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# Different Lyrics, Same Song: Watts, Ferguson, and the Stagnating Effect of the Politics of Law and Order

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# Different Lyrics, Same Song: Watts, Ferguson, and the Stagnating Effect of the Politics of Law and Order\*

*Lonnie T. Brown, Jr.\*\**

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## I. INTRODUCTION

On June 4, 1965, President Lyndon Baines Johnson delivered a historically powerful commencement address at Howard University. Reflecting upon the efficacy of the recently enacted Civil Rights Act,<sup>1</sup> and as a prelude to his imminent signing of the Voting Rights Act, President Johnson proclaimed:

You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, “you are free to compete with all the others” . . . . Men and women of all races are born with the same range of abilities. But ability is not just the product of birth. . . . Men are shaped by their world. When it is a world of decay, ringed by an invisible wall, when escape is arduous and uncertain, and the saving pressures of a more hopeful society are unknown, it can cripple the youth and it can desolate the men. . . . Blighted hope breeds despair. Despair brings indifference to the learning which offers a way out. And despair, coupled with indifference, is often the source of destructive rebellion against the fabric of society.<sup>2</sup>

Little did the President know that within two months, this vivid and moving description of the plight of African-Americans and the potential for their desperate and indifferent condition to erupt into a “destructive rebellion” would prove prescient.

From August 11 until August 17, black citizens of Watts burned, looted, and wreaked havoc throughout South Los Angeles.<sup>3</sup> Rather than an urban section of a major U.S. city, the region looked more like some foreign, war-

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<sup>1</sup> President Johnson had signed into law the landmark Civil Rights Act of 1964 on July 2, 1964.

<sup>2</sup> President Lyndon B. Johnson, Commencement Address at Howard University: “To Fulfill These Rights” (June 4, 1965), <http://teachingamericanhistory.org/library/document/commencement-address-at-howard-university-to-fulfill-these-rights/>, archived at <https://perma.cc/9N3K-S67Y> [hereinafter HOWARD ADDRESS]. For an excellent discussion of President Johnson’s Howard Address and its backstory, see DAVID C. CARTER, *THE MUSIC HAS GONE OUT OF THE MOVEMENT: CIVIL RIGHTS AND THE JOHNSON ADMINISTRATION, 1965-1968* 3–13, 15–29 (2009).

<sup>3</sup> See generally JERRY COHEN & WILLIAM S. MURPHY, *BURN, BABY, BURN!: THE LOS ANGELES RACE RIOTS OF AUGUST 1965* (1966).

torn nation.<sup>4</sup> The Watts riots — as they are most commonly known<sup>5</sup> — resulted in thirty-four deaths; injuries to over 1,000 people; nearly 4,000 arrests; and property damage in excess of \$40 million.<sup>6</sup>

America had witnessed riots of a racial nature on a number of previous occasions, by both whites and blacks. Some were overtly racist in tone, like the Chicago riots of 1919<sup>7</sup> and the Tulsa riots of 1921.<sup>8</sup> Others seemed to emanate from the growing problem of black mistreatment at the hands of law enforcement. Riots of this nature occurred as late as 1964 in Harlem,<sup>9</sup> Rochester, and Philadelphia, as well as other cities.<sup>10</sup>

In light of this history, the uprising in Watts probably should not have come as a great surprise, but it did, mainly because the magnitude of the rage displayed and the extent of the carnage wrought was beyond anything previously witnessed.<sup>11</sup> The seeds of black despair and indifference, to which President Johnson alluded, had been germinating for years, sprouting occasionally, but never enough to garner broad national attention. However, in August of 1965, those seeds burst forth in full bloom for the entire nation to see.

<sup>4</sup> See, e.g., GERALD HORNE, *THE FIRE THIS TIME: THE WATTS UPRISING AND THE 1960s* 339 (1995) (observing that in the wake of the riots “South LA resembled Baghdad in the aftermath of the Gulf War”).

<sup>5</sup> But see *id.* at 45, 49 (questioning the accuracy of the label by observing that the unrest actually spread well beyond the boundaries of Watts, though this area was the main focus of the uprising); *id.* at 36 (noting the then-consensus that “this was not a riot. It was an insurrection against all authority.”).

<sup>6</sup> See COHEN & MURPHY, *supra* note 3, at 317–18. There was informed speculation that the death toll may have been higher than reported. See *id.* at 163 (fire captain noting that “many persons may have died in flaming structures, and the bodies, or what remained of them, [sic] never discovered amid the massive, sooty rubble”). In addition, property damage in the entire curfew area, which encompassed a larger portion of South Central Los Angeles than Watts, was estimated at \$200 million. See HORNE, *supra* note 4, at 3.

<sup>7</sup> Here, rage over the alleged stoning and drowning death of a black youth led to a deadly clash between black and white citizens on the south side of Chicago, an environment that was already teeming with racial tension at that time. See REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 219 (1968) [hereinafter KERNER REPORT].

<sup>8</sup> This white-fueled unrest resulted in devastating destruction to one of the most affluent black areas in the country at that time. For a detailed account of the Tulsa riots and their aftermath, see generally ALFRED L. BROPHY, *RECONSTRUCTING THE DREAMLAND: THE TULSA RIOT OF 1921: RACE, REPARATION, AND RECONCILIATION* (2002).

<sup>9</sup> In July of 1964, the shooting death of a fifteen-year-old African-American boy by an off-duty police officer spawned widespread unrest, including looting and burning, in Harlem and Brooklyn. See JAMES T. PATTERSON, *THE EVE OF DESTRUCTION: HOW 1965 TRANSFORMED AMERICA* 5 (2012); see also CARTER, *supra* note 2, at 58.

<sup>10</sup> See CARTER, *supra* note 2, at 25, 58; see also MICHAEL W. FLAMM, *LAW AND ORDER: STREET CRIME, CIVIL UNREST, AND THE CRISIS OF LIBERALISM IN THE 1960s* 37–38 (2005) (discussing the riots that took place in Harlem and Rochester). Riots also occurred in parts of Florida, New Jersey, Ohio, and Illinois. See KERNER REPORT, *supra* note 7, at 35–36.

<sup>11</sup> President Johnson felt particularly blindsided by the riots because of the great strides that he believed his administration had been making in the area of civil rights. See CARTER, *supra* note 2, at 57 (noting that “Johnson felt betrayed after ‘all that [he] had done’ for black Americans”); see also *id.* at 170–71 (discussing expressions of collective surprise regarding the riots and why that probably should not have been the case).

A similarly tumultuous blossoming occurred in August 2014 in Ferguson, Missouri. The precipitating event there, as with Watts, was a hostile encounter between the police and a black citizen. Although the personal toll and physical destruction in Ferguson were much less severe than Watts, the parallels between the two situations in terms of cause, effect, and governmental response are palpable.

This Article critically examines the Watts riots and their aftermath in comparison to the Ferguson situation, and demonstrates how little progress America has made in a span of fifty years in the area of race relations. More importantly, the Article points to the politics of “law and order” as the primary culprit for this static social condition. Lamentably, this state of affairs has persisted notwithstanding the cogent articulation by a 1965 Presidential Task Force Report of the true causes of the urban turmoil and a strategy for addressing them.<sup>12</sup> This Report, principally authored by Task Force Chair and then-Deputy Attorney General Ramsey Clark, not only went unheeded by the Johnson administration, but was actually not released to the public. The disconcerting parallels between the problems and proposed solutions articulated in the Clark Report and those in the Department of Justice’s investigation of Ferguson are profoundly discouraging, to say the least.

The Clark Report stressed that the Watts riots were directly linked to the sense of hopelessness and despair prevalent among blacks in South Los Angeles, which largely emanated from rampant unemployment (or underemployment), poor education, and overly antagonistic police-community relations. Clark graphically depicted the dire situation faced by blacks in Watts (and elsewhere), using the very words of the people to communicate their desperation. In his view, the riots were the culmination of years of neglect, abuse, and frustration, and represented a manic attempt by the citizens of Watts to obtain recognition. They faced seemingly insurmountable social and economic hurdles, and no one with the power to help appeared to be paying attention. Clark embraced Dr. Martin Luther King, Jr.’s famous statement that “a riot is the language of the unheard.”<sup>13</sup> He listened intently to what the rioters had to say and gained a deep understanding of their intractable predicament.

Clark’s honest, unfiltered Report, however, got a tepid reception from President Johnson, who feared the prospect of a negative public reaction. The President preferred a response that was safer politically, and he therefore buried the Report, much to Clark’s dismay. The serious problems the Report identified, especially that of strained police-community relations, persisted.

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<sup>12</sup> RAMSEY CLARK, ANDREW F. BRIMMER, AND JACK T. CONWAY, REPORT OF THE PRESIDENT’S TASK FORCE ON THE LOS ANGELES RIOTS, AUGUST, 1965 (Sept. 17, 1965) [hereinafter CLARK REPORT].

<sup>13</sup> *MLK: A Riot is the Language of the Unheard*, 60 Minutes, CBS News (Sept. 27, 1966), <http://www.cbsnews.com/news/mlk-a-riot-is-the-language-of-the-unheard/>, archived at <https://perma.cc/RFW5-C3H8>.

Not surprisingly, more riots occurred from 1965 through 1968, the most devastating of which took place in Newark, Cleveland, and Detroit. President Johnson responded by creating the National Advisory Commission on Civil Disorders, better known as the Kerner Commission. The Kerner Report echoed many of the themes contained in the Clark Report, but painted an even bleaker picture of the future of race relations in America and placed primary blame for the problems of black citizens on white racism. Although President Johnson could not suppress the Kerner Report given its public nature, he bristled at its content and balked at championing its message. He privately clung to the possibility that the Commission might conclude that the riots were being conspiratorially fomented by “outside agitators,” such as black power activists Stokely Carmichael and H. Rap Brown.<sup>14</sup> This would have been more consistent with the prevailing white reaction to the riots, which was to condemn the conduct of the perpetrators — criminals deserving of punishment, not concessions — and to side with police officers, who were just doing their jobs, on issues related to the use of force.

Many liberals, accordingly, feared that accepting the positions espoused in the Clark and Kerner Reports might trigger a white backlash at the voting booth. As a result, President Johnson and other liberal Democrats were overly cautious in dealing with the intense racial and economic problems that contributed significantly to the riots. Instead of acknowledging the existence of these concerns and addressing them directly, they sought in vain to construct a narrative about the riots that would be both constructive and politically expedient.

Conservatives, on the other hand, were emboldened by the majority white sentiment, and endeavored to capitalize on it by appealing to this group’s demonstrable fear of the archetypal black criminal. What America needed at that time, according to California gubernatorial candidate Ronald Reagan and presidential candidates Richard Nixon and George Wallace, was “law and order.”<sup>15</sup> In other words, law enforcement was not the problem; it was the solution.

The appealing law-and-order narrative proved too strong to overcome. It not only carried Reagan and Nixon into office, but also halted advance-

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<sup>14</sup> See CARTER, *supra* note 2, at 215 (observing that following his creation of the Kerner Commission, the President “continued to express interest in finding out whether there was a conspiracy behind the rioting”); *id.* at 209 (pointing out that although President Johnson publicly “refused to endorse widespread rumors of a black radical conspiracy” behind the riots, “privately, he was far more receptive”).

<sup>15</sup> See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 46 (rev. ed. 2012) (observing that both Nixon and Wallace effectively employed “law and order” as the principal focus of their 1968 presidential campaigns); HORNE, *supra* note 4, at 281 (discussing Reagan’s emphasis on “law and order” in his successful California gubernatorial campaign in 1966); Cathleen Decker, *Watts Riots Shifted State to the Right, But New Demographics Pushed It Left*, L.A. TIMES (Aug. 5, 2015), <http://www.latimes.com/local/politics/la-me-pol-watts-politics-20150806-story.html>, archived at <https://perma.cc/LDU8-MYYP> (noting that during his campaign, Reagan called for increased law enforcement and maintained that inner city streets had become “jungle paths after dark”).

ments in civil rights — particularly in the areas of unemployment, education, and perhaps most importantly, police-community relations — the three central issues of the Clark Report.

To be sure, there were modest gains on various fronts in the area of race relations over the years. However, the great strides essential to real progress were never undertaken in a meaningful manner. The politics of law and order served as the primary obstacle, opportunistically utilized by both parties since 1965, most powerfully at the presidential level by the likes of Ronald Reagan,<sup>16</sup> George H. W. Bush,<sup>17</sup> and even Bill Clinton.<sup>18</sup> Moreover, thanks to the Nixon- and Wallace-like rhetoric of President Donald Trump, the politics of law and order again took center stage on the 2016 presidential campaign trail; Trump extolled the virtues of the police and emphasized the need for increased enforcement in order to stem the spread of crime.<sup>19</sup> In fact, channeling 1968-Nixon, Trump declared himself the “law and order candidate” following the deadly sniper attack on police officers in Dallas, Texas, on July 7, 2016,<sup>20</sup> which occurred on the heels of the shooting deaths

<sup>16</sup> See, e.g., ALEXANDER, *supra* note 15, at 48 (noting that “[c]rime and welfare were the major themes of Reagan’s campaign rhetoric”).

<sup>17</sup> See Julia Azari, *From Wallace to Trump, The Evolution of “Law and Order,”* FIVETHIRTYEIGHT (Mar. 13, 2016), <http://fivethirtyeight.com/features/from-wallace-to-trump-the-evolution-of-law-and-order/>, archived at <https://perma.cc/AFW4-8UHW> (pointing to Bush’s infamous Willie Horton ad as one of the most vivid examples of the continuing prominent role that crime played in presidential campaigns); see also ALEXANDER, *supra* note 15, at 54 (discussing the Willie Horton ad and its obvious racialized law-and-order message).

<sup>18</sup> See ALEXANDER, *supra* note 15, at 56 (observing that as a presidential candidate in 1992, “Clinton vowed that he would never permit any Republican to be perceived as tougher on crime than he”); Azari, *supra* note 17 (noting that Clinton “worked to shore up his ‘tough on crime’ credentials” both during his campaign and as president).

<sup>19</sup> See Dana Liebelson & Nick Wing, *Who Said It: Renounced Racist George Wallace or Donald Trump? We Seriously Can’t Tell*, HUFF. POST (Mar. 14, 2016), [http://www.huffingtonpost.com/entry/donald-trump-george-wallace-quotes\\_us\\_56e710efe4b0b25c9182d7e5](http://www.huffingtonpost.com/entry/donald-trump-george-wallace-quotes_us_56e710efe4b0b25c9182d7e5), archived at <https://perma.cc/LRP9-8C8S>; see also Azari, *supra* note 17 (“There has to be some decorum . . . . There has to be some law and order.”) (quoting Trump); Daniel Denvir, *The Long, Ugly History of “Law and Order” Candidates*, CITYLAB (Sept. 16, 2015), <http://www.citylab.com/politics/2015/09/the-long-ugly-history-of-law-and-order-candidates/405709/>, archived at <https://perma.cc/9RHD-QQQT> (noting Trump’s complaint that Baltimore was “set ‘back 35 years in one night because the police weren’t allowed to protect people. We need law and order!’”).

<sup>20</sup> See David M. Jackson, *Trump Declares Himself “Law and Order” Candidate*, USA TODAY (July 11, 2016), <http://www.usatoday.com/story/news/politics/onpolitics/2016/07/11/donald-trump-veterans-issues-virginia-beach/86947004/>, archived at <https://perma.cc/BQ34-ZRJC> (noting Trump’s description of himself as the “law and order candidate” and his pledge to “increase[ ] support for police in the wake of last week’s mass killing in Dallas”); Christina Wilkie, *Donald Trump: “I Am the Law and Order Candidate”*; *Shades of Richard Nixon*, HUFF. POST (July 11, 2016), [http://www.huffingtonpost.com/entry/donald-trump-law-and-order-candidate\\_us\\_5783e562e4b0344d51505dde](http://www.huffingtonpost.com/entry/donald-trump-law-and-order-candidate_us_5783e562e4b0344d51505dde), archived at <https://perma.cc/X456-72PU> (observing that by labeling “himself the ‘law and order’ candidate, . . . Trump has ripped a page from the campaign playbook of Richard Nixon, who successfully ran for the presidency in 1968 as the ‘law and order’ candidate”); see also Joel Achenbach, et al., *Five Dallas Police Officers Were Killed By a Lone Attacker, Authorities Say*, WASH. POST (July 8, 2016), <https://www.washingtonpost.com/news/morning-mix/wp/2016/07/08/like-a-little-war-snipers-shoot-11-police-officers-during-dallas-protest-march-killing-five/>, archived at <https://perma.cc/>

of two black men, Alton Sterling and Philando Castile, by police officers in Louisiana and Minnesota, respectively.<sup>21</sup> Trump doubled down on July 18 after three more police officers were killed in Louisiana, Tweeting: “We grieve for the officers killed in Baton Rouge today. How many law enforcement and people have to die because of a lack of leadership in our country? We demand law and order.”<sup>22</sup> Later, during his first presidential debate with Hillary Clinton, the future President criticized his opponent’s apparent reluctance to embrace “law and order,” and stressed its necessity for American society: “Secretary Clinton doesn’t want to use a couple of words, and that’s [sic] law and order. We need law and order. If we don’t have it, we’re not going to have a country. We need law and order in our country.”<sup>23</sup>

President Trump and other politicians conveniently overlook or ignore the reality that if more law and order were really the answer, America should not still have a significant crime and police-community relations problem. But there is no doubt that it does. Indeed, the DOJ’s Ferguson investigation unmasked issues depressingly evocative of 1965-Watts. So too are the contemporary reactions to those findings, as well as to the continuing pattern of volatile interactions between law enforcement and citizens of color. Indeed, a comparison of the rhetoric of the 1960s with that of today, on both sides of the issue, could make an objective observer legitimately wonder whether America has been in stasis for the past half-century. This Article exposes the truth of this perception, critically examines one prominent cause — the politics of law and order — and shines a revealing light on the most hopeful avenue for positive change, embodied in a suppressed and forgotten fifty-year-old report.

