, In Praise of Play, (New York: Harper and Row, 1969).

McNamara explains the urban violence of the 1960s in terms of traditional just war theory.[24] He describes the black American as viewing the established socio-political structure as exploitative and him/herself as victimized. Black rioters see their violent protest as having a reasonable chance to succeed; the establishment may reduce the level of aggression and exploitation if the cost to them can be raised high enough by the rioters. All other public remedies for their victimization are seen as progressing too slowly. Finally, blacks seeking redress through violence see the goal as being worth the personal and property cost it exacts from them.

Nieburg draws an analogy between urban riots in the United States and the Von Claswitz theory of war, by saying that the racial riots of the 1960s were essentially political protests carried out by other means when traditional patterns of political action became increasingly unproductive of relief from the socio-economic deprivation experienced by ghetto blacks.[25] In this argument Nieburg is in essential agreement with Fogelson's theme of violence as protest.

The most important contributions made by the interpretations of the riots of the 1960s sketched above has been to challenge explicitly in three ways the conventional wisdom (held by elected officials as well as members of the riot commissions) concerning the origin and purpose of American

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[24]McNamara, "Ethics of Violent Dissent," p. 143. His thinking roughly follows that of Fogelson (civil disorder) and Wilson (expressive riots).

[25]Nieburg, Political Violence, p. 17.

riot behavior.[26]

First, riots are not city-specific, but systemic in cause and effect;[27] the "flash-point" which set a given riot in motion may have been city-specific, but the expressions of relative deprivation by the rioters as well as more objective criteria for measuring basic socio-economic causes could be found in each of the urban centers experiencing a riot. Second, these studies have conclusively shown that the participants in recent riots are not the riff-raff of society. The profiles of the participants in all the major civil disorders from Watts through the Washington D.C. riots, which came in the wake of the murder of Dr. Martin L. King, Jr., developed by a variety of scholars, members and non-members of state and local commissions, display persons representative of the social-economic-educational norms, or slightly higher, of the community.[28]

Finally, the work of Fogelson and Wilson discredit the conventional view of urban riots as being senseless acts devoid of logic or

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[26]For examples of the conventional view see Violence in the City - An End or a Beginning? (the report of the Governor's Commission on the Los Angeles Riots [The McCone Commission]), Report For Action (the report of the Governor's (NJ) Select Commission on Civil Disorders, Trenton, N.J. 1968). See also the discussion of President Johnson's speech to the International Association of Chiefs of Police, below p. 315.

[27]Lipsky and Olson, MSS, I, pp. 14-16.

[28]Ibid., I. pp. 23-25.

reason, at best, and having common criminal intent at worse.[29] The position described here as conventional wisdom does not deny the need for social justice for black ghetto residents; it does deny those persons any right to use civil disorder as a means to that end. All official responses to the civil disorders of the 1950s and 1960s agreed with the New Jersey Governor's Commission Report which summarized its findings by saying:

> The illusion is that force alone will solve the problems but our society cannot deliver on its promises when terror stalks the streets, and disorder and lawlessness tear our communities apart. No group of people can better themselves by rioting and breaking laws that are enacted for the benefit and protection of everyone. Riots must be condemned. The cardinal principle of any society is law and order. It is vital to all. Without it no one will succeed or endure. The primary responsibility of government toward a threatened riot or mass violence is prompt and firm action, judiciously applied and sufficient to restore peace and order.
>
> At the same time, we recognize that in the long run law and order can prevail only in the conditions of social justice. Law enforcement in our country is neither designed nor equipped to deal with massive unrest. Our police establishments should not be forced into the roles of armies of occupations. Therefore reality demands prompt action to solve the long-neglected problems of our cities. Inherent in these problems is the virus of segregation.[30]

Efforts to terminate "unlawful" riot behavior dominates the official responses to the urban riots of the past thirty years. Lipsky

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[29]The conventional wisdom concerning riots defines "criminal" in two mutually inclusive ways. 1) anti-social, particularly in violation of statutory law, and 2) non-political (while there may be political consequences there was no admission of self-conscious political intent on the part of the rioters).

[30]Report for Action, p. XIII.

and Olson's "commission problem" has been the major contributor to this narrow response; lack of time and adequate resources to study the problem underlying the disorders have led all riot commissions to a singular concern with control of the immediate disorder and the creation of a social ethos in which it cannot be repeated. It is for this reason that Lipsky and Olson see the primary "American elite response to be to attempt to reduce the frequency and to condition the public perception of the riots".[31] The riot commission composed as it always has been of representative of that elite is a primary agent in the fulfillment of this responsibility.[32] Lipsky and Olson see the official response to riots, including the reports of riot commissions as having three components:

"1) The costs of the rioting must be raised beyond tolerable limits to the rioters.

"2) Reduce the extent to which riot events are perceived as related to real grievances and strategies designed to achieve redress.

"3) Reduce the sense of grievance over the distribution of values or the process by which the values are distributed".[33]

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[31]Lipsky and Olson, MSS, I, pp. 5-6.

[32]The police, the national guard, the courts and the elected officials of the riot afflicted community are the other significant primary agents.

[33]Lipsky and Olson, MSS, I, p.5.

All riot commission reports reflect these three ways of evaluating the nature of the riots. All begin their work and their reports with an investigation of the outbreak and recommendations for its control, followed by recommendations for different training techniques in riot control for the police and the national guard and the fire department, for upgrading the firepower of the police and the national guard, for expanded physical facilities for detention and incarceration of riot arrestees, for streamlined methods of processing arrestees through the judicial system, for improved communications systems, and for the levels of control of the media needed during the disorder. They then explain the outbreak as the product of the "riff-raff" of society or a criminal conspiracy. Finally, as with the New Jersey Commission, they make recommendations designed to relieve the immediate pressure of relative social and economic depravity felt by the rioters.

Thus the official response does not acknowledge the riots as expressive of civil protest in Fogelson's and Wilson's terms. The substance of the key question posed by students of the riots of the 1960s represented above - "Were the riots in any sense conscious political actions, designed to achieve real political gain at the expense of the dominant political elite?" - is denied from the beginning.

The riots may have been spawned by injustice, but acknowledgement of conscious political intent by the riot participants was rejected by all of the riot commissions when they began their work. Such an approach to the problem therefore precludes the possibility of reaching any accomodation between the rioters and the established political

authorities; when the social activities of a minority group, particularly one standing outside the political establishment, are classified as criminal by the established authority, it is virtually impossible for the traditional patterns of political accomodiation, bargaining and compromise to take place.[34] By accepting the premise that the rioters have no conscious political intent, the riot commissioners find themselves in the position of rulers imposing order on a criminal segment of the population; they cease being democratic politicians attempting to accomodate political differences through bargaining and compromise in an effort to resolve conflict. When on the other hand, commissioners seek to consider the riot activity as conscious political protest action (e.g. the Scranton and the Kerner Commissions) they inevitably encounter the frustrations and limitations of the "commission problem"; the lack of time and resources make it virtually impossible to pursue this line of inquiry, depending as it does on large quantities of both. In such circumstances, the riot commissioners finish their task personally frustrated with their work and a disappointment to the officials who appointed them.

F) The Political Failure of State and Local Advisory Commissions

There is agreement in the work reviewed thus far that state and local riot commission have failed in two ways: first as devices

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[34]Lowi, End of Liberalism, p. 300.

for the reduction of the frequency and intensity of urban racial disorders and, second, as instruments for enabling state and local officials to begin and maintain the initative in the creation of public policy designed to affect the riots and the conditions which created them.[35]

There are three general explanations for this failure which can be extracted from the literature.[36] These commissions commonly fail because:

1) State and local riot commissioners and those officials who appoint them misunderstand the political character of the violence associated with the riots.
2) Such commissions carry out their responsibilities in an environment in which political ambiguities are more pronounced than American political actors are used to.

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[35]Whether or not they, together with non-commission efforts to explain and control riots, have provided an intellectual resource in understanding and controlling civil disorders is another matter. The assumption here is that they have, but the development of the point cannot be attempted here. What should be underlined at this point, however, is the inability of state and local riot commissions to compete with a president determined to have a hand in the creation of the policy surrounding urban civil disorders in their community. The presidential riot commission is a valuable political resource for a chief executive determined to maintain national dominance over these types of local problems by not only pre-empting the field from the congress, and some of the federal department/agencies, but also from the elected state and local officials.

[36]The following discussion can be applied to presidential advisory commissions under one set of conditions. The three factors discussed are fatal to presidential advisory commissions when the appointing president withdraws some or all his support for its work and/or report.

3) Such riot commissions inevitably suffer from structural and organizational problems which are major contributions to their failure.

The first of the congenital weaknesses contributing to the political failure of these riot commissions is obvious when Fogelman's concept of civil disorder is recalled. The distinction between it and conventional wisdom about riots is not self evident.[37] Because they see riot violence as a periodic, illegal behavior pattern engaged in by deviant and unrepresentative persons, riot commissioners are unable to comprehend violence as expressive political behavior (Wilson) designed to test[38] and challenge what the rioters regard as the symbols of their oppression.[39] The implications of this failure become more obvious when Arendt's insights are applied. She sees violence as a weapon to which political reformers historically turn when the goals of their reformation are unachieved and/or perceived as unachievable.[40] As long as the conventional wisdom exempts expressive protest as a possible explanation for riot violence, and as long as riot commissions represent the persons and groups creating and sustaining the conventional wisdom, the political intent of civil disorders will be

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[37]Skolnick, Politics of Protest, pp. 33-34.

[38]Nieburg, Political Violence, pp. 124-125.

[39]Lowi, End of Liberalism, pp. 206-207.

[40]Hannah Arendt, "Reflections on Violence," New York Review of Books 12 (February 27, 1969):30.

ignored and the perimeters within which political solutions to urban racial problems can be achieved will be severely contracted.

The second general reason for the failure of these riot commissions is that riots create a political environment different from that to which most elected public officials and commissioners are accustomed. The spontaneity of the events of a riot, the uncertainty about the amount of support it has, (and therefore a consequent concern for its tenure), the administrative and logistical demands made in what is essentially a para-military operation, the general confusion over its meaning for the political future of elected officials and the general future of the community, all blend to produce a series of decision making situations unique in the political experience of all participants in the affected system. The riot commissioners placed in the center of this storm find it difficult to: 1) determine all that is expected of them, and by whom and 2) determine how to accomplish it even if purpose and expectation can be ascertained. Therefore, they find that their appointment raises a series of official and public expectations which are difficult for them to meet; political events tend to move very rapidly during and following a riot; officials find the development of public policy in this context not only complicated, but fraught with general and personal political dangers. Riot commissioners most often, therefore, find themselves between an anxious and uncertain group of public officials and an angry, sometimes terrified, and certainly confused public. Such a situation is a zero-sum game with the commissioners on the losing side of the equation. Within this context the criticism that riot commissions have a built-

a tendency to "white-wash" official handling of the disturbance,[41] that they all tend to produce the same kinds of reports,[42] and that they are unequal in the struggle with the interest groups which have a stake in the public policy developed in the post-riot period, are obviously justified. The tendency to white-wash and make similar reports can be credited to the fact that these advisory bodies exist in similar political environments; urban riots are more systemic than city-specific in character. That kind of environment produces similar actors and institutional structures not inclined to challenge the established pattern of making recommendations by advocating significant, immediate, implementable changes in public policy. In addition, because of the crisis atmosphere in which they work and the short period of their existence, these riot commissions must rely on the support of their appointing officials, and the prestige of the individual commissioners for authority and legitimacy in the policy making struggle between the various interest groups competing for positions of decisive influence. In that tense and politically ambiguous environment, riot commissioners generally find their prestige of limited value in the struggle to obtain and hold the initiative in the policymaking struggle. Unlike presidential advisory commissions, state riot commissions, a regular and predictable response by state and local officials to a situation of civil disorder, have not been found very helpful to those same officials in seizing and maintaining the policy-

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[41] Silver, "Official Interpretation," pp. 149-150.

[42] Kennedy Hearings, p. 1; Lipsky and Olson, MSS, I, p. 7.

making initiative. Nor have they been found helpful in finding and disseminating information concerning the causes of the riots which run counter to the conventional wisdom and the established values of the community. They do, however, serve the appointing officials well in buying time and providing a buffer between them and those in the community who would take precipitous actions of any sort. This positive function is no small contribution to community well-being and the political security of those in power.

The final set of reasons commonly set forth to explain the failure of these commissions can be found in what Platt calls the structural and organizational conditions of failure.[43] While much of what follows is implied in the discussion of the first two sets of variables affecting riot commission failure, it is well to be explicit at this point. Because of the nature of the selection process and the conditions under which the commissioners are appointed, riot commissions are severely limited by their formal mandates in what they can accomplish; as has been seen, general expectations for these groups often exceed their mandate which in turn creates a situation frought with ambiguity and potential for frustration.

Second, commissioners have not been representative of a very wide range of American society. In particular, the interests of those citizens most personally affected by the disorders are usually not represented in any way on the commission. Third, constraints of time and resources combine to produce Lipsky and Olson's "commission problem"

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[43]Platt, "Introduction," p. 45.

which usually results in, at best, poor scholarship attempting to explain the causes of the riots, and at worst, what Epstein called "political truth."[44] Fourth, no study of a particular riot commission, to date, refutes Platt's contention that "The relationship of commissioners with their research staff is typically exploitative and managerial. In turn, intellectuals have generally demonstrated an unwillingness to be misused, coopted and exploited by the commissioners."[45] This failure to attract persons of intellectual talent able to aid in the research necessary to develop a good report is perhaps the most serious of the reasons for the consistent failure of these groups. Fifth, riot commissions have produced theories about riots which are poorly grounded on hard data and which are politically naive. These two weaknesses are the consequences of the time and resources problem and the inherent inability of the riot commission to be politically effective in the policy-making conflict area. Sixth, riot commissions, by their very nature, have been unwilling to implicate the established government as a party to the causes of the riots. There is an assumption in all riot commission reports that the administrative practices and individual behavior of local government officials had nothing to do with

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[44]Edward Jay Epstein, Inquest: The Warren Commission and The Establishment of Truth, (New York: The Viking Press, 1966). He uses the term to mean a conclusion reached which is acceptable to the commission more for its political merits than its logical consistency with the investigation conducted by the commission and its staff.

[45]Platt, "Introduction," p. 46.

causing the riots.[46]

All of these inhibiting factors leave the commission with little more to do than appeal to the good faith and reason of the government and the general public to correct the circumstances which produced the unrest (the essence of most of the reports) without questioning the underlying assumption that changes in the conduct of the participants in the disorders can be achieved without changes in the socio-political conditions which produced the civil disorders.

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[46]National Commission on the Causes and Presentaion of Violence, Chicago Study Team, Rights in Conflict, (New York: A Signet Broadside, The New American Library, 1968), The report of the Walker Commission, concerned with the disorders in Chicago during the 1968 Democratic National party convention, is a notable exception to this generalization. The report called the disorders, "The Chicago Police Riot." The sustained hostility of Chicago officials to the report and its authors is an example of one reason why such reports often are not written.

PART II. POLITICAL USES OF AD HOC ADVISORY GROUPS IN THE ADMINISTRATION OF LYNDON BAINES JOHNSON

CHAPTER IV

LYNDON JOHNSON: THE MAN AND HIS DOMESTIC POLICY MAKING SYSTEM - AN OVERVIEW

In the five years he served as president, Lyndon Johnson moved from a position of being able to secure any legislative goal he desired to one where no new legislative programs could be initiated and little more than survival guaranteed for the existing ones. During his last eighteen months in office Johnson tried desperately to maintain the political process and programs which had served him and the other inheritors of the Roosevelt New Deal so well; he attempted to force a pattern of political behavior from the past on an increasingly reluctant nation; the results for Johnson appropriately can be described in literary terms - tragedy. New forms of political leadership were developing in the 1960s with which the persons and traditions of leadership of the 1950s were ill-equipped to cope. The new leaders were articulating new goals and new political means for obtaining them. This created an inevitable conflict between them and established leaders, like Johnson, who regarded the goals and means of the established policy-making system as normative. In short, the liberal realism of the 1950s became the romantic conservatism of the 1960s' and as romantic conservatives generally, Johnson and his

generation of political leaders led themselves, and the nation, into tragedy.[1]

Johnson was a member of the generation of American political leaders who, influenced by the two world wars and the Depression, saw severe limits to the political idealism of presidents like Woodrow Wilson and Herbert Hoover and rejected it in favor of a pragmatism of accomplishment. They were doers, politicans who had a record of legislative and administrative accomplishment. They not only set goals, they achieved them. Their sense of accomplishement was not only fed by the attainment of self-constructed goals but also by major victories in political battles thrust upon them; the second world war had been won and the Depression favorably ended. They were, therefore, not only committed to winning, but were the most experienced winners in the political battles of their time. Unfortunately, it was their impressive record of legislative and political accomplishment which clouded the vision of Johnson and his contemporaries to the changing political climate of the 1960s.

Lyndon Johnson was both the inheritor and a significant contributor to this political environment. He had been a vigorous New

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[1]There are, of course, other explanations of the fall of Lyndon Johnson. Three have been helpful in this study. In their study of American politics in 1967 - 1968 the authors of An American Melodrama (Lewis Chester, Godfrey Hodgson, Bruce Page, An American Melodrama: The Presidential Campaign of 1968, (New York: The Viking Press, 1969) isolated a sense of hubris as a root cause of the problem. David Halberstam (The Best and the Brightest, (New York: Random House, 1972) and Irving Janis, (Victims of Group-Think, (New Haven: Yale University Press, 1972) agree that a group-consciousness and a closed information gathering and distribution system was the major source of Johnson's undoing.

Deal liberal participant in Washington politics since the Roosevelt administration. He began his Washington political career as a member of the House of Representatives during the New Deal. He was trained for congressional leadership by fellow Texan Sam Rayburn, Speaker of the House of Representatives and master practitioner of the art of Democratic liberal politics. He was the majority leader of the United States Senate during the Eisenhower administration and, after an unsuccessful attempt to secure the presidential nomination for himself, became Vice President under John F. Kennedy and succeeded him after his murder. Few of Johnson's contemporaries were as experienced as he in national politics, public policy debates, and decision making; he was the political equal, if not the superior, of his post-World War II Democratic predecessors in the White House and he was determined to leave his personal imprint on the presidency and the nation.

B) Johnson The Man

The literature about Johnson reveals five personality characteristics the understanding of which is essential in explaining him as a political actor.[2] First, he tied his self-esteem to recognition

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[2]The discussion which follows is deeply indepted to Doris Kearns' Lyndon Johnson and the American Dream. It also draws on James D. Barber, The Presidential Character: Predicting Performance in the White House, (Englewood Cliffs, N.J.: Prentice Hall, 1977), Fred I. Greenstein, and Lawrence Berman, "Presidents and Their Advisors from 1933 to 1974," paper presented at the Conference on Presidential Advising in the United States, sponsored by the Politics Department and Woodrow Wilson School of Princeton University, October 31 - November 1, 1976, Edwin C. Hargrove, "Presidential Personality and Revisionist Views of the Presidency," American Journal of Political Science XVII (November 1973), Harry McPherson, A Political Education and George Reedy, The Twilight of the Presidency, (New York: World Press, 1970).

and appreciation by others of his personal accomplishments. Kearns discusses Johnson's need to earn the love of others, particularly that of his mother.[3] His obsession with amassing a significant record of accomplishment suited him well for a leadership position in the ranks of the Democratic New Deal liberals - persons whose self orientations were fixed to large scale social and political accomplishment.

It is useful to consider the second and third characteristics together. Johnson was possessed of a need to control his immediate environment as completely as possible. To accomplish this he gave what many regarded as undue attention to detail and the consequent accumulation of information useful to the maintenance of control. Illustrations of these characteristics include his personal selection of bombing sites in Vietnam, his insistence on being involved in the handling of the smallest details of the Dominican Republic and Panama crises, his intimate involvement in "head-counting" of votes in the development of the Great Society legislative program, what some regard as an almost pathological penchant for secrecy, and his repeated efforts to reduce serious policy problems facing him to dimensions which would allow him to have a one-on-one relationship with the representatives of the various concerned interest groups. The Johnson style of political leadership was then personal, grounded on an enormous amount of self confidence, the fulfillment of which was based on the premise that he

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[3]See in particular Chapters 1 and 2 of her, Lyndon Johnson and the American Dream.

could demand and receive more information than anyone else in the policy making mix.

Fourth, Johnson had an ability to turn limited personal resources into substantial political holdings.[4] From a minor junior congressman-president relationship between him and FDR, Johnson developed an image of himself as a White House confidant which was useful to him both with the executive branch of government and with his constituents. From bits and pieces of information, unimportant in themselves, he developed a data base of personal and political information. This enhanced his ability to move his fellow senators to support his legislative moves, which converted him from a regional and institutional to a national political leader. Johnson earned well his reputation of being able always to take what he had and put it to good use.

Fifth, Johnson tended to feel the need to run from personal and highly dangerous political problems while at the same time exaggerating his accomplishments in the events which precipitated the flight. Kearns relates two such adolescent flights.[5] His decision not be seek re-election and the objectively indefensable hyperbole he insisted on using during the last year of his administration in describing his legislative

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[4]Throughout her book, Kearns attributes this characteristic to his relatively impoverished childhood.

[5]Kearns, Lyndon Johnson and the American Dream, pp. 38-39 and 42-44.

accomplishments are further examples.[6]

Johnson also brought to the presidency a personality deeply conditioned by the socio-political environment in which he matured. Lyndon Johnson was first and foremost a west Texas populist.[7] Like other varieties of American populism, that of Johnson's west Texas hill country was conditioned by extreme poverty, rooted in the soil, vigorously individualistic and unquestioningly dedicated to belief in a direct correlation between hard work and success, provided an individual is given an equal chance to compete in life. For Johnson, government existed to insure individuals an equal chance to compete and achieve in the society; whatever else government might be, it was to be the leveler of the advantages of the accidents of birth. Johnson's brand of populism opposed the advantages ordinarily given to those who accumulated vast concentrations of money; he insisted that those who are so advantaged have an obligation to use their money and its consequent power for the public good.[8] Johnson and others of his

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[6]For examples of this see the following files in the LBJ Library: Califano 49-50 "Legislation" and Cater 3 & 4, "Presidential Memoranda" 6/67 (1) and 12/67, in which all legislation was either classified as "land-mark" or "major", and his administration's legislative accomplishments were compared in some detail to that of previous administrations and where there is a clear assumption being made that all bills proposed by the White House were worthy of passage and only a recalcitrant Congress stood in the way of even greater legislative accomplishment by the administration.

[7]Kearns' Lyndon Johnson and the American Dream is the best study of the influence of Johnson's socio-political environment on his political "style."

[8]Ibid., p. 27.

generation of west Texans were familiar with poverty, its personal effects and the related problems of poor ranchers being victimized by banks and other financial institutions which exploited rural landowners during the Depression years. They were generally less familiar with the problems of rural to urban migration and the urban poverty of the 1960s. They confused them with the rural poverty of their youth to the detriment of both the increasing number of urban poor and Johnson's political accomplishment.

In the world of the young Lyndon Johnson the social and personal worth of hard work was never questioned; carried on in a socio-political climate of free competition, hard work leads to individual and corporate well-being.[9] Translated into the political style of Johnson, such persons fight to win a share of the political pie waiting to be divided among the political contestants at any given time; one fights to win and uses all the political and personal resources available; one, in short, works hard. Losing he insisted, even for a seemingly good cause gains nothing; for Johnson, a major task in any political struggle is to define the situation in such a way that something can be gained which then can be used as a political resource for gaining more in the next phase of the struggle. This is a quantita-

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[9]As President, Johnson showed little appreciation of the increasingly obvious (to the non-populist liberal, at least) insight gleaned from contemporary social research that some human labor prevents particular individuals and classes of persons from achieving much of the common good and that for the persons so entrapped by the "system" learning to beat the system of elite control was more important to their "success" than hard work of the type used in populist rhetoric.

tive view of life and the political process: more is better.[10] The only important questions are the crudely pragmatic ones of economic and material success. There is simply no time for the luxury of asking questions which challenge the fundamental values of the society. For Johnson the values of America were obvious and understood, and success in achieving them could be measured by the economic and material standard of individual and corporate well- being. This was a politics of action over reflection favoring the technically and politically competent and skewed toward those public interest groups of the past from which the present political leadership evolved.

C) The Johnson Administrative Style

There were three components of Johnson's administrative "style" while he was in the White House. Binding each to the others were his concerns for control, detailed information, and secrecy.

First, in his approach to and his assumptions about national public policy making Lyndon Johnson was very formal. In being so he was closer to Presidents Eisenhower and Nixon than to any of his Democratic post World War II predecessors.[11] His was a very tight administrative system designed to allow him to have maximum effect on

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[10]Doris Kearns, "Lyndon Johnson: Personality, Culture and Politics," paper delivered at the annual meeting of the American Political Science Association, Chicago, September, 1971.

[11]See Richard R. Johnson, Managing the White House: An Intimate Study of the Presidency, (New York: Harper and Row, 1974) for a similar evaluation of the administrative styles of presidents from Franklin Roosevelt through Nixon.

the decisions which would determine national public policy. He took very seriously the fact that the president is the only Washington office holder elected by a national constituency. He saw himself as first among the Washington leadership, by virtue of his national election, and in no way equal to the others.

Johnson accepted the conventional wisdom of Washington New Deal liberals that the national leadership is chosen by a variety of democratic means from among the leaders of the various traditional national interest groups. For Johnson there were two kinds of national leaders; political and interest group leaders. Within the former category were the president, vice president and other members of the administration, and the members of congress. In the later category were the persons serving as the elected leaders of the various national interest groups. All had in common an electoral constituency as the source of their political power with the president's being not only the broadest but constitutionally and politically the most important. For Johnson the process of government consisted of bargaining and compromise among these various groups of persons until a consensus was reached. The responsibility of the leaders was to construct the necessary consensus, to govern and serve their constituencies. If these leaders did not produce, new leaders would be sent to Washington by the various voters. All those who stayed in Washington then were by definition leaders, winners, producers of public benefits for their various constituencies. Johnson saw this system as based on mutual confidences and trust and a willingness to bargain in good faith. The product of this system, the much valued consensus, was, by definition then, the

common good, or as near to it as is politically possible. Further, he saw the major interests of the body politic as essentially fixed and firmly represented by the established national interest groups. New groups would arise only when the established ones failed to produce. The normal state of affairs would be for the new interests to be absorbed by the existing interest groups.

Johnson saw himself as the de jure head of this national system of public policy production through interest group competition. All other leaders in the public policy process were part of his national constituency and had a responsibility to bend their parochial interests to the common good institutionalized in his Great Society.[12] This attitude toward his position in the national policy making leadership helps to explain his need for secrecy in the policy making debates within the national leadership. Secrecy not only allowed unfettered debate within the ruling elite, but a greater degree of presidential control. Once a consensus was arrived at among the national leaders Johnson expected public debate, not before! Public debate then was to be confined to consideration of the wisdom of decisions made by the national leaders. Public debate was not to be a part of the process of making the decision. Therefore, representatives of groups not a part of the Washington leadership who began to clamor in the 1960s for a voice in the decisions on public policies they felt affected them were considered by Johnson to be irrational at best and subversive

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[12]It is important to emphasize here that Johnson saw his national constituency as responsible to him, rather than the opposite. For Johnson, the president has a mandate to rule, not govern, until the next election.

at worse. Public debate for Johnson was best confined to elections not to the policy making process. Thus, there is a sense in which Johnson can be said to have tried to function more as a prime minister than as a president: i.e. as party leader, chief of state and head of government whose legitimate right to govern is solely dependent on the confidence of his elected peers. When a prime minister loses control of the elected elite, when there is no confidence, he falls from power. When Johnson felt he had lost control of congress, when he could no longer command the right to initiate policy for the war and his domestic programs, he resigned.[13]

Johnson's system, then , was one of political brokering among ruling elites. If, as Johnson seemed determined to maintain, the persons making up the national leadership remained relatively static, the ability of the president to maintain his position of dominance in the policy making process was assured. For Johnson, the best type of policy making group to fit his personal and institutional needs was a small group of key leaders, representative of the major interests concerned with the problem at hand, who met secretly, preferably with him, or with persons in whom he had great confidence, and by whom his

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[13]For a similar discussion of Johnson's leadership style see McPherson, A Political Education and Irving L. Horowitz, "Lyndon Baines Johnson and the Rise of Presidential Militarism," Social Science Quarterly 53 (September, 1972). Much of the above is indebted to Kearns, Lyndon Johnson and the American Dream. For one account, not yet in the public record, of Johnson's reasons for resigning see The Cabinet Meeting of April 3, 1968: The White House, pp. 1-2, LBJ Library.

prescription for the problem could be accepted. Johnson's style never allowed the other elites to question whether his views deserved primary and singular consideration. Thus Johnson saw elite brokering as a one-way process in which the other elected political leaders and those from the private sector came to terms with and accepted the position of "their" president.

In crisis policy making (e.g. the war in Vietnam and the civil disorders of 1967-1968) Johnson chose a small group (The Tuesday Lunch Group and his White House Civil Disorders Control Group) of persons in whom, by all accounts, he would try to implant his perceptions of the problem at hand and whom he expected to ratify his decisions.[14] His then was not the collegial style of crisis management of Kennedy who developed the Executive Committee (EXCOM) for handling the Cuban missile crisis and from which he absented himself in order to allow the participants to come to their best recommendation; nor was Johnson's method that of FDR who encouraged conflict and competition among his policy advisors in order to get a variety of points of view before he made a decision; his was rather a formal system of executive policy-making with the chief executive in a position from which he expected to maintain complete control over the whole of the system.[15]

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[14]See, for instance, Henry F. Graff's The Tuesday Cabinet: Deliberation and Decision on Peace and War under Lyndon B. Johnson (Englewood Hills, New York: Prentice Hall, 1970), McPherson, A Political Education, pp. 334-383 and Chapter 12, pp. 446-471, below.

[15]During the last two years of his administration, however, Johnson experienced an increasing amount of open dissent, competition and conflict among his advisory staff; he received more conflicting advice than he seemed to want. This loss of control over his most immediate environment was a significant contribution to his decision not to seek re-election.

The place of citizen voting in the Johnson scheme of democratic policy-making and governing needs to be briefly discussed if a complete picture is to be sketched. Johnson became a national leader during the Eisenhower Administration on the basis of the support he gave to the voting provisions of the Civil Rights Act of 1954. He worked hard to have a strong voting title included in what was an otherwise weak bill. He was from that time committed publicly to the expansion of the voting lists - increasing the number of persons who could participate in shaping the government. He intended to make this a vehicle for the material progress of the poor. He never wavered from his determination to broaden the franchise and to ease the problems associated with being black and trying to register to cast a vote. Citizens voting for their individual choices between competing leadership elites, in the public and private sector, was the essence of democracy for Johnson.

Simple pragmatism was the second ingredient in the Johnson style; pragmatism not in the philosophical sense of evaluating the consequences of action, but in the common sense of being principally concerned with action itself - does a particular action produce results commensurate with the goals set out for it? The unasked question underlying this approach is, "How can political power be used to obtain commonly agreed upon goals of the society?" This approach to problem solving works best in a policy making system where there are commonly assumed values. Johnson and his cohort assumed such values. For him the basis of this pragmatic approach was grounded in the west Texas Depression populism of his youth and young adulthood which perceived

material advancement of the people, of any sort, as a good, and the greater such advancement the greater the good. This is a non-ideological approach which is concerned with results. Discussions of the merits, the political and moral implications of the results, were not entertained and as such were regarded as irrational or argumentative at best and politically irresponsible at worse.

For some of Johnson's political generation and persuasion, evaluation of action took place at the level of technique, not at that of ends; if the methods by which policy was made were good (i.e. they were legal and did not cause too much damage to the people and institutions which produced and implemented them) the results could not be regarded as bad. Johnson, on the other hand, seems to have made no prior judgments about limits to the techniques or the results of his policy making efforts. "I do understand power ... whatever else may be said about me I know where to look for it and how to use it." "I want the presidency to improve how people live."[16] Power, inherent in the political office, developed by the person holding it, used for the well being of the population, as determined by the office holders, was the set of pragmatic presuppositions underlying Johnson's approach to policy making. This is the foundation for his desire to win something in every political battle, to get something from every policy-making struggle. It also explains his distrust of the persons he and Sam Rayburn called "enthusiastic losers."[17] The latter, for him,

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[16]McPherson, A Political Education, p. 450 and 202.

[17]Ibid., p. 160.

were usually intellectuals, persons who questioned the value of the results of particular policies and thereby in fact questioned the value of the total Johnson approach to policy making. Johnson saw the mass of people sharing his concern for results, but being unconcerned about having a share in the determination of the policy. He therefore resented and resisted those who, in the 1960s, asked for a way to participate in the policy processes which affected their lives. They wanted a share in the techniques and the results; Johnson thought that for the system to function properly they must be satisfied with the results and limit their participation to the process of leadership selection.

Johnson assumed, as Lowi notes, that there are no apriori limits to the priorities of government or to the uses of government power to obtain them.[18] Limits are imposed by the realities of the political market place, a kind of Adam Smith invisible hand operating to protect the public at large against excessive governmental action. As with Smith's economics, such an approach assumes that the rhetoric of justice insures the reality, that no provisions for the evaluation of results are needed as long as they and the techniques used to obtain them are not seriously contested.

Johnson also saw the power possessed by the president to be

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[18]Theodore J. Lowi, "One Dimensional President: Lyndon Johnson's The Vantage Point," Social Science Quarterly 53 (September, 1972): 410-412.

exclusively his, to be used by him to create new opportunities for citizens to achieve for themselves the benefits of the Great Society. Power for Johnson was not as Neustadt described it,[19] an instrument of last resort, used only when the maximum of influence had failed to achieve desired goals.[20] Because of his concern to maintain control of the total policy making situation, Johnson became a power maximizer who used the resource in deliberate and insidious ways to accomplish the goals he set for the society.[21] In the end, many observers felt that he became fascinated with the manipulation of political power and lost sight of the goals of the Great Society.[22] Regardless of the judgement of history on the point, Johnson did regard personal use of as much political power as necessary to accomplish the goals he set for his administration as the vital component of his pragmatic approach to national policy making.

Centralization of the total policy making process in him and his immediate White House staff was the third component of Johnson's style. Johnson's view of national political leadership placed the

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[19]Neustadt, Presidential Power.

[20]See Greenstein and Berman, "Presidents and their Advisers," p. 6. for a similar discussion of the differences between the practice of Lyndon Johnson and the model of the presidency set forth in Neustadt's work.

[21]Ibid.

[22]Ibid., Lowi, "One Dimensional President," p. 410 and McPherson, A Political Education, pp. 97-98.

presidency in the center of the process which developed the goals of, and the means for achieving, national policy. For him, national leaders set the standards for national policy goals; they were elected to lead, to provide the people with policies and programs, the means for achieving an economically secure life. He thought the national leader should set very high standards toward which the poor, in the context of his War on Poverty, could aspire; but it was he, as their elected leader, who set the standards. His desire for centralization and control also led him to try to confine in the White House the debate on the standards and the various policy options open to the society. His unwillingness to condone leaks, unless he authorized them, of information to the press and the congress is well known. It is this paternalistic, and at times dictatorial, drive toward centralized control, more than any other, that led to his adoption of the secret task force method for the development of novel policy proposals.

Johnson's relationship with the black leadership of the civil rights movement offers the best evidence of this paternalistic desire to centralize all power and responsibility in his own hands.[23] He did not trust the leadership of persons like Martin Luther King, Jr. because they insisted on developing goals for the society which did not coincide with those of the president. In the Vantage Point,

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[23]See McPerson, A Political Education, pp. 35-37 for a similar discussion. The minutes of the cabinet meeting of April 3, 1968 (Cabinet Meeting, April 3, 1968, The White House, LBJ Library) contain a record of Johnson's attitudes toward the leadership and goals of the civil rights movement at the time of the March on Washington.

Johnson reveals that he wanted control of the public policy part of the civil rights movement: public policy was his by right of election, and black leaders, in particular, should follow his lead. When many followed Dr. King and took an independent direction Johnson regarded it as a personal attack. They had failed him.[24] His was essentially a southern paternalistic view of the civil rights movement. As their president, he would lead black Americans to greater opportunity for full citizenship in and benefits from the society. Their responsibility was to cooperate with his policies, work hard and achieve much within the context of opportunity he provided for them.

Thus, Johnson's style can be characterized as serving liberal democratic values[25] with oligarchical means.[26] As Johnson's political career developed, particularly during the time of his presidency, his leadership style slipped further and further from the polyarchical side of Robert Dahl's scale for measuring political regimes and closer to the point designated as hegemonic rule by elites;[27] he was unwilling to tolerate and encourage citizen participation in the development and

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[24]See his discussion of the effect on his civil rights strategy on the events at Selma, Alabama. Lyndon B. Johnson, The Vantage Point: Perspectives on the Presidency, 1963-1969. (New York Chicago and San Francisco: Holt, Rinchart and Winston, 1971), pp. 161-162.

[25]Universal adult franchise and massive governmental activity designed to encourage maximum individual initative in the pursuit of the material benefits obtainable from the society.

[26]Government for the people by political and interest group elites.

[27]Robert A. Dahl, Modern Political Analysis, (Englewood Cliffs, N.J.: Prentice Hall, 1976), pp. 82-99.

execution of policies affecting them. This style led to a myopic perspective on the socio-political consequences of his policies. Moynihan is particularly astute in pointing this out when he observes that by putting the largest part of the local responsibility for the War on Poverty on the city mayors and their political organizations (when the original plan for citizen participation in the Community Action Program became a political liability) Johnson not only entrusted a program the urban poor had been led to believe was a major step in social justice to the most reactionary political group in American politics, but it also effectively pitted against each other two old friendly groups in the traditional Democratic alliance:big city mayors and urban Negroes.[28] Here, as he always tried to do, Johnson won something in his struggle with the other components of the national domestic policy making system. But in doing so he was blinded to the ultimate social and political consequences of the policy until it was too late. The 1967-1968 crisis in the cities, which such policies helped to produce, came too late to convince him that many of the Great Society urban programs were as much a part of the problem as the solution.[29] This crude form of pragmatism had

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[28]Daniel P. Moynihan, Maximum Feasible Misunderstanding: Community Action in the War on Poverty, (New York: The Free Press, 1969), pp. 142-143.

[29]See in particular the reports (pp. 178-179, 427-428, below) prepared for Johnson by junior members of the White House staff after they made extended visits to urban ghetto areas during the last year and one-half of the administration. In these they repeatedly pointed out that much of the administration's program efforts was not reaching the intended recipients and that the administration and it's Great Society programs were getting the blame.

no appreciation for the key ingredient of its long forgotten philosophical sire that the consequences of action must be anticipated and evaluated before the action is taken.

This integration of personal style and inherited political context which constitute the essence of Johnson's approach to the presidency can be summarized as follows: First, the president, in Johnson's view, provided the nation with cohesion through the implementation of the liberal New Deal Democratic creed. Second, Johnson saw one aspect of his constitutional role of commander-in-chief to be the pacifier of the world and thereby the guarantor of the domestic liberal values inherent in the first view.[30]

When Johnson perceived that his first understanding of the presidency was under attack and in danger of collapsing under the pressure of events in the last two years of his administration he shifted to the second to maintain control. One major adviser told him how he could use his commander-in-chief rule in his attempts to deal with domestic policy problems. National Security Adviser Walt W. Rostow saw the two as essentially identical in substance and therefore demanding similar responses:

> I was much struck -- in your excellent address last night -- by the parallels between your formulation of domestic policy and those you have applied to foreign policy.
>
> If and when the time comes to appeal to our people to start the course both at home and abroad -- perhaps in the context of a tax increase -- you may wish to make these parallels explicit.

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[30]Irving L. Horowitz "Johnson and Rise of Presidential Militarism," p. 395.

Specifically ---

1. At home your appeal is for law and order as the framework for economic and social progress. Abroad we fight in Vietnam to make aggression unprofitable while helping the people of Vietnam and all of Free Asia -- build a future of economic and social progress. The equivalent of domestic law and order on the world scene is that nations forego the use of violence across international frontiers.

2. The parallel can be done in greater detail. Abroad, you have formulated our policies under four headings which have domestic parallel as follows:

Abroad	At Home
- Deterrence of aggression	- Law and order
- Economic and social progress	- Economic and social progress
- U.S. partnership with regional organizations.	- Federal partnership with the States.
- Reconciliation among nations which now are postured in mutual hostility.	- Reconciliation among all groups in our own society.

3. I cite these parallels because it is a fact that we cannot play our part on the world scene unless we do so from a base of order and progress at home; and, equally, we cannot build order and progress at home in a world where U.S. withdrawal from its responsibilities results in an international environment of chaos and violence. It is unsafe for our society -- at home and abroad -- to walk away from its domestic problems and responsibilities. It is equally unsafe for our society -- at home and abroad -- to walk away from its external responsibilities. Therefore, we must -- and we can -- find the energy, talent, and resources to work for order and progress at home and abroad which means:

-- the cities;
-- foreign aid;
-- and seeing it through in Vietnam.[31]

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[31]Memo, Rostow to LBJ, July 28, 1967. McPherson 8/Riots 1, LBJ Library. This memo was written in response to Johnson's address to the nation following the events of the Detriot riot and the subsequent appointment of the Kerner Commission. There is no record of Johnson responding to it.

CHAPTER V

THE JOHNSON AD HOC ADVISORY SYSTEM

A) Introduction

The system of ad hoc advisory groups developed by Lyndon Johnson is a prime example of the integration of personal style and inherited political tradition discussed in the previous section. The tradition of using such groups to enhance the policy-making dominance of the presidency was well established when Johnson became president,[1] and his reliance on it illustrates a general characteristic of his presidency: a stronger tendency to perfect the administrative patterns of the past than to innovate. The use of presidential advisory groups, particularly secret task forces, was well suited to his personal style;[2]

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[1] As noted above, p. 35, Johnson as the majority leader of the Senate had run afoul of President Eisenhower's use of secret advisory committees in the dispute over national security which centered on the Gaither Commission.

[2] These groups were the principal means by which his administration generated its truly impressive record of policy making ideas, program recommendations and legislative proposals; by late 1968, by its count and hyperbole the Johnson administration had seen 401 pieces of legislation passed, most of which were concerned with domestic policy matters; of these 291 were branded as "major" and 110 as "landmark" with sixty-seven bills still pending! See "Legislative Record of the Johnson Administration" [undated] Califano 49/Legislation, LBJ Library.

beyond satisfying his personal need to control his immediate environment, the tradition of ad hoc advisory groups which Johnson inherited fulfilled a powerful complementary institutional need; it provided his presidency with an administrative and politically effective means for obtaining policy making information from technically competent experts outside the government without passing through the filter of the executive bureaucracy or the legislative process; the avoidance of both allowed Johnson to enhance the White House's position as initiator of public policy. Glazer correctly contends that the system evolved as a reflection of two political facts of bureaucratic-political life in Washington: 1) the president does not expect to get what he wants or needs in the way of policy-making thinking from the career bureaucracy or his political appointees, and 2) no permanent political institution can give the president what he needs to maintain his pre-eminent policy making position fast enough, cheap enough, reflecting a broad enough range of values and interests with such relatively low political cost to him as the ad hoc advisory group.[3]

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[3]Nathan Glazer, "On Task Forcing," The Public Interest 15 (Spring 1959): 42-43. Clapp sees six specific reasons for recent presidents establishing task forces within the Executive Office of the President: to provide visibility for the president's interest in a particular subject or policy problem, to elicit new ideas, to evaluate on-going programs, to give an independent view of a problem, to provide support for a program regarded as important to the president and presently under some form of political attack, and encourage as broad as possible participation by elite leadership in the policy making process. See Charles L. Clapp, Montauk Symposium, 1971, pp. 80-83.

The mature Johnson system of ad hoc advisory groups, particularly the agency and outside secret task forces and the public advisory commissions, was, by any administrative standards, a highly sophisticated, closely integrated means for producing and controlling the information for and the policies of the Great Society programs.[4] As a general rule, Johnson appointed task forces on a regular, planned schedule as a vital element in his production of the legislative foundation for his programs. Advisory commissions, on the other hand, were irregularly appointed in response to the various pressures on his office discussed in Chapter 4. Illustrations abound of Johnson's appointing a public commission and one or more task forces to consider the same policy problem, or set of problems. To anticipate somewhat the discussion to be found in the next section, a useful illustration of this type of close integration can be drawn from Johnson's struggle to command the federal governmental response to the urban riots of 1967; the Kerner Commission, charged with general consideration of the disorders, existed coterminus with the Kaiser Commission on housing and four major task forces on civil rights: the 1967 (annual) Task Force on Civil Rights, the Task Force on Urban Employment Opportunity, the Task Force on Crime and the Task Force on Summer Programs.[5] A major reason for so closely

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[4]See Wolanin, "Presidential Advisory Commissions," p. 54, for a similar discussion of the integrated character of the Johnson system.

[5]The record and report of each Johnson task force can be found, by name, in the Task Force Finding Aid in the LBJ Library.

integrating the work of the task forces and commissions was the education of particular elite publics discussed in Chapter 2. Of all the various possible benefits to the administration accruing from the use of advisory commissions in conjunction with task forces, education of congresspersons, the federal bureaucracy and various private elites were high on Johnson's list. A prime example would be the use of the Commission on Rural Poverty as an educational device to reinforce administrative recommendations on the school lunch program which had been previously perfected for the administration by the Agricultural and Rural Life Task Force of 1965.[6]

The following list of commissions and task forces, chosen to represent the variety of subjects given to these groups by the Johnson administration and listed here without rank ordering, bears witness to its impressive record of policy initative and accomplishment.

Commissions[7]

Warren, Kerner, Eisenhower, Kappell (post office) Kaiser (housing), national libraries, mental retardation, rural poverty, health facilities, international studies, veterans' hospitals, automation and technology, patent system, crime in Washington, D.C., military draft, tenants' rights, and heart, cancer and stroke,

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[6]See Cater 4/Presidential Memoranda, 9/67-10/67 and FG 690/Task Force on Agriculture and Rural Life, 1965, LBJ Library.

[7]Popular or subject titles are used.

Task Forces

Civil Rights, Crime, Protection for the Public, Health and Education, Innovation and Economic Growth, Consumer Protection, Urban Employment Opportunities, Gifted Persons, Agriculture and Rural Life, Government Organization, Summer Programs, Child Development, Communications, Housing, Cities.

Even a casual comparison of this list with the major legislative accomplishments of the Johnson administration shows that the system of task forces and advisory commissions was closely tied to the major interests supporting the Great Society program. The analysis of the ad hoc advisory groups which follows further reinforces that impression.

The Johnson use of ad hoc advisory groups in the development of his legislative program was patterned after those systems used by his immediate predecessors. And, as with much of the Johnson administrative style, in putting together his system he refined his inheritance.[8]

Johnson came to the White House determined to be a strong president. He believed in the adage that the president proposes and the congress disposes. He arranged the information gathering and policy

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[8]The substance of this section has been taken from interviews, Joseph Califano's oral history tape in the Johnson Library, Thomas and Wolman, "Policy Formulation," and an undated and unsigned paper titled "Policy Formulation in the Johnson Administration" found in the LBJ Library in Gaither 17/Policy Formulation During the Johnson Administration. Content analysis of the last document fixes the date of its composition late in the history of the administration, probably sometime in the last six months.

development system of the White House to maximize his ability to realize its truth. Kearns confirms this view of Johnson's understanding of the role of the president in national policy making; she shows it not to have been a result of his acceding to the office. While the substance of the following remarks was concerned with national security matters, the attitude expressed concerning presidential iniative in policy making is applicable to all his relationships with congress.

> In Johnson's view-which many shared-the presidency was the only institution in the American system capable of consistently initiating major legislation. It was up to the president to identify problems, first to bring them to public attention, and to draft bills designed to solve them. The executive must provide the agenda for Congressional action and set forth the subject matter and priorities for debate and decision. Congress was not, in his view equipped with the expertise, the time, or the type of coherent organizational structure needed to formalize and initiate programs of action on a regular and systematically related basis. "Whenever my critics in the Congress talked to me about the responsibility of creating issues, I came back to the question of where the hell they expected the issues to come from-from our heads? If an issue is not included in the presidential agenda, it is almost impossible-short of crisis-to get Congress to focus on it. That's the way the system works; but these fellows never understood that. They didn't understand-with all their calls for Congress to have all sorts of expertise and classified information... that the Congressional role...is not to act but to respond to the executive.[9]

The structure and the tradition of policy making Johnson inherited provided for the departments/agencies of the executive branch together with their interest group clients to propose new programs and legislative proposals to the president through the Bureau of the Budget.[10]

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[9]Kearns, Lyndon Johnson and The American Dream, pp. 139-140.

[10]Changed to the Office of Management and Budget during the administration of Richard Nixon.

Johnson thought that this traditional practice worked well in two particular ways at different times in the history of an administration. First, it is the best way to provide for incremental adjustments and minor changes to existing programs with the full participation of all the major interests concerned. It was ideally suited to the bureaucratic and pluralistic demand for slow incremental development and change of policy. Second, during the first two years of an administration, when there were large numbers of new persons staffing the various agencies/departments, the system permits a free, non-incremental, flow of policy ideas. It was the problems inherent in the incremental process of the traditional way of executive branch policy making that moved Johnson to create a process which could overcome bureaucratic inertia by bringing to the White House outside experts who could provide evaluations of existing policies and recommendations for changes. He wanted to provide a means for innovative policy suggestions to come into the White House from universities and other centers of policy planning without first going through the filtering process of the federal bureaucracy. Like all post-World War II presidents, and more determined than most, Johnson wanted a system which would be responsive to his presidential leadership and which would give him the ability to dominate the executive agencies/departments, by controlling their policy making agenda from the White House. He and his White House senior staff were frustrated by the fact that the executive departments/agencies did not see themselves as functional units of the White House. Johnson set out to change that. He wanted more information, more control, in order to enable him to produce more legislation.

Johnson's political instincts compelled him to resist any temptation to alter radically the White House policy making system he inherited in 1963; the primary reason being, of course, the fact that he had not been elected to the office. Johnson was cautious and resisted any temptation to change staff personnel and/or policy making procedures within one year of a national election. This was particularly important, he thought, if he was not to jeopordize what he regarded as an almost certain victory in that election. He, therefore, adopted a position of holding the line in administrative changes and any new programs and to prepare for the first two years of the new administration in which he could take quick advantage of the congress and the federal bureaucracy by the new personnel and procedures for executive policy making he planned to introduce.

Johnson had been impressed with the strengths and weakness of the task forces developed in the 1960 campaign. These task forces were used to produce issue papers and to aid the president-elect during the transition period. They were excellent vehicles for tapping the rich idea resources of the private sector as well as a means for allowing innovators within the government to surface. But he found their public exposure to be a disadvantage. The openness of their work allowed the opposition too much time to develop its counterattack. In the political world of Lyndon Johnson one did not allow the political opposition to know one's strategy and the strength of one's proposals until the time was right to use both to insure victory. It was therefore natural for Johnson to want to use idea producing task forces in his administration and to keep their

work from friend and foe alike until he was ready to use it.

After the election of 1964, Johnson moved quickly to secure the benefits of the Kennedy task force idea without its liabilities. He established within the White House his system of secret outside-task forces which became the major contributor to his yearly production of Great Society legislative proposals. In addition to satisfying his previously discussed personal penchant for secrecy and control, Johnson saw five virtues in having task forces do their work secure from the glare of Washington publicity. First, public advisory groups are forced, by their visibility, to be too cautious; such exercises in caution run the serious political risk of giving tactical advantage to opponents. Second, in addition to receiving innovative policy ideas Johnson wanted to know what was being done incorrectly in the federal bureaucracy. He did not think he could receive from a public advisory group very objective information about the quality of the work being done by the agencies supposedly under his control. Three, Johnson did not want to force members of task forces to endure the pressures of working under what he regarded as the harrassment from the national press corps which is inflicted upon all presidential appointees. Four, service on a public advisory group makes too many demands on persons already too busy. The secret task force is less demanding; because of its lack of public exposure its work can be finished faster than that of a public advisory commission. Finally, the secret task force allowed the president and members of his staff time to refine the task force recommendations before exposing them to

the reactions of congress, executive branch and the various concerned interest groups.[11]

An additional value can be added to Johnson's list of the virtues of the secret task force; they provided a way for the administration to experiment with policy ideas at little or no political risk. They were in fact in-house think-tanks in which the White House could experiment with policy ideas which it may or may not introduce to the congress and nation. Such experimentation and the opportunity it offered for the development of neatly refined ideas and legislative strategies provided Johnson with yet another vehicle for domination of the congress in the policy initiation game.

Throughout 1964, Johnson and his senior staff tinkered with their ad hoc advisory system and by 1965 its structure and procedures were refined into the form to be maintained through the end of the administration; outside task forces produced the substantive policy ideas for the Great Society, department/agency task forces reviewed their work and coordinated programs which had overlapping agency jurisdiction; commissions were appointed to buy time in the midst of

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[11]The secret task force also allowed the administration more skillfully to use what became for them a very important strategic tool in their struggle with the congress: the planned leak to the press of information generated by the off-the-record research groups. The tighter the control over the task forces, the more potential use the information they produced would be in the battle for political advantage in policy making. See Califano 57 [1758]/Press Contacts, LBJ Library, for evidence of the White House's efforts to control what to it were "bad", or unplanned leaks thought to be detrimental to the president and his program while at the same time providing for the press those leaks which were thought to be of use in furthering or clarifying the White House's designs. For other example of leaks see the discussion of this topic in the context of the work of the Kerner Commission below.

various types of crises and, in addition, aid the administration in supporting the Great Society legislative proposals before the congress.

The key person in the development and operation of the Great Society during its most productive years was Joseph C. Califano, Jr., Johnson's chief White House domestic aide. He came to the White House from the Department of Defense with little experience in domestic policy making. Johnson gave Califano three general responsibilities: 1) develop the legislative program. 2) coordinate all the domestic departments and 3) coordinate the economic policies of the administration. When he took office, Califano thought the scope of the task force system he inherited was too broad and the groups too inefficient. To remedy both defects he attempted a restructuring of the task forces along the lines of the Department of Defense's Programming-Planning-Budgeting (PPB) system.[12] This effort at instituting PPB was even less successful than most of the others tried in Johnson's Washington. However, Califano's efforts did contribute to the creation of tight administrative controls on task forces and closely integrated their work with the policy goals being set by the White House.

The three major parts of the ad hoc advisory group system Califano and his staff perfected were commissions, agency task forces and outside task forces. In the early stages of their development each had a particular responsibility to perform. Public commissions "took the heat" for the administration generated by the controversial parts of the Great

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[12]See Califano's discussion of this development in his oral history type in the LBJ Library.

Society program and served as the major educator of congress and the public concerning particular policy issues under dispute. Outside task forces were the idea generators, the groups which proposed specific legislative program recommendations. The agency task force was originally intended to review the recommendations of the outside task forces for political and administrative acceptability; as various pressures mounted on the administration and as congressional support for the Great Society programs diminished, Johnson and Califano turned more and more to these advisory groups composed of administrative insiders to help them in what was to become the increasingly futile task of domestic policy coordination.

The analysis of these parts of the Johnson ad hoc advisory groups system which follows is intended to reveal the unique contributions of each and the political and administrative linkages between them.

B) Definitions

The Johnson administration's advisory commissions can be fitted comfortably into the general definition of presidential advisory commissions put forth in Chapter 2:

> A presidential advisory commission is an ad hoc body of technically competent, highly prestigious persons, the majority of whom are not at the time of their appointment government officials, appointed and publicly charged by the president to independently study and report on what he perceives to be a highly sensitive national political-policy issue which cannot be managed by the regular administrative devices created for that purpose by a given administration.[13]

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[13]Particular commissions deviated from the norm; viz, the members of the Warren Commission were all active members of the government. But, here the exception does prove the rule.

An operational definition of the two types of Johnson task forces takes the following form:

> A confidential advisory group, composed of technically competent and/or persons bearing official political responsibility for a particular domestic policy area, appointed by the president to refine and perfect a presidentially selected public problem area and to present to the White House independent political and fiscal recommendations for legislative and/or administrative action.[14]

C) Purpose of Ad Hoc Advisory Groups

The creation of a legislative foundation for his Great Society was Lyndon Johnson's overriding concern as president. Until the events of Vietnam overwhelmed him and his administration, all his formidable personal resources were attuned to the achievement of this goal. Kearns describes is single minded obsession to make the legislative process his principal concern:

> In words and deeds, Johnson made known his intention to concentrate on legislation... he committed most of his waking hours to the Great Society ... (he saw his job with Congress to be) to obtain the maximum legislative output that any participant could be made to produce.[15]

Central to this task were his commissions and task forces.

The purpose of the Johnson advisory commission differed little from the general pattern discussed in Chapter 2; their fundamental purpose was to gather and process policy information to serve pre-

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[14]See Glazer "On Task Forcing," p. 43, Thomas and Wolman, "Policy Formulation," p. 129 and pp. 136-138 and Gaither File 17/Policy Formulation During the Johnson Administration, LBJ Library.

[15]Kearns, Lyndon Johnson and The American Dream, pp. 233-234.

sidentially defined purposes. Johnson appointed two types of advisory commissions. The first was intended to buy time. Appointed in the context of an administrative or political crisis, these were a means of securing time and breathing room for the other advisory groups and/or executive departments/agencies. These commissions took the heat, allowing the White House to avoid making rash actions which might be politically damaging to the administration or the nation.[16]

The second type was created to assist in supporting the administration; they were given mandates to prod the agencies/departments, congress and the various interest groups on behalf of programs and policies thought to be in trouble on the Hill or with various elite publics. These commissions served both an executive oversight and an educational function.[17]

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[16]Popper correctly describes most Johnson commissions as crisis oriented. (Popper, President's Commissions, p. 5) e.g. During the time the Kerner Commission was carrying out its assignment the congress was debating an anti-riot bill with which the administration felt uncomfortable. Being able to point to the yet uncompleted information gathering activity of the commission allowed the administration to avoid having to take a public stand on the bill and thereby slow its congressional progress and to eventually amend its content. See Ex/FI/4, 10/13/1967 - 1/26/68, LBJ Library for documentation describing the White House strategy regarding this bill.

[17]The Kappel Commission (Post Office) is a good example. The administration used this commission to inform the Post Office Department that present practices were under careful examination and that administrative changes might be in the offing. It also alerted congress and the particular interest groups which were concerned that an adjustment in policy was being contemplated.

Johnson's task forces were more institutionalized within his domestic legislation production system. Regardless of classification (agency or outside), task forces were intimately tied to the administration's yearly cycle of legislation. Their purpose was to provide innovative and "objective", policy ideas within the boundaries of the goals of the Great Society.[18] In the Johnson domestic policy making system, then, task forces provided the intellectual content, following the guidelines set by the president and the agencies/departments; congress and the special interest groups, in response to White House leadership, provided the legislative substance. Johnson's principal purpose in devising the system was to allow him direct controlled access to all participants and the major sources of information in the national policy making system and making them dependent on him for policy making initiative; having all parties to a policy issue either drawn into the White House to deal with the given problem, or dependent upon the White House for information or action before doing anything themselves, Johnson secured control over initiative and guaranteed himself a significant say in the final legislative and administrative form of the policy matter. Further, Johnson was concerned to circumvent the conservative barrier which the combined forces of the executive departments/agencies and the major interests groups erected before any innovative force in Washington.

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[18]Califano 5/'67 Task Force on Civil Rights (1), National Housing, LBJ Library for an example of Johnson's guidelines to a task force.

> ... Let me briefly describe the normal course of a new idea in the historical pattern of legislative program development. A new idea could emerge from any number of sources, from an Advisory Council or Commission, from an academic institution, or from any interested person or group ... Then the ideas would have to go through a rather tortuous process of study within a Department or Agency. It would have to be checked by all the interested groups and constituencies and the various jurisdictions within a given Department and elsewhere in the government. As it moved up the line, it would be reviewed by more and more people, people who had their own ideas and were either fighting to get them heard or, if they had been adopted to see them preserved. More often than not, the new idea, if it ever emerged was adulterated by internal bureaucratic considerations and the pressures of the Congress and client interest groups. The general theme was not to rock the boat ... The end product was normally a compromise. Then those same ideas would be pressed forward ... year after year. ---Perhaps the most important reason for this kind of operation lies both in the difficulties of extracting new ideas from the Departments and Agencies and also in the very nature of the Presidency. The President and the members of his staff are literally swamped by emergencies, by crisis at home and abroad ... Accordingly, a President must be able to reach out of the government and obtain the best thinking available in the country.[19]

Lastly, implicit in the other announced reasons for naming task forces, Johnson saw the system as a way of interjecting into the the national policy making mix the personal contributions of a variety

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[19]Gaither 17/Policy Formulation in the Johnson Administration, LBJ Library, pp.3-4, 15, while there is no indication in the files consulted that Johnson asked to have this paper prepared or read it, its content does correspond to his attitude concerning the reasons for the establishment of the task force system recorded by other students of his administration. See Kearns, Lyndon Johnson and the American Dream, pp. 210-250, Thomas and Wolman, "Policy Formulation," Thomas E. Cronin, "Presidents and Domestic Policy Devices," paper prepared for delivery to the Princeton Conference on Presidential Advising, and Greestein and Berman, "Presidents and their Advisers."

of technical experts whom he thought were overlooked by the traditional procedures.[20] This system served the purpose implicit in the organization of all post-World War II presidencies; it allowed the president to determine the terms of the policy debate and the grounds upon which it would be waged. In doing so the task force system allowed the president to maintain his position of policy initiator and thereby keep maximum pressure on the congress and, the executive departments/agencies and their interest group clients. In this system the congress was dependent upon presidential initative for its policy making identity; its major function was as either supporter or opponent of the presidential program. Further, the department/agencies were reduced to refiners and implementers of existing programs and reviewers of the innovative ideas of the task forces and the White House staff.[21] What remained was a system with the president in the commanding position. Johnson reinforced the position of strength his system gave him by carefully reminding members of his task forces that theirs was a service to the president and thereby the nation:

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[20]See the cover letter to the Task Force on Government Organization, 1967, LBJ Library and also see the discussion of task force membership, below. Johnson insisted that there be some type of geographical distribution of the technical experts named to task forces and commissions. As will be discussed, this was an important but not convincing contribution toward breaking down the pattern of excluding non-established interest groups from national policy members.

[21]See Thomas and Wolman, "Policy Formulation," pp. 127-129 for a similar discussion.

> It is interesting to note that despite periods when my popularity in the academic community was not very high, there were virtually no refusals from members of the academic community to serve on Presidential Task Forces. There were probably many reasons for this, but the first among them, and by far the most important I think, lies in the fact that whether or not a particular American happens to agree with his President, most Americans are willing to do their part to help meet the problems of this country. In addition, most people, particularly academics, know that they have certain ideas which are worth pursuing and when given the opportunity to bring them to the President, and hopefully the Congress, they are quick to respond to the opportunity.[22]

This message was not lost on the task force members. In his report to Johnson as Chairman of the President's Task Force on Government Organization Ben Heineman made the following comment about task force services to the president:

> We recognize the sensitivity of our work. We have retained tight control of its contents and authorship. While the report is organized to permit referral of some parts to the departments concerned, if you desire this, we have written it pre-eminently for your personal review and consideration ..... I want to express our collective thanks to you and your staff for offering us this splendid opportunity to be of service to you personally, and to acquire additional insights into some of the problems of the modern Presidency.[23]

Thus, by personalizing the task force system, Johnson institutionalized the tradition of presidential dominance of policy initiation.

Lastly, Johnson used his task forces as a kind of executive grand jury ferreting out information about how and why Great Society programs were or were not working as planned. Given Johnson's known resistance to public criticism, a public advisory group would find it very difficult

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[22]"Policy Making in the Johnson Administration," p. 16.

[23]Letter, Heineman to Johnson, October 1, 1967 in 1966 Task Force on Government Organization, LBJ Library.

to carry out such a responsibility. He wanted the task forces to tell him what was going wrong in the administration of the Great Society.[24] Again, the ad hoc advisory group system reflects Johnson's determination to absorb functions traditionally and legally reserved to the congress--oversight of administrative performance.

In short, the task force system was central to Johnson's desire to merge the Executive Office of the President, the executive departments/agencies and the congress into one institutionalized process dedicated to the creation and execution of the Great Society programs. As Kearns correctly maintains, Johnson, with this domestic policy system, had come close to the development of a kind of parliamentary government with legislative and executive power being vested in the same decision makers.[25]

D) Creation

Because they were public agencies, generally appointed in the context of some crisis, the creation of Johnson advisory commissions was usually accomplished by presidential announcement, the formality of which was dictated by Johnson's perception of the importance of the work the commission was being given to do. The invitation to membership,

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[24]"Policy making in the Johnson Administration," p. 8.

[25]Kearns, Lyndon Johnson and The American Dream, pp. 221-222.

on the other hand, was issued in an almost casual manner; senior White House officials called the nominees on the phone and issued an invitation which included references to the service being of personal value to the president.

While the invitation to membership on an outside task force was issued in the same casual manner, the creation of these advisory groups was much more institutionalized. The process began in the spring when senior White House aides requested "idea books" from the heads of the executive departments and visited the major university campuses looking for novel ideas capable of being translated into Great Society legislation. When it was determined, usually by late June, who and where the resources were for the development of White House public policy plans, the task force was named and its work schedule constructed. Obviously, no announcement was made concerning the appointment of secret outside task forces. A phone call was the only official announcement individual appointees received concerning his/her appointment; no letters of appointment were issued. There was, however a bit more formality connected with the appointment of inter-agency task forces. A form letter was used.[26] It was sent to the designated chairperson and contained blanks into which was to be inserted the name of the inter-agency task force to be created, those of the agencies/departments to be represented on it (the form provided for the expansion of this representation at the

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[26]See memo Gaither to Ross 8/8/67 and attachments, Task Forces, Organization of, Robson-Ross 27/Pricing Files, LBJ Library.

discretion of the chairperson), the name of the White House liaison person, a statement of the particular concerns the White House had in establishing the group and the date its final report was due. The form also contained a suggested outline for the final report and a recommendation that a short (ten page) summary should also be produced. As noted above, these task forces were intended to evaluate and make continuing recommendations for refinement of established Great Society programs and policy priorities. Therefore, the more formalized approach seems to have been dictated by the routineness of the appointment and the work.

E) Authority and Funding

Johnson's authority for naming task forces was clearly grounded in his constitutional responsibility to inform the congress of the state of the union and to execute faithfully the laws of the land.[27] While his authority to appoint public advisory commissions might be challenged on the statutory grounds mentioned above, his close integration of the work of outside task force to the State of the Union message provided no such basis for attack. Some cabinet members, however, felt the secret outside task force system removed them and their departments from anything but a reviewer's role in the development of new Great Society legislative programs, this was exactly the perception of the task forces which Johnson wanted to create.[28]

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[27]See p. 66, above.

[28]Source: interview data.

Johnson had access to two funds established by the congress for presidential contingency use with which he could finance the work of task forces and commissions.[29] In general, however, he preferred the method of agency contributions for this purpose; he thought this approach had the special virtue of having a clear statutory authority.[30] The interview data collected for this study corresponds with that of Wolanin on this point:

> Johnson rarely used his discretionary funds to support commissions. He insisted on them being funded with contributions from agencies. Each of them would be assessed to support a commission in their area ... He felt that he should return this money [in the two presidential contingency funds] to Congress every year, that this somehow made him a frugal and wise man.[31]

Thus Johnson avoided any need for a congressional-presidential confrontation over advisory group funding.[32] Further, by following this method, Johnson easily hid the real cost of his advisory group system from the congress. The extent of the political risks to the president and the advisory groups in this form of financing can be

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[29]The Emergency Fund for the President and the Special Projects Fund.

[30]See 31 USCA 691

[31]Wolanin, "Presidential Advisory Commissions," p. 154.

[32]A problem more pronounced when dealing with commissions than task forces. See the discussion of the problems of commission funding in the previous chapter. Funding for task forces, as noted, was more easily accomplished by the president appealing to his responsibility to fulfill his constitutional mandates.

seen in the experience of the Kerner Commission to be discussed below.

An indirect form of funding, often used by Johnson, was to have the various governmental department/agencies and private institutions lend qualified persons to be members or staff to the commissions-task forces for full-time work while carrying the salary costs of such persons in the budget of the "home" institution. The fact that task forces and advisory commission members received no compensation other than modest per diem and travel expenses was an additional form of subsidization by the persons asked to serve and by the institutions with which they were regularly affiliated. Solicitation of direct funding from private sources (foundations, corporations, etc.) was often used to help support particular commissions.

F) Membership

Membership for the type of ad hoc groups being examined in this chapter was drawn from three distinct constituencies: the major groups which had a vested interest in the particular matter being discussed, federal personnel from agencies/departments which had an interest in the targeted policy area and persons from universities, private "think tanks", foundations and industry who had special knowledge and skills to contribute. In general, the membership of commissions and agency task forces was composed of persons drawn from the first two groups and that of the secret task forces from the last.

Regardless of the type of advisory group being appointed, Johnson wanted his staff to maintain tight control over the two critical intra-group leadership positions: the chairperson and the executive director of the staff.