Part II of the Article supplies the historical backdrop for analyzing the effect of the politics of law and order by describing the details of the Watts riots, the publics’ response, and the federal and state governments’ post-riot investigations, especially that of the Presidential Task Force led by Ramsey Clark. It then proceeds to examine the aftermath of the riots in Part III,

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FX6Z-9UZN (discussing shooting deaths of five Dallas police officers and the wounding of seven others).

<sup>21</sup> See Richard Faussett, et al., *Alton Sterling Shooting in Baton Rouge Prompts Justice Dept. Investigation*, N.Y. TIMES (July 6, 2016), <http://www.nytimes.com/2016/07/06/us/alton-sterling-baton-rouge-shooting.html>, archived at <https://perma.cc/F6RL-Y8J9>; T. Rees Shapiro, “*They’re They’re Slaying Us Like Animals*”: *Philando Castile’s Family Outraged at Police*, WASH. POST (July 7, 2016), <https://www.washingtonpost.com/news/post-nation/wp/2016/07/07/theyre-slaying-us-like-animals-philando-castiles-family-outraged-at-police>, archived at <https://perma.cc/E4KL-FLN4>.

<sup>22</sup> *Donald Trump on Baton Rouge Shooting: “We Demand Law and Order,”* L.A. TIMES (July 18, 2016), <http://www.latimes.com/nation/la-na-baton-rouge-police-killed-live-donald-trump-on-baton-rouge-shooting-1468785394-htmlstory.html>, archived at <https://perma.cc/C57J-KJTK>.

<sup>23</sup> David Fahrenthold, et al., *First Presidential Debate: Trump Says Clinton Lacks “Stamina,” Clinton Cites His Attacks on Women as “Pigs, Slobs and Dogs,”* WASH. POST (Sept. 26, 2016), [https://www.washingtonpost.com/politics/clinton-vs-trump-first-presidential-debate/2016/09/26/4ef0c1a8-83f9-11e6-ac72-a29979381495\\_story.html](https://www.washingtonpost.com/politics/clinton-vs-trump-first-presidential-debate/2016/09/26/4ef0c1a8-83f9-11e6-ac72-a29979381495_story.html), archived at <https://perma.cc/4QDG-GTJJ>.



which principally consisted of more of the same — riots, responsive call for action, and then a return to the status quo.

In Part IV, the Article chronicles the dynamic of various American leaders' adoption of the politics of law and order as a response to urban unrest and to crime in general, while exposing the lingering appeal and stultifying effect of this strategy. Part V demonstrates the staying power of the politics of law and order through the example of Ferguson. It recounts the details surrounding the tragic police encounter and its explosive aftermath, as well as the DOJ's subsequent investigation, and then highlights some of the distressing parallels between Watts and Ferguson.

While upsetting, this congruence between past and present need not be viewed in a wholly negative light. For this to be so, however, the stagnation of the intervening fifty-one years must be acknowledged, and contemporary events — such as Ferguson and the growing list of regretful clashes between African-Americans and law enforcement<sup>24</sup> — must be viewed collectively as signifying that law and order alone will never alleviate the destructive despair and indifference endemic within large portions of the black community. Indeed, the political use of law and order as a platform for responding to civil disturbances and crime throughout this period has been a central impediment to progress in race relations and equality in America. If tangible change is ever to occur, political expediency and opportunism must be cast aside; and, in the words of the Clark Report, all people, including those most affected, must be willing to exert “patient, determined, and massive effort” to address the core problems of unemployment, inferior education, and combative police-community relations. Until this hard work is undertaken, the tragic history of Watts may be destined to repeat itself.

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<sup>24</sup> See, e.g., Haeyoun Park & Jasmine C. Lee, *Looking for Accountability in Police-Involved Deaths of Blacks*, N.Y. TIMES (July 27, 2016), <http://www.nytimes.com/interactive/2016/07/12/us/looking-for-accountability-in-police-involved-deaths-of-blacks.html>, archived at <https://perma.cc/Y25H-5A8M> (discussing recent high-profile incidents involving the deaths of blacks stemming from police encounters, namely Philando Castile, Alton Sterling, Christian Taylor, Samuel DuBose, Sandra Bland, Freddie Gray, Walter Scott, Laquan McDonald, Michael Brown, and Eric Garner); Doug Stanglin & Melanie Eversley, *Terence Crutcher's Death Listed as Homicide from Gunshot Wound*, U.S.A. TODAY (Sept. 23, 2016), <http://www.usatoday.com/story/news/2016/09/22/charges-filed-against-police-officer-tulsa-shooting/90858280/>, archived at <https://perma.cc/3S9K-UUDL> (describing an unarmed black man, Terence Crutcher, being shot and killed in Tulsa, Oklahoma by a police officer in September 2016); Jason Hanna, et al., *Fallen Officers: 64 Shot Dead in the Line of Duty in 2016*, CNN (Dec. 13, 2016), <http://www.cnn.com/2016/08/14/us/police-officers-fatal-shooting-line-duty-nationwide/>, archived at <https://perma.cc/FU5P-4B9S> (recounting shootings of police officers throughout the country in 2016).

## II. THE WATTS RIOTS OF 1965

A. *The Arrests of Marquette, Ronald, and Rena Frye*

On August 11, 1965<sup>25</sup> — just five days after President Johnson’s momentous signing of the Voting Rights Act — Marquette Frye, with his stepbrother Ronald as a passenger, was stopped by a California Highway Patrolman (Officer Lee Minikus) on suspicion of drunk driving.<sup>26</sup> The tone of the encounter was uncharacteristically cordial and lighthearted.<sup>27</sup> According to Marquette, “The officer that stopped me was as polite as an officer of the law can be. I mean the reason that most people started gathering around was because I was joking with the officer — I mean we was getting along, getting along.”<sup>28</sup>

Meanwhile, a woman informed Rena Frye — Marquette’s mother and Ronald’s stepmother — about what was happening.<sup>29</sup> She immediately rushed from her nearby apartment to the scene of the police stop, first preventing the towing of her car,<sup>30</sup> which Marquette had been driving, and then scolding her son once she realized he was intoxicated.<sup>31</sup> Rena’s public berating of Marquette dramatically changed the tenor of the situation. Marquette quickly went from jovial and cooperative to angry and defiant, vehemently refusing to be arrested.<sup>32</sup>

His resistance caused the several officers now present to utilize more aggressive measures to subdue him. When this failed, sensing the growing hostility of the expanding throng of onlookers, the officers called for extensive reinforcements.<sup>33</sup> One bystander claimed that as many as twenty-seven squad cars converged on the scene.<sup>34</sup> Ultimately, one of the patrolmen, as-

<sup>25</sup> Some have suggested that the atypically hot temperature that day may have played a role in escalating the tensions in Watts. See HORNE, *supra* note 4, at 53.

<sup>26</sup> COHEN & MURPHY, *supra* note 3, at 26–27. Officer Minikus stopped Marquette Frye after receiving a tip from an unidentified black citizen who had observed what he described as a “reckless driver.” See *id.* at 26. There seems to be little doubt that Marquette was intoxicated at the time of the stop. See *id.* at 29–30.

<sup>27</sup> See *id.* at 29–30.

<sup>28</sup> *Id.* Officer Minikus’s account was consistent with Marquette’s assessment. He maintained that “there couldn’t have been a better approach between officer and defendant at the time.” *Id.* at 29.

<sup>29</sup> See *id.* at 31.

<sup>30</sup> See *id.* at 31–32.

<sup>31</sup> See *id.* at 33 (“You’ve been drinking — I can smell it on your breath. You know you shouldn’t drive when you’ve been drinking. You better go with the officers.”) (quoting Rena Frye).

<sup>32</sup> See *id.* Marquette reportedly walked away and screamed: “Those mother-fucking cops ain’t going to take me to jail. . . . You’re going to have to kill me to take me to jail.” *Id.* at 34; see also Valerie Reitman & Mitchell Landsberg, *Watts Riots, 40 Years Later*, L.A. TIMES (Aug. 11, 2005), <http://articles.latimes.com/2005/aug/11/local/la-me-watts11aug11>, archived at <https://perma.cc/488E-APV5> (quoting Officer Minikus as saying “[e]verything was going fine with the arrest until his mama got there”). See also HORNE, *supra* note 4, at 55.

<sup>33</sup> See COHEN & MURPHY, *supra* note 3, at 35.

<sup>34</sup> See *id.*

sisting Officer Minikus, allegedly jabbed Marquette in the stomach with his riot baton, and then struck him on the brow after a brief struggle.<sup>35</sup> Now dazed, Marquette was forcibly dragged to the patrol car by Officer Minikus, thrown face-first into the front seat, and handcuffed.<sup>36</sup>

Rena and Ronald attempted to intervene on Marquette's behalf, with Rena purportedly jumping on the back of one officer.<sup>37</sup> After a brief scuffle, both Rena and Ronald were combatively apprehended and handcuffed, and then placed in the backseat of the patrol car with Marquette.<sup>38</sup> A sizable horde of Watts residents observed the entire episode, many questioning the level of force and manpower exerted to arrest the Fryes.<sup>39</sup>

There are disputes concerning the details of this encounter,<sup>40</sup> but there is no denying that a routine traffic stop devolved into an ugly confrontation that ended with Marquette, Rena, and Ronald Frye being driven away in a patrol car as a very large contingent of their community angrily watched.

Various exaggerated tales of the events of that August afternoon spread quickly throughout Watts, the most inflammatory being that a pregnant on-looker — Joyce Gaines — had been roughed up and arrested by the police.<sup>41</sup> One of the officers believed that Ms. Gaines had spit on another officer. As a result, he seized her from the crowd and then dragged her away.<sup>42</sup> Some observers mistakenly thought that Ms. Gaines, a barber, was pregnant because the smock that she wore resembled a maternity dress.<sup>43</sup> Inflated rumors, such as this one, combined with the truth to set off six days of unprecedented rioting in South Los Angeles.

### *B. Burn, Baby, Burn!*

The unrest in Watts began when the police officers tried to leave the area following the Fryes' arrests. They had difficulty getting through the assembled crowd and their vehicles were pelted with bottles and rocks.<sup>44</sup> Soon thereafter chaos reigned in the streets of Watts for the remainder of that

<sup>35</sup> See *id.* at 36.

<sup>36</sup> See *id.* at 37. One witness recalled that the police "took [Marquette] and threw him in the car like a bag of laundry and kicked his feet in and slammed the door." Reitman & Landsberg, *supra* note 32.

<sup>37</sup> See COHEN & MURPHY, *supra* note 3, at 37.

<sup>38</sup> See *id.* at 37–39.

<sup>39</sup> See *id.* at 39–41. One member of the crowd bristled at rough police efforts to keep a handcuffed Marquette Frye in the patrol car, shouting, "Why did you have to do that? . . . That boy's already handcuffed and bleeding. You didn't have to do that." *Id.* at 39. Another on-looker exclaimed: "Does it take all these people to arrest three people?" *Id.*

<sup>40</sup> For another account of the arrests, see HORNE, *supra* note 4, at 54–55 (suggesting that the police used force that was not justified and were therefore clearly the aggressors).

<sup>41</sup> See COHEN & MURPHY, *supra* note 3, at 56–59.

<sup>42</sup> See *id.* at 53–56.

<sup>43</sup> See *id.* at 59; see also HORNE, *supra* note 4, at 55 (noting that the "idea that a woman in that condition had been assaulted by authorities" who were known to engage in similar behavior "incited the crowd").

<sup>44</sup> See COHEN & MURPHY, *supra* note 3, at 61–62.

Wednesday evening late into the night. Avalon Boulevard — one of the main thoroughfares — was like a war zone, with bottles and slabs of cement being hurled at any vehicle that ventured into the area.<sup>45</sup> Cars were overturned or set on fire, and occupants dragged out and beaten.<sup>46</sup>

The local police believed the mob's ire would dissipate if they removed themselves from the scene of the encounter with the Fryes.<sup>47</sup> This strategy failed and the officers soon returned to Watts in full force.<sup>48</sup> The citizens greeted their presence with hostility,<sup>49</sup> and many of the officers responded in kind.<sup>50</sup> Rather than reducing the riotous behavior, the heavy-handed rejoinder escalated the situation. One observer noted that the police officers

were hitting everyone. Girls and little kids. The cops drove up to clusters of people and got out and started swinging their billy-clubs. . . . There probably wouldn't have been another night after that, if it hadn't been for them hitting the little kids.<sup>51</sup>

Some thought the rioting would amount to a one-day outpouring of rage.<sup>52</sup> A community meeting arranged to ensure that the events from the previous night were not repeated was overtaken by angry teenagers who blamed the violence on police brutality.<sup>53</sup> At dusk on that Thursday, the rioting resumed, but this time, in addition to the rock throwing, physical attacks, and vehicle fires, the citizens also looted and burned businesses.<sup>54</sup> Shooting occurred as well, and in the ensuing days, the breadth of the rioting expanded into other areas of South Los Angeles, eventually inspiring the imposition of a curfew across a forty-six mile radius.<sup>55</sup>

By the third day, it was apparent that the Los Angeles Police Department alone could not control the growing discord, especially the burning and the looting. Consequently, the state enlisted the California National Guard to assist the police.<sup>56</sup> This enhanced show of force, however, did not have

<sup>45</sup> See *id.* at 67.

<sup>46</sup> See *id.*

<sup>47</sup> See HORNE, *supra* note 4, at 56 (“Police tried pulling back and closing off the area where the rioting was worst on the theory that their absence might calm things down.”).

<sup>48</sup> See COHEN & MURPHY, *supra* note 3, at 68–69.

<sup>49</sup> See, e.g., *id.* at 70 (“As motor officers penetrated the crowd, youths pelted them with rocks and other objects.”).

<sup>50</sup> See, e.g., *id.* (“The police was chasing kids, ah, up and down the street, and he hit a young man in the head with his club.”).

<sup>51</sup> *Id.* at 72.

<sup>52</sup> See *id.* at 81 (noting that on Thursday morning, “it seemed to all appearances, merely a time to assess the statistics of the long, violent night and inscribe them in police records”); see also *id.* at 86 (observing that “a sense of urgency and a sense of appreciation of what lay behind Wednesday night’s disorder appeared lacking”). But see *id.* at 85 (indicating that Los Angeles Police Chief William Parker “sensed that the early morning quiet might be deceptive” and considered the manner in which the riots had stopped to have been “unusual”).

<sup>53</sup> See *id.* at 86–87.

<sup>54</sup> See *id.* at 92, 95.

<sup>55</sup> See *id.* at 106–07.

<sup>56</sup> See *id.* at 129, 164–70.

the anticipated calming effect. Confrontations between law enforcement and the people increased, along with the looting and burning of local businesses.<sup>57</sup>

While looting was a major component of the rioting in Watts, arson was perhaps an even more dominant feature.<sup>58</sup> In fact, the rallying cry for the rioters was “burn, baby, burn!”<sup>59</sup> The majority of the burning and looting was directed at white-owned businesses, but because of the derisive nature of the rebellion, black businesses were not safe from attack.<sup>60</sup> To make matters worse, snipers and rock throwers frustrated the efforts of firefighters to contain the widespread conflagration.<sup>61</sup>

Although intense rioting persisted through Sunday evening, from that point forward, there was a steady decrease in the amount of unrest.<sup>62</sup> This was probably the result of a combination of the presence of the National Guard, the imposition of a curfew, and sheer fatigue. By the evening of Tuesday, August 17, the Watts riots were essentially over.<sup>63</sup>

### C. Local Government's Reaction to the Riots

In the face of the widely-held view that antagonistic police-community relations had contributed greatly to the riots, Los Angeles Chief of Police William Parker and Mayor Sam Yorty were quick to defend law enforcement and lay blame at the feet of the rioters and others who may have inspired their anarchistic behavior. Parker believed that so-called “civil rights zealots”<sup>64</sup> were the heart of the problem: “You cannot tell people to disobey the

<sup>57</sup> See *id.* at 182–83.

<sup>58</sup> See *id.* at 158; see also HORNE, *supra* note 4, at 81 (noting on August 14, “scores of fires raged out of control”).

<sup>59</sup> See COHEN & MURPHY, *supra* note 3, at 95 (noting that “as each new car or business establishment shuddered from the force of an exploding Molotov cocktail, then was engulfed by flame, onlookers chortled raucously: ‘Burn, baby, burn!’”); see also *id.* at 204. The catchphrase is attributed to a popular Los Angeles disc jockey known as Magnificent Montague. See HORNE, *supra* note 4, at 327. However, originally it had nothing to do with actual fire; Montague used it in reference to music that he found to be particularly enjoyable. See Bob Baker, *Watts: The Legacy: “Burn, Baby, Burn!”: What Began as a Radio Disc Jockey’s Soulful Cry of Delight Became a National Symbol of Urban Rebellion*, L.A. TIMES (Aug. 12, 1985), [http://articles.latimes.com/1985-08-12/local/me-4003\\_1\\_disc-jockey](http://articles.latimes.com/1985-08-12/local/me-4003_1_disc-jockey), archived at <https://perma.cc/48RB-4DV5>.

<sup>60</sup> Many black proprietors would place signs on their businesses, identifying them in a manner that they hoped would cause the rioters to direct their rage elsewhere — “Blood Brother” or “This is a Negro Business” or “Soul Brother.” See COHEN & MURPHY, *supra* note 3, at 96; HORNE, *supra* note 4, at 111. Such efforts, however, were often to no avail. See COHEN & MURPHY, *supra* note 3, at 96.

<sup>61</sup> One firefighter likened the venture of arriving at a burning store in Watts to “riding through a shooting gallery.” COHEN & MURPHY, *supra* note 3, at 159. See also *id.* at 158 (“firemen were forced to abandon their efforts to put out the flames, in some cases, due to the rioters”).

<sup>62</sup> See *id.* at 231 (observing that “on each succeeding day, an ebttide was noticeable”).

<sup>63</sup> See *id.* at 238 (noting that the rioting officially “ended on Tuesday night with the lifting of the curfew”).

<sup>64</sup> *Id.* at 68.

law and not expect them to have a disrespect for the law. You cannot keep telling them that they are being abused and mistreated without expecting them to react.”<sup>65</sup> Rather than acknowledging the need to enhance police-community relations and ease tension between black citizens and the Los Angeles Police Department (“LAPD”), Chief Parker viewed the riots as evidence of the need for cracking down more harshly on criminal activity, maintaining that: “[I]f the citizens of Los Angeles haven’t learned from the riot that they must support strong law enforcement, ‘next time they’ll blow up the whole city.’”<sup>66</sup>

Chief Parker also publicly criticized the California Highway Patrol (“CHP”) for its inept handling of the Fryes’ arrests, maintaining that if the LAPD had made the arrests — with its superior training and experience — the rioting would have never occurred.<sup>67</sup> This self-laudatory and simplistic explanation for the riots angered many and diverted attention away from analyzing the possible underlying causes of the unrest.

Instead of constructively redirecting the debate, Mayor Yorty came to the defense of Chief Parker and added further fuel to the law-and-order narrative that had begun. He first mocked the idea that police brutality could have been the cause of the riots, referring to the concept as the “big lie” perpetuated by outside antagonists.<sup>68</sup> In a letter urging the Los Angeles District Attorney to investigate CHP’s actions on August 11, Yorty contended that: “Communists, fellow travelers, dupes, and demagogues have . . . deliberately foment[ed] antagonism to law enforcement officers, inciting the residents to resent and resist officers in the proper professional performance of their always difficult and dangerous duty to protect the rights of law-abiding citizens to be secure in their persons and property.”<sup>69</sup> In other words, because of the negative attitude created towards the police in the community, they necessarily had to exercise force in order to apprehend angry, resistant lawbreakers.<sup>70</sup>

Yorty went on to suggest that the LAPD was in a no-win situation, frustrated and perplexed by inflated anecdotes concerning its law enforcement activities.<sup>71</sup> In his view, the police could be perfectly correct and restrained, but would still be “subjected to false, exaggerated, and malicious charges and rumors deliberately calculated to create tension and increase the

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<sup>65</sup> *Id.* at 69; *see also id.* at 277 (“Those who advocate the violation of laws that have neither been repealed nor declared unconstitutional advocate anarchy.”); Scott Martelle, *Viewing the Watts Riots Through Different Eyes*, L.A. TIMES (Aug. 12, 2015), <http://www.latimes.com/opinion/opinion-la/la-ol-watts-reactions-kennedy-king-johnson-eisenhower-20150810-story.html>, archived at <https://perma.cc/H8CU-2VK2> (“People have lost all respect for the law. An outgrowth of civil disobedience has been built up.”).

<sup>66</sup> COHEN & MURPHY, *supra* note 3, at 277–78.

<sup>67</sup> *See id.* at 279–80.

<sup>68</sup> *See id.* at 280–81.

<sup>69</sup> *Id.* at 281.

<sup>70</sup> *See id.* (observing that the “campaign against the police has fostered a highly charged atmosphere into which our policemen must go to perform their duties”).

<sup>71</sup> *See id.*

difficulty of their work.”<sup>72</sup> Such an atmosphere, according to Yorty, hurts morale and undermines the ability of officers to effectively protect “law-abiding citizens.”<sup>73</sup> He further suggested that the riots might serve a constructive purpose if they were properly recognized as a harbinger concerning the untenable plight of law enforcement.<sup>74</sup>

The balance of Yorty’s letter sharply — and at times erroneously<sup>75</sup> — criticized CHP’s actions on August 11 and implied that its ineptitude sparked the riots.<sup>76</sup> As with Parker’s comments, Yorty’s defensive reaction did not reflect any semblance of concern for what might have created the hostile atmosphere that erupted into a full-blown rebellion. Yorty opted for a politically-inspired message that he thought would appeal to the majority white population, diverting attention from the fundamental problems of poor race relations and unequal treatment of blacks. He failed to appreciate that by ignoring the latter, he was engaging in the same sort of conduct that helped fuel the underlying rage: indifference toward the social predicament of Watts’ citizens. Unfortunately, Yorty and Parker were not alone in viewing the riots through this myopic law-and-order lens. As will be elaborated upon in the next section, this mindset was prevalent among white Americans at the time, including a number of prominent national politicians.

#### D. *White America’s Reaction to the Riots*

According to most accounts, the overwhelming white response to the riots — especially from those in close proximity to the unrest — was “to condemn the lawlessness, the impatience, and the destruction.”<sup>77</sup> It was widely felt that the black community “lack[ed] gratitude for recent economic and civil rights advances.”<sup>78</sup> The perception was that blacks were getting everything they wanted from the Johnson administration, and they still were not satisfied.<sup>79</sup> Instead, they revolted by burning and looting white

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<sup>72</sup> *Id.*

<sup>73</sup> *See id.* at 282 (“What would law-abiding citizens do if they called and there were no policemen willing to answer the call?”).

<sup>74</sup> *See id.* (“The recent destructive riots may serve some useful purpose if they awaken the nation to the dangers inherent in the deteriorating ability of law enforcement agencies to function effectively.”).

<sup>75</sup> *Cf. id.* at 285 (noting that there were “several points in the mayor’s letter which his critics would take issue with”).

<sup>76</sup> *See id.* at 283–84.

<sup>77</sup> CLARK REPORT, *supra* note 12, at 23. *See also* HORNE, *supra* note 4, at 280–84 (discussing the so-called “white backlash” that followed the riots, most notably among those that had previously sympathized with the plight of blacks); PATTERSON, *supra* note 9, at 186 (noting the “rising white backlash . . . , especially in working class areas close to black neighborhoods” in the aftermath of the Watts riots).

<sup>78</sup> CLARK REPORT, *supra* note 12, at 23.

<sup>79</sup> *See* HORNE, *supra* note 4, at 280 (quoting one white citizen as telling the President that “white people . . . are getting real tired of the kinky haired, thick lipped blacks who are giving so much trouble . . . you and the Kennedys have given them everything they have asked for — when do you plan to stop?”); *see also* CLARK REPORT, *supra* note 12, at 43 (noting that follow-

businesses, and physically attacking innocent white citizens. From the majority white perspective, the government's response to the Watts rebellion should have been to crack down on the disorder by tightening police control in urban areas, rather than softening relations between law enforcement and the black community.<sup>80</sup> There was strong opposition to any type of response that could be interpreted as rewarding this behavior,<sup>81</sup> which many viewed as inspired by nefarious elements antagonistic to the rule of law.<sup>82</sup>

Corresponding attitudes were expressed on the floors of the United States House and Senate, with some members of Congress going so far as to attribute the unrest to the culture of black civil disobedience promoted by Martin Luther King, Jr. and his followers.<sup>83</sup> There were also intimations that other national leaders bore responsibility and that purported "outside agitators" had encouraged the violence.<sup>84</sup> For example, South Carolina Representative Albert Watson stated:

The insurrection they are experiencing in California is the responsibility of the President, his Attorney General, the Federal courts and such professional troublemakers as Martin [Luther] King. . . . Repeatedly [King] has advocated the violation of local law, and he and his cohorts have led thousands of Americans into a life of civil disobedience.<sup>85</sup>

South Carolina Senator Donald Russell bemoaned the irony of the violence coming "in the wake of the most sweeping civil rights laws in the Nation's history," and expressed sadness over the fact that "the civil rights leaders, in pursuit of worthy aims, have done so much to breed disrespect for the law."<sup>86</sup>

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ing "the passage of the major pieces of civil rights legislation, some [felt] that Negroes [had] achieved the primary goals for which they were struggling and that the time [had] come to shift the expenditure of energies in other directions").

<sup>80</sup> See *id.* at 23 (noting that "[m]any feel that relief and welfare should be reduced and police control tightened"); see also *id.* at 22 (observing that the riots "generated strong support for the Police Department as the representative of law and order").

<sup>81</sup> See CLARK REPORT, *supra* note 12, at 23 (indicating that "many in the white community have expressed a determination not to yield to demands related to violence and feel that assistance to the riot areas rewards lawlessness"). Representative Richard Ichord of Missouri warned: "If any pity is shown in these cases it will serve to stimulate similar outbreaks all over the country. If civil, political, or economic gains are made solely because of this riot then our society is sick." 89 CONG. REC. H20754 (daily ed. Aug. 17, 1965) (statement of Rep. Ichord).

<sup>82</sup> See CLARK REPORT, *supra* note 12, at 23 ("Many see a close connection between peaceful demonstrations and rioting. They fear a breakdown in respect for the law."); FLAMM, *supra* note 10, at 63 (noting that a survey of white Californians revealed that a large majority of them believed that the riots were caused by "outside agitators" or a general "lack of respect for law and order").

<sup>83</sup> See ALEXANDER, *supra* note 15, at 40–41 (observing that many conservative legislators during this period maintained that Dr. King's "philosophy of civil disobedience was a leading cause of crime").

<sup>84</sup> See FLAMM, *supra* note 10, at 63.

<sup>85</sup> 89 CONG. REC. H20792 (daily ed. Aug. 17, 1965) (statement of Rep. Watson).

<sup>86</sup> 89 CONG. REC. S20614–15 (daily ed. Aug. 17, 1965) (statement of Sen. Russell).



Furthermore, Alabama Representative James Martin extolled what would become, in the years ahead, a rallying cry in local and national elections. Specifically, he called upon “responsible leaders [to] help bring about a decent respect for law and order;” and demanded a cessation of the “verbal lynching of policemen who are being used as an excuse for every robber, rapist, and murderer who sets himself against society and the civilized rules which must govern society.”<sup>87</sup>

Minnesota Senator Walter Mondale offered a powerful retort to such accusatory rhetoric. Calling it demagoguery, he maintained that

The only thing we can blame on the civil rights movement is the act of making America — white and black — aware of the plight of the American Negro. Thus, to blame the civil rights movement for what happened in Los Angeles is like blaming the man who turns [o]n a fire alarm for setting the fire.<sup>88</sup>

He concluded his remarks with a disquieting observation regarding the lack of progress in the area of race relations, punctuated with a pep talk of sorts that reflected the substance of President Johnson’s Howard speech:

[T]he . . . rioting (in Los Angeles) was a terrible reminder that in the century since emancipation we have only substituted misery and hopelessness and hatred for the bondsman’s chains. . . . We cannot respond to this outburst of anguish by continuing the old ways of discrimination and deprivation which brought it about. . . . We must . . . try to open the doors of hope for these people . . . . And in so doing, we will [d]efuse the time bombs [that] are ticking away in the slums of our cities.<sup>89</sup>

Senator Mondale discerningly captured the tone and message of the forthcoming Clark Report: unless the underlying problems contributing to the riots were addressed in a focused and diligent fashion by all constituencies, the prospect for further civil unrest would remain.

### *E. The Federal Government’s Response*

#### *1. President Johnson’s Reaction*

Given his powerful, moving words to the Howard graduates, foretelling the very “destructive rebellion” that occurred in Watts, one might have expected a nodding acknowledgment from President Johnson, accompanied by a decisive and potent response. Instead, the President reacted with dismay

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<sup>87</sup> 89 CONG. REC. H20757 (daily ed. Aug. 17, 1965) (statement of Rep. Martin); *see also* HORNE, *supra* note 4, at 152 (recounting LAPD Chief William Parker’s assessment that the “most downtrodden, oppressed, dislocated minority” in the country was the police).

<sup>88</sup> 89 CONG. REC. S20625 (daily ed. Aug. 17, 1965) (statement of Sen. Mondale).

<sup>89</sup> *Id.* at S20626.

and anger,<sup>90</sup> and for an extended period of time following the onset of the riots, he was incommunicado, seemingly paralyzed by the perplexing and devastating nature of the unrest.<sup>91</sup> When he finally issued a statement, it was highly political in tone, studiously designed to appease the white masses by condemning the rebellion and drawing an unfortunate analogy to the Ku Klux Klan: “A rioter with a Molotov cocktail in his hands is not fighting for civil rights any more than a Klansman with a sheet on his back and a mask on his face. They are both . . . lawbreakers, destroyers of constitutional rights and liberties, and ultimately destroyers of a free America.”<sup>92</sup>

President Johnson’s sharp rebuke was quickly tempered somewhat by his approval of a number of federal initiatives carefully directed toward black families in the troubled area.<sup>93</sup> In doing so, he was cautious to avoid the creation of any perception that his administration might be rewarding the rioters.<sup>94</sup> As a result, these efforts did not receive great fanfare,<sup>95</sup> nor did his appointment of a small federal task force chaired by Deputy Attorney General Ramsey Clark.

## 2. *Ramsey Clark and the President’s Task Force*

The President’s Task Force on the Los Angeles Riots, as it was officially known, was charged with “develop[ing] with Governor [Pat] Brown, Mayor [Sam] Yorty and other officials, a combined program to restore and rehabilitate the damaged areas of Los Angeles” and “to wipe out the causes of such violent outbursts.”<sup>96</sup> Other members of the Task Force included Andrew Brimmer (Assistant Secretary of Economic Affairs for the U.S. Department of Commerce) and Jack Conway (Deputy Director of the Office of Economic Opportunity).<sup>97</sup> Roger Wilkins, who was then the Deputy Direc-

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<sup>90</sup> See CARTER, *supra* note 2, at 56 (observing that the “outbreak of rioting in Watts shocked Johnson and fueled emotions that careened between rage and profound depression”); see also *id.* at 170 (noting that Johnson “saw Watts as an act of collective political ‘betrayal’ by black America”); *supra* note 11.

<sup>91</sup> See CARTER, *supra* note 2, at 56 (noting that “[a]fter an initial warning to White House aides to steer clear of any involvement in Los Angeles, [Johnson] drove around [his] sprawling [Texas] ranch for hours, refusing to take telephone calls, even from close aide Joseph Califano, for several days”).

<sup>92</sup> *Id.* at 60–61.

<sup>93</sup> See *id.* at 61 (indicating that the President quickly instructed his aide Joseph Califano and his special counsel Lee White “to prepare a range of ‘ameliorative’ federal responses”); see also CLARK REPORT, *supra* note 12, at 3 (“On September 2, 1965, the President approved an interim report on 49 programs and project grants to provide immediate assistance to all sections of Los Angeles in need of help.”).

<sup>94</sup> See CARTER, *supra* note 2, at 61 (noting that the “programs were to be targeted carefully at families so that there would be no perception of directly rewarding the activities of the rioters themselves”).

<sup>95</sup> See *id.* (observing the “[b]ehind the scenes” nature of these efforts).

<sup>96</sup> CLARK REPORT, *supra* note 12, at 1–2.

<sup>97</sup> See *id.* at 63; ROGER WILKINS, *A MAN’S LIFE: AN AUTOBIOGRAPHY* 172 (1982).

tor of the Community Relations Service, also served as an integral part of the team.<sup>98</sup>

Ramsey Clark's pristine legal pedigree and his noteworthy credentials in the area of civil rights made him well-suited for this complex assignment. His maternal grandfather, William Ramsey, served as a judge on the Texas Court of Criminal Appeals, and later as a justice of the Texas Supreme Court.<sup>99</sup> Clark's paternal grandfather was a well-known Dallas attorney, who served at one time as president of the Texas Bar Association,<sup>100</sup> and his father was none other than U.S. Supreme Court Justice Tom C. Clark, who, prior to his elevation to the Supreme Court, had served as Attorney General under President Harry Truman.<sup>101</sup>

Clark practiced antitrust law in the family firm after graduating from the University of Chicago Law School,<sup>102</sup> but in 1961 decided to devote his skills to public service. Through his family's political connections he obtained the position of Assistant Attorney General for the Lands Division.<sup>103</sup> Because his southern roots and "good-old-boy" disposition enabled him to "pass" for a local citizen — making him a highly effective watchdog — Attorney General Robert F. Kennedy drafted Clark to participate substantially in the administration's monitoring of various high-profile civil rights matters in the South.<sup>104</sup> While Clark's southern, white gentility was an asset in his prior civil rights activities,<sup>105</sup> these qualities would appear to have been a liability in endeavoring to communicate with and address the problems of an angry, urban black constituency. Even Clark's right-hand man in the in-

<sup>98</sup> See WILKINS, *supra* note 97, at 169. Wilkins was already in Los Angeles, having accompanied Community Relations Service Director LeRoy Collins there, along with George Culbertson, as an advance team to look into the riots, at the behest of President Johnson. *Id.* at 162–63. He was directed to work with Clark as a "link between the first team that had been out there and the second." *Id.* at 169.