> Ernest Goldstein, an Assistant to President Johnson, telephoned me in December 1967 and asked me to accept appointment to the Commission of Obscenity and Pornography as its Chairman .... I agreed to serve on the Commission but called Mr. Goldstein's attention to the fact that the Act called for the Commission itself to elect its chairman. The President announced the appointment, which announced me as chairman in a press release, but I believe that my official appointment was simply as a member of the commission ...The Commission elected me chairman by unanimous vote.... I know nothing about the manner of selecting the other members of the Commission. I made no recommendations as to its membership to anyone in the White House ... (Goldstein) .. read me a list of names, I knew none of them, but their positions made it sound like a well balanced commission of highly competent people, and this influenced my willingness to accept appointment.[33]

Johnson wanted to have a person responsible for White House liaison work on each advisory group. In the case of the agency advisory group this person was explicitly designated in the document creating the body. With the other two groups the chairperson or the executive director was most often expected to carry out this responsibility. With each type of advisory group there was appointed a White House staff person whose responsibility it was to "look after" the advisory group on behalf of the president and his legislative goals.

The actual appointment of the two outside groups was carried out in a rather informal manner. A White House staff member would phone the nominees and outline the proposed work of the group and invite

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[33]Letter from William Lockhart, chairman of Commission on Obscenity and Pornography to Senator Edward Kennedy, Kennedy Hearings, pp. 25-26.

each to participate. By all accounts, there were very few refusals. With the agency task forces the process was more formal; the standarized forms and memos were used and it was assumed that an appointment was being made, not an invitation issued. The selection of particular persons for advisory group membership was not, however, a matter of casual concern to the Johnson White House leaders. The group selected would be expected to support the Johnson program. Advisory group membership selection always involved participation by the senior policy staff of the Johnson White House. The president involved himself in the selection process only when creating politically sensitive public advisory commissions. By definition, then, moderates dominated these groups, particularly the public advisory commission, with "radicals" being either of the "show" (Hoffer on the Violence Commission) or the "house" variety (George Ball on the Vietnam advisory group).[34]

The public character of the advisory commissions forced Johnson to be extremely careful in those membership appointments to insure that interest group balance was obtained. Considerable White House time was devoted to this balancing in an effort to insure adequate representation from the established groups concerned with the issues generating the need for the commission. Lipsky and Olson found that Johnson drew his public advisory membership from eight specific groups of persons, groups upon which Johnson also counted very heavily for general political support: blacks, labor, business, women, big city political leaders, Texans, college professors and college presidents.[35]

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[34]McPherson, A Political Education, p. 348.

[35]Michael Lipsky and David Olson, "Riot Commission Politics," Trans-Action 6 (July/August 1969): 63-64.

Agency task force membership was drawn from the president's official family, primarily cabinet members, and agency/department heads. These groups needed high level government representativeness to validate their role as periodic (usually yearly) reviewers of established programs. The working membership of these task forces was, of course, made up of the assistant secretaries and directors of the departments/agencies concerned.[36] Such official administrative representation, which included the inevitable White House liaison person, was designed to maintain a close integration of White House policy objectives, and department/agency interests. Refinement and incremental development of established programs, not innovation, resulted from this mix of agency task force membership.

The criteria for membership on the secret outside task forces were different; selected for their technical expertise the members of these groups were expected to create innovative proposals which, if enacted, would allow the Great Society program to make a quantum leap rather than progress in ordered incremental steps. Beyond an insistence on some form of regional representation, Johnson only demanded that these persons be recognized experts in their fields. In addition, the senior White House staff members who did most of the work in selecting members for the secret outside task forces, also looked for persons with independent attitudes who had not had recent government

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[36]See file Summer Programs (2), Robson/Ross 27/Pricing Files, LBJ Library for a representative list of "official" and "real" members of the 1966 Youth Opportunity Task Force.

service experience.[37] They chose a large number of what Glazer calls a special breed of intellectuals; persons well known in their fields, persons who lived out their professional lives in institutions with close ties with governmental activity and research; persons who had had experience working for the government and who were therefore aware of, if not practiced in, the practical constraints of national policy making.[38] In the final two years of the administration, the senior staff added to these criteria the condition that nominees to these task forces would not have publicly opposed Johnson policies, especially those pertaining to Vietnam.

All nominees had to agree to one major condition before appointment to one of the secret task forces: he/she would not reveal the fact that he/she had been named to membership nor would he/she publish any of the technical research done for the task force. This type of agreement, foreign as it is to the normal commitments of academics, justifies Glazer's characterization of secret task force members as an unique brand of intellectual.[39]

G) Staffing

As with the commissions appointed by other presidents, Johnson's depended on their staffs to do the work given them. The size of the

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[37]Thomas and Wolman, "Policy Formulation," pp.133-136 and House Hearings, Part 1, p. 192, testimony of Thomas E. Cronin.

[38]Glazer, "On Task Forcing," pp 41-42.

[39]For other illustrations see memo Ginsburg to Califano, 12/14/67, Executive/LE/A65/FG690, LBJ Library, also Thomas and Wolman, "Policy Formulation," p. 126.

staff of a particular commission depended first on the budget allocated for its work which in turn depended on the importance attached to the work of the commission by the White House. Senior staff persons were drawn regularly from the pool of Washington lawyers, foundations, corporations and universities on friendly terms with the White House. Selection of members of the junior staff was left to the members of the commission and their executive director. The latter was almost always named by the White House, or at least with its concurrence, and served as the "president's man" on the commission, responsible for keeping the White House informed of the directions of the commission's work.

Both types of Johnson task forces needed little in the way of staff; the members of the task force were chosen because of their ability to do the technical work assigned to the group. The staff which was used was drawn almost exclusively from the Executive Office of the President and the executive agencies/departments. Some task forces had a full time executive director. As task forces became more institutionalized in the Johnson policy making system, the Bureau of the Budget became more insistent that it have a liaison person on each major task force.[40] These liaison persons served a very important political function in the life and work of the task forces; they kept the advisory groups in close touch with the legislative goals of the administration and the potential for cooperation of proposed programs with those already in existence.

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[40]See Thomas and Wolman, "Policy Formulations," pp. 136-138.

H) Independence

Independence from the White House by Johnson Administration ad hoc advisory groups can be directly correlated with the amount of public exposure each had and the scope of the presidential mandate given. Advisory commissions, almost all of whose work was done in public, had the greatest degree of independence and secret task forces the least. A commission with its public appointment and presidential mandate, its highly experienced and politically astute membership, carefully balanced by the White House with the relevant major interest groups in mind, often holding all its meetings in public and always issuing a report which could become the object of public scrutinity, had strong incentive to maintain enough distance from the White House to grant credibility to its work and report. The same incentives were present for the White House; if the commission was appointed to give it objective independent information, then commission independence must be maintained.[41] Senior Johnson White House aides therefore realistically assumed that it was virtually impossible to control a public advisory commission. They did, however, assume that they had the right and the responsibility to demand two things from them. First a reasonable opportunity in the form of time and personnel to present the administration's point of view on the subject under commission consideration. Obviously, the desire here was to have the opportunity to educate the elite publics represented by the commission

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[41]See the detailed discussion of commission independence found in Chapter 2, pp. 40-44.

membership to the policy positions of the administration. Such education was one of the major reasons for the appointments of the commission in the first place. Second, the White House staff made it clear to the chairperson and the executive director of the commission that the president did not want to be surprised or embarrassed by the directions the commission's work took or the substance of its final report.[42] Thus, Johnson and his senior aides were realistically accomodated to the fact of advisory commission independence and were willing to support and defend it within the bounds of the specific policy-making goals of the administration. They found "grinning and bearing it" when commissions "turn around and bite your ass"[43] a stance preferable to trying to apply pressure to politically resourceful persons. Besides, the White House always had other resources inherent in the presidency for rendering impotent the work of a "run-away commission." These made it unnecessary to apply direct pressure on a commission while it was at work. The direct confrontation with the elite publics represented on the commission that would result from such an attack was more political risk than the Johnson White House was willing to take in the context of most of their political

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[42]Wolanin's interviewees put this responsibility on the "president's man" on the commission. They saw this person as fulfilling two responsibilities for the White House: 1) keeping it well informed and 2) giving the president a person whose evaluation of the work and the report of the commission he could understand and trust. Wolanin, "Presidential Advisory Commissions, pp. 194-196.

[43]Ibid., pp. 183-184.

commissions. The report could be ignored, swamped by other news generated by the White House at the time of its publication, or "lost" by all concerned because of the ending of the life of the commission and the return of its members to "private" life or other government service and the turning of the attention of the White House to other concerns due to a shift in events or public attention.[44]

In sum, Johnson advisory commissions tried to maintain the image and the reality of being independent of the White House. They sought to give the president independent advice and a free flow of information. In this effort they generally were supported by the White House. The degree of independence they were able to maintain was contextually determined by a delicate mixture of the political intensity of the matter under consideration, and the amount of support the group received from congress and/or departments/agencies of the executive branch and the major relevant interest groups and the press.

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[44]Howard Schuman, HR Hearings, Part 2, p. 141, discussed the work of the Douglas Commission (national housing needs). Because housing was a high priority policy issue of the administration, the work of the commission was of special concern to the president. The commission made its report late in the life of the administration; its content was an attempt to establish a position on national housing clearly independent of that of the Johnson administration. The content of the final report became known by the White House prior to its publication. Johnson refused to accept the report and, in addition, leaked to the press a HUD document which countered the substance of the work of the commission. Schuman's conclusion is that the White House was not going to allow a presidentially appointed commission to issue a report critical of a major administration program.

Independence of the White House is almost a contradiction in terms when used in an operational definition of the work and status of the Johnson task forces. Both types of task forces were intended to be closely tied to the White House and its public policy purposes. Persons accepted membership with that clearly in mind.[45] Independence of mind, not of function, was what the structure and intent of the Johnson ad hoc advisory system demanded.[46]

I) Functioning of Commissions and Task Forces in the Johnson Policy-Making System

Johnson appointed advisory commissions at a faster rate than any previous president; on the average, he appointed five advisory commissions per year.[47] Of the many ways commissions have been used by presidents, Johnson stressed two in particular: 1) to aid him in dealing with a problem which had proved to be untenable in the normal process of accomodation and compromise available to the administration and 2) to provide him with an effective means of advancing the program of the administration with the congress and the various elite publics. Buying time in order to delay actions by the congress or fatal criticism by the Republicans was an obvious part of the strategy of the administration in creating the Kerner, and Eisenhower commissions. These were dramatic exceptions which prove the rule; in the regular course of political events, however,

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[45]See the discussion of membership pp. 164-168 above where it is noted that the appointees committed themselves to not revealing the existence of their task force or the substance of their report.

[46]For a discussion of the former see Thomas and Wolman, "Policy Formulation," pp. 127-128.

[47]See p. 4 above and Lipsky and Olson, MSS. III, pp. 1-2.

Johnson used commissions most often to advance a policy program or policy idea which, for a variety of reasons, were stymied in the other parts of the policy-making system. Ideas generated by task forces or in other parts of the system were often given public exposure through the device of the advisory commission. As noted above, the Rural Poverty Commission was used to give public exposure to recommendations for a school lunch program developed first by a secret task force. Despite its eventual repudiation by the administration, the White House fed the Douglas Commission much of the work of the Kaiser Commission and that of several task forces on housing. Other examples include changes in the draft laws, reorganization of the Post Office Department and various programs in the area of criminal justice and in the general area of civil rights. By surfacing novel policy ideas in this manner Johnson was not only able to continue to pre-empt the policy-making field from congress, but he could gauge the reaction of congress and the various elite publics without having to be committed to the proposals in any politically damaging way.[48]

The primary purpose of the mature Johnson task force system was to provide substance to and support for the Great Society legislative program. First, and most substantively, the system provided the White House with a steady flow of innovative ideas for the Great Society

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[48]It is worth noting at this point that task forces were also often fed information from congress and from work in process in various parts of the Executive Office of the President by White House staff members. Staying ahead of the other potential initiatiors of policy proposals and education of elite publics through their representatives was clearly the intent of these activities also.

programs. Second, it supported the administration by providing in-house means of reviewing the effectiveness of the executive departments in furthering the president's policy goals. In pursuing each objective the task forces enabled the president to maintain control over the initiation, introduction and progress through the congress and the federal departments/agencies of the Great Society legislative program. This use of the task forces to guarantee White House control over the total legislative process, save that of the casting of congressperson's votes, tends to confirm Kearn's contention discussed above, that the effect of Johnson's organization of his policy making system was to create an American expression of a parliamentary form of government. Johnson saw, in short, the congressional legislative process as an extension of the White House policy making system. A detailed discussion of the role of task forces in the formulation of the legislative program follows shortly; at this point it is important to note the ways these advisory bodies were used to review the work of the executive branch and thereby usurp functions traditionally belonging to the Congress and the Bureau of the Budget.

Every task force established during the Johnson administration had an important review function implicit in its charge. Suggestions of new policies and programs had to be grounded on the presumed non-existence of such a program or on perceived programmatic or administrative deficiencies in some existing federal program. Johnson established yearly task forces to deal with those areas of his Great Society program he regarded as crucial (e.g. civil rights and housing). One purpose of these task forces was to review the programs begun in the previous

years. Such efforts were examples of his determination to maintain as much control as possible of his Great Society program by allowing congress and the Bureau of the Budget very little in the way of the political advantage which they normally obtained through the process of oversight and review of agency/department performance.[49]

The task force system became functional in the manner the president wanted in 1965 and remained essentially intact until 1967. Its purpose was to provide the White House with "objective" recommendations for domestic programs which, if adopted by the president, would be proposed to the congress in his annual State of the Union address. That message would be quickly followed by a barrage of special messages detailing the substance of each proposal, together with bills written in the executive department to be introduced the day following the particular special message. This system was designed by Califano and his staff to provide a maximum flow of information from the various sources they had created. It was designed to work best when under the tight control of the White House. Until they were overcome by the events produced by the administration's foreign policy, the domestic task force system did in fact work as planned and did produce for the president an impressive amount of new policy ideas, legistation and programs.

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[49]See the letters establishing the yearly task forces on the cities and civil rights found in Califano's files and in the files of the various task forces for mandates to review the work of previous task forces, commissions and other public agencies. e.g. Califano 9/Economic/Innovation and Economic Growth (1) and the files of task forces on the cities and civil rights, LBJ Library.

The Johnson system had its own rhythm. The late spring was the period in which new ideas were solicited and generated. The Bureau of the Budget served as the first collection point for these plans; it compared the suggestions with existing and projected programs and budgets for degrees of duplication and redundancy. These ideas would be, in part, solicited from the major executive department officers by Califano. They were asked to provide idea books reflecting the most innovative program thinking in their respective agencies/departments.[50]

The next stage was one highly regarded by Johnson and Califano, spring trips to the major university centers by senior members of the White House staff.[51] Califano and his staff visited geographically varied university centers where nationally known scholars worked on Great Society related problems on which the White House was ready to move. Califano had one central question to ask at each of the centers: what should the

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[50]Suggestions came not only come from domestic advisers. Secretary of Defense Robert McNamara submitted 50 domestic proposals one year. See Thomas and Wolman, "Policy Formulation," p. 128.

[51]Johnson insisted that care be taken to visit the major regional centers. He was adamant that the university resource from which the task forces not be limited to the "Harvards", his name for the major university centers of the northeastern United States. As noted above, Section F, pp. 164-167, Johnson also insisted that task force membership, particularly that taken from the academic world be broadly geographically representative.

federal government be doing in your area of expertise?[52] While the discussions were open-ended, Califano and his aides looked for ideas which fit the president's general legislative program for that year.

Interviews, oral history accounts and the documentary evidence all indicate that large numbers of persons were consulted during this stage of the process.[53] The persons consulted were technically knowledgeable, familiar with the processes of federal policy-making, and accustomed to advising high federal officials. They were, in short, acceptable (to Johnson) persons, working in and for acceptable institutions; they were persons to whom Califano and his aides felt comfortable in turning because they expected proposals which would challenge the particulars of administration policy, but not question its ends. When that boundary was violated by larger and larger numbers of the academics consulted, beginning in 1967, the university visits ceased and the quantity and the quality of White House contacts with the academic community were severly reduced. Housing, banking, construction, medical, educational and other major interest groups were also consulted for ideas and personnel. It was not until late in the administration however, that the White House opened itself to a direct flow of policy and program-specific information from the persons at whom most of the Great Society programs were directed and who would have to absorb them into their lives.

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[52]Califano discusses in detail one of these trips and the Great Society program it produced (the early childhood education program) in his oral history tape at the Johnson Library.

[53]The primary effort was to gather information from major university centers, but the staff members also consulted the various non-teaching "think-tanks" and research centers.

In 1967-1968, with Johnson's encouragement, some junior members of the White House staff began to make visits to various black urban ghettos throughout the nation and wrote elaborate reports for him on their impressions and the reactions to the various Great Society programs and other domestic policy efforts of the persons they interviewed.[54] Some of the interviews conducted during these ghetto visits were with non-official, non-business persons, but most were with small business owners, low-level governmental and service institution employees (district policemen, social workers, welfare employees, etc.) In retrospect, it is obvious that these reports contain valuable pre-and post riot information, useful in any understanding of what had happened in the major urban centers in 1967 and what could happen in the future. However, the psychological and political conditions in the White House were not right for receiving such information and absorbing much of it into the domestic policy-making process. There is no indication of a direct passage of the insights of these reports from senior White House persons to any of the task forces created in 1967-68.

In July, the senior White House staff and other key presidential policy advisors discussed the various proposals received in the context

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[54]The coming elections and the recent riots were probably the major reasons for the initial requests by the staff members to make the visits and for the president's approval. Each of the reports was addressed to the president and was channeled through Califano and Markham, the normal routing for such documents. There was no indication in the files that Johnson read the reports. See McPherson 8/Riots (1&2), Robson and Ross 8/Pricing Files/"Ghetto Visits", Watson 1 & 2/Civil Rights/Negroes, LBJ Library.

of Bureau of the Budget evaluations and their own sense of the needs and expressed intentions of the president. The task forces were named in mid-summer and their work schedule given to them. They were asked to report by early fall, seldom later than November 1. When the reports of the task forces were received they were compiled, compared and correlated by the senior White House staff with program proposals made by the various executive departments/agencies which had been requested earlier. These compilations were then processed through the Bureau of the Budget for cost estimates. There the proposals were refined to conform to the perceived needs of the president and taken to him for his consideration and decision as to the final components of his legislative package for that particular year.[55] Johnson and his staff prepared the State of the Union address in the late fall and Johnson delivered it in January. During the next two months the staff sent numerous special messages to Congress detailing the proposed new programs, followed immediately by the introduction of specific bills. During this

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[55]The reports of some of the task forces were also submitted to a qualitative evaluation process by the Bureau of the Budget and key departments and agencies. They were asked to examine the reports of task forces which Califano and his staff thought had wandered too far from White House goals and objectives. The effort here was to see if anything of value to the administration could be salavaged for the next legislative program. Predictably, the Bureau of Budget and the other evaluators of the original task force report would most often recommend an inter-agency task force to make amends and do the job in the "correct" way. It was in such ways that Califano tempered the criticism of the outside task forces by persons in policy-making positions within the administration.

period, immediately following the State of the Union message and prior to the introduction of the administration's legislative package, Califano and the chairperson of the individual task forces would spend time with the congressional liaison office of the White House going over the proposed programs and the pieces of legislation drafted by the executive branch, developing a strategy for its presentation to the correct committee of the congress and assaying its realistic chances for passage.[56] No special message with its accompanying legislation was sent to congress without a careful head-count of both houses. Major Great Society bills not given an excellent chance of passage were not submitted.[57] There were weekly reports made to the White House on the progress of specific bills the substance of which went to the president. He expressed particular interest in knowing when there were shifts in attitudes and vote positions on bills. In all there was very little congressional participation before the bills were ready for introduction. The total process of legislative production was an exercise in executive management carried out by non-congressional policy-making elites.

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[56]Califano in his oral history tape reflects on his developing displeasure with what he regarded as weak legal craftsmanship in the BOB. He eventually turned to the Department of Justice for Great Society bill drafting service.

[57]Johnson gave Califano the responsibility of White House gatekeeper for the flow of legislation to the congress. The final decision on major bills was reserved by the president for himself. He regarded such matters as clearly within his expertise and official responsibility.

With this overview of the Johnson Commission and task force advisory system in mind attention can now be shifted to a case study of the system in action: the work of the National Advisory Commission on Civil Disorders (the Kerner Commission).

PART III

THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (THE KERNER COMMISSION): A CASE STUDY OF THE POLITICAL USES OF AN AD HOC ADVISORY GROUP IN THE JOHNSON ADMINISTRATION

CHAPTER VI

THE POLITICAL CONTEXT

> For nearly five years, since the administration of President Kennedy, two long waves of danger had raced toward the safe and settled shore where most Americans lived--the danger of the war in Southeast Asis and the danger of the Black rebellion in the heart of American cities. The last week of April 1968 was the week the waves broke.[1]

The political tremors which produced the final set of tidal waves were first felt in 1967.

The shocks began with the convening of the Ninetieth Congress in January, 1967. This congress was skeptical of Johnson's interpretation of the national interest and the leadership in the two wars he was attempting to wage--the one against poverty at home and the other against presumed aggression in Vietnam. By March, 1967 the White House had received very clear messages from congress that new domestic program proposals would receive a cool reception and that there was

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[1]Chester, et al., American Melodrama, p. 3.

significant erosion of support for the war in southeast asia.[2]

The issue with congress was joined when Johnson determined to stand by his announced plans to expand the Great Society domestic programs and to continue to its conclusion the multi-year strategy for ending the war.[3] The strategy implicit in Johnson's purusit of these goals, the purchase of support for the war by expanded domestic expenditures,[4] was upset by the catastrophic urban disorders of 1967, congressional

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[2]See the file Presidential Memoranda, June, 1967 (1) Cater/3 and Califano's oral history tapes, both in the LBJ Library. The Congressional Quarterly Service's annual review of congress pictured 1967 as a year of stalemate between Johnson and congress, the result of frustrations over the war, the urban disorders and the reduction of the Democratic majority in the house to 61 seats (57 percent of the total). The losses re-established southern Democrats and conservative Republicans into positions of de facto leadership in the House. The revival of that coalition severly threatened the Great Society programs (See Congressional Quarterly Service, Politics in America, 3rd Edition, (Washington: 1969), pp. 68-69). John Manley, in an interesting study of problems of congressional vs presidential power calculates that in his last two years in office Johnson won less than one half the legislative battles he waged with the southern Democratic-conservative Republican coalition. See, John F. Manley "White House Lobbying and the Problem of Presidential Power," paper prepared for delivery at the annual meeting of the American Political Science Association, Washington, D.C. 1977.

[3]Louis Hern persuasively argues that General William Westmoreland's (Commander of U.S. forces in Vietnam) strategic timetable called for 1967-1968 to be the "Year of the Offensive" in which the war could be won. In the general's scheme the victory year was the logical and indispensible conclusion to the "Year of the Crisis" (1964), the "Year of the Military Committment" (1965) and the "Year of the Development" (1966), (Louis Hern, No Hail, No Fairwell, (New York: Harper and Row, 1970) p. 133). Evidence found in the file Post-Vietnam Planning, Califano 57/(1758), LBJ Library, documents the establishment of a post-war cabinet-level planning group early in 1967 (March 5) and leads to a hypothesis that Johnson had adopted a form of the Westmoreland timetable into his own strategic thinking and planning about the war.

[4]Hern, No Hail, No Fairwell, pp. 133-134. See also the file Post-Vietnam Planning, Califano 57/(1758), LBJ Library.

resistance to both major Johnson policy objectives,[5] and a series of other major foreign and domestic crises.[6] But as James Reston observed toward the end of the period, the upset of Johnson's plans was brought on more by systemic collapse than strategic miscalculations.[7] Designed

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[5]On March 16, 1967, Johnson signed into law a bill authorizing supplemental appropriations for the Department of Defense. The congress had willingly passed the legislation, but appended to it a statement affirming support for the "fighting men in Vietnam," for a limitation to the war, for a negotiated settlement, for Vietnamese self-determination and for a reconvening of the Geneva Conference. (Public Law 90-5, 81 Stat. 5, and also see "Statement by the President Upon Signing the Bill Authorizing a Supplemental Appropriation for the Department of Defense, March 16, 1967." U.S. President, Public Papers of the Presidents of the United States, (Washington, D.C.: Office of the Federal Register, National Archives and Records Service), Lyndon B. Johnson, 1967, Vol. 1, p. 356. Hern maintains that the tone of the debate on the bill was polite, "... there was no suggestion of incipient revolt, but the message was unmistakeable. There was no heart for the war, hence the longing for a negotiated settlement." Subsequent congressional actions confirms his insights. Further comments on congressional resistance to expanded domestic program expenditures as a consequence of the war expense will be made later in this chapter. In the 90th Congress the conservative Democratic-Republican coalition had regained its post World War II status as the effective majority of the congress and was thereby able to defeat 38 Johnson sponsored bills in 1967. (Hern, No Hail, No Fairwells, pp.137-138.) Persons serving in the White House at the time bemoaned the fact that they were unable to get congressional sponsors for various pieces of Great Society legislation. There were four particular areas of the Great Society under attack: youth, aid to urban areas, education and the Teacher Corps programs.

[6]While no modern president can be said to have served during a "quiet" period of history, January 1967 through November 1968 was, for Johnson, and extremely difficult time both in the quality of the political events with which he had to deal and the personal political damage they did to him: e.g. the revelations of CIA domestic spying activities, the 6 percent tax surcharge battle, the Arab-Israeli war, racial unrest in the military (the mutiny and arson on the U.S.S. Forrestall), the unrest on the various college campuses, the city disorders, the TET Offensive, the disorders at the Democratic convention in Chicago, his decision not to seek re-election, and the assassinations of Martin Luther King, Jr. and Senator Robert F. Kennedy.

[7]New York Times, March 6, 1968:46, 3.

essentially to deal with the problems created by previous administrations the Johnson formula of political brokering fell victim to the explosive dynamics of its contemporary equivalent of the ancient parable of new wine in old wine skins.

The telephone call from Attorney General Ramsey Clark which awoke him early in the morning of July 27th, 1967 introduced him to a series of events which remain permanently engraved on his memory.[8] The Detroit disorder and those in the other cities[9] challenged Johnson at the point of his strength, the Great Society domestic programs. The urban disturbances widened the divisions within congress and allowed Great Society foes to attack its underlying principles as well as particular programs. Opponents claimed the disturbances revealed weakness in principle and program: social engineering such as the Great Society programs cannot, by definition, buy social stability. Supporters argued the opposite: social change when

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[8]Johnson, The Vantage Point, pp. 167-168.

[9]The Kerner Commission settled on a list of 164 disorders in 128 cities during the period. They classified them into three categories: Major Disorders (a total of eight for 5 percent of the total), Serious Disorders (Thirty-three for 20 percent of the total) and Minor Disorders (123 for 75 percent of the total). The greatest number of deaths, injuries and amount of property damage took place in the Detroit, Cincinnati and Newark disorders. Eighty-three deaths and 1897 injuries in all of the 1967 disorders with 80 percent of the deaths and over one-half of the injuries occuring in Newark and Detroit. The cost figures which could be calculated for the major disorders were Detroit, Newark, and Cincinatti (somewhat more than $1 million). The National Advisory Commission on Civil Disorders, Report. (Washington: Government Printing Office 1968) pp. 65-67. (Hereafter cited as Report)

properly financed by public funds can provide equilibrium; the Great Society had been asked to do too much with too little.[10] Each, however, agreed with its opponent on two fundamental points: 1) that the disorders were, in part, the result of unrealizable promises by the federal government to the poor of the nation, in general, and to the urban black population in particular, and, 2) that public money had to be taken from the administration's domestic program budget to support the war in Vietnam. Further, congress was showing signs of becoming weary of its commitment to both wars and of a willingness to draw back and reconsider the national priorties explicit in both. Yet, Johnson persisted in his attempt not only to wage, but to win his two wars. To do so he did what he knew had to be done; he maintained the initative in policy-making, controlled the flow of information to congress and the public, used the prestige and power of his office to maintain pressure on congress for support for both his wars, while resisting efforts by persons in the streets to "shoot" their way into a position of legitimacy among the established interests of the polity.[11] This was a task worthy of the talents of the Johnson of 1965 and the Eighty-ninth congress, but the time, events and the actors were

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[10]The other popular congressional explanation for the disorders was that they were the product of a domestic criminal and/or foreign subversive conspiracy.

[11]All presidents use such rhetoric, but none has been able to realize it in the form of unqualified public policy. Selective, and sometimes random uses of violence are of positive value to many groups in their successful attempts to gain legitimacy among the policy elite of the nation (e.g. the American labor movement is a recent example).

all very different. By the end of the year he knew that he had failed and began the process which eventuated in his resignation.

In the summer and fall of 1967, however, Johnson thought of himself as being in a politically dangerous but not fatal situation. He was caught between Great Society supporters and opponents-each being able to muster significant support in attempts to move him away from the positions he had adopted, but neither was able to marshall the strength necessary to force him to follow its lead.[12] He was acutely aware that congress would not accept any new Great Society initiatives from the White House; further, the potential was high for partisan exploitation of the urban disorders. There was a general obsession in Washington with a conspiracy theory of the origin of the disorders, that the new, young, Negro leaders were getting help from communist countries (Cuba in particular). There were demands for various kinds of congressional investigations. In short, there was developing a struggle for national leadership of major proportions. Congress was clearly attempting to challenge the president in the area of domestic policy and was showing increasing signs of rejecting the means if not the ends of the Johnson foreign policy.[13]

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[12]Much of the pressure Johnson was feeling for increased funding for local police and the national guard was coming from a coalition of big city and other urban political elites and anti-Great Society members of congress.

[13]During the spring and summer months Johnson was receiving mixed signals about support for his foreign policy. The ambivalence of congress has been mentioned. The word he was getting from the campuses was coming from faculty sources friendly to the administration, persons who had been supportive of the war from its beginning. Their word was not discouraging. There is no evidence of efforts by the White House to talk with faculty members who were not on the White House list of potential consultants and task force members. See, Presidential Memoranda, 4/16, Cater 3, LBJ Library.

Three Senators brought the immediate pressure which led Johnson to appoint the Kerner Commission: Edward W. Brooke (Republican-Massachusetts), Fred R. Harris (Democrat-Oklahoma), John McClellan (Democrat-Arkansas), two of whom (Brooke and Harris) Johnson named to the commission membership. Each represented a distinct challenge and opportunity for him; Brooke's action represented that of the opposition looking for a way to use the disorders for partisan advantage, McClellan's that of the southern Democratic leadership seeking additional means of securing control of domestic policy making and Harris that of the bright, ambitious group of liberals who continued to support Great Society principles, if not all the specific programs. Johnson, predictably, chose to align himself with the congressional challenge that promised him the greatest flexibility to pursue his own plans and maintain his position of political dominance and control over policy.

Senator Brooke introduced a resolution calling for the Senate to appoint a seven member select committee to study the origins of the riots in order to give the nation a "tangible demonstration, a symbol of the fact that the U.S. Senate is actually and actively concerned."[14] His resolution was endorsed by the Republican Coordinating Committee with the additional suggestion that the composition of the committee be expanded to include members of the House of Representatives. Nothing came of Brooke's original proposal or its amended endorsement by the Republican Coordinating Committee. Neither was supported by the Senate

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[14] New York Times, July 25, 1967:20,5.

Republican leader Everett McKinley Dirksen.[15] Instead Dirksen supported an investigation of the disorders by Senator McClellan and his sub-committee.[16] The choice of the McClellan sub-committee posed a most serious challenge to Johnson; the sub-committee was equipped to investigate criminal and law enforcement problems. In addition to appointing the sub-committee to do this work, the Senate sent an additional message to the White House by rejecting an effort by Senate liberals to specify that the sub-committee look into economic and social causes of the disorders.[17] Clearly the Senate was concerned to settle the question of criminality and conspiracy. Johnson shared the Senate's concern to expose the criminal origins of the disorders and to punish the guilty, but recognized the dangers the sub-committee presented to his domestic legislative program. He and his staff had spent considerable time during the spring of 1967 pacifying powerful congressional opponents to various Great Society programs,[18] and Johnson knew well that a conservative like

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[15] New York Times, July 26:19,1.

[16] Two days following the appointment of the Kerner Commission, the Senate Rules Committee, by a vote of eight to one, acted to select the McClellan sub-committee to carry out an investigation of the disorders. In addition to McClellan, Democratic members of the sub-committee were, Henry Jackson (Washington), Sam Ervin (N. Carolina), Edwin Muskie (Maine), Abraham Ribicoff (Connecticut) and Harris. The Republican membership consisted of Karl Mundt (S. Dakota), Karl Curtis (Nebraska) and Jacob Javits (New York). Discussion of the relationships between the sub-committee and the Kerner Commission can be found below, pp. 407-412.

[17] Richard Lyons, Washington Post, 8/12/67.

[18] See Presidential Memoranda, 3/67, Cater 3, LBJ Library, and Graff, The Tuesday Cabinet, p. 153 for a discussion of the time and efforts spent on one member of the House of Representative, Representative George Mahon of Texas. For a discussion of Mahon's influence on Johnson's reception of the Kerner Commission Report see pp. 481-483 below.

McClellan would inevitably turn his investigation on the Great Society programs as one possible cause of the disorders.

Given this set of political variables, Johnson was relieved when Senator Harris and Senator Walter Mondale (Democrat from Minnesota) recommended a joint congressional-presidential commission to investigate the civil disorders. Their suggestion, together with Brooke's, allowed the White House to claim congressional support for the appointment of a presidential commission to look into the disorders.[19] Further, Harris's and Mondale's recommendation for a congressionally approved presidential advisory commission meant to Johnson that, regardless of who did what kind of investigation, the McClellan sub-committee had as a member at least one Senator willing to broaden the investigation of the disorders beyond the Senate mandate. Harris and Mondale's resolution provided for a commission to investigate the civil strife in the cities. It provided for nine members appointed by the president. The commission would make recommendations to a permanent Office on Civil Strife (which would be created by the same act as the commission) to be located in the Office of Emergency Planning in the Executive Office of the President. The plan became particularly enticing to the White House when Harris

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[19]The fact that a third of the Senate did not vote on the McClellan authorization, and the $150,000 appropriated for its work, further strengthened Johnson's hand in responding positively to Harris's suggestions. See Richard L. Lyons, Washington Post, 8/12/67.

sent a hand carried letter to the president containing a copy of the proposed resolution together with a suggestion that the president might prefer to appoint a commission by executive order before the resolution passed the senate; if not, his and Mondale's commission suggestion would be preferable to any congressional investigation.[20] Thus the congressional call for national leadership in the face of the disorders and the division within its ranks about the proper form of its response left Johnson with the opportunity he needed to commandeer the investigation of the disorders and to gain the time necessary to recapture the initative in the pursuit of his Great Society goals. His reaction to congress allowed him to maintain control

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[20]There were at the time four proposals in congress for investigations of the disorders by commissions. See memo, Cater to LBJ 7/25/79, Cater 4/ Presidential Memoranda, LBJ Library, covering Harris's letter to the president. See also the document Analysis of Proposals for Commissions to Investigate Crime and Riots, July 27, 1967 in the same file. A copy of the Harris-Mondale bill can be found in Detroit(4)/ Gaither 31, LBJ Library. Wolanin, "Presidential Advisory Commissions," pp. 122-124, misunderstands the context in which Harris made his proposal and its effect on the White House and congress. He says that the Harris-Mondale proposal recommended congressional study of the riots and that none was made because of the appointment of the Kerner Commission. This assumes that the contention maintained at the time by both the White House and Senator McClellan that the two groups were in the pursuit of different goals is true, that the subcommittee was not investigating the disorders. Wolanin did not investigate the work of the McClellan subcommittee and its effect on the Kerner Commission and the importance of Harris's being a member of both. When one looks at this, as is done below, it can be seen that the two groups were not only dealing with the same subject matter, but they were actively competing against each other.

of the policy making environment, and to claim congressional support for his appointment of a commission, 40 percent of whose members were congresspersons and the mandate of which placed heavy emphasis on seeking the truth about the alleged criminal causes of the disorders. The momentum of control of national leadership and policy-making was again moving in Johnson's direction.

For its completion, the description of the relevant ingredients of the Kerner Commission's political context demands a general consideration of the content and character of the urban civil rights policy of the Johnson Administration in 1967.[21] It is important to note at the outset of this discussion that Johnson had two distinct sets of policies for the events being considered here. First, control of the disorders for Johnson was a police problem; a law and order matter for local officials--a national security problem when it passed into the hands of the president as it did in Detroit; civil disorders were a concern for the criminal justice system. Second, civil rights policy, on the other hand, was a national political concern, the responsibility for which rested primarily with the president. As he did with his two wars, Johnson attempted to pursue both simultaneously. His attitude and policy toward the riots was simple; the disorders were caused by criminals, unappreciative malcontents who were willing for their own

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[21]For the purpose of this discussion, Johnson's civil rights policy is being defined as those legislative and administrative proposals and enacted programs designed to provide comprehensive federal aid to the victims of racial descrimination.

selfish reasons to threaten the social gains of all Negroes, for which he (Johnson) was largely responsible; the disorders, therefore, not only attacked his programs, but him.[22] In discussing the summer civil disorders with Kearns, Johnson lamented,

> "It simply wasn't fair for a few irresponsible agitators to spoil it for me and for all the rest of the Negroes, who are basically peace-loving and nice. A few hoodlums sparked by outside agitators who moved around from city to city making trouble. Spoiling all the progress I've made in these last few years."[23]

In his published retrospective analysis of the period Johnson admitted to a willingness to entertain a more complex explanation for the "long hot summers." There he said:

> As the mask of Black submission began to fall, the countless years of suppressed anger exploded outward. The withering of hope, the failure to change the dismal conditions of life, and the complex tangle of attitudes, issues, beliefs and circumstances all led to the tragic phenomena known as "the riots"--"the long hot summers."[24]

He never admitted, however, that the Great Society programs themselves were in any way responsible for the frustrations to which the parti-

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[22]Califano recounted that at the time of the Watts disorder, which occured during the week that the Voting Rights Act of 1965 was signed, Johnson was so stunned by the event that he refused to acknowledge the existence of the disorder and was immobilized by it. See Kearns, Lyndon Johnson and the American Dream, p. 305.

[23]Ibid.

[24]Johnson, The Vantage Point, p. 167.

cipants in the civil disorders were giving vent. During the 1967 civil disorders Johnson manifested one constant attitude toward those who took to the streets—they must be stopped immediately with no hint of any "reward" to the rioters (i.e. any form of federal aid). Lipsky and Olson note an exchange between Johnson and an unidentified person slated to testify before a congressional committee on the day before the announcement of the appointment of the Kerner Commission which represents the president's attitude throughout 1967. When he inquired what kind of testimony might be useful to the White House, he was treated to the following dialogue:

> No reward for the rioters
> What else:
> No reward for rioters
> Anything else?
> No money.[25]

He was willing within a few hours to do whatever the federal government was authorized to do for the cities, businessmen and homeowners victimized by the disorders; they, in his mind, were the innocent victims of criminal acts; they deserved help. The criminal elements responsible

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[25]Lipsky and Olson, MSS, III, p. 9. Another, less dramatic example can be found in a memo from Califano to Johnson, dated July 15, 1967, in which Califano relates his conversation with New Jersey officials concerning federal aid to Newark following the disorders there. Califano recorded that his first concern in the conversation was that the New Jersey officials understand that rioters are not to be rewarded with federal aid. Commission on Civil Disorders (2), Califano 3, LBJ Library.

for the disastrous events deserved nothing other than that which the criminal justice system is designed to provide for all persons accused of crime.[26]

The president's attitude complicated the political environment of the time in another important way. By 1967 the urban disorders no longer immobilized him as they had in 1965.[27] When the 1967 disorders began, Johnson activated a command center in the White House for federal action which closely resembled those he developed and used in a variety of foreign policy crisis situations.[28] This treatment of the urban disorders further allowed Johnson to separate the demonstrators from the general consideration of national civil rights problems. In the command center they easily became "the enemy." All civil disorders looked very much alike and the solutions to them could easily be limited to police-military actions. The obvious question of whether Johnson

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[26]This attitude made it very difficult for Johnson to accept major parts of the Report of his Commission on Civil Disorders.

[27]See Note #22, p. 195, above.

[28]The more or less permanent members of the domestic crisis command center were Johnson, Califano, Director of the Federal Bureau of Investigation, J. Edgar Hoover, Attorney General Ramsey Clark, and Secretary of Defense Robert McNamara. Various White House staff persons participated in these groups depending on how closely the particular crisis touched on their individual areas of responsibility. McPherson, and various aides of Califano fell into this category. Mr. Associate Justice Abe Fortes was a participant in both the foreign and domestic crisis command posts.

had much choice over the creation and maintenance of a federal riot command post can be answered simply--he had no choice. No president could allow such a sequence of disorders, spread over the nation as those of 1967 were, to persist without some form of coordinated national response and still expect to maintain his political stature. Where he did have a choice, however, and where his judgement and actions can be questioned was in his selection of the location of the center and in his decision for personal involvement in the total process.[29] Given Johnson's attitudes toward civil rights and political leadership it is doubtful that any other format of action was entertained. The mindset of the president made it impossible for him to see the participants in the disorders as citizens engaging in what they felt to be the only avenue of political protest left open to them. For Johnson, there were good Negroes (those who accepted the opportunity for participation in the Great Society obtained for them by him and his generation of New Deal liberals) and bad Negroes (those who did not); civil disobedience

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[29]Graff records a conversation he had with Johnson's National Security Advisory, McGeorge Bundy about "...the usefulness of having the White House serve as a command post during a crisis ... Bundy seemed to be saying that hereafter every president must conduct critical phases of his foreign relations as Johnson was doing, making himself a more active commander-in-chief than was ever envisioned by those who wrote this presidential role into the constitution." The Tuesday Cabinet, pp. 47-48. Graff's discussion implies that the role the president adopts to meet a particular challenge not only determines the character of the governmental response but changes the character of the events to which he/she is responding. If the president acts as the commander-in-chief it is difficult for all those responding to his/her orders to see the events involved as other than created by an "enemy". In turn, those toward whom such national force is directed find it very difficult to think of it as other than that of an alien antagonist which must be opposed.

of the sort experienced in the summer of 1967 was for him insurrection and must be treated as such. In this response, too, Johnson remained a southern populist insisting upon the centrality of his role as both advocate for rights and opportunities for American Negroes and the judge of the quality of their reaction to the largess.[30]

Johnson was not deterred in the pursuit of his civil rights policy goals by the niggardly response to his 1967 proposals by the Ninetieth Congress. Through the first nine months of the year the administration proceeded in its customary fashion of presenting to the congress a steady stream of special messages followed by specific legislative proposals. Before the end of April of 1967 Johnson sent to the Hill twelve special messages crafted to meet the prevailing White House view of the Great Society programs needed.[31] Throughout the pre and post-riot period of 1966-67 the White House was receiving task force and commission reports on a variety of riot related problems (e.g. the task force reports on cities, youth opportunities, civil rights and the Kaiser Commission report) and directing cabinet level attention to what it conceived to be pre-riot conditions in major urban centers. A variety of debates was taking place in the White House concerning the positions the administration should be taking based on these data. The senior aides were not of a mind on the subject. Some saw the character of civil rights and disorder related issues changing because their leadership was so unstable. McPherson discusses at some length a debate going

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[30]See Samuel P. Huntington, "Strategic Planning and the Political Process," Foreign Affairs XXXVIII (January, 1960), p. 298 for a discussion of the difficulties into which a president gets in trying to be both judge and advocate for a particular policy issue.

[31]See Public Papers of the Presidents, LBJ, 1967, Part 1.

on at the time concerning the future of the civil right's bill then before the congress and the nature of the on-going relationship between the administration and the black leadership of the civil rights movement. McPherson wanted to open lines of communication to the "new" Negro leaders by means of a White House sponsored conference. Johnson disagreed. McPherson lamented the decision by telling a story about how Johnson continued to use and patronize the established Negro leaders to serve the ends of his civil rights movement. In the tale, at the conclusion of a meeting with an unidentified Negro leader, Johnson tells him that he cannot leave without demanding something of the president. Johnson picked up the phone and called the Secretary of the Navy and said that a personally carried complaint had come to him that day concerning the slowness of the Navy to follow his directives for integration of the service academies. What was the Secretary going to do about it? After the conversation with the Secretary, Johnson sent the "leader" to an arranged press conference to give details of the status of Negroes in the naval academy taken from a list which Johnson had handed him.[32]

Other disputes taking place early in 1967, which helped in formulating the core of the civil rights program for the year centered around the administration's position on the extension of the life of the U.S. Commission on Civil Rights[33] and how to handle the 1967 civil rights

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[32]McPherson, A Political Education, p. 350-359.

[33]The major dispute centered on a discussion of whether the commission should be extended for five years or be given a permanent extension. See memo Califano to Gaither 1/3/67 in Gaither 25/Civil Rights (3), LBJ Library.

package in the face of the particular challenge presented by the congressional anti-riot bill, which all senior White House aides opposed.[34] Johnson met the challenge in characteristic style. He sent to congress his total civil rights package for the year, the product of the secret task force system, after submitting strong measures providing for a cut in total government spending, but which also proposed increases for the budgets for the war and the anti-crime programs.[35] In short he was determined to have his Great Society, win his foreign war, and do it on his terms.

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[34]Memo Gaither to Califano, 1/23/67 in Gaither 25/Civil Rights (3), LBJ Library.

[35]See "Annual Message to the Congress," January 10, 1967 (pp. 2-14), "President's News Conference," January 17, 1967, (pp. 16-26), "Annual Budget Message to the Congress," January 24, 1967 (pp. 39-61), "Special Message on Crime in America," February 6, 1967 (pp. 134-146), and "Special Message to the Congress on Equal Justice," February 15, 1967 (pp. 184-196). All found in Public Papers of the President, LBJ, 1967, Book 1.

CHAPTER VII

CREATION AND PURPOSE

The president announced the creation of the Kerner Commission in a speech to the nation on July 27, 1967.[1] It was formally impanelled by means of Executive Order 11365.[2] As with any presidential advisory commission, the appointment of the Kerner Commission had both explicit and implicit purposes. The patent reasons for the appointment were forcefully stated in two presidential speeches and the executive order. The first address was given in the wake of the series of disorders which climaxed in Detroit on July 26th.; he announced the creation of the commission, its members and in very general terms outlined the purposes for which he created it — " (to) ... investigate the origins of the recent disorders ... make recommendations — to me, to the congress, to the State Governors and to the Mayors — for measures to prevent or contain such disasters in the future."[3] In this speech Johnson articulated the two principles which were constants in his interpretation of the disorders. First, the disorders were not part of what he recognized as the

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[1]See Public Papers of the President, LBJ, 1967, p. 721.

[2]Executive Order 11365, "Establishing a National Advisory Commission on Civil Disorders," 3 Weekly Comp. Pres. Doct. p. 1069; 32 F.R. 11111, 3 CFR, 1967 Comp. p. 310, July 29, 1967.

[3]Public Papers of the President, LBJ, 1967, p. 721.

legitimate civil rights movement; the perpetrators of the unrest were criminals and would, under the law, be treated as such. Second, the vast majority of the Negroes living in the riot plagued ghettos were law abiding and had been victimized by this criminal minority. His prime responsibility, as president, was to put an immediate end to the disturbances. "There will be attempts to interpret the events of the past few days. But when violence strikes, then those in public responsibility have an immediate and very difficult job: not to analyze, but to end disorder."[4] He also used the speech to rehearse another theme which would remain constant throughout the months ahead -- congress must bear a significant part of the blame for the disorders. They had consistently failed to pass the Great Society legislation designed to relieve, if not remove, the causes of the conditions which breed dispair and violence -- the Model Cities Act, Voters Rights Act, Rent Supplement Act, medicare and medicaid, twenty-four education bills, head start, job corps, manpower development and training, etc.[5]

The executive order and the remarks he made on the occasion of signing it were more specific and formed the normative basis for the work of the commission. The executive order charged the commission with the responsibility to investigate and make recommendations for four general areas:

1) Find the origins of the major disorders, "... including the basic causes and the factors leading to such disorders and the influence, if any, of organizations or individuals dedicated to the incitement or encouragement of violence."

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[4]Ibid., p. 722

[5]Ibid.

2) Develop "... methods and techniques for averting or controlling such disorders...;"

3) Determine "The appropriate role of local, State and Federal authorities in dealing with civil disorders...;"

4) "Such other matters as the President may place before the Commission."[6]

It was in the speech of July 29th, however, that Johnson became most specific in his charge to the commission. He wanted it to find the answer "... to three basic questions about the riots:

"----what happened?

"----why did it happen?

"----what can be done to keep it from happening again and again?"[7]

Beyond these three were fourteen specific questions he wanted answered to aid him and state and local officials "...to cope with their immediate and long range problems in maintaining order:

"——why riots occur in some cities and do not occur in others?
"——why one man breaks the law, while another, living in the same circumstances, does not?
"——to what extent, if any, there has been planning and organization in any of the riots?
"——why have some riots been contained before they got out of hand and others have not?
"——how well equipped and trained are the local and State police, and the State guard units, to handle riots?
"——how do police community relations affect the likelihood of a riot ——or the ability to keep one from spreading once it has started?
"——who took part in the riots? What about their age, their level of education, their job history, their origins, and their roots in the community?
"——who suffered most at the hands of the rioters?

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[6]Executive Order 11365.

[7]"Remarks Upon Signing Order Establishing the National Advisory Commission on Civil Disorders" Public Papers of the Presidents, LBJ 1967, p. 725.

"——what can be done to help innocent people and vital institutions escape serious injury?
"——how can groups of lawful citizens be encouraged, groups that can help to cool the situation?
"——what is the relative impact of the depressed conditions in the ghetto ——joblessness, family instability, poor education, lack of motivation, poor health care —— in stimulating people to riot?
"——what Federal, State and local programs have been most helpful in relieving those depressed conditions?
"——what is the proper public role in helping cities repair the damage that has been done?
"——what effect do the mass media have on the riots?"[8]

He wanted a profile of the riots "... of the rioters, of their environment, of their victims, of their causes and effects."[9] He wanted detailed, advice for short term riot prevention, for containment policies, and long-term measures for their future prevention.[10]

A cataloguing of the President's publicly stated purposes for appointing the commission can be made from these declarations. First, the appointment of the commission itself was to be one means of stopping the immediate disorders in the cities. Second, Kerner and his colleagues were to provide the information necessary to create a policy which would insure its not happening again. Third, information must be gathered to provide for a legal means of exposing and punishing the criminal conspirators presumed to be responsible for the riots. Fourth, Johnson saw two types of victims whose plight government must address: those victimized

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[8]Ibid.

[9]Ibid.

[10]Notes for the various drafts of the speech, of which McPherson was the major writer, can be found in the LBJ Library in the file Riots (1), McPherson (8). Another document which appears to be a draft of the speech can be found in the file Riots (3), McPherson (8). The tone and substance of the address did not change substantially in its evolution.

by the disorders and those victimized by the environment of the black urban ghetto to the point where they became disorderly. To each group he offered sympathy and understanding; to the former the promise of federal aid; to the latter, understanding, but no promise of reward until their anti-social behavior patterns ceased. Fifth, Johnson firmly believed in a criminal conspiracy theory explanation of the civil disorders. They were, for him, at least in part, the product of criminal malcontents, whose behavior can be explained and understood, but never tolerated.[11] Such an assumption allowed him to isolate the "violent few" and to assign legitimacy and virtue to the "law abiding Negro families who have suffered most at the hands of the rioters",[12] to establish these "victims" as the principle objects of his concern in dealing with the disorders, to make them the proper representatives of the interests of the urban black population: "It is responsible Negro citizens who hope most fervently — and need most urgently —— to share in America's growth and prosperity."[13] Sixth, the commission was instructed to conduct a comprehensive investigation including examination of the causes and effects of the disorders, studies of those arrested in the disturbances and of their victims, of the police and national guard, of the effects of the news media on the disturbances and evaluations of state and local governmental programs designed to prevent and control such outbreaks. It is clear from his public statements and his subsequent actions that this grant of broad power to the commission was designed to emphasize what Johnson regarded as the failure of congress to come to grips with

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[11] See Public Papers of the Presidents, LBJ, 1967, pp. 721-723 and 725.

[12] Ibid., 723.

[13] Ibid.

the problems he saw underlying the riots and the inability of the state and local governments to comprehend and respond adequately to what he considered a national problem. The seventh and final presidential purpose in appointing the Kerner Commission stated in his public pronouncements was to reinforce in the minds of the public, the congress and any doubtful members of the executive branch the country's need for the Great Society programs. He used the occasion of the disorders to rehearse the major legislative accomplishments of the Great Society which were aimed at correcting what he considered to be the riot producing conditions; the examples Johnson used here and on many other occasions during this period were the model cities, voter's rights, omnibus civil rights, rent supplement, medicare-medicaid, education, job corps, neighborhood youth corps and teacher corps programs.[14] He chastized congress for failing to follow the administration's lead on particular bills (e.g. the rat control bill)[15] and made it very clear that he had no intention of abdicating national leadership in developing and executing civil disorder related public policies.[16]

The importance of these public statements by the president in establishing the commission were not lost on his appointees and their staff. Early in its life David Ginsburg and Victor Palmieri (Executive and Deputy Executive Directors, respectively) put forth what they thought

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[14]Ibid., p. 722.

[15]Ibid.

[16]See items 17 and 19 of "President's News Conference of July 31, 1967," Public Papers of the Presidents, LBJ, 1967, pp. 730-731.

the order of the commission's responsibilities to be. The ordering follows precisely the president's priorities as set out in his public statements. The commission did not significantly deviate from this agenda: 1) answer the president's questions, 2) provide guidance to national, state and local officials regarding the prevention and control of violence and make recommendations for effective social and economic action programs by all levels of government and all segments of the community, 3) focus the attention of the people (especially the white surburban population) on the critical issues of the riots.[17]

Interpretation of presidential purpose cannot be based solely on the public record. Implicit purpose also can be inferred from analysis of political behavior. The appointment of the Kerner Commission reveals three implicit purposes, one of which is unique to Johnson in the appointment of this commission and the remainder of which are indigenous to all presidential advisory commissions.[18] First, Johnson wanted no linkage of the war in Vietnam and the urban disorders. He made no mention of the war in his public statements connected with the creation of the commission and, as will be seen, deeply resented any efforts by the commission, or others, to do so; he maintained this position despite the fact that a major part of congress' resistance to the Great Society in 1967-68 stemmed from its frustration with Johnson's efforts to gain its support for his

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[17]Memo, Palmieri to Ginsburg, 9/12/67, 49/9-3/5, NACCD Papers, LBJ Library.

[18]See discussion of presidential purpose in naming commissions, pp. 55-65, above.

guns-and-butter approach to public policy. The implications of the omission of reference to the war were not lost on the members of the commission and their senior staff.[19]

The second and third purposes, common to all presidential advisory commissions in varying degrees, were to buy valuable time and to educate the public about presidential policy and purposes.

Johnson's desire to purchase time by the appointment of the commission is easily understandable. The level of personal and property damage and violence resulting from the disorders was unprecedented. He was getting enormous pressure from congress, state and local officials, the media and his own advisers to do something to cool the inflamed atmosphere.[20] But, important as the need to do something is to any president in such a situation, there were various other, more important, reasons for Johnson to seize the option of naming a commission to give himself time and political space in which to operate. Califano, in a broad ranging discussion of the Johnson advisory system pointed to the need for the administration to buy time in order to gather information on

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[19]The following exchange between Senator Edward Kennedy and David Ginsburg, though benefiting greatly from hindsight, does reflect nevertheless, the attitude of the commissioners and the senior staff members whenever the question of the war was raised. Senator Kennedy: "There is no mention of the war in the report. Can you tell us why?" David Ginsburg: "I can quickly answer that. We were given a certain mandate in the Executive Order and in the President's charge. We were not to concern ourselves with the war." Kennedy Hearings, p. 21. Being presidential commissioners, they exclusively concerned themselves with the issues he gave to them.

[20]See Wolanin, "Presidential Advisory Commissions," p. 39 and Max Frankel, New York Times, July 28:1,8.

the disorders not then available to the White House.[21] The public character of the commission and the charge Johnson gave to it quickly attracted a data flow toward it upon which the administration accordingly could adjust its policies. In developing his argument, Califano failed to mention the vast quantity of information available to the administration in the form of task force reports. The Kerner Commission might have been useful to Johnson in attracting bits and pieces of new information relevant to understanding the disorders, but its most important function was to provide a very public means, over a period of time determined by the president, of disseminating to interested publics the parts of the work of the various task forces the White House wanted known.

Johnson also wanted to buy time to head off the burgeoning efforts by congress to investigate the disorders and by means of it move into position to command the contest for national urban disorder policy leadership. There were particular reasons why the White House wanted to pre-empt the congressional efforts to create a commission by legislation[22] and to avoid what the White House regarded as the dangerous political pitfall of an investigation of the disorders by a congressional committee.[23] Of particular concern was the danger inherent in the possibility of such an investigation being launched as a support device for the proposed anti-riot and crime control bills then before the congress. There was

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[21]Notes from the Princeton Conference on Advising the President, in the possession of the author.

[22]See the discussion of the proposals by Senators Brooke, Harris and Mondale, above, pp. 190-194.

[23]See the discussion of the McClellan Sub-Committee above, Ibid.

fear that these bills and others that would inevitably be produced from such a congressional investigation would seriously endanger the president's projected Great Society legislative program. Therefore, the White House needed time to sort through the various approaches to the policy problems developing in the changing environment created by the summer disorders.

By raising the investigation of the disorders to the level of presidential concern, the first national riot commission not only allowed the Johnson Administration time to maintain its policy-making advantage over congress, but also helped prevent formation of a legion of state and local investigations of the disturbances. New Jersey did appoint a governor's advisory commission to study its disorders[24] and the Michigan legislature did some investigative work as a prelude to proposing legislative relief for its several disorders. But, the exceptions proved the rule. In both instances, close contact was maintained by local and state officials with White House staff members and the Kerner Commission. The appointment of the commission slowed down such local actions and concentrated attention on it and the White House as the nexus of civil disorder investigation and policy development.

The Kerner Commission was no exception to the norm that presidential advisory commissions are appointed in large part to educate the public.[25] Califano, in his remarks at the Princeton University conference, remembered this as the major reason for naming the Kerner group.[26] The commission

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[24]The Governor's Select Commission on Civil Disorders (Charles D. Lilley, Chairman).

[25]See pp. 58-60, above.

[26]Notes from Princeton Conference on Advising the President.

was appointed to meet two educational needs: 1) to call attention to the Great Society programs which had been designed to alleviate the problems the administration felt to be the root causes of the disorders and 2), to create a highly visible executive agency through which new policies could be advanced. The White House considered it necessary to fulfill both needs. The disturbances could produce a national conservative reaction which might easily be translated into congressional reaction against existing programs and agencies. The White House was acutely aware of congressional resistance to any new domestic programs. The Kerner Commission provided a highly visible means of floating a variety of secret task force proposals before the public and congress. The purpose of this strategy was to build pressure on congress to accept and support these administration proposals. The administration provided the commission with significant data and program proposals from departments/agencies, secret task forces, and other commissions, most of which were advanced in some manner in the commission's final report.[27]

There were additional educational functions some members of the White House staff saw the commission fulfilling. First, aid the administration in adjusting public expectations to what realistically can be expected of forces of law and order in reaction to the circumstances surrounding a civil disorder. The commission provided a public forum for such an explanation. Second, and most important for these advisers, the

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[27]The failure of the commission to give the kind of strong endorsement of existing Great Society programs which Johnson expected was a major contributor to the cool reception the President gave the Report.

commission was needed to analyze and interpret for the general public those social dynamics which led to the civil disorders.

The intensity of the president's commitment to the achievement of his purposes in appointing the commission was most clearly revealed by the way in which he established it. The announcement of its creation was made on national television; the commissioners were brought to Washington the next day where they were again treated to the president's public endorsement;[28] they met privately with Johnson, Vice President Hubert Humphrey, Attorney General Ramsey Clark, the senior members of the president's domestic policy advisory staff, and Cyrus Vance, the president's special envoy to Detroit. The president spoke to them in very strong, positive terms about their assignment, and his support of their work. He told them that their work would be initially funded by use of the President's Emergency Fund;[29] he appointed their executive director and the executive officer; he reviewed for the commissioners the constitutional and statutory authority he possessed for ordering army troops into Detroit; he had Vance brief them on the situation in Detroit; in brief, the context constructed by the president and his staff, the symbols of presidential authority and purpose invoked at the time of their appointment reinforced for the commissioners the fact that they were presidential

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[28]See Public Papers of the President, LBJ, 1967, pp. 724-726.

[29]Most of the commissioners came from this meeting with a sense of presidential commitment to get from congress whatever additional money they would need for their work. This understanding, or lack of it, became a bone of contention between some members of the commission and its staff and the White House.

appointees, set upon a clearly defined presidential mission for which he was promising them strong support. As a group they affirmed Johnson's purpose and leadership by taking a series of actions which set their goals clearly within his framework; they unanimously voted to seek power from congress to issue subpoenas by which they could compel testimony from persons testifying before them.[30] They agreed not to televise their hearings at any time, to confine their meetings to commissioners without alternates,[31] to direct the staff not to call any meetings until they and the commissioners were fully prepared on the topics to be discussed, and to eschew all partisan politics from their efforts. They agreed, too, not to make these decisions public for the time being.[32]

From their actions, it is clear that the commissioners took the president's perception of the nature of the disorders very seriously. That they so quickly and completely adopted the prevailing White House view of the disorders should not be surprising for at least two simple reasons; first, they were there to do work the president had appointed them to do and second, at this point they had no other place to stand

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[30]Public Law 90-61, 90th Congress, J. S. Res. 98, August 2, 1967. Popper sees commissions as not needing subpoena power as they do not hear hostile witnesses. He cites Mercy as saying commissions do not look for wrong doing by individuals but for general facts and trends. Popper says of the recent commissions only the Warren Commission had subpoena power. (Popper, President's Commissions, p. 38.) This is obviously incorrect as far as the Kerner Commission is concerned. Since Popper's work the Rockfeller Commission and the President's Commission on the Accident at Three-Mile Island asked for and received subpoena power from congress.

[31]Though violated some in practice, the degree to which they adhere to this principle greatly impressed all experienced commission observers.

[32]Memo, Bohen to Califano, 7/31/67 covering a five page document titled "Special Commission on Civil Disorders," "Minutes of the Meeting-Saturday, July 29th, the White House," in the file Civil Disorder (2), Califano 3, LBJ Library.

from which to view the disorders. They were a creation of the president and their first actions reflected their commitment to the office, the man and his understanding of the problem he had charged them to study.

Despite these initial attempts to bring their work into conformity with the view of the problem held by the White House, other reactions were not long in emerging. Interpretation of the broad presidential mandate was as might be expected, an open-ended matter for some of the commissioners. The variety of interpretations was exposed during the first meeting of the commissioners.[33] John Lindsay expressed impatience with Kerner's desire for deliberate speed and strict adherence to the fourteen point mandate in their work (a characteristic stance for the mayor throughout the life of the commission). He suggested that the commission meet again within a few days to reassess the riot situation and then define its role in dealing with it. He, joined by Senator Harris, pushed hard for a study of any broad social problems which might lay behind the riots. Senator Brooke wanted the commission to provide the people living in the urban ghettos with a reason for confidence in the national government (a position with which Johnson found it difficult to disagree, but not one included in his charge to the commission.) Thornton was adamant in wanting the commission to serve the president's purpose in the broadest possible ways. It was he who pushed hardest to have the commissioners address themselves to the effect of the disorders on the conduct

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[33]Ibid.

of U.S. foreign policy. Subsequent meetings and exposure to increasing amounts of data would lead to other suggestions that the commission set its own agenda. While never a "run-away", the Kerner Commission was able to maintain a considerable distance from the administration. The movement away began during its first meeting.

The broad mandate given the commission had other political consequences which are important to note at this point. First, it claimed urban disorder policy-making for the executive branch and thereby assured presidential dominance in that area; deference from congress and state and local government officials was assured until they could assertain which parts of the mandate would receive the bulk of the commission's and the president's attention. Second, the broad mandate gave Johnson time and maneuvering room in dealing with congress. He was well aware that a congress aroused from its customary subservient state could become a formidable opponent, even for a strong president. The political territory defined in the mandate, the implicit time-line and the fourteen points gave the congress and state and local officials enough pause to allow the White House time to channel through the commission to the congress a variety of recommendations from other parts of the advisory system — particularly from the task forces. Third, the broad mandate set some public expectations too high. While the White House was well aware of the benefits and the drawbacks of raising the expectations of various publics, they were willing to take the risk; they calculated the risk as being limited to the group they referred to as the victims of the disorders. But, expectations were raised also for persons concerned with "law and order" issues. They heard only the harsh words spoken to the "apostles of violence"

and adjusted their expectations accordingly. Fourth, others also engaged in this exercise of selective hearing; liberals dissatisfied with Johnson's leadership, saw the mandate as an opportunity to cast aside the conventional wisdom and present the administration and the nation with novel policy ideas; the document "Harvest of Racism", an abortive attempt by a majority of the professional staff to write the final report for the commission, was a liberal effort to respond to what its authors thought was the intent of the president's mandate messages.[34] Fifth, Johnson wanted a wide ranging study into the factors which permit one city to explode into a riot and another to remain calm.[35] This directive forced the commission and its staff into elaborate research on non-riot as well as riot cities, using up much of their scarce resources of time and money.

> This approach deflected staff attention from an alternative explanation; that the riots were the result of national factors and of national scope, that Black rebellion was attributable to the Black position in America, not the characteristics or policies of individual cities.[36]

The mandate defined presidential purpose and consequentially the boundaries of the work of the commission. The fourteen points were regarded by the commissioners and their staff as their agenda; because

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[34]See the discussion of the ensuing controversy pp. 455-457.

[35]See the first of Johnson's 14 point mandate, Public Papers of the Presidents, LBJ, 1967, Book 2, p. 725.

[36]Michael Lipsky, "Social Scientists and the Riot Commissions," The Annals of the American Academic of Political and Social Science 394 (March, 1971): 79-80. Lipsky also notes that in making the final report the commissioners used very little of the enormous amount of staff work done on individual cities.

they were so broadly drawn it was easy for any person to rationalize presidential intent and/or endorsement and thereby put some commission participants at odds with others; but the comprehensive character of the mandate and the ensuing conflicts over its interpretation, inevitably forced them into a political middle where all could agree when the final report was written. The fact that that middle ground was not one upon which Johnson could stand with his commission was due more to the kind of persons he appointed than to the charge he gave them. Attention must now be turned to the membership of the Kerner Commission and its staff.

CHAPTER VIII

MEMBERSHIP

A) Commissioners

In the address to the nation in which he laid out the guidelines for the commission the president announced the names of those he had chosen to serve on it: Chairman, Otto Kerner, Governor of Illinois; Vice Chairman, John V. Lindsay, Mayor of New York City; Fred R. Harris, United States Senator from Oklahoma; Edward W. Brooke, United States Senator from Massachusetts; James C. Corman, United States Representative form the Twenty-second District of California; William M. McCulloch, United States Representative from the Fourth District of Ohio; I. W. Abel, President of the United Steel Workers of America (AFL-CIO); Charles B. ("Tex") Thornton, Chairman of the Board and Chief Executive Officer, Litton Industries, Inc.; Roy Wilkins, Executive Director of the National Association for the Advancement of Colored People; Katherine Graham Paden, Commissioner of Commerce for the State of Kentucky; Herbert Jenkins, Chief of Police, Atlanta, Georgia.[1]

On the following day the commissioners were informed that David Ginsburg a Washington, D.C. attorney had been chosen as Executive Director.

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[1]The ordering of the names of the commissioners given here is that of the president in his speech. This ordering was maintained in all the official publications of the commission.

In turn, he and Califano named Victor H. Palmieri, a Los Angeles lawyer and businessman, to be the Deputy Executive Director. These thirteen persons became the principle public agents in Johnson's efforts to maintain control over the domestic disorders and the public policy-making responses to them.[2]

There is a curious quality to these appointees. They lacked the distinction which the circumstances surrounding their appointment seemed to demand. They were, to be sure, members of the leadership group to whom the president always turned when making major appointments — high status individuals,[3] experienced in the ways of national politics, representative of most of the major groups and institutions deemed by the White House to have a vested interest in the resolution of the disturbances, obviously of potential value to the president in his efforts to cool the flames of rebellion in the cities and reduce the likelihood of independent policy action toward them by state and local governments and the congress. Yet, they were not in any objective way the strongest candidates available to the White House.

The four congresspersons, for instance, symbolized the importance of the commission to the president; further, each served on at least one committee possessing the potential for causing Johnson serious political trouble if it began the process of mounting major investigatory hearings into aspects of the disorders falling under its jurisdiction; and one (McCulloch) was the ranking Republician on the important House

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[2]A discussion of the other members of the professional staff can be found below.

[3]A term used by Lipsky and Olson in describing the members of the commission. See MSS, IV, p. 13.

Judiciary Committee. However, none was a chairperson or a member of the "inner circle" of leadership in either house. The two senators were relatively new to congress,[4] and undoubtedly were selected because they had achieved political visibility by advocating the creation of some type of commission to investigate the riots.[5] Representative Corman was beginning his second term. Only McCulloch, who was in his tenth term, had anything like the seniority one might expect in a congressperson appointed to such an important commission.