<sup>99</sup> See MIMI GRONLUND, *SUPREME COURT JUSTICE TOM C. CLARK: A LIFE OF SERVICE* 25 (2010). For a fuller treatment of Ramsey Clark's background, see generally ALEX WOHL, *FATHER, SON, AND CONSTITUTION* (2012). See also Lonnie T. Brown, Jr., *Representing Saddam Hussein: The Importance of Being Ramsey Clark*, 42 GA. L. REV. 47, 54–101 (2007).

<sup>100</sup> See GRONLUND, *supra* note 99, at 13.

<sup>101</sup> See *id.* at 85. Notably, Tom and Ramsey Clark are the only father and son attorneys general in the nation's history.

<sup>102</sup> See Josh Saunders, *Ramsey Clark's Prosecution Complex: How Did Lyndon Johnson's Attorney General Come to Defend Dictators, War Criminals and Terrorists?*, LEGAL AFF. (Nov./Dec. 2003), at 42–43.

<sup>103</sup> See C. DAVID HEYMANN, *RFK: A CANDID BIOGRAPHY OF ROBERT F. KENNEDY* 192 (1998).

<sup>104</sup> See VICTOR S. NAVASKY, *KENNEDY JUSTICE* 26 (1971); Interview with Ramsey Clark, Former Attorney General, U.S. Dep't of Justice, in New York, NY (Nov. 8, 2008).

<sup>105</sup> Among other things, Clark worked tirelessly to ensure peaceful enforcement of the federal school desegregation mandate, including the historic admission of the first African-American (James Meredith) to the University of Mississippi. Interview by Harri Baker with Ramsey Clark in Falls Church, Va. (Feb. 11, 1969), [http://www.lbjlibrary.net/assets/documents/archives/oral\\_histories/clark\\_r/clark-r2.pdf](http://www.lbjlibrary.net/assets/documents/archives/oral_histories/clark_r/clark-r2.pdf), archived at <https://perma.cc/ZG92-J4DV>. After President Kennedy's assassination and Lyndon Johnson's ascension to the presidency, Clark was retained in the administration, and eventually elevated in 1965 to Deputy Attorney General, the position he held when tapped to chair the President's Task Force. See *id.*

vestigation — Roger Wilkins, the nephew of National NAACP Chair Roy Wilkins — was initially skeptical of President Johnson's choice.<sup>106</sup> Clark's compassionate and sincere approach to this difficult work, however, quickly changed Wilkins' opinion.<sup>107</sup>

Clark employed a grassroots strategy in carrying out his duties as chair. Besides meeting personally with pertinent city officials, he and Wilkins conducted numerous town-hall type gatherings, affording virtually every interested resident of Watts an opportunity to speak his or her mind.<sup>108</sup> In Clark's words:

We met from the very first day for many hours every day with practically every type of ghetto group and organization . . . . We went out to . . . churches . . . to parks . . . to houses and neighborhood youth centers, and just wherever a large number of people could be accumulated, to see what they were thinking, how they analyzed the riots and the cause of the riots.<sup>109</sup>

The key, though, was that Clark was not merely going through the motions. He was open-minded, sincere, and extraordinarily empathetic.<sup>110</sup> As such, he did not simply offer the people of Watts an opportunity to vent, he also listened attentively.<sup>111</sup> Wilkins notably remarked that he had never witnessed “a powerful white man take poor black strangers seriously before. . . . [Clark] was more sensitive to the problems of poor blacks than [Wilkins] imagined any white man could be.”<sup>112</sup>

Much of the language used by the citizens was harsh and the message accusatory,<sup>113</sup> directed almost exclusively at white people, especially white

<sup>106</sup> See CARTER, *supra* note 2, at 172 (noting Wilkins's initial temptation to dismiss Clark as essentially a lackey of the federal government); see also WILKINS, *supra* note 97, at 171 (expressing anger because of his initial impression that Clark would conduct a superficial investigation and not meet with black citizens).

<sup>107</sup> See WILKINS, *supra* note 97, at 172 (noting that in observing Clark's interaction with black citizens of Watts, Wilkins was “deeply moved” . . . and “[a]s the hours passed, [he] began to love him”).

<sup>108</sup> See CLARK REPORT, *supra* note 12, at 61 (stating that the “task force . . . talked with virtually every element of public and private interest and responsibility in the Los Angeles area”).

<sup>109</sup> Interview by Harri Baker with Ramsey Clark in Falls Church, Va. (Mar. 21, 1969), [http://www.lbjlibrary.net/assets/documents/archives/oral\\_histories/clark\\_r/clark-r3.pdf](http://www.lbjlibrary.net/assets/documents/archives/oral_histories/clark_r/clark-r3.pdf), archived at <https://perma.cc/ZG92> [hereinafter Clark Oral History III].

<sup>110</sup> See CARTER, *supra* note 2, at 172 (pointing out that Clark was “clearly moved by what he had heard” in Watts).

<sup>111</sup> See *id.* (observing that Clark “listened” and “took copious notes while those in attendance, their indignation often coming out, shared accounts of all the problems — most notably police brutality — they faced in Watts”).

<sup>112</sup> WILKINS, *supra* note 97, at 172.

<sup>113</sup> See CLARK REPORT, *supra* note 12, at 16 (observing that the citizens' views were “expressed with emotion, urgency and eloquence — but in many instances, with simple harshness”).

police officers.<sup>114</sup> Ramsey Clark, nevertheless, calmly and respectfully listened to and digested everything that the Watts residents had to say.<sup>115</sup> They had much to share about their lot in life, but no one in power, until Clark, had seemingly been willing to pay attention. He recognized that this frustrating sense of isolation and virtual invisibility, at least in part, fueled the social explosion that began on August 11, and he was committed to ensuring that the people would not go unheard this time.

### 3. *The Clark Report: Employment, Education, and Police-Community Relations*

The Task Force's Report is perhaps the best evidence of Ramsey Clark's commitment to conveying the actual feelings and perceptions of the people of Watts. Principally drafted by Clark and Wilkins, the report highlighted the experience of Watts residents in their own words, eschewing any attempt at sanitization.<sup>116</sup> For example, on the subject of unemployment: "We are discriminated against in hiring, in promotion, in all aspects of economic and social activity."<sup>117</sup> "We need employment. Give us jobs and everything else will take care of itself. Jobs first."<sup>118</sup> With regard to education, the citizens maintained: "Ghetto education is a sham. Our kids learn nothing. The teachers are afraid and don't try to help. Our children are promoted to get rid of them whether they've learned anything or not."<sup>119</sup> They, however, reserved their harshest assessment for law enforcement: "The police brutalize the Negro. Many young Negroes get police records which ruin their chances for employment."<sup>120</sup> "There is widespread fear and distrust: people of people, police of people, and people of police."<sup>121</sup>

The body of the Clark Report began with a description of the disturbing nature of the community conditions in Watts and the surrounding South Los Angeles area, all of which was predominately African-American. Substantial overcrowding was one major concern documented. The population density for areas of Los Angeles outside of the riot curfew zone was 5,300

<sup>114</sup> See, e.g., *id.* ("The white power structure wants us to stay in our place, to be kept in poverty, in ghettos, uneducated, on relief."); *id.* at 19 (noting that "[i]n virtually every conversation, strong feelings about police-community relations were registered").

<sup>115</sup> Roger Wilkins observed that: "Ramsey asked questions politely. He wrote down what people said. He followed up their statements with probing questions. He didn't get flustered by the rage. It went on hour after hour. He was never angry or self-righteous, never lost his manners or his interest." WILKINS, *supra* note 97, at 172.

<sup>116</sup> See *id.* at 173 (noting that "Andy Brimmer, Ramsey and I (Roger Wilkins) worked to produce a report that would explain as fully as possible why Los Angeles had blown"); WOHL, *supra* note 99, at 280 (noting that in describing his role in the drafting process, "Clark diplomatically stated, 'There were sections that I wrote, and there were sections that I rewrote. I spent many, many hours working with the people that were working directly on it.'").

<sup>117</sup> CLARK REPORT, *supra* note 12, at 20.

<sup>118</sup> *Id.* at 21.

<sup>119</sup> *Id.* at 18.

<sup>120</sup> *Id.* at 19.

<sup>121</sup> *Id.*

people per square mile.<sup>122</sup> Within that zone, on the other hand, the density figure spiked dramatically to 13,000 people per square mile, and increased even further to 16,400 in Watts.<sup>123</sup> This significant overpopulation served to exacerbate the related issues of uneven housing, poor employment, inferior education, and intense, widespread poverty.<sup>124</sup>

Tellingly, the most salient concerns addressed by the Clark Report were those about which the people spoke most adamantly, namely employment, education, and police-community relations.<sup>125</sup> This toxic amalgam of social ills engendered a paralyzing sense of isolation and hopelessness. African-American citizens of South Los Angeles were in a deep hole, with no apparent way out and no one in power seemed to care. The combative arrest of the Fryes on that fateful August evening in 1965 was not the cause of the riots, according to the Report; it merely served as the catalyst for a volcanic reaction that had long been simmering beneath the surface.<sup>126</sup>

The Report recognized that addressing the employment concern was the “most important and immediate task.”<sup>127</sup> However, it also ominously observed that “the high unemployment statistics and low income figures in Watts and South Los Angeles areas tell only part of the story.”<sup>128</sup> These troubling numbers failed to capture the debilitating emotional effects of this stark reality, especially on the psyche and motivation of black men. Among other things, the Report noted that the figures

do not tell of the frustration felt by able-bodied men who have unsuccessfully sought employment time after time . . . . [Nor do they] tell of the destruction of the capability and the will to work and the slow and difficult task of rehabilitation before men can become productive. And they do not tell of the social dynamite locked inside the clusters of angry unemployed men seen on the streets of the slum, day after day and night after night.<sup>129</sup>

Clark and his team acknowledged that multiple factors contributed to the employment problem, including years of legally-sanctioned discrimina-

<sup>122</sup> *Id.* at 6.

<sup>123</sup> *Id.*

<sup>124</sup> *See id.* at 8–13.

<sup>125</sup> While these three items were arguably the most significant, the Clark Report examined and made recommendations concerning nine separate issues that the Task Force deemed critical to addressing the underlying causes of urban unrest. *See id.* at 27–60; *see also infra* note 144.

<sup>126</sup> *See* CLARK REPORT, *supra* note 12, at 50 (observing that the “arrests of August 11 were only the spark that ignited a highly combustible environment”); *see also* KERNER REPORT, *supra* note 7, at 299 (maintaining that “[i]n Newark, in Detroit, in Watts, in Harlem — in practically every city that has experienced racial disruption since the summer of 1964 — abrasive relationships between police and Negroes and other minority groups have been a major source of grievance, tension and, ultimately disorder”).

<sup>127</sup> *See* CLARK REPORT, *supra* note 12, at 27. *See also id.* at 20 (noting that the “one theme that emerged in every conversation was the pressing need for jobs”).

<sup>128</sup> *Id.* at 20.

<sup>129</sup> *Id.* at 27.

tion in education and job-related opportunities.<sup>130</sup> Successfully addressing the black employment concern would take far more than the mere enactment of anti-discrimination legislation. In the words of the Clark Report, solving this and other similar problems would “require patient, determined, and massive effort.”<sup>131</sup> “The needs can be filled only by all-out effort of every component of government — local, State and Federal; of every element of nongovernmental group action; and of the individual citizens, particularly those involved.”<sup>132</sup>

With regard to education, the Report maintained that “[it] is the door through which the outsider can walk in. It must be held wide open if we are not to consign many in future generations to idleness, unproductiveness, and perhaps destructiveness.”<sup>133</sup> The employment and education problems went hand-in-hand. Without a true equalization of educational quality and opportunity, the employment crisis in Watts would never be solved.<sup>134</sup> As President Johnson stated in his Howard address: “You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, ‘you are free to compete with all the others.’”<sup>135</sup>

As in America today, allegations of racial profiling, harassment, and overt brutality were common among members of the black community against law enforcement in the 1960s.<sup>136</sup> The Clark Report observed that there was an unshakable perception that the police in South Los Angeles viewed the black community as “hostile territory to be kept in check by a continuous show of force.”<sup>137</sup> Even when police did not engage in physical abuse, blacks perceived that officers “were unnecessarily impolite and even

<sup>130</sup> See *id.*

<sup>131</sup> *Id.* at 24.

<sup>132</sup> *Id.* at 3.

<sup>133</sup> *Id.* at 31.

<sup>134</sup> See *id.* (“[Education] is inextricably related both to employment and to the full involvement of all of our people in all aspects of our life. If many of the problems of urban areas are to be alleviated, the exclusion of great numbers of our people from full participation in American life must end.”).

<sup>135</sup> See HOWARD ADDRESS, *supra* note 2.

<sup>136</sup> See CLARK REPORT, *supra* note 12, at 57 (observing that the “charge of police ‘brutality’ is a dominant theme of conversation and editorial comment in the Negro community”); see also KERNER REPORT, *supra* note 7, at 206 (maintaining that the “atmosphere of hostility and cynicism is reinforced by a widespread belief among Negroes in the existence of police brutality and corruption, and of a ‘double standard’ of justice and protection — one for Negroes and one for whites”). But see CLARK REPORT, *supra* note 12, at 58 (acknowledging that “a great many policemen . . . feel that they are being unjustly criticized because of their persistent effort to suppress the high crime rates in the Negro community”).

<sup>137</sup> CLARK REPORT, *supra* note 12, at 57.

insulting” in their day-to-day dealings.<sup>138</sup> The ongoing antagonistic relationship spawned an intense sense of mutual distrust and fear.<sup>139</sup>

Ramsey Clark believed that this reciprocal antipathy could be undone, in part, through the establishment of a culture of “community policing” — a concept that has attracted considerable renewed attention in recent years.<sup>140</sup> It amounts to a change in focus by the police from pure law enforcement to crime prevention and protection, and involves the creation of a feeling of unity between citizens and the police.<sup>141</sup> The appearance of a police officer should connote safety and security, rather than evoking apprehension, disdain, or rage.<sup>142</sup> Similarly, the sight of a black youth should not automatically arouse suspicion for law enforcement officials.<sup>143</sup> Enhanced police-community relations can break down stereotypes and foster an atmosphere of trust and cooperation.

Employment woes, inferior education, and hostile police-community relations, among other underlying problems,<sup>144</sup> cultivated the pervasive and devitalizing sense of alienation and isolation felt in South Los Angeles’s black community, which the Task Force believed was at the heart of the

<sup>138</sup> See *id.* at 58; see also *id.* at 57 (noting reports that contacts between the police and members of the black community “are frequent and . . . believed to be unnecessarily brusque”); KERNER REPORT, *supra* note 7, at 303 (observing that in addition to physical abuse, urban blacks were otherwise harassed without basis and subjected to “contemptuous and degrading verbal abuse”).

<sup>139</sup> CLARK REPORT, *supra* note 12, at 57 (noting within the South Los Angeles area the existence of “reciprocal distrust and fear” between black citizens and the police); see also KERNER REPORT, *supra* note 7, at 206 (contending that “to many Negroes police have come to symbolize white power, white racism and white repression. And the fact is that many police do reflect and express these white attitudes.”).

<sup>140</sup> See generally FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING (2015), [http://www.cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf) (last visited Apr. 7, 2017).

<sup>141</sup> See CLARK REPORT, *supra* note 12, at 59 (calling for police and other administrators to engage in “[f]requent contact with minority groups and young people in situations other than investigation or arrest”); see also *id.* at 51 (recommending the development and implementation of “programs designed to provide broad and frequent social contact between citizens and individual policemen, such as speaking assignments school activity participation, and civic and social organization activity by the police”).

<sup>142</sup> See, e.g., *id.* at 48 (suggesting the need for “[v]igorous, but humane and understanding enforcement of the law in low income areas with a substantial deployment of uniformed Negro officers to this task”); *id.* at 57 (maintaining that it is essential that “there be a mutual respect between the police and the people of the slums”). See also RAMSEY CLARK, CRIME IN AMERICA 154 (1970) (observing that the citizens of Watts “saw the police . . . not as their protector but as their oppressor”).

<sup>143</sup> See CLARK, *supra* note 142, at 159 (noting the critical importance of police developing good relations with youth).

<sup>144</sup> See CLARK REPORT, *supra* note 12, at 2 (observing that the “underlying causes of the riot are numerous, complex, and profound”). Besides employment, education, and police-community relations, other underlying problems that contributed to the riots and that were in need of remedial attention included: (1) poor health and health care; (2) overcrowded and substandard physical conditions in Watts and South Central Los Angeles; (3) lack of communication with black citizens and a failure to engage them in reform efforts; and (4) delinquency and crime. See *id.* at 36–49.



riots.<sup>145</sup> Although the Clark Report in no way cast blame on the black residents of South Los Angeles for their precarious plight, it did emphasize that they needed to play a major role in solving the various problems, taking ownership of their situation, so as to best capitalize on any governmental support provided from the outside.<sup>146</sup> The Report wisely recognized that excluding citizens from the solution, as had been the case to date,<sup>147</sup> would render the problem unsolvable, as they alone fully understood what it felt like to be in their shoes.<sup>148</sup> Indeed, the riots themselves were palpable evidence that reform efforts by the government and disconnected civil rights leaders were doing little to alleviate the desperation felt within urban black communities. Securing voting rights and dismantling legal segregation meant virtually nothing to black citizens of Watts who could already vote and were largely under- or unemployed, trapped in inferior de facto segregated schools, brutalized by those charged with keeping them safe, and subject to abject poverty and societal indifference.<sup>149</sup> Civil rights leaders pointedly acknowledged that they may have missed the mark in their strategy to achieve racial equality by not fully understanding or considering the predicament of blacks in urban communities.<sup>150</sup>

Formally submitted to President Johnson on September 17, 1965, the Clark Report tragically never went much further.

#### 4. *The Fate of the Clark Report*

The Clark Report was a powerful, candid document that exposed painful realities about the condition of black citizens in Watts that were emblematic of broader racial inequities throughout the nation. It called for dramatic

<sup>145</sup> See *id.* at 42 (observing that the “riot itself was in large part an expression of a deep feeling of alienation”).

<sup>146</sup> See *id.* at 25 (contending that the difficult task ahead “[could] be accomplished only by the balanced and diligent effort of all our governments — local, state, and federal — of labor and business, and by the *involvement and concern of the people themselves*”) (emphasis added).

<sup>147</sup> See *id.* at 42 (maintaining that “[t]o a very considerable degree, the people of the poverty areas are non-participants and voiceless in community affairs”).

<sup>148</sup> See *id.* at 43 (observing the African-American citizens’ deep sense of frustration seems to have stemmed from the “belief that they [were] not included in the making of decisions which affect[ed] their own future”); *id.* at 21 (“If people in the depressed areas can participate in the planning and execution of welfare and poverty programs, they will be doing better.”).

<sup>149</sup> See *id.* at 43.

<sup>150</sup> See CARTER, *supra* note 2, at 60 (observing that “many civil rights leaders privately — and occasionally publicly — concluded that the rioting was an indictment of their own personal and organizational failures to reach out to a broader black constituency that would include the poorest of the poor in the cities of the North and West”). Committee on Racial Equality founder James Farmer stated: “Civil organizations have failed. . . . No one had any roots in the ghetto.” *Id.* Activist Bayard Rustin echoed this critique, proclaiming: “We must hold ourselves responsible for not reaching them . . . . We’ve done plenty to get votes in the South and seats in the lunchrooms, but we’ve had no programs for these youngsters.” *Id.*

and sustained action to remedy or at least alleviate these ills,<sup>151</sup> and emphasized the necessity of treating the urban black poor with dignity and respect.<sup>152</sup> While pragmatic, the Report was optimistic and inspiring, proposing unprecedented teamwork between elite leaders and African-American working-class poor. It likely offered the most realistic, albeit challenging, recipe for successfully addressing the daunting problems that plagued black Americans generally, but especially those in urban settings. Notwithstanding its promise, President Johnson declined to release the Clark Report publicly in light of “larger political concerns.”<sup>153</sup> Though circulated privately amongst a number of “permanent government” bureaucrats, copies of the Report ultimately were vaulted away in an undated envelope, bearing the clandestine and forbidding legend: “Confidential Reports which we have announced have never been prepared. Do not give out to anyone, or acknowledge we have.”<sup>154</sup> Various theories have been offered on what “larger political concerns” led to this troubling decision to covertly suppress the Report.

Ramsey Clark, for one, has maintained that the graphic, undiluted nature of the Report caused its concealment. It said things that the President did not want publicized, especially not by the federal government.<sup>155</sup> Harry McPherson, President Johnson’s Special Assistant and Counsel, has suggested that the President’s decision was an economic one. The recommendations made in the Clark Report would have required the expenditure of millions of dollars, and according to McPherson, “[t]he President was quite dubious about the possibility of getting major social appropriations through [Congress] in the aftermath of the riots.”<sup>156</sup> Another proffered explanation was that President Johnson did not want to step on the toes of the California Commission that Governor Pat Brown had appointed to study the riots —

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<sup>151</sup> See CLARK REPORT, *supra* note 12, at 61 (maintaining that in addressing the problems unearthed in the Report, “America faces a challenge it will not be able to meet unless it has the understanding, concern, initiative and action of all our government, of all our public and private organizations, and of all our people”).

<sup>152</sup> See *id.* at 56 (“the task of thinking of the minority poor as a vital and important part of the national scene and treating them with the dignity and decency they deserve as people — American people — must be mastered if we are to succeed in dealing with the problems”).

<sup>153</sup> CARTER, *supra* note 2, at 172–73.

<sup>154</sup> *Id.* at 173.

<sup>155</sup> Interview with Ramsey Clark, Former Attorney General, U.S. Dep’t of Justice, in New York, NY (January 6, 2016). See also Clark Oral History III, *supra* note 109, at 4 (noting that “the report didn’t pull any punches; it demonstrated the existence of really immensely difficult problems . . . ; it was not tender in its treatment of many important interests”); CARTER, *supra* note 2, at 173 (suggesting that the Clark Report may have been suppressed because its “findings were so uncompromising in appraising the extent of problems in Los Angeles — and, by extension, in other American cities — that [it] might . . . have been deemed too politically sensitive by administration higher-ups and their political allies in southern California”).

<sup>156</sup> Interview by T.H. Baker with Harry McPherson, in Washington, D.C. (Apr. 9, 1969), <https://www.discoverljbj.org/item/oh-mcphersonh-19690409-5-74-210-e>, archived at <https://perma.cc/RF9Z-D5VX>.

the McCone Commission, chaired by former CIA Director John McCone.<sup>157</sup> That Commission would not complete its work until December of 1965,<sup>158</sup> over three months after Clark submitted his Report.

Whatever the reason, the Report was never made public, and that was disappointing and frustrating to Ramsey Clark.<sup>159</sup> Although he provided a copy to the McCone Commission as a resource in its examination of the riots, that body failed to embrace and articulate the hopelessness and despair of South Los Angeles in the authoritative, unadulterated manner of the Clark Report.<sup>160</sup> Admittedly, the McCone Report's findings in terms of the causes of the riots and recommendations for reform were similar; however, that Report's overall tenor was quite different from Clark's,<sup>161</sup> particularly with regard to its moderate assessment of law enforcement's contribution to the climate that helped spawn the civil unrest.<sup>162</sup> In fact, consistent with the white majority's law-and-order response to the riots, the McCone Report largely praised the LAPD and singled out Chief William Parker, specifically, for his efforts in such a difficult situation.<sup>163</sup>

### III. AFTERMATH: MORE RIOTS, MORE REPORTS, MORE INACTION

Not surprisingly, more riots in major urban settings followed in the succeeding years,<sup>164</sup> the most devastating of which took place in Cleveland,<sup>165</sup> Newark,<sup>166</sup> and most destructively, Detroit.<sup>167</sup> As a result of these further disturbances, in July of 1967, President Johnson created the National

<sup>157</sup> See HORNE, *supra* note 4, at 286 (observing that McCone had "thrown a fit" when he learned about the Task Force and threatened to resign as chair of Governor Brown's Commission if that group's report was published) (quoting WILKINS, *supra* note 97, at 173).

<sup>158</sup> See HORNE, *supra* note 4, at 343 (noting that the McCone Report, titled *Violence in the City: An End or a Beginning?*, was released in December of 1965).

<sup>159</sup> See Clark Oral History III, *supra* note 109, at 4 (noting that it was a "continuing frustration to some of us, not to release [the Report]").

<sup>160</sup> See WOHL, *supra* note 99, at 281.

<sup>161</sup> See HORNE, *supra* note 4, at 343 (observing that the Report "made recommendations concerning the pressing issues — the LAPD, jobs, schools, etc. — but the points raised seemed either overly cautious or obvious"); WOHL, *supra* note 99, at 281.

<sup>162</sup> See CARTER, *supra* note 2, at 173–74 (characterizing the findings of the McCone Report as "cautiously stated" and noting the harsh criticism directed at the Report by the Southern California Advisory Commission to the United States Commission on Civil Rights, especially with regard to its positive portrayal of the LAPD and Chief Parker); FLAMM, *supra* note 10, at 62–64 (discussing the conservative, cautious tone of the McCone Report and recounting the widespread criticism to which it was subjected by liberals).

<sup>163</sup> See *supra* note 162.

<sup>164</sup> During the first nine months of 1967, 164 instances of civil unrest of varying degrees of intensity were reported. See KERNER REPORT, *supra* note 7, at 113.

<sup>165</sup> See CARTER, *supra* note 2, at 201.

<sup>166</sup> See *id.* at 201–02 (discussing the Newark riots in which there were 26 deaths and almost 1,500 injured).

<sup>167</sup> See *id.* at 204–08 (noting that on the heels of the devastating Newark riots, rioting erupted in Detroit that would lead to even greater individual harm and destruction, including 44 deaths, 351 serious injuries, and over 4,000 arrests); FLAMM, *supra* note 10, at 88–92 (discussing the Detroit riots).

Advisory Commission on Civil Disorders (the Kerner Commission).<sup>168</sup> The President tasked the Commission principally with answering three straightforward but impossibly challenging questions regarding the riots: “What happened? Why did it happen? What can be done to prevent it from happening again?”<sup>169</sup>

In its chillingly ominous overall assessment, the Commission noted that the “nation [was] moving toward two societies, one black, one white — separate and unequal.”<sup>170</sup> In addition, the Commission laid primary blame for creation of the conditions that led to the riots on “white racism”: “Race prejudice has shaped our history decisively; it now threatens to affect our future. White racism is essentially responsible for the explosive mixture which has been accumulating in our cities since the end of World War II.”<sup>171</sup> It went on to note that among the ingredients that comprised this mixture were “[p]ervasive discrimination and segregation in employment, education and housing, which have resulted in the continuing exclusion of great numbers of Negroes from the benefits of economic progress.”<sup>172</sup>

Although the Report’s Summary was perhaps its most dramatic and jarring section, the remainder of the voluminous document carefully detailed the evidence that supported such powerful pronouncements. For example, it provided a depressing synopsis of the evolution of race relations in America from legalized slavery to Jim Crow to the de facto institutionalized segregation that widely existed at the time of the Report.<sup>173</sup> This sharply illustrated the lack of progress, notwithstanding various intermittent glimmers of hope — the abolition of slavery,<sup>174</sup> Reconstruction,<sup>175</sup> *Brown v. Board of Education*,<sup>176</sup> and varying incantations of the civil rights movement,<sup>177</sup> among others. According to the Report, frustrated hopes for racial progress com-

<sup>168</sup> See CARTER, *supra* note 2, at 211.

<sup>169</sup> KERNER REPORT, *supra* note 7, at 1.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 10. The Report also stated: “What white Americans have never fully understood but what the Negro can never forget — is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it.” *Id.* at 2.

<sup>172</sup> *Id.* at 10. The other ingredients listed were specific variations of the discrimination and segregation theme, and included:

*Black in-migration and white exodus*, which have produced the massive and growing concentrations of impoverished Negroes in our major cities, creating a growing crisis of deteriorating facilities and services and unmet human needs.

*The black ghettos* where segregation and poverty converge on the young to destroy opportunity and enforce failure. Crime, drug addiction, dependency on welfare, and bitterness and resentment against society in general and white society in particular are the result.

*Id.*

<sup>173</sup> See *id.* at 206–35.

<sup>174</sup> See *id.* at 211–13.

<sup>175</sup> See *id.* at 213–14.

<sup>176</sup> See *id.* at 225–26.

<sup>177</sup> See *id.* at 226–36.

bined with persistent racial discrimination, as well as the perceived air of legitimacy conferred upon violent acts of white terrorism and a general sense of powerlessness within the black community, to create an atmosphere ripe for civil unrest.<sup>178</sup>

In light of this combustible environment, all that was needed to set off an explosion was a spark, typically supplied by law enforcement. As the Commission noted, “Almost invariably the incident that ignites disorder arises from police action. Harlem, Watts, Newark and Detroit — all the major outbursts of recent years — were precipitated by routine arrests of Negroes for minor offenses by white police.”<sup>179</sup> There was a widespread perception among blacks, particularly those in urban settings, that police brutality against blacks was rampant.<sup>180</sup> And the Commission recognized that: “This belief [was] unquestionably one of the major reasons for intense Negro resentment against the police.”<sup>181</sup>

Clearly, the Commission’s assessment was that the causes of the riots were complex, longstanding, and deeply entrenched. Fortunately, this bleak diagnosis was not the end of the Report. Rather, it went on to recognize that its gloomy vision of an America heading toward two separate and unequal societies was not inevitable, and could indeed be reversed with the realization of “common opportunities for all within a single society.”<sup>182</sup> As with the Clark Report, the Kerner Report made plain just how difficult the task ahead would be — the end goal could be achieved only through “compassionate, massive and sustained [commitment], backed by the resources of the most powerful and the richest nation on this earth. From every American it will require new attitudes, new understanding, and, above all, new will.”<sup>183</sup> The Commission proclaimed: “[The programs proposed] will require unprecedented levels of funding and performance, but they neither probe deeper nor demand more than the problems which called them forth. There can be no higher priority for national action and no higher claim on the nation’s conscience.”<sup>184</sup>

Echoing and reinforcing the “alienation” message of the Clark Report, the Kerner Commission emphasized that “virtually every major episode of violence was foreshadowed by an accumulation of unresolved grievances and by widespread dissatisfaction among Negroes with the unwillingness or

<sup>178</sup> See *id.* at 204–05; see also *id.* at 205 (“The frustrations of powerlessness have led some to the conviction that there is no effective alternative to violence as a means of expression and redress, as a way of ‘moving the system.’”).

<sup>179</sup> *Id.* at 206. See also CLARK, CRIME IN AMERICA *supra* note 142, at 144 (noting that “[e]very major riot of the 1960’s prior to the widespread violence following the murder of Martin Luther King arose from a police incident”).

<sup>180</sup> See KERNER REPORT, *supra* note 7, at 302–04.

<sup>181</sup> *Id.* at 302.

<sup>182</sup> See *id.* at 1.

<sup>183</sup> *Id.* at 2.

<sup>184</sup> *Id.*

inability of local government to respond.”<sup>185</sup> This persistent feeling of isolation and unimportance stemmed from the same festering problems previously identified by Clark’s Task Force — unemployment, poor education and living conditions, and antagonistic police-community relations.<sup>186</sup> Unless adequately addressed, these problems would continue to provide the fuel for civil unrest and lead the nation down a path towards two permanently separate Americas.

President Johnson was by no means pleased with the Kerner Report, and consequently greeted it with little fanfare or gratitude.<sup>187</sup> This seemed chiefly attributable to the fact that the Commission, in his view, failed to accord him appropriate praise for his strident efforts on the civil rights front.<sup>188</sup> Furthermore, the President felt that the Commission had left him between a rock and a hard place by announcing sweeping recommendations that were economically unrealistic. The Commission frustratingly charged him with what he believed to be an impossible task and he alone would have to endure the fallout when the Report’s lofty proposals went unfulfilled.<sup>189</sup> Perhaps most notably, Johnson seemed uncomfortable with the Commission’s pronouncement that “white racism” was at the heart of the riots.<sup>190</sup> Although he could not deny that this played a role, he at least partially harbored the belief that rioters and looters were fundamentally “lawbreakers.”<sup>191</sup>

There was no denying that there was an opportunistic, criminal element present in all of the disturbances — there were those who viewed rioting merely as a convenient excuse and cover for committing crimes.<sup>192</sup> How-

<sup>185</sup> *Id.* at 14.

<sup>186</sup> See *supra* Section II.E.3.

<sup>187</sup> See CARTER, *supra* note 2, at 227–31 (discussing Johnson’s “muted” and “lukewarm” reception to the Kerner Commission’s Report and his ultimate refusal to even issue obligatory thank-you notes to Commission members for their service); FLAMM, *supra* note 10, at 108 (observing that “laying blame for the riots on white racism and . . . calling for billions of dollars in additional aid to the cities . . . touched a raw nerve with the president,” resulting in his refusal “to give the report even an insincere embrace or polite dismissal until it was too late”).

<sup>188</sup> See CARTER, *supra* note 2, at 230 (observing that Johnson “found it hard not to interpret the commission’s report as a 500-page personal insult, a failure to register proper recognition of his efforts in launching ‘his’ Great Society programs and winning civil rights legislation”).

<sup>189</sup> See *id.* at 228 (recounting President Johnson’s position that money was the real problem with the Commission’s Report because he felt it impossible to convince Congress to appropriate the necessary funds given the budgetary battles he was already waging to preserve his Great Society programs).

<sup>190</sup> See *id.* at 232 (“I think probably, maybe the word racism, white racism [in the Kerner Commission Report’s summary], frightened him. He didn’t want to go down in history as the president who had pointed his finger at his own people.”) (quoting Interview by Thomas H. Baker with Roy Wilkins, Chairman, NAACP (Apr. 1, 1969), <https://discoverljb.org/item/oh-wilkinsr-19690401-1-73-27>).

<sup>191</sup> See *infra* text accompanying note 217.

<sup>192</sup> See STEVEN J. GOLD, *THE STORE IN THE HOOD: A CENTURY OF ETHNIC BUSINESS AND CONFLICT* 107 (2010) (acknowledging theories that “the rioters were disaffected and marginal youth or criminals” and that “looting was opportunistic”).

ever, to dismiss the rioting out of hand on this basis, as many white conservative leaders did, was to self-interestedly gloss over the true nature of the problems for black America in order to capitalize politically on the exploitation of white fear. Consistent with this approach, there was also the pervasive theory among the same group of leaders that black militants had conspired to ignite the disturbances with the aid or inspiration of communist agitators.<sup>193</sup> To make matters worse, President Johnson himself could not fully shake the political allure of being able to lay blame for the riots at the feet of black radicals or communists.<sup>194</sup> The President carefully endeavored to walk the tightrope between acknowledgment of the underlying ills that he well knew contributed to the riots and outright condemnation of the destruction and lawlessness.<sup>195</sup> That, however, proved to be an unfeasible task, and his clumsy efforts, combined with his ultimate refusal to embrace the Kerner Report, may have served to further embolden those already committed to characterizing the riots as a pure “law and order” issue.