A governor of a large state and the mayor of the most densely populated city in the nation, of course, did signal the administration's concern to appoint persons familiar with urban problems. Yet Kerner was not a distinguished governor, despite his experience in civil rights, urban affairs and national guard matters. Lindsay is an exception to the generalization. He was well known nationally as the Mayor of New York, and, at the time, he was considered a "dark horse" candidate for the Republican nomination for the presidency the next year; he had a widespread reputation for being an able, aggressive (even abrasive), hard working, effective executive; some regarded him as having an almost compulsive concern with civil liberties. Many questioned the wisdom of naming Lindsay to the commission. As one commission staff member put it, "I don't see why LBJ couldn't have foreseen that with Kerner as Chairman and Lindsay as Vice Chairman, Lindsay would end up dominating the picture."

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[4]Harris had, in 1967, served three years in the senate; in 1966 he had been elected to his first (and, as it turned out, only) six year term (his first election was to fill out the unexpired term of the late Senator Robert Kerr). Brooke was in his first year of senate service when appointed to the commission.

[5]See above, pp.190-194.

Highly recommended by Secretary of Defense Robert McNamara (a former colleague at Ford Motor Company) and Califano, few persons outside a small part of the business community knew of Litton Industries or of "Tex" Thornton. His presence on the commission could hardly be expected to call forth immediate and widespread support from the business community for the commission and its work.[6] He was, however, a strong supporter of Johnson's war policy.

I. W. Abel was a major leader but he represented only a part of the labor movement and at the time of his appointment and was not regarded as a national spokesman for labor. The selection of Abel was made on the traditional political principle of rewarding one's friends. He was a great favorite of Johnson and Califano for "going out on a limb for us during the 1965 steel negoiations." George Meany, President of the AFL-CIO was considered briefly for appointment to the commission, but was passed over. Roy Wilkins was not the first choice of the White House to fill one of the "Negro positions" on the commission. His name was drawn from the list of "Negro leaders" kept by the White House for such occasions. The first choice of the White House was Whitney Young, President of the National Urban League, who was passed because of having

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[6]The commission established a special panel on private enterprise chaired by Thornton from which little was heard. When Johnson became serious about involving the business community in the work of preventing future civil disorders he named Henry Ford II to head the National Association of Businessmen and gave it the responsibility of finding ways to open new job opportunities for urban blacks, See discussion below, pp. 507-508.

recently served on three other presidential advisory commissions. Wilkins, while not as well thought of by Johnson and his senior aides as Young, was regarded as being an acceptable Negro leader. Thurgood Marshall, the Solicitor General of the United States, was briefly considered for appointment but his name was put aside because the president did not want to jeopardize his pending confirmation as an Associate Justice of the United States Supreme Court.[7] The leaders of the relatively new Negro civil rights organizations (e.g. Martin Luther King, Jr., Stokley Carmichael, etc.) were definitely not on the White House list of Negro-Americans eligible for appointment to Johnson advisory groups.

A rather extensive list of women who might be named to various executive positions was kept in the Johnson White House.[8] The archival evidence indicates a general propensity by Johnson to see that every public advisory body had "its woman" on board. Representation was granted when it was determined that women had a particular interest in the matter under commission consideration. Katherin Paden's selection, therefore, indicated that the White House viewed women's concerns with the urban disorders as being marginal, at best. The only other woman considered was Julia Davis Stuart, of the League of Women Voters National Board, who was dropped because she had recently served (1966) as a member of the

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[7]Johnson nominated him on June 13, 1967; his senate confirmation came of August 30, 1967.

[8]See file Women for Task Forces or Commissions Exec. FG 690/Task Forces, LBJ Library. (This is a 7 page document with the notation on the first page "from Liz Carpenter").

President's Committee on Law Enforcement and the Administration of Justice.

Herbert Jenkins was a respected police chief of a major Southern city, but he was by no means a national leader in his profession on matters having to do with riots and civil disorders.

David Ginsburg was a Washington lawyer, knowledgeable of the ways of the Capitol. Like Lindsay, he came close to having the kind of political reputation that would merit appointment to such a commission. Palmieri was a person of virtually no political reputation outside Southern California.

This group fits Drew's description of what official Washington usually regards as an ideal commission: non-controversial, bi-partisan, representative of the major concerned interests and respectable, chaired by a person who is able and/or safe (to the administration).[9] That definition while containing a kernel of truth, is essentially flippant and more of a handicap than a help in making a serious explanation as to why particular commission appointments are made. This is especially true when considering the Kerner Commission. These appointments were made for a variety of complex reasons, not totally explicable by the usual reasons for naming persons to commissions. It is true that Johnson did want a bi-partisan, representative,[10] and non-controversial

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[9]Drew, "On Giving Oneself A Hotfoot," p. 47.

[10]According to Lipsky and Olson, Johnson's commissions always contained representatives from eight major constituency groups which the president regarded as central to national policy making: Negroes, labor, big business, women, big cities, Texas, college professors and presidents. Only the last two were omitted from membership on the Kerner Commission.

commission chaired by a "safe" person. But, it is clear in the selection of the Kerner Commission membership that Johnson wanted much more out of his appointees and he was willing to spend some political capital to get it; in return for obtaining known strengths in aiding him in managing the conflict in the cities and centralizing policy-making initiative in the presidency, he was willing to allow it to be said that the "wrong" interests were being represented on the commission. These persons had, for Johnson, four important political attributes in common which led to their appointment: 1) they were in basic support of the Johnson civil rights policy; 2) they favored, in principle, government programs to aid the economically deprived of American society (there were differences in interpretation of what constituted economic deprivation, but all were supporters of major parts of the Great Society); 3) all were proponents of a vigorous national policy of law and order in response to the disorders--order must be restored and maintained before any efforts are made to provide relief for alleged or real grivenances,[11] 4) none had voiced any public opposition to Johnson's conduct of the war in Vietnam.

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[11] Kerner as a former United States Attorney, Jenkins as an urban police chief were clearly on the side of a traditional law and order response to the disorders; even Wilkins, who fought Thornton in particular on this issue, saw the re-establishment of positive police-community relations in the urban-Negro communities as the first task of the commission. (See Minutes of Meeting's of Commission, taken by Kyran McGarth, Civil Disorders (2) Califano 3, LBJ Library). The minutes of the first two meetings are most revealing on this point; on the law and order issue Abel and Paden were passively supportive of the positions taken by Jenkins and the other commissioners whom they regarded as having the most experience in these matters (cf. Minutes of the Commission for 12/7/67, for example); Harris, McCulloch and Corman each came to the commission favoring support for the police in the form of provisions for additional equipment as a deterent to future disorders and passage of a repressive anti-rioting bill by the Congress; Thornton favored a strong show of force in the face of the challenge of the rioters. He also was a harsh critic of the courts for

In addition to possessing these virtues, each of the appointees offered Johnson special resource in his efforts to control the disorders and to gain support for his overall leadership efforts in the midst of the urban unrest. He and his aides were looking for and found particular types of persons with unique skills and connections in their pool of "commission persons." The majority of the thirteen brought to their appointment the expertise one would expect of a group named by Johnson. They had the political connections and resources to aid him in heading off challenges to his authority and ability to lead the national effort to curtail the disorders. Also, they brought to the task experience in national economics, a useful resource in attacking what Johnson felt to be at the root of the disorders.

The appointments of the four congresspersons and Mayor Lindsay to the commission were also undoubtedly aimed at co-optation of political opposition to the president's policy leadership. Lindsay, as mayor of the largest city and a potential opponent in the next election, as with George Romney in Michigan, posed a serious threat to Johnson. He had a potent political platform and a record in urban politics from which to criticize the administration in politically telling ways. Bringing him on the commission not only brought some of his ideas into the administration,

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being too soft on crime; Lindsay, while not a hard-line law and order person, was from the beginning in favor of supporting the police in the fulfillment of their responsibilities. He was willing, however, to be an advocate of civilian review boards; Brooke's position was the most skewed from the commission norm on this matter. From the beginning he spoke against interpreting the riots as communist inspired and/or the result of a criminal conspiracy.

but also tied him to the administration's policy efforts, or so the reasoning went. Brooke's proposal for a joint commission was publicly ignored by the White House and his leaders in the Senate, but was accepted and elaborated on by other members of his party's leadership. Naming him to the commission was clearly aimed at tempering the Republican congressional opposition. Harris, Corman and McCulloch each had committee assignments in the Congress, any one of which could cause the White House some trouble by launching independent investigations into the disorders. Harris was a member of the very important Permanent Sub-Committee on Investigations (McClellan Sub-Committee) of the Senate Government Operations Committee. In addition he served on the Select Committee on Small Business and the Senate Finance Committee, each of which could be called upon to handle White House proposals to remedy the urban disorders and their causes. Corman served on the House Committee on Small Business, but more important to Johnson, he was a member of the all-powerful Ways and Means Committee. McCulloch was the ranking Republican member of the House Judiciary Committee. In sum, each congressman offered Johnson an important means of access to one of the congressional committees most likely to do him political harm. The congressmen were viewed as being of little help to Johnson in the passage of legislation;[12] he had other resources to help him with that; they were

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[12]See the discussion of congressional membership on advisory commissions, above pp. 78-79.

thought, however, to be useful in being, if not his eyes and ears on the committees, as Harris was very effective in being,[13] at least a means by which the various policy positions of the administration could be placed into the congressional dialogue. All Johnson expected from these persons was to communicate honestly the administration's position and/or plans concerning a particular matter; they need not become converts, only reliable messengers. As long as they were not opponents, Johnson was ahead by naming them to the commission.

Employment and housing were policy issues very much on the minds of Johnson and his senior advisers when they put the commission together. Whatever the commissioners did they would have to speak to these two pivotal urban issues. Throughout the commission's tenure a majority of its members (Corman, Lindsay, Wilkins, McCulloch, Paden and Thornton) voiced support for policies directed at providing greater access to jobs and homes for black urban citizens.[14] Ginsburg and Palmieri also brought to the commission experience in these two areas. Ginsburg had practiced labor law, including service as a labor mediator. He had served as a staff person on the Security and Exchange Commission and the wartime Price Stabilization Board. Palmieri was the President of the Janus Corporation, a west coast real estate firm and thereby brought to Washington significant contacts with that regional economic community.

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[13]See pp. 233-234 below.

[14]This majority had a clear set of policy priorities which became those of the commission: first, law and order; second, jobs and housing; third, education.

Abel, of course, brought important labor experience to the task, if not direct contact with the urban labor market. Abel also could draw upon extensive experience in institutional racial integration. Lindsay had had intimate experience with urban labor problems. Of particular help to the commission and the White House was the mayor's experience with unionized police and fire departments. Those commissioners who did not have direct experience with urban political problems prior to their appointment made special efforts to become thoroughly informed (the best example is Harris). The commissioners, then, were not eleven of the key interest group leaders of the country by whose presence on the commission the president could hope to swing other elites behind his leadership. Rather they were experienced practitioners of Lyndon Johnson's type of liberal politics whom he knew to be able to serve him well in their areas of policy competence, as listening posts for what was being said and planned in various politically influential centers and as interpreters of the administration's policy.

Justice cannot be done to the members of the Kerner Commission and its senior staff if analysis ends after detailing their individual and corporate contributions to the achievement of explicit and implicit presidential goals. This group did after all compile a distinguished record in the annals of presidential advisory commissions. Their report was more widely read and discussed than any other, save that of the Warren Commission.

The minutes of the private meetings of the commission, various reflections by commissioners and members of the staff in interviews, and in intra-commission memos and in published works, reveals a group of persons willing and able to work hard at understanding the problems

assigned; this determination was the external manifestation of their deep commitment to the president and the nation. They began as citizens dedicated to the public good as seen by the president; they were presidential appointees in the most literal sense, committed to "doing a job" for him, adhering religiously to his mandate; in the end a majority of them moved closer to their commitment to the nation and farther from the office to which they owed their corporate existence. An explanation of the psychodynamics responsible for this development is neither possible nor necessary at this time. What is possible and necessary is a sketch of the most important individual characteristics which contributed to this evolution.

Otto Kerner was regarded as "quiet and tough," not a forceful person,[15] inexperienced in the ways of Washington.[16] Commission participants and observers alike agree that the White House wanted a deferent chairperson so David Ginsburg (the original "president's man" on the commission) could direct the work of the group; Kerner fit this mold. He had, however, compiled a consistently positive record of support for civil rights for Negro-Americans. He and his father pioneered in Illinois the opening of legal access channels to Negroes. As governor he had been effective in dealing with urban racial problems and had striking success in developing the abilities of the national guard to deal with riot problems (a matter of importance to Johnson and the work of the commission). The

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[15]See the memos from Califano and Christian in the file Press Contacts, Califano 57 (1758), LBJ Library.

[16]New York Times, July 28:1,8.

staff of the commission was prone to identify him as a lawyer-judge type commissioner—a person who saw a particular "right" for every "wrong" encountered in their work. Kerner was a member of the job opportunity-open housing majority on the commission.[17] He was one of the commissioners most influenced by the ghetto visits which became so decisive in writing the final report. He moved increasingly closer to the "liberal wing" of the commission (a position occupied by Lindsay from the beginning) and at the end fully adopted both the white racism point of view of the "Summary" and a view which depreciated, if it did not exclude, a criminal conspiracy explanation of the disorders.[18] Kerner was a person who came to the commission with a strong commitment to the president and his programs, particularly those in civil rights, and who left with a stronger commitment to civil rights. Throughout that process Kerner served the president and the commission well as the leader of record. He labored hard on commission business (by his own account, 60 percent of his time during the time of the appointment); he officially represented the commission before the White House and congress and together with Ginsburg was responsible for the amazing amount of work the individual commissioners did. Until very near the end of the life of the commission, Kerner was the leader of the "president's people".

Lindsay too was consistent in his performance. He was very predictable. The White House never expected him to be one of "their" people.

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[17]See above p. 228.

[18]See Kerner testimony, the Kennedy Hearings, pp. 7-14.

From the beginning he was the leader of the loyal opposition on the commission. He also lived up to his reputation as an activist, hard working, politically sophisticated person possessed of a "stubborn concern" for civil rights.[19] He was the first to push the commission to discuss issues broader than those contained in the president's fourteen points,[20] and throughout, he saw one of the commission's primary tasks to be to make the nation, particularly the congress, uncomfortably aware of the plight of the urban Negro ghetto resident.[21] His aggressive (some said abrasive) concern for the "larger" issues, together with his political skill were useful tools in his role as the prime architect in the production of the "Summary"[22] and his attempt to call the commission back into being during the summer of 1968.[23] His role in the development of the "Summary" was the final step in his evolution from the opposition to his subsequent position as the leader of the loyal opposition.

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[19]See Nat Hentoff, A Political Life: The Education of John V. Lindsay, (New York: Alfred A. Knopf, 1969), p. 8, and Charles 37X Kenyetta, "The Changing Role of the Militants," Harvard Review 4 (Second Quarter, 1968):45.

[20]See "Minutes of the Meeting of the Commissioners of 7/29/67" in file Commission on Civil Disorders (2), Califano 3, LBJ Library.

[21]Ibid., "Minutes of Meeting of the Commissioners, 12/9/67."

[22]See below pp. 450-455.

[23]Lindsay and Harris were unsuccessful in this effort, but they did aid in the production of a book, One Year Later, (Urban America, One Year Later: An Assessment of the Nation's Response to the Crisis Described by the National Advisory Commission on Civil Disorders (Sanford, N.Y.: Praeger, 1969) as an effort and reinforce their contentions that the administration and congress had disregarded the recommendations of the commission.

Harris, by the account of commissioners and staff members alike, provided the intellectual and partisan political leadership necessary to make the shift which allowed the "Summary" to be published. He came to the commission clearly marked as one of the "president's men." A southwesterner, a strong supporter of the Great Society and the war in Vietnam, brilliant, hard working, Harris was in many ways a young LBJ. The two men were attracted to each other early in Harris' first term and maintained a close political relationship until he "turned on Johnson" with his strong endorsement of the Report and his subsequent actions which ran directly counter to Johnson's major domestic and foreign policies.[24]

Harris, too, had a long commitment to civil rights.[25] Like Lindsay, he was aggressive and hard working; he was not, however, regarded as abrasive. He was seen as a person of good humor able to make his points without alienating his fellow commissioners. He strove for an open commission, which would share the problems of the disorders (he did not see much in the way of solutions at the time) with the people and the congress.[26] As he learned more, particularly from the visits to the ghettos,

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[24]For Harris' account of the closeness of the relationship and an account of himself as "Johnson's Man" on the commission see his Potomac Fever: A Personal and Good Humored Memoir of Twelve Years in the Nation's Capitol, (New York: Norton, 1977), pp. 107-108.

[25]He wrote his book Alarms and Hopes at the same time the commission's report was being completed.

[26]McGrath Minutes 2/9/68.

Harris became less the "president's man" and more his own.[27]

Brooke was a major disappointment to most of the commissioners and the senior members of the staff. Being black, a northeastern liberal Republican senator, and one of the first persons to suggest the formation of a commission, most of his colleagues expected him to be an aggressive commissioner. His contributions to their common work, particularly to the development of the position expressed in the "white racism" and "two societies" themes of the Report, were significant, when he was present for meetings; his abstenteeism from scheduled meetings however, was regarded as excessive and a consequent handicap to members of the staff and the other commissioners. His value to the common effort lay, however, in his ability to comprehend and articulate the broader issues underlying the disorders and to resist easy answers to the questions before the commission; this obviously allied him with Lindsay and Harris. He was also helpful to the liberals on the commission as a strong ally against any vengeful law and order position.

Congressman Corman expressed more traditional New Deal values. A second term member of the house of representatives, who had been reelected in California despite a sweep of the state by the conservatives, led by the new Republican governor Ronald Reagan, Corman came to the commission with a reputation for expertise in urban and civil rights matters. He was

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[27]His independent political stance was not confined to his work on the commission. It subsequently cost him his seat in the senate. He chose not to run for re-election in 1972.

an early supporter of the position that white racism underlay the disorders and that the "two societies" theme accurately reflected the character of urban America.[28] He was anxious for the commission to pursue the questions of official lawlessness in the disorders and was unwilling to do anything to lower the expectations of American Negroes just because there was some evidence that unfulfilled expectations were a factor in causing the disorders. As with many New Deal-Great Society Democrats of the time, Corman adhered to a liberal interpretation of the causes of the urban disorders (e.g. racism) but was conservative in his orientation toward some of the systemic implications of those values. For instance, throughout the life of the commission, Corman was at odds with the staff over proposals for the final report they were submitting to the commissioners. In a letter to Kerner and the other commissioners, Corman was highly critical of what he regarded as a proposal which, if adopted and sent forth to the nation and the president, would commit the commission to advocacy of a "complete overhaul of the American system". Corman's inclination was to adjust, not scrap the existing system.[29] He and Thornton were united on this and together were strong advocates of perfecting the existing system of education, jobs, and housing; point out the errors, perfect, but do not scrap the system. They stood over against the change-oriented commissioners

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[28]See McGrath Minutes of 11/20/67 and 12/9/67.

[29]Letter, Corman to Ginsburg, Ginsburg's Corman file, NACCD papers, LBJ Library.

as well as most of the staff on these matters.[30] Corman's traditional liberalism led him to adopt a status quo orientation concerning existing institutions and programs. He was a "president's man" not in the usual sense of one who carries information to the White House but in the sense that Lyndon Johnson understood and appreciated best; he wanted the commission to stick narrowly to the mandate given it by the president; he supported the institutions created by New Deal Democrats and the Great Society programs designed to perfect that inheritance. His approach to the need for social change implicit in the urban disorders of 1967 was one of institutional and programmatic refinement, not dismantlement.

Congressman McCulloch brought to the commission a much more conservative record than Corman except in civil rights where their performance was virtually identical. His contribution to the work and the final product of the commission, unlike Corman's, was small. A long-time advocate of civil rights he, like Johnson, was willing to come down very hard on the "criminal element" he saw as causing the riots. He too was eager to support and aid the Negro-Americans who showed gratitude for the progress obtained for them in national civil rights policy by hard work and non-involvement in the riots. He

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[30]The issues were drawn over recommendations concerning education, job, the police and the media. Lindsay, Harris, Brooke and Wilkins became increasingly persistent and aggressive in their endorsements of recommendations for radical changes in institutional structures to overcome the effects of racism. See, the McGrath "Minutes of the Commission Meeting" of 1/11/68 for a particularly harsh clash between Corman and Wilkins over recommendations concerning the school system.

accepted the idea of America as a racist society but saw that as no reason for "criminal" activity on the part of some Negroes. Johnson was pleased enough with the congressman's work on the Kerner Commission that he named him to the Eisenhower (Violence) Commission.

I.W. Abel's role on the commission is difficult to describe. The staff regarded him as an independent in the intra-commission conflicts. He was a person who made up his own mind, who did not seem to be intent upon advocating set points of view on all the issues facing the group. He was open to listening to the variety of proposals which came forth. Unlike Corman, for instance, he was not prone to lecture his colleagues on the need to maintain the structures of the society, but at the same time he agreed and voted with him. He was articulate about the realities of American Negro social and economic life. He was a long-time supporter of a positive public civil rights policy and a vigorous advocate of an identical policy in the labor movement. When the time came for decision making, however, he fell into the middle range of commissioner behavior. Willing to accept the white racism doctrine and significant radical changes in institutional structures, particularly those pertaining to employment and wage practices, he was reluctant to tie the war to the disorders or to challenge the practices of the police or national guard. He clearly belonged to the cautious middle of the commission.

Thornton presents no such role assignment problems. He was a solid conservative, an enthusiastic supporter of the status quo. He endorsed the Johnson civil rights policy and the basic Great Society programs, including the War on Poverty. He was in every sense the

"president's man". He wanted more job programs and more emphasis on the perfection of the existing educational system. He could not accept the contention of the staff and most of the commissioners that poverty, as well as racism, was a major cause of the disorders. He maintained that if they put too much stress on poverty ..."30 million poor people will use it as an excuse to riot."[31] He was to the right of Corman and those others who were willing to raise expectations. He was wedded to a principle of incremental social change which led him to affirm existing social and political institutions as the base upon which any change must be built. He never seemed to entertain the proposition that existing structures may have outlived their usefulness, and may have become a part of the problems of the society rather than a basis for their solution. Here he and Corman were adamant in defense of existing Great Society programs and policies. Thornton remained the "president's man" until the end; the Great Society's War on Poverty, civil rights program, and the war in Vietnam were acceptable to him because they were the president's; the task of the commission was to define those policies and programs which were working best and defend and support them; refinement was his method of change, and then only when the White House, the locus of those who knew the most about such matters, was favorable.

Roy Wilkins was regarded by Johnson and his aides as one of <u>their</u> Negro leaders. He was one of the group of executives of organizations to which the Johnson administration always turned when they needed a

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[31]McGrath Minutes, 11/10/67.

Negro on an advisory group.[32] He was a strong supporter of the Great Society, criticizing it only when it did not go far enough, fast enough in its announced goals of social, racial, political and economic justice. He was an opponent of the "Black Power" movement as it was being articulated by many younger and more radical Negro leaders. It is questionable whether he even felt very close to the position being taken by Dr. Martin Luther King, Jr. and his followers. Wilkins especially did not want the white liberal establishment to view any Negro person or group as the spokesperson or the savior of the Negro-American community. He sought full integration of Negro Americans into the mainstream of American life and he saw the established Negro groups as a means to that end. Wilkins saw himself on the commission as the advocate of what had become "traditional" Negro-American public policy goals — access to the benefits of American citizenship: jobs, education and housing. He sought federal governmental aid to the Negro community as a means of moving into position to compete equally for a share of the American dream. He played this role by adopting a strategy of carefully nurturing those persons who occupied the middle of the commission's range of commitments on civil rights matters. When the time came for decision making on the various issues, he spoke forcefully for his point of view and generally brought the moderates with him. He was a follower, a reactor, a refiner, in the development of the Report. He gave strong

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[32]McPherson writes that Johnson and his key aides were aware, at the time of the Watts disorders, that the major Negro "leaders" had more of a following among white than black-Americans. McPherson, A Political Education, p. 344.

support to the lead of others in development of the white racism theme.[33] He resisted, with Corman, the two society concept finding it counter-productive to the achievement of the basic goals the commission had set for itself.[34] He never wavered, however, from advocating strong statements on open housing and police-community relations (he once threatened to resign unless there was a statement on open housing which he could accept in the final report)[35] and was a consistent supporter of the efforts to connect police action to the causes of the disorders. Wilkins can be classified a cautious moderate, ready to become an active advocate or, if necessary, the swing-vote for the issues of real concern to him — inevitably issues concerning systemic change. The character of those issues puts him into the group led by Lindsay.

Other than the fact that she was a southern woman, and an announced candidate for the United States Senate from Kentucky, Katherine Paden had few qualities to justify her appointment. In fairness to her, it is important to note that her senate candidacy and region were serious handicaps to any personal desires she may have entertained to join in the efforts

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[33]In his syndicated column of 2/10-11/68, Wilkins defends the commission against an attack by the sociologist Amatai Etzioni that few social scientists were employed by the commission. Wilkins contended that the work of the commission uncovered racism and held it up as an explanation of the riots, something social science had failed to do. A typed copy of his column of 2/10-11/68 is in the files of the Office of Information, Papers of the NACCD, LBJ Library.

[34]McGrath Minutes, 12/9/67.

[35]Ibid., 1/11/68.

at recommending systemic change developing in the commission. She was, however, a good example of how a president can use commission service as a means of educating certain elites. She began her service embracing a rather traditional southern conservative viewpoint on all issues before her. She moved to a position of vocal support of the total Report.[36] She was a persistent critic of the mass media, finding it at least partly responsible for the disorders. On the field trips to the various cities which had experienced disorders, Paden was faithful to her role as the "representative" of women by actively soliciting the views of Negro women. She ended her service a vocal moderate who was optimistic about the future of race relations in the country and willing to support not only the Report but the administration's civil rights program. She clearly belongs in the cautious middle of the commission's membership.

Herbert Jenkins' name came to the attention of the White House through Attorney General Ramsey Clark who was impressed by his work on Department of Justice advisory groups. Clark recommended him because of his openness; he was not locked into a rabid law and order position characterized on the commission by Thornton.[37] He used his experience as

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[36]The Wall Street Journal carried an interesting analysis of her work on the commission which caught her transition in mid-stream. See the issue of 12/3/67.

[37]See Herbert Jenkins, Keeping the Peace: A Police Chief Looks At His Job, (New York: Harper and Row, 1970), p. 95, for his discussion of his liberal identifications within the law enforcement profession and his reaction to opposition to his appointment to the commission from his police peers.

a police chief in the South to the advantage of the commission. While he was not from a major urban center, he did have extensive experience with urban Negro ghettos and with civil disorders. In particular, he brought an informed concern for the reliability of the national guard as a peace keeping force under the command of a political official like Governor Lester Maddox of Georgia. He helped sway the discussions away from recommendations advocating extensive reliance on the guard as the sole means of force for curtailing disorders and toward support of local police forces. It was he who proposed and gave the strongest support to the various proposals in the Report for changes in internal policy department policies and for bettering policy-community relations. Jenkins was profoundly influenced by the thinking of Senator Harris and gradually moved with him from the cautious middle to a radical and change oriented position.

B) The Executive Staff

The size and quality of the staff of a commission more than any other variables determine the substance, character and importance of its work. The size of the staff is dependent on the president and it is he who also approves the budget as well as assigns the work of the advisory body. As noted in the Chapter 2 the size of a commission's staff is one major critera on by which the importance a president vests in a given commission can be measured.[38] The quality of the staff is dependent first on the skill of those doing the procuring and second on the quality of the pool of available people from which the choices are made.

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[38]Above, pp. 87-88.

The Report lists 115 members of the professional staff.[39] In addition to generating a large quanitity of data for use by the commissioners such a staff has to attract a considerable amount of political attention, at the very least, from members of congress who serve on committees whose jurisdictions potentially overlap the areas in which the commission has been assigned to work. The fact that Johnson and Califano allowed the Kerner Commission staff to grow so large was a strong indication that they expected more from this advisory group than window dressing.

The appointments of Ginsburg and Palmieri were further indications to the politically aware, that Johnson expected something of substance from this group. Each provided the staff and commissioners with more than good executive leadership; they were the professional peers of the commissioners, the kind of person to whom Johnson turned most often to appoint to membership on advisory bodies rather than to their staffs. In the case of each, but more in that of Ginsburg, the leadership provided was not exactly what the White House wanted or expected. Ginsburg's position, that to serve the president best one serves the nation first, more than any other, moved the commission from being presidential to being a national advisory body. Henry Kissinger has written that effective policy leadership "...requires a sense of proportion and a sense of style."[40]

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[39] Report, p. VIII.

[40] Henry A. Kissinger, "The Policy Maker and the Intellectual," Thomas E. Cronin, Sanford D. Greenburg, ed., The Presidential Advisory System, (New York: Harper and Row, 1969), p. 160.

Ginsburg provided both to the staff and the commissioners. It was with his sense of proportion and style that he led the whole commission to follow his transition. Ginsburg, then and now, did not see himself, or the commission, as deliberatly setting out to defy the president. But the mandate did address the commission to the nation. Ginsburg took this seriously. The data compiled by his staff, particularly that which pointed to the Great Society as more the cause than the solution to the disorders, convinced him that the commission must speak over the head of the president to the nation. From that point on Johnson knew the commission was no longer his. In Johnson's administration it was he who defined the needs of black-Americans.

Ginsburg perfected his ability to function effectively in Washington politics during an almost stereotypic career as a Washington lawyer. Beginning in the Roosevelt Administration he had developed a reputation in and around the White House and Capitol Hill as a person able to get things done because of his superior abilities and contacts. He moved in and out of government service easily,[41] specializing in

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[41]Elaine M. Wolfson calls Ginsburg a Washington "in-and-outer" (after Richard E. Neustadt in his "The White House and Whitehall," The Public Interest 2 (Winter, 1966):55-69) and notes that he served Johnson extensively and well as an economic trouble-shooter in the months prior to his selection as executive director of the commission. See her "Presidents and Advisers: Filtering the Two-way Flow of Information," a paper prepared for delivery at the annual meeting of the American Political Science Association, Washington, D.C., 1977.

serving Democratic administrations as an adviser and practitioner in wage and price matters and private international law.[42] He was in short a very experienced and highly successful member of the Washington policy making establishment.

Neither he nor his old friends Lyndon Johnson and Joe Califano expected him to be other than the classic "president's man". Being such had been the one of the hallmarks of his career. That he became other was a result of a mixture of a particular kind of person with a very unique set of events. Ginsburg was known as a man of reason who followed its dictates wherever it lead him in the pursuit of answers to problems he had before him. A highly intelligent and skilled lawyer, he was firmly commited to the virtues of extensive investigation of a problem, including field research. He never seemed satisfied with the conventional wisdom of law or politics. He was not given to quick judgements. He was, then, a careful, scholarly man, completely devoted to liberal democratic principles, willing to serve the president to the best of his ability during the crisis of the urban disorders; but, as always, he was his own person. That meant that he served first the dictates of his reason and morality.

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[42]A list of Ginsburg's accomplishments includes: a staff position on the Security and Exchange Commission (1935), law secretary to Associate Justice William Douglas (1939), general counsel of the Office of Price Stability (1941), member of the Austrian Treaty Commission (1947), Administrative Assistant to Senator Sam Neely (Dem. W. Va.) (1950), Adjunct Professor of International Law, Georgetown University (1960-1967), Chairman, Presidential Board intervening in the March 1967 railroad strike, member Kappel (Post Office) Commission (1967). See Anthony Prisendorft, "Charles D. Ginsburg: Digging up the Roots of Violence in the Cities," New York Post, 8/19/67.

Ginsburg performed all the traditional responsibilities of the executive director,[43] but his unique role on this commission was his ability to transcend his capacity as the "president's man," and what the New York Times called his absolute middle-class background, and become a crucial leader in the evolution of the commission into a national advisory body.[44] It was he and Lindsay who from the first meetings of the group took most seriously the presidential mandate to speak to the nation as well as to the president. As one high staff official put it, "This commission had a mandate and stuck to it — it didn't limit itself to advice to the president."

Ginsburg was a persistent proponent of field research; in the case of the commission of exposing the commissioners to the realities of life for Negro urban dwellers. Those trips became the major means of educating the commissioners. The trips were also the greatest single influence on Ginsburg. In the last analysis, however, Ginsburg as with all the commissioners, remained a member of the "commission class" and while a dedicated reformer, he was not a revolutionary; he, too, was content to bear the burden of his class and impose solutions on the serious problems of the economic and racial lower-class he and his colleagues uncovered.

Victor H. Palmieri's first assignment was to oversee and coordinate the work of the staff. With such a responsibility it was inevitable that he be tagged as the "heavy" of the staff. His propensity for imposing ideas into the substantive as well as the procedural deliberations of the various staff departments also contributed to his acquisition of that

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[43] See Chapter 2, pp. 50-94.

[44] New York Times, August 1, 1967, 17:4.

label. He had a very traditional view of the staff-commissioner relationship — the staff carries out the work assigned in the name of the commissioners. Ginsburg and Kerner, with the obvious support of the White House saw the relationship differently. The inherent conflict in this situation led to some of the well publicized feuds within the commission.[45] Palmieri supported those members of the professional staff who held this view, but he did not in any overt way join the liberal faction of the commissioners.[46] He remained consistently loyal to the work of the commission and in particular to the staff. It is clear, however, that most of the negative criticism of the commission and its work, based on sources within the staff, came from persons aligned with Palmieri.

Palmieri was appointed to the staff because of a combination of factors favorable to him, the work of the commission and certain political interests in the administration. His name came to the attention of the White House and Ginsburg by means of friends of his in the Department of Justice.[47] His legal training and experience gave

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[45]It is important to note here that the substance of these feuds was concerned with who would lead in doing the work. There was virtually no debate over whether or not whatever solution arrived at would be imposed upon residents of black urban ghettos; that was assumed.

[46]Palmieri did not have a high regard for Kerner's leadership. He did respect Ginsburg and Harris. His reluctance to rally significant staff support behind the leadership of Lindsay was probably due to his strong liberal Democratic commitments. He respected Lindsay and his work, but was unable to actively support him.

[47]Lipsky and Olson maintain that the recommendation for his appointment was made by the Secretary of Housing and Urban Development, Robert Wood. (MSS, IV, p. 20.) Given the role Palmieri played on the commission, the determination of the origin of his nomination is important. By 1967 Ramsey Clark's Department of Justice was being looked upon with some

him those general qualifications so essential to the functioning of an advisory body. He also had developed a reputation as a knowledgable person in urban affairs, with particular expertise in land use and real estate matters;[48] finally his known connections in the liberal Democratic community were of use to the administration for at least communication purposes.

C) The Professional Staff

Hiring the members of the professional staff and their subordinates was, of necessity, a hasty and essentially disorganized affair. From the point of view of those doing the selecting and hiring they took on as quickly as possible the best people they could find. Those employed can be classified into three groups: 1) Washington lawyers with good Democratic establishment connections, and some token Republicans, 2) academics who had extensive experience in consulting government agencies and/or serving on the staffs of congresspersons, task forces or commissions, and 3) a variety of well educated and talented young people temporarialy living in the Washington, D.C. area and in need of employment. As with the commissioners, no one on the professional staff, in any way, directly represented

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suspicion by the White House as being populated by administration policy dissenters. Palmieri regarded the origin of his nomination in the Department of Justice as important to the liberal role he played on the staff. He saw himself as representing on the commission the liberal dissenters in the Democratic Party. It also appears that, by virtue of his selection, the White House was willing to have that interest group represented.

[48]He was the President of the Janus Corporation, a California based real estate firm.

the persons or the interests of the perpretrators or the victims of the disorders.[49] They were mostly lawyers from the Washington area who were picked for this service through the "good old boy" network of the profession.[50] Many were "loaned" from federal agencies.[51] Lipsky and Olson found that those persons "loaned" were those least needed for the work of the loaning agency. They also uncovered an unwillingness on the

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[49]Robert Conot, a special consultant (discussed below) came closest to being that type of representative, but, that only because he wrote about such persons. Kerner and Ginsburg named Theodore A. Jones, Director of the Illinois Revenue Department, to the post of deputy executive director of the staff before considering Palmieri, but Jones resigned five days after his appointment for personal reasons. (NYT 8/2/67, 1:5) As with the other Negroes on the commission Jones could be regarded as a representative of the Negroes directly affected by the disorders only by persons who think any Negro represents all Negroes. There is only one piece of documentary evidence, and that from a non-commission source, that any consideration was given to having an urban ghetto Negro serve on the commission staff. (Roy Reed NYT 7/30/67, 1:1). In interviews, those responsible for staff procurement laid heavy stress on the pressure of time as the major reason why no effort was made to find persons with such a background to serve on the staff.

[50]One-half, eighteen, of the commissioners and members of the professional staff were lawyers. Most of the members of the non-professional staff were lawyers or in or about to be in law school. Lipsky and Olson give five good reasons for the preponderance of attorneys on the staff:1) lawyers are by training generalists, 2) they are more available for this kind of work, their firms are likely to give leaves of absence for service on a government advisory body on short notice, 3) as a profession, they are best able to gather and interpret data under pressure--they do not need long periods of intellectual gestation to produce a finished product, 4) work on an advisory commission is a kind of volunteerism indigenous to the legal profession and 5) lawyers like to work with other lawyers. (MSS, I, pp. 11-12, and Wolanin, "Presidential Advisory Commissions," pp. 228-230.

[51]The most common agency sources were: HUD, Justice, Labor and HEW. Roy Reed, New York Times, July 29, 8:1.

part of agencies to loan their black staff members to the commission and a corresponding reluctance on the part of Negro agency employees to take temporary employment with the commission.[52] A few came from the academic world for short periods of time.[53] The paucity of academics on the staff, except in the role of part-time, contract consultants is explicable in two ways: 1) staff recruitment could not begin until August at which time most academic personnel were under contracts to their institutions, and, perhaps most important, 2) academics are very hesitant to take on presidential commission assignments because such appointments force them to work at a pace and manner they find to be professionally unacceptable. Most social scientists saw the president's mandate demanding at least two years of research work; the commission, at best, was guaranteed one year of existence. The remainder of the staff, young, pre or newly credentialed professionals, largely liberal Democratic in political philosophy, were secured in whatever ways possible; Kerner and Ginsburg had less than one year to fulfill the president's mandate and they needed all the help they could get, as quickly as it could be obtained.

The Report contains the names of 115 members of the staff.[54] Each of them served in a more or less permanent capacity.[55] The size of the

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[52]Lipsky and Olson, MSS, V, pp. 11-12.

[53]e.g. Gary Marx of Harvard was hired as a special consultant for a twelve week period beginning in late September. His agreement was that he would work three days a week at a minimum rate of $70 a day. See memo, Shallow to Palmieri, 9/28/67 found in Staff Procurement file, NACCD papers, LBJ Library.

[54]Report, p. VIII.

[55]See the discussion below concerning problems over the size of the staff and the budget.

group was a function of two important factors: first, the president and Califano wanted a working commission and were therefore willing to invest in a staff large enough to get the job done; 2) the commission decided early in August to produce two major reports, one to be published around Christmas and the other in March.[56] The junior staff did the basic research and writing for the commissioners.[57] In addition, many of them carried the responsibility for arranging the commissioner and senior staff field trips. Therefore, these persons were most often the first to come into contact with the commission's "hard" data. It was they who first identified, met and worked with the indigenous black leaders of the cities into which the field trips were made. Very often that was the only contact those persons had with the commission. The junior staff members became acutely aware of the differences between the leaders of the various black communities with which they came into contact and those established spokespersons of the civil rights movements in the various parts of the country the commissioners were hearing

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[56]The existence of this time schedule from the beginning of the life of the commission has been hotly debated by commissioners and senior and junior staff members. Interviews confirm that it did have an informal state of existence among the commissioners and the senior staff; the commissioners, Ginsburg and Palmieri understood that the size of the staff was to be reduced after the issuing of the first report. While the problems of staff reductions and the subsequent debates are not directly relevant to this essay they will be briefly mentioned below.

[57]Those one-hundred members of the professional staff listed on page VIII of the Report with no titles after their names.

in the formal hearings in Washington and during the field trips.[58] The divergence in perspective on the disorders which developed from these different exposures to the "leaders" of black urban-American became a source of serious conflict between the junior staff members and the commissioners. It was also largely responsible for forcing Ginsburg and Palmieri into the brokering role they played during the last half of the life of the commission between the two groups of antagonists.

If there is, as Wolanin maintains, a "commission class" then each of the senior staff members to be discussed now should be classified as belonging to a "staff-consultant sub-class".[59] All these men were well-connected, politically and professionally, with the Washington political establishment; each had had experience serving on, advising or consulting with government agencies at all levels; all but two (Shallow and Nathan) were by profession generalists—mostly lawyers; only two

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[58]Depositions from a variety of "new" leaders of the Negro community--black nationalists and black power advocates--were taken for the commission record late in February (the final report was published on March 1). Those deposed at that time were: Ron Karenga, Charles Evers, Floyd McKissick, Stokely Carmichael, Dick Greogry, Vernon Jordan, Carl B. Stokes and Richard Hacker. See memo Ginsburg to commissioners, 2/21/68, General Counsel file, "Black Power," NACCD papers, LBJ Library. A record of one of the depositions was made in a memo from General Counsel Merle McCurdy to Ginsburg dated 3/5/68 (Ibid.) in which it is noted that Karenga was deposed at 7:00 p.m. on Thursday, February 22 by McCurdy and his assistant N. R. Jones. The Report indicates that each of the persons from whom depositions were taken were "Witnesses at Special Hearings," Report pp. 300-302. A discussion of the formal hearings of the commission can be found below. pp. 279-291. It can be said here that no formal means was provided for all the commissioners to meet and hear this type of black leader.

[59]Persons listed on p. VIII of the Report as heads of the various departments or as "special consultants."

(McCurdy and Conot) had had a professional or personal history remotely similar to that of the segment of the population they studied and only one of those, Conot, had reflected on that experience prior to his commission service.[60]

Stephen Kruzman, Deputy Director for Operations, was a Washington lawyer.[61] He was a former Assistant United States Attorney for New York City and had worked in various capacities for Lindsay and Senator Jacob Javits (United States Senator from New York). His initial responsibilities included the coordination of the field activities and the development of the city profiles with the research and analysis programs. In October, he became the de facto administrator of all staff activities.[62] This realignment freed Ginsburg and Palmieri to work more closely with the commissioners.

Robert Shallow, Assistant Deputy Director—Research, was one of the two professional social scientists on the staff.[63] He came from the position of Chief, Special Projects Division of the National Institute of

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[60]Robert Conot, Rivers of Blood, Years of Darkness (New York: Bantam Books, 1967).

[61]A partner of Ronald L. Goldfarb, who was a consultant to the commission (see Report, p. 302). Further mention of Goldfarb can be found in the discussions of consultants and the public safety section of the Report, below pp. 369-376, 304-332.

[62]Memo Ginsburg to staff, 10/2/67 and Palmieri to Kruzman, 10/31/67 in Office of Operations file, NACCD Papers, LBJ Library.

[63]He was also the only member of the staff to publish reflections on commission service. See Shallow, "Social Scientists and Social Action."

Mental Health.[64] His academic training was as a social psychologist; during his career he had developed an interest in police-community relations.[65] Shallow was not supported for the position by Palmieri, who wanted to secure a social scientist with a national reputation for the position.[66] Shallow saw Palmieri's continuing opposition to him and his work as reflecting a general negative attitude held by most of the lawyers on the staff; they wanted him to produce a "case" which explained the causes of the disorders, an argument which could hold water, which could be used to "prosecute" the offenders before the "court" of public opinion; he, on the other hand, wanted to produce a picture of what had happened.[67]

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[64]He was a commissioned officer in U.S. Public Health Service.

[65]Shallow thought he got the position because better known social scientists saw two serious professional dangers in the job: 1) the life of the commission was too short to do the research necessary to answer the president's questions, and, 2) the politics of the situation were much too volatile for well known scholars—there was a tendency among prominent social scientists at the time to believe that the commission was being named to white-wash the whole matter of the disturbances. See Shallow, "Social Scientists and Social Action," p. 208.

[66]See Palmieri to Gans, 12/31/67 in Deputy Director's file, NACCD Papers, LBJ Library, and Kopkin, "Black on White," p. 3.

[67]Shallow, "Social Scientists and Social Action," p. 208 and see the following taken from a Shallow to Palmieri memo (1/10/67) which had as its subject a critique of a draft of Chapter 2, "Patterns of Disorders" (12/19/67 Draft, Director of Research file, NACCD Papers, LBJ Library.) of the Report prepared by the Operations Department. In a section of the memo entitled "General Evaluation" Shallow had the following comments to make: "...flatness and lack of significance only occasionally relieved by a well-framed and relevant question competently handled. ...Beneath an appearance of countable certainty, much ambiguous and sketchy information has been 'hardened' into positive fact, and the matter is further complicated by inaccuracies of detail.... a portrait done with a broom." This distinction between research methodologies and the struggle it produced is useful in understanding the subsequent battles over the content and form of the Report.

Arnold Sagalyn, Associate Director of Public Safety (a friend of Ginsburg's) was "on loan" from HUD where he was responsible for public safety matters. He had worked for the Treasury Department as an adviser on criminal investigation activities and personnel training, had been Senior Vice President of the International Police Organization (Interpol), and was at the time of this assignment the United States representative to that organization. He had also served on the staff of the Crime Commission.[68] Sagalyn's responsibilities were to coordinate the work related to the investigation and report on police-community relations and the development of new police methods for effectively avoiding and controlling future civil disorders.

Richard P. Nathan, Associate Director for Program Research, the other professional social scientist on the staff (an economist), came from the Brookings Institute.[69] His principle responsibilities were to coordinate the development of the short and long-term recommendations for which the mandate called. Like Kruzman, Nathan was an experienced senior adviser to key Republicans. He had worked for several Republican members of the house of representatives and United States Senator Kenneth Keating (New York). He had also served the 1964 Nelson Rockefeller

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[68]The experience that Shallow, Merle McCurdy, Milan Miskovsky and Sagalyn brought to the staff and the responsibilities given them are strong indicators that the commissioners and the senior staff wanted the major thrust of their work to be in the area of criminal investigation.

[69]A private Washington "think-tank" devoted to research and writing on public policy issues.

presidential campaign as its director of domestic research.[70]

Charles E. Nelson, Director of Field Operations and former supervisor of field operations for the Agency for International Development, was responsible for directing the work of the field teams; he assumed larger duties in this area when Kruzman took on the total administrative responsibilities for the staff.

Melvin L. Bergheim, Director of Research Services, was recommended for his position by Richard Scammon, of the Bureau of the Census (an experienced adviser to senior Democrats and a consultant to the commission) but was vigorously opposed by Palmieri who wanted a statistician. Scammon, whose argument prevailed, contended that statistical specialists could be obtained "on loan" from the Bureau of the Census and that Bergheim's value to the commission lay in his generalist's abilities.

Merle McCurdy, General Counsel, was in charge of the hearings held by the commission in Washington and "on-site" in some of the cities visited during the field trips. McCurdy won the respect of many for his organization and conduct of the hearings as well as for his sharp, penetrating questioning during them.[71] McCurdy also clashed

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[70]Perhaps because of Nathan's experience with Republican politicans, he was often in general conflict with H. B. (Boots) Taliaferro, Director of Congressional Relations, who was a close political ally of Harris.

[71]The White House was impressed enough with the quality of the witnesses and their testimony, arranged for by McCurdy, to keep special files on each. For an example of McCurdy's ability to "trap" witnesses before the commission into admissions of racism in the organizations they represented. See file, Testimony of George Meany, NACCD, 10/14/67, Gaither 37, LBJ Library.

with Palmieri on a number of issues; a former United States Attorney in Cleveland, McCurdy was not used to having someone tell him how to conduct investigations or witness interrogations. He was the only black American holding a senior position on the staff.

The position of Director of Investigations was held by Milan C. Miskovsky, who was on leave from the position of Assistant General counsel of the Department of the Treasurer.[72] Miskovsky had served in the Central Intelligence Agency. His major responsbility for the commission was to investigate the truth of the generally held suspicion that a criminal conspiracy lay at the root of the disorders.

Henry B. ("Boots") Taliaferro, Director of Congressional Relations, was recommended to Ginsburg by Harris. He and the senator had a long relationship and though he held the title of the director of a staff department, Taliaferro was regarded by all as "Harris' man" on the staff.[73] Between them, Harris and Taliaferro kept close tab on the efforts of ongress to investigate and enact legislation concerning the disorders, civil rights in general, urban problems, or any of the areas

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[72]An illustration of the method of assignment of persons "on loan" from a permanent Federal department/agency, is contained in the memo from Joseph W. Barr, Undersecretary of the Treasurery to Ginsburg, 10/9/67: "This letter will confirm the detail of Mr. Milan C. Miskovsky to the National Advisory Commission on Civil Disorders. The detail will begin immediately and, as an initial matter, run through the end of March, 1968. As arranged, Mr. Miskovsky's salary will not be reimburseable. The Commission will, of course, bear all travel and similar expenses incurred by Mr. Miskovsky while working for the Commission." In Ginsburg file "Office of Investigations," NACCD Papers, LBJ Library.

[73]See memo Chambers to Ginsburg, 9/5/68, in Ginsburg's, "Commissioner Harris" file, NACCD papers, LBJ Library.

mandated to the commission for investigation. Upon Ginsburg's resignation he became Acting Executive Director on April 1, 1968.

Robert Conot carried the title Special Consultant. He was brought to the staff upon recommendation of Palmieri. He came first in September as an educational consultant for the writing of the city profiles and joined the staff in a full-time capacity in October. He carried general responsibilities for supervising the style and tone of the prose of the Report. As noted above, Conot was the closest the commission came to employing a black-American who had extensive experience in urban Negro ghettos of the type under investigation.

Colonel Norman J. McKenzie was chosen by Califano to be the Executive Officer. He, too, was an experienced advisory group staff member. His responsbilities were exclusively administrative (budget control, allocation of space, supervision of the general clerical help, etc.). There is no evidence that he involved himself in any way in the substantive work of the commission.

There remains to mention briefly something of the background and responsibilities of those other persons who played important, if less visible, roles in the work of the professional staff. Alvin Spivak, Director of Information, was on leave from United Press International.[74] David L. Chambers, Ginsburg's special assistant, was "lent" by his Washington law firm of Wilmer, Cutler and Dickering. John Koskinen, a fellow Los Angeles attorney, served as special assistant to Palmieri and also shared his "heavy" reputation.

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[74]Later he became press secretary for the Democratic National Committee when Harris became its chairman in 1969.

Five men are listed in the Report under the rubric Special Assistant to the Commissioners—William L. Cowin, Kyran McGrath, William A. Smith, Donald W. Webb, Stephen D. Weiner.[75] Of these, two were particularly important in the life of the staff. Kyran McGrath served Governer Kerner. His extensive minutes of the private meetings of the commissioners are of great value to scholars as they were to the commissioners and other members of the staff with whom he shared them. His primary responsibility, however, was to be the daily eyes and ears of the chairman. McGrath was "Kerner's man" and was clearly commissioner-directed in his work. He spoke for Kerner at staff meetings and kept the chairman and the other commissioners informed about the thinking, planning and the work schedule of the staff.[76] This unique role of a special assistant serving as a watch dog for the chairman was undoubtedly the function of three important factors: 1) Kerner could not be in Washington very much and he did not trust Ginsburg to give him all the information he wanted, 2) the size of the staff, and 3) the importance of the work of the commission.

Stephen Weiner, served as Representative Corman's assistant. Corman often delegated to Weiner the responsibility to represent him at commissioner meetings.[77] Weiner was on the commission payroll but was to do

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[75] Report, p. VIII.

[76] See McGrath to Kerner 11/15/67, McGrath to Thornton 11/22/67, McGrath to Senior Staff 10/31/67, in McGrath files, NACCD Papers, LBJ Library.

[77] Letter Corman to Kerner 11/17/67 in Kerner file, NACCD papers, LBJ Library.

general staff work only if his assignments from Corman so permitted.[78] Weiner had been Congressman Corman's administrative assistant and had been deeply involved in the passage of the 1965 Civil Rights Act and the 1966 Omnibus Civil Rights Law. He served principally in the broad areas of civil rights legislation and evaluations of congressional actions. At the time of his appointment to the staff Weiner was employed by the Bay Area Transit Authority.

Three commissioner aides are not listed in the Report: Victor French (Harris), James H. Jones (Abel) and Jay Kriegel (Lindsay). French was a member of Harris' senate staff who was given special commission responsibilities. He aided Taliaferro in congressional relations and was particularly useful in working with and around the McClellan sub-committee.[79] Jones was very controversial. He was not liked by the senior staff. He tended to overplay his position as Abel's aide.[80] There were times when the senior staff was convinced that Jones saw himself as the twelfth commissioner. He came with a long record of labor movement civil rights activities. His principle contribution to the commission was to consume an inordinate amount of the time of the senior staff and to add to the

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[78]Memo, Ginsburg to McKenzie, 8/18/67, Ginsburg's file, NACCD papers, LBJ Library.

[79]Like Spivak, French followed Harris to the Democratic National Committee.

[80]He first introduced himself to Ginsburg in a memo by saying that it was necessary for him to attend all staff meetings, including executive sessions; further he must have lists of the responsibilities of all staff members and be personally notified of all (his emphasis) hearings. Letter, Jones to Ginsburg, 10/12/67, in Ginsburg file, NACCD papers, LBJ Library.

general confusion inherent in the operation of such a large body operating on such a small ration of time and money.

Jay Kriegel was considered to be one of the brightest of the bright young persons Lindsay had recruited to work for him in New York. He was a twenty-five year old recent graduate of the Harvard Law School, a veteran Democratic campaign worker and an experienced practioner of the art of civil rights legislation drafting and lobbying.[81] Kriegel sat in for Lindsay in commission hearings, did a great deal of research and writing for him and was a significant factor in Lindsay's eventual domination of the "Summary" to the Report. Further, he was respected by members of the staff and often referred to by them when they needed opinions from someone outside their day-to-day work.

In summary, the professional staff can be categorized as white, well-educated (usually lawyers), men who had had extensive and impressive experience in a variety of civil rights areas. Collectively they brought to the commission extensive experience in all levels of government; they knew their way around politics in general and Washington in particular; their partisan political affiliations were reasonably well balanced, despite little overt attention being given to achieving it; they were, in short, political establishment types. Having said that, distinction must be made between the executive staff, the professional and junior staff and the commissioner's assistants. A distinctive mark of the executive staff members was their view of themselves as counsel to the commissioners. This became most marked after Kurzman took on the administrative responsibilities

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[81]He met Lindsay while both were working on the civil rights law of 1965. Hentoff, A Political Life, p. 156.

originally assigned to Palmieri. A large staff, politically very much more liberal than the commissioners, and increasing amounts of pressure coming from the White House because of the recalcitrance of congress, created a situation ready made for the talents of lawyers like Ginsburg and Palmieri. Beginning in October the two executives spent most of their time engaged in bridge-building, negotiation, compromise and facilitation; they spent ever increasing amounts of time working to avoid a serious rupture between the staff and the commissioners. As the "president's man" Ginsburg had, of course, understood this as one of his major responsibilities. Palmieri saw himself somewhat differently and strove to be the advocate of staff points of view when his and their values coincided. He saw himself and the professional staff as the liberal conscience of the commission and he had no intention of having that voice muted. There can be no question that most of the junior members of the professional staff saw themselves as the loyal liberal opposition in a conservative administration. They saw themselves in an adversary relationship with the commissioners. This conflict broke into the open in December after information was leaked to the press about the reduction of the size of the staff and the content of the "Harvest of Racism" document.[82] As noted in the Preface,[83] these conflicts have been heretofore interpreted exclusively in terms of struggles between truth and error, liberal justice and conservative repression when they were in fact conflicts between factions of the ruling national elite—

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[82]See pp. 455-459, below.

[83]See pp. 16-17, above.

between those who were established and those on the rise. There was however, no conflict on a very fundamental premise—they all intended to keep in their own hands the fate of the citizens for whom the disorders were personally real. The efforts to employ Negroes with experience in urban ghetto living died aborning. Black American ghetto residents, the political "outs", had no voice <u>on</u> and there was but one effective access point for them <u>to</u> the commission and that was through a group who had, at best, a strained relationship with the commissioners.

CHAPTER IX

AUTHORITY AND FUNDING

A) Authority

The legal authority for the Kerner Commission to exist and act was grounded on the president's authority to appoint it:

> by virtue of the authority vested in me as President of the United States, it is ordered as follows...[1]

For its political authority it was dependent upon presidential favor and the willingness of the executive departments and agencies to cooperate by providing it with information, personnel and money.[2] An elaboration of the ways in which its political authority was used is the subject of the following chapters. It is well known that Johnson did not consistently support the commission. Some of the reasons for the support can be explained by examining the history of Johnson's efforts to secure funds for its work.[3]

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[1] Executive Order 11365, Report, p. 295.

[2] See Huntington, "Strategic Planning," p. 29 for a similar discussion of the sources of political authority of national defense groups.

[3] The funds provided to the commission for executing its responsibilities were garnered from three sources: the Executive Fund of the President, transfer of funds, personnel and/or in-kind services from executive departments/agencies and from private funds (chiefly the Ford Foundation).

B) Funding

The Johnson administration was in serious political trouble in the summer of 1967 because of the country's economic problems. The $8.1 billion deficit in the federal budget predicted in January had swollen to a projected $23.6 billion by the summer;[4] further, Johnson had been forced to increase his proposed 6 percent tax surcharge to 10 percent.[5] George Mahon and Wilbur Mills, chairmen, respectively, of the House Appropriations and Ways and Means Committees, were united in an attempt to force the White House to make significant cuts in the proposed budget for fiscal 1968 and 1969, particularly in the domestic program area.[6] The struggle was not resolved until June of the next year when Johnson signed into law a 10 percent tax surcharge; the cost for passage was his pledge to congress to make $6 billion in expenditure cuts, most of which were to come from his domestic programs.

At the time the commission was appointed, the commissioners and Ginsburg understood that the money needed to carry out the president's mandate would be provided from the Executive Fund of the President. Further, they understood that congressional approval for a supplemental

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[4]U.S., President, Public Papers, Lyndon B. Johnson, 1967, p. 8.

[5]Ibid., pp. 733-740.

[6]See pp. 481-483 for a discussion of Representative Mahon's attitudes toward the Great Society programs at the time of the publication of the Report.

appropriation to cover any additional costs would be sought if needed.[7] The commission's leaders thought a White House attempt in August to get congressional approval of a supplement to the Executive Fund of the President would have been successful. However, Johnson's recollection of the situation was that congress would not have approved such a request.[8] By the end of August, all agree, the only means open to the White House to obtain the necessary public funds for the commission's operation was by means of department/agency contributions. The responsibility for negotiating those contributions was assigned to Califano, Ginsburg and Charles L. Schultz, Director of the Bureau of the Budget.

It took the commissioners and the executive staff a month to put together a detailed budget for the White House. Their proposed budget was in keeping with their understanding that the president would meet whatever money needs they developed in fulfilling the tasks he had laid

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[7]See "Funding and Administrative Arrangements for the Special Advisory Commission of Civil Disorders (July 29)" and the July 31 Bohn to Califano memo covering the document entitled "Special Advisory Commission on Civil Disorders, Minutes of Meeting Saturday July 29, The White House," both of which are in Commission on Civil Disorders (2), Califano (3), LBJ Library. It is clear that Johnson preferred, as a matter of standing principle, to return to congress each year as much of the Executive Fund of the President as possible and to fund commissions through agency contributions (based on the authority granted in 31 USC 691) or by statutory appropriation. As will be seen, efforts were made to present the case for the supplemental appropriation to the Executive Fund of the President but Johnson rejected all of them.

[8]See Johnson, The Vantage Point, pp. 449-461.

for them.[9] The first recorded hint of trouble came from Palmieri who in late August reported hearing concerned bureaucratic reactions to Johnson's special budget message to congress.[10] He suggested to Ginsburg that they delay in moving on securing personnel from government agencies until what he described as a "murky" financial situation cleared.[11] Ginsburg also received word that the Bureau of the Budget was gearing itself to implement the president's commitment to fiscal austerity. By early September the Bureau of the Budget clearly understood that no supplemental appropriation was forthcoming and Schultz began the process of pruning the commission's budget to a level within which the involved executive department/agencies could live.[12] Throughout September and October, however, members of the commission

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[9]It is very difficult to affix an exact sum to the commission's total budget. A variety of variables affect the total. For example, what is the value of in-kind services? Whose budget should be charged for various "loaned" personnel? (The accounting sheets of the commission are available. They were not consulted for this study.) What can be said for general reference is that the first budget proposed for the commission exceeded $7 million. By the end of September the Bureau of the Budget was estimating the total budget to be $5,748,000 which was cut a week later by Schultz to $4 million. The final budget appears to have fallen between $2 and $4 million. The $2 million figure was used by the BOB in accounting for federal funds and the latter figure, which includes outside funding, was used by the White House when reporting on the commission's budget. The detail of these changes is discussed in the text below.

[10]U.S. President, Public Papers, Lyndon B. Johnson, 1967, pp. 733-740.

[11]Memo, Palmieri to Ginsburg, 8/31/67, Review of Staff Work 8/1-9/1 and Objectives 9/4-14, in Palmieri files, NACCD papers, LBJ Library.

[12]See letter Charles Schultz (BOB) to LBJ, 8/7/67, Commission on Civil Disorders (1), Califano (3), LBJ LIbrary.

staff still were operating on the assumption that the funds for the original budget would be forthcoming.[13] By mid-November, however, the fact that no supplemental appropriation request was going to congress became clear to all. The Bureau of the Budget leaked to commission staff members the information that the final 1967 supplementary appropriations package had been prepared by the administration and it did not include mention of the commission.[14]

Schultz and Califano secured nearly $2 million for the commission from various departments/agencies, but did so with serious reservations. They were not in total agreement with the president's decision to exclude the commission from the year-end group of supplemental appropriation bills. Both saw something to be gained from sending the request for the supplemental appropriation to congress. Schultz informed the president of the difficulty they were having in obtaining money from the department/agencies. The Department of Defense for instance, was forced to get congressional approval before it could contribute to the commission's budget; Representative Mahon had made it clear to Defense "... that he does not want them to reprogram their funds to assist the commission. Without reprogramming (and the consequent necessity for congressional approval) Defense's hands are tied".[15]

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[13]Ginsburg in his efforts to secure private funding mentions the congressional appropriation as one of the other sources of commission income in a letter to McGeorge Bundy of the Ford Foundation as late as 10/29/67. Ginsburg to Bundy, 10/29/67, Ginsburg budget files, NACCD Papers, LBJ Library.

[14]Memo Chambers to William Carey (BOB), 11/28/67, Ex FI4/FG690, WHCF, LBJ Library.

[15]Memo Schultz to LBJ covered by memo Califano to LBJ, 10/19/67, 10/19/67, Ex FI4/FG690, WHCF, LBJ Library.

Further, the other affected department/agencies would, in Schultz's opinion, be in serious trouble if and when their respective congressional oversight committees realized that large sums of money appropriated for another purpose were being diverted to the commission. Several of the departments/agencies told Schultz that they felt obligated to inform their congressional oversight committees of the channeling of any appropriated funds to the commission. Schultz feared congressional retaliation against the administration for this budget tampering, creating a threat to this traditional means of funding the administration's task forces and commissions. He thought it better to submit the appropriation and the commission, to congress for review and have it take the blame for what he saw as the inevitable termination of the commission's work.[16] Johnson disagreed and chose to provide funding through department/agency contributions and grants from private sources. Why did Johnson ignore the advice of his aides? The most reasonable explanation is that he saw in the situation a no-win outcome for himself; the best he could do was to minimize the damage. He knew that congress would not allow him to achieve the "victory" Schultz and

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[16]Ibid. Despite the fact that this memo contains no indication that Johnson approved the plan, White House aides and senior commission staff members felt he had no intention of following through on it. See also Califano to LBJ 12/4/67, EXFI4/FG690, WHCF, LBJ Library, in which Califano discusses for the president parts of the final supplemental appropriation bill which could be delayed in being sent to congress until January. He also wanted to avoid having the president blamed for terminating the commission. If the supplemental appropriation were sent to congress it would be subject to a point of order in the House (the commission was not a creation of congress) and thus be killed and congress would get the blame, or so Califano's reasoning went.

Califano predicted. A hearing on a supplemental appropriation request could be turned into a trial of the Great Society. Johnson preferred to have the commission free to provide him with some service. At the very least, the commission might be a factor in reducing the likelihood of disorders the following summer. Further, if congress launched an attack based on the Independent Offices Appropriation Act of 1946 he could charge it with petty politics rather than having to carry the label himself.[17] Johnson also knew that most congressional leaders were satisfied with the existence of the Kerner Commission; it took the public's attention off the quality of their responses to the disorders. Therefore, he followed his established procedure for funding commissions. It allowed him to get the most service possible from the commission despite the fact that it was now doomed to an early demise. Further, the established procedure allowed him to fix the attention of the executive departments/agencies on his mandate to the commission. They might be reluctant to give the money and personnel, but once they saw the degree of the president's determination to obtain the information outlined in his mandate to the commission, he knew they would set themselves to the task of carving out as much of the policy territory for themselves as possible. The annexed territory would, of course, come from the congress. In sum, Johnson was not willing to completely sacrifice a presidential advisory body or control over this part of domestic policy-making. Nor was he willing to give congress opportunity to re-

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[17]See Chapter II, pp. 70-71, for a discussion of the Independent Offices Appropriation Act.

view his advisory system for the sake of what inevitably would be, if gained, a minor victory.

When the Bureau of the Budget closed its books on the Kerner Commission's operations it found the government's share of the $4 million budget to have been obtained from the following sources:[18]

Executive Fund of the President	$ 47,000[19]
Department of Justice	75,000[20]
Department of Commerce	150,000[20]
Department of Labor	312,500[20]
Department of Health, Education and Welfare	312,500[20]
Department of Housing and Urban Development	150,000[20]
Office of Economic Opportunity	388,000[21]
Department of Defense	450,000[21]
Department of Justice	50,000[21]
	$1,935,000

With this budget Johnson kept the commission on a short leash and expected it to follow his lead in policy making and endorse his programs. Reducing the commission's budget reduced its capacity to do

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[18]"BOB Fact Sheet on the National Advisory Commission on Civil Disorders, 1968." Obtained from the BOB. A copy is in possession of the author.

[19]The commission returned $53,000 to this fund. That action allowed Johnson to maintain his record of always returning to congress some of the money appropriated for this fund.

[20]These funds were collected and dispersed by the Interagency Committee on Civil Disorders which was created to meet the requirements of the Independent Offices Appropriations Act of 1946. Ernest C. Friesen, Jr. was the chairman and Palmieri was named the executive director.

[21]"For contractual studies undertaken for the commission pursuant to the Executive Order," BOB Fact Sheet.

the job the president needed. But keeping it alive, and on a short leash, fulfilled most of the items on the president's implicit mandate and kept active the hope that it might also produce a report that he could use.[22] Further, having control over a large budget is a means to political power and Johnson was determined to control the commission's access to that power. By controlling its budget, Johnson more closely tied the commission's authority and legitimacy to his own.

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[22]See Shallow, "Social Scientists and Social Action," p. 212 for a complementary explanation of the president's actions.

CHAPTER X

STRUCTURING THE COMMISSION'S WORK

a. Introduction

The commission's staff was carefully organized by Ginsburg, in close consultation with Califano, to fulfill the demands for service contained in the president's explicit and implicit mandates. However, the reorganization forced by the budget crisis in December only reduced the number of staff persons available to the commission, it did not alter its internal organization. Only after the final report was published and the president's public indifference to it became obvious did any member of the commission express a desire to organize commission activities independent of the president.[1]

Ginsburg was determined to organize the work of the commission in a manner that would maintain the confidence of the White House, other parts of the administration, and the congress. As the "complete lawyer"[2] Ginsburg treated the commission staff as if they were members of his firm; they were retained to build a case for their primary client, the president of the United States; in the process they also had to make a case for a secondary client, the commissioners. He chided, encouraged,

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[1] The Harris-Lindsay attempt to have the commission recalled. See pp. 494-497, below.

[2] Lipsky and Olson, MSS, VI, p. 32.

pushed and persuaded his staff to get the evidence, do their homework, stay within the boundaries set by the president, not to take any positions they could not defend and win in the court of political and public opinion. To accomplish this, Ginsburg set for himself and his staff four goals: First, answer the key questions put by the president and refined by the commissioners; Ginsburg reduced them to two sets of key questions. The first had to do with law and order issues: the question of a criminal conspiracy, the "riff-raff" theory of the rioters, and the problem of the effectiveness of the police and the national guard. The second set of key questions concerned explaining the "character" of the cities which experienced disorders as compared with those which did not. The field trips and the construction of the city profiles were means used to deal with this set of questions. Ginburg's original plan was to occupy the commissioners and the staff with these key questions during the first half of the commission's life with the interim report being the product. Long range recommendations for correction and alleviation of the conditions producing the disorders would be given attention in the winter and spring months and be the subject matter of the final report.[3] Ginsburg told the staff that in pursuit of the answers to these key questions they must not deviate from the president's concerns; in particular, they must not allow themselves to become caught up in supporting and/or opposing pending

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[3]Harris in his book Potomac Fever, pp. 112-113, gives an ex post facto view of the principles underlying the organization of the commission's work. He says the commission was primarily concerned with long range recommendations from the onset. This does not conform to the evidence, developed for this study.

legislation.[4]

Ginsburg's second organizing principle for the work of the commission was his insistence that members of the staff and commissioners go to the source of their primary data, the cities affected by the disorders of 1967. The commission's Washington hearings were important to Ginsburg, particularly for resolving the questions surrounding the conspiracy issue, but the field trips to the cities which experienced disorders were indispensable if the case the commissioners was to make to the president and the nation was to have any credibility. Ginsburg was a firm believer in and practioner of field research in his law practice. He insisted that his people do their own field research, experience the physical environment in which the facts of particular cases arose. Therefore, Ginsburg planned and organized the commission's field trips and insisted that all major participants in the life of the commission share in them.

Third, Ginsburg insisted that the work of the commission be cooperative, not competitive with similar labors of the various executive departments/agencies and other commissions and task forces. A secondary, but important, ingredient of this principle was Ginsburg's determination to keep lines of communication open and a positive relationship with the leaders of the major academic communities of the

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[4]See memo, Sarah Carey to Miskovsky, 11/7/67 re: Pending Legislation on the Control of Riots and Sale of Firearms, Office of Investigation Files, NACCD Papers, LBJ Library.

nation and other groups interested in urban policy.[5] This part of his plan was the product of a seasoned Washington political operator, experienced in the ways of Lyndon Johnson's advisory system; consultation with the leaders of established groups concerned with particular policy issues and close integration of all the constitutent elements of the advisory system were hallmarks of the Johnson administration.[6] Each executive department was directed by the president to appoint a liaison officer with the commission. This effort was co-ordinated by the White House in Califano's office. Ginsburg established his own points of contact within the administration. He acted under the explicit authority of Executive Order 11365 to seek immediate help from all departments/agencies which might have useful information for the commission.

Fourth, Ginsburg proposed that the commissioners take no action regarding recommendations until each was thoroughly informed of the administration's, other commissioner's, and the staff's thinking in the particular area.[7] Ginsburg was determined not to have any major surprises in the work of the commission. He kept a steady stream of

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[5]Lipsky and Olson, MSS, V, pp. 9-11, discuss a meeting called by Ginsburg at his home on August 6, 1967, to which he invited a number of prominent private and public social scientists to review his proposed outline of the work of the commission. Throughout his tenure, Ginsburg held such advisory meetings in Washington and in the academic centers of Cambridge and New York. In addition, the commission files contain a considerable volume of correspondence between Ginsburg and a variety of academic and government experts on civil disorders.

[6]See pp. 142-153, above.

[7]This scheme was related to the commission rule that all recommendations would carry the unanimous endorsement of the commission. See pp. 212-213.

materials flowing to the commissioners: presidential speeches, department/agency reports, commission and task force reports, presidential special messages to congress, books, newspaper clippings.[8] This procedure conditioned the commission's work in three major ways. First, it made each commissioner responsible for the substantive product of the commission. Second, no one was left behind; every commissioner knew each of his/her colleagues had been exposed to every document whether or not he/she was present at a particular meeting.[9] Third, the commissioners were educated about the range of options available to them from the best thinking of others working in the field. Ginsburg and Califano wanted to expand the boundaries of political reality of the commissioners by exposing them to the work of those whom they regarded as the best thinkers in the political and intellectual community.[10]

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[8]Important examples of materials found are Robert Conot's book Rivers of Blood, Years of Darkness, the report of the crime commission, "The Quiet Revolution" by the Office of Economic Opportunity, a report on the 1943 Detroit Riot, a bibliography on the Negro in American cities (prepared under contract with the commission by Dorothy Porter of Howard University), the report of the Advisory Commission on Rural Poverty, The People Left Behind, all staff and consultant papers produced during the life of the Kerner Commission, intra-staff memos which Ginsburg thought important enough to share with all the commissioners, and the draft versions of the various chapters of the final report.

[9]See p. 214, above.

[10]An important, but difficult to classify, problem Ginsburg faced in organizing the commission's work was how and where to physically house the staff. Intra-staff communication, and therefore organization and control, could have been greatly facilitated if the staff had been housed in one building. Because of the extremely large number of staff persons originally employed, Ginsburg was unable to secure such ideal office accommodations. Some of the intra-staff problems experienced in the late fall of 1967 can be partially blamed on the separation of members of the staff into two separate buildings. Ginsburg was never able to get the necessary space in the early fall, and the budget crisis of November and December settled the issue for him.

b. Rules

The structure of the commission's work was formalized by the adoption of a set of rules and their publication in the Federal Register on September 12, 1967.[11] The rules provided for hearings, depositions and affidavits under oath, provisions for the transcripts of the formal hearing, use and disposition of evidence and other formalities necessary for fulfillment of the provisions of the executive order. The rules, as published, were not entirely satisfactory to the commission's General Counsel, Merle McCurdy. His objections grew from commission practice and point up a flaw in Ginsburg's plan to guarantee no surprises in the commission's work. McCurdy noted that there was no provision in the official rules for a commission quorum at the formal hearings.[12] He wanted to establish a credible basis for a variety of commission actions. It was necessary, he said, to agree, before-hand, about the number of votes needed to open hearings

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[11]Vol. 32, #176, p. 12969. The rules took their authority from Executive Order 11365 and PL 90-61, 81 Stat. 164, the latter being the statutory authorization for the commission "... to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that related to any matters under investigation by the commission." (81 Stat. 164).

[12]Memo McCurdy to Ginsburg and Palimeri, 9/11/67, (Sub: Proposal Guidelines for the Commission's Use in Implementary Its Rules and Procedures) and 10/31/67 (Sub: Proposed Quorum Rule) in General Counsel File, NACCD Papers, LBJ Library.

to the press and/or the public, to release testimony to the public, to approve and receive depositions and affidavits taken by the staff, to approve recommendations to be made by the commission and to approve the interim and final reports. McCurdy's concerns were prompted by indifferent commissioner attention to the hearings, leaks of commission material to the press, and the increasing possibility of minority reports and/or "rump" sessions of the commissioners. The matter had been anticipated and resolved, to Ginsburg's and Kerner's satisfaction, by the establishment of the unanimous approval rule. But, as will be seen, that did not remove the threat to the commission's integrity to which McCurdy's memo speaks.[13]

c. Hearings

The White House wanted the public hearings to set the substance, design and tone of the commission's report(s). This plan was only partially successful; the field trips upon which Ginsburg insisted had a greater influence on the commission's final product. Through the hearings the commissioners heard about ghetto people and their problems from knowledgeable persons, administration sources and representatives of groups who had developed an identity by speaking for the nation's urban black population. It was during the field trips that the commissions saw the damage done by the disorders and met with various leaders from the neighborhoods in which the disturbances took place. The final report put a considerable distance between the commissioners and some of

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[13]See Chapter 12, pp. 449-455.

the ghetto leaders with whom they talked, but none of the Kerner group deny that the field trips had the greatest impact on the report they sent to the president and the nation. This and the following two sections consider the importance of the Washington hearings, field trips and the private meetings of the commissioners.

The first major decision of the commissioners at their July 27 meeting was to establish the dates (August 1 and 2) and the content (hearing testimony of Director of the Federal Bureau of Investigation, J. Edgar Hoover on the conspiracy issue) of their first formal Washington hearings. Their next item of business was to accept Ginsburg's schedule for the rest of the hearings and the field trips.[14] By the end of August the eight commissioner field trips were completed, the Washington hearings in full swing and the major part of the staff recruited and set to work. With this flurry of activity the commission fulfilled one of its major responsibilities; it convincingly showed the congress and the nation that a presidental advisory body had actively engaged a serious national problem.[15]

The hearings produced little that the commissioners could not have obtained by some other means, but they were important to the

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[14]Memo, Bohen to Califano, July 29, 1967, Commission on Civil Disorders (2), Califano (3).

[15]By official reckoning, there were 20 days of hearings stretched over the period August through November in which at least 130 persons were heard. Report p. 319. McCurdy in his final report to Koskinen mentions 19 days of hearings involving 167 witnesses. See his memo of February 13, 1968, General Counsel File, NACCD Papers, LBJ Library.

commissioners and their interested publics for a variety of reasons.[16] First, the hearings allowed for an immediate, relatively simple and inexpensive means of getting to work, doing something important, while the staff was being assembled and the budget being fixed. Further, the hearings were an important socialization and institutionalization device; the commissioners and the senior staff got to know each other and the key administration persons through whom they were going to have to pass their work; Wilkins noted in reflection that the hearings allowed them to develop a common sense of urgency about the task they had been given to do.[17] Finally, the hearings allowed the commissioners to develop an independence from the administration that was difficult for the White House to ignore.[18] For the administration, the hearings provided a forum for presenting those parts of its record in domestic policy it wanted before the public; second, the hearings provided an opportunity to boost programs that were languishing before the congress. Third, the hearings provided a presidentially approved forum for hearing

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[16]Lipsky and Olson, MSS, IV, pp. 23-25, have a similar topology.

[17]Wilkins, syndicated column transcript, February 10-11, 1968, Office of Public Information File, NACCD Papers, LBJ Library.

[18]e.g. Bohen in an August 24th memo to Califano, which was passed on to Johnson, made the following comments about commissioner behavior during the hearing on the Newark disorders which he attended for the White House: "... the Commission is extremely sensitive now to 'railroading' by the Administration. I missed Wirtz's testimony ... but he apparently left the impression that Vance had earlier -- that the Administration wanted the commission's quick endorsement of hastily drawn reports and statements. When I returned to the meeting ... I listened as almost every member expressed sensitivity 'between the lines' about serving as a rubber stamp. Kerner barely got the watered down statement which Lindsay subsequently killed, and he had to ignore delaying motions, which had the votes, to get what he got, however unsatisfactory it was ..." FG 690 (1)/National Advisory Commission on Civil Disorders, 11/23/67 - 9/30/67, LBJ Library.

state and local officials without directly involving the president and/or his senior staff;[19] fourth, the hearings provided a forum for a variety of established private interest groups which had something important to say or from whom the administration wanted to hear (as with the political elites, the administration could hear which of the private elites it chose, in a context it controlled).[20] Fifth, in particular instances, which will be discussed below, the administration was able to use the commission hearings, and its witnesses as a means of controlling information being made available to congress.

For most of the members of congress the commission hearings were

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[19]e.g. Gov. Rommey could be heard in this context without having to give him the politically useful (to him) vehicle of a White House meeting.

[20]The decision was made to hear the leaders of the "radical" groups by means of deposition hearings rather than in the formal hearing context. See the memo, Ginsburg to the Commissioners 2/21/68, Ginsburg files NACCD Papers, LBJ Library, where the executive director explained what the staff had done to get testimony from non-establishment blacks. "Pursuant to your request that the report reflect a wide range of views including those held by the various black nationalists and black power advocates, I directed the General Counsel to arrange for the taking of testimony from the latter through means of deposition: Ron Karenga, Charles Evers, Floyd McKissick, Stockely Carmichael, Dick Gregory, Vernon Jordan (Atlanta), Carl B. Stokes, Richard Hatcher." These deposition sessions, called "special hearings" in the Report, were taken in person and by phone by staff members. The transcripts of these "hearings" were made available to the commissioners, but it is doubtful they were read and they could not have had any effect on the writing of the Report which was essentially finished when the depositions were taken. The transcripts now reside in the custody of the National Archives and Records service under multi-year embargo provisions, some extending to seventy-five years. The witnesses deposed in this manner are noted in the Report by the footnote #1 by their names which refers the reader to a caption, "Witnesses at Special Hearings," Appendix E, pp. 300-302.

welcome, but not all accepted them for the same reasons. For those who were used to following executive leadership, especially in times of crisis, the commission and its hearings were a valuable symbol that the president was in control; they were content to let the commission live out its life and respond to requests for congressional action when they came. Some welcomed the hearings as a way of fixing blame on Johnson and his Great Society programs for the disorders; they were certain that the commission would excuse the participants in the disorders and call for greater expenditures of funds for the administration's domestic programs; these saw the McClellan committee as the answer to this administrative effort to whitewash its errors.

For the established interest groups with a stake in the resolution of the problems causing and caused by the disorders, particularly the established civil rights groups, the hearings provided an opportunity for their leaders to be publicly heard and thereby convince their followers that they were indeed consulted by the White House in crisis situations. The benefit for the administration was identical to that obtained when a forum was provided for Governor Romney; persons could be heard without involving the president. Through its hearings the Kerner Commission served a classical advisory commission function; it was an effective political buffer between the president and interested publics desiring to participate in major public-policy decisions.

Part of the sense of urgency felt by the commissioners during the hearings was the creation of Ginsburg and McCurdy. With Ginsburg's approval, McCurdy carefully structured a series of hearings which moved the commissioners from a general consideration of the disorders to a

particular consideration of the problems of Negro citizens in the nation's urban centers. He began the hearings with testimony from FBI Director Hoover on the subject of criminal conspiracy, then moved through a variety of federal, state and local officials who had carried varied responsibilities throughout the disorders. By all accounts the hearings climaxed with the appearances of psychologist Kenneth Clark and historian John Hope Franklin who unfolded for the commissioners the history and character of the life experiences of American Negroes in urban ghettos. The hearings were timed to end coincidentially with the completion of the staff field trips when the commission was to begin writing the interim report to the president.

The audience Ginsburg and McCurdy had in mind in constructing the hearings was the major interested elite publics. They were determined to inform those elites of issues underlying the disorders which they thought to be more serious than the immediate damage to the affected cities. For instance, early in their work the senior staff members became convinced that the police and the National Guard were major causes of the riots; they were equally convinced that most members of the elite audience the commission was selected to reach did not share that conviction. If these elites could be brought to a common understanding of the causes of the disorders, it was thought, they then might be brought to a common level of support of the administration's efforts at preventing them in the future.

McCurdy deliberately built a grand jury tone into the hearings.[21]

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[21]Popper, The President's Commission, p. 36.

Criminal investigation was the dominant theme of the first weeks of the hearings; McCurdy wanted to secure a commission indictment against those responsible for the disorders. This fit the administration's plan to get at the heart of the law and order issues through the hearings; Johnson wanted court convictions to come from the investigations of the disorders. But McCurdy had a broader role in mind for the hearings and the commission's report. He wanted the report to bring the full force of public opinion on those responsible for the disorders. To accomplish this the hearings had to bring the commissioners to a common understanding which involved their feelings as well as their minds. He conceived the impact of the hearings in symbolic terms. Skolnick's image of public hearings as theatre comes close to the mark in describing McCurdy and Ginsburg's design for the impact of the hearings on the commissioners:

> Hearings are a form of theatre. Conclusions must be presented to evoke an emotional response in both the commissioners and the wider audience. In this respect, the planners of the hearings can be likened to the author and director of a play with strategy substituting for a plot... the expectation is that staff and commissioners will walk along fresh roads together, reaching similar conclusions. This explanation derives from the image of a trial. Such an adjudication model must, however, be largely fictional. The "judges", the commissioners, already have strong views and political interests, though they are supposed to be neutral. The staff too, is supposed to lack opinions, even though it was selected because of prior knowledge. Since strategy substitutes for plot, there are only three possible outcomes. The play may be a flop, that is, the staff perspective is not communicated; or the perspective is communicated, but unemotional so as to merely make a record; or emotional engagement is achieved. Here social science as theatre reaches its ultimate art. Commissioners are used to hearings, are used to testimony and probably cannot be moved

> in any new direction unless emotionally engaged... commissioners are... the establishment.[22]

The hearings were successful in helping to bring the commissioners to the emotional commitment to the problems underlying the disorders that Ginsburg and McCurdy desired. They failed to meet the other objectives for two reasons: internal opposition to the format and goals of the hearings and the decision to conduct the hearings in executive sessions. A major intra-staff feud between Palmieri and McCurdy ran the course of the commission's life and had its origins in a dispute over the structure and conduct of the hearings. In a series of memos, Palmieri outlined his unhappiness with the hearings as planned by Ginsburg and McCurdy; he wanted the hearings to be more like a congressional hearing. In keeping with his desire to have a staff-dominated commission report, Palmieri advocated a plan for the hearings which called for the staff to build the "case" and present it to the commissioners through the hearings. He was, in short, concerned for more traditional plot in the play. He wanted the cast of the play to be composed of fewer stars in order to make room for the able journeyman actors, who were more experienced and better able to bring out the subtle and intricate nuances of the plot. His position was stated in an early memo to Ginsburg in which can also be found hints of the beginnings of Palmieri's leadership of the junior staff opposition to the leadership of Ginsburg. In this memo Palmieri saw the political necessity for having hearings such as those designed to hear Governor

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[22]Skolnick, The Politics of Protest, p. 36.

Romney, and the representatives of Detroit and Newark but went on to say:

> ... I hope we can avoid any more hearings of this type... The objective now is to develop a plan for the hearings through the end of the year. The plan must be based on a conception of the initial report. That conception involves the following elements:
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> 1) The riot scenarios and a resulting "profile(s)"
> 2) An analytical discussion based on the scenarios
> 3) Recommendations for immediate action programs, direct and indirect, aimed at the prevention and control of violence.[23]

Further, he wanted the hearings to contain the additional elements; first, a comparative view of the sequence of the disorders taken from selected cities; second, a similar view of the disorder participants, including consideration of the pertinent sociological and psychological data; third, a carefully drawn demographic portrait of selected cities which experience disorders; fourth, an "analysis of underlying causative factors by experts and local participants and observers;" fifth, "prescriptions for immediate action programs directly and indirectly related to the prevention and control of violence by experts, including, again, indigenous experts (militants)."[24] Two weeks later Palmieri again raised the issue, this time in a more belligerent manner:

> It is absolutely vital that all of the hearings be structured in a way that gives the commission the best possible basis for applying factual understanding to theoretical formulations. It seems to me that they are better prepared to do this if they first hear from the people who are working in the field directly with the problems and then hear from the academic experts...

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[23]Memo Palimeri to Ginsburg, 8/31/67, Palimeri files, NACCD Papers, LBJ Library.

[24]Ibid., emphasis added.

He went on to criticize the grand jury atmosphere of the hearings by suggesting that witnesses be invited, subpoenaed only if necessary, to come before the commission; he wanted some of the hearings opened to the public.[25] In his reply McCurdy correctly observed that Palmieri was calling for an entirely different type of hearing from that planned and conducted to date.[26] McCurdy and Ginsburg won this battle; the hearings were conducted as planned. Palmieri's call for testimony from "indigenous experts" went unheeded. His suggestions for the hearings became the basis for the organization of the work of the staff and his concerns saw the light of day in their work. But that, too, created tension within the staff and between the staff and the commissioners; there too Ginsburg won a limited but important victory.[27]

The decision to hold all the hearings in executive session was the second major factor limiting their effectiveness.[28] In addition to the desire to spend much of the hearing time on law and order issues, the commissioners had two major reasons for closing the hearings to the public. First, there was a fundamental distrust of the press among the

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[25]Memo Palmieri to McCurdy, 9/11/67, "Subject, Procedure for Conducting Hearings," Palmieri file, NACCD Papers, LBJ Library.

[26]Memo McCurdy to Palmieri, 9/14/67, (Sub: Procedure for Conducting Hearings), Hearing Procedures file, NACCD Papers, LBJ Library.

[27]See the discussion of the "Harvest of Racism" documents, pp. 445-459.

[28]Kerner and Harris were the only commissioners to vote for a degree of openness. They urged their fellow commissioners to use some of the hearings as a means of educating the public in the traditional way of congressional investigations. See Lipsky and Olson, MSS, IV pp. 34-36. As will be seen a bit later there was serious disagreement within the commission over whether or not it had an educational function.

commissioners and the White House. There was a strong feeling in both quarters that the press was partially responsible for the intensity of the disorders.[29] Among the commissioners, Paden and Thorton were the most vocal and adamant in insisting that the press be excluded from the hearings and be given only commission and witness approved releases about the sessions. This, of course, guaranteed leaks from commissioners and staff members. Second, the commissioners did not want to provide a public forum for particular public figures, including persons from the Negro community, whom they knew they would be forced into hearing if the sessions were opened.

The White House was in complete agreement with the commission's decision to close the hearings to the public and the press; closed hearings made it a great deal easier for the White House to monitor the work of the commission and to make selective use of the testimony given. A White House aide, usually either Larry Bohen or Matthew Nimetz, was present at each of the hearings and sent a written report of the session to Califano.[30] Having the testimony taken by the commission available to the White House was useful in preparing administration officials to testify before the McClellan Committee. The administration could, and did, select from the testimony given to the commission those data which it wanted congress to have. The fact that Senators Harris and Edmund Muskie (Democrat, Maine) were willing to cooperate in an effort to

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[29]See the discussion of the media conference, pp. 398-403.

[30]See the Bohen and Nimetz memos in the file Commission on Civil Disorders (1), Califano 3, LBJ Library. Complete transcripts were also sent to Califano.

undermine Chairman McClellan's intended use of the committee hearings made this task easier for the White House and the commission.[31]

Closing the hearings presented one other major problem which contributed to their limited effectiveness. It meant that the commission developed no on-going means of educating the general and elite publics to its perception of the issues underlying the disorders and its proposed ways of addressing them.[32] Together with Director of Information Alvin Spivak, Ginsburg used a variety of loosely related means of informing the public of the progress of the commission; they issued press releases on the hearings and the city visits, and they arranged for commissioners and key staff to give a number of interviews and speeches.[33] These efforts were not, however, particularly useful in developing the public's consciousness to a level where a broad base of support existed for the content of the final report. The commission's primary client, the president, on the other hand, was kept well informed and was not sur-

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[31]See below, pp. 407-412, for a discussion of the Harris - Muskie cooperation.

[32]Lipsky and Olson note that columnist Roscoe Drummond warned of this danger in August. They found the Drummond article to be something of a stimulus for those commissioners desiring open hearings. See Lipsky and Olson, MSS, IV, p. 35. Director of Information Alvin Spivak, argued the same point in a memo to Ginsburg on August 29th, and before the commission on September 13 (see McGrath "Minutes of the Meetings of the Commissioners", 9/13/67, McGrath Files, NACCD Papers, LBJ Library.) At the same meeting Representative Corman articulated the position which he was to hold, and perfect, throughout the life of the commission that the Kerner group did not have a responsibility to educate the public. Its job was to gather facts and draw conclusions: answer the president's questions. The division of points of view represented by Corman and Spivak remained with the commission and not only qualified the success of the hearings but deeply influenced the substance of the final report.

[33]See Lipsky and Olson, MSS, IV, pp. 34-36 for a more elaborate discussion of the means used by the commission to stay in the public eye.

prised by the Report. There is reason to believe, however, that many members of the commission's key publics, who could have been very helpful in the reception and assimilation of the Report, were surprised by its tone and substance.

In summary, the decision to hold closed hearings was clearly in line with Johnson's standard policy regarding the uses of ad hoc advisory groups. The Kerner group forfeited the full educational value inherent in the public hearing format and adopted the role of visible but quiet presidential adviser.[34] Further, the independent political streak developed by the commission was not evident to the public until the publication of its report in March.

d. Field Trips

The field trips were successful in providing the commissioners with the kinds of experimental data Ginsburg thought so necessary in the development of the complete "case" on the civil disorders. Unlike hearing testimony, viewing riot torn cities and holding discussions with

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[34] e.g., one cost to the public was ignorance of the fact that the commission was exposed to and ignored, in large part, the kind of testimony found in a memo from Paul G. Bower to members of the senior staff dated 10/26/67 which covered a copy of a summary of the commission hearings of 9/21/67 done by Karen Krueger, a research assistant to the staff. (Public Safety Files, NACCD Papers, LBJ Library). She said that the witnesses at that hearing (J. Stanley Sanders, Los Angeles, California; Father James Groppi, Milwaukee, Wisconsin, accompanied by Father Patrick Flood, Dwight Benning and James Pierce; Ernie W. Chambers, Omaha, Nebraska; Piri Thomas, New York City) claimed the riots were caused by racial discrimination, that white people really were the problem, that the disorders were a means to obtaining recognition of existence, that the police were unsympathetic to the problems of urban Negroes, that the commission must exert its power to change the system and if there were no change there would be a revolution.

inner-city residents and leaders were not familiar activities for the commissioners. The trips were well planned and organized by the elected and federal officials in the given cities, but, personal responses to these new sets of stimuli could not be programmed. It was the city visits, more than any other factor, which moved the commissioners to construct a report to President Johnson which he regarded as unacceptable.

The field trips were important to the fulfillment of Ginsburg's plans for the commission for five reasons. First, they were ideally suited to provide the commissioners with another common experience to meld them into a cohesive working unit sharing similar views about the problems with which they had to work. Second, the trips forced the commissioners to develop confidence in their abilities to generate and evaluate their own data; the trips were taken during the time when Ginsburg and Palmieri were filling out the staff and Ginsburg used the trips to impress upon the commissioners the validity of their own research efforts.[35] Third, the trips were a very public means of conveying the image of a working commission, without incurring the political liabilities of public hearings.[36] Fourth, the trips were an ideal way

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[35]In this area, too, Palimeri resisted Ginsburg's efforts and advanced a more traditional role for the staff. See his memo to Ginsburg dated 9/6/67: "... these trips should provide both you and me with a continuing vehicle for acquainting the commissioners on an individual basis with the progress of our work and getting their points of view." (Palimeri File, NACCD Papers, LBJ Library).

[36]See the letter from John E. Hansen (Executive Director, Community Action Commission of Cincinnati) to Taliaferro where he thanks the commission for the visit and notes that "... its good to know that someone cares about our problems." (Letter, Hansen to Taliaferro, 9/1/67, Taliaferro File, NACCD Papers, LBJ Library).

"to rub the noses of the commissioners in the problem" (at least as the city and federal officials saw the problem). During each trip the commissioners were exposed to the aftermath of the disorders and to the interpretation of the events by local leaders and by key local state and federal officials. The administration did not waste the opportunity to sell the commissioners on the Great Society programs and the need to expand them to accommodate the needs created by the disorders. Finally, the commissioner reactions to the field trips provided an excellent orientation for members of the staff to the thinking of the commissioners.

Eight sites of civil disorders were visited by the commissioners during the period August 16-30: Newark, Detroit, New York, Tampa, Los Angeles, Milwaukee, Cincinnati and Cambridge (Maryland).[37] Each visit

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[37]The following order is that of the visitation schedule. An undated document (a copy is in possession of the author) found in the Kerner Commission Field Trips File, NACCD Papers, LBJ Library, gives the following data regarding the dates of the trips of individual commissioners:

August 16
  Newark-Lindsay
  Detroit - Kerner, Peden, Thornton
  New York - Abel, Wilkins
August 21
  Detroit - Corman, McCulloch, Jenkins
August 23
  Newark - Abel, Jenkins, Peden, Wilkins, Thornton
August 25
  New York - Brooke
August 26
  Tampa - McCulloch, Corman
August 28
  Los Angeles - McCulloch, Corman, Wilkins, Thornton
August 29
  Milwaukee - Jenkins, Harris, Wilkins, Peden
August 30
  Cincinnati - Lindsay, Harris
  Cambridge - Abel, Paden
October 9
  Detroit - Brooke

consisted of the commissioners being briefed by federal officials prior to beginning the trip, a meeting in the city with the mayor, his key cabinet members and local federal officials, followed by an auto tour of the city (one commissioner and a city and/or federal official in each car) with stops at various federal and local proverty program centers, a meeting with local Negro leaders (usually at a location outside of the Negro section of the city) and a concluding press conference. One commission staff person assigned to the party wrote an extensive summary of the event for the commissioners who did not make the trip and the other members of the staff. All these staff reports reflected surprise on the part of the visitors that the parts of the cities they saw were not as damaged as they expected, and commissioner dissatisfaction with the format of the visits, particularly with "entrapment" by city officials in the official tours.[38]

The exposure to the various leaders of the Negro communities was of help in educating the commissioners, but most of the meetings took place in a context created and controlled by local officials. There was, however, a noticeable tension in the meetings with black leaders. More than one participant in them attributed the tension to a bitterness on the part of the leaders over the heavy emphasis the president put on

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[38]The members of the staff had more opportunity to see the various cities on their own. The staff members did not travel with the official commissioner party to the various cities visited (the commissioners who accompanied Thornton to Detroit did so on his private plane) but rather went by commercial air line and train. Consequently they saw a great deal more of the city and its citizens, most of which was missed by the official parties. A variety of recommendations flowed from the staff experiences in the cities visited: rent cars, drive unaccompanied through the civil disorder area, take walking tours, etc.

law and order in his mandate to the commission. Despite the bitterness, several common themes were discussed in these meetings: the inadequacy of the Great Society programs designed to help them, the failure of the basic institutions of the city to serve the basic human and social needs of the Negro community, complaints against the police, the unrelenting presence of white racism.

The visit to Cincinnati was the major exception to this common pattern. Significantly, it was made by the two commissioners (Lindsay and Harris) who led what became known as the "liberal" block within the commission.[39] The visit to Cincinnati, one of the last of the series, benefited from the problems and mistakes of the other commissioner field trips; it was structured differently from the others. Charles (Chuck) Willis, a member of Mayor Lindsay's New York staff, who, because he had worked in Cincinnati was employed as a consultant, spent three days in Cincinnati preparing for the visit by the two commissioners. As part of their preparation Harris and Lindsay were briefed by the FBI on the persons they were to meet.[40] Willis arranged for them to meet a type of

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[39]The written record of the Cincinnati field trip was made by "Boots" Taliaferro and sent to the other members of the staff in a memo dated September 19. (Taliaferro to Senior Staff, 9/19/67, in Cincinnati Trip file, NACCD Papers, LBJ Library.

[40]This was done as a regular part of the briefings before each visit. The FBI documents always contained confidential information on the degree of suspected criminal involvement of the persons with whom the commissioners were scheduled to meet. Of interest here is a retrospective account by Senator Harris of some of the political fall-out from this visit. In reflections on his close association with Lindsay and the political damage it caused him with Johnson, Harris tells of a White House meeting in which the president chastised him for the relationship. Harris told Johnson of the recent trip to Cincinnati and its impact on him and Lindsay, particularly their conclusion that there was no conspiracy involved in that city. Johnson asked if Harris had read the FBI reports. He replied "no" but said some staff members had and all the commissioners

local Negro leader unlike those with whom commissioners met in the other cities. These were persons out of favor with the local officials, but nevertheless, leaders with enough of a following to honestly deserve the title in this context. They were young, well-educated (most had post-graduate degrees) and were all products of the non-violent civil rights movement. The meeting was unprecedented in another way, too; it was held in the Avondale Community Center, in the heart of the area hardest hit by the disorders. The meeting began and ended in a very tense atmosphere (Taliaferro used the phrase, "intensely bitter"); the black leaders refused to shake hands with the commissioners. Lindsay and Harris became, in Taliaferro's words, "personal targets for hate and frustration." Unlike the other visits the commissioners ended the Cincinnati trip with a meeting with city officials. "The two commissioners described what they had seen and heard. The city officials appeared to listen and be somewhat stunned. The meeting ended on that note."[41] Some members of the staff had such meetings with indigenous black leaders in some of the cities they visited, but such events remained outside the experiences of the other commissioners.

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had heard the testimony of Director Hoover. Johnson insisted that Harris read the FBI reports. The senator did and he reports that, "They tended to indicate that 'outside agitators' helped cause the riots and they amounted to the most sloppy mess of reporting I had ever seen, and I told (Marvin) Watson (a Johnson White House aide) so" (Potomac Fever, p. 111) Harris, in all accounts, was severly critical of the FBI work he saw, but here his memory and/or notes failed him, or there was more than one set of confidential FBI reports of the Cincinnati civil disorders, one for the White House and another for the commissioner's briefings. Johnson's use of another set of FBI reports with Harris is a distinct possibility given the fact that the president knew of the details of the Cincinnati visit before talking to Harris; he had access to Taliaferro's report on the trip. See pp. 297-298, below.

[41] Quotations from the Cincinnati meetings are taken from Taliaferro's 9/16/67 memo to the members of the senior staff.

The Cincinnati visit made deep impressions and wrought profound changes in attitudes in the two commissioners and their colleagues who made the trip, but not so profound as to change the way the commission staffed itself and went about doing its business. It has been noted that there was discussion among the commissioners and the senior staff about the wisdom and the possibility of employing persons with recent experience living and working in one or more of the nation's urban racial ghettos.[42] The Cincinnati trip presented the commission with exposure to persons who had the same basic qualifications for employment possessed by all of the junior members of the staff (post-graduate degrees and urban work experience) but who had the additional qualifications of being ghetto residents with local leadership credibility. It would, no doubt, have been politically unacceptable to try to employ one or more of the young black leaders with whom Lindsay and Harris had met. However, it is conceivable that other such persons could have been turned up in other cities and secured for the commission. The only effort to change the make-up of the commission staff following the city visitations consisted of Harris and Lindsay's recommendation that the commission take on Willis as a member of the staff. But Willis came to the commission directly from Lindsay's staff and his appointment, therefore, has to be seen as much as a commission-style patronage act as an attempt to fill out the staff with "street-wise" urban blacks.

Copies of all the staff summaries and critiques of the commissioner field trips went to the White House for review. Califano passed them to the president with notes indicating the sections he felt to be of

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[42] pp. 248-249.

interest to Johnson. Califano marked with special care the sections of Taliaferro's summary describing the meeting of Harris and Lindsay with the young black leaders in the Cincinnati community center.[43]

A considerable amount of staff time was consumed in field research efforts in the early weeks of the commission's life. The original Ginsburg plan called for the commission to let a contract for the systematic field studies thought necessary to fulfill the presidential mandate to investigate and report on evidence of conspiracy and to compare the cities which experienced disorders with each other.[44] It was decided, however, that the use of commission staff for the work would produce better results, allow for closer coordination of the various field investigations being done under the aegis of the commission with the evolving purposes of the commission, and would be politically helpful by allowing the commission to hire a relatively large number of the applicants for staff positions it had received.

But the staff field research efforts did not produce a quality product equivalent to the effort invested. Time pressures, misdirected efforts pursuing the answer to Johnson's comparative cities question (an essentially unanswerable question), and problems inherent in the American federal political system qualified the staff field research efforts to the point where they contributed little to the final report.

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[43]Califano to the President 10/6/67, Ex HU2/FG690/LG/Cincinnati; "Presidential Memoranda," LBJ Library. There is an indication on the document that Johnson read it. It would appear from these data that Johnson knew more about the Cincinnati trip and Harris' relationship with Lindsay than the senator knew.

[44]See point 2 of the mandate (Report, p. 396) and p. 2 of the History of the Commission, NACCD Papers, LBJ Library.

Lipsky and Olson, in developing their "commission problem" idea, note that the pressures wrought by shortness of time did not allow the Kerner group to develop much in the way of a theoretical framework or a systematic approach to their work.[45]

Staff members made independent and individual visits to cities not on the "official" sample of cities to be studied. In addition, staff members were sent to all the major professional academic meetings held in late 1967 and early 1968 to listen to what was being said about the commission, civil rights and civil disorder problems. Similar forays were made to the known meetings of black nationalist and black power groups as a means of obtaining information and keeping a finger on the pulse of the black movement. All of the staff field trips suffered from the same problems experienced by the commissioners on theirs: co-optation by state and local officials, resistance from black leaders because of a basic distrust and fear of the commission's purpose, and lack of time and resources to do an adequate job. Much effort was given to field research with meager amounts of new data or insights resulting. The visits did, however, provide a valuable service to the president. They displayed to state and local officials a deep enough level of presidential concern in their problems to invest time, personnel and money into securing information which may lead to answers. The visits had the additional advantage of helping these same officials reinforce what had become a natural political reaction for most of them - defer to the national government on policy matters in which the White

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[45]See Lipsky and Olson, MSS, V, pp. 31-34 and the statement about methodology found in the Report, p. 320.

House shows a keen interest.[46]

e) Meetings of the Commissioners

The commissioners met for a total of forty-four days, excluding time spent on city visitations.[47] It was the time and effort given to these private sessions which earned the Kerner Commission the reputation of being a "working commission." In the meetings of the commissioners the work of the staff was minutely reviewed, a variety of "experts" were interviewed, films were seen, books and papers sent by Ginsburg discussed and ideas shared.[48] These meetings were very private affairs, only the commissioners and invited others were present.[49] Ginsburg was always present and served as the leader of the commissioners. Ginsburg's leadership role in these crucial meetings was based on two factors: he was respected by the commissioners as a good and fair administrator, and accepted as the "president's man" on the

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[46]It is well to call attention again to the ghetto visits by members of the White House staff discussed above, p. 179. Those visits were an independent source of information for Johnson and also served the other general purposes discussed here.

[47]Report, p. 320.

[48]e.g. the meetings of November through December 12 were devoted to work on the various drafts of the Report; on October 29 the commissioners had dinner with the heads of the three television news networks; on November 3 they saw the film "The Jungle" produced by a group of Philadelphia inner-city young persons.

[49]McGrath was present at all the meetings. See p. 259 for a discussion of his role as Kerner's aide on the commission.

commission.[50] Ginsburg pushed the commissioners to achieve the unanimity they agreed to reach before sending any major recommendations to the president. He chided them when they neglected the hearings and went to great lengths to keep them up-to-date with each other. He was in regular contact with the White House on a variety of matters involving the commission and the other responsibilities he carried for the administration; he used these occasions to obtain and convey useful information to and from the administration and the commission. Lipsky and Olson accept at face value Ginsburg's modest report that he only spoke to the president three or four times about the commission and its work during his tenure as executive director.[51] But Ginsburg did not have to rely on face to face meetings with Johnson to get his point of view through to the president. He had the confidence of the key White House aides, particularly Califano. He had daily conversations and memo exchanges with cabinet officers, senior White House aides and other key administration persons. An examination of Califano's official files on the Kerner Commission reveals many instances of his sending a Ginsburg memo to Johnson specifically calling attention to reports from the executive director.[52]

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[50]Kerner, by all accounts, while close to the White House, was a weak leader and served the commission best as its voice before the press, the public and congress. Kyran McGrath, Kerner's "ears" on the staff, became increasingly concerned about the eclipse of his boss by Ginsburg and (especially) Lindsay, but to no avail. See his memo to Kerner 1/15/68, McGrath files, NACCD Papers, LBJ Library.

[51]MSS, IV, p. 31.

[52]A number of examples have been cited in this study. Many more exist in the National Advisory Commission on Civil Disorders files in the papers of Joseph Califano, LBJ Library.

Ginsburg's close relationship with the White House caused initial concern among some of the commissioners, especially the Republicans, but his evenhanded performance and his ability to communicate well between the White House and the commission, won him praise from all. The commissioners accepted the fact that they were members of a presidential advisory commission and consequently valued the function Ginsburg performed for them with the White House.

Leadership among the commissioners early slipped from Kerner to Lindsay.[53] Lindsay's national prominence and his easy access to the New York based media and research resources were useful and were appreciated by most of the commissioners, but not by the White House. Administration reservations about the commission's work increased in direct proportion to its perception of Lindsay's rise to prominence as a leader.

A typical meeting of the commissioners consisted of the following elements (listed in order of time devoted to them). First, review and revise the work of the staff and the consultants. This consisted of reading and discussing drafts of chapters, and consideration of research papers which might become the basis for future chapters. It was common for individual commissioners to produce a paper on an area of personal expertise for a particular work session set to deal with that problem.[54] Consistent with their agreement that

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[53]The White House became concerned about Lindsay's aggressive style on the commission soon after his appointment. Harris describes Johnson's concern over the mayor's rise to dominance in Potomac Fever pp. 106-113.

[54]e.g. Abel-labor, Jenkins-police, Lindsay-urban problems, Kerner-national guard.

all documents destined for public review had to have unanimous commissioner endorsement, they read the various drafts of the chapters to each other, agreeing on every word and turn of phrase which were eventually published. They began these work sessions early in December, a month following the end of the Washington hearings and the staff field trips and three months prior to the scheduled publication date for the interim report. They scheduled themselves to deal with the most pressing problems first,[55] specifically the conspiracy issue and, matters of public safety and then moved to long-range recommendations.[56] Present at these review sessions were the commissioners, the senior staff, commissioner aides (if needed) and invited members of the professional staff.[57]

Lunch time was given over to a free exchange of ideas between one or two invited members of the professional staff and the commissioners. These were wide-ranging sessions in which the participants "got a feel" for each other and were useful in helping to establish the boundaries within which the report could be written and published.

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[55]Senator Harris, in his reflections says the commissioners decided early that there was no short-run solution they could responsibly endorse and thereby turned their attention to long-run problems and fundamental reforms of the urban policy making system. As mentioned above, (FN #3, p. 274) the evidence does not substantiate Harris' recollections.

[56]e.g. the December 7-9 meeting was given over to discussions of conspiracy and public safety (police, fire and national guard recommendations) and questions of racism. The meeting of January 11 and 19 were devoted to discussions of long-range recommendations. See, McGrath "Minutes of the Meetings of the Commissioners" for those meetings.

[57]Usually persons who had a hand in producing the document to be considered by the commissioners at that particular session. The remainder of the staff was kept informed of the commissioner's work by the notes made by Kyran McGrath.

Supper sessions were devoted to staff presentation of work in progress. Here the staff members got clear policy guidelines from the commissioners and the commissioners attempted to protect themselves from being surprised by the staff work.

These work patterns of the commissioners were designed to impress upon themselves and the members of the staff that it was they who were ultimately responsible to the president for the final report, and they who would produce it. Much of the conflict between the commissioners and the staff grew from confusion on the part of the staff over this point. The commissioners, strongly supported by Ginsburg, insisted and maintained the position that they, not the staff, were the commission. Further discussion of the major problems arising from this conflict can be found below.

f) Organization of the Staff

The ten staff departments were designed to assist the commissioners in fulfilling the president's mandate(s). Each had a set of responsibilities designed to address one or more of its parts. A discussion of the work of each of the staff departments follows.

1. Public Safety

Public safety was the most politically sensitive subject undertaken by the commission. Every major interest group with a stake in the resolution of the problems created by the civil disorders (particularly the police, firefighters and the national guard) centered its attention on how the commission handled this problem and on the work of its Public Safety Department (Arnold Sagalyn, Director.)

Five key factors in the political environment in which the commission existed forced the matter of public safety to the top of its agenda: the mandate, the "commission problem," congressional interest, the quickly developed and strongly held conviction by the commissioners and staff members that in the event of another wave of urban civil disorders the safety of the urban public could not be guaranteed, and the persistent efforts by some of the commissioners and senior staff members to broaden the mandate of the commission to include some of the unresolved issues raised by the Katzenbach (Crime) Commission. These factors will be addressed throughout this discussion of public safety.

Ginsburg and the commissioners also had to deal with three important procedural questions while dealing with these politically explosive problems of public safety. First, which official or private organization(s) was administratively and politically capable of carrying out the necessary studies of the police, firefighters and the national guard? Second, how should the commission deal with the politically and legally difficult problems of federal-state relations raised by its public safety mandate? Third, what role should the commission play in the unassigned, but relevant, policy areas of gun control legislation and administrative reorganization of the police, fire departments and the national guard? The text of this section describes and analyzes the ways in which the commission dealt with these political-procedural problems.

The fear the president and members of the senior White House staff felt in facing another summer of disorders with a national guard which had performed badly in dealing with those of 1967 was impressed

upon the commissioners and their executive staff immediately after their appointment. In his speech of July 27 Johnson said:

> I have directed the Secretary of Defense to issue new training standards for riot control procedures immediately to National Guard units across the country. Through the Continental Army Command, this expanded training will begin immediately. The National Guard must have the ability to respond effectively, quickly and appropriately, in conditions of disorder and violence.[58]

With the aid of members of the White House staff, the commission wrote a letter to Johnson on August 10 recommending three actions be taken to better equip the national guard to carry out its future civil disorders responsibilities:

> "1) Increase substantially the recruitment of Negroes into the Army National Guard and the Air National Guard...
>
> 2) Improve and expand riot control training of the Army National Guard and the Air National Guard...
>
> 3) Review by Federal and State officials of the qualifications and performance of all officers in the Army National Guard and the Air National Guard. The Department of Defense should also review federal recognition standards and procedures to insure that they are adequate to preclude the appointment and promotion of substandard officers."[59]

Reaction was quick in coming from members of congress, governors and various private interest groups. Representatives F. Edward Hebert and Mandell Rivers, senior members of the military establishment of the House of Representatives and experienced protectors of the national

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[58] Report, p. 297.

[59] Ibid., p. 318.

guard heatedly contested the commission's recommendations.[60] Hebert did not settle for a verbal blast at the commission and the White House. On August 23 he wrote a letter to Governor Kerner asking for access to the data upon which the commission's recommendations were based. The information would be useful, he said, to a special subcommittee of the House Armed Services Committee which he was establishing to look into the quality of the civil disorder training being received by the national guard. Ginsburg, replying for the commission, said that he would bring the matter to the attention of the commissioners. He added, "I hope very much, incidentally, that the materials submitted to your Special Subcommittee will be available to this Commission for its future deliberations."[61] The offer was not taken up by Hebert.

Johnson and Califano paid particular attention to a letter from Governor Dan K. Moore of North Carolina. Moore's was representative of much of the opposition directed at the commission's position on the national guard.[62] Moore expressed concern over a report, brought to him by his Adjutant General, Major General Claude T. Bowers, of a recent three day conference on the national guard.[63] The participants in

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[60] Chicago Tribune, 8/15/67.

[61] Ginsburg to Hebert 8/30/67, Ginsburg file, NACCD Papers, LBJ Library.

[62] See Califano to the President, 8/25/67, covering Moore's letter, National Advisory Commission on Civil Disorders (1), Califano 3, LBJ Library.

[63] Knowledge of this impending meeting was one of the factors determining the commission's sending the August 10 letter to the president on the national guard.

the Washington meeting discussed the disorders, reorganization of the national guard and the recommendations of the Kerner Commission. Moore shared Bower's concern that the commission's recommendations and the reorganization being proposed would have an adverse effect on the morale of the national guard. Moore's specific concern was over,

> ... the means that will prevail in obtaining a substantial increase of Negroes in the Guard. The success of the National Guard system lies in its traditional role as a voluntary organization and its high enlistment requirements. This has allowed the Guard to fill its ranks with intelligent individuals with high moral standards. No attempt to reduce the mental, moral and physical standards for enlistment should be made. To do this would greatly reduce the overall standards of the Guard. It would eventually change the complexion of the National Guard and destroy the position it enjoys today as a respected organization in the local community.[64]

Another negative reaction came from James F. Cantwell, President of the National Guard Association of the United State.[65] The issue became so politically charged that Ginsburg accepted the recommendation of Cyrus Vance that their mutual friend Stephen Ailes (a former Secretary of the Army) be used as a knowledgeable and mutually respected outsider through whom further commission recommendations about the guard could be filtered. Ailes provided the commission with a means for putting distance between it, the White House and hostile pro-national guard politicians and interest groups on this issue.

The time component of the "commission problem" forced the com-

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[64]Califano to the President, 8/25/67 (see Fn #62, p. 307).

[65]Ginsburg to Cantwell, 8/21/67, Ginsburg Files, NACCD Papers, LBJ Library.

missioners to make recommendations on the national guard earlier than they desired. The administration had a large body of data substantiating predictions of the inability of the guard to deal with any new civil disorders. Once the commissioners saw the case against the national guard built by the administration they agreed that the recommendations must be made public well before the summer if the mutally agreeable changes in policy were to be realized. If training procedures were to be changed before the onset of the next "riot season" the task had to begin in the late summer of 1967. Califano told Secretary McNamara that the national guard recommendations of the Kerner Commission were high on the president's priority list; therefore, the Department of Defense gave them full attention.

The national guard was being charged by the White House with having an inadequate plan for riot duty and inadequate personnel for doing the job even if an acceptable plan were developed; the indictment charged that national guard units used in the disorders of 1967 behaved as if they were individual police officers, not members of military units with a unified command operating under a predetermined plan of action. The mayors of the cities experiencing disorders reported the guard performance as inept at best. Commissioners expressed concern over the fact that too many members of the guard were white and had chosen service in the guard as a means of avoiding regular military duty.

A series of events beginning in December reinforced the sense of urgency originally felt in the late summer by the commissioners and the top White House advisers. At a seminar on civil emergencies, General J.C. Baker, Vice Chief of Staff to Governor Rockerfeller, announced that his office, with the cooperation of New York civilian authorities, (and

he implied the permission and/or the knowledge of the Kerner Commission) was working on a plan which would allow the national guard to enter Negro sections of cities prior to the outbreak of a disorder, ostensibly to protect lives and property.[66] The unrest created by this proposal, which had no basis in fact as far as the commission was concerned, was considerable in New York and in the Department of Justice; the incident again impressed on the commissioners the enormity of the task they had to do and the small amount of time in which they had to do it.

Recommendations to reorganize the national guard, raised in the commission and elsewhere in the administration brought forth a variety of constitutional questions. The commission was asked by the Department of Defense to recommend that the command structures of national guard battalions not be limited to individual states; this proposal was intended to enable the federal government to call guardsmen from a wide area, including surrounding states, to duty in case of future disorders. As an alternative, Kerner proposed that the commission recommend mutual aid pacts between the states for the purposes of control of disorders. The Department of Justice took a dim view of the constitutionality of these proposals. In its final report the commission yielded to the Department of Justice's concerns. It did not look favorably on splitting battalion commands between states and recommended "... that the Department of Defense reconsider the alignment of units between states in order to ensure that state needs for unified command and

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[66]Letter and attachments, Roger Wilkins (Department of Justice) to Ginsburg, 12/21/67, Department of Justice Files, NACCD Papers, LBJ Library.

control in riot operations are fully taken into account."[67] The commission took no action on the legally and politically more difficult suggestion of Kerner.

President Johnson was deeply committed to a law and order approach to the problems of public safety;[68] the congress was equally, if not more, determined. Arnold Sagalyn, reflecting the views of his staff, sardonically remarked at a meeting of the commissioners that "After 90 years of police experience, the most important problem facing the nation next summer is police protection."[69]

Sagalyn and his staff had five major sources of information on police and fire departments. First, the commissioners were an unusually rich source of data. Jenkins, Lindsay and Kerner had first-hand administrative experience with both kinds of departments and, accordingly, each had firm ideas on the subject. Wilkins and Brooke spoke forcefully about their understanding of Negro American attitudes toward law enforcement and fire departments. In a letter to Ginsburg, Jenkins established the public safety chapters of the final report as his primary concern and set out problem areas and potential sources of help for the commission, each of which he would return to again and again:

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[67] Report, p. 276.

[68] See the discussion of his speech to the International Association of Chiefs of Police in Kansas City on September 14, 1967, p. 315.

[69] McGrath Minutes of Commissioners' Meeting, 12/8/67. The Kerner Commission was the second of three successive presidential advisory commissions to speak to police-community relations problems.

> I believe that the greatest need is for the adoption of national police standards, police recruitment, police training, police pay, police supervision and especially police community relations. Once such standards are adopted, the cities must have considerable financial assistance to meet these standards.
>
> The preparation of such standards and the enforcement of them will be the most difficult task. It might be desirable to ask the International Association of Chiefs of Police to prepare the standards.[70]

Jenkins saw the public safety mandate in terms of two interrelated problem areas common to all large American cities: poverty and the police. Poverty is a major cause of the rioting which in turn creates the unacceptable circumstance of the police having to act as an uninvited, unwanted (essentially foreign) occupying force in the urban black ghettos.

Lindsay brought to the task a seasoned commitment to the need for civilian review boards of police work and a hostility toward firefighter's associations. Wilkins and Palmieri were also strong advocates of a civilian police review system. Jenkins, on the other hand, opposed the inclusion of a recommendation for civilian review boards in the final report. Jenkins' position prevailed.

Brooke and Wilkins, joined by Corman, were vigorous advocates

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[70]Jenkins to Ginsburg, 8/17/67, Ginsburg file, and McGrath to Kerner 11/29/67, McGrath file, NACCD Papers, LBJ Library. Jenkins' recommendation of the International Association of Chiefs of Police rather than the FBI was based on a professionally developed sense of distrust of the ability of the federal agency to do an objective job. He entertained no illusions about the abilities of the International Association of Chiefs of Police to be very objective. The choice for him was between the lesser of two evils. He thought that it would be politically impossible for the commission not to use one of these organizations as the job was too large for the commission staff to do without help.

of the inclusion of recommendations to limit the types of weapons permitted the police for use in controlling civil disorders.[71]

Kerner and Lindsay, often joined by Corman, wanted to qualify Jenkins' efforts to have the commission endorse police management of the reformation of their profession. They wanted to aim the recommendations on the police at mayors and police chiefs in order to strengthen the hands of local officials in police matters, particularly in training for control of civil disorders.

Wilkins and Lindsay and Jenkins were energetic in contending that fire departments were the most recalcitrant of the public safety groups with which the commission had to deal. Jenkins wanted to include a recommendation that fire departments develop their own means of protecting themselves in civil disorders, but that was rejected. New York City contributed a large amount of data on fire departments and civil disorders and they formed the basis for the section in the report dealing with that subject.[72]

The second source of data for the staff working on the public safety section of the report was the federal bureauaracy. The Department of Justice provided a vast amount of data about the state of readiness of various police departments to deal with future disorders. The picture painted was not a bright one. Staff members of the Depart-

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[71]See McGrath, Minutes, 12/8/67, and Report, pp. 9 and 176; also see the discussion of consultant O.W. Wilson's opinion on this issue, pp. 322-323.

[72]See McGrath, Minutes, 12/8/67 and the letter Jay Kriegal to Palmieri and Sagalyn 1/3/68, Palmieri files, NACCD Papers, LBJ Library together with a report from Kriegal about the New York Fire Department. See also Report pp. 272-274.

ment of Justice aided the commission staff in drafting the following commission letter to the president:

> The National Advisory Commission on Civil Disorders, on the basis of testimony thus far received, recommends that you direct the Department of Justice to conduct a series of intensive training conferences this winter for governmental and police officials. The series would focus on effective measures for the maintenance of law and order and on programs to improve police-community relations.
>
> We emphasize that knowledge and programs in these areas are not substitutes for solutions to the problems of racial discrimination, alienation and poverty, as reflected in such areas as employment, education and housing. But there is a need for cities, as soon as possible, to share the knowledge that has been gained in methods for maintenance of law and order.
>
> Some seventy-five witnesses, including mayors, chiefs of police, other state and local officials, representatives of federal departments and agencies, and residents of disorder areas have now testified before the Commission. Many others will be heard.
>
> The testimony to date convinces the Commission that a substantial body of knowledge now exists in the fields of prevention and control of civil disorders that could profitably be communicated through training conferences under the auspices of the Department of Justice. Of course, we are aware that a number of valuable meetings and programs for local law enforcement officials are under way. But these meetings we believe can be significantly supplemented by a conference of broader scope and longer duration such as that we here propose.
>
> The precise format of this conference and the cities to be involved would, of course, be determined by the Justice Department. The conference could be conducted here in Washington or on a regional basis, perhaps in cooperation with colleges or universities. A short program might be appropriate for key state and municipal officials, a slightly longer one for police chiefs, and a more extensive one for other public safety and government personnel. Subjects to be covered presumably would include decision planning; control techniques; communications systems; decision making during disorders, joining operations with neighboring police, state police, the National Guard and Army; community relations and effective means of dealing

with citizens' grievances.[73]

The Office of Law Enforcement of the Department of Justice worked closely with the commission staff in structuring the testimony of hearing witnesses and gathering other forms of evidence (intra-department studies, task force reports, etc.) necessary in preparing the commissioners for making their recommendations on police riot training.[74]

The publication of these recommendations for police training was accelerated by the speech Johnson gave to the International Association of Chiefs of Police in Kansas City on September 14.[75] The commission was kept informed of the evolution of the speech and the senior staff agreed with the White House and the Department of Justice on the need to move quickly to reinforce those parts which called for police training; all feared that Johnson's tough law and order rhetoric in the Kansas City speech would be the only thing heard by the police chiefs and reported in the press; they wanted to remove the fear of police repression and brutality from the minds of urban Negroes by recommending community relations as well as riot control training.

The Office of Economic Opportunity presented the commission with a plan for a Junior Cadet Corps which Sargent Shriver (Director of OEO) reasoned would be a useful component in a comprehensive police-community

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[73] Report, p. 318.

[74] Palmieri to McCulloch 9/1/67 and Ginsburg to Commissioners 9/20/67, Ginsburg, Public Safety file, NACCD Papers, LBJ Library.

[75] U.S. President, Public Papers of the Presidents, Lyndon B. Johnson, 1967, pp. 831-836 and 839-841.

relations program.[76] Jenkins and Lindsay supported this recommendation and added another for community relations officer programs similar to those which had been so successful in Atlanta.[77]

Third, a variety of institutional and individual consultants aided Sagalyn's people in collecting and analyzing public safety data. Three institutional resources were used: the Michigan State University School of Police Administration, the International Association of Chiefs of Police (IACP), and the Federal Bureau of Investigation (FBI).

The data supplied Sagalyn's staff by Michigan State University's School of Police Administration complemented that obtained by commissioners and staff members in their discussions with Negro leaders during the field trips and the hearings; in both the police departments in the cities in which the disorders occurred were described as more inclined and better equipped to repress than to prevent disorders. The Michigan consultants made a particularly important attempt to contribute to the public safety section by showing how the Katzenbach (Crime) Commission had been weak and how the Kerner Commission might succeed where its predecessor had failed. Robert Wasserman of Michigan State, who had worked for the Crime Commission on problems of riot control, urged the Kerner Commission to be specific in its recommendations on police-community relations in order to beat down the resistance police

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[76] Letters Shriver to Ginsburg, 8/14/67 and 9/7/67, OEO file, NACCD Papers, LBJ Library.

[77] Letter Kriegal to Kruzman 11/22/67, Public Safety file, NACCD Papers, LBJ Library.

departments would create to the commission's report, and to aid community officials in their efforts to bring the police into this relatively new area of work.

> I would suggest that you consider the development of action models, especially in the area of police-community relations and police tactical operations. Such action models could be published as an appendix to your report or could be included in each relevant section. The important point to be considered is that every recommendation should have a model or simple procedure - this is one area where the National Crime Commission's work was weak.
>
> Police officials are defensive and resistant to change; to force the organization change necessary to a productive program in police community relations will require detailed explanation of the problems, recommendations for action and detailed instructions as to how to implement those recommendations. Without the latter, your work will have little effect.
>
> Finally, the community can force change. Publicity given the fact that the commission recommended models can cause the community power structures to demand their implementation.[78]

The commission's recommendations on the police were aimed in the direction Wasserman pointed, but the "commission problem" again thwarted the effort; in this instance the combination of scarcity of time and the necessary staff (particularly after the decision to publish only one report) forced the commissioners to be far more general in the police chapter than most of them desired to be.

The International Association of Chiefs of Police (IACP) was the major outside consultant for the commission in its efforts to get data on the state of civil disorder preparedness of the nation's major police

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[78]Letter, Robert Wasseman to Kruzman, 9/27/67, Public Safety Files, NACCD Papers, LBJ Library.

forces. The commissioners and staff members most knowledgeable in police matters wanted the FBI to take on this task, but when the bureau turned the commission down Sagalyn turned to the IACP after sounding out a number of persons within and outside the commission.[79] The contributions of the IACP, like those of the FBI, were received and used very cautiously. Sagalyn insisted, as a part of the contract, on the right to confer with the IACP during the study, and to review its work before accepting its final report to the commission.[80]

The research effort by the IACP consisted of "... determining the current capabilities of state, county and local law enforcement agencies to prevent and control civil disorders."[81] Thirty major population centers of the country were examined and evaluated in eight areas of civil disorder preparation:

> "1) Plans for mobilization of resources to meet the emergencies of civil disorders and disasters including liaison with other related agencies.
>
> "2) Training programs especially constructed to prepare personnel for both the prevention and control of civil disorders.
>
> "3) Formalized logistical and contingency planning.

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[79]Sagalyn to Ginsburg 9/29/67, Public Safety Files, NACCD, LBJ Library. Jenkins gave his approval when the FBI turned the commission down. Other persons with ties to the police community doubted the capacity of the IACP to do the job in the time frame alloted; others questioned its ability to be "objective"; but all agreed that if the FBI would not do this work then the IACP should be allowed to try.

[80]Ibid. See also Bower to Ginsburg 11/1/67, Public Safety, NACCD Papers, LBJ Library. Bower wanted Ginsburg and Palmieri to read the draft of the first phase of the IACP study "... to determine whether the report will create any policy problems for the commission."

[81]Quinn Tamm (Executive Director of the IACP) to Sagalyn 9/27/67, Public Safety, NACCD Papers, LBJ Library.

"4) The development of command and control systems.

"5) The planning and development of strategy and tactical operations for preventing, containing or coping with such disorders.

"6) The establishment of pertinent intelligence systems.

"7) The availability of legal tools, special equipment and weapons.

"8) The effect of legal, economic, political and social restraints upon police efforts before and during disorders."[82]

The commissioners adopted Sagalyn's cautious approach to the IACP contract. The IACP report was carefully read by the public safety staff, Ginsburg, Palmieri and Chief Jenkins, with the commissioner having virtual veto power over which parts of the report were directly incorporated into the commission's final statements about the police. Specifically, with the key White House aides, the Department of Justice, Jenkins, most of the commissioners, and the executive staff of the commission in agreement that police practices were in part responsible for the disorders, the public safety staff drafted a set of recommendations, true to the evidence before them and reasonable in substance and tone to everyone except the president, the hard-line law and order supporters in congress and the police.[83] The recommendations had little effect on the nation's police departments. New training efforts concentrated on the suppression of disorders, not on their prevention. In addition to the "commission problem", two reasons stand out to explain the failure

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[82]Ibid.

[83]Johnson was supportive of the requests for more emphasis on police civil disorder prevention and control training. Is is doubtful, however, that he was willing to give any support to public identification of the police as causal factors in the disorders.

of the commission to achieve its goal of changing police behavior. First, the commission was the only highly visible national body attempting to give this type of moderate leadership to the problems of public safety and civil disorders. The president and congress were contesting for leadership of the hard-line law and order movement which obviously had a good deal of public support behind it. In such a political environment a presidential advisory commission's recommendations have little chance of achieving much success. Second, the proven ability of the nation's police departments to translate citizen protests against perceived governmental oppression into greater amounts of lethal weaponry again prevailed.[84]

The relationship between the FBI and the commission can best be described as cautious and proper. The commission had to deal with the FBI on the conspiracy issue because the president had specifically vested the bureau with responsiblity for investigating the matter.[85] Thus Director Hoover was the first witness heard at the hearings and he was consulted and informed, directly and through the commission-FBI liasion officer, of the development of the commission's recommendations as late as two days before the final report was published. On all other issues the commission kept the FBI at a respectful distance, accepting its interpretations of the various problems before it as no less authoritative than the others it was receiving from a variety of government departments/agencies.

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[84]For another discussion of this point see pp. 325-329.

[85]See Johnson's Executive Order 11365 and the speeches he made at the time of the commission's appointment. Report, pp. 295-298.

Three individuals made significant contributions to the commission's public safety recommendations: Adam Yarmolinsky of the Harvard Law School, O.W. Wilson, former Superintendent of Police for the City of Chicago and Anthony Downs, Vice President of the Real Estate Research Cooperation of Chicago.

Ginsburg turned to Yarmolinsky for names of persons from whom the commission could secure information on the public safety questions it had set out to answer.[86] Yarmolinsky suggested three types of persons to bring before the commission as witnesses: police officials, academic observers, and local ghetto leaders.[87] In the first two categories he made specific recommendations of persons to be contacted: nine police officials from around the nation and seven academic specialists in police practice and administration, together with the names of two persons from the Katzenbach (Crime) Commission.[88] Instead of listing names of local ghetto leaders, Yarmolinsky recommended that Ginsburg contact three persons whom he thought had good contacts with the indigenous Negro leadership in a number of key cities: John Spiegel of Brandeis University who had been doing research involving ghetto leaders, Kenneth Clark of the Metropolitan Applied Research Center, Inc.,

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[86]Yarmolinsky was one of a group of Harvard professors - Abraham Chayes and Richard Neustadt being the most important-who served as consultants for the commission. While Ginsburg did not limit himself to this group of consultants Yarmolinsky and his colleagues did serve as primary gatekeepers through which vital information about personnel, institutional resources and public policy matters in general flowed through Ginsburg to the commissioners.

[87]Yarmolinsky to Ginsburg, 9/1/67, Ginsburg files, NACCD Papers, LBJ Library.

[88]Ibid.

(MARC) in New York, with whom the commission was well acquainted, and Noel Day of Boston.[89] Yarmolinsky observed that national civil rights leaders were not the best source of information about local Negro leadership.[90] His advice was obviously not followed. Only national civil rights leaders were heard at the commission hearings. Others were heard by one of the other means developed for taking testimony.[91]

O.W. Wilson, formerly of the University of California and Superintendant of Police for the City of Chicago, joined forces with Jenkins in presenting the commissioners with an argument against writing any recommendations which could be interpreted as supporting the exclusive use of the police in suppressing disorders. Wilson was firmly in favor of using the police as agents of civil disorder preventive maintenance. In his testimony, and his written review of the first draft of the police chapters, Wilson strongly endorsed police-community relations as the primary police contributions to the prevention of disorders. He was very cautious about endorsing recommendations which might be interpreted as approval of police use of a variety of kinds of weapons in controlling disorders. Throughout, Wilson supported those on the commission who insisted that the police were more a part of the problem than the solution to the urban disorders; he agreed that the law enforcement agencies had a history and a potential for being serious perpetrators

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[89]Ginsburg cleared Yarmolinsky's list of names with Paul Ylvisaker and James Vorenberg, executive directors respectively of the New Jersey riot commission and the Katzenbach (Crime) Commission. All prospective witnesses were cleared by the White House before being invited by the commission to testify.

[90]Yarmolinsky to Ginsburg, 9/1/67.

[91]Discussed in Section C. pp. 279-291.

of injustice.

The influence of Anthony Downs on the final report of the Kerner Commission was great and his work on the public safety chapters was among his most important contributions.[92] Downs injected into the work on public safety a strong note of political realism. He placed heavy stress on an interpretation of public opinion data which pictured increasing percentages of the population moving toward demands that the police control the unrest in the Negro ghettos and that future disorders be quickly suppressed.[93] Downs' realism had the effect of reminding the staff and the commissioners that their recommendations set forth in the police sections of their final report were counter to a strong current of public opinion running through the nation at the time.

The field trips were the fourth source of public safety data for the commission. Recognition that the residents of the urban ghettos viewed the police and the national guard as an enemy force grew gradually in the consciousness of the commissioners. It was the residents themselves who told them the same thing in visit after visit: there had been official indifference to their needs for basic police services prior to, and repressive police actions during the disorders. Not all the commissioners adopted this position as their own; however, most understood it even if they did not believe it to be true. The question of what to do with and about this attitude of urban ghetto blacks became a bone of contention among the commissioners and between them and the staff as the public safety chapters were written.

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[92]Many of his contributions to the commission will be discussed in section F, 10, pp. 369-376, and Section F, 11, a, pp. 376-384.

[93]See McGrath Minutes for 9/13/67.

The Detroit and Cincinnati field trips were definitive for the commissioners and staff in bringing them to full understanding of this Negro attitude toward the police. The interviews conducted during these city visits exposed them to the unrestrained fear and hatred of the police possessed by established and radical black leadership alike. The commissioners expected to hear radical positions articulated by the leaders Harris and Lindsay met in Cincinnati, but it was the testimony of the Detroit black leaders which shocked the commissioners the most. In Detroit, the local Negro leadership was as moderate and essentially conservative as expected until the topic of the police was raised:

> The existence of police brutality will not be accepted by the community. We are terrorized by it. The answer to this problem has been rejected across the country by the White police departments. We need Civilian Review Boards with power.[94]

> It is more than brutality. The police do not do the things they could; around Northern High School there are drugs being pushed, sometimes by the police, and they get their cut. There is organized crime and Girardin says that he is not aware of it.[95]

At the same time the Urban League of Detroit was conducting a survey of Negro attitudes which identified police practices and ghetto housing as the principle causes of the 1967 disorder.[96] The bitterness which

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[94]Testimony of Reginald Wilson, DESAGE, found in notes taken during the 8/21/67 commissioner's Detroit Field trip. Detroit Field Trip File, NACCD Papers, LBJ Library emphasis in the original.

[95]Ibid., testimony of Charles Colding.

[96]The data produced by this study were later used by the commission.

Harris and Lindsay reported after their Cincinnati visit confirmed that this attitude toward the police was not limited to one city or type of Negro leader.

Some commissioner resistance to adoption of this point of view about the police can be traced to its vigorous endorsement by the junior members of the staff who made the trips with the commissioners and those who participated in the staff field trips; they mounted considerable pressure on the commissioners to identify the police as one of the major causes of the riots. The climax of this struggle came in early December when chapter drafts were circulated for staff criticism prior to their submission to the commissioners. The general staff critique was that the drafts did not reflect the Negro bitterness experienced during all the field trips; Paul G. Bower (Assistant Director of the Department of Public Safety), for instance, insisted that the commission could not settle for simple restatements of the findings of the Katzenbach (Crime) Commission on police practices.[97] Dennis T. Barrett, a field team leader, was commissioned by his fellow field team members to send a draft highly critical of the police-community relations section of the first staff attempt to write a summary of the final report. He said, in part:

> As one of our team members put it, "I can see some practical reasons for saying nice things about the cops in an attempt to make the harsh things more palatable, to them, but it is too late for winning friends." From a structural point of view, the transition from the often brutal role of the police during the riots to the apology for their lives and actions, then back to their

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[97]Memo, Bower To Ginsburg, and Palmieri and Sagalyn, 12/11/67, Public Safety, NACCD Papers, LBJ Library.