#### IV. RISE OF THE POLITICS OF LAW AND ORDER

##### A. *Evolution of the Appeal of Law and Order Politics*

Although the earlier McCone Commission was criticized for its upbraiding of the rioters and laudatory treatment of law enforcement,<sup>196</sup> these themes gained significant political traction, both locally and nationally. The Commission acknowledged the various urban problems that contributed to the Watts riots, but emphasized that “agitators” or “riffraff” were instrumental in igniting and fanning the flames of unrest<sup>197</sup> and defended the repu-

<sup>193</sup> See CARTER, *supra* note 2, at 216 (noting that conservative law-and-order proponents “championed the idea that the riots could be brought under control if the loudest of the ‘agitators’ who cried ‘burn, baby, burn’ were placed behind bars”); FLAMM, *supra* note 10, at 96–97 (observing that “[c]onservatives charged that the riots were criminal acts incited or exploited by radical conspirators armed with revolutionary intent and aided or abetted by liberals whose social programs had first instilled a sense of entitlement among the rioters and then rewarded them for their lawlessness”). In critiquing the conspiracy theorists, Ramsey Clark poignantly observed: “The conspiracy theory provided the happiest answer: it implicated only a few evil people we could all hate . . . Everything in our nature wanted to find a scapegoat. Conspiracy alone could relieve us of a sense of national guilt. The most unpleasant fact ignored, that the ghetto is rampant with crime and that black rage is real.” CLARK, *CRIME IN AMERICA*, *supra* note 142, at 168–69.

<sup>194</sup> See *infra* note 220 and accompanying text; see also Jacki Lyden & Martha Wexler, *Maryland Town Recalls Racial Unrest in 1967*, ALL THINGS CONSIDERED (Jul. 29, 2007), <http://www.npr.org/templates/story/story.php?storyId=12420016>, archived at <https://perma.cc/Q69F-HLDZ> (noting that “Johnson believed outside agitators, even foreigners or communists, must have been to blame for the rioting and arson that engulfed so many cities”).

<sup>195</sup> See *infra* notes 216–19 and accompanying text; see also FLAMM, *supra* note 10, at 104 (recounting Special Counsel Harry McPherson’s dismay over how the White House’s practice of issuing a statement strongly condemning the rioters followed by “an apologetic ‘Of course, we understand why you rioted.’”).

<sup>196</sup> See *supra* note 162.

<sup>197</sup> See FLAMM, *supra* note 10, at 62.

tation and efforts of the LAPD.<sup>198</sup> This mix of blaming the so-called criminal, riffraff element and praising the police would become a popular rhetorical formula for conservative politicians throughout the late 1960s.

Even before the Watts riots, Republican presidential nominee Barry Goldwater mainstreamed the law and order approach by prominently injecting it into his unsuccessful campaign against President Johnson.<sup>199</sup> Goldwater, however, actually took the baton from Alabama Governor George Wallace, who, in campaigning for the Democratic nomination, shamelessly invoked law and order to arouse racist, anti-integration sentiments among voters;<sup>200</sup> and to a fairly significant degree, it worked.<sup>201</sup> Although Goldwater did not want to be characterized as a racist, he recognized the appeal and acknowledged the import of Wallace's message.<sup>202</sup> As a result, he endeavored to highlight the same themes, but in a less overtly bigoted manner. For example, at the Republican National Convention in 1964, Goldwater stressed the importance of law and order by striking a protectionist tone: "security from domestic violence, no less than from foreign aggression, is the most elementary and fundamental purpose of any government."<sup>203</sup> He subsequently told a reporter that if elected, he would "do all I can to see that women can go out in the streets of this country without being scared stiff."<sup>204</sup> Although Goldwater's tactics demonstrated the potential appeal for a tough-on-crime type campaign, Johnson was ultimately able to defuse this strategy, in part, by coopting the Republican's message. Specifically, he recast his administration's "war on poverty" as a "war on crime" — "The war on poverty . . . is a war against crime and a war against disorder."<sup>205</sup> Plainly, the law and order platform had tapped into a viable vein within white

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<sup>198</sup> See *id.* at 63.

<sup>199</sup> See ALEXANDER, *supra* note 15, at 42 (noting that Goldwater "aggressively exploited the riots and fears of black crime laying the foundation for the 'get tough on crime' movement that would emerge years later"); FLAMM, *supra* note 10, at 30 (observing that Goldwater made law and order a central campaign theme in his challenge to Lyndon Johnson).

<sup>200</sup> See FLAMM, *supra* note 10, at 34 ("As the physical embodiment of southern segregation and 'massive resistance' to civil rights, Wallace clearly appealed to the anti-integration sentiments of his northern audience.").

<sup>201</sup> See *id.* at 35 (noting that Wallace received a sizable percentage of the vote in various primaries and "demonstrated how powerful the appeal of law and order was to those for whom the threat of crime and disorder was real").

<sup>202</sup> See *id.* at 36.

<sup>203</sup> *Id.* at 31.

<sup>204</sup> *Id.* at 36. It is important to note that the racial subtext of Goldwater's message was nonetheless readily apparent. For example, by airing footage of the Harlem riots as illustrative of the "break down of law and order." *Id.* at 43–44. Notably, NAACP Chair Roy Wilkins charged that "every utterance touching on [law and order] by the Republican nominee and by his vice presidential running mate has had ill-conceived racial overtones, undertones, and just plain out-and-out tones." *Id.*

<sup>205</sup> *Id.* at 47. See also *id.* at 48 (observing that "[b]y avoiding issues where Goldwater was strong (like law and order) and attacking those where he was weak (like Social Security and nuclear war), Johnson protected his early lead and roared to a landslide victory").



America, and therefore was well-positioned to capture broader support in the aftermath of the Watts riots and other instances of urban unrest.<sup>206</sup>

In the fall of 1965, President Johnson formally announced his “war on crime” and embarked on a politically aggressive approach to battling crime in America.<sup>207</sup> The Watts riots, however, effectively derailed this attempt to stem conservative appropriation of the law and order theme. As Historian Michael Flamm has observed, “Watts . . . exposed and exacerbated the racial and ideological fissures that permeated the nation as it reached a fault line between the optimism of the early 1960s and the pessimism of the late 1960s.”<sup>208</sup> Conservatives were poised to capitalize on these divisions for political gain, and in the coming years would unashamedly promote and exploit white fears of rampant urban violence and lawless black mobs. They touted more law and order as the comforter for these fears.

California gubernatorial candidate Ronald Reagan was one of the first major politicians to successfully utilize law and order as a campaign theme after Goldwater. In what was perceived as a longshot challenge to Democratic incumbent Governor Pat Brown, Reagan combined his movie-star charisma with a tough-on-crime message to handily capture the election.<sup>209</sup> Though somewhat more subtle in his approach than Goldwater, Reagan nevertheless deftly aroused fear among white Californians about black crime, with such statements as “[e]very day the jungle draws a little closer.”<sup>210</sup> He also defended the so-called “white backlash” by characterizing it as “nothing more than the concerns people have for . . . extremists in the civil rights movement taking to the streets, the use of violence, of demonstrations instead of an orderly process of appealing wrongs through legitimate channels.”<sup>211</sup> Further validating this point, Reagan vowed “not to tolerate

<sup>206</sup> See *id.* at 49 (noting that, for a variety of reasons, the law-and-order approach failed in 1964, but it “energized a new generation of conservative activists . . . who at little political cost could now appeal directly to southern whites opposed to black demands for civil rights”); see also *id.* at 84 (“By the fall of 1967, restoring law and order meant repulsing urban riots. Polls showed that the racial crisis was now the nation’s chief domestic concern.”).

<sup>207</sup> See *id.* at 51. Johnson proclaimed: “I will not be satisfied . . . until every woman and child in this Nation can walk any street, enjoy any park, drive on any highway, and live in any community at any time of the day or night without fear of being harmed.” *Id.* Substantively, he pushed through law enforcement-related legislation and established the Presidential Commission on Law Enforcement and the Administration of Justice (the so-called “Crime Commission”) chaired by Attorney General Nicholas Katzenbach. See *id.* at 52–58.

<sup>208</sup> See *id.* at 52.

<sup>209</sup> See *id.* at 68.

<sup>210</sup> CARTER, *supra* note 2, at 218 (quoting Reagan). Reagan also sought to arouse a racially tinged backlash against welfare initiatives by Governor Brown and other liberals. See, e.g., Cathleen Decker, *Watts Riots Shifted State to the Right, but New Demographics Pushed It Left*, L.A. TIMES (Aug. 5, 2015), <http://www.latimes.com/local/politics/la-me-pol-watts-politics-20150806-story.html>, archived at <https://perma.cc/F5W5-4EJT> (quoting Reagan as saying “four more years of reckless welfare spending and no change in a welfare system whose only present purpose seems to be to perpetuate the dole and build a political machine”).

<sup>211</sup> *Id.*

individuals who broke the law under the guise of civil disobedience,” which he said had no place in a democracy.<sup>212</sup>

Subsequent riots provided additional fodder for law and order enthusiasts. Notably, Richard Nixon’s future Vice President Spiro Agnew, seized upon law and order as governor of Maryland following a 1967 riot in Cambridge that may have been at least encouraged by black power advocate H. Rap Brown — then-Chair of the Student Nonviolent Coordinating Committee (“SNCC”) — in a fiery speech, punctuated with an ominous ultimatum: “If this town don’t come around, this town should be burned down.”<sup>213</sup> Agnew was furious, expressing a desire to lock up Brown and throw away the key.<sup>214</sup> He also took a staunch law-and-order stance in response to the unrest, announcing that it would be the “policy of this state to immediately arrest any person inciting to riot, and to not allow that person to finish his vicious speech.”<sup>215</sup>

Although President Johnson understood the complex underlying problems that fueled the widespread civil disorder, he could not resist the political temptation to publicly trumpet his administration’s similar intolerance for lawless activities of any kind and his personal commitment to “law and order.”<sup>216</sup> For example, on the heels of the 1967 Detroit riots, the President forcefully rebuked the rioters and committed to a stern national response:

Pillage, looting, murder and arson have nothing to do with civil rights. They are criminal conduct. . . . We will not tolerate lawlessness. . . . It matters not by whom it is done or under what slogan or banner. . . . This nation will do whatever is necessary to do to suppress and to punish those who engage in it.<sup>217</sup>

To be sure, it was appropriate for President Johnson to condemn unlawful behavior, but to downplay the underlying hopelessness and desperation that he accurately predicted could lead to such rebellions was hypocritical at best and opportunistic at worst.<sup>218</sup> No doubt mindful of the potential hypocrisy of piling on too heavily with the law-and-order rhetoric, the President did soften his message somewhat in the ensuing days by acknowledging that the well-known underlying conditions that led to “despair and violence” had

<sup>212</sup> FLAMM, *supra* note 10, at 71.

<sup>213</sup> HARVARD SITKOFF, *THE STRUGGLE FOR BLACK EQUALITY 1954-1992* 203 (Rev. Ed. 1993) (quoting Brown).

<sup>214</sup> See Lyden & Wexler, *supra* note 194.

<sup>215</sup> *Id.*

<sup>216</sup> See, e.g., CARTER, *supra* note 2, at 207 (observing that in his speech following the Detroit riots, President Johnson employed the phrase “law and order” on numerous occasions).

<sup>217</sup> *Id.* (quoting President Johnson’s Remarks to the Nation on Detroit Riots and Participation by Federal Troops, July 26, 1967).

<sup>218</sup> *Id.* (maintaining that “those seeking some evidence that the president was willing to acknowledge publicly the devastating conditions and police provocations that laid the groundwork for urban unrest could draw little comfort from the address”).

to be aggressively addressed, namely “ignorance, discrimination, slums, poverty, disease, joblessness.”<sup>219</sup> Privately, however, he continued to harbor an optimistic belief that the riots were the product of a conspiracy by black militants and he put intense pressure on his Attorney General Ramsey Clark to validate this theory by bringing charges against Stokely Carmichael and H. Rap Brown.<sup>220</sup> Much to the President’s dismay, Clark steadfastly refused,<sup>221</sup> and thereby denied Johnson the political cover that he so desperately sought.

*B. Mainstream Acceptance of the Politics of Law and Order  
and Rejection of Ramsey Clark*

Throughout the lead-up to the 1968 elections, Republican candidates exploited the urban civil unrest, overtly employing a law-and-order platform and deftly playing on the fears of white voters.<sup>222</sup> The Republican Coordinating Committee unapologetically usurped the “civil rights” label to describe the effect that the rioting was having on law-abiding citizens — “The most basic of civil rights is being denied to the American people,” the right to be safe on the streets.<sup>223</sup>

In April of 1968, future Vice President Agnew enhanced his prominence as a standard bearer for law and order with his reaction to riots that broke out in Baltimore following the assassination of Martin Luther King, Jr. Although Agnew was appropriately respectful and remorseful about Dr. King’s death, he could not contain his disdain for the looting and burning of his state’s largest city. He blamed black power incendiary Stokely Carmichael for starting the riots and curbed suggestions that “an overwhelming sense of frustration and despair” was the actual cause.<sup>224</sup> Agnew further lamented the breakdown of law and order in the face of such criminal behavior, submitting that “law breaking has become a socially acceptable and occasionally stylish form of dissent,”<sup>225</sup> a fairly obvious and insensitive swipe at the familiar civil rights tactic of civil disobedience. Moreover, in a meet-

<sup>219</sup> *Id.* at 212 (quoting President Johnson).

<sup>220</sup> *Id.* at 215. See also Lonnie T. Brown, Jr., *A Tale of Prosecutorial Indiscretion: Ramsey Clark and the Selective Non-Prosecution of Stokely Carmichael*, 62 S.C. L. REV. 1, 20–22 (2010).

<sup>221</sup> CARTER, *supra* note 2, at 215 (noting that “the new attorney general resisted substantial pressure from the White House, Congress, and public opinion to mount” such a case); Brown, *supra* note 220, at 21–22.

<sup>222</sup> See FLAMM, *supra* note 10, at 82 (observing that during the summer of 1967, “riots in Newark and Detroit would further fan the fear — and doom the efforts of the White House to regroup in preparation for 1968”); see also *id.* at 96 (“By the end of the ‘Long Hot Summer [of 1967],’ the combustible combination of race, radicalism, and riots had exploded the liberal faith that the War on Poverty would constitute a war on disorder.”).

<sup>223</sup> See CARTER, *supra* note 2, at 209.

<sup>224</sup> JUSTIN P. COFFEY, SPIRO AGNEW AND THE RISE OF THE REPUBLICAN RIGHT 56 (2015).

<sup>225</sup> KEVIN T. McEANEY, TOM WOLFE’S AMERICA: HEROES, PRANKSTERS, AND FOOLS 70 (2009) (quoting Arthur Schlesinger quoting Agnew).

ing intended to ease tensions within the black community, Agnew made things worse by denigrating black militants as “circuit riding, Hanoi visiting, caterwauling, riot-inciting, burn-America down-type of leaders.”<sup>226</sup> Such diatribes alienated him from Maryland’s African-American community, but enhanced his appeal as a national leader of the right.<sup>227</sup>

One of the most notorious and visible invocations of the politics of law and order likewise occurred shortly after the widespread rioting that erupted in the wake of Dr. King’s assassination. In response to the looting and burning in Chicago, Mayor Richard Daley, a Democrat, publicly stated that the police “should have had instructions to shoot arsonists and looters — arsonists to kill and looters to maim and detain.”<sup>228</sup> Attorney General Ramsey Clark quickly denounced Daley’s position, and essentially threatened the Mayor with personal prosecution if any looters were shot. The likelihood of civil unrest, especially by vocal opponents to the Vietnam War, loomed over the upcoming Democratic National Convention planned for Chicago later that summer. As a result, there was reasonable concern that the police might put Mayor Daley’s words into action within the next few months. Clark, no doubt, hoped to short-circuit this possibility. He preferred a thoughtful, measured approach to the civil unrest, recognizing that it emanated from causes far more complex than mere lawlessness.

Although there was no shooting of looters or killing of arsonists, the police put on a public display of brutality against anti-war protesters that was unlike anything seen before in the north. According to Norman Mailer’s description, “The police attacked with tear gas, with Mace, and with clubs, they attacked like a chain saw cutting into wood, the teeth of the saw the edge of their clubs, they attacked like a scythe through grass, lines of 20 and 30 policemen striking out in an arc, their clubs beating, demonstrators fleeing.”<sup>229</sup>

The majority of the public approved of Mayor Daley’s stance regarding looters and arsonists and was sympathetic to the hardcore law-and-order approach employed by the Chicago police to keep the protesters in line.<sup>230</sup> For his attack on Daley and his preference for a more guarded, professional approach to quelling urban disturbances, Ramsey Clark was pilloried. Sharply critical letters poured into the Justice Department, expressing views such as: “When a man of the stature of Mayor Daley . . . indicates that he is going to

<sup>226</sup> CLINT HILL, *FIVE PRESIDENTS: MY EXTRAORDINARY JOURNEY WITH EISENHOWER, KENNEDY, JOHNSON, NIXON, AND FORD* 328 (2016) (quoting Agnew).