> brutality is just too abrupt. What White American is unaware of is the entire range of police misconduct which is the daily factor in the life of the ghetto resident: actual brutality, rough treatment, unjustified stopping on the street accompanied by a rough and degrading frisk, daily insults. If we sugarcoat the complaints, we have failed in our task of alerting the country to the true state of facts. The fact that the Cincinnati police did not shoot anyone by itself does not prove their day-to-day methods are more enlightened.[98]

Predictably, the junior staff members lost this struggle.

Most police officials reacted negatively to the criticisms of them and their work which the commissioners finally approved for inclusion in the final report. The commissioners rejected all the attempts to radicalize the chapters on the police; they produced instead moderate criticism of and recommendations for the major public safety institutions of the nation. In doing so they stayed close to the advice of Anthony Downs and wrote a statement that could be read and understood by the average citizen in the hard-line law and order climate developing in the country.

The other major source of information for the commission in developing the police chapters was data produced by previous riot

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[98]Memo, Barrett to Nelson, "Re: Draft Comments on Shallow Paper," 12/5/67, p. 2., Department of Research, NACCD Papers, LBJ Library. On the same page Barrett added the following footnote: "An informal poll of all team leaders shows that, in their opinion, police malpractice was the major complaint in all of the 23 cities visited. In 7 more cities it was a secondary but still important complaint. In only five cities did the Team Leaders feel it was of little significance." (FN#1) When consideration is given to the fact that the document under consideration here (the "Shallow Paper") was the infamous, for most of the commissioners and Ginsburg at least, "Harvest of Racism" paper which was rejected out of hand by the commissioners and Ginsburg as being too radical, one begins to see how wide the gap between the two groups was.

commissions, other presidential advisory commissions and task forces. From this rich reservoir, the Kerner researchers selected for careful examination the report of the East St. Louis riot commission, the Crime Commission, and the various Johnson secret task forces charged with the study of police and crime related problems.

Ginsburg, Sagalyn and the other members of the staff working on these issues were keenly aware that clear objective reporting by riot commissions of riot provoking and often brutal behavior by the police most often resulted in more money for police departments which in turn produced more personnel and better armed police forces. The history of police methods of dealing with civil disorders seemed, therefore, to be one of providing incentives for the police to maintain their past behavior patterns. The Kerner personnel were aware of this pattern, in particular of the history of the East St. Louis and Chicago riot commissions; that accounts in part for the rejection of the more radical options with which the staff presented them and the moderate tone of the final report. Some aspects of the recent history of police behavior also influenced the tone of the final report. Consultant James Q. Wilson, Professor of Government at Harvard University, reported that there had been a reduction in the uses of massive force against disorders by the police because of political constraints which had developed, particularly in northern cities, in the past thirty years.

> ... we note a significant reduction in the willingness of those who command the police to use them with maximum vigor in suppressing disorder. The attention given of late to real and imagined cases of "police brutality" has obscured the

> fact that, compared to the police response to labor violence even 30 years ago, most big city police departments, especially in the North, have recently been less inclined, primarily for political reasons, to use instant and massive retalitory tactics against any incipient disorder. It would appear that this is one reason the majority of serious riots have occurred in the North, not the South-in the latter regional political constraints on the police are less effective.[99]

Wilson's point, that if willing the police can make the cost of civil disorders too high for the would-be participants, was neither lost on or ignored by the commissioners and the senior staff.

Elaborate use of the work of preceding commissions and task forces was expected of any unit of the Johnson ad hoc advisory system. A major reason for appointing the Kerner Commission was to provide the White House with a means of bringing to public attention a variety of ideas developed by various other commissions and task forces. Ginsburg and Sagalyn were very careful to expose the commissioners to relevant sections of the reports of the annual task forces on civil rights, the task force on the cities and the Katzenbach Commission. Most of this material was worked into the chapters on public safety of the commission's final report.

Data on the compliance of police departments with the recommendations of the Katzenbach Commission, collected by the White House, indicated that only a few of the largest departments even attempted to implement them. Smaller departments were found to be unable, even when willing, to implement the recommendations because of small budgets and number of personnel. This information created concern in the staff

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[99] J.Q. Wilson, "Why Are We Having A Wave of Violence?" New York Times, May 19, 1968, VI, 24.

of the Kerner Commission because of what it portended for its recommendations. In the end, the commissioners settled for a restatement of the Katzenbach Commission's recommendations for two basic reasons. First, the time problem, coupled with the political sensitivity of the issue, forced the commission to put forth recommendations which were known to the administration and the police community, accepted by the former, and by enough of the latter to provide some hope of their being better received the second time around. Second, as noted above, the commission was not happy with the work of the International Association of Chiefs of Police and used little of it in the final report. With little in the way of original research to call upon it is therefore not surprising that the commission turned to the work of its predecessor.[100]

There was a strong desire among some members of the staff to attempt to secure Kerner Commission endorsement for a variety of other concerns raised by some of the task forces and the Katzenbach Commission. The issue which received the most attention by Sagalyn and his colleagues

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[100]A glance at a summary of the Crime Commission's police recommendations shows how closely the Kerner group followed their predecessors lead. The section of the Crime Commission report headed "The Challenge of Crime in a Free Society" had ten subject heads under it: 1) Statutory Guidelines for Stopping and Questioning; 2) Police Participation in Community Planning; 3) Community Relations Programs; 4) Establishment of Citizen's Advisory Committees (Precinct Level); 5) Recruitment and Promotion of Minority Group Policeman; 6) Community Relations Training; 7) Behavior of Police Officers; 8) Procedures for Hearing Citizen Grievances; 9) Police Department Policies for Exercise of Police Discretion; 10) Use of Firearms; 11) Other Recommendations. See memo, Paul Bowers to Ginsburg, Palmieri and Sagalyn, "RE: Crime Commission Recommendations on Police-Community Relations" 9/27/67, Public Safety, NACCD Papers, LBJ Library. One study prepared for the Crime Commission was particularly useful to the commission in developing its recommendations: Civic Accountability of the Police: A Proposal for Police Procedures, by A.J. Reiss, Jr. of the University of Michigan. Reiss' paper can be found in Public Safety Papers of the NACCD, LBJ Library.

was gun control. The time was right for such consideration. The president was beginning a significant publicity effort aimed at securing passage of firearms control legislation.[101] Several key commissioners were known to favor national control of firearms. The members of the senior staff favored such legislation. However, gun control was not a specific part of the president's mandate to the commission. The commissioners did discuss the problem at some length in December.[102] Jenkins, Lindsay, Kerner and Corman supported some form of national gun control. A month earlier Jenkins urged his colleagues to endorse the Federal Firearms Control Act, a position Ginsburg resisted.[103] Considerable staff time was spent in discussions with representatives of the major gun manufacturers about the feasibility of the commission's sponsoring a study of the uses of firearms in the 1967 civil disorders. When the manufacturers learned of the commission's decision to issue one report in March they, with Ginsburg and Sagalyn, concluded that the time and budget constraints precluded commission participation in the study. The contract for the study was turned over to the Stanford Research Institute with the blessing of the commission.[104] Firearms control then

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[101] U.S. President, Public Papers of the Presidents, Lyndon B. Johnson, 1967, pp. 831-836.

[102] McGrath, Minutes, 12/18/67.

[103] Letter McGrath to Kerner 11/29/67, McGrath files, NACCD Papers, LBJ Library.

[104] See memo, Miskovsky to Chambers 10/11/67, covering a letter from William A. Durbin of Hill and Knowlton, Inc. (the public relations firm for Winchester and Remington). Also see memo, Miskovsky to Ginsburg "RE: Stanford Research Institute Study on Role of Firearms in Civil Disorders". 1/11/68, Office of Investigation, NACCD Papers, LBJ Library.

was forced into being a border-line issue for the commissioners; they endorsed the studies done by the Katzenbach Commission on the relationships between crime and the availability of firearms, supported the president's call for federal legislation and called for the type of state and local legislation advocated in the Crime Commission report.[105]

This solution to the firearms control issue was symtomatic of the way the commission was forced by political and time pressures to handle all of its public safety responsibilities; a great deal of staff work was invested in consultation, research and writing, but the final report turned out to be primarily a collection of insights and recommendations of previous commissions and task forces.[106] The result of the work of Sagalyn's department was Chapters 11 and 12, Part IV of the final report, the letters to Johnson about police and national guard training programs and the meetings that resulted from those communications. In public and private testimony, members of the commission and its staff insisted that, despite its lack of originality, the public safety parts of the Report did get the attention of the general public and, more importantly, the special audience toward whom it was directed: the police, fire departments and the national guard.[107] In the last analysis,

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[105] Report, p. 289. See also McGrath, Minutes, 1/19/68. The position adopted was first presented by Kerner.

[106] For a harsh criticism of this see Edward C. Banfield, "Some 'Do's' and 'Don'ts' of Riot Control: A Statement to Supplement by a Consultant to a Consultant." Harvard Review IV (Second Quarter, 1968):41.

[107] See Ginsburg's testimony, Kennedy Hearnings, p. 18.

however, it must be said that the recommendations which were made had been already rejected, or ignored in large part by the nation's public safety institutions and what new ideas the Kerner Commission put forth (largely recommendations about tactics and control made by the IACP) were submitted by the police themselves.

2. Research

a. Department of Research

The Department of Research, headed by Robert Shallow, was responsible for the collection, refinement and interpretation of most of the analytical data contained in the commission's report.[108] As with all the staff departments, the assigned work changed as the commission accommodated itself to its changing political environment. Shallow's primary responsibility was to describe for the commission patterns in the disorders which might be helpful in answering the president's questions. The scheme for accomplishing this involved first, the construction of a theoretical framework, within which the necessary research could be conducted; second, field research by the commission staff; third, analysis of data generated by the staff, government departments and private agencies.[109] To accomplish this in the time

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[108]A brief discussion of similar staff research conducted independent of Shallow's office can be found following this section, pp. 339-343, "Program Research". A special section has been reserved for a discussion of the "Harvest of Racism" paper in Chapter 12, pp. 445-459.

[109]See Shallow, "Social Scientists and Social Action," pp. 209-210 and the memo, Shallow to Palmieri, 1/17/68, "Re: Summary of the Activities of the Office of the Assistant Director of Research", Department of Research, NACCD Papers, LBJ Library.

originally projected, Shallow divided the work time of his department into two parts. First, during the month of September he recruited staff and consultants and set out to develop a systematic plan for collecting data from the riot cities. "Disturbances were ordered into five levels, based on their duration, estimated number of participants, extent of damage, and the level of the enforcement response."[110] Twenty-six cities were studied by field teams which produced approximately 20,000 pages of material which became the "hard data" base for the work of Shallow's staff.[111] Second, from October to December, the department produced nine staff papers, studies of collective behavior, leadership structures, and bargaining processes and general social psychological factors operating during the disorders.[112]

The major effort to take these data and apply them to the theoretical constructs Shallow's staff was developing (white racism, the movement toward two societies, etc.) was aborted with the rejection of the "Harvest of Racism" paper and the reduction in the size of the staff.[113] The shelving of the data collected by the field teams produced the most obvious weaknesses in the report and became the basis for most of the criticism leveled at the commission. These data presented evidence of Negro hostility toward the police, toward many of the Great Society programs and toward the established black leadership; they also showed

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[110]Ibid., p. 209.

[111]See memo, Shallow to Palmieri 1/17/68.

[112]Ginsburg to Commissioners 10/31/67, "Summary of Commission Research Programs," Department of Research, NACCD Papers, LBJ Library.

[113]See Chapter 12, pp. 459-463.

considerable support for the emerging black leaders and their goals of black power and black nationalism. The commission leadership ignored these data because they regarded their source with political suspicion, their status as incomplete, and knew that the commission would have neither time, money or manpower to go to the field again and substantiate the conclusions the staff was reaching. Many of the conclusions the staff reached on the basis of the field team data and which the commission leadership rejected were substantiated in large part by the supplemental studies which the commission sponsored but which were not published until four months after it went out of existence.[114]

The commissioners and Ginsburg did not entrust all research efforts to Shallow and his staff. Late in September, Ginsburg initiated formal contacts with, among others, Richard Neustadt (Harvard), Harry Rowen (RAND Corporation), Kermit Gordon (Brookings Institution) and Francis Bator (Harvard) seeking substantial research help for the commission's work.[115] Specifically, Ginsburg wanted the staffs of these institutions to project short-run (through 1985) recommendations in response to the following questions and requests:

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[114]National Advisory Commission on Civil Disorders, Supplemental Studies For the National Advisory Commission on Civil Disorders, (Washington, D.C.: Superintendent of Documents, 1968).

[115]See for example Ginsburg's letter to Neustadt of 9/28/67, Ginsburg Files, NACCD Papers, LBJ Library. It is interesting to note that Ginsburg approached some of the same persons and institutions used by Califano in his annual visits to the research community of the nation in a search for new ideas for the Great Society programs (pp. 177-179) Ginsburg, however, limited himself to the "Harvards"; he did not seem to feel obligated to go to the lesser known centers of research for his advice. It would appear, then, that he did not seek the approval of the White House for this procedure for obtaining ad hoc research assistance and advice.

"How much will our society have to dispose from economic growth after other important needs are met to lift up the disadvantaged and restore our cities?

What would this cost? (if possible by major sectors of private and social action)

How should the necessary revenues be raised and disposed?

We'd also like to quantify:

The cost of poverty,

The cost of racial discrimination, and if possible,

The cost of civil disorders."[116]

In October, Ginsburg traveled to Cambridge to meet with a group of scholars whom Neustadt had invited to discuss these questions.[117] He came away disappointed; the academics turned down his requests. Through Neustadt they gave four reasons for their actions.[118] First, the economic issues as presented were not of great interest to the group. Second, the academic group was not able to move quickly enough to be of use to the commission; previous research commitments, teaching requirements and other university obligations precluded their moving directly to address Ginsburg's questions even if they found them within the realm of professional interest and competence. Therefore, they

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[116]Ibid.

[117]Those invited were: John Kain (Harvard), Otto Eckstein (Harvard), Lester Thurow (Harvard), Ray Vernon (Harvard), John Meyer (Harvard), Richard Musgrave (Harvard), Robert Solow (MIT), James Tobin (Yale), Francis Bartor (Harvard), Carl Kaysen (Institute for Advanced Studies, Princeton). See Neustadt to Kain (cc Ginsburg) 10/2/67, Ginsburg Files, NACCD Papers, LBJ Library.

[118]Neustadt to Ginsburg 10/16 and 10/25/67, Ginsburg Files, NACCD Papers, LBJ Library.

directed him to the Brookings Institution as "the most efficient instrument for your immediate research purposes."[119] Third, Ginsburg apparently failed to communicate to the satisfaction of the persons at the meeting the specific character of what he was requesting of them. Neustadt indicated in his October 25 letter that Tobin and Solow probably would be willing to help the commission recruit others from the academic community to be of aid if they knew clearly what it was that Ginsburg was requesting. Finally, there was in the group considerable "... diffidence about the immediate utility of the particular jobs..."[120] being requested.

Similar efforts directed at the RAND Corporation and the National Planning Association were no more satisfactory. In replying to a letter from Ginsburg, Henry Rowen of the RAND Corporation said:

> ... with respect to the preparation of an overall estimate of the needs of the cities and the costs of meeting these needs, I don't see how we can do it.[121]

He added that his company could help in the study of poverty (which it did) by evaluating the methods of the Office of Economic Opportunity in its attempts to reach its objectives in the War on Poverty. He also noted that RAND had recently reached an agreement with Mayor Lindsay to carry out some broad studies on problems facing the city of New York. John Miller, Assistant Chairman and Executive Secretary of the National

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[119] Neustadt's 10/25/67 letter.

[120] Ibid.

[121] Letter, Rowen to Ginsburg 10/16/67, Ginsburg Files, NACCD Papers, LBJ Library.

Planning Association, told Ginsburg:

> Within the limits of time it is, I fear, obvious that no one can give you a scientific answer to the questions for which you need answers. There does not exist a classification of the public and private expenditures which separates those directly relevant for the inhabitants of the centers of the cities from other related objectives. ... There is no objective way of defining the "needs" which must be met to improve living and earning conditions within these centers. Nor is there any objective way of deciding on priorities among various national goals - even if we do not consider the uncertainties of the South East Asia conflict.
>
> Ultimately, therefore, the answer to your question must be based to a large extent on judgment, representing the convictions of those responsible for your report.[122]

Thus Ginsburg in his attempt to obtain answers to his questions ran aground on the same problem that would stifle Shallow's efforts: the "commission problem" of lack of time and available resources to do the job. Implicit also in this dilemma was the fact that the data which existed were all directed at questions different than the ones the commission was trying to ask. The commission researchers were beginning to be able to raise new questions on the basis of the findings of the first field trips, but those questions and the answers, at least as first phrased, were not acceptable to Ginsburg and the commissioners, and there was no time to do much in the way of trying again. Ginsburg was vastly disappointed in the research efforts connected with the commission's work. He was not able to uncover the "hard data" he thought needed to answer his questions, the case which Ginsburg wanted to make

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[122]Letter, Miller to Ginsburg, 10/19/67, Ginsburg Files, NACCD Papers, LBJ Library.

to the president, congress and the nation could not be made without the data requested. To ask new questions of data sets compiled with other questions in mind left him with the same problems faced by Shallow; without being able to exploit the leads uncovered in the field research of Shallow's staff the case was to remain a weak one for the following reasons. First, it is clear from the responses of Neustadt and the others to whom Ginsburg first turned that the data sought were non-existent. They had questions for which there was no extant "hard data" upon which to base an answer. The frustration produced by the lack of adequate social-economic data led to a recommendation to the Bureau of the Census for a mid-decade census. The Kerner staff endorsed the idea and worked with the bureau staff to secure outside support for this innovation by noting the needs left unfulfilled by the existing census data.[123] The second reason for the failure of much of the research effort resides in the now often mentioned "commission problem" identified by Lipsky and Olson -- time being the primary problem. Research of the scope Ginsburg was requesting in September could not be

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[123]Director of Research Services, Melvin L. Bergheim in a memo to Koskinen (2/2/68), in which he detailed and criticized the research efforts of the commission, noted that no real body of up-to-date set of comprehensive, consistent data existed to aid the commission in exploring the causes of the civil disorders; the 1960 census did include neighborhood statistical data, and they were the only such data available; they were inadequate, however, for the commission's purposes. For him, this handicapped the commission and the other government agencies working in the area, more than any other factor in their attempt to answer the president's questions. He recommended that the BOB make a comprehensive national review of all government statistical programs that provide social-economic information so that questions growing from the work of the commission might be answered in the future from a more adequate data base, Bergheim files, NACCD Papers, LBJ Library.

completed by July; time was the enemy of the commission, not a lack of money or personnel. As with most commissions, the Kerner group had time only to point the way, not lead. To criticize it for failure to provide new data and methods is to fault it for being unable to achieve the impossible. The third reason for the failure of the total research effort is the resistance of the commissioners and the executive staff to use of data they had. If there had been a greater willingness to exploit the data acquired in the field team efforts, the staff could have been reorganized after the decision to publish one report and sent back into the field to gather additional data to confirm or deny the findings of the first trips. The commissioners and the executive staff, as we have seen, had a penchant for established sources of information; to have leaned too heavily on these new sources of data would have committed them too closely to ideas and groups which the president, and obviously the commissioners, wanted to avoid.

b. Program Research

The research efforts described in the preceding section were intended to undergird the long-range recommendations of the commission's final report. Until the December 13 shift in plans, the commission agenda called for the interim report to contain a series of short-range recommendations which would be formulated by a staff group headed by Richard Nathan.[124]

Nathan structured his department along lines he perfected as

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[124] Nathan began as the Director of Short-Term Programs but his title was changed to Associate Director of Program Research.

director of program research for Governor Nelson Rockefeller in his 1964 presidential campaign. He secured a small group (seven recent college graduates) of research generalists to whom he assigned the responsibility of producing an inventory of existing federal and state programs and whatever "action program" (short-run policy suggestions) could be found by interviewing politically knowledgeable persons in or close to the commission. His scheme next called for this group to produce papers summarizing their research which in turn would be reviewed by policy specialists before submission to the commissioners. He planned, too, to make his staff of generalists available to quickly respond to developing commission research needs.

Nathan's staff produced papers on all the themes touched in the president's mandate, on topics introduced by the commissioners, witnesses and ideas developed by the field teams. Nathan summarized the work of his staff into one paper, Proposed Short-Term Domestic Program Options (12/11/67), which called for commission endorsement of $4.5 billion in short-term program development, financed by a proposed emergency tax program. Nathan's proposals never reached the commissioners. Ginsburg and Palmieri rejected them out of hand as being politically unacceptable. Regardless of the merits of that charge, Nathan became another victim of Ginsburg's inability to adequately and consistently articulate to his staff the type of research he wanted. Lipsky and Olson neatly summarize the dilemma in which Nathan found himself.

> ... Ginsburg and Palmieri were disappointed by the staff document. The early basic program inventories were dismissed... The summary of these documents prepared by Nathan was similarly rejected. Ginsburg and Palmieri

> had been trapped by their own expectations, their inability to communicate their constantly evolving requirements to the staff, and the limits of the early staff patterns which they approved... the failure of the short-term program effort contributed to the commission's decision to abandon the interim report and take more time to produce a single report in a few months... With the decision to change the commission's schedule, condense the two reports to one scheduled for publication at a later date, and with recognition of the difficulties of distinguishing between long and short term changes, the Nathan staff became expendable.[125]

Thus a fourth reason for the failure of staff research efforts can be identified: Ginsburg's inability to communicate to the staff the commission's needs. His consequent development of a small panel of Washington-experienced social scientists to produce the kind of document he thought the commissioners would accept will be discussed in some detail below.[126]

One reason for Ginsburg's uneasiness with the product of Nathan's office lay in the staff's willingness to challenge the established interpretation of the ills underlying the domestic disorders being experienced in 1967. Myron J. Lefcowitz,[127] for instance, saw serious dangers in what he called the traditional liberal approach of the commission to the causes of the civil disorders; there was a danger, he thought, in promising too much, in creating a climate of unfulfilled

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[125] Lipsky and Olson, MSS, V, p. 55-56.

[126] pp. 376-384.

[127] Co-director, for a short time, with Nathan of staff studies on short and long term programs. He came to the commission from being Assistant Director of the Institute for Research on Poverty at the University of Wisconsin.

expectations. He proposed that the commission recommend a set of limited objectives for federal domestic programs from which satisfaction could be realized by the intended beneficiaries of the programs as well as the politicians who created and implemented them. This, he reasoned, would produce more social and political benefits sooner than could be expected from the traditional patterns of New Deal Great/Society policy-making.

Nathan's proposals for domestic policy change were closer to existing administration policy but no less threatening than those proposed by Shallow's group. Nathan insisted that better administration of existing domestic programs could become a serious deterrent to future disorders:

> ... the problem is not so much a need for better policy and legislation as a need to do the job better under the many policies and Acts of Congress which now exist. The groundswell of legislation on Civil Rights up to 1964 and on domestic programs in 1965 has given the government powers and responsibilities in many areas. The questions today are increasingly, not what needs to be done, but how to do better the jobs we are already doing...[128]

He also warned of the dangers of writing a report which might yield to the temptation offered by the hard-line law and order position of allowing the riots to become an excuse for undercutting the effectiveness of those existing programs which were designed to correct the

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[128]Memo, Nathan to Palmieri 10/1/67, Program Research files, NACCD Papers, LBJ Library. See also Lipsky and Olson, MSS, V, pp. 53-54. This idea was not very well received by Ginsburg, on behalf of the White House, but Nathan argued that it was consistent with the president's own position as articulated in his message, "Special Message to the Congress: The Quality of American Government." U.S. Presidents, Public Papers of the President's, Lyndon B. Johnson, 1967, pp 358-368.

the injustices of the 350 year history of Negroes in America.[129]

Nathan was also one of the staff members who voiced misgivings about the established political order. He questioned whether Negro Americans could ever have adequate representation in the public policy decisions which affected them without serious changes in the way public representatives are selected. He called for the commission to give attention to this matter, affirming that such a study could have as major an impact on race relations in 1967 as the Negro family issue introduced by the Moynihan study had in the Kennedy administration.[130] Nathan's suggestions were uniformly ignored. The White House made it clear to Ginsburg that the commission's efforts were to be supportive of the administration's 1968 domestic policy program.

3) Office of the General Counsel

Merle McCurdy's office was responsible for the organization and conduct of the formal hearings, for the taking of all testimony from witnesses and the correlation of witnesses' testimony with the city profiles developed by the staff field teams.[131] McCurdy's original plan was to have two sets of formal hearings, one for each of the reports expected of the commission.[132] The first set of hearings was finished before the decision was made to jettison the interim report. Therefore,

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[129]Memo, Nathan to Palmieri 10/16/67, Nathan files, NACCD Papers, LBJ Library.

[130]Memo, Nathan to Ginsburg 12/4/67, Nathan files, NACCD Papers, LBJ Library.

[131]See pp. 279-291 for the discussion of the hearings.

[132]McCurdy to Ginsburg 8/25/67, General Counsel files, NACCD Papers, LBJ Library.

matters of immediate concern, the conspiracy question and the investigation of why particular cities had disorders and others did not, dominated the hearings held and consequently the final report.

McCurdy's staff thoroughly prepared for each hearing; field interviews were conducted by staff members, the witnesses were carefully questioned before the hearings along the lines the questioning in the formal sessions was expected to take, and each commissioner was given a comprehensive summary of all these interviews, including a summary of prepared statements by the witnesses.[133]

His office was also responsible for studying the city profiles produced by the staff field teams, "... to determine the basis for each material allegation, fact and conclusion set forth. Those not supported by sworn testimony or data on which the commissioners could take 'judicial notice' were isolated and verifying witnesses identified."[134] Considerable time was given to gathering sworn testimony in the field verifying the conclusions arrived at in the city profiles. Robert Conot, who was responsible for the editing of the final report, worked with the General Counsel's office in reconciling the field depositions with the profiles and the hearing transcripts. When this was finished they certified their authenticity for Ginsburg who in turn assured the commissioners that there were no significant contradictions in these various records. This careful coalition of all these materials was

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[133]See, for example, memo, McCurdy to commissioners, 10/14/67 "Re: Views of Prospective Witnesses in the Commission Hearings," General Counsel Files, NACCD Papers, LBJ Library.

[134]Memo, McCurdy to Koskinen 2/13/68, "Re: Methodological Section." General Counsel Files, NACCD Papers, LBJ Library.

necessary, McCurdy was convinced, to cushion the shock the commissioners were going to receive when they read the city profiles.[135]

McCurdy also sent his staff to meetings of groups from whom he thought the commission could obtain useful information.[136] As discussed above, McCurdy was unsuccessful in getting any personal testimony before the commission of the various spokespersons of the emerging black interest groups.[137]

4) Office of Investigation[138]

The task of providing the commissioners with information on the politically sensitive conspiracy question was entrusted to the Office of Investigations under the leadership of Milan Miskovsky. Ginsburg took the White House's concern over the conspiracy issue so seriously that he directed Miskovsky to report directly to him rather than to Palmieri, for which the original organization of the staff called.[139]

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[135]Memo, McCurdy to Ginsburg 10/27/67, General Counsel Files, NACCD Papers, LBJ Library. There were ninety persons deposed in this manner. In addition to taking sworn testimony, each witness was engaged in an extensive pre-interview, usually by phone. There were 167 witnesses heard by the commission in the formal hearings, which extended from August until November.

[136]See for instance, memo, N.R. Jones to McCurdy on Jones' report on his attendance at the National Conference of Negro Elected Officials 10/3/67. General Counsel file, NACCD Papers, LBJ Library.

[137]See pp. 281-282 for a discussion of how testimony was taken from some of these persons. See also pp. 350-351, 403-406, below.

[138]Most of the information of the workings of this office has as its source the memo Miskovsky to Ginsburg, "Final Report of Office of Investigation 3/25/68," Office of Investigation file, NACCD Papers, LBJ Library.

[139]Ginsburg was willing to accept the staff tensions resulting from this change in exchange for control over those parts of the commission's work about which the White House felt the strongest.

Ginsburg and Mayor Lindsay offered Miskovsky the position of chief investigator late in September and he began work on October 4. The schedule he originally accepted called for his work to be completed by August 1, 1968. That date was subsequently changed twice, to May 1 and finally to March 1, in response to the budget adjustments and the decisions to issue only one report. The public charge to Miskovsky was to answer the president's questions concerning a conspiracy by working closely with the FBI. Privatly, his office was expected to aid the commission in developing a statement on the conspiracy issue which had credibility independent of the FBI's position. The distrust of the FBI by Ginsburg and most of the commissioners was undisguised. For them, their work on the conspiracy issue had to stand on its own if it was to be accepted outside the police community.

Faithful to his charge Miskovsky turned first to the FBI to obtain its information on the existence of a national conspiracy before assembling his staff or developing a specific work program for his office. Here Miskovsky was following the lead of Ginsburg who had arranged for J. Edgar Hoover to be the first witness before the commissions. Robert Haynes was assigned by the bureau as the commission's liaison person. After a slow beginning, attributable by Miskovsky to the FBI's unfamiliarity with the data being requested by his office, the cooperation was good.[140]

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[140]Miskovsky kept the senior staff informed of the content of the FBI information passed to his office; e.g. his 11/6/67 memo to Ginsburg in which he told of a FBI report on a rally at the Abyssinian Baptist Church in New York to support Representative Adam Clayton Powell at which H. Rap Brown spoke. The report also had information on Martin Luther King's plans to march on Washington. Office on Investigation, NACCD Papers, LBJ Library.

Miskovsky sought and received help from a variety of other sources. In the Department of Justice Warren Christopher, John Doar, Walter Yagley and Fred Vinson were of great assistance, with Christopher and Doar being of the most value. Each of these men encouraged Miskovsky to direct his investigators toward the urban ghettos, away from reliance solely on information accumulated by other federal agencies. Christopher "... emphasized the need for our staff to live in the ghetto areas, to get the feel of the ghetto as well as information from the ghetto residents themselves."[141] Doar stressed the need to obtain as much information as possible from within the ghetto about organized activity in the civil disorders. Others in the Department of Justice stressed the need to investigate and state clearly any links between the disorders and organized crime in the United States - an area of investigation in which the FBI was notoriously weak. Miskovsky asked the CIA for information on foreign involvement in the urban disorders and the Internal Revenue Service (his "home" agency) for advice on investigating techniques.[142] Contact was also made with the Department of Defense and arrangements were made to use their computer files on domestic militant groups and persons.[143] Lindsay arranged with

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[141]Memo, Miskovsky to Ginsburg 3/25/68, Office of Investigation, NACCD Papers, LBJ Library.

[142]The concern in the administration and congress over Cuban involvement in the disorders was great. The CIA supplied Miskovsky's office with twenty-eight reports pertaining to the extent of such involvement, with the proviso that the agency not be identified as the source of the information in the commission's final report. These data were shared with the FBI and the White House.

[143]Memo, Miskovsky to Ginsburg 11/7 and 12/5/68. Miskovsky files, NACCD Papers, LBJ Library.

Miskovsky to talk with Commissioner Howard R. Leary of the New York Police Department from whom he obtained detailed information on particular black militants. Finally, he touched base with Quinn Tamm of the IACP, hoping to secure his good offices when his staff investigators had need to approach and work closely with the police departments of the key cities.

After having established contact with the federal agencies, Miskovsky set out to name his staff. He and Ginsburg agreed that it should be relatively small. His original plan, based on the August 1 deadline, was to work from October through December developing data on Negro and white militant groups which would become the basis for field investigations; at the same time he proposed securing information from two or three black investigators who would gather information by living for several months in major ghetto areas. The Washington D.C. office was to be staffed by a small group of lawyers who would be responsible for correlating the data from agencies and the field and writing reports for the commissioners. This plan was scrapped with the August 1 report. The size of the staff on which he and Ginsburg agreed was predicated on a May 1 reporting date. It was composed of thirteen full-time persons. A former CIA intelligence officer, an FBI agent and a Secret Service agent (all "on loan" from their agencies) formed the nucleus of the group which did the analytical work on a part-time basis. Three part-time consultants were also employed.[144]

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[144]The staffing was not completed until November 13. In addition to Miskovsky the full-time staff consisted of Stanley P. Herbert, Sarah C. Carey, Martin J. Connell, Harold H. Hair, Haywood L. Perry, Norbert

Field investigations were launched in the twenty-six target cities. They began in November in New Jersey. Miskovsky reported good cooperation from ghetto residents and the police, but he was not so positive about the cooperation with the commission field teams. The field team members and the investigative staff were mutually suspicious of each other. Neither was convinced of the legitimacy of the other's assignment, feeling that the other's operation threatened the integrity of the commission's final report. "After a great many conferences with field team representatives and meetings with all members of the teams, we were able to convince them of the legitimacy of our operation. While we never did receive full cooperation, we were able to work together."[145]

In the middle of November, Miskovsky was asked to produce a statement on conspiracy for the interim report. His department was not structured for that. "I agreed to put down in some fashion some of the information that was emerging but also made it clear that the support for any conclusions was not there."[146] He rather arbitrarily selected

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C. Rayford, Salvador A. Romero, John K. Scales, Kathleen M. Alder, Annie C. Clay and Ruth A. Fisher. John Lynch was secured as a consultant charged with developing contacts with black militants. Byron Morgan (consultant) was responsible for preparation of the presentation of data to the commisssioners. The Navy provided Louis Brickman as a part-time security consultant and Lt. Luis Guinot as a data analyst. Office of Investigation, NACCD Papers, LBJ Library.

[145]Memo, Miskovsky to Ginsburg, 3/25/68, Office of Investigation, NACCD Papers, LBJ Library.

[146]Ibid.

five cities (Detroit, Newark, New Haven, Milwaukee and Cincinnati) as a data base for the work he was to do for the interim report and sent his investigators there. Because of the lack of time, they had to depend almost totally on the police and local residents for information, "... the responsible official in the police departments surveyed all indicated no conspiracy. These conclusions were backed-up -- perhaps not too scientifically, I suppose -- by readings we were getting from our investigators probing the ghettos."[147] This interim effort, which became the final one of the Office of Investigation, meant that most of the staff did field work only in those five cities. Their work and its correlation with the data secured from the various federal agencies became the sole basis for the commission's answers to the president's questions on conspiracy. On December 6, Ginsburg told Miskovsky that there would be no interim report.[148] This meant that the efforts to trace leads on conspiracies found in the initial visits to the twenty-six cities would have to be dropped. Another casualty was Miskovsky's efforts to develop meaningful contacts with black militant groups.

> It was clear to me from the beginning that we had to get information from the militants themselves. I was advised against this course by various members of the staff of the commission. On the other hand, Mr. (Warren) Christopher, among others, advised strongly that it was

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[147] Ibid.

[148] Ibid. This is the only documentary evidence which suggests that prior to its December 12 meeting Ginsburg was aware that the commission was going to change its schedule.

> essential that we talk to the militants... In November I had personally made contact with several Black militants ... and had in fact built a very good relationship with them.[149]

Miskovsky's efforts to have the commission officially sponsor a conference with black militants[150] was aborted. Miskovsky lamented these losses; "... in all honesty, I believe the commission's effort suffered as a result."[151] Miskovsky's was perhaps the most significant attempt to involve leaders of emerging non-establishment black groups in the deliberations of the commission; it, too, was thwarted by the leadership of the commission.[152]

5) Field Trips

The staff field trips were developed to complement those undertaken by the commissioners. Their purpose was to provide the commissioners and all the staff departments with new interview data on urban black attitudes.

The field teams originally planned two rounds of data gathering in the target cities. This plan, too, fell victim to the decision to

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[149] Ibid. emphasis added.

[150] The MARC conference. (See pp. 403-406)

[151] Memo, Miskovsky to Ginsburg, 3/25/68.

[152] Another neglected proposal by Miskovsky's staff was its effort to establish some type of police early warning system to check out rumors of violence which inevitably occurred prior to the outbreak of the 1967 disorders. Miskovsky's idea was to develop a means of keeping rumors from generating into fact by means of an elaborate communication system. No police department studied had the resources for carrying out the idea. See Miskovsky to Ginsburg 11/22/67, Office of Investigation, NACCD Papers.

issue one report. Consequently, those data secured in what had been planned as a first cut of the research population became the total field-based data resource.[153] One interviewee opined that the budget could have been juggled and additional field trips might have been attempted after the December decision, if consultant Richard Scammon of the Bureau of the Census had not convinced Ginsburg and Palmieri that additional city visits would not add much to the data already collected. Scammon argued that the information available from the cheaper data sources available in Washington was an adequate reflection of the urban centers undergoing disorders and that the field trips already undertaken had secured adequate supplemental data. This decision was not welcomed by members of the staff, some of whom thought the census data were completely unable to answer the major questions the commission had to ask.[154]

Charles Nelson's field teams were fully operational by the first of October and the plan which he developed called for the first round of research trips to be completed by November 15 to give his office ample time to compile their findings for the scheduled interim report.[155] The trips were designed to aid not only in the development of the interim report, but also to supplement the data resources of the various executive agencies having an interest in the twenty-six key cities. Nelson

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[153]Lipsky, "Social Scientists and the Riot Commission," p. 78.

[154]For another discussion of this matter see pp. 338.

[155]The outline for the field team's work which follows is taken from a status report on his work filed with Kruzman on 9/28/67, Field Teams, NACCD Papers, LBJ Library.

had as many as five teams of six staff persons each in the field.[156] His plan called for field investigation of seventeen of the twenty-six cities designated as key by the executive staff. The two cities which had university campus disturbances in 1967 were isolated for a special contract study by the Center for Community Studies in Nashville, Tennessee. Each team had two days' preparation in Washington during which persons from a variety of federal agencies briefed them on the city they were to visit.[157] Two to five days were spent in the target city interviewing, observing and collecting "hard" data.[158] The teams spent three days in Washington writing their reports which consisted of the development of a city profile and a disorder scenario, and being debriefed by the agencies which prepared them for the trips.[159] Normally, the full report of each team was reviewed by the staff of the research department and dissected for data useful to sections of the final report other than the proposed city profiles and disorder scenarios.[160] Each team member made at least two field trips.

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[156]They used two of the special assistants to the commissioners and two persons from the staff of the general counsel.

[157]See Nelson to Kruzman 9/28/67, Nelson Files, NACCD Papers, LBJ Library, for a list of the key persons in the various federal agencies who were designated to give these briefings.

[158]The original plan called for a series of follow-up visits by specialized researchers to verify the data generated.

[159]The draft scenario for each city was written by David DeLo, after the debriefing process was finished.

[160]As part of the effort to share and retain the generated data for future use, a verbal data memory bank was developed by taping the briefing and debriefing sessions.

Ginsburg insisted on strict political controls on the field teams. He made the first contact with the city to be visited by calling the mayor and introducing the team members and outlining the purpose of the visit, the planned scope of the research effort and the proposed used of the data generated. Team members were under strict orders to refrain from any contact with the target city until Ginsburg's call was made and to check with his office before major deviations from the announced research effort were made.[161] Ginsburg's office also kept tight political control over the distribution of field team generated data to any non-executive branch agency. He did not want the information to get into the press, or to congress, and become public before the commission was ready to release it; such premature disclosures obviously could cause serious political embarrassment to the commission and the president. Further he ordered that his pledge to the McClellan Committee to share information be honored only after every word of the profiles and scenarios of each city was carefully reviewed by the executive staff.[162]

6) Operations

Stephen Kruzman's Office of Operations was responsible for four specific areas of the commission's work.[163] First, agency liaison, wherein a person(s) in each federal agency was identified as one to whom

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[161]Memo, Nelson to Team Leaders, 9/25/67, Field Teams, NACCD Papers, LBJ Library.

[162]Memo, Ginsburg to Nelson 10/6/67, Ibid.

[163]Memo, Kruzman to Ginsburg 9/29/67, Ibid.

the staff could turn to secure or share information.[164] Second, Kruzman was initially responsible for coordination of the various field team operations of the commission.[165] Third, his office was assigned the task of producing the scenarios of the disorders. This assignment became more modest with the change in the commission's schedule, but Kruzman spent much of his time in January and February working over the disorder scenarios with Conot and the other senior members of the staff. Fourth, Kruzman's staff was assigned the responsibility of recording and maintaining a city by city file of the various data collected by the staff. In October Palmieri was successful in securing more of Kruzman's time for general administrative work.[166] From the previous discussion of the work

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[164]Agency liaison persons also served as funnels for information about commission work to their departments, a device useful in avoiding duplication but also troublesome to the commission when the various agencies engaged in a variety of defensive tactics designed to avoid commission pre-emption of what each regarded as its area of responsibility in civil disorder policy development. See Lipsky and Olson, MSS, IV, pp. 25-27.

[165]See the discussion of field teams, above pp. 351-354.

[166]See pp. 253 for another discussion of this change in duties. On October 2 he assigned Kruzman to general administration of staff affairs. Later that month Kruzman was assigned the following:

> "1. All liaison and coordination of activities associated with the budget presentation.
>
> "2. Continuing follow-up on the program leaders... report.... exactly what their status is and whether their production shows any promise.
>
> "3. All matters associated with the team operations including the follow-up visits, the editing and re-writing ... of the (field reports) and the design of the special operation wherein the team members will search the interview material and the (field reports) for particular concrete examples and problems relating to the special program areas."

Palmieri to Kruzman 10/31/67, Palmieri's file, NACCD Papers, LBJ Library.

of the field teams it is obvious that the redefinition of Kruzman's responsibilities caused some administrative confusion, a predictable result given the rapid adjustment necessitated by the changes in the commission's schedule made scarcely one month after the new assignments were made.

7) Congressional Relations

The politically experienced group of commissioners and senior staff did not need to be reminded that a major part of their responsibility was to work with Califano and the rest of the White House staff to protect the interests of the president in the struggle with congress over control of national public policy development in response to the civil disorders of 1967. All bills and committee work remotely concerned with the areas falling under the fourteen point mandate were closely monitored and collated with the commission's work. Such information was reported to Ginsburg and the White House. The commission wanted particular attention to be paid to the McClellan Committee.

Henry B. (Boots) Taliaferro, Jr. held the title of Director of Congressional Relations and as such was officially responsible for coordination of the various efforts by the commission to work with (and against) the congress. Taliaferro was aware that close coordination of commission-congressional relations was both impossible and undesirable. He was determined, however, to define as broad an area of responsibility as possible for his office. In defending his recommendations for the size of staff needed for his department, Taliaferro defined for Palmieri his view of his basic responsibilities:

"1. To obtain for the commission the results of the relevant work done by the Congress in the past.

"2. To keep the commission informed of the relevant work now being done by the Congress.

"3. To assist the commission in making necessary contacts with the Congress.

"4. To interpret the work of the commission to the Congress and the Congressional staff."[167]

It was point 2 that took most of Taliaferro's time. Closely working with the White House and key congresspersons he and his staff were able to keep the staff regularly informed of the present status of all civil disorder related bills and the administration's position on them.[168] The most important work done fulfilling the third responsibility was the close contact maintained with the McClellan Committee.[169] Taliaferro also worked with executive agencies on their testimony before the commission and congressional committees and getting information to them from the testimony of others.[170]

Ginsburg expected each staff office to keep close track of any congressional actions in the policy areas assigned to it. The reports of these monitoring activities went to Ginsburg and Taliaferro for review and action, if necessary. For instance, Miskovsky's office was given

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[167]Memo, Taliaferro to Palmieri 9/5/67, Congressional Relations, NACCD Papers, LBJ Library.

[168]e.g. in an 8/31/67 memo to Ginsburg, Taliaferro explained that the administration's opposition to the Equal Employment Opportunity Act (SB1545) was based on a perceived threat its cost posed to the passage of the poverty program package, then before the congress. Congressional Relations, NACCD Papers, LBJ Library.

[169]Taliaferro's fulfillment of this particular responsibility is discussed in detail pp. 407-412.

[170]e.g. the Small Business Administration wanted to be alerted regarding any testimony relating to its agency concerns. See memo, Philip F. Zeidman to Taliaferro 10/26/67, Congressional Relations, NACCD Papers, LBJ Library.

special responsibility for watching the McClellan Committee, the House UnAmerican Activities Committee and congressional activity on gun control.[171]

The question of the amount of information the commission should share with congress was never far from the top of the list of problems with which Ginsburg and Taliaferro had to deal.[172] Predictably, members of congress from the cities and states which had experienced disorders and had been visited by representatives of the commission were anxious to have access to the reports of the commission field teams before they were made public. Taliaferro's office received these congressional requests. He resisted sharing the reports until they had been refined and made ready for publication. If the commission was forced to give up the "raw data", Taliaferro argued, it should not be done until the resolution of the budget problem with congress.[173] As matters turned out the budget crisis was resolved without recourse to such actions. The reports were shared with congress, after they had been carefully reviewed by the White House and the concerned executive departments/agencies.

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[171] See memo, Ginsburg to Miskovsky, 10/9/67 and Miskovsky to Taliaferro, 2/15/68. Congressional Relations, NACCD Papers, LBJ Library.

[172] See the exchange of memos with Representative Hebert concerning the national guard discussed pp. 306-309. For a discussion of the sharing of information with the McClellan Committee see pp. 407-412.

[173] Memo, Taliaferro to Ginsburg and Palmieri 11/1/67, Congressional Relations, NACCD Papers, LBJ Library.

8) Public Information

Alvin Spivak, Director of Information, saw the protection of the commission's independence from congress and the White House as one of his chief responsibilities. He knew and understood the axiom which holds that control of the flow of information is a major ingredient in measuring political power and independence. He also was aware of the ability of the White House staff (he had covered the White House as a reporter) to release information in ways designed to best serve the interests of the president. Consequently he spent much of his time trying to prevent or trace leaks from the commission and heading-off White House efforts to pre-empt or influence the commission by means of releasing confidential information common to both.

By Washington standards, Spivak was of average success in accomplishing these goals. Some of the leaks from the commission damaged its relationship with the congress and the White House. A good example is the leak which appeared in Newsweek in early October.[174] The article maintained that the commission would recommend improved training for the police and the national guard, job training programs more extensive than those proposed by the administration, and dismiss conspiracy as an explanation of the disorders.[175] It seems that some

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[174] Newsweek, October 2, 1967, p. 2.

[175] This part of the story was not much of a revelation as the letters to the president on these matters had been sent to the White House by Kerner and Lindsay on August 10 and October 7, respec-

members of the commission or senior staff (most likely the latter) were anxious to implant in the minds of the public, the congress and the White House, the commission's "findings" on the major charges given it by the president. In this game of leaks and counter-leaks by the commissioners, senior staff members and the White House, Spivak was a handicapped participant.

Popper maintains that the public relations efforts of a presidential advisory commission can be an important tool in its efforts to educate the public.[176] He sees every commission having three opportunities for engaging in this type of public education: during the public hearings, through the issuing of public reports, and at the time of the release of the report. In all three areas the Kerner Commission received negative publicity which became counterproductive to its efforts at public education. The public's attention was directed as much or more at the problems the commission had with the White House than at the subject matter of the report. In the end the White House won the public relations struggle and politically neutralized the commission's public relations efforts at each of Popper's critical three moments in the life of an advisory commission.

Spivak opposed most of the studies done on the news media for the

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tively. Knowledge of the imminent publication of the Newsweek story was partially responsible for the early October delivery of the recommendation on police training. The last contention is interesting in light of the fact that Miskovsky was not employed by the commission until October 4. The source of the information in the article on the conspiracy issue must have been FBI Director Hoover's testimony before the commission.

[176]Popper, President's Commissions, p. 36.

commission by outside consultants. He was especially opposed to the work done by the Simulmatics Corporation as part of a contract with consultant Abraham Chayes of Harvard University. The Simulmatics Corporation work, to which Spivak objected, was used in Chapter XV, "The News Media and the Disorders," of the Report. It consisted of a content analysis of the media coverage of the disorders in the cities experiencing them. Spivak argued that the results of the studies were little better than common sense interpretations of the newspaper and TV coverage of the civil disorders; he was chagrined that the limited funds of the commission were used for such shallow insights. However, Spivak was a vigorous supporter and promoter of the commission's conference on the media.[177]

Along with Miskovsky, Spivak worked very hard to open and maintain contacts with a variety of persons in the black communities throughout the nation. He met with representatives of the black press and helped arrange (through Vice President Humphrey's office) meetings in Washington between black newspapers and high Washington officials, including Johnson, at which the concerns of each were discussed. Spivak informed the major black publishers that his office would send them information from the work of the commission which they wanted and needed.[178] His reasoning was that good open communication between the commission and the black community through its ethnic press was an essential ingredient in any formula for disorder control which would eventuate from the

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[177]See pp. 398-403 for further discussion of this conference.

[178]Spivak's letter to a variety of black publishers, 10/17/67, Office of Public Information, NACCD Papers, LBJ Library.

commission's work. Because of the general restrictions placed by Ginsburg on sharing commission work with outside groups the material passed on was not very substantive. But the effort was made, and the black press had a different kind of access to the commission and its work than the other media.

9) Commissioner-Staff Relations

Students of presidential advisory commissions have found it difficult to agree on a common way to characterize commissioner-staff relations. Lipsky and Olson found riot commissions to be inherently fragmentary, a condition which inevitably leads to serious commissioner-staff tensions; there is too little time and too great urgency to get the job done (the Lipsky and Olson "commission problem") to develop a creative process of socialization and group norms.[179] Popper and Drew in their investigations found commissioner-staff relations to be acerbic, tense and guarded;[180] the staff, most often feels used and abused by the commissioners whom they regard as cosmetic appendages to the important work they alone can do. Wolanin, on the other hand, drawing on a much more comprehensive body of data, finds six means by which these seemingly inevitable commissioner-staff tensions have been reduced.[181] First, low levels of commissioner-staff conflicts exist because the two groups tend to share the same perspective toward the problem they have been

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[179]Lipsky and Olson, "Riot Commission Politics," p. 13.

[180]Popper, President's Commission's, p. 23.

[181]Wolanin, "Presidential Advisory Commissions," p. 234.

called together to address. Most staff members see themselves not as ideological partisans, but as agents of the commission. Second, most presidential commissions have a long enough life span that the perspectives of the two groups converge as they share the common educational experience of the advisory group; in general Wolanin found the commissioners became more liberal and the staff members more moderate in reaction to the commission experience. Third, in commissions with wide mandates, demanding large support staffs, (the exception in the administrations he studied) such as the Kerner Commission, partisan conflicts over issues held for partisan and/or ideological reasons existed within the staff. Wolanin thinks this staff ideological pluralism is positive in that it allows the members of the commission a variety of viewpoints with which to agree or disagree. Fourth, commissioners always have independent sources of information and therefore never feel totally dependent on the staff; limited dependency creates only minor frictions. Five, because the commission staff membership, as with commission membership, is always "balanced", there is very little chance that the staff will be "stacked" against the commissioners in any politically meaningful way. Finally, Wolanin found the "neutral-servant-of-the-commission" role to be the one most frequently adopted by the executive staff of the commissions he studied. Strong partisan members of the staff were found, if at all, in the middle and lower levels of the professional staff. The leaders of the staffs of the groups Wolanin studied, therefore, were disinclined to allow a commissioner-staff split to develop.

Examination of commissioner-staff relations on the Kerner Com-

mission reveals the presence of some of Wolanin's tension reduction factors and some of the conflict patterns recorded by the other scholars. The most important factor in reducing tension between staff members and commissioners during the life of the Kerner Commission was David Ginsburg. From the beginning he was concerned to meet the needs of all the commissioners. He was particularly sensitive to what he knew to be a concern of some of the Republican commissioners and staff members that he was too clearly identified with the liberal New-Deal wing of the Democratic Party. He sought to be open to all Republican concerns and to see that those expressed received an open and fair hearing by the commissioners and the members of the staff. He also took care to recruit senior staff members with strong Republican ties (Nathan and Kruzman).

Commissioner anxiety about expressions of political partisanship was not directed solely at Ginsburg. General concern to avoid over-zealous, social reform oriented staff members was expressed and recorded during the first meeting of the commissioners.[182] The exchange between the commissioners at this meeting also revealed conflicts among themselves concerning the role of the staff; Thornton wanted an objective group; Wilkins insisted that such a goal was impossible to achieve; Lindsay pushed hard for a highly professional staff recruited from such placed as the Harvard-MIT Urban Study Center. With these commissioner concerns in mind, Ginsburg set the development of mutual confidence between the commissioners and staff members as one of his first goals; by all accounts he accomplished it and deserved his

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[182]See memo, Bohn to Califano 7/29/67, Commission on Civil Disorders, Califano 3, LBJ Library.

reputation as a fair and even-handed leader.

Another tension reliever was the tenure of the commission and the adjustments in the size of the staff made during the six month period. As the staff grew smaller and the commissioners became more self-confident in their responsibilities, the two groups grew closer together in their diagnosis and prescription for the civil disorders. The field trips in particular speeded the joint socialization process.[183] There developed from this process a broad consensus of support in the commission and the staff for the gains made in civil rights by the Johnson administration and for the goals of the Great Society.

But this socialization process was not sufficient to eliminate the tensions found to be endemic to other commissioner-staff relationships. While Ginsburg was successful in alleviating some of the tension producing pressures, most could not be relieved. The time and resources problem, more than any other variable shaped the final product of the commission and the process which produced it. The closer they came to the date when some kind of report had to be produced, the more estranged the two groups felt. The non-executive members of the staff felt betrayed by the personnel and budget reductions and by the negative reception their work was receiving by the senior

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[183]Acting on suggestions by Paden, the staff "debriefed" individual commissioners after their field trips. This process allowed the members of the staff to have a clearer understanding of commissioner perceptions of the problems underlying the disorders and thereby avoid drafting interpretive sections of the Report that would obviously be rejected by a particular commissioner. See memo Kruzman to Ginsburg and Palmieri 10/24/67, Kruzman Files, NACCD Papers, LBJ Library. See also Shallow "Social Scientists and Social Action," pp. 213-215.

staff members and commissioners. In addition, some members of the staff were convinced that the White House had written off the commission because of dissatisfaction with the work of the staff. For their part, the commissioners were increasingly convinced that the staff was attempting to push them into a position of accepting and therefore having to defend a report which would challenge the existing socio-political order to a far greater degree than the majority of them desired; the bottom line for most of them was drawn under the fact that it was they who had to take public responsibility for whatever the commission produced; they constituted, they reasoned, the Kerner not the Ginsburg Commission.[184] A critical point in staff commissioner relations was reached early in 1968 and examination of McGrath's notes for the commissioner meetings of January 11-11 reveals the ways in which the problem was resolved. By this point in their work the commissioners had experienced the consequences of cutting the size of the staff, revising

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[184]See Lipsky and Olson, "Riot Commission Politics," p. 14. They note that staffs of riot commissions report the need to create a sense of urgency in order to aid in molding the commissioners into a unit in which they think of themselves as a commission, not as individual commissioners. Staff members they interviewed conveyed their sense of the importance of such action in preparing the commissioners for the crucial late stages in the life of the commission when stands must be taken on matters of public policy. In commenting on the Kerner Commission, Lipsky and Olson noted that the staff used such things as the public hearings, field trips and a variety of scholarly articles, such as Fogelson's on the McCone Commission, ("White on Black") to generate a sense of urgency among the commissioners, to "hold" them as a unit until such time as "hard" data could be produced by the various research efforts. As has been noted and implied throughout this study, the Kerner Commissioners needed no such sense of urgency forced on them. They were convinced from the day of their appointment of the urgency of their task, the need for a unified commission if they were to fulfill their responsibilities, and of the necessity of their control of the staff's contribution to their efforts.

their work schedule and were face to face with the very painful reality of having to produce a public statement. Further, they were becoming increasingly aware that if they were to maintain the integrity of their findings, the published report was going to be unacceptable to the president and to large segments of the population. It was in this context that a majority of the commissioners felt themselves being pushed by the staff, and by some of the commissioners, to adopt unacceptable positions. During the two day meeting Corman, Thornton, and McCulloch held fast to the position that the commission should not make recommendations on any matters not directly related to the civil disorders. They resisted and resented what they regarded as efforts by the staff (aided, they thought, by Lindsay) to push the commission into support of a wide variety of domestic programs at the expense of expenditures for the war in Vietnam. These commissioners were anxious to narrow the report to the "real world" of politics facing the administration and not use it as a device for stirring public debate over proposed innovative divisions of scarce public resources; under pressure, they relented considerably in their opposition to recommendations on housing and education.[185] The majority of the commissioners were adamant in rejecting what they thought to be a staff effort to align them in support of the civil disorders.

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[185]During the meeting a sometimes heated debate between the commissioners developed over inclusion of recommendations on housing and education. Lindsay threatened to write a minority recommendation on housing if the majority did not agree to include one in the final report. McCulloch and Thornton joined Corman in resisting a section on housing and education. Jenkins sided with Lindsay, wanting to have a statement in the report calling for a reduction in defense spending with the savings going to urban programs.

Corman reacted so strongly to this perceived threat that he wrote a letter to his fellow commissioners in which he expressed dissatisfaction with the staff work and saw no need for following what he described as the revolutionary efforts on the part of some staff members to overhaul the American system, beginning with the cities.[186] This declaration of commissioner independence was not confined to opposition to positions developed by the "radical" staff, but extended to that of consultants, who were conservative by any definition of the term.[187]

In the midst of the struggle between the two groups the executive staff was drawn more and more into the commissioner-White House camp; they were forced to respond to their responsibility to bring together the disparate parts of the commission's work into a whole that would first meet the commissioner's demands and hopefully those of the White House. It was they who filtered the information flow to the commission and implemented for the commissioners many of the decisions which so alienated the junior staff members. They and the commissioners each engaged in an intricate process of anticipating the reaction of the group to whom they felt responsible (the commissioners and the White House for the executive staff and the White House for the commissioners) for the quality of the information being assembled for the Report. As

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[186]Corman to Commissioners, 1/13/68, Ginsburg Files, NACCD Papers, LBJ Library.

[187]e.g. In a letter to economist James Tobin, reflecting on the "very difficult exercise" he experienced in attempting to get the commissioners to accept a draft of the Report produced by consultant Anthony Downs, Palmieri expressed concern over whether the commissioners would accept any basic innovations. Letter, Palmieri to Tobin 1/17/68, Palmieri Files, NACCD Papers, LBJ Library.

with any research effort, considerable amounts of raw, uninterpreted data together with many drafts of chapters were left in the files rather than risk a negative reaction by the superior body. Mattick makes an important observation about the process of anticipating the reaction of higher authority:

> It was the upper staff levels who decided what materials would be allowed to survive in the final drafts submitted to the commission for review, acceptance of rejection. Whether the upper staff levels were any more accurate in their perceptions about the commission than the latter were about the President and the Congress is a question that is unanswerable, but the entire process of anticipation and the exercise of restrained sensibilities underlies the conservative nature of the Report.[188]

In sum, then, by the way the commissioners and the senior staff handled the problem of commissioner-staff relationships, the commissioners achieved independence from the staff and forced the writing of the report which while more independent than the White House desired, was firmly in the center of the advisory commission tradition -- supportive of the established policies and means of policy-making.

10) Consultants

The consultants most used by the commission were experienced practitioners in the art of advising high level Washington policy makers.[189] They were persons who had been instrumental in the construction and

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[188]Hans W. Mattick, "The Form and Content of Recent Riots," Midway (Summer, 1968): 4.

[189]For a list of all persons and organizations having some form of consultant relationship with the commission, see Report pp. 302-304.

implementation of the Great Society programs, by serving as members, staff persons and/or consultants to White House and/or agency task forces and commissions. Many had also served congressional committees in similar capacities. They were, in short, persons bearing striking resemblance to the profile of the commissioners and Ginsburg sketched above.[190] To be sure, each of the consultants had a technical expertise to offer the commission, but the most important resource each brought to the task was experience in and knowledge of the commitment to the established programs, processes, and goals of the New Deal tradition and establishment. They came to the commission from the leading academic institutions of the nation, private think-tanks and the major Washington law firms.

The contribution of the consultants was greatest during the first weeks of the commission's existence and in the period of early 1968, during the period immediately following the decision to issue one report. The latter period will be discussed in the context of the uses made of the Social and Economic Panel.[191] At this point a brief examination of the early uses of these outside experts is in order.

During the first weeks of the commission's life Ginsburg and Palmieri made trips to Cambridge to discuss the work of the commission and twice met in Washington with a group of urban experts to review the

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[190] pp. 219-246.

[191] pp. 376-384.

outline Ginsburg had prepared for the commission's work.[192] The participants in each of these meetings were persons at home in Washington and in the policy-making environment of the Johnson administration. It is interesting to note, however, that no participant officially represented the White House. In one sense, because of Ginburg's presence, there was no need to have such a person present; in another, the absence of a representative from the White House tends to confirm Wolanin's contention that presidential advisory commissions try very hard to maintain a certain type of independence from the White House.[193]

Dror has described outside consultants as the "new idea" people in the policy-making mix.[194] He sees them as the persons who inject innovation into the otherwise established interest bound system in which public policy is made. Dror's generalization is not valid when measured against the Kerner Commission experience and is of doubtful validity when compared to other advisory commissions. Contrary to his contention, the consultants working with the Kerner Commission were as bound as the

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[192]Present at the 8/31/67 Washington meeting were: Anthony Downs (Real Estate Research Corporation), Don I. Wortman (Office of Economic Opportunity), John McKnight (Commission on Civil Rights, Chicago), Mitchell Sviridoff (then the Human Resources Administrator, New York City, later of the Ford Foundation), Carl Holman (Civil Rights Commission, Washington, D.C.), Don Hess (Office of Economic Opportunity), David DeLo (Systemetrics, Washington, D.C.), James Tucker (Department of Labor), Richard Nathan (then of the Brookings Institution, later of the commission staff), William Welch (Vice President Humphrey's staff) and Palmieri, Kruzman and McCurdy (of the commission's staff).

[193]Wolanin, "Presidential Advisory Commissions," pp. 158-159.

[194]Dror, Policy Making Reexamined, p. 92.

commissioners to the political and established interests of the time. Like the commissioners, they and the senior members of the staff saw the commission as a servant of the administration and thereby bound to its political realities. Also, like their commission peers they desired to continue to serve the administration, a fact also circumscribing the amount of policy innovation possible. Further, the commissioners and the senior staff bought the time of these consultants to obtain insights into the politically possible, not the novel. In several important ways all consultants served the advisory commissions in the same way those commissions serve the president.[195] They are particularly helpful in mobilizing external support for the commission and its report.[196] They mobilize elites who have been neglected in the commissioner and staff recruitment process; they take on tasks the commission cannot, or is unwilling, to do. In the case of the Kerner Commission contract consultants took on the job of doing attitude research and the study of riot arrestees, the structuring and development of the media studies and the media conference, the work of the Social and Economic Panel,[197] stimulating "... private persons or groups to perform tasks that tradition or limited resources will not permit the

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[195] See Popper, President's Commissions, p. 26 for similar insights.

[196] e.g. the use of respected academics from prestigious institutions was extremely helpful in gaining support of that community for the Kerner report. See Neustadt's offer of help from Tobin and Solow (see letter to Ginsburg 10/25/67) It does not strain his argument to apply Chadwick F. Alger's concept "external bureaucrat" to the role played by consultants to advisory commissions. See "The External Bureaucrat in Foreign Affairs" Administrative Science Quarterly, VII, (June 1962).

[197] See below pp. 376-384.

government to undertake itself."[198] The Private Enterprise Panel also attempted to perform this function for the Kerner Commission.[199] They did those technical tasks for which only the consultant institutions had the skilled personnel.[200] As with commissioner-staff and commissioner-White House relations, those between the commission staff and the consultants were often strained. For instance, the commission personnel resented the fact that the major research and writing for the commission was done by consultants.[201]

Most of the Kerner commissioners and staff members interviewed for this study agreed with Popper that the general quality of the consultant's work was low and not worth the time and money invested in it.[202] Etzioni agrees and reflects the frustration of most of the consultants (particularly those who were academics) over the limitations the "commission problem" placed upon them. He blames that problem for the substandard performance of his fellow social scientists in doing research for the commission.[203] Consultant work which was of high quality was produced too late to be of any use to the commission in its deliberations

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[198]Alger, "External Bureaucrat," p. 78.

[199]See pp. 384-387 for a discussion of this panel.

[200]e.g. The use of the RAND Corporation by the Kerner Commission to study guerrilla warfare.

[201]See memo, Koskinen to Ginsburg, Palmieri, Kruzman 11/27/67, Koskinen Files, NACCD Papers, LBJ Library, where the suggestion is made that the consultants be limited to general review and recommendations and that they be excluded from research and writing tasks.

[202]Popper, President's Commissions, pp. 24-25.

[203]Wall Street Journal, July 9, 1968.

leading to the final report.[204] Schuman, himself a consultant, noted in his testimony before the House of Representatives subcommittee investigating the role of advisory committees in the federal government that it was "almost universally true of their studies; the less we paid the better we got."[205]

In a more positive vain, the consultants were extremely helpful to the senior staff in refining the substance and tone of the Report prior to its various parts being submitted to the commissioners. Drafts of the proposed chapters were submitted to a number of consultants, deliberately chosen to represent a variety of viewpoints on the subject matter under consideration. The responses received from these persons allowed the staff to determine and measure with some precision what types of recommendations would be acceptable in the professional community and by whom. When they put the knowledge together with their understanding of the positions of the commissioners and the White House they then were in a position to create a final version acceptable to the latter groups. This process contributed to the conservative tone of the Report.

An example is the development of Chapters XI-XIII, dealing with public safety. Law and order, particularly problems with the police, was a politically sensitive topic for the commissioners, as has been

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[204] e.g. Report, Supplemental Studies.

[205] U.S. Congress, House, Committee on Government Operations. Presidential Advisory Committees. Hearings Before A Subcommittee of the Government Operations, 91st. Cong., 2nd Session, May 26-27, 1970, p. 139.

seen. Drafts of the police chapters were sent to a variety of knowledgeable persons for comment. Most found it too cautious, not conveying enough of a sense of urgency. Henry S. Ruth, a member of the staff of the crime commission and Cornelius Cooper (Department of Justice) complained to Bower of the conservative tone of the draft on policy and community relations.[206] J.Q. Wilson, (Harvard University), tried to steer the report away from crime and move it toward consideration of the disorders.[207] Jerome Skolnick, in February was pleased to find that the late draft was skewed away from what he perceived to be the law and order position of the administration; Herman Schwartz (University of New York at Buffalo Law School) on the other hand, was very concerned about the conservative tone of the final draft it had too little sense of urgency, and not enough attention given to police oppression; Albert Reiss (University of Michigan) failed to find in the draft an appreciation of what he regarded as the positive contribution the emerging black groups were making to social cohesion in the urban black ghettos. The consultants therefore warned the commission of the criticisms the Report would receive from the professional community outside the police establishment. But the commission had to deal with the White House and the police and, because of the president's strong views on the subject which were shared by a small group of the commissioners, the substance of these chapters did little more than restate the concerns of the crime

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[206]Letter, Ruth to Bower, 12/22/67, Copper to Bower 2/21/67, Public Safety Files, NACCD Papers, LBJ Library.

[207]Letter, Wilson to Bower, 12/26/67, Public Safety Files, NACCD Papers, LBJ Library.

commission; a position designed to move the administration away from the status quo but not so far as to completely estrange the police. Here again, it was the president's position on the policy issue which set the limits for the recommendations of the commission.

11) Special Panels and Conferences

Many of the responsibilities of the commission were delegated to ad hoc groups and events. The commission created three special panels and two major conferences to assist it in gathering and processing information it thought could not be obtained in any other fashion and still fulfill the president's mandate within the allotted time. A third conference was projected but not held.

The three planning groups were the Social and Economic Panel, the Private Enterprise Panel and the Insurance Panel. Special conferences were called to discuss the role of the media in the civil disorders and the training of police and national guard to meet the challenge of disorders. The conference proposed, but not held, (the "MARC" Conference) was designed to be a meeting of black militant leaders and commission personnel.

a. The Social and Economic Panel[208]

The most important of the planning groups to the final report was the Social and Economic panel. Three factors led to the forming

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[208]The members were: Kermit Gordon (President, Brookings Institution), Anthony Downs (Senior Vice President, Systemetrics Corporation), James Tobin (Yale University), Louis Winnick (Ford Foundation), Mitchell Sviridoff (formerly with Mayor Lindsay's New York Staff, then with the Ford Foundation) and Richard Nathan (Commission Staff).

of this panel; first, the decision to issue a single report; second, the conclusion reached by the executive staff that Shallow's research department was not going to produce an acceptable report; third, the need to find a means for integrating the "short-term" recommendations of Nathan's office (originally prepared for the interim report) and other staff research efforts into a draft outline of the single report now scheduled for publication in March.

Ginsburg wanted this planning group to make recommendations which would, if adopted as national policy, achieve three specific goals; first to open opportunities to urban Negros which were denied them by racial segregation and discrimination; second, to improve the quality of life in existing Negro neighborhoods in larger cities; third, to provide increased opportunities for political self-determination by Negro citizens (particularly in government programs aimed at achieving the first two objectives).[209] The panel met three times (December 12,20, and 29, 1967).[210] Anthony Downs, the group's rapporteur, charged by the panel with producing a paper for the commissioners and the members of the staff on social and economic problems, produced three rough working outlines for the second meeting, the content of which became the basis for the social-economic recommendations of the commission's final report. In his December 20 working paper, Downs articulated the issue before the commission in terms suggestive of those put forth earlier to the

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[209]Letter, Ginsburg to John Garner 1/3/68, Ginsburg Files, NACCD Papers, LBJ Library.

[210]Memo, Ginsburg to Commissioners 12/22/67, Ginsburg Files, NACCD Papers, LBJ Library.

commission by Daniel P. Moynihan.[211] Simply, Downs told the commission that the fundamental question it had to answer was whether to direct its social-economic recommendations solely toward the black urban community or toward the urban American under-class in general. The decision was, he said, essentially political. He posed it in this manner:

> In designing policies to remedy low incomes, poor housing and other undesirable characteristics among Negroes, the question arises concerning whether these policies should be aimed at Negroes specifically, or at all persons suffering from similar deprivations, regardless of race.[212]

Downs saw five advantages to focusing program recommendations on Negro Americans. First, there are fewer Negroes, therefore, the costs would be considerably less. Second, blacks suffer more from racial discrimination than from any objective inferiority traits. Third, it is "morally appropriate" to focus on blacks, as white Americans are the major cause of their present relative deprivation.[213] Fourth, since the present civil disorders are closely tied to racial injustice focusing remedial

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[211] See p. 453.

[212] See, Anthony Downs, "THE FUNDAMENTAL ISSUE OF WHETHER REMEDIAL POLICIES SHOULD FOCUS UPON NEGROES SPECIFICALLY," p. 1. This 16 page paper is attached to the 12/22/67 Memo Ginsburg to the commissioners cited in Footnote #210 of this chapter. Both are in Commission on Civil Disorders (1), Califano (3), LBJ Library.

[213] "Only in this manner can existing -- not just past -- racial discrimination be offset. This principle is not based upon 'compensation' for past evils, but current ones right now oppressing Negroes." Ibid., emphasis in the original.

policies on urban blacks would be helpful in reducing the problem of future disorders.[214] Fifth, "Since policies aimed at Negroes specifically could be much lower scale than those aimed at providing equal remedy to general conditions, such policies would be easier to administer and could be put into effect much faster."[215] The disadvantages were equally formidable. First, such a plan if adjudicated could be ruled unconstitutional by the courts. Second, by ignoring the majority of the poor it could be regarded as unjust by them and others. Third, if whites are in fact anti-Negro, the program could die because of significant political opposition.[216] Fourth, such a program could increase white prejudice because of perceived "favoritism." Last, the objects of such special programs conceivably could object to special treatment as discriminatory and humiliating.[217] For Downs, this decision, because it is political in nature, must be made by the commissioners, not the staff. The fact that some of the recommended social-economic programs could be handled differently than others ("Housing remedies could be general, but educational ones racially focused") did

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[214]This principle can, of course, be seen as a foundation for the white racism theme of the Summary of the Report. It probably helped to establish that theme, but as will be seen below, the Ylvisaker Task Force report, which Downs gave to the commission staff, and the efforts by Mayor Lindsay were more directly related to the adoption of that controversial idea.

[215]Downs, FUNDAMENTAL ISSUE, p. 2.

[216]Downs noted here that most of the welfare and other programs aimed specifically at Negroes had dried up.

[217]Downs, FUNDAMENTAL ISSUE, pp. 2-3.

not alter the fact that the "policy decision remains a political one."[218] Downs laid out further implications for the commission if it accepted his proposed focus for the social-economic program recommendations. He offered four principles upon which programs for urban blacks could be built. First, such programs must be developed with the realization in mind that the conditions of ghetto life form an entire system of deprivation and frustration leading to individual alienation and must, therefore, aim at environmental as well as individual change. Second, remedial recommendations must be person, not program and agency centered; programs must fit individual needs not individuals into slots. Third, whenever possible, program recommendations should resemble the G.I. Bill model, which allowed the individual recipient to apply the benefits of the program to him/herself. Fourth, all program recommendations should aim at removing disadvantaged persons from positions of direct dependency upon public authorities, from positions of direct adversary confrontation with the authorities and from isolation from the major components of the majority's social-economic system.[219] In this fourth principle Downs came closest to challenging the premises underlying the view of political reality held by most of the commissioners and the senior staff. In his text he elaborated on this point. He called for the conferring of certain benefits upon individuals as rights together with an education program informing them about the character of those rights. In addition he

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[218] Ibid., p. 3.

[219] Ibid., p. 5.

called for some participant control over programs. He proposed a series of ways to reduce social and economic isolation of urban blacks (e.g. the programs must make a serious effort to obtain a heterogeneous mix of haves and have-nots and to shift as many persons as possible into the free enterprise system and thereby move them from the welfare sub-culture to the dominant economic culture.) The remainder of Down's paper was devoted to developing an outline for a new national jobs policy. His proposal here was essentially an extension of existing Great Society programs -- federal money stimulating work programs in the private and public sphere with emphasis on young urban blacks, the private enterprise sector of the economy and on development of economic resources within the black urban ghettos.

This exposition of the Downs' paper is important for three reasons. First, Downs was the most important consultant to the commission and the Social-Economic Panel was a major vehicle for his work. He served as the staff member to the panel, thereby doing most of the research and writing for group. He served the whole commission in similar and equally important ways. He was present at the crucial early meetings of consultants called by Ginsburg in August. After the collapse of the interim report schedule and the rejection of the major staff program research efforts, he more than any other non-commissioner, dominated the efforts by the commission to develop a politically credible report. His paper focused the commission's attention on urban blacks and the problems of employment.[220] Downs made a politically

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[220]It has been noted before (pp. 234-236) that there was considerable intracommission fighting over the wisdom and practicality of proposing

more significant contribution when he shared the report of the Ylvisaker Task Force on Cities with Ginsburg and Palmieri.[221] Most of the recommendations of that task force found their way into the commission's report including the white racism and two societies themes.[222] Second, the paper presented at the two December meetings contained the most detailed presentation laid before the commission of the very provocative position that there is a strong link between the Great Society programs and the disorders. Down's argument was already known to the executive staff. In a September letter to Palmieri, Downs made a plea for relating government performance to the rising aspirations of American Negroes and the disorders.[223] He also spoke against recommending programmatic solutions which would be administered from outside the black community. He repeated these concerns in the paper presented to the commissioners at the two December meetings. He noted, too, that law and order, of a kind, can be restored to the cities without correcting the conditions which produced the disorders by making heavy expenditures for more police personnel and equipment. To avoid this he tried to focus the commission's attention on urban black Americans and program

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social-economic programs in areas other than employment (housing and education being the two most hotly contested candidates for inclusion). Downs obviously disagreed with those desiring to exclude from the report areas of concern not immediately related to the disorders. But he did secure a place in the Report for jobs and the private enterprise system.

[221]See Lipsky and Olson, MSS, V, 14-15, for a discussion of this series of events.

[222]See the discussion of the Ylvisaker task force report p.

[223]Letter, Downs to Palmieri, 9/1/67, Palmieri Files, NACCD Papers, LBJ Library.

recommendations which had the potential of meeting their rising aspirations and in which they could share. Third and finally, Down's work, as represented in the above discussion presented the executive staff and the commissioners with the ablest challenge to the conventional liberal wisdom it would receive. His efforts to tie together the Great Society programs and the urban disorders, his consequent efforts to refine the problem of law and order and his efforts to endorse citizen participation in local policy-making affecting them, while hardly radical in intent or content, were innovative enough to capture the attention of the commissioners and the staff. It is equally important to note at this juncture that the White House's negative public reaction to the social-economic recommendations of the Report, which were not as innovative as Downs had recommended, was predictable for two reasons. First, the White House staff had once before secretly rejected the recommendations of the Ylvisaker task force and their modified reappearance in the Kerner final report were equally unacceptable. Second, the White House had no intention of moderating its stand on the relationship of law and order to the disorders. Finally, the White House was unwilling to change its position on community participation in the Great Society programs. Johnson was adamant in his conviction that a mistake had been made in the Community Action Program by not allowing locally elected officials to have the final say on the various programs. He did not intend to allow that mistake to be made again, despite the timid endorsement of community participation finally approved and adopted by the

commission.[224]

b. Private Enterprise Panel[225]

This panel was established broadly to "... consider the appropriate role of the profit making free enterprise system in helping to alleviate the causes of the civil disorders..."[226] The panel gave specific attention to developing tax incentives and "... comparable ideas for private sector participation in coping with economic problems in areas that have suffered or are threatened by civil disorders, as well as with the problem of migration from rural areas."[227] Ginsburg's intention in endorsing the creation of the panel was to give it exclusive responsi-

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[224]See Report, pp. 154-155.

[225]See Report, Appendix I, pp. 313-317, "Report to the Commission of the Advisory Panel on Private Enterprise." Members of the panel were: Commissioner Thornton, Chairman, John Leland Atwood (President and Chief Executive Officer, North American Rockwell Corporation), Martin R. Gainsburg (Senior Vice President and Chief Economist, National Industrial Conference Board), Walter E. Hoadley, Senior Vice President and Chief Economist, Bank of America), Louis F. Polk, Jr. (Vice President, Finance, International Development, General Mills, Inc.), Lawrence M. Stone (Professor of Law, University of California, Berkeley). William Smith, Commissioner Thornton's press secretary, served as executive director of the panel. An undated and unsigned document titled Proposed Members for Thornton Committee was found in a file of the commission. The names of Polk and Hoadley appear on this list as does a recommendation for a tax lawyer (which position Stone filled). The other names mentioned were D.W. Brosnan (Southern Railroad), Dan Smith (Harvard University and formerly Assistant Secretary of the Treasury for Taxation under President Eisenhower), and the last names Austin (Coca-Cola) and Lundy (Executive Vice President Ford Motor Company) were handwritten at the bottom of the document. This proposal also called for "one or two academic world figures." Ginsburg wanted Charles Zwick to serve on the panel, but the BOB Director preferred to be available to the group as a consultant. See Tax Incentives file, NACCD Papers, LBJ Library.

[226]Report, p. 313.

[227]10/23 draft of telegram sent to nominees for membership on the panel. This is identical to the language in press release of 11/21/67, Private Enterprise files, NACCD Papers, LBJ Library.

bility in these areas on behalf of the commission.[228] But that was not to be. In the rush of events in the commission's life in December and January, the panel's mandate was preempted by Down's Social and Economic Panel. The concerns and recommendations of the Thornton panel found their way into the final report, but more because of their endorsement by the Downs' panel than by the work and influence of Thornton and his colleagues. The commission's acceptance of the Social Economic Panel's work can be attributed simply to the fact that Down's work was finished first.

The question of whether or not the commission should recommend the establishment of a national policy of tax incentives to business as a means of channeling private capital into particular kinds of urban ghetto projects occupied most of the time of the panel. Various tax incentive proposals were extant in the Congress and the executive branch; commissioners Thornton and Harris were particularly interested in supporting such a set of recommendations.[229] Ginsburg's political instincts and his expertise in the intricacies of the national budget, informed him of the potential for stalemate in the pursuit of the topic.

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[228]See memo, Ginsburg to the commissioners, 10/30/67 in which he noted that the commission's formal hearings could not focus on tax incentive problems because the Panel on Private Enterprise was to deal with it. Tax Incentive file, NACCD Papers, LBJ Library.

[229]Harris also had a concern for developing policies which would encourage a reversal of the rural-urban migration which he thought to be one factor underlying the disorders. He and Senator James B. Pearson of Kansas were at that time co-sponsoring the "Rural Development Act" which contained tax incentive provisions aimed at attracting job producing capital to rural areas suffering from immigration of their work force. It was Harris' interests in both areas which brought them into the arena of the commission's concerns.

He consequently was willing to turn the matter over to Thornton and his panel.[230]

The panel began its work on December 6, just prior to the decision to shift to one report. Thornton and Kerner had assured the panelists that their commitment of time would be minimal, the panel's staff would function in the manner common to most presidential advisory commissions, a method of operation in sharp contrast with that of the commission itself.

The members of the panel raised the issue of tax incentives in the context of six areas (job training and employment, housing, economic development, Negro entrepreneurship, education and attitude change) in which they felt private enterprise could make a signifcant positive contribution toward changing the socio-economic environment in which the disorders had developed. The limitation of time forced them to give the majority of their attention to the urgent problem of persistent, hard-core rural and urban unemployment. To enable the private sector to meet the challenge, they recommended a scheme for recruitment and employment of such persons together with a plan for private investment in rural areas and a joint business-labor-civic organization clearing house for exchanging experiences in dealing with the problems of the hard-core unemployed. To finance their scheme they called for sub-

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[230]Not before, however, he had sought out the names and positions on the issue of the persons in the executive branch most knowledgeable about the political and economic implication of the various tax incentive proposals then under consideration. He found most of these experts to be against such plans.

stantial federal tax credits to businesses willing to engage in it.[231] A modified version of their proposals appears in the text of the Report in Chapter XVII, "Recommendations for National Action: Employment."[232] The employment recommendations found in Chapter XVII calling for the use of tax incentives as a means of alleviating hard-core urban and rural unemployment represents a considerable adjustment of the recommendations found in Appendix J. The Chapter XVII recommendations were tailored to meet the known resistance and support centers in the congress and the executive branch. For instance, Taliaferro reported to the commissioners that tax incentive legislation had little chance of passing the House of Representatives because of the opposition of the Ways and Means Committee Chairman Wilbur Mills; he was reported to be opposed to any tax incentive bill. The senate was more favorably disposed toward such legislation: The Harris-Pearson bill had been filed and Senator Robert Kennedy (D. New York) had filed a bill titled "The Urban Employment Opportunity Act" which containted tax incentive measures.[233] The Treasury Department, through Stanley Surrey, in its pre-publication review of Chapter XVII, was generally disapproving of the commission's proposals in the context of existing federal tax law.[234] The Department of Labor, through Secretary Wirtz, favored direct payments to companies

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[231] Report, p. 314.

[232] Ibid., pp. 235-236.

[233] SB 2088

[234] Letter, Surrey to Ginsburg, 2/13/68, "Tax Incentives" file, NACCD Papers, LBJ Library.

if such on the job training programs were to be expanded by federal action.[235] There was also known opposition in the Department of Labor to all the programs for training the hard-core unemployed by business; they regarded them as failures, wasted efforts at best and stalling efforts by business at worst.[236] The commission was also aware that the Ylvisaker task force had been negative toward tax incentive schemes as a means of reducing unemployment. The commissioners knew, too, that the Kaiser and Douglas commissions shared this point of view. In sum, the commission created the Private Enterprise Panel to guarantee that a particular strong point of view of established business interests would be represented in the work and product of the commission and that a particularly time consuming task would be taken on by a group other than the commission. It was clear to the leaders of the commission from the beginning that recommendations for increased use of tax incentives to finance the private sector job training programs would not survive the congressional or executive branch policy-making process. But the schemes were proposed because the interests pushing for them were well established and their support was needed for the other commission recommendations.

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[235]Letter, Wirtz to Ginsburg, 2/7/67, Tax Incentives file, NACCD Papers, LBJ Library.

[236]See the Department of Labor study on job training programs- a ten page untitled, unsigned, unaddressed document found in the Department of Labor Subject files, Roll 54, LBJ Library.

c. National Advisory Panel on Insurance in Riot Affected Areas[237]

It can be argued that the Private Enterprise Panel suffered most in its work from too broad a mandate. Its members did not have time to get a proper fix on their assignment; too many radically diverse components constituted the private sector of the economy to allow for the panel to develop a coherent national plan for its involvement in ghetto development. No such problem faced the White House and the commission when the decision was made to establish an advisory panel on insurance. The problems to be solved and the industry to be addressed were clearly identifiable.

For the commissioners the problems of insurance coverage were visible in the property damage in the riot-affected cities they visited and in the testimony they received in the hearings. They knew a significant sum of money was going to have to be produced if the damage was to be repaired. The field trips revealed that in some areas insurance was not available to ghetto merchants and residents before the disorders and in other cases that which was available either was withdrawn by the companies or increased in cost beyond the capacity of the insured to pay.[238] In the 1967 disorders it became obvious to most that three

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[237]The members of this panel were: Chairman, Richard J Hughes (Governor of New Jersey), Vice Chairman, William W. Scranton (Former Governor of Pennsylvania), Frank L. Farrell (President, Liberty Mutual Insurance Company), George S. Harris (President, Chicago Metropolitan Mutual Assurance Co.), A. Addison Roberts (President, Reliance Insurance Co.), Walter E. Washington (Commissioner, District of Columbia), Frank M. Wozencraft (Assistant Attorney General in Charge of Legal Counsel, Department of Labor). Stanford G. Ross, a BOB staff member on White House assignment as staff assistant to Califano was named by the White House to be the executive director of the panel.

[238]See Report, pp. 198-199.

major deficiencies existed in the law and practice of the insurance industry which threatened to block the flow of money needed to rebuild the ghetto areas. First, most insurance policies written prior to and including 1967 contained a contingency clause providing for voiding the contract if the property damage sustained by the insured was due to an act of insurrection.[239] Second, the Federal Disaster Act of 1950 did not provide for aid to victims of civil disorders. Third, the insurance companies thought themselves to be handicapped by various state regulations which forced them to set their rates in a particular state on the basis of their losses in that state.

The industry's campaign to get federal government aid in its effort to change public policy in its favor was quickly mounted. A prominent industry journal noted late in July that the disorders:

> ... prompted an industry meeting last Thursday, with an eye to discussions with the federal government. The companies hope to work with the government to devise a program which will allow a realistic approach to insurance coverage in riot potential areas... Because insurance rate making, using the past as a guide, is designed only to produce a profit from business currently accepted, the losses of last

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[239]Governor Romney found his ability to respond to the Detroit disorder severly limited by these contract provisions. President Johnson and Attorney General Clark were determined to get from the governor an admission of his inability to contain the disorders (a de facto admission that a state of insurgency existed) before they authorized the dispatch of federal troops to aid in the restoration of order. Romney had been advised by counsel that such a declaration on his part would void most of the insurance policies in the disorder area. The dilemma was eased by a later agreement by the major insurance companies to honor their contracts, regardless of the insurgency clause. However, the problem of how many times this solution could or would be evoked remained for Michigan and national political and industrial policy-makers.

> week will never be recovered. Rates or coverage, or both, will have to change if companies are to continue to underwrite these exposures.[240]

The companies expressed concern that they would be left holding the financial bag for the social and economic catastrophe created by the disorders, which were, according to the policies they wrote, not covered and not insurable. Their discussions centered on the fact that the cost of their reinsurance contracts were bound to rise both because of the disorders and because those rates were set by foreign companies, principally Lloyds of London. Aware of this latter concern, conversations were carried on with Lloyds of London by the insurance panel staff. Ross summarized the company's position in a September file memo.[241] Lloyds, he said, will take the American market as they find it. They do not plan to interfere with American public policy matters. For this reason, the chairman of Lloyds choses not to come to the United States to talk with the panel or interested congressional committees. The Lloyds' representative also imparted to Ross that "... some American companies had suggested to Lloyds that it take a position that it would not reinsure against the riot risk in its treaties which were being renewed as of January 1, 1968."[242] Ross notes that Lloyds replied that it would take no radical action although it would have to maintain flexibility on the terms of the treaties. It would appear, therefore, that being

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[240] Best Weekly, July 31, 1967, p. 1.

[241] Ross File Memo 9/29/67, Panel on Insurance in Riot Affected Areas (1), Robson-Ross Pricing Files 33, LBJ Library.

[242] Ibid.

relieved of the necessity of writing contracts in ghetto areas was a high priority goal for some American insurance companies despite statements to the contrary. Ross and his colleagues also found that Lloyds regarded its losses on its American reinsurance business to be unacceptable. In 1964, the last year for which public figures were available in 1967, Lloyds reported their greatest losses in some time. They were more attributable, however, to Hurricane Betsy than to the disorders in Watts. It seems that Lloyds' concerns were based on a strict profit and loss pattern, regardless of what was insured. Some American companies, on the other hand, were concerned to strip themselves of a particular type of loss; a loss which according to Lloyds' figures, was not great when compared to natural disaster damages. It can be argued that these companies found it politically easier to drop their ghetto property and business contracts than those written for natural disasters because the latter covered a more diverse socio-economic (and therefore politically effective) clientele.[243] H.J. Maidenberg in an article in the New York Times cited figueres, not significantly different from those in the insurance panel records, which show the civil disorders losses to be relatively minor.[244] He found that the London reinsurance companies were turning their backs on the American companies that normally "parcel out large portions of their

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[243]Documentation on Lloyds losses and further discussion of its situation can be found in Panel on Insurance in Riot Affected Areas (4), Robson - Ross Pricing Files 33, LBJ Library.

[244]July 9, 1967, 32:1.

risks to underwriters in Britain." This he said was the reason for the cancellation of many policies in riot areas. He noted that the riot losses for American companies totaled some $70 million against an income of $23 billion.[245]

Johnson and Califano were aware of the problems in which the insurance companies and the states perceived themselves to be. Discussions on the insurance problem were held in the White House within days of the Detroit disaster. Califano sent a briefing memo to Johnson on August 4 telling him how Governor Brown had worked with the insurance companies in Watts to insure payment to policy holders. He also assured the president that the major insurance companies in Michigan had agreed to cover the losses in Detroit. He noted, too, that he had instructed the Department of Justice to examine this whole matter.[246] During the week preceeding the writing of this memo, Johnson had received a letter from the New Jersey City Merchants Council urging passage of SB 1484 which would establish a small business crime protection insurance corporation designed to provide insurance for merchants unable otherwise to obtain it.[247] A month later, the New Jersey Merchants Council sent a telegram to the president "regretting" the lack of retailer representation on the insurance panel. The wire claimed that merchants had suffered

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[245]For its internal purposes the panel estimated that the insured losses in the disorders were $100 million and the uninsured to be between $25-100 million. Memo, Ginsburg to Commissioners, 9/18/67, Insurance Panel, Ginsburg Files, NACCD Papers, LBJ Library.

[246]Memo, Califano to the President, HU2/Box 6/File 7/30/67 - 8/8/67, LBJ Library.

[247]Robert A. Wright, "Economists Look at Cost of Riots," New York Times July 30, 1967.

the greatest losses in the disorders and therefore should have a voice in the panel's decision making.[248] Further, many knowledgeable persons were expressing their concerns to the White House that the insurance companies would withdraw from the urban ghetto market.

The White House intended the insurance panel to operate in a semi-autonomous manner. The wedding of the panel to the Kerner Commission was a matter of political necessity; the White House doubted that congress would stand for the appointment of yet another advisory comission designed to deal with matters it too was investigating. As far as the Bureau of the Budget was concerned the panel was a part of the Kerner Commission[249] and Ginsburg arranged the administrative procedures in such a manner that the staff of the panel reported directly to him as well as to Governor Hughes and the other panel members.[250] But the members of the panel and the White House staff treated the existence of the insurance group as if it were another presidential advisory commission. Hughes held his own press conferences, without first consulting the

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[248]Letter, Harry F. Salomon, President to President Johnson, August 24, 1967. HU2/Box 6/File 7/30/67 - 8/8/67, LBJ Library.

[249]See memo, Ross to Palmieri and William Cannon (BOB) 9/7/67. Insurance Panel file, NACCD Papers, LBJ Library.

[250]Memo, Ginsburg to Palmieri 8/19/67, Insurance Panel, Ginsburg files, NACCD Papers, LBJ Library.

commissioners about their content,[251] the panel held its own hearings and conducted its own investigations and issued a separately published report which was received and highly praised by the president.[252] The panel established an independent set of relationships with congress, which was conducting hearings on a variety of bills designed to meet the insurance problems caused by the disorders.[253] The panel also established itself in an independent consultant role by turning its staff to the task of working out an insurance plan for the District of Columbia which it hoped would be a model for other cities.[254]

The panel set for itself three general goals which it intended to achieve before its December 12 termination date; 1) to endorse and recommend to the states the development of "Urban Area Plans"; (these plans, which were essentially a local insurance pool created by industry and government cooperation, had been successful in several cities, most

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[251]Ginsburg kept the commissioners informed of the panel's actions, but not always before they happened.

[252]The panel's report was published under the title "Meeting the Insurance Needs of Our Cities (Government Printing Office, Washington, DC 1968). A summary of that document can be found in the Report, Appendix H, "Basic Findings and Recommendations of the National Advisory Panel on Insurance in Riot-Affected Areas," pp. 305-312. In receiving the panel's report, Johnson made no effort to relate its work to that of the Kerner Commission. See US President, Public Papers of the Presidents, Lyndon B. Johnson, 1968, pp. 77-78.

[253]The panel did not carry out this liaison through Taliaferro's office but there was contact with the commission in this effort because each of the committees with which it worked most closely had a commissioner as a member: Senate Banking-Brooke, Senate Small Business-Harris, House Small Business-Corman.

[254]See letter, Ross to Walter Washington, 10/10/67, Insurance Panel files, NACCD Papers, LBJ Library.

notably Boston). 2) to reinforce state insurance commission efforts to resist any company attempts to cancel existing inner-city contracts;[255] 3) to work with the congress in developing crime insurance legislation for small businesses; 4) the creation of a national insurance pool to handle losses incurred in the civil disorders from Watts through 1967. The intent in this last goal was to leave the problem of the development of a national "riot insurance" policy to the commission as one of its long-term issues which it planned to turn to after issuing its interim report. Events, of course, precluded such a plan.

Working in tandem with the White House, independent of the commission except for reporting purposes, the panel had no difficulty achieving these goals; they had been endorsed by the administration at the time they were being formulated by the panel and had found themselves in a number of Great Society legislative proposals. In the one area where the panel encountered obstacles pursuing these goals, it functioned well in the established tradition of ad hoc advisory bodies -- it served to reconcile industry and administration needs in a manner acceptable to both. The post-Detroit insurance conflict into which the panel was placed was waged between the large and small insurance companies. The large companies sought legislation authorizing a national insurance pool together with federally guaranteed ceilings on losses due to civil disorders.[256] The small companies were opposed to any federal rein-

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[255]See letter, Ross to State Insurance Commissioners 9/18/67, Insurance files, NACCD Papers, LBJ Library.

[256]See R. Lewis. File Memo 9/22/67, Insurance Panel files, NACCD Papers, LBJ Library.

surance guarantee and sought for themselves a tax deferral plan in return for their writing contracts on inner-city properties.[257] The matter was finally and simply resolved by recommending both plans in the panel and the commission's reports. This "solution" allowed both groups to think they had won something, freed the administration from having to bargain directly with either, and allowed the White House to pursue the program it wanted. The administration decided to endorse the position of the large companies and incorporated their program into the omnibus Housing Act of 1968. The small insurance company position was rejected largely because of the opposition in the Department of the Treasury and the congress to any kind of tax deferral plan.

An examination of the lobbying engaged in by the large insurance companies to get their plan adopted, and the way in which the panel and the White House worked together in developing the administration's new insurance policy reveals an almost perfect example of the workings of Lowi's interest group liberalism;[258] it also illustrates something of the character of elite rule in national government during the Johnson administration. First, the large companies dramatically supported the president's call for "high risk" investment in ghetto areas by pledging $1 billion for such programs.[259] The pledge was publicly announced the

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[257]See R. Lewis. File Memo 9/23/67, Insurance Panel files, NACCD Papers, LBJ Library.

[258]Lowi, End of Liberalism.

[259]See US, President, Public Papers of the Presidents, Lyndon B. Johnson, 1967, pp. 829-830; U.S. President, Weekly Compilation of Presidential Documents 3, pp. 1283-1284; Presidential Memoranda, Cater 4, LBJ Library, for a series of memos, beginning 9/2/67, from Cater to Johnson detailing the events and strategy leading to the announcement of the pledge.

day preceding the insurance panel's announcement (September 14, 1967) of its "Urban Area Plan," a recommendation strongly supported by the large companies.[260] Second, the American Insurance Association presented the panel with a proposed federal reinsurance plan, developed for it by the Department of Housing and Urban Development, which they regarded as a "prerequisite" for the "Urban Areas Plan."[261] Their proposal would have provided government guarantees of losses exceeding 4 percent of any company's premium volume (on a company by company, state by state basis). This would, of course, avoid the ever rising reinsurance rates necessitated by having to deal with private foreign companies like Lloyds of London.

In sum, the panel served the administration, and the dominant interests of the industry it was commissioned to study. Here, as with most of the Kerner Commission's work, effort was expended to indemify damage rather than address the wrongs underlying the problems at hand. The immediate problem of getting the pools created to cover the losses in the areas hardest hit by the disorders was accomplished. The panel did not address itself to the evidence that a part of the reason for the physical deterioration of the nation's inner-cities rested on the refusal of the insurance companies to provide insurance coverage; that some of the same companies tried to encourage the major international reinsurers to price them out of the inner-city market; failing that, they attempted to get the federal and state governments to guarantee a ceiling on their

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[260] See memo, Levinson to the President 9/14/67, Commission of Civil Disorders (1), Califano 3, LBJ Library.

[261] See R. Lewis File Memo 9/22/67, Insurance Panel files, NACCD Papers, LBJ Library.

losses on such contracts.[262] Michael Harrington seemed to be describing the insurance-government relationship in 1967 when he observed that in the United States "... justice is not a sound business investment."[263]

d. The Media Conference

The commission sponsored a conference on the media and the civil disorders at The Homestead, the executive conference center of the International Business Machine Corporation at Poughkeepsie, New York, on the week-end of November 10-12, 1967. Invited were the representatives of newspapers, magazines, TV and radio networks, the Federal Communications Commission, the International Association of the Chiefs of Police Commissioners and various members of the commission staff.[264]

There were three reasons underlying the calling of this conference. First, the president, in his mandate to the commission asked: "What effects did the mass media have on the riots?"[265] The constitutional questions raised by this question presented Ginsburg with one of his most difficult challenges. He decided to move very cautiously and treat the media carefully, with the end in mind to force the press to attack the problem of the media and the disorders and not

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[262]For Lowi's discussion of the same type of problem see End of Liberalism, p. 213.

[263]New Left, p. 304.

[264]FCC representatives were Chairman, Nicholas Johnson and General Counsel Henry Geller. Quinn Tamm, Executive Director represented the IACP. The commissioners present were Able, Jenkins, Kerner, Lindsay, Paden, Thornton and Wilkins.

[265]Report p. 296.

the commission. The conference format, he thought, allowed the commission to accomplish this and answer the president's question in the best way possible.

Second, the president's question was being seriously raised by a variety of informed groups and persons, including a number of the commissioners; the debate over the live television and radio coverage of the disorders in Watts persisted in and outside the news media profession; the commissioners were aware that the 1967 planners of the meeting of the national journalism fraternity Sigma Delta Chi were receiving requests from prominent members to have the subject discussed at the convention; the Journalism School of Columbia University conducted a conference in October on race relations and the media.[266] Ginsburg was aware of the concerns of some of the commissioners (Paden, Thornton and Jenkins in particular) that press coverage played a part in aggravating the disorders. In sponsoring the conference the commissioners reacted as experienced liberal policy makers; one way of solving a pressing public policy issue when the government and interested groups in the private sector perceive a common problem is for the government to bring the established interests together before a public body (in this case the commission). All parties then can share their points of view and can have a chance to feel as if they have participated in the decisions leading to a change in the public policy and, most important in this traditional scheme, there will be no suprises. This normal modus operandi ran into consi-

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[266]October 17-18, 1967. Spivak sent Larry Still, of his staff, to the conference. See memo, Still to Spivak 10/20/67, Public Information files, NACCD Papers, LBJ Library.

derable resistence in the case of the media conference.

Third, Ginsburg and his staff were running into serious problems with the group of consultants with whom they had contracted to do the major research and writing for the proposed chapter on the media in the final report. The major contract had been given to Abraham Chayes (Harvard School of Law) and the Simulmatics Corporation, a research and consulting firm with which he was associated.[267] Chayes had proposed, and the commission had accepted, that his firm do an elaborate content analysis of media coverage of the disorders. The financial plight of the commission forced them to reduce this plan to a rather simple descriptive statistical analysis of media coverage in fifteen selected cities. Regardless of the financial problems, Ginsburg received from his staff a number of complaints about the quality of the Chayes proposal and of the Simulmatics Corporation's work as the project evolved. About the time of the media conference Spivak, the designated liaison officer for the commission with Simulmatics, expressed to Ginsburg serious distrust of the company's willingness to honestly report the status of its work to him.[268] A month later he expressed the same concerns and added to them reservations about the research design being used; he thought the data collected by the commission's field teams was better.[269]

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[267]Simulmatics was a division of the Real Estate Corporation, (David DeLo, Executive Director) a management planning and analysis firm of which Anthony Downs was a board member. The work for the commission was done by Simulmatics' Urban Studies Division (Sol Chabeles, Director).

[268]Memo, Spivak to Ginsburg, 11/16/67, Simulmatics file, NACCD Papers, LBJ Library.

[269]Memo, Spivak to Ginsburg, 12/23/67, Simulmatics file, NACCD Papers, LBJ Library.

Kruzman, too, thought the commission's staff had already done as good a research job as Simulmatics and was singularly unimpressed with the company's operation after a visit to their offices.[270] Kruzman and Spivak were both concerned that the Chayes group was determined to produce a report which could be used as the commission's final report.[271] These suspicions and predictions of trouble ahead, led Ginsburg to construct the media conference as an alternative means of producing the media chapter in answer to the president's question.

The convening of the conference was not a simple matter. Two of the nation's largest and most prestigious newspapers (The Washington Post and the New York Times) balked at participating.[272] Both refused to participate, despite persistent efforts by the commission to involve them. Neither was anxious to share in what it regarded as a government investigation of the news coverage of the disorders.

The product of the conference and the research of the commission staff became the basis for the substance of Chapter XV of the Report; the work of Simulmatics proved to be of little value to the commission. The principal topics discussed at the conference were live coverage of

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[270]Memo, Kruzman to Ginsburg, 11/23/67, Simulmatics file, NACCD Papers, LBJ Library.

[271]Spivak to Ginsburg 12/23/67 and Kruzman to Ginsburg 10/11/67, Simulmatics file, NACCD Papers, LBJ Library.

[272]The New York Times also had refused to be a participant in the Columbia University conference on race relations and the media. They did send a reporter to cover those meetings as a news event. Larry Still interpreted the Times behavior as not wishing "... to give an appearance of commitment to the conference goals or subject its (the Times') policies to criticism." Memo, Still to Spivak, 10/20/67, Spivak files, NACCD Papers, LBJ Library.

disorders by the electronic news media (an agreement was reached that such coverage is usually undesirable), police-media relations, the coverage of "normal" ghetto life, coverage of black concerns in the "white" press and the desegregation of the journalism profession.[273]

The value of this conference to the commission can be assessed in the following ways. First, it did provide a great deal of the substance of the media chapter of the Report. It therefore did protect the commission in the face of the Simulmatics Corporation's failure to produce what had been expected of them.[274] Second, the conference did provide a "neutral" forum in which the question of the president could be discussed by media persons and representatives of the administration; the conference was not called by the White House and there were no representatives of the administration present other than the members of the commission and its staff. However, the concerns of the Washington Post and the New York Times seem, in retrospect, to be legitimate. The conference participants were aware that the commissioners would make a report to the White House, that their actions were not independent of the administration's. The media representatives who did participate either accepted the situation as proper, or went along with it because they saw the cost of non-participation as being too high. Third, the

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[273]See Lipsky and Olson, MSS, V, pp. 36-38 for a similar discussion of the conference.

[274]The Simulmatics project was not a total failure. Lipsky and Olson point out that its content analysis did relieve the press of the "devil" image it had been forced to carry by many, including some of the commissioners, who felt the rhetoric of the media encouraged those who participated in the disorders. Lipsky and Olson, MSS, V, pp. 37-38.

conference did shift the burden of dealing with the president's question onto the media and provided a means for reasonable assurance that the commission would be immune from attacks by the press over the content of Chapter XV of the Report. Further, the conference allowed Ginsburg to show some members of the commission that he took their concerns and the president's about the press seriously and "had the press in" to inform it of the serious questions being raised about its performance in the disorders. However, some of the commissioners were not completely satisfied that the conference had "put the press in its place." As late as the January 19 meeting of the commission several commissioners were concerned that what they saw as an insipid content analysis done by the Simulmatic people would be all that would get into the Report. Commissioners Peden, Thornton and Able still saw the news media as guilty in some way of causing some of the disorders. Jenkins wanted to be certain that the others knew that the organizations representing police chiefs and mayors had recently expressed similar concerns. Only Lindsay objected to what he described as persistent efforts within the commission to put the media on the rack.[275]

e) The MARC Conference

Milan Miskovsky was determined to create lines of communication between the commission and the leaders of the emerging black power and nationalist groups. He reasoned that the president's question concerning conspiracy could not be answered nor could the commissioners write a comprehensive report unless such communication were opened and

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[275]McGrath, Minutes, 1/19/68.

sustained.[276]

He and his staff developed a plan for a conference on black militancy for the commission which deserves mention in this discussion because it was the only effort by commission persons to develop anything exceeding conversation and deposition interviews with persons representing "radical" black interests. Miskovsky vented some of his frustration over the failure of the executive staff and the commissioners to support the conference:

> One of the plans we developed and you approved was the MARC Conference. We believed that it would result in a great deal of valuable information on the issue of conspiracy. Perhaps more important, the conference would lead to information on the planning and programs of the Negro militants and their organizations. Without rehashing all the details and reasons, I was forced to cancel those plans and in all honesty I believe the commission's effort suffered as a result.[277]

The conference was planned by Miskovsky and the MARC staff and had as its primary objective to "... determine those forms of black organizations--as well as actual programs--most effective for achieving social change under present conditions."[278] The conference was designed

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[276]Another discussion of Miskovsky's activities in this area can be found above, pp. 350-351. Much of the discussion which follows is based on Miskovsky's "Final Report of the Office of Investigation," March 25, 1968, Miskovsky files, NACCD Papers, LBJ Library.

[277]Ibid. MARC, (Metropolitan Applied Research Center) was a private urban problems consulting agency directed by Dr. Kenneth Clark, an influential witness before the commission hearings and an ongoing consultant to its work.

[278]Memo, Susan Carey to Ginsburg and Miskovsky 12/9/67, "Re: MARC Commission Sponsored Conference on Ghetto Activists and Theorists." Miskovsky files, NACCD Papers, LBJ Library.

to serve the commission's plans for long-range program recommendations which would have been part of the final report originally planned for the summer of 1968. The meeting was designed to last for two and one-half days and was to have been held in New York sometime late in January or early in February, 1968. There were to have been a limited number of individual black militant participants (fifteen to twenty), each of whom would be a leader of an effective local action program or a theorist of the black movement.[279] Hopefully, at least two members of the commission would be present for the whole conference and a limited number of commissioners and MARC staff members would also attend. Kenneth Marshall (MARC) was slated to chair the meetings. Five topics were to be discussed: the role of violence in the black revolution, separation and integration (including discussions of black control of cities), ghetto economic development (including the role of private enterprise), government vs. self-help and new coalitions for social change. They also planned to have the MARC staff do an independent field analysis of the major existing local action programs and share the results with all the conference participants and the commission. In addition the commission staff would do a review of the relevant literature on these subjects and provide the results to the participants before the beginning of the conference.

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[279]For action program leaders Carey had the following types of persons in mind: Albert Cleague, Detroit Social Change Project; Jesse Jackson, Chicago Breadbasket Program; Jessey Gray, New York, a leader in the rent strike movement. In the category of theorist she named the following as examples: Harold Cruse, David Belelon, Nathan Wright, Stokley Carmichael.

The conference was a victim of the decision to issue one report and of the resistence of some commissioners and staff members to any plan to give the leadership of the emerging black groups a forum at the expense of the commission (and by implication the president).[280] By not holding the conference most of the commissioners had only vicarious contact with the emerging thinking, interests and movements the proposed meeting intended to expose. Throughout the hearings efforts were made to allow the commissioners to have access to a variety of black thinkers, writers and leaders. But, the hearings were limited to those leaders who were known and safe. During the field trips, only a few of the commissioners were exposed to any point of view other than that the city officials desired them to hear. The cancelling of the plans for the MARC Conference ended the last opportunity the commission had for interjecting non-establishment black points of view into the deliberations which produced the final report.

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[280]See Miskovsky's lament about being blocked in his efforts to have more contact with these groups and persons above pp. 350-351.

CHAPTER XI

THE COMMISSION AS POLITICAL ACTOR

A) With Congress: The McClellan Committee

Johnson expected the Kerner Commission to muffle the congressional investigations into the causes of the disorders. Johnson and Califano feared the investigations would weaken their limited chances of getting approval for their proposed 1968 domestic legislation package. The congressional investigation about which the White House was most worried and toward which it directed the commission was that conducted by the Senate Permanent Investigating Sub-Committee of the Government Operations Committee (the McClellan Committee).[1]

Kerner, Ginsburg and Califano saw the commission's relationship to the committee to be one of subversion guised as a coordinated investigative effort.[2] Commissioner Harris and Senator Edward Muskie of Maine (both members of the committee) joined the other three in carrying out the subversion; together they skillfully used information

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[1] Hereafter referred to as the McClellan Committee.

[2] It is doubtful that Senator McClellan saw the relationship any differently.

on the disorders obtained by the commission and possessed by the White House to the committee's disadvantage.

In this struggle they faced a formidable adversary, Senator John McClellan of Arkansas, a senior southern Democrat, a skillful investigator and an experienced and successful survivor of many legislative-executive battles. He was personally convinced that a conspiracy lay at the root of the disorders and set out to prove it.[3]

The McClellan Committee began its hearings on August 8. In the opening statements Senator Harris was the only member of the committee to mention the Kerner Commission. He set a cooperative tone by pledging the help of the commission in the work of the committee and suggested that the two groups share witness lists and transcripts.[4] McClellan's statement was not as cooperative; he made no public response to Harris' overtures[5] and, what in retrospect appears to have been a deliberate slight of the Kerner Commission, had the entire record of

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[3]See memo, Vick French (an aide to Senator Harris and sometime member of the staff of the commission) to Harris, 10/27/67, Harris files, NACCD Papers LBJ Library, in which he relates the substance of the briefing given to senators and their staffs by the staff of the committee immediately prior to the beginning of their hearings.

[4]In a memo to Kerner, Harris told the chariman that the committee would have a more limited focus than the commission and that it would be in the best interests of each group to cooperate with the other. Memo, Harris to Kerner, 8/2/69, Harris files, NACCD Papers, LBJ Library.

[5]In his recent book, Harris says that the McClellan hearings were the beginning of the end of what had been a cordial relationship between him and the chairman. "McClellan was totally convinced that the riots had been the result of a massive conspiracy. I was equally convinced that the causes were much deeper." (Potomac Fever, p. 63). Later McClellan eased Harris off the Permanent Investigating Sub-Committee and his place as chairman of the Sub-Committee on Government Research. This falling out of the two senators is a partial explanation for Harris' willingness to participate in the subversion of the work of the committee.

Senator Abraham Ribicoff's 1966 hearings on urban problems included in the record of the committee.[6] The way the hearings of the committee were structured removed any doubt Califano and the commission leadership might have had about whether the senator was going to supplement and support the work of the commission. Two of the committee's goals were to investigate whether employees and program participants of the Office of Economic Opportunity were instrumental in starting and supporting the disorders and to focus on uncovering any criminal conspiracies underlying the disorders. The senator was making it clear that his committee would do the work that he and some of the other leaders of congress thought the commission would not do.

The cooperation which the commission proposed was cosmetic; it covered the commission's intent to inhibit the work of the committee. Ginsburg, for instance, sent hearing transcripts to the committee,[7] only after they had been carefully reviewed by the commission's witnesses and the executive staff. Ginsburg and Califano knew that the testimony would be very different from that received by the committee. This sharing was a way of getting the administration's point of view on the disorders before those of the committee who read the transcripts. There was, too, willingness to share, on a limited and self-serving basis, some of the field trip information, but only after Kruzman and Nelson went"...

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[6]Ribicoff chaired the Sub-Committee on Executive Reorganization of the Committee on Government Operations. His sub-committee generated over 4,000 pages of testimony. U.S. Congress, Senate, Committee on Governmental Operations, Riots and Disorders. Hearings Before the Permanent Subcommittee on Investigations of the Committee on Governmental Operations. 90th Cong. 1st Sess. (Nov. 1967-May, 1968) Part I, p. 10.

[7]Letter, Taliaferro to McClellan 9/12/67, Taliaferro files, NACCD Papers, LBJ Library.

over every word of the field team reports before sharing them with the McClellan committee."[8] Some of the senior staff of the commission met with McClellan in October to discuss cooperation. In reporting on the meeting to the other members of the staff Taliaferro warned that the committee staff people working in the field were a very aggressive lot and not to be regarded as colleagues, but as competitors.[9] Further a member of the commission staff monitored the public sessions of the committee (this in addition to Harris who personally attended, or sent a staff member to every meeting). The commission staff took the information obtained from the McClellan sessions and compared it with its own and released to the press the evidence of differences; the commission was determined to best the committee in describing and cataloguing the disorders. In this effort to gain and hold credibility with the public the commission had an advantage in that its hearings were secret. It released only the information which served it best. The commission clearly won the public relations battle with the committee, a battle from which Popper says the committee never recovered.[10] Even before the committee began hearing witnesses in November the efforts by the commission staff to discredit its work had borne some fruit in the press. The Associated Press ran a story on October 2 which said that the work of the committee to date was skimpy. By the end of the month (October 30) a story in the Wall Street Journal discounted

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[8]Memo, Palmieri to Kruzman and Nelson 10/6/67, Taliaferro files, NACCD Papers, LBJ Library.

[9]Staff Meeting Notes, 10/10/67, Taliaferro files, NACCD Papers, LBJ Library.

[10]Popper President's Commissions, pp. 36-38.

the work of the committee done to date saying the senators were divided and McClellan was retreating somewhat from his strong law and order stand. At a meeting of the department heads of the commission the next week, Taliaferro reported "The McClellan hearings were (sic) a source of disappointment to some members of the sub-committee because the record it was developing does not substantiate the point of view about the riots. Also, press coverage is not creating a national atmosphere to amplify McClellan's viewpoint."[11] There is evidence, too, that Ginsburg shared information exclusively in the possession of the commission with members of the administration before they testified before the committee. The intent here was to give the witnesses better (or at least different) information on the conspiracy issue than that held by the committee. A good example of this kind of action was Ginsburg's sharing of the testimony of John McCone before the commission with Joseph W. Barr, Under Secretary of the Treasury, prior to his testimony before the committee.

> Enclosed is a copy of the testimony of John McCone before the Commission on August 22. Since the hearing was in executive session and some of the testimony has been released, I would appreciate your keeping the transcript and its contents confidential. I would also appreciate it if you would not indicate to the Congressional Committee that you have read our transcript.[12]

The efforts of Senators Harris and Muskie were the most telling of the efforts to subvert the committee on behalf of the commission.

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[11]Minutes of Department Heads Meeting, 11/13/67, Taliaferro files, NACCD Papers, LBJ Library.

[12]Letter, Ginsburg to Barr, 9/18/67, Ginsberg files; NACCD Papers, LBJ Library.

Before the committee held hearings on the disorders in particular cities, Harris would be briefed by the commission field team which had studied the area; he came to those hearings equipped with an exclusive body of data. Further, he and Muskie instructed their staffs to share information in a manner that would allow them to build a case against McClellan's point of view in the committee hearings. The two staffs also worked together to develop a more "liberal" witness list.[13] Muskie used his contacts with executive departments/agencies to get information useful to him and Harris in the committee hearings and he, in turn, sought executive department/agency information on the disorders from the commission in an "... attempt to balance the record during the McClellan hearings".[14] Ginsburg agreed to this plan and told Taliaferro to obtain agency clearance and get the information Muskie requested to him as quickly as possible.

B) Within the Administration

The commission's political activity within the administration was characterized by a variety of patterns of service and individualized survival strategies. By October, Ginsburg and his colleagues knew that the ability of the commission to serve out its designated life-span depended on its ability to serve a wider variety of presidential needs than those laid out in the executive order and the other public statements creating it. The budget crisis, which crippled all parts of the

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[13]Memo, Marge Banner (Harris Staff) to Taliaferro 9/20/67, Taliaferro files, NACCD Papers, LBJ Library.

[14]Memo, Taliaferro to Ginsburg, Palmieri and Scammon 8/16/67, Taliaferro to Ginsburg 10/16/67, Taliaferro files, NACCD Papers, LBJ Library.

Johnson administration in late 1967, made this reality very clear. It forced all parts of the administration to compete for declining economic resources. In such a struggle for survival an ad hoc advisory group operates at a disadvantage. To survive it must join service of presidential purpose with political acumen; under Ginsburg's leadership the Kerner Commission showed considerable skill in developing and executing this type of strategy.

Section 3 of Executive Order 11365 directed the various departments/agencies of the executive branch to cooperate within the limits of the law with the commission upon request of its chairman. Here, as always, Johnson tightly integrated the constituent parts of his advisory system;[15] the president expected them to share information and cooperate, under guidance from the White House, in developing a coherent civil disorders policy. The commission was not the only, or even the principal, executive agency concerned with the disorders. But it was the most visible and as such was expected to draw attention to the administration's efforts to cope with and correct the conditions created by the disorders.

The arena of commission action was not unlimited, even within those areas staked out in the presidential mandate. Johnson wanted integration, not independence, in his advisory system. Consequently he was careful not to give exclusive authority and responsibility for work on any part or parts of the disorders to any one department/

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[15] See chapter V, pp. 142-182, for a detailed discussion of Johnson's efforts to integrate the various parts of his advisory system.

agency.[16] Johnson's scheme of granting overlapping areas of responsibilities was similar to that developed by President Franklin Roosevelt. Johnson's, however, was designed more for control of the policy making process than for the development of innovation.

Johnson involved himself in the workings of the system he devised to deal with the disorders.[17] He maintained his own lines of communication with the problems surrounding the disorders. He created a cabinet level group under the chairmanship of Vice President Humphrey and charged it with keeping in touch with the established leadership of the black community in the nation. One major group meeting was arranged and numerous individual and small group meetings with black leaders were held.[18] He sought and received advice from a variety of

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[16]There was one obvious exception. The FBI was given primary, if not exclusive, responsibility for investigating the conspiracy issue. Others in addition to the commission engaged in conspiracy investigations, but Johnson relied on the FBI reports.

[17]Those closest to him at the time agree that the president did not sacrifice his responsibilities in domestic affairs because of the war. Califano and others say they did not feel neglected by Johnson during this hectic time.

[18]The meeting with black publishers, discussed above, pp. 361-362. Considerable debate was waged at the highest levels of the administration over inviting all established black leaders to a meeting at the White House with the president and other government officials. Vice President Humphrey and his cabinet group supported the idea. McPherson, noting the need to drive a wedge between the established and 'radical' black leaders, supported the idea. Johnson ultimately rejected it as politically too risky. See the memos in HU2 (5) 7/1/67 - 7/28/67, LBJ Library.

persons outside the government in whom he had confidence.[19] Further, Johnson wanted direct communication with the nation's mayors and proposed that he make a speech to the upcoming National League of Cities in which he would seek support for the proposition that his existing and proposed domestic programs were the best guard against future disorders.[20] The speech was not given, but the president did send a letter to the mayors of the nation's major cities offering support and potential help and sent Humphrey to speak to the meeting of the National League of Cities.[21]

Johnson's personal stamp on the civil disorder policies developed by his administration also can be seen in the handling of the law and order issue. All of Johnson's actions directed at correcting the disorders were tempered by his conviction that they were principally the acts of criminals, malcontents and ingrates and by his determination that there would be no "rewards" for the rioters. There was no doubt in the minds of those around Johnson about the depth of his commitment

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[19]George Reedy, former presidential press secretary, in a letter to Johnson dated 7/25/67 reported the reactions of some black students who participated with him in the Intensive Studies Program at Yale University. He told of extensive support of the black movement and of lack of faith in the white leadership. HU2 7/1/67-7/28/67, LBJ Library.

[20]Key members of his staff (McPherson, Roche, Wood and Christian) opposed this plan. They contended that the mayors were more concerned about the disorders than the Great Society programs and that Johnson would be severely criticized if he gave the speech he was proposing. See Riots 3, McPherson 3, LBJ Library.

[21]Letter, Johnson to Mayors 7/29/67, Commission on Civil Disorders (2), Califano 3, LBJ Library.

to this conviction; the position became an independent variable in all executive branch civil disorders policy-making efforts. While there is no doubt about Johnson's personal commitment to this position on the rioters, it can also be said that political reality dictated it. The law and order issue was politically ripe in the country, as the attitudes of congresspersons attested. Johnson knew he could not be soft on the rioters and expect to see his domestic program get through congress.[22] The development of a policy for treatment of the rioters was not passed off on the Kerner Commission; the White House knew the president's mind on the matter and acted accordingly. For instance, the White House had to make a decision about the form of the federal response to the destruction in Detroit. Proposals were made (mostly by the Department of Justice) to amend the Federal Disaster Assistance Act of 1950 to include civil disorders. Others suggested that the aid be given through the Small Business Administration (SBA) so the benefits could reach the victims of the "crimes" rather than the perpetrators. (This recommendation was made by Cyrus Vance the president's special envoy to Detroit.) The president chose the SBA option.[23]

Further evidence of Johnson's putting his personal stamp on all

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[22]See McPherson, A Political Education, pp. 377-383. See also Statements 48, "Remarks, Kansas City, Missouri, IACP, 9/14/67," LBJ Library.

[23]See memo, Califano to the President 8/10/67, Detroit Chronology (1), Califano 3, LBJ Library. See also New York Times July 30, 1:1.

of the administration's responses to the disorders can be seen in the development and final content of four major public statements he made early in 1968.[24] The preparation of the 1968 State of the Union Message[25] in the Johnson White House was a major production involving most of the White House staff, executive departments/agencies and whomever else was thought could help. Production began late in the winter with requests for suggestions going to virtually every major office in the executive branch. Many drafts of the speech were made with the president having a significant hand in the writing of the last two or three. The 1967-68 pattern for writing the speech was typical of those which had been followed since 1964; the executive staff of the Kerner Commission was among those solicited for ideas. Ginsburg sent a list of suggested federal initiatives to cope with the disorders which the commission's work had developed. White House aides took the suggestions, combined them with others flowing from the task forces and recommended that the president incorporate these suggestions in the state of the union message and the special messages to follow, without waiting for the commission's recommendations to be made formally to him.[26] This was an attempt to avoid having to rely too heavily on third party efforts to get his domestic program

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[24]See Chapter 13, pp. 475-479, below, for another discussion of these and other public statements made at this time by which Johnson set the boundaries of his domestic policy program for 1968.

[25]U.S. Presidents, Public Papers of the Presidents, Lyndon B. Johnson, 1968, pp. 25-34.

[26]Memo, Nimitz to Califano 12/27/67 and 1/29/67, Riots - Riot Control, 1968 (2), Gaither 30, LBJ Library.

through the congress.[27] Further, they recommended that the president launch a direct attack on domestic problems using the resources available in the advisory system and mount a leadership campaign by means of the state of the union message and the special messages. Johnson adopted this strategy.

In the 1968 State of the Union Message Johnson took recommendations from the Kerner, Kaiser and Douglas Commissions,[28] task force reports and suggestions from other sources and proposed the following as part of the Great Society contributions to remedying the problems which produced the disorders. First, a $2.1 billion manpower program designed to help private industry absorb 500,000 new jobs by 1971.[29] Second, Johnson called for the full funding of his Model Cities Program.[30] Third, he called for the creation of six million new houses during the next ten years.[31] He also called for passage of the Safe Streets Act, a drug control act, and authorization to appoint one-hundred

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[27]McPherson, A Political Education, p. 361.

[28]Some of which would appear in a somewhat different form in the final reports of those bodies.

[29]U.S. Presidents, Public Papers of the Presidents, Lyndon B. Johnson, 1968, p. 28, fn, 5.

[30]Ibid., p. 28.

[31]Ibid., p. 29.

new FBI agents.[32] During the two month period between the State of the Union message and the publication of the commission's report, Johnson continued this pattern; he sent three special messages to Congress giving substance to these proposals.[33] The special message "To Earn a Living: The Right of Every American" detailed Johnson's $2.1 billion job stimulation and occupational health and safety program; the former of these two was more clearly aimed at correcting what he saw as disorder creating conditions -- idleness induced by joblessness. This message also contained proposals for two interrelated programs: JOBS (Job Opportunities in the Business Sector) and NAB (National Association of Businessmen). JOBS was a program for inducing private industry to employ and train persons classified as "hardcore" unemployed.[34] Unlike the proposals developing at the same time in the Kerner Commission and its Panel on Private Enterprise, Johnson suggested building on existing programs and ignored the option of granting business tax credits for engaging in the program.[35] The NAB, under the chairmanship

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[32]Ibid., p. 30. Of these recommendations only the law and order type programs and requests were not included in the final Kerner Commission report. It also is interesting to note at this point, that members of the administration, in retrospect, saw these recommendations as efforts on the part of the president to pre-empt the reports of his commissions, particularly that of the Kerner group. It was also thought that the Kerner Commission, in turn, took the president's recommendations and increased them for its Report.

[33]U.S. President, Public Papers of the Presidents, Lyndon B. Johnson, 1968, pp. 46-53.

[34]Ibid., pp. 48-50.

[35]See pp. 384-388 above for other discussion of this issue.

of Henry Ford II was charged with the responsibility of creating 500,000 private sector jobs for the unemployed within the next three years and for advising the Secretaries of Labor and Commerce on implementation of the program. The announcement of the creation of the NAB came at the same time Commissioner Thornton was attempting to begin the work on his Private Enterprise Panel (and complaining that the commission was ignoring his efforts).[36]

"To Insure the Public Safety" contained a recommendation for the enactment of a Federal Riot Control Act of 1968. That endorsement ended a White House debate in which some White House advisers tried to get Johnson to refrain from giving such legislation his approval in favor of securing support for the act from the commission. Referral to the commission, it was thought, would inevitably slow some of the congressional momentum which was building for enacting such a bill. Johnson, on the other hand, felt that the disorders were criminal in origin and he would not get significant congressional support for his Great Society programs unless he convinced the solons of his toughness on crime. When it became obvious that a majority of the Kerner commissioners would not endorse such a bill, it was agreed in the White House that the crime message should include the president's approval of it; the special message and the provision for the anti-riot bill, then, came at a time when the president's show of determination on crime would gain maximum publicity; that is, before the time when

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[36]As will be seen in Chapter 13 this set of recommendations also caused great frustration in the commission and can be pointed to as one factor in the group's willingness to take the president's recommendations and double them.

the commission's lack of endorsement of the bill became known.[37] Johnson's explanation for preempting his commission was:

> We await their report and recommendations. But there is no need to wait before protecting society against those who tear it apart for whatever their purposes. I propose the Federal Anti-Riot Act of 1968.[38]

The last special message presented to congress before the publication of the Kerner Report, "The Crisis of the Cities," drew upon the work of several advisory groups and departments/agencies. Its proposals joined the guns and butter issue and represented the culmination of intense debate within the administration concerning the size and direction of the next budget. Among the proposals in the message, Johnson included $2.18 billion for the anti-poverty program for fiscal 1969,[39] $2.34 billion, over five years, for rehabilitation of old housing and new construction,[40] an anti-inflation

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[37]See memo, Nimitz to Califano 10/25/67 EX FI 4 10/13-19/67 - 1/26/68 and Nimitz to Califano 1/29/68 Riots and Riot Control 1968 (3), Gaither 30, LBJ Library.

[38]U.S. Presidents, Public Papers of the Presidents, Lyndon B. Johnson, 1968, p. 191. The last part of this proposal calls for state and local authorities to enact or strengthen their own anti-riot laws and for Congress also to pass the Federal Firearms Bill: See pp. 191-192.

[39]Ibid., p. 250.

[40]Ibid., p. 252. The Kaiser Commission (housing) made an interim report on the same day this message was sent to congress. It made reference to its housing recommendations, but put its main focus on the president's program. See Kaiser Commission Press Release 2/22/68, Robson-Ross Pricing Files, Housing (1), Robson-Ross Pricing Files, (1), LBJ Library.

inflation tax and fair housing legislation.[41] This extremely ambitious package, sent to congress one week before the publication of the Kerner Report was, to some in the administration, Johnson's most important Great Society proposal; it was the first comprehensive message on the nation's cities given by a president, and it called for congress to direct its attention to the reconstruction of the environment in which the civil disorders were bred. The congress rejected the requests and continued to demand cuts in the domestic programs. Nevertheless, Johnson remained in control of domestic policy initiation and the Kerner Commission heeded the message (the commissioners were aware of the content of the message before the president sent it to congress) by presenting a very general, albeit controversial, set of housing recommendations.[42]

Johnson expected the Kerner Commission to play two important roles within the executive branch, neither of which was detailed in the public mandate he gave it. First, it was a convenient public place to refer the many proposals for executive action produced in the various universities and "think-tanks" around the nation. Second, the commission was expected to examine those involvements in the civil disorders policy-making and execution which attracted the most public attention and/or congressional attack.

The existence of the commission provided the administration with a very convenient public depository for the many suggestions for action

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[41] Ibid., p. 253.

[42] See p. 478-479, for another discussion on this point.

and proposals for studies which came to the White House. Many offered the administration little more than comic relief.[43] Others, however, were serious proposals made by persons generally recognized as competent to make them. A good example of the latter can be found in the exchange of memos between James Gaither, of the White House staff, Warren Christopher of the Department of Justice and David Ginsburg concerning studies for prevention and control of riots.[44] The White House referred such proposals to Christopher "... for whatever action you deem appropriate in light of the current situation and the possible passage of the Crime Control Bill."[45] Christopher, in turn, passed them on to the commission with the expectation that they would be merged with other such proposals into the commission's work and/or report. Many of the originators of these proposals became part of the commission's advisory apparatus (contract consultants) and some became major contributors to the final report.[46] Regardless of the outcome of the

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[43]e.g., the United States Embassy in Australia forwarded a suggestion from a veteran of the British struggles with the Indian independence movement to the effect that sirens, capable of producing sounds of high intensity and quality, such as those used as air raid warning signals in World War II, mounted on jeeps, set off and transported through areas in which disorders are occurring, will so frighten the rioters that they will quickly disperse.

[44]See Riots, 1967, Gaither 30, LBJ Library, the series begins with Gaither to Christopher, July 27, 1967.

[45]Memo Gaither to Christopher, July 31, 1967, Ibid.

[46]e.g. Ronald L. Goldfarb (a law partner of Stephen Kruzman of the commission's staff) conducted major research and writing programs on criminal justice system for the commission after having submitted some proposals through the channels described above. See memo, Gaither to Christopher, July 27, 1967, Ibid.

referral of such proposals, the commission offered the administration a public place to collect and organize such material and thereby give the White House time to decide how best to use them.

The second role the White House expected the commission to fulfill within the executive branch was to aid in monitoring the work of executive department/agencies related to civil disorders. Hounding the departments/agencies for specific policy-making plans and activities is something an advisory commission can do without incurring the bad relations the White House develops when it undertakes to do the job. The commission had a particular area of responsibility (civil disorders) and could be expected to need to gather information on that matter. Further, its life was limited, it was soon to pass from the scene; the White House wanted to hound the executive branch about other matters. But there was another type of investigation and information gathering within the executive branch that Johnson wanted the commission to carry out: watchdog of the investigations of the extent, if any, of the involvement of federal employees and/or program participants in the disorders.[47] Califano wanted the commission to do some of this investigative work as one means of heading-off

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[47]See the discussion of the McClellan Committee above pp. 407-412 for additional insights into this role.

congressional investigations. Califano's problems with the Office of Economic Opportunity (OEO) provide a good illustration of how he used the commission in this area of work. From the onset of the disorders charges circulated that persons in the employ of the OEO, or recipients of OEO program money and/or benefits were active participants in them. These rumors endangered the passage of the 1967-68 OEO appropriation and threatened the passage of the whole domestic legislative package. Califano and Gaither asked the commission to enter into the invesigation of these charges. They wanted to preempt congressional action and a plan by the OEO Director Sargent Shriver to have the investigation done "in-house." The White House saw the commission as a more credible investigative body than the OEO.[48] A discussion of the success of the efforts by the commission to debunk the charges against the OEO can be found below.[49]

The commission had to compete for political space in the Johnson advisory system with three types of groups, each of which was assigned and/or assumed responsibilities in civil disorders matters: formal White House groups, the White House staff group which was formed as

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[48]See memo, Gaither to Ginsburg 8/8/67, Ginsburg files, NACCD Papers, LBJ Library. "Shriver feels that the major obstacles to passage of the OEO bill is the charge that the OEO people are involved in the riots. Shriver has recommended that the Economic Opportunity Council (headed by Morrie Leibman) call an emergency session to establish an executive committee to investigate the charge. Shriver believes that they will find no evidence of OEO involvement -- a finding which might be the key to passage of the bill. Joe (Califano) feels that your commission (and not the Economic Opportunity Council) ought to handle this..." (emphasis in the original).

[49]pp. 443-444.

an independent civil disorders investigating body, and the cabinet departments.

The first was an official group drawn together by Johnson in reponse to the specific character of the disorders and the federal laws pertaining to them. This riot control group, operating from the White House, saw duty in each of the disorders. Its duties did not overlap the commission's but much of what it did in the summer of 1967 had an effect on the work of the Kerner group. The group was composed of Johnson, the Attorney General Clark, Director of the FBI Hoover, Secretary of Defense McNamara, Califano, McPherson and Cyrus Vance, who as the president's personal representative to Detroit in the aftermath of the disorders was added to the group in the summer of 1967.[50] It was this group which aided the president in formulating and executing the actions in response to the Detroit disorder: dealing with Governor Romney, declaring an emergency, dispatching federal troops, drafting the president's speech to the nation, etc.

Califano, in response to a presidential directive, put his staff to work doing research (drawing of legal briefs, legislative research, studies of agency programs, coordinating task force and commission re-

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[50]McPherson, A Political Education pp. 359-360. McPherson also speaks of another person "a Washington lawyer" who aided Johnson in writing the speech he gave in reaction to the Detriot disorder. There is good reason to believe that the person was Supreme Court Associate Justice Abe Fortas, an old friend of the president's and a trusted friend in time of trouble. See also memo and documents, Califano to Justice Fortas, "Authority Under Which the President Acted in Sending Federal Troops to Detroit," Detroit Chronology (1), Califano 6, LBJ Library.

ports, etc.) of the disorders to enable the White House to arrive at judgements independent of those of the commission. Fred Panzer was put in charge of this work.[51]

The White House staff also put before the president novel insights into the origins of the disorders based upon self-generated sources of information. McPherson, for instance, cautiously but directly, raised with Johnson the conviction many shared that the Great Society programs themselves might be a cause of the disorders.[52]

Another very important source of information on the disorders for Johnson and his closest advisers was the visits to the black urban ghettos by members of the White House staff during the fall of 1967 and winter of 1968. These visits were a loosely organized effort to secure direct and unfiltered information for the White House about the conditions which spawned the disorders.[53] The reports of these visits were received in Califano's office, compiled and sent to Johnson.[54] The reports challenged several of the key premises upon which Johnson acted in dealing with the disorders. In general, they revealed that the president was popular with urban black Americans and that popularity

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[51]See Panzer papers, especially boxes 12-14, LBJ Library.

[52]Memo, McPherson to LBJ 8/24/67, Riots 2, McPherson 8, LBJ Library.

[53]McPherson describes his ghetto visits, A Political Education, p. 375. In his discussion he notes that the best local sources of information on the conditions creating the disorders came from the federal bureaucracy rather than the local mayors or congresspersons. This was a position that Johnson did not share.

[54]See Riots (1 and 2), McPherson 8 and HU 2/8/9/67 - 8/15/67, LBJ Library.

was based on his creation and implementation of Great Society programs. Local public officials were not nearly so well liked; Mayor Lindsay, an exception, got high marks for his persistent efforts to keep in touch with persons living in the New York racial ghettos. The disenchantment with public officials extended to the Kerner Commission which was faulted for not having as members persons who "have a street following."[55] The reports, too, were virtually unanimous in their condemnation of housing conditions in the ghettos, in urgently recommending job programs and in condemnation of police practices. The information which flowed to the president from these sources, complemented rather than competed with that which he received from some of his task forces and from the commission field trips. The reports from his aides were different in that they came from persons upon whom Johnson was used to relying. Unfortunately for the residents of the black urban ghettos, Johnson rejected these sources of information and their messages to him and turned instead to the more traditional sources.

The relationships with the cabinet departments were the most complex for the commission. Johnson assigned his cabinet officers a variety of particular responsibilities he expected them to carry out in cooperation with the Kerner Commission and some exclusive tasks which clearly placed them in competition if not conflict with it. Predictably, also, cabinet officers sought to capture as much of the work being assigned on the civil disorders as possible for their

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[55]See, for example, memo, Markham to the President, 8/29/67, covering a memo dated 8/14/67, Riots (1) McPherson, LBJ Library.

departments.