<sup>227</sup> *See id.* (noting that Agnew’s actions attracted the attention of the leadership of the Republican Party and put him on the radar for his eventual selection as President Nixon’s running mate).

<sup>228</sup> FLAMM, *supra* note 10, at 155.

<sup>229</sup> *Id.* at 157 (quoting NORMAN MAILER, *MIAMI AND THE SIEGE OF CHICAGO: AN INFORMAL HISTORY OF THE REPUBLICAN AND DEMOCRATIC CONVENTIONS OF 1968* (1969)).

<sup>230</sup> *See id.* at 159 (noting that a “Gallup Poll reported that by a 56 to 31 percent margin Americans approved of Daley’s actions [and a] Harris Poll showed that 66 percent of those surveyed sided with Daley and the police”).

try to preserve law and order, the Attorney General should have been the first one to back him up. But obviously, this Ramsey Clark does not believe in law and order."<sup>231</sup>

Clark was undeterred. Based on Watts and other experiences, he had come to view the principal source of black anger and dissatisfaction as America's police force. The tension between law enforcement and the black community was palpable, and instances of unfair treatment and displays of excessive force against citizens of color did not seem exaggerated.

Clark believed that American law enforcement operated in a separatist, paramilitary fashion, imposing law and order through force and intimidation.<sup>232</sup> He considered this to be an irrational strategy, observing that: "Police who act by force, violence, and cunning stamp the imprimatur of the people on such practices, and leave those they seek to subjugate with little alternative but to reply in kind. In this way, by acting violently and criminally, the police are the cause of further crime and violence."<sup>233</sup>

Consistent with his perspective on law and order, Clark did not hesitate to prosecute officers who resorted to excessive force. In 1968, Orangeburg, South Carolina police opened fire on unarmed black students from South Carolina State College who were protesting the local bowling alley's refusal to grant them access to the facility.<sup>234</sup> Three students were killed and twenty-seven others wounded, most in the back, indicating that the students were fleeing when the shots were fired.<sup>235</sup> This often-overlooked event, known as the Orangeburg Massacre, infuriated Attorney General Clark.<sup>236</sup>

Despite the local government's cover-up, as well as the strong likelihood that a conviction would not be possible, Clark pursued the nine offending police officers on the charge of "impos[ing] summary punishment" without due process of law.<sup>237</sup> Although they were ultimately acquitted, Clark had no regrets about the prosecution. He was content with the message his action sent, firmly believing that "[f]rom a law enforcement standpoint, [the case] would have a sobering, stabilizing effect."<sup>238</sup>

The prospect of inspiring caution in the face of similar public safety challenges in the future was ample prosecutorial motivation for Clark. In addition, he laid definitive blame for the tragedy at the feet of the government and the American public for "our failure to right grievous wrongs,

<sup>231</sup> Constituent Letter, Lyndon Baines Johnson Library, Personal Papers of Ramsey Clark, Box 68, "Letters Re: Riots & Shooting of Looters."

<sup>232</sup> See Ramsey Clark, *Police That Serve Society*, in *THE GREAT IDEAS TODAY* 9–11 (Robert M. Hutchins, et al. eds., 1972) (characterizing American police as paramilitary in nature).

<sup>233</sup> *Id.* at 5–6.

<sup>234</sup> See JACK BASS & JACK NELSON, *ORANGEBURG MASSACRE* 65–77 (1970).

<sup>235</sup> See *id.* at 76–137.

<sup>236</sup> See *id.* at 168–172; see also Frank Beacham, *Orangeburg, America's Forgotten Tragedy*, L.A. TIMES (Feb. 5, 1993), [http://articles.latimes.com/1993-02-05/local/me-797\\_1\\_civil-rights](http://articles.latimes.com/1993-02-05/local/me-797_1_civil-rights), archived at <https://perma.cc/D45T-33BK> (noting that Clark was determined to uncover the truth of the tragedy and "mounted a federal investigation").

<sup>237</sup> BASS & NELSON, *supra* note 234, at 180.

<sup>238</sup> See *id.* at 101, 180.

permitting conditions to arise and continue where tens of thousands of black Americans were deprived of constitutional and statutory rights — and really their opportunity for personal fulfillment in our society.”<sup>239</sup> This echoes of what he had articulated in his Watts Report three years earlier.

For positions like this, FBI Director J. Edgar Hoover labeled Clark a “jellyfish,”<sup>240</sup> and presidential candidates Richard Nixon and George Wallace even more damningly sullied him as being “soft on crime.”<sup>241</sup> In fact, the centerpiece of future President Nixon’s successful campaign was the exploitation of the white majority’s fears regarding black militants, rioting, and urban crime in general<sup>242</sup> — the so-called Southern strategy<sup>243</sup> — and he repeatedly proclaimed to the American public that: “If we are to restore order and respect for law in this country, there’s one place we’re going to . . . begin. We’re going to have a new Attorney General of the United States.”<sup>244</sup> The even more extreme and racially tinged law-and-order stance that third-party candidate Wallace staked out rallied a substantial voting bloc, which likely aided Nixon’s eventual victory.<sup>245</sup> For example, following the unrest in Chicago, Wallace took Mayor Daley’s rhetoric to another level, proclaiming: “We don’t have riots in Alabama. . . . They start a riot down there, first one of ‘em to pick up a brick gets a bullet in the brain, that’s all. And then you walk over to the next one and say, ‘All right, pick up a brick. We just

<sup>239</sup> BASS & NELSON, *supra* note 234, at 226.

<sup>240</sup> CURT GENTRY, J. EDGAR HOOVER: THE MAN AND HIS SECRETS 598, 601 (1991).

<sup>241</sup> See, e.g., Peter Carlson, *The Crusader*, WASH. POST (Dec. 15, 2002), <https://www.washingtonpost.com/archive/lifestyle/2002/12/15/the-crusader/9de49dd7-43fd-45e0-a4ef-3df4475cb4a0>, archived at <https://perma.cc/6ZZ8-4V8B> (observing that on the campaign trail Nixon promised “at every whistle-stop to fire Clark and hire somebody who’d crack down on crime”); John B. Judis, *The Strange Case of Ramsey Clark*, NEW REPUBLIC, Apr. 22, 1991, at 23, 27–28 (noting that Nixon “singled out Clark . . . for undermining ‘law and order’ in the country”).

<sup>242</sup> See RICHARD HARRIS, *JUSTICE: THE CRISIS OF LAW, ORDER AND FREEDOM IN AMERICA* 144 (1970) (observing that during his campaign, “Nixon repeatedly implied in the North that he would crack down on those who fomented disorder and those who committed crimes . . . and he repeatedly implied in the South that he would slow down the pace of integration”).

<sup>243</sup> See ALEXANDER, *supra* note 15, at 44 (explaining that the “success of law and order rhetoric among working-class whites and the intense resentment of racial reforms, particularly in the South, led conservative Republican analysts to believe that a ‘new majority’ could be created by the Republican party, one that included the traditional Republican base, the white South, and half the Catholic, blue-collar vote of the big cities”).

<sup>244</sup> HARRIS, *supra* note 242, at 14.

<sup>245</sup> See FLAMM, *supra* note 10, at 167. Whereas Nixon was somewhat circumspect in terms of making direct racially-charged appeals, Wallace was not, saying such things as, “Race mixing doesn’t work. Show me a place where it’s worked.” *Id.* at 165. Nixon was able to portray himself as a more palatable version of Wallace by not denouncing Wallace’s message, while at the same time making similar points in a less caustic manner. See *id.* at 165. He was thus able to attract Democrats who might have otherwise voted for Wallace, while Wallace still attracted a good number of hardcore, disgruntled Democrats away from their party’s nominee. This likely led to Nixon’s narrow victory. *But see id.* at 167 (maintaining that even if Wallace had not been in the race, Nixon may have still won).

want to see you pick up one of them bricks, now!"<sup>246</sup> His plan for dealing with any future riots would be to shoot first and ask questions later.<sup>247</sup>

Although many rejected such a harsh posture, enough voters gravitated towards Wallace's message and Nixon's less confrontational version to force mild-mannered Democratic nominee Hubert Humphrey to reluctantly join in the law-and-order fray, albeit to a small and ambivalent extent.<sup>248</sup> In fact, because of the effective job that Nixon did of portraying Ramsey Clark as being "soft on crime" and blameworthy for the breakdown in law and order, Humphrey, like Nixon, promised that he too would have a different Attorney General if elected.<sup>249</sup>

It is noteworthy that although Clark, for the most part, kept to himself during the campaign, on at least one occasion he could not endure Nixon's distortion of the reality of crime in America and his accompanying calls for more law and order. Clark felt compelled to respond with an insightful and moving rebuke, which is equally as relevant and poignant in today's political climate:

Politicians can lead or follow. . . . They can appeal to the best in people or to the worst. They can divide, brutalize, and mislead, or they can unite, humanize, and give confidence. . . . What of crime? How is it controlled and reduced? . . . Not by exhortations to "law and order," which may mean many things but to most today signify force, order as an end in itself, repressiveness. It nurtures fear by conjuring terrible crimes. It fires anger by implying authoritarian power. It divides black from white, young from old, rich from poor, educated from ignorant. . . . It somehow calls for force to prevent the act of crime while ignoring the heart prepared to commit it.<sup>250</sup>

In the end, Nixon and "law and order" prevailed, and Clark, as promised, exited the Department of Justice in January of 1969. Unfortunately, with his departure, so went much of the hope that existed for seriously endeavoring to solve the racial ills that had been central to the civil unrest over the preceding three years.

President Nixon, John Mitchell (Clark's successor as Attorney General), and FBI Director J. Edgar Hoover continued to fan the flames of white fear of black lawlessness for political gain, most infamously through Hoover's proclamation of the Black Panther Party as the "greatest threat to the internal security of the country [among] violence-prone black-extremist

<sup>246</sup> *Id.* at 164.

<sup>247</sup> *See id.*

<sup>248</sup> *See id.* at 168–73 (discussing Humphrey's awkward efforts to appear more strident on law and order, while not discarding his core beliefs in justice, fairness, and eradication of poverty).

<sup>249</sup> *See id.* at 172.

<sup>250</sup> HARRIS, *supra* note 242, at 28–29 (quoting Clark).

groups.”<sup>251</sup> To control this threat and other similar ones, America, of course, needed more law and order, according to the Nixon administration. The Clark Report had taken note of the new radical leadership that had been emerging within the civil rights movement and warned of the necessity of working with and learning to understand their perspective.<sup>252</sup> Attempting to listen to and engage the Black Panther Party and other militant voices, however, was never an option that was seriously considered by Nixon, Mitchell, or Hoover.

*C. More Unrest, More Calls for Law and Order,  
More Avoidance of the Issue*

Subsequent administrations have differed in their approaches, but almost invariably, the law-and-order refrain has remained a viable political reprise to perceptions of black lawlessness, whether in the form of rioting, street violence, or drug-related crime.<sup>253</sup> In 1992, after Rodney King’s brutal beating at the hands of the LAPD was famously captured on video for the entire world to see,<sup>254</sup> and the officers were later acquitted of criminal charges, Watts-like rioting erupted across South Los Angeles.<sup>255</sup> Citizens of color rioted out of desperation, frustration, and anger because after twenty-seven years it seemed that little had changed in terms of how they were viewed in the eyes of the law — the King verdict painfully reaffirmed a widespread sense of hopelessness, insignificance, and despair<sup>256</sup> that once more fueled a “destructive rebellion against the fabric of society.”<sup>257</sup>

<sup>251</sup> ROY WILKINS & RAMSEY CLARK, *SEARCH AND DESTROY: A REPORT BY THE COMMISSION OF INQUIRY INTO THE BLACK PANTHERS AND THE POLICE* 11 (1973) (quoting Hoover).

<sup>252</sup> See CLARK REPORT, *supra* note 12, at 44 (“It is a matter of greatest importance that these new leaders be understood, because increasingly it is through them that the restive minorities in our major cities will be reached.”).

<sup>253</sup> See, e.g., FLAMM, *supra* note 10, at 182–84 (recounting President George H. W. Bush’s use of the infamous Willie Horton ad to make the point that his Democratic challenger was soft on crime and President Bill Clinton’s hardline efforts to convince American voters that he was tough on crime); *supra* note 17.

<sup>254</sup> See HORNE, *supra* note 4, at 355 (recounting the brutal beating of Rodney King — an African-American motorist — by LAPD officers following a high-speed chase, which was captured on videotape and widely broadcasted thereafter).

<sup>255</sup> See HORNE, *supra* note 4, at 355 (noting that following the acquittal of the police officers, the “city again exploded”). The mayhem and damage that accompanied the 1992 L.A. riots far exceeded that of Watts: more than 16,000 were arrested; 2,383 were injured; 52 died; and property damage was in the vicinity of \$1 billion. See *id.* at 355–56. In 1980, similar unrest occurred in Miami, Florida in the Liberty City area, when four police officers were acquitted of manslaughter charges for the killing of a black motorist, Arthur McDuffie, after a high-speed chase. See David Smiley, *McDuffie Riots: Revisiting, Retelling Story — 35 Years Later*, *MIAMI HER.* (May 16, 2016), <http://www.miamiherald.com/news/local/community/miami-dade/article21178995.html>, archived at <https://perma.cc/DEX5-RXE4>.

<sup>256</sup> See, e.g., HORNE, *supra* note 4, at 358 (observing that “[o]nce again, the LAPD’s treatment of blacks had deepened old wounds”).

<sup>257</sup> *Supra* note 2.



As in 1965, prominent leaders were quick to focus upon and condemn the looting, burning, and violence.<sup>258</sup> They could not or would not look past the superficial mayhem, focusing instead on black and brown lawlessness,<sup>259</sup> and thus again failed to comprehend the message behind the rioting. And, as in 1965, another commission was formed, this time to specifically investigate the LAPD, with former McCone Commission member Warren Christopher as its chair.<sup>260</sup> Interestingly, one of the main recommendations of the Christopher Commission was a call for the establishment of “community policing,”<sup>261</sup> a proposal central to the Clark Report.<sup>262</sup>

Multiple incidents over the twenty-four years since the Rodney King riots have exposed the continuing presence of social ills that fueled the civil unrest in Watts over fifty years ago.<sup>263</sup> Perhaps the most striking and depressing parallel, however, can be gleaned from the contemporary events in Ferguson, Missouri, spurred primarily by yet another tragic encounter between law enforcement and the black community. The following section will provide some background on what led to Ferguson’s replaying of the Watts’ tune in 2014, and then examine the public’s reaction and the federal government’s response, both of which were eerily redolent of 1965.

## V. THE FERGUSON RIOTS OF 2014

### A. *The Shooting of Michael Brown*

As with the Watts riots, the precipitating event for the civil unrest in Ferguson, Missouri in 2014 was an encounter between a police officer and an African-American citizen. In addition, like the Frieses’ confrontation with Officer Minikus and the California Highway Patrol, accounts of the details surrounding what actually transpired on that fateful day in August of 2014 vary widely. Some contend that Michael Brown was never the aggressor and in fact submissively had his hands up at the time that Officer Darren

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<sup>258</sup> See, e.g., Ronald Brownstein, *Buchanan Links L.A. Riots to Immigration Problems*, L.A. TIMES (May 14, 1992), [http://articles.latimes.com/1992-05-14/local/me-3227\\_1\\_illegal-immigrant](http://articles.latimes.com/1992-05-14/local/me-3227_1_illegal-immigrant), archived at <https://perma.cc/BNH6-UT5K> (noting Republican Presidential candidate Pat Buchanan’s expressed view that illegal immigrants were largely responsible for the rioting and his position that America should build a fence between it and Mexican border to stop illegal immigration); Karen Hosler, *Bush Hopes Riots Spark Concern for Law and Order*, BALTIMORE SUN (May 6, 1992), [http://articles.baltimoresun.com/1992-05-06/news/1992127128\\_1\\_urban-problems-law-and-order-riot-zone](http://articles.baltimoresun.com/1992-05-06/news/1992127128_1_urban-problems-law-and-order-riot-zone), archived at <https://perma.cc/764F-Q2BB> (suggesting that President Bush began to play on the “racial anxieties of white voters” following the L.A. riots, expressing his intention to prosecute those “who murdered, burned and looted”).

<sup>259</sup> A large Latino contingent participated in the 1992 riots. See HORNE, *supra* note 4, at 356.

<sup>260</sup> See *id.* at 358.

<sup>261</sup> See *id.*

<sup>262</sup> See *supra* notes 140–43 and accompanying text.

<sup>263</sup> See *supra* note 24 and accompanying text.

Wilson fatally shot him,<sup>264</sup> spawning the widespread adoption of the protest slogan, “Hands Up. Don’t Shoot!”<sup>265</sup> Others maintain that Brown became aggressive when stopped by Officer Wilson, and that Wilson’s deadly response was in self defense.<sup>266</sup> The truth is likely somewhere in between and will never be fully known.