During the Johnson administration, the Bureau of the Budget (BOB) supervised the stewardship of the president's programs by the various parts of the executive branch. As such, it carried a major part of the responsibility for the commission. The role of the BOB in the budget crisis of the commission has been discussed in Chapter IX. What remains to be described are the various ways the Bureau of the Budget cooperated with the work of the commission. Charles Schultz, Director of BOB during the most crucial months of the life of the commission, took very seriously the president's order that all executive departments/agencies should cooperate fully with the Kerner group. Schultz was privy to most of the program execution, planning and White House evaluations of the other parts of the executive branch and he shared with the commission the information he thought useful to them in the development of their report and in their relationships with the other groups. He, for instance, provided Ginsburg with copies of memos concerning difficulties the White House was having with the Department of Housing and Urban Development, including its formation of the Joint Administrative Task Force on Housing which was organized to make recommendations for correcting the deficiencies in HUD's operation.[56] This kind of information helped the commission appraise the political realities within which it had to work. By October, the commission was beginning

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[56]See memo, Lawrence J. Kirsch (Staff Assistant to the Director of BOB) to Ginsburg 8/22/67, Ginsburg files, NACCD Papers, LBJ Library.

to feel the consequences of the reluctance of many parts of the executive branch to cooperate with it. Ginsburg prevailed upon Schultz to intervene so the work of the commission could proceed.[57] Schultz complied with the request and began monitoring the compliance of the departments/agencies with the president's directives regarding cooperation with the commission. In all, the BOB was a positive support factor for the commission within the administration. The bureau secured the commission's budget, much of its personnel and monitored the level of executive branch cooperation. It is doubtful that the commission could have survived in anything but name if it had not been for the active support of Schultz and the BOB.[58]

Schultz and the BOB were given assignments which staked out an independent role for them in the administration's civil disorder policy-making scheme. Early in 1968 the White House began its detailed planning for the anticipated summer disorders. It was assumed that the White House riot control group would be maintained to handle the federal response to a major disorder during the time it was occurring. Coordination of all other federal responses was were to be handled by the BOB, under the direction of the White House.[59] The major departments/

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[57]Memo, Ginsburg to Schultz 10/3/67, Ginsburg files, NACCD Papers, LBJ Library.

[58]The tone of the memos between Schultz and Ginsburg indicates that a positive personal friendship played a considerable part in fostering the good relationships between the two groups.

[59]See memo, Nimetz to Califano 2/29/68, Riots and Riot Control, 1968 (2), Gaither 30, LBJ Library, in which overall plans for this coordination are discussed, in the context of a change in the key personnel in the BOB.

agencies were aware of the substance of the Kerner Report at the time these plans were being formulated, and its recommendations were incorporated in the planning as each saw fit, but the White House made no effort to highlight them in this contingency planning.

The central role of the Department of Justice in the development and execution of civil disorder policy-making was attributable to the legal implications of "normal" disorder activity, the scope of the department's statutory responsibilities and the predisposition of the president and many key members of congress to think a major cause of these events to be a criminal conspiracy. The extent to which Johnson was willing to use the Department of Justice in controlling the "criminals" can be seen in McPherson's and Graff's accounts of the pressures put on Attorney General Clark to prosecute those whom Johnson felt to be the leaders of an inter-state criminal conspiracy to stimulate riots and insurrection.[60] (Clark successfully resisted these pressures on the grounds of lack of evidence.[61]) Second, the criminal division was given responsibility for monitoring the nation's urban centers and reporting through Ramsey Clark to the White House

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[60]McPherson, A Political Education, pp. 362-363, and Graff, The Tuesday Cabinet, pp. 172-193.

[61]Later the Department of Justice did go to trial with other famous opponents of administration policy (e.g. Coffin, Spock, Seal and the Chicago 7).

group developing the contingency plans for the summer of 1968.[62]

Not only did Clark and some of his top aides resist the pressure to concentrate all the attention of their department on criminal activity related to the disorders, but they turned their attention to a variety of short term issues they felt to be important causes of the disorders. Their principal concern was the police. Christopher in a speech at Rice Institute called attention to the patterns of the disorders for the previous three years in which police action was a significant factor in the origin of the unrest.[63] Clark, at the Conference on Prevention and control of Civil Disorders[64] designated 1968 as the "year of the policeman":

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[62]Memo, Fred M. Vinson, Jr. to Clark 10/20/67, Riots 1967, Gaither 30, LBJ Library. There were also two task forces operating during the life of the Kerner Commission with responsibilities related to civil disorders. Both had key Department of Justice personnel as members. Clark chaired the 1967 Civil Rights Task Force which reported to the White House in the late fall. That task force made 35 recommendations on public employment, urban problems, housing, lending practices and education without any mention of the fact that the Kerner Commission was charged to work on the same problems at the same time (see Gaither 32/ 1967-68 Civil Rights Task Force (2), LBJ Library.) Further, the 1967 Task Force on Crime, Chaired by James Q. Wilson of Harvard (a commission consultant) with Warren Christopher and Fred M. Vinson, Jr. as members, made a recommendation to the White House for including crime prevention programs as part of HUD's guidelines for cities to qualify for aid under the Model Cities program. (See report of the 1967 Task Force on Crime, LBJ Library).

[63]The address was delivered on 11/2/67. A copy is in the Public Safety files, NACCD Papers, LBJ Library.

[64]The conference was planned and co-sponsored by the commission and the IACP as a training event for local police and political leaders in preparation for the summer.

> The policeman is the most important man in the United States this year. He is the man in the middle. 1968 is the Year of the Policeman. The policeman will tell more about the future of this country than will any other person in our society because this is a crucial year.[65]

He insisted that police unpreparedness, brought about by poor police-community relations, was a major cause of the previous year's disorders. He also stressed that most cities lacked communication systems designed to prevent the spread of rumors during a disorder. Clark later aided the commission in securing help from the Federal Communications Commission for improving intra-city emergency communication systems.[66]

The Department of Justice and the commission had a considerable amount of interchange, most of it very positive and cooperative. The department aided the commission in drafting its rules, in thinking through the problems of inter-state compacts for the use of the national guard, providing a place where all the data collected on the disorders could be stored,[67] and sharing with the commission informa-

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[65]Memo, Christopher to Ginsburg, 1/29/68, covering Cliff Session's summary of Clark's remarks at the Conference on Prevention and Control of Civil Disorders, 1/20/68, p. 1, Public Safety files, NACCD Papers, LBJ Library.

[66]See letter Spivak to Lee Lovinger (FCC), 10/30/67, and Kerner to Rosel H. Hyde, Chairman of the FCC, and Ramsey Clark, 2/7/68, in Public Safety files, NACCD Papers, LBJ Library.

[67]Letter Ginsburg to Christopher 12/26/67, Public Safety files, NACCD Papers, LBJ Library.

tion about its legislative activities related to civil disorders.[68] There were tensions, too. Those in the department responsible for civil rights matters never felt comfortable with the commission.[69] The staff of the Community Relations Division of the department in its pre-publication review was sharply cirtical of the proposed texts, noting a lack of urgency and outrage in the drafts. They urged the commission to view the disorders in political terms; they deplored the commission's effort to repair, rather than destroy, the nation's ghettos and wanted the commission to speak for more participation by ghetto residents in the development of priorities for local and national action.[70] The Office of Law Enforcement Assistance of the Department challenged the work of the commission in another way. Generally supportive of the police, the LEA staff members resisted the commission's movement, however small it was, toward a position which could be interpreted as being "unduly critical" of police practices.[71] They sought to reflect police attitudes in finding fault with the tone of the drafts (they called for more "tact"). They characterized the police-community relations sec-

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[68]See letter, Edward I. Selig to Bowers, 1/18/67, Public Safety files, NACCD Papers, LBJ Library, in which the department's plans to submit revisions of 10 USC 15 ("Armed Forces Involvement in Insurrection") were sent to the commission.

[69]See memo, Nathan to Palmieri, 10/20/67, Palmieri files, NACCD Papers, LBJ Library.

[70]Letter, James H. Lane to Palmieri, 1/1/5/67, Palmieri files, NACCD Papers, LBJ Library.

[71]Memo, Christopher to Ginsburg 1/29 covering a 1/24/68 report from the LEA on the commission's draft chapters to Christopher, Public Safety files, NACCD Papers, LBJ Library.

tions of the drafts as naive and objected to giving high praise to the work of the Atlanta Police Department.[72] The character of the relationship between the commission and the FBI has been discussed at length above in the discussions of the Office of Investigation and will be touched on again in the consideration given the conspiracy issue below.[73] Suffice it to say here that the relationship was one of propriety and caution, faithfully adhering to the president's directives regarding the relationship and befitting the bureau's reputation.

The quality of the relationship between the commission and the Department of Labor was determined by two now familiar factors: personal relationships between the principal political actors (in this case Ginsburg and Secretary of Labor Willard Wirtz) and presidential directive. Wirtz was personally supportive of the commission and its work. Many of the formal exchanges between Ginsburg and Wirtz are covered by personal notes, with Wirtz offering personal encouragement and advice for the commission's efforts.[74] Wirtz was also an early

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[72]In this criticism they were reflecting some of the reservations felt in the police community as a whole about the work of the Chief Jenkins.

[73]pp. 446-450.

[74]e.g. In sending Ginsburg, by directive of the president, a copy of a document explaining the administration's Urban Training Program, Wirtz covered it with a note the content of which refers to a draft letter prepared by his staff which would, if sent, be from the commission to the president making recommendations for Department of Labor actions: "You will recall the story of the drummer who asked the waitress in the small town hotel for 'two boiled eggs and a kind word.' He got the eggs, but had to ask again for the kind word. 'Don't' she said, 'eat the eggs...'" memo, Wirtz to Ginsburg 8/21/67, Ginsburg files, NACCD, LBJ Library.

and enthusiastic supporter of the commission's final report, a risky political stance, as shall be seen.

At the same time Johnson was appointing the Kerner Commission he was instructing Wirtz to conduct a study of arrestees in the Detroit disorder.[75] The study was done on a crash basis.[76] The data from the study were shared with the commission in August,[77] but the report was not made public until March 1, 1968, the day on which the commission issued its report.[78] Commission participants thought the release of this report was an attempt to diminish the impact of their document.[79]

The commission ran into political trouble in handling the depart-

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[75]See Detroit Chronology (1), Califano (5), LBJ Library for a copy of the report: The Detroit Riot: A Profile of 500 Prisoners. See also Department of Labor Subject Files Roll 54, LBJ Library.

[76]"Eleven days after the outbreak (August 3, 1967) the U.S. Department of Labor contracted, under authorization of the Manpower Development and Training Act, with the Behavior Research Institute of Detroit to introduce into an ongoing survey of prisoner's questions designed to shed additional light on their employment status and indebtedness ... The survey was not based on a scientific sample. It was conceived and conducted under extreme pressure. The data were coded, processed and analyzed on August 5 and 6:" ("Preface" The Detroit Riot: A Profile of 500 Prisoners.

[77]It appears that the department regarded the report as the property of the commission. See memo, Taliaferro to Ginsburg, 10/25/67, and attachment, Ginsburg files, NACCD Papers, LBJ Library.

[78]See Press Release 3/1/68, Labor Department, Subject Files, Roll 54, LBJ Library.

[79]There was no evidence found indicating that the department acted on White House orders in releasing the report. There is evidence, however, of some tension between the staffs of the two agencies; those in the department who worked on this report were not happy with the commission's contract with Fogelson to do his study on Detroit arrestees. See memo, Shallow to Kruzman, 10/19/67, Research Department files, NACCD Papers, LBJ Library.

ment's study of the administration's labor training programs.[80] This was an interim report of a two part review of selected training programs which Wirtz sent to the commission on the president's directive. The report exonerated the Great Society training programs from blame as a causal factor in the 1967 disorders and called for greater use of the programs as a means of getting larger numbers of persons off the streets and into gainful employment.[81] Following Wirtz's suggestion, a proposed transmittal letter from the commission to the president, written in the department, endorsing the report's recommendations and suggestions for enhancing them, was not sent. This neglect and the commission's incorporation of many of the report's themes into its final report, without specific endorsement of the Great Society training programs from which they were taken, laid the foundation for much of Johnson's public resistence to the Report.

The major effort by the White House to use the Department of Labor to take some attention away from the commission and congressional efforts to explain the disorders occurred on November 2, 1967 when the Bureau of Labor Statistics issued a report titled "Social and Economic Conditions of Negroes in the United States."[82] In his statement made

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[80]Memo, Wirtz to Ginsburg, 8/21/67, and letter, Wirtz to Kerner, 8/22/67 (letter and attachment, undated, Urban Training Programs. Report II Use of Programs in Chicago, Detroit, Los Angeles, Newark and Washington, D.C.), Manpower Program files, NACCD Papers, LBJ Library.

[81]Ibid., p. 2.

[82]Bureau of Labor Statistics, Report No. 332, Current Population Series. P-23, No. 24, (Washington, D.C.: U.S. Government Printing Office), p. 97.

at the time of the release of the study, Johnson, in a very characteristic manner, said:

> This report... backs up neither of the extreme positions that emerged in the wake of the summer disturbances. It does not confirm the diagnosis of bleakness and despair: that there has been no recent progress for Negroes in American and that violence is therefore the logical remedy. It does not confirm the opposite view: the Negroes have been given "too much" ... Far from showing no progress, the picture revealed is one of substantial progress... In education, in occupations, in income, in housing, most Negroes have made progress over the past few years ... Government helped by opening the doors of opportunity to better themselves -- they will better themselves... Let us get on with the job.[83]

This report, obviously aimed, in part, at setting limits of acceptability for the commission's final interpretation of the conditions of black Americans, was not shared with the commission prior to publication. Nor were the data transmitted to the commission even though they were available to the White House as early as the preceding August.[84]

The interrelationships of the commission with the Department of Defense (DOD) existed on three levels. First, the president joined the commission and the department when he instructed the former to investigate and make recommendations on disorder prevention which included "... the training of state and local law enforcement and national guard

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[83]U.S. President, Public Papers of the President, Lyndon B. Johnson, 1967, pp. 980-981.

[84]The final BLS report was actually a compilation of two White House reports based on the BLS data done for the president.

personnel in dealing with potential or actual riot situations,"[85] and by directing:

> ... the Secretary of Defense to issue new training standards for riot control procedures immediately to the National Guard units across the country. Through the Continental Army Command, this expanded training will begin immediately. The National Guard must have the ability to respond effectively, quickly and appropriately in conditions of disorder and violence.[86]

The detail of this relationship has been discussed elsewhere in this study.[87]

The second level of relationships with the DOD consisted of a common interest, determined by presidential dictate, in securing and sharing intelligence information on the disorders. The DOD became publicly involved in the civil disorder-conspiracy issue when the president ordered national guard units to riot duty and dispatched General Throckmorton and his command to Detroit. The DOD cooperated with the commission in pursuing the conspiracy study by giving Miskovsky and his staff access to its computer files and free use of its computer system to analyze data.[88] This cooperation with the DOD

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[85] Executive Order 11365, Section 2, Report p. 295.

[86] Report Appendix C, "Excerpts from President Lyndon B. Johnson's Address to the Nation on Civil Disorders, July 27, 1967." p. 297.

[87] See discussion of the national guard in Chapter 10, pp.304-311.

[88] Memos, Miskovsky to Ginsburg 11/17/67 and 12/12/67, Ginsburg files, NACCD Papers, LBJ Library.

presented the commission staff with a serious problem, however. The military analysts involved in the conspiracy study reported concerns about the possible outbreak of guerrilla warfare and serious reservations about the ability of the nation's police and national guard system to contain any future major disorders.[89] The concerns being expressed by the military analysts exceeded those the commission staff was getting from the FBI and the conclusions they were reaching based on their own research. The persistence of the DOD in pressing its views of the origins and character of the disorders caused Ginsburg and Palmieri to fear the Report's being skewed toward the military point of view.[90] To counter this the senior staff deliberately set out to temper the department's view on the disorders. For instance, Ginsburg sought and received an invitation to speak to the DOD Manpower Breakfast (to which all top persons dealing with manpower questions in the DOD were invited) and to the Army Policy Council; to the former he spoke of the uses of the military in civil disorder situations and to the latter about the findings of the commission on the conspiracy issue. In these types of meetings the senior staff of the

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[89]Lipsky and Olson report an interview with Robert Lilley (President of the New Jersey Bell Telephone Company and Chairman of the Governor's Select Commission on Civil Disorders, New Jersey) in which he related his experience when he "... attended a meeting in Washington where Army spokesmen admitted being worried that the riots could not be contained. Although in retrospect this perception does not do credit to Armed Forces intelligence, Lilley recalls shuddering in recognition that if the Army was worried we should all be worried, for there is no force to back up the Army." MSS, III, p. 3.

[90]See Palmieri's letter to Robert Hutchins, 9/18/67, Palmieri files, NACCD Papers, LBJ Library.

commission tried to move the senior level military staff of the DOD away from thinking of the disorders as products of foriegn and/or domestic criminal conspiracies.

The third level of contact between the commission and the DOD was an extension of the concerns just discussed. The commission attempted to direct the military's attention toward taking greater responsibility for disadvantaged minority persons of the society by acting as an employer of last resort and as an adjunct to federal civilian job training programs. To accomplish this the commissioners first wanted to recommend to Johnson that the department expand two of its existing programs: Project 100,000 and Project Transition.[91] Project 100,000 was designed to admit young men who had below standard physical and mental test scores into the armed forces at the rate of 100,000 a year. Secretary of Defense McNamara supported the program, but resisted the idea of expanding it beyond the 140,000 men the department had projected through the end of September 1968.[92] He was not certain that the armed forces could accommodate additional numbers of such persons without sacrificing performance standards. He recommended that the commission ask only that the department "continue its emphasis" on the program and "consider expansion;" McNamara agreed with the commission that Project Transition, designed to train and counsel servicemen scheduled to return to civilian life about vocational opportunities, should be expanded.[93] In its final report, the commission adopted the

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[91]Memo, Ginsburg to McNamara, 2/5/68, DOD file, NACCD Papers, LBJ Library.

[92]McNamara to Ginsburg, 2/10/68, DOD file, NACCD Papers, LBJ Library.

[93]Ibid.

secretary's position on both matters.[94] There are two reasons for the commission's rather easy acquiescence on these program recommendations. First, McNamara told the commission that of the 140,000 men projected to be in the program by September 1968, only fifty thousand of them would be Negro Americans and of those only 37 percent were from the areas of the country experiencing the most intense disorders.[95] Second, there was a growing conviction in the commission and elsewhere that the army was already too much a poor person's organization and, further, was ill equipped to handle the social welfare problems in the manner the commission's original recommendations envisioned. The commissioners settled, therefore, for endorsement of existing DOD programs and recommendations which gently directed the attention of the military to other possible causes of the disorders than the conspiratorial ones they were entertaining.

The relationship between the commission and the Department of the Treasury was much more narrowly defined than those previously discussed; the only question here was the use of tax incentives as a means of encouraging employers in the private sector of the economy to employ persons classified as belonging to the "hard-core" unemployed. This has been discussed at some length above with the work of the commission's Private Enterprise Panel.[96]

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[94] Report p. 235.

[95] McNamara to Ginsburg, 2/10/68, DOD file, NACCD Papers, LBJ Library.

[96] pp. 384-387.

The relationships between the commission to the Department of Health Education and Welfare (HEW) and Housing and Urban Development (HUD) were different from those described above because those departments were in deep political trouble with the White House and the congress. The president placed special demands on the two departments in the areas of their deficiencies and did not indicate to them or the commission any particular type of relationship he expected them to maintain beyond the explicit ones set out in the mandate.[97]

Johnson, however, did direct the commission to give specific aid to the Office of Economic Opportunity (OEO) in its troubles with congress. The agency's struggle with those who wished to tie its programs and employees to the disorders is discussed elsewhere.[98] But attention should be called at this point to the fact that this effort to help OEO is a good example of the uses to which a president can put a commission after it has been appointed. The work on

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[97]Responding to its general distrust of HEW Secretary John Gardner's ability to work with the congress on civil rights matters, the White House decreed that the department's civil rights work be more closely coordinated with its own; so closely coordinated in fact that Gardner was forced to send weekly reports on the department's accomplishments, particularly with southern congresspersons, in civil rights lobbying which then were checked by Douglas Cater. (Presidential Memoranda, July 1967 (1) Cater 3, LBJ Library). In August Johnson sent a formal letter to HUD Secretary Robert Weaver with a personal note attached detailing complaints he was receiving from various sources about the department's handling of the various Great Society housing programs, Johnson to Weaver 8/7/67, HUD File, NACCD Papers, LBJ Library.

[98]See pp. 424-425, the file Riots (2) McPherson 8, (Memo Herbert Kramer, OEO, to George Christian 9/6/67) and memo Califano to Johnson 7/27/67 in Detroit Chronology (2) Califano 6, LBJ Library and Lipsky and Olson, MSS, IV, p. 57.

the OEO took valuable time away from the major items on the commission's agenda, but it did respond in a politically helpful way to the immediate demands of the president, which is, of course, one of the major reasons presidents appoint advisory commissions.

The administrative responsibility for maintaining these relationships and fulfilling the special assignments fell principally on Ginsburg for the commission and Califano for the White House. Ginsburg knew from experience that there was no way to keep Johnson uninformed or to keep him from "meddling" with the commission when he saw the need to do so. He knew that Kerner, Harris and Thornton had regular, direct lines to the president. By January he knew, too, that Corman had opened his own channel to the Oval Office. There were, also, the official White House liaison persons who sat in on all the commission meetings. Therefore, two facts of commission political life impressed themselves on Ginsburg: there is no place to hide, and the commission is the creature and, therefore, the servant of the president. To gain the independence possible for the commission, Ginsburg chose to be completely open with the White House. There were no surprises (disappointments, yes) for the White House. They knew of the commission's work each step of the way. If they had not, it is doubtful the commission would have

been allowed to survive the budget crisis of December.[99]

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[99]In light of the obvious candor on the part of the commission's executive staff with the White House, it seems that Chairman Kerner was either unaware of the close relationship that existed or was deliberately fabricating when he had the following exchange in a press conference:

"Q. Has the White House pressured you to tone down the report?

A. (Kerner) I have not. I don't know how the White House could ask us to tone it down or up. They haven't seen it nor has it been discussed with them.

Q. Weren't some of the staff recommendations discussed with the president in the middle of November?

A. Not to my knowledge they weren't and I am sure that I know of all discussions that have been going on."

Press Conference 1/10/68, Office Record, Spivak file, NACCD Papers, LBJ Library. Some interviewees felt Kerner did not know all that was going on.

CHAPTER XII

FULFILLING THE MANDATE

The purpose of this chapter is to uncover and explain the major obstacles which had to be overcome before the Kerner Commission could produce its final report. The examination of the character of these disputes and the manner of their resolution reinforces a central contention of this study - before anything else the Kerner commissioners saw themselves as servants of the president commissioned to fulfill the implicit as well as the explicit purposes of their appointer.

A unanimously supported final report was the goal of Kerner, Ginsburg and most of the commissioners. Along with the great majority of presidential advisory commissions they achieved the objective, but not without considerable trouble over four closely related problems which challenged the leadership's ability to hold the commission together;[1] first, the matter of a criminal conspiracy; second, the "Summary" of the final Report and its themes of white racism and two racially separating societies in America; third, the role of the junior staff in the commission's work, a topic which is best discussed in the context of the Harvest of Racism document and the dismissal of large

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[1] See Wolanin, Presidential Advisory Commissions, p. 118.

numbers of the research and field staff; fourth, the decision to issue only one comprehensive report together with supplemental studies. Each of these problem areas has been discussed before, at varying lengths, in earlier parts of this study. Some of this discussion will be rehearsed again, but in this instance the intent is to draw out and explain as many of the consequences flowing from the actions as possible.

Unlike the other three issues to be discussed in this section, there were no disagreements among the commissioners and the executive staff as to the necessity of settling the conspiracy issue first. None of the other questions of the president could be answered properly, it was thought, unless question number three in the fourteen point mandate were clearly addressed.[2]

The White House made it known to the commissioners that the president did not want any precipitous actions taken, by any part of the government on this issue. He wanted action but not until he could be in control.[3] The commissioners first turned to J. Edgar Hoover for information and guidance before setting their staff to work on an independent set of investigations.[4] The data secured from these sources and that garnered from the field trips forced a resolution of the conspiracy question earlier than the commissioners had

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[2]Report p. 296.

[3]See Lipsky and Olson, MSS, IV, pp. 8-9 for a similar idea.

[4]As was the practice, a summary of his testimony that there was no evidence of an organized conspiracy was released to the press.

planned; their evidence clearly pointed them away from the conspiracy explanation of the disorders and toward explanations which included socio-economic factors, police practices and even the Great Society programs.[5] A consensus developed among the commissioners that the conspiracy explanation of the disorders had to be repudiated if the other explanations they were developing were to have any credibility with the president or the public.[6] So the major part of the commissioner's time through November was spent in working through the evidence before them and refining their understanding of the conspiracy problem. Once the commissioner consensus was reached, Kerner and Ginsburg thought it wise to make it public before the publication of the Report. Kerner, in his press conference of January 10, announced it as one of the findings which would be in the final document.[7] Their conclusion is found in Chapter III, the shortest, but one of the most important parts of the Report. There the commission said:

> On the basis of all the information collected the Commission concludes that the urban disorders of the summer of 1967 were not caused by, nor were they the consequence of, any organized plan or "conspiracy." Specifically, the Commission has found no evidence that all or any of the disorders or the incidence that led to them were planned

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[5]The one exception was the flow of information from military intelligence sources discussed above pp. 439-441.

[6]Howard Hubbard, "Five Long Hot Summers and How They Grew," The Public Interest 12 (Summer, 1968):23, Shallow, "Social Scientists and Social Action," p. 209 and Johnson, The Vantage Point, p. 173, in retrospect, also agreed with this point.

[7]Press Conference transcript, Spivak office copy, Office of Information, NACCD Papers, LBJ Library.

or directed by any organization or group, international, national or local.[8]

The manner in which the conspiracy issue was handled by Miskovsky and Ginsburg allowed the commissioners to remain united and avoided the possibility of an incapacitating struggle among themselves, with congress, and the police community over the issue.[9] By treating the conspiracy issue first, and coming to their conclusion relatively early, they allowed themselves the luxury of being able to remain publicly aloof from the problem, gave themselves some precious time for the other departments to get their work organized and took from the congress and the FBI the right to speak authoritatively on the issue. The national attention given this part of their work allowed the public to direct its attention to other matters related to the disorders.

The conspiracy question was the most important external obstacle

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[8] Report, p. 89, Miskovsky's investigators did turn up evidence of some type of conspiracy. At the November 10 meeting, Ginsburg reported that suspicious evidence obtained at a black power meeting in Newark had been turned over to the FBI. (McGrath, "Minutes," 11/10/67.) The contract researchers working on the disturbances in universities also turned up what they thought to be evidence of an effort at a national conspiracy. (See Kerner's testimony, the Kennedy Hearings, p. 9). Neither was regarded as significant enough to warrant a change in the consensus statement which appeared in the Report. It is important to remember too that the commissioners kept their investigation on this matter open until the last possible moment. The final communication from Director Hoover was dated February 27, 1968.

[9] See the letter from George Reedy, former presidential press secretary to Johnson, 8/3/67, EX FG690, PR18, LBJ Library, in which this outcome was predicted.

which the commissioners had to clear on the way to their final report. The battle over the "Summary" to the Report[10] was the most important of the internal conflicts which threatened to bar the way to a unanimous statement to the president and the nation. The resolution of this dispute decided for the Kerner Commission a matter of critical concern to all advisory commissioners - will there be minority reports?

The struggle over shaping the commission's final report was waged between two groups of commissioners; one was headed by Mayor Lindsay, and usually consisted of Kerner, Harris, Jenkins, Brooke and Wilkins; the other formed around Representative Corman and on most of the important issues consisted of McCulloch, Thornton, Paden and Abel. Each group used the threat of a separate dissenting report as a weapon in molding the final report to their liking. The smaller group usually attempted to frame the Report in the terms Corman articulated in his January 13 letter to Kerner. They resisted what they saw as an attempt by the majority to engage in an "... indiscriminate attack on every problem of American society." They sought, on the other hand, "... a careful weighing of evidence from the disorders, a development of understanding for the frustrations and limitations of human beings in the conflicts and a judicious setting of program priorities that respond directly to the immediate causes of the riots." The Corman group sought to get commission endorsement of four themes in the final report: 1) commitment to the rule of law, 2) the disorders did not constitute a civil war, 3) there is no reason for official complacency

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[10] Report, p. 1-13.

despite the relatively low level of property damage and loss of life in the disorders, 4) "The disorders do not demonstrate the urgent need for abandoning fundamental American principles..." but rather the need to bring Negroes into the mainstream of American life".[11] Lindsay was the leader of a group desiring a report with a sense of urgency and commitment to significant increases in private and government activity in the areas of education, housing, employment and welfare. It was Lindsay who produced the document which contained the themes "white-racism" and America as two racially separated societies and threatened to issue it publicly as an independent statement. Faced with Lindsay's action the Corman group withdrew their threat to issue a minority report and adopted his as that of the commission provided it was separated from the body of the Report. They did so because they thought his threat credible and because most of the "Summary" did accurately reflect the content of the report. They had no strong objection to the theme of "white racism" being identified as the central problem the commission uncovered in its investigations.[12] The "Summary" as adopted did not call for any reorganization of American society (it condemmed violence and praised law and order); it sought no change in the established way of attacking the public problems of American society, it just called for more of the same. It did stress urgency and a sense of crisis and highlighted the major recommendations of the commission. There was, in short, in the "Summary", enough of what each group wanted

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[11] Letter, Corman to Ginsburg, 11/13/68, Ginsburg files, NACCD Papers, LBJ Library.

[12] Lipsky and Olson, Commission Politics, p. 13, and Popper, President's Commissions, p. 33 for similar conclusions.

to allow them to agree to it.

The efforts to broaden the scope of the final report and to frame the "Summary" began after the field trip to Cincinnati. Lindsay and Harris, in particular, came from that experience stressing the need for a report which would make recommendations calling for renovation and expansion of existing public and private housing, jobs and education programs. Lindsay called for a strong section on housing in the report.[13] Soon after the first of the year Lindsay was urging his colleagues to express a sense of urgency in the text of the Report. It was during the same period that he first laid before the commission the proposals which were included in the "Summary".[14] The theme of white racism first surfaced in the controversal Harvest of Racism manuscript (to be discussed immediately below); it also appeared early in the drafts of the various forms of the Report.[15]

While the theme of white racism was easily accepted by the commissioners, a common definition and an understanding of its implications were not. From the onset of their work the commissioners wrestled

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[13]McGrath, "Minutes," 11/1/68.

[14]Ibid., 1/9/68.

[15]e.g. Chambers to Birenbaum, 1/23/68, General Counsel files, NACCD Papers, LBJ Library. The documentary evidence is conclusive that the development of the ideas of the "Summary" and the broadening of the scope of the Report were gradually and persistently pursued by Lindsay and his group and were subject to full debate within the commission and the staff. The kind of intrigue engaged in to get the "Summary" accepted by the commissioners described by Kopkind, "Black on White," cannot be substantiated by the written evidence, or by the interviews conducted by the author.

with conflicting explanations of the causes of the disorders. The debates over the root causes revolved around poverty and racism as explanations. The argument for the poverty explanation was put forth most forcefully to the commissioners in formal and informal contacts by Daniel P. Moynihan. He insisted that the disorders were class based -- the results of the actions of members of an unhappy underclass which happens to be Negro.[16] Senator Harris was the most articulate challenger of the Moynihan thesis. For him, white racism was the root cause of the disorders. The McGrath notes of the commissioner meetings reveal that these debates consumed much of the commissioner's time before they finally were presented with and agreed to the language of the introduction to the "Summary". In the January 19 meeting, in a discussion of the section which eventually became Chapter XVII of the Report, the record of the discussion reflects the character of this debate over the causes of the disorders. Corman and Thornton were willing to separate racism and poverty and stress the former. Wilkins and Lindsay disagreed, wanting to tie the two together and made recommendations for a variety of wide ranging social-economic programs which would inhibit racism and reduce the level of poverty. Corman in turn wanted to stress that "... a lot of whites living on less than $3,000 a year didn't throw firebombs last summer. So need to stress racism. Let's attack what's wrong in our educational system, etc., but not call for destruction of our educational system, etc. Poverty

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[16]See pp. 377-378 for another discussion of Moynihan's position.

doesn't cause racism."[17] The resolution of this conflict was to use the concept white racism in the "Summary" without any attempt to define it or to tie it to the discussion and recommendations in the body of the text.[18] The "Summary" with its controversial introduction then became satisfactory to all the commissioners precisely because it committed them to nothing with which any of them seriously disagreed; by not tying the white-racism theme to the text of the Report they could make their policy recommendations without having to confront the need for changes in the form or substance of the traditional institutions and programs they endorsed.[19] The introduction had the urgency Lindsay and his colleagues desired but the remainder of the "Summary" and the text of the Report did not advocate any transformation of the basic institutions of the society; that pleased Corman and his group. Thus the Report set forth a slogan (white-racism) as an explanation for the cause of the disorders and a call for more Great Society programs as the means of preventing them from reoccurring. The Report called for white Americans to will a change in the social

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[17]McGrath, "Minutes," 1/19/68.

[18]See Downs, "THE FUNDAMENTAL ISSUE", p. 2.

[19]The white racism theme of the "Summary" is a good illustration of Whalen's observation about the role of "style" in post-JFK Washington: "In Kennedy-enchanted Washington, 'style' was everything ... style for its own sake. The line between image and substance disappeared. A thing well said was a thing accomplished. What answer did the people receive when they asked what could they do for their country? None -- the desired effect had been achieved by asking the striking question." (Richard J. Whalen, Catch the Falling Play: A Republican's Challenge to His Party. (Boston: Houghton Mifflin, 1972): p. 108.

order to allow Negro Americans to share in the Great Society. There was no call for changes in the structure and leadership of the dominant institutions. The Kerner commissioners put a radical sounding introduction before what is basically an imperial, conservative document; imperial in the sense that it advocated an imposed, white solution, to the problems of black urban conditions, complete with armed forces, a solution in which the persons targeted for the help had little to say in its development; conservative in the sense that the text of the Report essentially reaffirms and recommends strengthening the established interests and institutions of the society (e.g. most of the recommendations advocate increasing amounts of public resources be dedicated to the kinds of institutions against which the disorders had been directed). In making this same point Kopkind said of the Report, "It expresses the notion that since the conflicts of black and white America are non-ideological, no real shifts of power are needed to correct them. The problems which were seen in the American cities in the summer of 1967 did not represent contradictions within the whole political economy, but malfunctions of one or more institutions."[20]

A major stimulus for Representative Corman's fear that the staff was trying to lead the commissioners toward a report which intended to challenge the fundamental institutions of the society was a document written by Shallow's office in preparation for the aborted, interim

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[20]"White on Black," p. 2.

report," The Harvest of Racism: The Political Meaning of Violence in the Summer of 1967."[21] "Harvest" (as the paper was known within the commission) was presented to the commissioners seventeen days before the decision was made to reduce the size of the staff. While there is no firm evidence linking the two events, the controversy caused by the paper did not mitigate any feelings some of the commissioners may have had to solve their budget problems by jettisoning persons regarded as liabilities to the commission and the White House.[22]

"Harvest" was essentially a theoretical statement about the disorders written from the point of view of the participants, built on data collected by the commissioners and the staff field teams during the various city visits. Its authors intended it to be a means of putting before the commission a variety of hypotheses for classifying and explaining the disorders. At best, the paper was intended to stimulate ideas and insights and to be of use in managing the vast amount of data the commission was accumulating. The authors planned to return to the field and gather additional data to strengthen their admittedly shaky first set of explanatory categories.

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[21] Dated 11/22/67 and found in Department of Research files, NACCD Papers, LBJ Library. See Shallow, "Social Scientist and Social Action," pp. 211-212, for a description of the manner in which the document was produced.

[22] Skolnick, "Violence Commission Violence," and Kopkind, "White on Black," both think the two events are inextricably linked. Their reasons for coming to that conclusion seem to be based solely on interviews with members of the staff who were discharged.

"Harvest" stimulated the commissioners to a far greater degree than Shallow and his colleagues planned. Ginsburg had asked for an exploratory document. But by the time the paper was given to him the needs of the commissioners had shifted dramatically; they were now seeking a report which, at a minimum, not only classified the disorders but demonstrated the validity of the classification scheme. Obviously, that was not the kind of paper the authors of "Harvest" had in mind, and it is doubtful that they or anyone could have produced such a document in the time allotted. The commissioners now wanted all generalizations about the disorders supported by "hard data".

Ginsburg's demands on Shallow's staff changed in response to the developing conflict between the commissioners over the relative merits of the racism and poverty themes. Corman attacked what he suspected to be a staff attempt to take from the commission the responsibility for the form and content of the interim report a full month before "Harvest" was turned over to the commissioners. In a letter to Ginsburg dated October 17, 1967,[23] which the executive director circulated to members of the staff Corman said:

> The following comments are designed to assist the staff in the preparation of a draft for the commission's consideration. No foreseeable action or combination of actions, either public or private, can significantly alter the objective facts of life in the Negro ghetto before next summer.

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[23]"Attached is a remarkable letter which merits the close attention of every member, man or woman, on the commission staff." Memo, Ginsburg to the staff 10/17/67, Ginsburg files, NACCD Papers, LBJ Library.

> One would hope, however, that the Commission's interim report can help set a new tone for public discussion and perception of civil disorders. The Commission's report can help ease tensions within the ghettos, thus reducing the severity of future disorders, and help avoid self-defeating or un-wise public reaction which might otherwise be taken in the face of new violence. In addition, the interim report must establish the credibility of the Commission itself in the eyes of both the white and Negro communities. Without this credibility the final report will be of little value ... (it) must fully and fairly explore the causes of Negro grievances while reassuring the entire nation of our determination to maintain public order... The Commission should make it absolutely clear that the underlying causes of our present dilemma are the conscious and unconscious barriers that have prevented whites and Negroes from perceiving each other as human beings of worth... there is no doubt that the Commission has a responsibility to recommend steps to improve enforcement of law and order.[24]

On the basis of this letter, and the commissioner reactions to it, Ginsburg became convinced that a significant minority of the commissioners was demanding a draft of the interim report which more resembled a lawyer's brief than a social science document.[25] Not only did "Harvest" fail that test, but, if adopted, would clearly have placed the commissioners in an adversary position with the White House. As Lipsky points out, acceptance of "Harvest", or any variation on its themes as the interim report, would have forced the commissioners into supporting three propositions, no one of which was acceptable to a majority of the com-

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[24] Ibid.

[25] Lipsky, "Social Scientists and the Riot Commission," p. 76.

missioners at the time. First, police practices were major instigators of the disorders; most of the commissioners came to accept this proposition in January and February, but very few were willing to acknowledge it in November. Second, the riots and civil disorders of 1967 were events of positive social and political value, the societal benefits of which cannot be realized until the demands of the protesters have been met. This point, more than the others, seriously frightened Corman. To accept it would not only challenge the credibility of the commission and the present administration, but the whole political system. Third, specific policy and legislative needs flow from the first two propositions, demanding that the commission take sides on some very partisan and controversial pieces of legislation pending before congress.[26] Faced with these kinds of choices, Ginsburg and Kerner turned down "Harvest" and immediately turned the attention of the commissioners to the developing budget crisis and to the concurrent problem of changing the timetable for the report(s). In turning to the budget problem they were able to rid themselves of the focal point of a considerable amount of commissioner dissatisfaction.

The fundamental reason for the reduction in the size of the staff was economic; the White House's battle with the congress over the budget reached a critical state in the last two months of 1967 and a peripheral part of the administration, such as an advisory commission, was not

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[26]Ibid., p. 75.

going to be unaffected by it. In November the financial situation became desperate for the commission. It was faced with two irreversible facts: it would have no money after the last day of the month and the president had decided not to include it in his request for supplemental appropriations from congress. The financial crisis was eased by Califano's and Schultz's securing department/agency funds to see the commission through a short period of time and by Ginsburg's ability to secure grants from private foundation sources. On December 9, the commission decided to accelerate its work and issue one report. On December 10 it was announced that the professional staff would be redcued by twenty-nine persons on December 30. Of these, approximately twenty-five had been slated for termination around the first of the year. An additional seventeen were cut from the staff on January 13. In an undated memo Koskinen developed the following which details the number of staff persons employed before and after the cut:[27]

	Professional Staff	Clerical
Before 12/31	97	75
After 12/31	68	46
Remaining 1/13	51	34
Remaining 2/1	40	31

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[27]See memo, Koskinen to Henry M. Jackson 11/17/67, Koskinen to Long Term Task Force Members 11/14/67, Koskinen to Taliaferro 1/3/67, Staff Termination files, NACCD Papers, LBJ Library.

There were forty professional staff persons still employed on March 8, 1968, twenty-two of whom were laid-off at the end of that week. By mid-April the staff consisted of two professional staff persons and two secretaries.[28] In his letter of December 15 to those being terminated, Ginsburg gave the following reasons for the commissioner's action:

> As you know, the commission at its meeting December 9 decided not to publish an Interim Report and to file its Final Report as soon after the first of the year as possible. This decision taken together with the budget problem which faces every federal department and agency in Washington, has forced us to plan for a reduction in manpower after the first of the year.[29]

Some of those affected by this action took public exception to this explanation and charged the White House with ordering a staff purge after reading "Harvest."[30] The evidence denies such an interpretation of these events. No doubt the White House staff read "Harvest" and were as upset with it as were Ginsburg, Palmieri and the commissioners. But to order a purge and to cut the commission's budget in retaliation

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[28]Memo, Ginsburg to Commissioners, March 8, 1968 Ginsburg files, NACCD Papers, LBJ Library.

[29]Found in Staff Terminations file, NACCD Papers, LBJ Library.

[30]See Spivak's account of a staff leak to the Washington Star on December 12 Undated memo, Spivak to Ginsburg in Spivak's file, NACCD Papers, LBJ Library. Also see memo, Spivak to Ginsburg, Kerner and Lindsay, 1/9/68, in which he reports that a former consultant to the commission, T.M. Tomlinson (listed in the Report as Tomlins, p. 304) made such a charge in a paper prepared for presentation at the annual meeting of the American Academy for the Advancement of Science in December (26-31). A commission staff member who attended the meeting reported that Tomlinson did not make the charge in his oral presentation of his paper.

strains the dictates of reason. The White House had many other ways of handling a "run-away" commission and it did not need risking public criticism over something that could be handled in another manner. On the contrary, the White House staff and Schultz worked very hard to keep from cutting the commission's budget, but other policy issues took a higher place on the administration's agenda. The timing of the budget and personnel decisions was politically poor, but the White House had no choice. In the context of the politics of that year the political damage Johnson suffered because of these actions was small. Money was found to keep the commission in existence; whatever the problems were with "Harvest," the executive staff could handle them. From the viewpoint of the White House the budget crisis had its origins in a larger political arena in which such matters as the existence of "Harvest" played no part.

Before leaving this issue, however, it is important to note again that from the viewpoint of the commission and the work it had yet to do, the consequences of the budget and personnel decisions were great. The first casualty was the quality of the Report's analysis of the disorders in 1967; as Gary T. Marx, a Harvard sociologist at that time, and one of the December casulaties, pointed out in a letter to the New York Times, the commission entered a crucial phase of its work with few social scientists in its employ.[31] Some social scientists were brought in to assist the staff in the last stages of the writing

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[31] New York Times, February 2, 46:5.

of the report. Hans Mattick (University of Chicago School of Law), a consultant brought in to rework "Harvest" into an "acceptable" form observed:

> ... very little got into the analytical parts of the Report that could not be documented by defined data, explicit methodology, sworn testimony, affidavits, or very reliable sources ... The manifest aspects of civil disorders were set forth in great detail while their latent aspects were relatively neglected... As a consequence several interesting attempts to formulate a riot topology, based on the data available to the commission, simply did not survive the division of labor and editorial decision process that resulted in the publication of the Report.[32]

Shallow commented about the lack of rigorous analysis of the data the commission had compiled. The failure, in large part caused by the decision to eliminate most of the social scientists from the staff, produced a product (Chapter II, "Patterns of Disorder") which:

> was dryly atheoretical; a pseudo-statistical tallying of events and characteristics of cities. At best it was a layman's conception of what a respectable social science analysis should look like ... It sometimes touched on the major analytical themes set forth in the "Harvest", especially those stressing the characteristics of riot

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[32]Mattick, "Form and Content of Recent Riots," p. 4. His footnote three on the same page contains, in part, the following: "Two other such attempts came to the author's attention. One was prepared by Robert Shallow ... an excellent paper entitled "Harvest of Racism" which was prominently stamped with the cautionary message, 'This document has been neither submitted to nor approved by the members of the commission.'"

> participants, but it bent over backwards in obscuring others. We were disappointed that this section ducked the challenge of giving meaning to the riots, a meaning which we felt was implicit in the data developed by the commission itself. By narrowly defining events into categories and stressing the quantitative approach, significant features of social interaction were lost ... By reducing all control tactics to five simple categories and relating each to the onset and intensity of violence, the analysis obscured, I believe, one of the most important findings to come out of the investigations: namely, that there are several distinct types of disorders; that one type may (and probably will) evolve into another; and that a tactic appropriate to one kind of disorder may be entirely inappropriate to another.[33]

The second consequence was that the commission survived as an agent of the president, still able to function in a relatively independent way. The budget crisis and the staff reductions crippled the commission, but did not kill it. Internal action by the commission leaders removed "Harvest" as a bone of contention and the personnel dismissals had the positive effect of removing from the staff most of the persons at whom Corman, Thornton and the others of the "conservative" group were directing their wrath. Consequently, as of December 31, Ginsburg and Kerner still had a chance to deliver to the president an unanimous report which would be "acceptable." Before then, however, they had to resolve one additional major matter - the issue of one report or two.

The decision to shorten the life of the commission and issue only one report was taken at the same meeting (December 9) as that to reduce the size of the staff. Like the latter, it was made in response

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[33]Shallow, "Social Scientists and Social Action," p. 212.

to the same economic and political demands. Unlike the latter, however, the decision to issue one report was executed in consultation with the White House.

The original directive to issue a report of findings of fact no later than March 1, 1968 was contained in the president's executive order creating the commission.[34] Ginsburg and Kerner understood the president's intent in issuing this directive to be, first, to have available to the nation, particularly the mayors and governors, a report answering the fourteen point mandate far enough in advance of the summer of 1968 to be helpful in preparing for any disorders. The second reason was Johnson's desire to have a report before the public early enough to be helpful to him in pushing his 1968 domestic program package through the congress. The leadership of the commission also understood that the final report, due before July 29, 1968, was to contain long-range policy recommendations. Findings of fact first, then policy recommendations - that was the original scheme the commission expected to follow.

Senator Harris proposed a series of interim reports. He wanted to hold hearings and prepare recommendations on three topics for public release in early September: increased police salaries, riot training for the police and national guard, police-community relations.[35] His proposal got no support in the commission or the White House but his

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[34]Executive Order 11365, Section 7, Report, p. 296.

[35]Memo, Ginsburg to Palmieri and Scammon 8/19/67, Ginsburg files, NACCD, LBJ Library.

objective was partially accomplished by the commission's sending four letters to the president and other appropriate officials containing specific public safety action recommendations.[36]

There also were disagreements among members of the staff about the kind of report and when it should be issued. Concern was expressed by some that care must be taken not to rush into print; time must be taken first to secure as much supporting evidence as possible for any recommendations in order to "counter balance potential criticism that the commission is either shooting from the hip or acting out of purely political motives."[37] These kinds of discussions continued to be held throughout the fall, but failed to have any significance for the commission's work until November when the group was faced with replacing one set of plans for issuing a report with another.

The meetings between Ginsburg, Califano and Schultz in which the realities of the budget crisis were laid out revived these discussions. The White House preferred that the commission accept a budget cut in the form of reducing its life span and its work expectancy; reducing the size of the staff was a logical extension of this position. Techni-

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[36]See Appendix J, Report, pp. 318-319 for the texts of the letters. The topics were riot training for the national guard and the army, recruitment of blacks into the armed forces and the national guard, a recommendation for a series of police training programs and problems of police radio communication in times of disorders. Popper, President's Commission, claims these recommendations were the only ones the president adopted and that a number of the commissioners regretted having sent the letters because they allowed Johnson to appear to have done something in response to the commission's work. As will be noted shortly, Popper's contention is overdrawn.

[37]Memo, Koskenin to Palmieri 8/18/67, "RE: Staff Meeting of 8/17/67", Koskein files, NACCD Papers, LBJ Library.

cally, the decision was made at the December 12 commissioner meeting, but there is reason to believe that the commission leadership, the White House and Schultz had reached an agreement some days before, and that all the necessary contingency details had been worked out by Ginsburg and cleared with the White House. As noted above, Miskovsky, in his final report to the executive director, reminds Ginsburg that on December 6th he (Ginsburg) told him that there would be no interim report and that the two of them discussed the problems they anticipated following such a decision.[38] McGrath's notes of the commissioner meeting of December 8 show that some discussion was held on the one report-two report problem. (There is no record in those notes of any discussion of the Ginsburg, Califano, Schultz meetings.) In a pattern typical of all their decision-making, consensus was reached by the commissioners on producing one report. It was agreed Ginsburg would tell the press the next morning that "We've expanded the interim report so there will be some delay. We can't give a specific date (for the publication of the Report)."[39] By the morning, however, the press release clearly said that the report would be published no later than March 1.[40] Ginsburg called Califano after the press conference and the following was passed to Johnson:

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[38]Miskovsky, "Final Report 3/25/68," Miskovsky files, NACCD Papers, LBJ Library.

[39]McGrath, Minutes, 12/8/67.

[40]Press release dated 12/10 for release on 12/11, Spivak files, NACCD Papers, LBJ Library.

> David Ginsburg just called to tell me that the Riot Commission voted unanimously today to consolidate their work into one report that would be submitted in late December or late January. They felt that the urgency of the situation required that they report to you as promptly as possible.[41]

Johnson responded, "That's good and tell him I appreciate that."[42] The next day Ginsburg sent a copy of the commission's press release to the president with a hand written note, "Dear Mr. President, This, I hope, will be helpful. Respectfully, David Ginsburg."[43]

Thus the White House, while not dictating the specifics to the commission, was able to bring about a solution to the problems of the budget, personnel and publication of the report in a manner which served its interests well. From the president's perspective, he was now in better control of the commission and its work; he had it on a shorter leash, to use a favorite Johnson expression. The reasons for the president's privileged position, though quite obvious, are important to list, because they have been ignored or discussed in the wrong context by other students of the commission. First, and most obvious, other than the relatively small amount of money from private sources, the White House had a firm grip on the commission's work through its finances.

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[41]Memo, Califano to the President, 12/9/67, EX PU 1, FG 690, 11/31/63 - 2/29/68, LBJ Library. Ginsburg obviously misjudged how long it would take him to get unanimous agreement for a report.

[42]Note attached to 12/9/67 memo, dated 12/10/67, EX PU 1, FG690, 11/31/63-2/29/68, LBJ Library.

[43]12/10/67 memo is attached to a Califano memo to the president, 12/11/67, EX PU 1, FG 690, 11/31/63-2/29/68, LBJ Library.

In January, for instance, Kerner and Ginsburg went to Charles Schultz and Califano and asked for an additional $162,000 for the work of the commission. Schultz thought the money could be found but before doing so wanted to be certain he knew what Johnson's political objectives were:

> Of the additional $162,000, approximately $88,000 is needed to complete the editing and publishing of the Commission's report and the editing and publishing of a number of very valuable surveys and research findings. I would agree with Kerner and Ginsburg that these funds are needed -- without them, some extremely useful material cannot be put into usable form.
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> The remaining $74,000 is to keep in being a small Commission staff, from April 15 (when the Commission's report will be issued) to August 1. The staff would be used to handle correspondence, Congressional relations, and inquiries from the press, and will "work on informing the public about the report."
>
> My major question is whether or not you want to keep the Commission in being tc handle these essentially public relations jobs during the late Spring and Summer.
>
> On the one hand, it just might be useful to have them in being if riots should break out next Summer. On the other hand, if their report urges large, new programs which we cannot handle at the present time, having a staff around promoting such proposals could give us trouble. Governor Kerner will call me tomorrow for an answer on this. Before answering him, I would like to know your wishes with respect to this basic question.[44]

The decision was made to deny the commission the funds to stay in existence through the summer. Later, as shall be seen, there was some agitation (mainly by Lindsay and Harris) for recovening the

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[44]Memo, Schultz to the President 1/25/68, EX, PU 1, FG 690, 11/31/63-2/29/68, LBJ Library.

commission; it was to avoid giving the commissioners the possibilities of doing just that which dictated this decision on commission funding. Second, there was now less time for the incipient revolt of the commission "liberals" to develop; this was a possibility upon which Johnson was being kept current. Here, as with most advisory commissions, Lipsky and Olson's "commission problem" became a factor positively supporting commission dependence on presidential design. Third, because of the lack of money and the importance of the "commission problem," the Kerner group was almost totally dependent on administrative resources for filling in the gaps of their research. There would be no time, and probably no money, for additional field research (as planned); nor would there be time for additional hearings;[45] now, only depositions, sworn and taken before the staff members, could be taken from persons who might have testified before the whole commission. The taking of depositions in lieu of hearings was particularly important to the content of the final report when it is remembered that this was the primary means for getting testimony from the leaders of the non-established black groups.[46] Fourth, moving the one report

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[45]In November a staff task force had been created "... to develop a hearing schedule compatible with the final report concepts" composed of McCurdy (Chairman), Downs, Koskinen, Chambers, Louise Sagalyn, and Kruzman (Minutes of the Department Heads 11/13/67, NACCD Papers, LBJ Library)

[46]It can be argued that the commissioners would not have heard such persons under any circumstances. However, the Lindsay-Harris experience in Cincinnati, the various efforts to get these leaders before the commission, and/or the proposed MARC Conference might have had, with more time, the effect on the commissioners and Ginsburg of changing their minds on the issue.

to as early a date as possible gave the White House considerable lead time to decide how to use its recommendations before the on-set of the summer "riot season."[47] Last, the White House now had less chance of being "upstaged" by the Report. The shortened time period meant that the commission would have to rely more on administrative sources thereby making it more difficult to make recommendations outside the realm of those already established or in the administration's policy mix. Further the shortened time frame forced the commission into giving more attention to the causes of the disorders and less to policy recommendations.

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[47]Mattick, "The Form and Content of Recent Riots," p. 3, fn 2, claims an additional benefit for the White House in receiving an early report. Having it finished in the winter provided "a cooling off" period before the most intense part of the campaigning for the presidential nominations began.

CHAPTER XIII

THE PRESIDENT AND THE KERNER COMMISSION REPORT

The decision to issue a single report was well received by the White House -- the commission report was not. Johnson made "... the difficult decision not to respond directly to the call for major new programs"[1] because he received a document which presented him with, 1) recommendations for elaborate Great Society-type programs in many cases with specific goals (e.g. housing) considerably more expensive than the administration's, 2) implicit criticism of his "guns and butter" policy, 3) insufficient words of praise for the Great Society efforts to remedy the conditions which he thought to be the causes of the disorders, 4) criticism of those socio-political interests upon which he felt politically dependent.

The leaders of the commission, on the other hand, knew they had produced a document which was not completely acceptable to any of the major publics to which it was addressed. But they were convinced that they had written, as one of them put it, "a document the president could run for re-election on," broad and flexible enough to

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[1] Johnson, The Vantage Point, p. 451.

allow him to use its recommendations as he saw fit in molding the 1968 Great Society program to meet his re-election needs. Further, they were convinced that, if adopted, the recommendations would be an adequate beginning to meet the needs of black Americans described in Part II of the Report.[2] They knew, too, that any direct endorsement of the Great Society or the president's war policy would split the commission; a majority of the commissioners was in favor of expansion of the existing domestic programs, opposed to the war and uncomfortable with the leadership Johnson was giving to both. The leadership, in short, saw themselves salvaging what they could (which they thought was a great deal) from a majority of their colleagues which was able but not quite willing to push the administration, by means of the Report, to the logical limits of its own domestic policy program commitments, and by implication, to challenge its war policies. To Johnson this meant that most of the commissioners were in agreement with his most severe liberal critics in congress. The trouble for him inherent in that alliance forced him to turn his back on the commission's work.

But Johnson did not reject the report. He chose to snub it publicly while privately encouraging various groups to read and implement as many of its recommendations as possible. This stance allowed him to occupy ground of his choosing, not one dictated by any explicit or implied policy position in the Report, in a position to determine the place and the content of the debate over the commission's recommendations. It was

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[2]Chapters V-IX, pp. 91-146.

clear that he wanted to move his Great Society program in the direction the Report was pointing but he wanted to control the movement and he did not want to put himself in a position of being open to charges of reckless spending. If he fell victim to the latter charge, he thought, he would permit his domestic program to become hostage to a congress determined to force him to change his war policy. To manipulate the Kerner recommendations in the manner he desired was not easy, particularly in light of the massive amount of publicity the publication of the Report and his reactions to it received. But he did accomplish two of his goals: the initiation and direction of domestic policy programs remained in his hands and the debate over the Report and its recommendations took place in the press and the academy, not in the congress. Given the other political pressures Johnson was under at the time, this was no small accomplishment.[3]

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[3]It is well to keep in mind that the political pressures which developed in the ninety day period before Johnson announced his decision not to seek re-election. In foreign affairs, the seizure of the intelligence ship USS Pueblo and the Tet Offensive of the North Vietnamese, were, of course, two of the heavier straws that broke the back of his administration. Perhaps most revealing of the political problems Johnson had was his decline in the public opinion polls during this period. Approval of his ability to handle the war fell from 39 percent to 26 percent and of his general handling of the presidency from 41 percent to 36 percent. (see, George H. Gallup, The Gallup Poll: Public Opinion, 1935-1971 (New York: Random House, 1972), Vol. 3, pp. 2099-2115). It is also important to note Kearns' observation that the same polls showed support for Johnson's policies; the decline in public support was personal, a problem of his credibility. (Kearns, Lyndon Johnson and the American Dream, p. 336). See also Johnson, The Vantage Point, pp. 532-533 for Johnson's reflection on the series of events which began with the Pueblo incident, "... the first link in a chain of events -- of crisis, tragedy, and disappointment...", which left him feeling that he was "... living in a continuous nightmare."

Johnson's response to the Report was well thought out, tightly controlled by the White House and closely integrated with his domestic policy plans. The close watch on the commission maintained by Califano and the executive departments/agencies was intensified during the weeks following the decision to issue one report. One reason for the vigil was that this period coincided with that of the state of the union message and Johnson's, now traditional, special messages to congress; Johnson and Califano wanted to avoid having domestic policy recommendations reach congress independent of one of the special messages. But, Johnson's primary concern in monitoring the commission was to be certain that it aided him in advancing the domestic policies the White House was about to introduce to congress. During the almost ninety days between the decision to issue one report and the date of the final report's publication, Johnson made seven key public statements in which he outlined his 1968 domestic programs, each of which had relevance to the work of the Kerner Commission. These speeches set the policy boundaries beyond which he did not want any part of his administration to venture and within which he expected full support.

In his State of the Union Message Johnson staked out the boundaries. He requested a $2.1 billion manpower program (a 25 percent

increase over the previous year's budget), $1 billion for the Model Cities Program (an approximate $700 million increase over the congressional appropriation for the previous fiscal year) and $6 million for federally financed middle and low income housing units (to be built over the next ten years). These programs were part of a total projected budget outlay of $186 billion which, if congress accepted the president's tax surcharge proposal, would produce a deficit of $8 billion in Fiscal Year 1969.[4]

The first special message directly concerned with the Kerner Commission's work was "To Earn a Living: The Right of Every American."[5] Here Johnson outlined a manpower proposal which included the announcement of the JOBS and National Alliance of Businessmen programs.[6] Johnson regarded both of these proposals as central to his efforts to remove one of the major causes of the disorders: lawlessness generated by idleness. He reinforeced his concern by making additional statements to appropriate members of congress and the press.[7]

Johnson's fourth annual special message to congress on civil rights condemned racism and affirmed the commitment of the administration to policies designed to achieve equality of the races.[8] Johnson also

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[4]U.S. President, Public Papers of The Presidents, Lyndon B. Johnson, 1968, pp. 25-33.

[5]Ibid., pp. 46-53.

[6]See pp. 419-420 for another discussion of these programs.

[7]U.S. Presidents, Public Papers of the Presidents, Lyndon B. Johnson, 1968, pp. 53-54, 78-80.

[8]Ibid., pp. 55-62.

proposed to strengthen the federal government's hand in guaranteeing the right of all citizens to employment and housing.

On January 27th he formally received the report of the commission's insurance panel.[9] In a short statement he directed the Departments of Housing and Urban Development, Commerce, Treasury, Justice, the Bureau of the Budget and the Small Business Administration to prepare legislation to implement the recommendations of the Hughes panel.[10]

In his 1968 budget message Johnson explicitly established his domestic budget priorities, conditioned by congressional cooperation in granting his request for passage of the surcharge tax.[11] Those programs for which he requested increases, which were also under consideration by the Kerner Commission at the same time, were manpower training, the Model Cities Program and proposals for correcting the rising crime rate (an implicit concern underlying most of the commission's recommendations).[12] These he cautiously presented to congress as a part of a policy of selected expansion of existing programs "... or the inauguration of new ones only as necessary to meet those urgent requirements whose fulfillment we cannot delay."[13]

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[9]Ibid., pp. 77-78.

[10]The legislation which resulted was Title XI of the Urban Property Protection and Reinsurance Act (PL 90-488, 82 Stat. 476, 555). The bill was signed by Johnson on August 1, 1968.

[11]U.S. President, Public Papers of the Presidents, Lyndon B. Johnson, 1968, pp. 83-112.

[12]Ibid., p. 89.

[13]Ibid., p. 83.

In his special message on crime Johnson made clear his commitment to reducing the threat of criminal conspiracy as a factor in future disorders.[14] The tenth recommendation in this message was for "a felony law aimed at those who cross state lines to incite and take part in riots."[15] At the time this message was given, Johnson was well aware that FBI Director Hoover had told the commission he found no conspiracy underlying the 1967 disorders. But he was also aware that Senator McClellan's belief in the existence of a conspiracy was widely shared by his congressional colleagues. Johnson knew too that the commission was developing a negative picture of the role of the police in the disorders. He therefore set out both to preempt the commission and clearly to establish himself as being tough on crime; he called for immediate action:

> ... there is no need to wait (for the Kerner Report) before protecting society against those who would tear it apart for whatever purpose. I propose the Federal Anti-Riot Act of 1968.[16]

From the point of view of his top domestic advisers the most important 1968 domestic program proposal was the cities message.[17] In it the budgetary limits were set for the administration's urban program: $2.18 billion for the War on Poverty, $2.34 billion for

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[14]Ibid., pp. 183-196.

[15]Ibid., p. 183.

[16]Ibid., p. 191, emphasis in the original.

[17]Ibid., p. 248-263.

the first five years of a ten year program for the construction and rehabilitation of 2.35 million housing units, $65 million for the rent supplement program, $1 billion for the Model Cities Program, $230 million for urban mass transportation, $20 million for urban training and research, $55 million for planning for orderly urban growth and $10 million for area-wide urban incentive grants. The Kerner Commission had an interest in each of these areas. Of equal importance to the commission was Johnson's reference to an interim report of the Kaiser Commission and the final report of the insurance panel, but no mention of its work.[18] In retrospect this omission can be seen as a word to the advisory panel that its work had to be in line with the administration's proposed domestic program for the year or be completely ignored by the president. The congress had set the budgetary limits. He then set the policy limits for domestic programs; the battle between the two was joined at that point, and as far as Johnson was concerned the only choice the commission had was to follow his lead.

There can be little doubt that Johnson would have been more positive toward the Report had it not been for the political restraints on him. But he saw any endorsement of the Report as giving aid to all his enemies in congress, liberal and conservative. He therefore made the decision to snub the Report in public and privately to work to

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[18]Ibid., p. 257.

secure some of its recommendations for his domestic program.[19]

To accomplish his goals Johnson made certain his lines of communication with the protagonists in the struggle over the Report were kept clear. From Califano he received a steady flow of information about intra-commission developments obtained from the formal and informal liaison persons. But Johnson did not rely only on formal channels of communication. He sought out advice, counsel and information from commissioners he trusted, and congresspersons whose support he would have to have for his programs. As the struggle over a possible minority report and the proposed "Summary" developed Johnson's aides kept him informed of each turn of events. Irv Sprague, for instance, sent to Johnson Corman's letter of January 13 to Kerner together with a note detailing a call the congressman made to the White House expressing concern about "... the degree of liaison between the White House and the commission (and asking) ... if the commisssion is headed in the direction desired by the president," and reporting that unless the direction was changed Thornton, Paden, McCulloch and he would issue a minority report.[20]

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[19]There were some elements of presidential electoral politics involved in the decision. Johnson and his aides were upset that Lindsay had been able to gain the leadership of the commission. Johnson did not want to endorse a report which could be tagged by the press as "Lindsay's." See Harris' accounts of conversations with Johnson about Lindsay's rise to dominance in the commission. (Harris, Potomac Fever, pp. 110-113).

[20]Memo, Sprague to Barefoot Sanders (congressional liaison officer) 1/15/68. Corman's letter is attached to a memo which has the following inscribed on it "Seen by the President 1/17/68." EX FG 690 (3), WHCF, LBJ Library.

Ginsburg's regular communications with Califano included briefings on these matters. He provided a step-by-step report of the problems encountered in the development of each chapter and sent the final drafts of each to Califano immediately following their approval by the commissioners. Califano in turn sent these drafts to the Bureau of the Budget for cost estimates and to members of his staff to be read and carefully summarized. It was during this period that the drafts of the chapters were sent to the various cabinet members for comment and criticism.[21]

By the last week in Febraury, the content of the Report and its recommendations were well known in Washington.[22] Consequently Johnson became the object of a short but intense lobbying effort by partisans and opponents of the document. The most effective of the opponents were Congressman George Mahon and Commissioner Thornton. The major

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[21] In mid-February Ginsburg told the White House that the Report would be ready for the president on March 1 (with an agreed upon press embargo in effect until March 3) and requested a meeting between Johnson and the commissioners on the morning of that day. Johnson conditionally agreed to the meeting, "If Joe (Califano) has seen the Report and says OK." (Written on a memo, Watson to the President 2/13/68 in which Califano's proposal is outlined.) Following the president's instructions Watson instructed J.R. Jones, Special Assistant to the President, to "block out a time for this group. Joe Califano is to be back in touch with us." (ibid) The meeting was not held. As demonstrated below Johnson found the political risks too great. (Copies of these memos were found in EX FG 690. A note at the bottom of the top memo says "original in Presidential Handwriting File." LBJ Library.

[22] See the 2/21/68 memo to Ginsburg from Spivak (Spivak file, NACCD Papers, LBJ Library) detailing the planned coverage of the Report by the various media following publication. It is clear that the advanced commitment of time and print space was predicated on knowledge of the content of the Report.

participants agree that these two provided the stimulus which moved Johnson to his final position regarding the Report. Mahon was not a strong supporter of the Great Society or the commission. Three days following the appointment of the commission, in an address to the House of Representatives, he said, "Discipline, self-respect and law and order, enforced at the local level are very important ... the more we have appropriated for these (social welfare) programs the more violence we have."[23] Mahon was also an adamant foe of the surcharge tax proposal and effectively used his opposition to it to cripple the Department of Health Education and Welfare (HEW) appropriation and forced the White House to reorganize its lobbying efforts to achieve the passage of both.[24] Mahon was credited with being the primary reason for the congressional cut of the requests for the Teachers Corps and international education, the only significant reductions in the HEW budget in 1967.[25] It was, therefore, not promising for those advocating a presidential reception of the Report when Mahon, sometime during the last two weeks of February, met with Johnson, and some of his key domestic advisers, and shared his conviction that the congress was in no mood to accept the Report. He said that the Report would further jeopardize the chances for the passage of the surcharge tax bill.[26]

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[23]Lipsky and Olson, MSS, IV, p. 5

[24]See Minutes of the Cabinet, The White House, 10/18/67, LBJ Library.

[25]Memo, Cater to the President, 12/15/67, Presidential Memoranda, 12/67, Cater 4, LBJ Library.

[26]Mahon was quoted, immediately following the publication of the Report, as saying that the surcharge was in trouble with congress and

Prior to his meeting with Johnson, Mahon had met with Thornton who told the congressman of his concerns over the handling of taxation in the report and his fears that the commission's work would encourage future disorders.[27]

By February 26 Johnson's mind was made up; either the commission recommend ways by which its program recommendations could be funded or he would be unable to publicly support it.[28] A number of documents generated the next three days demonstrate that administration supporters of the Report worked hard to secure Johnson's endorsement of the document as written. Ramsey Clark[29] advocated a practical

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the Report's recommendations would need a 10-100 percent surcharge to get results. See New York Times March 2, 1:7.

[27]The Mahon-Thornton, Mahon-Johnson meetings were independently attested to by four interviewees, two of whom were in a position to have first-hand knowledge of the events. Harris lays the total blame on Thornton. "One of the commission members, Charles "Tex" Thornton, who had fought the majority on almost every significant point in the report, got the false word to Johnson that it condoned and would tend to encourage riots and the commission had, in effect, severly criticized Johnson by finding that his progams were insufficient to meet the problems. Although I'm sure the president never read the report, the White House canceled the delivery ceremony." (Harris, Potomac Fever, p. 113). Thornton did communicate directly with the White House (see below) but his actions were not as important to Johnson's decision as those of Mahon and those other leaders of what John Herbers of the New York Times called the "congressional economic block" (March 2, 1:7).

[28]See Larry Temple to the President, 2/26/69, covering copy of Johnson's statement that the commission must recommend ways of paying for their program recommendations. EX FG690, WHCF, LBJ Library.

[29]Clark had read the entire Report the week-end before its announced publication date and reported to the president through Larry Temple (Special Counsel to the President).

approach; the president should accept the Report; the commission knew what it was doing " ... it may be too late to do anything about them (the recommendations) ... In addition ... (the recommendations are) known to the press."[30] Clark also examined the preliminary Bureau of the Budget projections of the costs of the commission's recommendations and reported that they were not causing the BOB any great concern. In addition he volunteered to talk to Kerner about the BOB figures when they became final. Johnson's reply was curt and emphatic. He directed Temple to tell Califano that "some suggestion must be in the report on how to pay (for the recommendations)."[31] To avoid any misunderstanding Johnson also had Temple prepare and send a memo to Califano expressing his position:

> I have been seeing on the wire and hearing on the radio all day long what the Commission on Civil Disorders is going to report to me. As you know, I would prefer to receive that report before I hear about it from news media. Whatever the report recommends, I hope it will also contain recommendations to finance these proposals. Anyone can recommend spending, but preparing methods to fund the costs of new programs takes more ability. It has been my experience that spenders can always spend if they find lenders to lend or taxpayers willing to be taxed. So I hope those who are preparing the final report will be as imaginative on taxing as they are on spending.[32]

Califano responded that he was meeting with Kerner on February 27 to go

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[30] Ibid.

[31] Temple's notes on the 2/26/68 memo to the president indicating the substance of his conversation with Johnson.

[32] Johnson to Califano 2/26/68 (see footnote #28, above).

over the BOB projections and to communicate the president's position. He also noted that the Report "has virtually no figures of cost in it. But there is a paragraph which says all of the recommendations 'depend on our will to tax ourselves.'"[33]

On February 28, the day following his meeting with Kerner and the day preceeding the planned meeting of the president with the commissioners, Califano submitted to Johnson a detailed summary of the Report, including a cursory comparison of the commission's recommendations compared with the administration's projected domestic program, the BOB estimates of the costs of the recommendations and some suggested options for action which the president could take.[34] Califano characterized the recommendations as similar to the administration's "... but much more ambitious and in some cases unrealistic in the short-run."[35] The BOB projections for the cost of the recommendations over the president's Fiscal Year 1968 budget levels were: $6 billion for jobs, $2.3 billion for education, $7-9 billion for welfare. No cost figure was given for the housing recommendation. "This (recom-

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[33]Temple to Johnson 2/26/68 (a different memo than the 2/26/68 note referred to immediately above but found in the same file).

[34]These documents can be found in EX FG 690 WHCF, LBJ Library and are dated 2/28/68. They consist of an one page handwritten memo from Califano to Johnson, a six page memo (clocked at 9:20 p.m.) summarizing the whole commission report (including the BOB estimates), a summary of the public relations operation projected by the commission, recommendations for presidential action, and a thirteen page summary of Chapters X-XVII (Section III "What Can Be Done). The "Summary" of the Report was not available to Califano at that time.

[35]Califano to the President 2/28/67, p. 2.

mendation) doubles the program you announced last week and is totally unrealistic."[36] He also reported the commission's unwillingness to meet the president's demands that it produce a plan for raising revenue for its recommendations:

> ... the strongest language that Kerner and Ginsburg were able to get was:
>
> > This alternative will require a commitment to national action ... compassionate, massive and sustained, backed by the resources of the most powerful and richest nation on this earth. From every American it will require new attitudes, new understanding and above all new will.
> >
> > The vital needs of the nation must be met; hard choices must be made, and, if necessary new taxes enacted.[37]

Finally, Califano reported the lack of real unanimity among the commissioners:

> ... there are two members who at heart have different views. Thornton believes that it (the Report) is much too ambitious and he will probably say so at some point. Lindsay believes the commission should have come out against the Vietnam War because of the resources it is draining away from the cities, and will probably say this at some point.[38]

The staff recommendation to the president for handling the Report, contained in the February 28 memo, was two-pronged. First, Johnson should issue a public statement in response to the official

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[36] Ibid., p. 3.

[37] Ibid., p. 5.

[38] Ibid.

transmission of the Report by Kerner; second, "Privately you give (George) Christian and me approval to start leaking the report to diminish its overall impact, point up its enormous cost and the unrealistic nature of its recommendations."[39] In his note to the president, Califano discourages any thought of calling the commission back into session to make recommendations for funding the proposals, but he did recommend that Johnson meet personally with the commission and receive its report.[40] On the following day Califano sent Johnson the final staff and BOB pre-publication study of the Report.[41] There is no substantive difference between this and the first analysis; the second contains a more detailed budget analysis than the first, but the total dollar estimates are the same.

Ginsburg was aware of Johnson's movement away from formal acceptance of the Report. On February 28, the day before the scheduled meeting between the president and the commissioners, he made a last attempt to change Johnson's mind by trying to provide him with new information. Ginsburg was convinced that Johnson was misinformed on the substance of the division within the commission and on the conspiracy issue. To correct this he sent a hand written note to Califano, attempting to pinpoint the differences among the commissioners.[42]

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[39]Ibid., p. 6. The usual form for presidential approval or disapproval is found at the bottom of the memo but there is no indication of presidential action there.

[40]Memo, Califano to the President, 2/28.

[41]Gaither, Nimetz, Bohen and he did the work.

[42]Memo, Ginsburg to Califano 2/28/68, EX FG 690, WHCF, LBJ Library.

Ginsburg noted Thornton's concern that the "Summary" ignored the serious danger inherent in over-taxation, recorded that both Lindsay and McCulloch had objections to the Introduction and Chapter XVII ("Recommendations for National Action") and included a copy of J. Edgar Hoover's last letter on the conspiracy issue. Ginsburg also informed Califano that he was "... calling Marvin (Watson) for an appointment (personnal) (sic) with the President. He has been misinformed."[43] There is no record of such a meeting. Nor is there evidence that the president read the memo. Ginsburg's efforts failed.

The remainder of the scenario for the publication of the Report is familiar; somebody (or bodies) "leaked" the "Summary" to the Washington Post which published it. That broke the press embargo and the elaborate plans Spivak had for publicizing the Report.[44] Kerner and Ginsburg released the remainder of the Report and Bantam Press met its announced goal and published it within twenty-four hours after receiving the manuscript. As seen above there is no evidence that the president authorized the "leak"; however, the fact that the suggestion was made in writing indicates that the practice was common in the

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[43]Memo, Ginsburg to Califano, 2/28/68.

[44]Spivak sent Califano two memos on this subject, February 21 and 27, which detailed the multi-media coverage arranged. These memos were sent to the White House. (Spivak files, NACCD Papers, LBJ Library).

Johnson administration.[45] Regardless of the source of the leak, the publication of the "Summary" before that of the text did not, as Califano had predicted, diminish the overall impact of the Report. On the contrary, having only the "Summary", detached from the rest of the Report, forced public attention on its dramatic themes of white racism and the characterization of American society as drifting toward a North American version of apartheid. The media coverage of the Report dealt almost exclusively with these themes. Johnson was unhappy that the discussion was so centered, but for him that was preferable to having to defend the commission's far-ranging and extremely expensive recommendations before a hostile congress and a severely divided public; further such a defense would demand that he adjust his carefully laid out domestic program to fit the recommendations of this advisory body; that was a position in which few presidents, and certainly not Lyndon Johnson, would willingly allow themselves to be placed.

Johnson was determined to maintain control of domestic policy

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[45]Most of the commissioners and staff members assumed that the White House was the source of the leak. One person particularly knowledgeable in such matters recalled that certain of the staff members released from the commission in December since had been responsible for a number of stories in the press based on leaks from the commission. Other evidence of leaks from the commission itself which can be pointed to, include the Richard Valeriani NBC radio news report in January of the contents of the drafts of the chapters to that date and the statement by a staff member in an interview that syndicated columnist Carl Rowan had possession of a "leaked" copy of the "Summary".

during the last year of his term of office.[46]. He knew that he had limited political resources to call upon to achieve this goal; he had very little support from the leadership of congress and he was painfully aware of his personal decline in the public opinion polls. Kearns perceptively describes the situation Johnson faced in early 1968:

> Unhappiness about the war and the protestors, the Blacks and the bigots, the young and their critics, attached themselves to the man in the White House. Too much outcry, too many riots, too many demonstrations: the nation seemed in a state of continual unrest, and, as the people saw it, the President -- the man at the nation's center -- was to blame.[47]

For Johnson, to publicly embrace the Report would be to run the risk of incurring additional blame; blame for endorsing expansion of domestic programs at the expense of the badly deteriorating war in Vietnam. He could not bring himself to destroy the delicate balance between his domestic and foreign policies. The Pueblo affair, the Tet Offensive, the international monetary crisis and its threat to the dollar, combined with the prospect of civil disorders during the coming summer were threat

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[46]In The Vantage Point Johnson gives considerable evidence to support his contention that his announcement of March 31, 1968 had been carefully worked out over an extensive period of time. (See Chapter 18 "A Beginning and an End, March 31, 1968," pp. 425-437.) Kearns, Lyndon Johnson and the American Dream, supports this basic contention, but draws different conclusions from it. (See Chapter 12, "The Withdrawal," pp. 335-352.) From these sources it seems safe to conclude that by the time the controversy over the commission's report broke, Johnson had made up his mind not to seek re-election in 1968.

[47]Ibid., p. 337.

enough; Johnson could not endorse recommendations which would doom his design to balance the demands inherent in this political context to his and the nation's disadvantage.

Johnson reports his response to the Kerner Report was taken solely because of the negative effect he saw it having on his overall strategy for dealing with the intransigence of the economic leaders of congress.[48]

> With the tax bill hanging by such tender threads, I knew that any call for increased spending would give my opponents the excuse they sought to call me a reckless spender and kill the tax bill. If that happened, it could bring on an uncontrollable world monetary crisis of 1931 proportions and consequences. It was a risk we could not afford.[49]

For Johnson, the financial crisis, symbolized for him by his inability to get the congress to act on his tax surcharge proposal, was one of three major reasons for his decision not to seek re-election; the other two being the war and the threat of further civil disorders.[50]

> ... I will never understand how the commission expected me to get Congress to turn 180 degrees overnight and appropriate an additional $30

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[48]See Johnson, The Vantage Point, pp. 172-173 and 450-451.

[49]Ibid., p. 451.

[50]Ibid., p. 426. Kearns agrees that the stalemate on taxes was crucial to the president's decision not to seek re-election. He saw "... the deepest fears of his generation reflected in this situation ... the spectre of 1929 haunted him daily ... (If he remained a candidate, he feared,) the Republicans in Congress would stall the surtax, so they could campaign in the fall against 'Johnson's inflation' as well as Johnson's war ... withdrawing from the race was the only answer." (Kearns, Lyndon Johnson and the American Dream, p. 347.)

> billion for the same programs that it was demanding I cut $6 billion.[51]

Johnson misstates somewhat the commission's intent and joins his advisory group in a litany of mutual blame assessment for the lack of national will to correct the problems underlying the disorders. The Report is clear about how the money can be produced if the administration and the nation have the will to do so: "The major need is to generate new will -- the will to tax ourselves to the extent necessary to meet the vital needs of the nation."[52] Will was the crucial variable for the commissioners; the resources were available. From Johnson's perspective the resources could not be unlocked. He applauded the commission's emphasis on the need to create a new national will to meet the problems produced by the disorders but did not think it did enough to generate it.[54] What the commission said on this point was:

> The Nation has substantial resources... to make a start on reducing our critical "social deficit," in spite of the war, and in spite of current budget requirements. The key factors having a bearing on our ability to pay for the cost are the great productivity of the American economy and a Federal revenue system that is highly responsive to economic growth.[54]

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[51] Johnson, The Vantage Point, p. 173.

[52] Report, p. 11.

[53] Johnson, The Vantage Point, p. 173.

[54] Report, p. 229. Also Downs and the Social Economics Panel provided data used by the commission in informing these conclusion about national financial resources, see pp. 376-384.

The commission calculated automatic revenue increases generated by economic growth to be between $11 and $14 billion a year and estimated that the proposed surcharge "... would add about $16 billion to the fiscal dividend of about $28.5 billion over a 2 year period."[55] In short, the commission asserted that the money was available, even accounting for the war, if a national will existed to use it to correct the circumstances which produced the disorders of 1967. Clearly the commission was saying that the administration was not offering the leadership necessary to generate the necessary will.[56] White House aides ignored the implicit challenge of the Report and focused their attention on what they regarded as the commission's overly optimistic budget projections:

> The 1968 budget indicates that the revenue growth from economic growth between 1968-1969 would be $11 1/2 (sic) billion, including earmarked trust fund receipts. Only

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[55] Report, p. 230.

[56] It is useful to point out some of the main options for handling the national budget which the commissioners rejected. First, that they recommend that the new programs be phased into the federal budget over a three year period to provide for administrative efficiency and to cushion the blow caused by any miscalculations in the growth of federal revenues. Second, that it recommend to the administration and congress that the rate at which the federal deficit is reduced be slowed to take place over four years rather than three. These options were presented in Financial Responsibilities for New and Expanded Ghetto Oriented Federal Programs" by W. Lewis, Jr. 1/12/68. (Financing Recommendation File, NACCD Papers) This document represents the cost analysis of the commission recommendations done by the Brookings Institution. Lewis' calculations produced a $30 billion first year cost figure with projections of $2.4 billion added each succeeding year. In ignoring these recommendations, particularly in the face of the administration's more conservative estimates of the money to be realized by growth in the economy, the commissioners chose to directly challenge the administration's policy priorities, albeit in a somewhat oblique way. Johnson's aides had access to the Lewis study.

> about $9 1/2 (sic) billion would be available for other programs. The president's surcharge request was for a temporary tax, expiring June 30, 1969, and producing $14 billion over its entire life.[57]

The White House staff, in doing this, was trying to follow the president's lead and avoid having him blocked in by the commission's projections and recommendations. All the principals were well aware of the divisions in the commission, the challenge to the president's guns and butter policy, and of the compromises wrought by the commission leadership. For his part, Johnson saw one overriding need -- to protect his program, his vision of the Great Society in a peaceful world from the ravages of a congress too intent upon the pursuits of narrow regional interests. He had less than one year to serve and he was determined to do everything possible to salvage his place in history by leaving the nation in good order. As Kearns put it, he wanted to be certain that "... posterity would see his abdication as an act of courage not cowardice ... Abdication was thus the last remaining way to restore control, to turn rout into dignity, collapse into order."[58]

When the presidental appointment to a commission ends the commissioners and members lose the responsibilities and the legitimacy which goes with the office. Their return to the institutions

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[57]Comments on Chapter XVII, p. 15, 2/28/68, memo, Califano to President, EX FG 690, WHCF, LBJ Library. (See FN#34, this chapter).

[58]Kearns, Lyndon Johnson and the American Dream, p. 347.

and positions from which they came considerably qualifies their ability, as a group, to be politically effective advocates of the work they have done for the president.[59] The publication of its report relieved the Kerner commissioners of their mandated responsibilities to the president.[60] However, the publicity generated by the Report gave it and its authors more public exposure than most presidential commissioners get. Throughout the post-publication period Johnson kept close watch over the ex-commissioners activities and public statements. He did everything possible to prevent them from obtaining, as a group, any public forum which might enable them to pursue policy interests contrary to his. In dealing with the media during the days immediately following the publication of the Report, the commissioners, to the person, stood by their work and the president, affirming that their efforts were intended to help the president; they had made their recommendations, they said, and they were consistent with the president's programs; what was needed now was for the congress to act.[61] In these interviews the commissioners moved easily from participants in the

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[59]See Chapter 2 for a more detailed discussion of this problem.

[60]Ginsburg stayed on as the executive director through the month of March when he was relieved by Taliaferro and a skeleton staff, which was needed to answer mail and oversee the publication of the supplemental studies of the commission which were published in July.

[61]See two memos, and attached transcripts, from Bob Fleming to the President dated 3/3 and 3/4/68 giving his evaluation of the two nationally televised interviews with various members of the commission (Issues and Answers-ABC and Face the Nation-CBS.) EX FG 690 LG/New York City, LBJ Library.

commission process to advocates of its product; they supported the president and their report but attacked congress.[62] Later however, as the pressure mounted on Johnson, two of the commissioners, Lindsay and Harris, were bold enough to attempt to force him to call the commission into an emergency session designed to aid him in carrying out the commission's recommendations.[63] When the request came to reconvene the commission Ginsburg anticipated the president's response. He immediately told Califano that he had asked Kerner to "cool off" the petitions.[64] Johnson made it clear to Kerner that the commission

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[62]Harris attempted to win some support in the White House for the Report by instigating a study by Taliaferro detailing with what he and most of the commissioners thought were inaccuracies in the press coverage of the Report:

> "As you know, reaction of the press to the Report has been highly favorable. I have been puzzled, however, by some press comments to the effect that the Report did not recognize how much has been done in the recent past (during President Johnson's administration and by his leadership) to attack the urban and racial problems which gave rise to the riots of 1967.
>
> In view of those comments, I again went through the report. It is clear that such commentators did not read the book. I have taken the liberty to list (1) some of the countless specific references in the report to policies and programs proposed and advocated by President Johnson and enacted and implemented during his administration, and (2) some of the many general references to leadership and progress during this administration."

Memo, Taliaferro to Ginsburg, "Subject: Inaccuracy of Some Press Comments on the Report" 3/11/68, EX FG 690, 2/28/28-2/13/68, LBJ Library. This memo was routed to McPherson, Califano and Gaither. There is no evidence the president read it.

[63]New York Times April 11, 1968, 1:5 and April 25, 1:2.

[64]Memo, Califano to the President 4/10/68 and Kerner to Califano 4/25/68, EX, FG 690, LG/NY City, LBJ Library.

ended its life on March 1, 1968 and that he did not want the group meeting again under any circumstances which he did not request or approve.[65]

Lindsay persisted in being the most vocal commissioner calling for support and adoption of the recommendations by the president and the congress. Immediately after the Report was published he ordered all the top New York City officials to examine it and recommend steps the city should take to implement its findings. In most of his public statements made during this time he said that the racial problems of the nation are best dealt with at the national level.[66] In June at the U.S. Conference of Mayors meeting he allied himself with Mayor Cavanagh of Detroit in an unsuccessful attempt to secure the passage of a resolution condemning Johnson's "months of inactivity" on the Report;[67] in late July, on the anniversary of the appointment of the commission, Lindsay leveled another blast at Johnson.[68] Finally, he and Harris contributed to the production of a book, One Year Later, which catalogued their interpretation of the consequences of Johnson's neglect of the commission's recommendations.[69]

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[65]See memo, Califano to Johnson 4/11/68 for the written record of these conversations. EX FG 690, LG/NY City, LBJ Library.

[66]New York Times March 2, 1:5.

[67]New York Times June 13, 30:4, Cavanagh never reconciled himself with Johnson after the events of the week of the Detroit disorders in which they both participated.

[68]New York Times July 31, 24:8.

[69]Urban America, One Year Later; An Assessment of the Nation's Response to the Crisis Described by the National Advisory Commission on Civil Disorders, by Urban America and the Urban Coalition. (New York: Praeger, 1969).

The mayor and the senator were the exceptions however. The remainder of the commissioners returned to their professions where the nation's urban crisis was not the only or even the major issue facing them. Governor Kerner was much in demand as a speaker and a witness before congressional committees. His appointment to the United States Eighth Circuit Court of Appeals cut short his attempts to implement some of the recommendations in his state. Senator Brooke attempted to secure the backing of the Republican congressional leadership for legislation to implement the Report's recommendations;[70] he also proposed a national commission of city officials which would be charged with the responsibility for developing plans for carrying them out. The latter plan was endorsed by Mayor Ivan Allan of Atlanta and the two Republican leaders in congress, House Minority Leader Gerald Ford and Senate Minority Leader Everett Dirkson; former staff member Stephen Kruzman gave Brooke significant help in developing these projects but the efforts were futile; they lacked any significant support from the Democrats.[71] Corman limited himself to endorsement of those parts of the Report which he had supported: help for local police forces, jobs for the young and summer education programs.[72] Jenkins returned to Atlanta and perfected the changes he had begun in his police force before beginning service

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[70] Atlanta Constitution, 3/2/68.

[71] Lipsky and Olson, Commission Politics, p. 138.

[72] Atlanta Constitution, 3/2/68.

on the commission.[73] Jenkins supported Mayor Allan's efforts to appoint a city commission to see that every city department carried out the Kerner recommendations appropriate to it. McCulloch vigorously supported the white racism theme, but backed-off on proposing new legislation, insisting that most of the Report's recommendations were contained in some bill presently pending before the congress.[74] Wilkins defended the Report and adopted a position common among established black leaders at the time, expressing little concern for psychoanalyzing white America, but great concern for creating jobs for blacks. Paden returned to Kentucky to mount an unsuccessful campaign for the United States Senate. The consensus opinion among her colleagues was that service on the commission was very difficult for her; she had to carry the burden to a conservative constituency of being partially responsible for the Report. Abel was very quiet about the Report. Immediately preceding and following its publication he was deeply involved with the White House in settling the two hundred day copper strike which helped to complicate Johnson's economic problems. It is conceivable that his desire to get the best settlement possible for the strikers tempered his enthusiasm for supporting a document the White House opposed. Thornton thought the Report had embarrassed the president and offered to be of service to the White House in its efforts

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[73]The reforms were first recommended by the 1966 Atlanta Commission on Crime and Delinquency. Some of the recommendations from this commission found their way into the Report under the sponsorship of Jenkins; various reforms in police-community relations, integrated patrols, youth police corps were some which were considered and adopted.

[74]Atlanta Constitution, March 2, 1968.

to call some of the recommendations in question.[75] The White House did not pick up on his offer.

In sum, the commissioners were handicaped by two factors from forming any meaningful political alliances to enhance the adoption of the Report's recommendations. First, in returning to their own "constituencies" the issues identified by the commission had to compete with those of high priority to those groups; as Abel and Paden found, for many of the commissioner's constituents the recommendations of the Report had very low priority items on their public policy agendas. Only Lindsay, Wilkins and Jenkins had large numbers of constituents to whom the Report was a very high priority item. But after leaving the confines of the presidential advisory commission, these three had very little in common which would bring them together to form any kind of meaningful political coalition able to realize some of the recommendations. None of the commissioners had as a majority of his/her constituency the black under-class for the relief of whom they had written the Report. Second, the president showed a determined effort to control the immediate policy-making environment into which the Report was received. His supporters were able to head-off the challenge of Lindsay and Cavanagh at the National Conference of Mayors and he was certain the Democratic leadership in the congress was going to consider only his domestic legislation package, and little of that.

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[75]Memo, Califano to the President, March 8, 1968, in which he relates a Gaither-Thornton telephone conversation: EX, FG 690, WHCF, LBJ Library.

Johnson's efforts to control responses to the Report within his administration were fraught with difficulties. Presidents have never found it easy to keep a tight political rein on the members of their administrations. This is particularly true of relations between the president and members of his cabinet; under the best of conditions presidents find it difficult to bring order out of the anarchy which is characteristic of the politics among and between the cabinet barons of Washington. The conditions in which Johnson was working were not the best for maintaining control over the reactions to the Report by members of his administration. Two factors allowed the Johnson cabinet secretaries to strike out on their own and develop a relatively independent course in reaction to the Report. First, the cabinet departments most concerned with the substance of the Report had had a significant hand in writing it. The commission leadership had been careful not to allow the secretaries to have veto power over the recommendations, but they also had been careful not to propose novel programs.[76] The commissioners worked closely with those who administered the Great Society and tailored their recommendations to fit the needs, standards and objectives of their cohorts in the Johnson administration. Those needs included support for the major institutional and political interests served by the departments and a careful balancing of the

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[76]The housing recommendations were the most serious exception to this rule. But it must be noted that the controversy was over the number of houses recommended, not over the policy.

Report to meet the minimum political demands of congress.[77] Thus there was ample reason for Johnson to think that some of his cabinet secretaries had a stake in the success of the recommendations of the commission and would seek to find ways to implement them independent of his plans and wishes. Second, the announcement of the president's intention not to seek re-election liberated the cabinet members. Johnson obviously was aware that he would make his announcement about not seeking re-election. He knew, too, that his action would lead to some resignations before January and/or a hurried effort by some cabinet officers to establish a personal record of accomplishment.[78] Such activity meant, for some of the secretaries, attempts at independent action to serve their future plans. Johnson was well aware of these and other political liabilities of lame duck administrations and was determined to overcome them.

Johnson, as he always had when he was personally challenged, moved quickly and purposefully to keep as much control as possible of his administration's reaction to the Report.[79] First, through the

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[77]See Lipsky and Olson, Commission Politics, pp. 130-131, for a similar discussion of this problem, but one which lacks appreciation of the commissioners' sensitivity to serve these political needs of the president.

[78]At the time the commission reported Johnson already had a new Secretary of Defense (Clifford replacing McNamara), a new Secretary of Commerce (Smith replacing Trowbridge) and would, on March 22, nominate Wilbur Cohen to succeed John Gardner as the Secretary of HEW.

[79]See Kearns, Lyndon Johnson and the American Dream, p. 376 for a discussion of Johnson's life-long desire and ability to move fastest among the competitors in a particular political environment to seize the advantaged position.

Director of the Bureau of the Budget, he gave the cabinet officers three directives: 1) identify the parts of the Kerner Report which presently are part of the administration's programs and the ways those programs can be improved by using the Report's recommendations. 2) identify those programs for which the administration has already requested authorizations and/or appropriations for congress and try to get them passed. 3) re-examine administration programs submitted by cabinet officers to the White House, but not acted on, and recommend those on which action should be taken.[80] The reports were produced for the White House during the first week of March. The rapidity is not surprising when consideration is given to the fact that the departments had reviewed the relevant chapters of the Report several times before its publication.[81]

With these reports came evidence of some cabinet resistance to the president's response to the Report. Ramsey Clark, as mentioned above, proposed a plan whereby the president could formally accept the commission's Report. He recommended that the president appoint a sub-cabinet level task force to analyze the Report and recommend how it could be implemented by the federal government. He suggested, too, that Johnson recommend such task forces for the cities and states. Second, he proposed that "In accepting the report, you can praise the work and dedication of the commission members but you need not embrace all of

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[80]U.S. President, Public Papers of the Presidents, Lyndon B. Johnson, 1968, (Question 16), p. 435; Johnson, The Vantage Point, p. 172; Minutes of the Cabinet Meeting 3/13/68, The White House, p.7, LBJ Library.

[81]The reports are found in FG 690 (1), 2/28/68-3/13/68, LBJ Library.

its findings or recommendations. You can accept it for what it is: a searching and comprehensive statement of problems and goals. You can make any comments you deem appropriate. You can point out that the task now is to assess it and to determine how to translate it into action."[82] The president ignored the suggestion. Eleven days later, while giving a report to the other members of the cabinet on preparations for the "long hot summer of 1968", Clark said that some of the federal-state problems of the previous summer might be avoided in 1968 because mayors and police chiefs now were more willing to say politically unacceptable things than they were before the Kerner Commission said them.[83] Johnson ignored Clark and reaffirmed his directive to the Director of the Bureau of the Budget and his cabinet members - the Report should be read and recommendations made to him.[84]

Later Wilbur Cohen, Acting Secretary of the Department of Health Education and Welfare, presented Johnson with a plan for tying the needed tax increase to the recommendations of the Kerner Report. He proposed to "earmark the new tax by placing all revenue received from it in a special Trust Fund to be expended only for such purposes as Congress determined were to carry out the recommendations in the Report."[85] He proposed to name the new fund "The Domestic Peace and

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[82]Memo for the President "Re: Response to the Report of the Kerner Commission," 3/2/68, EX, FG 690, (1), 2/28/68-3/13/68, WHCF, LBJ Library.

[83]Minutes of the Cabinet Meeting 3/13/68, The White House, p. 9, LBJ Library.

[84]Ibid., p. 10.

[85]Letter, Cohen to the President, 3/18/68, FG 690 (1), 3/14/68-6/15/68, LBJ Library.

Tranquility Trust Fund" and the tax "The Domestic Peace Tax" and to levy it for five years.[86] A board of trustees would administer the fund and have authority to borrow against the anticipated tax revenues to begin the work of implementing the recommendations. "Even if congress didn't adopt the recommendations it would show that you have taken the leadership in meeting the domestic crisis."[87] Cohen soon got the message that Johnson was not open to any variations of the position he had adopted. Four days after his formal nomination to the senate he publicly attacked the Report's white racism theme and criticized it for over-simplifying the civil disorder situation.[88] Most interpreters saw Cohen as speaking for Johnson; Ginsburg did, and in a blistering letter challenged the secretary-designate's comments:

> You said when we spoke that your remarks were taken out of context. My reading of the transcript suggests that the news stories were strikingly accurate.
>
> Your reply indicates little familiarity with the report.
>
> Do you really believe that this commission offered a slogan in response to the vast public questions put to it by the president?
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> If the transcript doesn't accurately reflect your views, I do hope you'll find an opportunity soon to correct the record. In my view your remarks have hurt the Report,

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[86]He estimated $40-$50 billion to be available for use at the end of the five year period. He did not indicate how those figures related to Vietnam expenses.

[87]Memo, Cohen to the President, 3/18/68.

[88]New York Times March 26, 43:3.

> the members of the commission and those associated with it. My guess is that it will also hurt you, your Department and the President -- because the text of the Report makes clear that the implications of most of what you said are untrue and the attributions to the commission misleading and wrong. Most important, it will hurt and react against the people we're all trying to help. No one who had read that Report and wanted to describe it, could have said what you said.[89]

Cohen later changed his public position and accepted the white racism theme.[90]

Willard Wirtz, Secretary of Labor, ended his response to the Bureau of the Budget directive by labeling the Report as "one of the historic documents of the Nation."[91] On the same day the letter to Director Zwick was sent, Wirtz gave a speech supporting the commission's work, focusing most of his attention on the two-societies concept. He supported the idea of reforming individual attitudes as a means of attacking the causes of civil disorders.[92] On March 22 Wirtz went a step further and publicly endorsed the Report.[93]

John Gardner, former HEW Secretary, tried to link the National Association of Businessmen (NAB) program and the Kerner Report by recommending that Johnson call key business leaders, including Henry Ford II (Chairman of the NAB), to the White House at the time he

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[89]Letter, Ginsburg to Cohen 3/29/68, Reactions to the Report, NACCD Papers, LBJ Library.

[90]Memo, Kruzman to Ginsburg 4/2/68, Reactions to the Report, NACCD Papers, LBJ Library.

[91]Letter, Wirtz to Zwick, 3/14/68, Labor Department Subject Files, Roll 52.

[92]Department of Labor Press Release. "Excerpts from the Remarks of L. Willard Wirtz Upon His Acceptance of the Sidney Hillman Meritorious Award Presented by the Sidney Hillman Foundation," Washington D.C. 3/13/68. Labor Department, Subject Files, Roll 52.

[93]Washington Post 3/22/68.

planned to announce the head of the new Urban Affairs Institute. The president could then use the time to "review publicly the BOB analysis of the Kerner Commission Report."[94] Gardner wanted the president to take advantage of the Report's emphasis on private initative and community action. Douglas Cater, in forwarding Garner's letter to Johnson, sided with the former Secretary by adding, "I believe that this would be a good opportunity to respond to the critics by showing that you are taking calm deliberate actions on city problems while others are striking emotional postures."[95]

At the first cabinet meeting following the publication of the Report Johnson clearly set out for his department secretaries and top aides the place the work the Kerner group occupied in his planning for the immediate future. The agenda of the meeting did not mention the Report.[96] The Report was discussed by Johnson for seven minutes following a twenty-five minute discussion of the work of Leo Bebbe, Executive Vice Chairman of the National Association of Businessmen, who explained the functions of the NAB.[97] Each of the secretaries

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[94]Memo, Cater to LBJ 3/22/68. The memo is the substance of Gardner's phone call to Cater, EX FG 690 (1), 3/14/68-6/15/68, WHCF, LBJ Library.

[95]Ibid. On this memo Johnson granted Cater permission to prepare a scenario for such a conference. Johnson seems to have chosen the press conference of that day to make his only public statements about the Report. See below pp. 515-516.

[96]"AGENDA, CABINET MEETING OF MARCH 1968: I. VIETNAM BRIEFING II REPORT OF JOBS PROGRAM III PREPARATIONS FOR THE LONG HOT SUMMER," THE CABINET MEETING OF MARCH 13, 1968 THE WHITE HOUSE, p. 1, LBJ Library.

[97]Ibid., p. 5-6.

was given a copy of the NAB handbook for review comment. Johnson told the gathering that James Gaither of his staff was assisting in organizing the activities of the NAB. To further reinforce the secondary nature of the Kerner Report in Johnson's plans, George Christian, in summarizing the cabinet meeting for the press did not mention it:

> The main thrust at the Cabinet meeting today was the presentation by Mr. Leo Bebbe of the National Alliance of Businessmen on the hard-core unemployment job program.[98]

Johnson's seven minutes of comments on the Report consisted of a review of his directive to the Bureau of the Budget, the budget crisis and an admonition that it was they, the cabinet officers, who would have to defend any new budget request before congress. As part of his plan to break the stalemate over the budget, he informed the cabinet of a directive he had given the BOB to look for programs to cut and directed each secretary to:

> ... take a hard look:
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> At new programs -- like the Kerner recommendations -- analyzing their feasibility and cost; and
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> At opportunities for reductions in your present budget -- if Congress begins to cut us back.[99]

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[98] "Transcript, News Conference at the White House with George Christian and Leo Bebbe, the Executive Vice Chairman of the National Alliance of Businessmen at 1:20 p.m. EST, Wednesday, March 13, 1968" (Attached to the Minutes of March 13 Cabinet Meeting). The remainder of the meeting was taken-up by a report from General Earl Wheeler reviewing the military situation at Khe Sanh and Attorney General Clark's report on the preparations for the "Long Hot Summer" of 1968.

[99] Ibid., p. 8.

He closed the discussion of the Kerner Report with the following set of observations:

> .Our financial situation is most serious. Chairman William McChesney Martin of the Federal Reserve Board has reported to me that four measures are absolutely necessary:
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> 1. Passage of the bill to repeal the gold cover
> 2. Curtailment of domestic expenditures
> 3. Passage of the tax bill
> 4. Raising the rediscount rate.[100]

Johnson's design to tailor the reactions of his cabinet to the Report were reasonably successful; as has been seen, several of them took personal stands supporting the commission but none of the agencies made efforts to attempt to change their department's programs to meet the recommendations of the commission. Johnson was not quick enough, however, to harness his impulsive vice president. Humphrey instinctively reacted favorably to the Report and was ready to endorse it when it was published. The White House was aware of this. Johnson also knew that the Humphrey was planning to leave Washington on February 29 for a three day trip through Florida; included in the announced it-

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[100]Ibid. Johnson reiterated the message about the financial crisis at the next meeting of the cabinet, too (the first following his announcement of March 31). In the discourse he explained the financial crisis to be one of the reasons he chose not to run again; he could not preside, he said, over the necessary $6 billion in expenditure cuts if his opponents "... question my motives, if I have to go running all over the country with my shirt tail out." THE CABINET MINUTES OF APRIL 3, 1968, THE WHITE HOUSE, p. 2, LBJ Library.

inerary was participation in a panel discussion on civil rights at Florida State University at Tallahassee on March 1. Johnson's aides kept a close watch on Humphrey's trip, particularly the Tallahassee part of it. During the panel discussion one of the participants asked Humphrey to comment on the Report. He urged all Americans to read it and called it "probably the most extensive and intensive study made on our social conditions in recent years."[101] With typical Humphrey exuberance he went on to say that the Report pointed to a need for "a tremendous coordinated massive program of rehabilitation and social action;"[102] "a nation," he said, "that can put a man on the moon for $30 billion can afford to pay what it takes to put men on their feet in this country."[103] The tenor of these remarks was not well received in the White House. His comments in Florida were virtually ignored by the news media because the White House had released a more measured version of the vice president's Tallahassee remarks prepared for the press before he left on the trip.[104] The comments in the text were not as as positive toward the Report as those he delivered in person.[105] Several days later Humphrey spoke to the National Housing Conference. By that time he had

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[101] Tallahassee Democrat March 2, 1968 Associated Press story by Jim Parks.

[102] New York Times March 2, 1968, 15:2.

[103] Ibid.

[104] The New York Times ran the story on page 15.

[105] This account of these events was given by more than one interviewee. No copy of the statement released by the White House was found in the Johnson Library.

been back in Washington long enough to talk with the White House and be told the message which the president preferred for him to give to the public. A report of this address was carried on page one of the New York Times with a headline reading: "Humphrey Doubts Riot Panel View: Says That Idea That U.S. Moves Toward Two Societies Is Open To Challenge."[106] Humphrey is recorded as saying that the major basis for the challenge are the Johnson administration's Great Society programs. The story refers to the address as the "first high level comment from the Administration." Humphrey repeated the substance of his housing conference speech on March 24 before the Triennial Convention of B'nai B'rith Women.[107] But, as with many other important matters during the last year of the Johnson administration, Humphrey returned to his original, and for him, most natural position on the Kerner Commission. Five days after the B'nai B'rith address, in a speech before a meeting of trade unionists, he attempted to "... (clear) up some confusion about his views on the Report." He told his audience, "I believe the most important and principal conclusions of the report are right. I commend the report to you and thank the authors."[108]

Johnson's reactions to the Report were not all taken in private. While he did not formally receive the work of the commission, he did not totally ignore it in his public messages during this period. The

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[106]Byline, John Herbers, March 15, 1:7.

[107]Facts on File Vol. 28, No 1436, p. 175.

[108]New York Times March 29, 1:5.

ways he used the Report, the few times he referred to it, are revealing of the manner by which Johnson went about securing support for his economic policies and domestic programs. He went for help to those leaders of interest groups who, in the past, had been useful to him in bringing congress and the federal bureaucracy into line with his plans. As he had done throughout his career, Johnson attempted to convince those leaders that his goals were in their interest.[109] He made four direct and essentially positive references to the Report in public addresses and news conferences during the month between the publication of the Report and his announcement of March 31.[110] The three speeches were representative of all Johnson's efforts to build a consensus for any policy initiative. He carefully chose a group whose special interests and concerns paralleled his policy goals and

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[109] Kearns, Lyndon Johnson and the American Dream, p. 374.

[110] During the same period a very positive speech supporting the Report was drafted by White House staff member Matthew Nimetz ("Draft 3/30/68, Nimetz" found in Draft Speeches, Gaither 33, LBJ Library.) There is no indication for whom the speech was written. There is no evidence that Johnson ordered the speech written. The text indicates the speech was written to be given to a politically significant audience; it was also designed to be critique of the administration's urban program by means of a discussion of the Kerner Commission; it also explored and defended relationships between the commission and the president. It admits to new questioning among American liberals about the future of their contribution to American society; with the exception of housing, the efforts of Johnson had removed "the clear visible injustices of the 1950's and early 1960's ..." (p. 1), "however, the fight for human dignity, for a single American community, has not been won." (Ibid). It speaks positively about the white racism theme, emphasizes the point that the president's directive to the members of the administration to study the Report "was no idle gesture" (p. 11) and quotes approvingly Vice President Humphrey's March 29th speech endorsing the Report. It is conceivable that Johnson's speech of March 31 wrecked whatever plans were laid for use of this text.

sought to enlist its support in moving the congress to action. In this context Johnson felt at home, a leader among leaders, working to convince them that his program was good for them, their interest and country.[111] His goal was to achieve support for his plan to end the budget crisis, to honorably pursue and hopefully end the war, and to keep the country moving toward the Great Society. The problem here was that his style of consensus building among the established groups of the society did not provide the leadership wanted by these groups. The established political elites were calling for new leadership; others were demanding that the traditional leaders of the various interest elites, particularly those concerned with urban and civil rights affairs, incorporate in their ranks persons from the new "radical" groups. But Johnson, unable to choose between the war and the Great Society was incapable of changing the formula of leadership that had worked so well since the New Deal.[112]

The most important of the speeches Johnson made in which he incorporated references to the Kerner Commission was to a meeting of savings and loan bankers.[113] The audience was gathered to discuss how their institutions could participate in the rebuilding of the nation's inner-cities. In encouraging them to pursue this objective

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[111]Kearns, Lyndon Johnson and The American Dream, p. 398.

[112]Ibid., 374.

[113]U.S. Presidents, Public Papers of the Presidents, Lyndon B. Johnson, 1968, pp. 344-348.

Johnson rehearsed in detail his cities message and closely tied the Kerner Report to it;[114] the commission's work was a valuable supplement to the administration's program for the cities; it should be read by everyone; it should be clear from reading the two documents what needs to be done; the bankers should follow his leadership and get it done.[115] Next he held up the Report to farm leaders as being on a par with the message he sent to the congress on the farmer and rural America.[116] In short, Johnson was maintaining that the Great Society was indivisible and appealing to all interest groups to rally to his efforts to stabilize the economy and get on with his efforts to win both wars:

> "... join us in a total national effort to win the war to win the peace and to complete the job that must be done here at home. I ask you to join in a program of national austerity to insure that our economy will prosper and that our financial position will be sound.[117]

The last group with whom Johnson attempted to use the Kerner Report to rally support for him and his programs was a group of editors of

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[114] Ibid., p. 346.

[115] Ibid.

[116] Ibid., pp. 406-413.

[117] Ibid., p. 410. Kearns, Lyndon Johnson and the American Dream, p. 339, quotes a different, more hawkish version of this part of the address. The version published in the Presidential Papers does end with one rather strong statement aimed at his war critics.

black publications. Johnson first praised the Report, including its emphasis on white racism, then bemoaned the fact that "Congress won't vote me the $80 billion and there is no point in disillusioning and holding hope."[118] There is no other record of Johnson endorsing the white racism theme. It appears that he did what was necessary to get the support of these black leaders for his 1968 domestic program.

In his press conference of March 22, Johnson was asked to respond to the criticism that he had ignored the Report.[119] Johnson replied by reviewing his orders to the Bureau of the Budget and the general content of the cabinet responses: general praise for the commission and its work and reports of how departments already had, either underway or in development, programs similar to those in the Report. In speaking of the housing recommendations, he said that he would not oppose asking for more from congress if he thought he could get it. Johnson's comments to the press were less specific, less calculated to bring pressure on congress for particular parts of his program than the speeches. Having no control over the "constituents" of the reporters before him, Johnson chose to speak in very general terms. The press reported to all "leaders," friends and foes alike; that, for Johnson, was an uncontrollable audience. He, therefore, neither endorsed or re-

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[118] New York Times March 29, 1:5. These comments are not recorded in the appropriate Presidential Papers volume.

[119] U.S. Presidents, Public Papers of the Presidents, Lyndon B. Johnson, 1968, pp. 434-436.

pudiated his commission, but described the ways in which it had been handled by the administration.[120]

These actions by Johnson attempting to control the uses of the Report and its recommendations were viewed by many of the advisers as inconsistent, reflecting no clear administrative purpose.[121] But that was a mistake. There was no inconsistency in Johnson's behavior. He was responding to what he saw as the demands of political reality. In the face of the powerful challenges to his ability to govern, he narrowed the scope of his concerns to those he regarded as essential to political survival, to those actions which his refined political instincts told him were necessary if he was to build a record during his last year in office by which history would judge him favorably. He retreated to the essentials of his political life which had served him and his generation of political leaders so well: tight executive control of public policy issues, the use of governmental powers to institutionalize the belief that government exists to serve the needs of the ordinary citizen and that realism, not idealism, is the basis for achievement of the two goals. Johnson kept enough control of the administrative response to the Report to effectively use it to garner congressional and interest group support for his programs and to block alternative efforts at domestic policy making. This was a successful defense from his point of view. Lindsay's efforts came to naught,

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[120] See Kearns, Lyndon Johnson and The American Dream, p. 354-355 for a discussion of Johnson's inability to deal with general, abstract, or unknown audiences.

[121] Ibid., p. 341, for discussion of this kind of staff attitude.

congress addressed the commission's recommendations, when at all, on the administration's terms and he was able to move the 1968 housing and civil rights bills through the congress and he got his tax surcharge.[122] When he saw the threat to his Great Society to be serious and his time and space to act limited, Johnson sought to strengthen the institutional ties between his administration and the major economic interests of the country. The efforts to organize the farmers, the unions, the bankers and the leading business interests in support of the Great Society programs in March of 1968 was his last effort to give expression to his belief that government exists for the common person and that those who have been successful in the society have an obligation (a vested interest and need) to aid in this effort.[123] It was here that Johnson thought the Kerner Report did him the most harm; it hindered his efforts in 1968 to win the support of the groups he thought he needed if the Great Society were to survive his tenure in office. He saw the commission's emphasis on white racism and the description of the society drifting toward two racially separate camps alienating the leadership of the white community which had aided him in the past in moving the Great Society through congress. The liberal community which had held together

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[122]There was a dear price for the last two bills. The murder of Dr. Martin Luther King, Jr. was probably the difference in securing the passage of the civil rights bill. For the surcharge, Johnson had to agree to a spending ceiling in fiscal 1969 which would require cuts of $6 billion in estimated 1969 expenditures. To get the tax surcharge, the president had to agree also to limitations on federal employment. See Congressional Quarterly, Politics In America, p. 72.

[123]Kearns, Lyndon Johnson and the American Dream, p. 373.

through five administrations was being torn apart by internal name calling. "That's what I have been trying to tell you ... there aren't that many of us that we can afford to get some of us against the rest of us. That kind of talk ... only hurts us when we try to pass laws for the Negroes."[124] Johnson had lost much (and sensed he would lose more) of the traditional Democratic liberal community because of his war efforts; he thought he could not afford now to lose their support for his domestic programs. He had led the traditional liberal community in standing against any reward for the rioters and now he let it be known that he had no intention of supporting rhetoric which would further diminish the slim possibility he saw himself having to salvage what he could of his Great Society.[125] Johnson's appeal to the establishment was to join him in stabilizing the institutions which had served them all so well for the past thirty years. He stood opposed to incorporation in the establishment of any new leaders; he did not call for social change but appealed to his traditional allies to join him in saving the established social order for the sake of the deserving poor and the aspiring Negroes of the country. As Kearns notes, Johnson was well aware that the established interests of the society "... had no

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[124]McPherson, A Political Education, p. 376. Kearns also has an account of Johnson's displeasure with the "ingratitude" of those he tried to help: blacks, students and the poor. (Lyndon Johnson and The American Dream, pp. 340-341.) Wolanin, too, records Johnson as lashing out at the white-raism theme ("Why the hell did they say that?.") "Presidential Advisory Commissions," pp. 376-378.

[125]McPherson A Political Education, pp. 377-78 and 381-83 describes the "liberal dilemma" Johnson was in, in somewhat different fashion.

desire to tear apart a structure they were now accustomed to, had conformed their activities to, and under which, moreover, they were doing better than before."[126] What Johnson did not see was that those same leaders increasingly viewed him and his policies as a threat to that status quo; they were beginning to say that it was he and the way he pursued his policies that were to blame for the problems he was trying to enlist their support to oppose. No doubt most of those leaders agreed with Johnson that the issue of the cities was not one of class conflict but of relative deprivation. They consequently, were willing to join him and the Kerner Commission in denying access to the political arena to those "militant" leaders of the urban poor and blacks -- those who were calling for basic social change. But the established leaders did not need Lyndon Johnson to accomplish that goal.

Johnson adhered to the established canon of the political realism of his time; in a period of crisis one does not rush off in pursuit of novel, no matter how noble, ideals, foresaking the ability to win something, no matter how small. Johnson intended to win something from every political battle he entered. Thus his efforts to jettison the commission, the new leaders of the blacks and the poor, in an attempt to win enough support from the established leaders of the society to see the war to its end and the Great Society in a position to last beyond his incumbency. What he could not comprehend was that the liberal establishment he was attempting to rally for one last hurrah was itself

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[126]Kearns, Lyndon Johnson and the American Dream, p. 388.

in a state of shock, preceding collapse. His fellow leaders blamed him. But the fault ran through the whole leadership establishment. It was as a liberal that President Kennedy entered the Vietnam war and the liberal Johnson pursued it; further, it was as a liberal that Johnson pursued the Great Society even in the face of the urban and student disorders. He endeavored to save his war effort, the economy, and a few new programs, with the leadership which had helped him in the past. The tragedy, in the full sense of the word, was that he did not fully comprehend until later that it was those efforts on his part which condemned the Great Society, the war and the nation to their fate under Richard Nixon, the "last great liberal."[127]

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[127]Gerry Willis, Nixon Agonistes: The Crisis of the Self-Made Man (New York: New American Library, 1970). See also Kearns, Lyndon Johnson and the American Dream, pp. 286-287, for another discussion of Johnson's inability to see his control of the liberal establishment collapse.

PART IV: CONCLUSIONS AND IMPLICATIONS FOR PRACTICE AND THEORY

CHAPTER XIV

CONCLUSIONS AND IMPLICATIONS

The discussion in Section I demonstrated that from the administrations of Theodore Roosevelt through Richard Nixon presidents have used task forces and advisory commissions to wrench from congress control of the various executive departments/agencies and of the development and execution of national public policy. These advisory groups were shown to be central factors in the development of the presidency as administrative and policy sovereign in American national politics.[1] The discussion in Sections II and III showed the extent to which Lyndon Johnson perfected this pattern of presidential action to enhance the goals of his Great Society. By focusing attention

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[1]The term "administrative sovereign" is that of Peri E. Arnold, "The Presidency and Reorganization: A Comparative Analysis of Six Cases, 1905-1955," a paper presented at the annual meeting of the American Political Science Association, Washington, D.C., 1979. In his study, Arnold adds valuable information to the existing literature on presidential advisory commissions created to aid the president in reorganizing the executive branch of government. His discussion of the Taft Commission (1910-1912) is particularly helpful. In it he shows how president Taft capitalized on the municipal reform movement of the early years of this century to increase his power over the growing number of executive agencies. "In the cities, the reformers had attacked the power of city councils and created the strong mayor; in the case of the national government, the Commission sought to substantially increase the President's control over administration, ending the virtual monopoly of power that congressional committees had developed over the agencies in the late 19th century." (p. 7.).

on the political purposes of the president and the response to them by commissioners and task force members this study has filled a gap in the existing literature devoted to analysis of the Johnson advisory system. There remains the need to summarize the major conclusions and implications which can be drawn from this study. Two sets of generalized conclusions about Johnson's use of temporary advisory groups will be discussed. They will be followed by specific comments on some salient implications of the work of the Kerner Commission.

First, Johnson's advisory groups were instruments of presidential policy making sovereignty. By skillful use of his task forces and advisory commissions, Johnson funneled the creative insights and energies of the nation's policy making elite into the White House where it was processed and submitted to congress and the executive departments/agencies when it suited the demands of the president's political agenda. In so doing Johnson maintained control over the information needed by the other Washington political actors if they were to affect any meaningful changes in national domestic policy; the policy making agenda and the information necessary for carrying it out were securely in the hands of the White House during the Johnson years. Members of the task forces and commissions bent to the demands and needs of the president and then to congress and those of their interest group constituencies.

Second, Johnson's advisory groups were showcases in which the quality of the policy making leadership of his administration was displayed. The membership of these groups, their mandates and the ways in which they worked

to fulfill them combined to reveal much about the persons responsible for the creation of domestic public policy at the time. But, here, too, it was the president who was the most exposed in this process; the persons he selected, the mandate he gave them, the resources he made available to them, the ways he delegated responsibilities, reveals how Johnson went about organizing his advisory system, reveals his policy priorities and the resources he intended to use to meet them. Each of these conclusions will be now displayed in turn.

Johnson's advisory groups were servants of his political needs and designs. They were appointed on his authority as chief executive; he designed their mandates and expected the persons he appointed as White House liaison with each of the groups to keep the work of the group within the prescribed limits; he determined the extent of the resources (personal, financial and time) they had available to them; his continuing support was necessary if they were to prosper. Simply put, Johnson expected his advisory groups to serve him and his purposes.[2] When they strayed, as he thought the Kerner Commission had, Johnson was quick to ignore their work, the ultimate penalty for a presidential adviser. Neither he nor the members of the commission and task forces saw this close adherence to presidential purpose as a qualification of their personal or interest group independence.

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[2]See Lyons, "The President and His Experts," p. 144 for an insightful discussion of this point in the context of the work of the President's Council of Economic Advisors.

The conventional wisdom, which they all shared, informed them that in serving the needs of the president they best served the interests they were chosen to represent on the advisory groups; further, in most cases, they were encouraged to be as creative as possible in the work given them to do.

Johnson's advisory groups were an important component in his plan to leave the presidency as strong an institution as he inherited; he wanted to strengthen the office by institutionalizing the practice of presidential dominance of domestic policy making. He appointed more advisory groups than his predecessors, he increased the number of members of each, increased their length of service and more closely tied their work to his basic strategy for domestic policy making than any of his predecessors. It must be noted that these developments were not entirely due to Johnson's designs for the imperial presidency. He was responding to the needs of the times. The discussion in Section II should make it clear that more advisory groups were needed because the problems Johnson was facing were more complex than those faced by his predecessors. He could not reasonably make his Great Society proposals without calling upon ever greater representation from the interest groups making up the policy making elite of the nation. As was shown in Section II and III, Johnson's willingness to accomodate that demand had its limits, a deficiency which was a significant contributor to the weakening of the Great Society programs and the collapse of his administration.

The increasingly common phenomenon of the "runaway" commission is often posited as an example of the ability of presidentially appointed commissions to develop and maintain, when there is a desire and reason for so doing, independence from the presidency. This study confirms the work done on other presidential advisory commissions that such vagrancy occurs when the president permits or encourages it and/or when the goals and objectives of the chief executive for the advisory group significantly change. Johnson largely avoided the problem of the "runaway" commission by extensive use of secret task forces; he encouraged them to be as innovative as possible and could accept or reject their work as it suited his purposes. However, he had a different set of problems with the public commissions. In most cases his mandate to them was so narrow that there was little chance for a "runaway." But, as has been seen in the cases of the Kerner and Kaiser commissions, Johnson took a calculated risk in giving some very wide mandates which some used in a manner unacceptable to him. It was a known risk and the White House responded to each prodigal in a predictable manner; the reports of the commissions were ignored. It is reasonable to assume that the issues facing presidents in the immediate future which will necessitate the naming of a commission will be of such a complex character that they will demand very broad mandates which in turn will produce more commission independence. Johnson's willingness to appoint commissions for longer periods of time indicates he was willing to accept a certain amount of commission independence in return for innovative policy recommendations

and maintainence of policy making dominance. By extending the lives of his commissions he focused the attention of the relevant policy making elites on the White House for longer periods of time and increased the possibility that they would coalesce in their recommendations for national action. Further, by increasing their length of existence Johnson increased the possibility that the commissions would encounter and expose to public view new problems tangentially related to those they were originally created to address; a useful if unintended by-product. This latter consequence of appointing commissions for longer periods of time can become an effective tool for future presidents in their attempts to educate the public about particular sets of extremely complex public policy issues, a process almost exclusively used by the congressional investigating committee in the past. Future presidents might also ponder the proposition that public commissions extended over longer periods of time may be able to offer important independent judgements on policy matters which, while not relevant to the immediate political situation, could provide substance for future debates when the problem again comes to the attention of the president. The risks, however, for the president in this are great. Regardless of the degree of public independence a commission may obtain, its report and recommendations are those of a presidential commission. No president has been able to escape responsibility for the recommendations of his public commissions and his response to them. As has been seen, Johnson's political fortune in 1968 was not enhanced by his treatment of the Kerner Commission Report.

This study of Johnson's advisory groups has also provided valuable insight into his public policy designs. Of all the means available to him

for obtaining policy information, the commission and task force were those with which he felt most comfortable. In this area, Johnson was an innovator, free of the constraints of the traditions of the office. Because the work of the commissions was relatively open and because documentation of the work of both advisory groups is now easily available to scholars, much can be learned about the character and evolution of Johnson's domestic policy designs. The appointments to membership, the mandates given, the ways in which the mandates were fulfilled with or without White House guidance, the disagreements or agreements between the White House and the commissioners and the president's reaction to the reports are all useful in solving the mystery of presidential policy intent. The examination of the work of the Kerner Commission, for instance, has shown that Johnson was principally concerned to use the commission to thwart congress in its attempts to deal with the urban disorders and to communicate to congress and the nation that he could be hard on the perpetrators of the disorders while pursuing his Great Society programs for the deserving poor.

This study of Johnson's advisory groups also has yielded important insights into the quality of the policy making leadership he offered the nation. The members of the task forces and commissions, and to a lesser extent their staffs, were members of the nation's power elite. They were part of the American aristocracy of talent, money, and political power; they were persons who were equally at home in government, business and the academy. They were chosen because of their stature within the interest groups most important to Johnson and because they knew how to survive and produce in the

cauldron of national politics. While these persons were not inclined toward accepting radical challenges to the established patterns of politics, they did offer the president, and to a lesser extent the congress and the nation, an additional set of lenses through which the political reality of the time could be seen.[3] They not only brought to the president a willingness to do a job for him, but also the concerns of the groups they represented--a valuable, but limited because of its exclusive character, resource for the president. Wolanin termed these persons the "commission class."[4] Etzioni called them members of the president's fire brigades.[5] And one might call them political minute men, able citizens who pursue their private careers until public duty calls them. Regardless of the descriptive metaphors, the evidence in this study supports the conclusion that the security of Johnson's policy making system and his administration were severely threatened by his insistence that those selected to serve in his advisory system only represent those national interests which he recognized as legitimate. They were Johnson's commission class, Johnson's fire brigade, Johnson's minute men. This exclusionary practice became particularly pronounced when Johnson began to sense that his presidency was in serious trouble. On the basis of the findings in this work, future studies designed to measure the systemic impact of the work of presidential advisory groups will be well-advised to give serious attention to the consequences for policy making and administration of the exclusion (systematic or not) from the

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[3]See Graff, Tuesday Cabinet, p. 45 for a similar discussion concerning individual presidential advisers.

[4]"Presidential Advisory Commissions," pp. 181-182.

[5]Amitai Etzioni, Wall Street Journal.

presidential advisory councils of groups claiming to have a legitimate interest in the problems under consideration.

Finally, this study of the Johnson temporary advisory groups yields valuable information about the manner in which his leadership elite handled the problem of domestic policy making in a time of severe political crisis. Johnson's reaction to the urban disorders of 1967, including the appointment of the Kerner Commission, was clearly an effort to buy time and protect his options for action against an increasingly combative congress. Faced with a policy issue which threatened him with unknown or ambiguous political consequences, Johnson did what was necessary, as did his predecessors in similar situations; Johnson's initial reaction to a major political crisis was one of process before substance.[6] This is not meant to imply that Johnson, or any other president faced with similar situations, met the challenges solely with administrative process. All presidents use the time-honored administrative device of attempting to buy time in the hope that the problem will ease, go away, develop into a more familiar and therefore more manageable form or attract to it persons with innovative ideas capable of bringing it under presidential management. By so doing, the president provides the time necessary for an advisory group to get to work and allows the rest of the presidential advisory system and the concerned elite publics to refine a response to the problem originally presented or to watch

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[6]See Lowi, End of Liberalism p. 97. Lowi insists that the characteristic American political response to crisis situations is process rather than substance. See also Lipsky and Olson, MSS, IV. p. 22.

it evolve into something new and hopefully something more manageable. The substantive work of the Johnson advisory groups was closely integrated to his overall policy designs. But it is also clear that their reports were designed by the task force and commission members as much to maintain themselves within the policy making elite as any other public policy purpose. The advisory group members knew they were expected to adapt their ideas and follow the White House lead in their work; they practiced what Heydebrand calls "the (administrative) art of laissez faire;"[7] in response to presidential dictates and their sense of his needs, they directed their attention toward the political process and institutions in Washington needed for developing support for their recommendations.[8] If they failed they knew they would not be invited to try again. Consequently their recommendations were always either realizable or acceptable to the president.

In telling of his own political education, Harry McPherson speaks of the need for the would-be liberal reformer to choose between prophecy (the way things ought to be) and effectiveness (the way things must be).[9] This choice was also before those persons Johnson named to membership on his task forces and commissions, especially those who served during the last months of his administration such as the Kerner Commissioners. Johnson wanted effectiveness from his public commissions and task forces and tolerated prophecy only from the secret task forces. This study has shown the degree to which the Kerner Commissioners selected between these

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[7]Wolf Heydebrand, "Administration for Social Change." Public Administration Review XXIV (December, 1970):165.

[8]For a similar insight into presidential behavior drawn from another area of public policy making see Michael H. Armacost, The Politics of Weapon Innovation: The Thor-Jupiter Controversey, (New York: Columbia University Press, 1969), p. 11.

[9]McPherson, A Political Education, p. 31.

options. Being successful and widely experienced political actors, their instincts directed them toward the kind of effectiveness which best served the needs of the president at that time. But that same experience told them there is no absolute choice; that which is prophetic in one context is effective in another and in some extremely complicated political environments the options merge--to be prophetic is to be politically effective. They saw their recommendations as effective, but knew the president would see them as prophetic. The most important fact to remember in this context is that the president is the creator of the independent variables making up the environment of the advisory groups existence: size, budget, tenure in office and general support system. It is these factors more than any others, as has been seen, which condition the work product of the group. By extending the lives and broadening the mandates of public advisory groups future presidents can increase the possibilities of their being exposed to more political stimuli over longer periods of time. Such activity could accure to the political benefit of the president by publicly identifying him and his administration with creative public policy leadership. A careful use of public advisory groups, coupled with a willingness to take the risks inherent in such an operation, could well provide policy substance for the kind of bold leadership which has been rewarded with public support in the past. If prophecy is, as Burns implies, an essential ingredient in the highest form of leadership, then it is well for presidents and scholars of the office to give considerable attention to the ways in which it can be and has been institutionalized in the presidential advisory system.[10]

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[10]Burns, Leadership, pp. 21-22.

These general conclusions about the political implications of Johnson's uses of temporary advisory groups can be applied to the case study of the Kerner Commission in order to reveal important theoretical insights for the general study of the presidency in American politics.

The Kerner Commission was a response, in part, by the Johnson administration to what it perceived to be a challenge to its ability to govern. Each of the commissioners chosen to aid in meeting the challenge was selected for his/her abilities to represent a recognized constituency: the congress, the police, major urban centers, national black groups, labor, business were the more important. None of the commissioners or the senior staff appointees in any direct way represented those persons or groups most affected immediately by the civil disorders--the residents of the urban black ghettos. Further, it is clear, as the text of Section III demonstrates, that contact between the commissioners, the senior staff and representatives of persons actually engaged in the disorders was kept at a minimum as a matter of commission and White House policy. It has been maintained throughout this study that the exclusive character of the Kerner Commission was representative of one of the major problems underlying the domestic turmoil of the 1960's; national domestic public policy was being made by groups unrepresentative of parts of the public having a significant vested interest in the disorders, their control and the efforts developed to prevent their reoccurrence. The Kerner Commission was named to aid the president in heading off the congress' efforts to lead the national response to the disturbances, developing public policy to end the civil

disorders and to meet and correct the conditions which produced them; it was to do this without any direct involvement, save that of testimony, and most of that by deposition, of representatives of those groups and persons toward whom the new policy presumably was directed. The examination of the major presidential advisory commissions of other administrations conducted in the first three chapters confirms that this pattern of exclusion was not limited to Johnson or to other periods of domestic crisis. Virtually without exception, membership on and testimony before presidential advisory commissions has been reserved for representatives of those established interest groups whose activities were at least partially responsible for the set of social and political circumstances which caused the president to create the advisory bodies. A major contemporary theoretical explanation of American politics holds that the American political system is polyarchical: a system of government combining elite and majority rule, vitalized by the ideal of citizen equality and consent.[11] Polyarchies are commonly placed on the democratic side of a continuum stretching from autocracy to democracy. Robert Dahl maintains that they can be distinguished from autocracy, or hegemonic rule by elites, in three ways:

1. By the extent to which opportunities are available to opposition elites to contest the conduct of government.
2. The amount of open conflict among political leaders and open competition for the support of non-leaders, particularly by voting in elections.

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[11]See Robert A. Dahl, Democracy in the United States: Promise and Performance, (Chicago: Rand McNally, 1973), pp. 3-56.

3. The periodic occurrence of local and national elections contested by competing political parties.[12]

This study provides substantial reasons for not placing the political uses by presidents of temporary advisory groups very close to the democratic pole on Dahl's scale. If groups representing the interests of the citizens demanding changes in the allocation of the values of the political system are denied a voice in the advisory groups called to aid the president in developing policy to meet the demand, then the answer to the question implicit in the first distinguishing criteria above becomes clear: presidential task forces and advisory commissions have most often served hegemonic rather than polyarchical ends.

Further Lowi has maintained that the leadership elite of the American political system always attempts to maintain a balance between the requisites for social order and the requisites for social change by increasingly expanding the provinces of government. Each such expansion creates a crisis of public order which in turn creates demands for equally significant expansions of interest representation.[13] This study has shown that in naming the members of the Kerner Commission, Johnson decided against yielding to the demands of new representation in his executive policy making councils dealing with urban and civil rights matters. He decided for social order, assuming that his Great Society programs had adequately met and would continue to meet any needs for social change extant among the poor of the nation. The Johnson administration's subsequent crisis of public authority became critical when his presidency was incapacitated by the conflicting pressures of demands for

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[12]Ibid., pp. 44-45.

[13]Lowi, End of Liberalism, pp. 93-94.

expanded representation in domestic policy making by a variety of alienated interest groups which rejected their exclusion by joining in creating political disorder and by a congress which was increasingly resistant to his requests for expansion of the federal government's commitment to his Great Society programs.

Lyndon Johnson used his system of secret task forces and public advisory commissions as policy information gatekeepers; they admitted to the White House and congress only acceptable policy information and excluded that originating in groups the president did not recognize as legitimate. These practices had a qualitative effect on the political system. A variety of particular systemic implications of the gatekeeping activities of the Kerner Commission were noted in Section III. Note must now be taken of the salient implications of evaluating the democratic character of the work of the commission.

In its efforts to serve the political needs of the Johnson administration and what it perceived to be the interests of black urban Americans, the Kerner Commission explicitly sought to condition the political environment in which it was operating in four ways. One consequence of each was exclusion of particular groups and policy interests from the national debate. Further, contrary to the commissioners' intent, each contributed to the demise of the administration by contributing to an unequal distribution of those values of the society being contested by those citizens who supported the disorders; their actions also contributed to a growing sense of injustice in those persons who were disadvantaged by the distribution.

First, the Report interpreted the civil disorders as random, non-deliberate acts; the commissioners, together with the president, interpreted them as criminal acts devoid of any political intent to challenge the Great Society. Ironically by denying political design to those urban blacks who supported and participated in the disorders, Johnson and his commission engaged in that form of socio-political emasculation which black Americans had come to be expected from the white racist society described in the "Summary" of the Report. Second, the Report explictly endorsed the Great Society method of public policy development and execution (though obviously not to the degree desired by the White House); it identified political inequalities but recommended that they be corrected by the process which created them--adaptation to, rather than reform or reconstitution of the status quo was its stance. Third, the Report reinforced the conventional wisdom of the day by not explicitly relating the war in Vietnam to the civil disorders in the cities. Some witnesses before the commission made the connection, but the Report ignored the relationship. In doing so, it doomed the least advantaged of the society, many of whom were participants in the disorders, to continue to pay most of the human costs of the failures of the established domestic and foreign policies. Fourth, the Report tied its recommendations to those socio-political institutions it found contributing to the disorders: 1) insurance coverage in ghetto areas, 2) private sector employment, 3) community relations programs for the police, 4) inter-police department communications, 5) police and national guard riot control training programs, 6) governmental interest in housing, 7) employment and educational services in ghetto areas. All recommendations in these areas were adopted by the private institutions and the

public departments/agencies toward which they were recommended; this result is not surprising when it is remembered that these same institutions had a major hand in writing the recommendations; they were not likely to write recommendations contrary to their perceptions of their own interests. But it was those government agencies/departments and the national interests they and the commissioners represented which stood to gain most from the recommendations. Those toward whom the recommendations were ostensively addressed were powerless before and after the policy making process was set in motion because the recommendations were not intended to enhance their political power, but rather that of those who wrote them. The recommendations were predictably conservative and, in sum, reinforced the decision making structures and the political values which were the major procedures of the civil disorders.

The recommendations of the Kerner Commission were more directed toward broad social change than those presented by any other presidential commission in this century. Yet there is a tragic quality to its work when it is noted that in balance it produced more socio-political problems than solutions. Lest it be lost, an obvious concluding point needs to be made. The official reaction to demands for massive social change in the United States by persons who are members of the "out" groups of the society is to provide more, not less injustice. Predictably, it seems, the "haves" will continue to have more and the "have-nots" less.

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