The facts that cannot reasonably be disputed, however, are that Brown and a companion were walking eastbound down the middle of Canfield Drive when Officer Wilson, from his patrol car, stopped the two men.<sup>267</sup> There was an apparent struggle through the driver’s side window of Wilson’s vehicle between Brown and Wilson, though it is not entirely clear who initiated it.<sup>268</sup> During the struggle, Brown was shot in the hand; he then retreated down the street and Wilson ran after him.<sup>269</sup> Following a brief chase, Wilson shot Brown multiple times. Witnesses’ claims that Brown was shot in the back have been discredited by the physical evidence, but there is no denying that Brown was unarmed and was gunned down by Officer Wilson while residents of the neighborhood watched.<sup>270</sup>

Although the shooting angered onlookers and resulted in chants encouraging retaliation — “we need to kill these motherf---ers”<sup>271</sup> — the neighborhood did not erupt in the same manner as Watts. Nonetheless, numerous citizens expressed outrage, both locally and nationally, and riot-like behavior occurred in the streets of Ferguson — looting and angry protesting.<sup>272</sup> After a controversial display of military-style police force,<sup>273</sup> relative calm was

<sup>264</sup> See DEP’T OF JUSTICE, DEPARTMENT OF JUSTICE REPORT REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI POLICE OFFICER DARREN WILSON 8, 32, 49 (Mar. 4, 2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj\\_report\\_on\\_shooting\\_of\\_michael\\_brown\\_1.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf), archived at <https://perma.cc/XU3K-M29E> [hereinafter WILSON REPORT] (concluding that the accuracy of testimony to the effect that Brown had his hands up could not be confirmed); see also Michelle Ye Hee Lee, “Hands Up, Don’t Shoot” Did Not Happen in Ferguson, WASH. POST (Mar. 19, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/03/19/hands-up-dont-shoot-did-not-happen-in-ferguson>, archived at <https://perma.cc/47A5-4G7K>.

<sup>265</sup> See *id.*

<sup>266</sup> See *id.*

<sup>267</sup> See WILSON REPORT, *supra* note 264, at 6.

<sup>268</sup> Wilson claims that when he tried to open his car door, Brown shoved it closed and then punched him the face. Wilson then alleges that he reached for his gun and Brown tried to take it from him. At this point, Wilson contends that he shot Brown in the hand. See *id.* at 6. The DOJ was unable to corroborate Wilson’s account of the struggle over the gun with eyewitness testimony, but no credible evidence was uncovered that could refute his story either. See *id.* at 7.

<sup>269</sup> See *id.* at 6.

<sup>270</sup> See *id.* at 7.

<sup>271</sup> *Id.* at 8.

<sup>272</sup> See Lindsey Bever, *Police Killing Prompts Rioting, Looting Near St. Louis*, WASH. POST (Aug. 11, 2014), <https://www.washingtonpost.com/news/morning-mix/wp/2014/08/11/police-killing-prompts-rioting-looting-near-st-louis/>, archived at <https://perma.cc/VYD4-ZRW8>.

<sup>273</sup> See *infra* note 286 and accompanying text.

restored to the area, but peaceful protests continued, typically headlined by the mantra “black lives matter.”<sup>274</sup>

Ferguson remained tense, but superficially subdued in the ensuing months, that is, until the announcement of the grand jury’s decision not to indict Officer Wilson on criminal charges.

### B. *The Grand Jury Decision*

Many within the Ferguson community and throughout the nation were cautiously optimistic that Darren Wilson would be indicted for the killing of Michael Brown, and anxiously awaited the grand jury’s decision. On November 24, 2014, District Attorney Robert McCulloch announced that the grand jury declined to indict Officer Wilson on any charges.<sup>275</sup> While from a substantive, evidentiary standpoint, that result may have been defensible, the optics of the situation were troublesome.

First, the D.A.’s decision to remain involved in the grand jury investigation was of great concern, in part, because of the inherent conflict of interest that exists when local prosecutors consider possible criminal charges against officers with whom they necessarily work closely.<sup>276</sup> This innate conflict, however, was exacerbated by the fact that McCulloch’s father was a police officer who had been killed in the line of duty.<sup>277</sup> In addition, the longstanding history of law enforcement’s violence against African-Americans going mainly unchecked, could not be ignored. Lastly, and most importantly, the toxic culture of mistrust and fear that permeated the relationship between black citizens of Ferguson and the Ferguson Police Department (“FPD”),<sup>278</sup>

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<sup>274</sup> “Black Lives Matter” is a movement that began after George Zimmerman’s acquittal for the shooting death of unarmed black teenager Trayvon Martin, which occurred in Sanford, Florida in 2012. See Jonathan Capehart, *From Trayvon Martin to “Black Lives Matter,”* WASH. POST (Feb. 27, 2015), <https://www.washingtonpost.com/blogs/post-partisan/wp/2015/02/27/from-trayvon-martin-to-black-lives-matter/>, archived at <https://perma.cc/GK27-TTFG>.

<sup>275</sup> See Chico Harlan, Wesley Lowery & Kimberly Kindy, *Ferguson Police Officer Won’t Be Charged in Fatal Shooting*, WASH. POST (Nov. 25, 2014), [https://www.washingtonpost.com/politics/grand-jury-reaches-decision-in-case-of-ferguson-officer/2014/11/24/de48e7e4-71d7-11e4-893f-86bd390a3340\\_story.html](https://www.washingtonpost.com/politics/grand-jury-reaches-decision-in-case-of-ferguson-officer/2014/11/24/de48e7e4-71d7-11e4-893f-86bd390a3340_story.html), archived at <https://perma.cc/ZR6A-QSTF> (discussing the grand jury’s decision and the chaos that ensued after the announcement).

<sup>276</sup> See Kate Levine, *Who Shouldn’t Prosecute the Police*, 101 IOWA L. REV. 1447, 1447 (2016).

<sup>277</sup> See Kate Levine, *The Ultimate Conflict: Local Prosecutors Should Not Decide Whether to Criminally Charge Police Officers Like Ferguson’s Darren Wilson*, SLATE (Sept. 11, 2014), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2014/09/local\\_prosecutor\\_bob\\_mcculloch\\_should\\_not\\_be\\_the\\_one\\_to\\_decide\\_whether\\_to.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2014/09/local_prosecutor_bob_mcculloch_should_not_be_the_one_to_decide_whether_to.html), archived at <https://perma.cc/MLB9-QY8C>.

<sup>278</sup> See DEP’T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 2 (Mar. 4, 2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) [hereinafter FPD REPORT] (observing that “Ferguson’s police department and municipal court practices have sown deep mistrust between parts of the community and the police department, undermining law enforcement legitimacy among African Americans in particular”).

as in Watts forty-nine years earlier, appears to have been the fuel ignited by the grand jury's sparks.

### C. *Burn, Baby, Burn!* — Part 2

Following Robert McCullough's announcement that Officer Wilson would not be charged, Michael Brown's stepfather, Louis Head, angrily shouted to a crowd of protesters: "Burn this motherf---er down! . . . Burn this bitch down!"<sup>279</sup> Although it is not possible to directly link the burning, looting, and violence that later ensued to Mr. Head's comments,<sup>280</sup> his inflammatory rhetoric certainly did nothing to curtail it and harkened back to the Watts riots' rallying cry of "burn, baby, burn!"<sup>281</sup> Throughout the night of November 24 and into the next day, fires were set, stores looted, gunshots heard, and bricks hurled.<sup>282</sup> The damage, injuries, and arrests paled in comparison to the Watts riots and other instances of civil disturbance in the late 1960s, but the parallels were nonetheless dramatic.<sup>283</sup>

While the white public's response was not nearly as vitriolic and condemning as that related to Watts, there were familiar calls for more law and order, finger-pointing at the black community for demonstrating a lack of personal responsibility,<sup>284</sup> and defensive praise of police officers for the hard work they perform. Notably, however, the law-and-order refrain was by no means uniform from conservatives. A number of high-profile Republican leaders broke rank and seemed to side with the protesters, especially concerning the harsh police response to the unrest.<sup>285</sup> For example, Republican Senator Rand Paul, after the rioting in the immediate aftermath of Brown's

<sup>279</sup> Ray Sanchez, *Michael Brown's Stepfather at Rally: "Burn This Bitch Down!"*, CNN (Dec. 8, 2014), <http://www.cnn.com/2014/11/25/us/michael-brown-stepfather-video/>, archived at <https://perma.cc/EE5X-JZVE>.

<sup>280</sup> See Sarah Larimer, *Stepfather of Michael Brown Apologizes for Rant After Grand Jury Announcement*, WASH. POST (Dec. 3, 2014), [https://www.washingtonpost.com/news/post-nation/wp/2014/12/03/stepfather-of-michael-brown-apologizes-for-rant-after-grand-jury-announcement/?utm\\_term=.ac277a6eb624](https://www.washingtonpost.com/news/post-nation/wp/2014/12/03/stepfather-of-michael-brown-apologizes-for-rant-after-grand-jury-announcement/?utm_term=.ac277a6eb624), archived at <https://perma.cc/KZ78-86DX> (noting Louis Head's apology for his rashness and disclaiming of any responsibility for the unrest that followed, attributing that largely to the state's militaristic preparation for possible unrest).

<sup>281</sup> See *supra* Part II. B. Cf. *supra* text accompanying note 213.

<sup>282</sup> See Yamiche Alcindor, et al., *Ferguson Burning After Grand Jury Announcement*, USA TODAY (Nov. 25, 2014), <http://www.usatoday.com/story/news/nation/2014/11/24/ferguson-grand-jury-deliberations/19474907/>, archived at <https://perma.cc/SJ9D-M965>.

<sup>283</sup> See, e.g., Chuck Henson, *Reflections on Ferguson: What's Wrong with Black People?*, 80 MO. L. REV. 1013, 1013–14 (2015), (observing parallels between 1967 riots in Newark and Detroit and Ferguson).

<sup>284</sup> See FPD REPORT, *supra* note 278, at 5 (observing that Ferguson "officials have frequently asserted that the harsh and disparate results of [its] law enforcement system do not indicate problems with police or court practices, but instead reflect a pervasive lack of 'personal responsibility' among certain segments of the community").

<sup>285</sup> See Jonathan Martin & Ashley Parker, *Law and Order Issues, Once G.O.P.'s Strength, Now Divide the Party*, N.Y. TIMES (Dec. 24, 2014), <http://www.nytimes.com/2014/12/25/us/politics/law-and-order-issues-once-gops-strong-suit-now-divide-party.html>, archived at <https://perma.cc/C2YG-JG8F> (noting that some Republican leaders have taken a softer stance on stressing "law and order" in light of recent police shootings of unarmed black men).

shooting, wrote that: “There should be a difference between a police response and a military response. The images and scenes we continue to see in Ferguson resemble war more than traditional police action.”<sup>286</sup>

Such sympathetic responses, though, may have been politically inspired, designed to curry favor with groups that now represent a very sizable potential voting bloc. In addition, given the decline in crime statistics in recent years, it is now less risky to take a position that bucks the law-and-order mainstream.<sup>287</sup>

Nevertheless, there were many who still vigorously embraced the politics of law and order, and their number and volume has increased over the two years since the initial Ferguson rioting, engendered by more police shootings and more violent responses. For instance, after the Baltimore riots — which occurred in response to the April 2015 death of Freddie Gray while in the custody of the Baltimore police<sup>288</sup> — condemnation of the burners and looters was fierce and unapologetic. Though most acknowledged the troubling circumstances surrounding Gray’s death, they expressed no tolerance whatsoever for the violent community reaction that ensued and sternly condemned the lack of respect for law and order. Then-Republican presidential hopeful Ben Carson lamented the inanity of rioting and called upon parents to take control of their children and “not allow them to be exposed to the dangers of uncontrolled agitators on the streets.”<sup>289</sup> Even President Obama had strong words for the rioters: “There is no excuse for that kind of violence . . . . It’s counterproductive. . . . They’re not protesting. They’re not making a statement . . . . They’re stealing . . . they’re committing arson.”<sup>290</sup>

And as time has passed, leaders have progressively moved towards making direct appeals for the restoration of law and order. They have also switched the focus of the narrative somewhat to defense of law enforcement, aided by acts of violence senselessly carried out against random police of-

<sup>286</sup> Jeremy W. Peters, *Missouri Unrest Leaves the Right Torn Over Views on Law vs. Order*, N.Y. TIMES (Aug. 14, 2014), <http://www.nytimes.com/2014/08/15/us/politics/seeing-missouri-unrest-views-begin-to-shift-among-conservatives.html>, archived at <https://perma.cc/L6ZV-G6E2>; see also Peter Beinart, *This Time It’s Different: The Conservative Response to Ferguson*, THE ATLANTIC (Aug. 14, 2014), <http://www.theatlantic.com/politics/archive/2014/08/this-time-its-different-the-conservative-response-to-ferguson/378546/>, archived at <https://perma.cc/6UAM-5CGL>.

<sup>287</sup> See *id.* (observing that it is now possible to safely express skepticism regarding hardline law-and-order policies because of the decline in crime).

<sup>288</sup> See Tom Foreman Jr. & Amanda Lee Myers, *Baltimore Hit by Riots; National Guard is Called In*, BOST. GLOBE (Apr. 27, 2015), <https://www.bostonglobe.com/news/nation/2015/04/27/baltimore-officers-hurt-mall-riot-police-say/gu2meSJ03xADrNHBTumA11/story.html>, archived at <https://perma.cc/VG47-LA3J> (discussing the looting, burning, and brick throwing that erupted in Baltimore after the funeral for Freddie Gray).

<sup>289</sup> Ben Carson, *Dr. Ben Carson: Baltimore Rioting Is “Truly Senseless,”* TIME (Apr. 28, 2015), <http://time.com/3838868/ben-carson-baltimore-riots/>, archived at <https://perma.cc/DS6R-TT3Q>.

<sup>290</sup> Maya Rhodan, *President Obama Says There Is ‘No Excuse’ for Violence in Baltimore*, TIME (Apr. 28, 2015), <http://time.com/3838611/president-obama-baltimore-riots-violence/>, archived at <https://perma.cc/G2BK-VECT>.

ficers in retaliation for shootings of black men.<sup>291</sup> In September of 2015, Texas Congressman Roger Williams delivered a speech from the floor of the U.S. House of Representatives that harkened back to those made by conservative Southern legislators in the wake of the Watts riots:<sup>292</sup>

We find ourselves asking: When will the rule of law and those who enforce that law, once again, be respected? How many more violent protests and threatening chants will those who bravely wear the badge have to put up with? How much more taunting under the guise of a misleading slogan [“black lives matter”] be [sic] tolerated before community organizers, prominent African American leaders, and democrats at the city, State, and national levels say enough is enough? When will we hear, in unison: “It is not okay to kill police officers?”

Mr. Speaker, my colleagues and I are here this evening . . . to call for the restoration of law and order. We are here to call for the protection of the men and women who put their lives on the line every single day — the ones who chose a profession to help make their neighborhoods safer. . . . Mr. Speaker, their lives matter, too, and all lives matter.<sup>293</sup>

More recently, following the deaths of Alton Sterling in Louisiana and Philando Castile in Minnesota, and the vengeful shootings of Dallas and Louisiana police officers, the politics of law and order squarely reclaimed center stage. On July 11, 2016, then-Republican presidential nominee Donald Trump ripped a page directly out of Richard Nixon’s playbook by declaring himself the “law and order candidate,” maintaining that: “We must maintain law and order at the highest level, or we will cease to have a country, 100 percent. . . . Or we will cease to have a country.”<sup>294</sup>

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<sup>291</sup> See, e.g., Manny Fernandez, et al., *Five Dallas Officers Were Killed as Payback, Police Chief Says*, N.Y. TIMES (July 8, 2016), <https://www.nytimes.com/2016/07/09/us/dallas-police-shooting.html>, archived at <https://perma.cc/J2V5-FRHZ> (observing that the Dallas shooting “was the kind of retaliatory violence that people have feared through two years of protests around the country against deaths in police custody”).

<sup>292</sup> See *supra* text accompanying notes 85–87.

<sup>293</sup> 114 CONG. REC. H5808 (daily ed. Sept. 8, 2015) (statement of Rep. Williams).

<sup>294</sup> Wilkie, *supra* note 20. See also Michael Barbaro & Alexander Burns, *It’s Donald Trump’s Convention. But the Inspiration? Nixon.*, N.Y. TIMES (July 18, 2016), <http://www.nytimes.com/2016/07/19/us/politics/donald-trump-portrayed-as-an-heir-to-richard-nixon.html>, archived at <https://perma.cc/AM5J-G85R> (noting the undeniable similarities between Trump’s campaign rhetoric and that of Richard Nixon in 1968). Following President Trump’s victory, concerns were voiced regarding the prospect of a return to an emphasis on “law and order.” See, e.g., Yamiche Alcindor, *Minorities Worry What a “Law and Order” Donald Trump Presidency Will Mean*, N.Y. TIMES (Nov. 11, 2016), <http://www.nytimes.com/2016/11/12/us/politics/minorities-worry-what-a-law-and-order-donald-trump-presidency-will-mean.html>, archived at <https://perma.cc/892G-LF3P>; Kevin Johnson, *With a President Trump, and Emphasis on ‘Law and Order,’ U.S.A. TODAY* (Nov. 9, 2016), <http://www.usatoday.com/story/news/politics/elections/2016/11/09/donald-trump-criminal-justice/93550162/>, archived at <https://perma.cc/T4RY-GAZW>.

Demonstrably, in terms of the appeal of resorting to law and order in response to urban violence and unrest, little appears to have changed since the 1960s. The same can be said for the problems that the Department of Justice found to be at the core of the turbulence in Ferguson.

#### *D. Federal Response: The DOJ Investigation*

In September 2014, the Civil Rights Division of the DOJ commenced an investigation of the FPD to determine whether it was engaged in a pattern or practice of conduct towards African-American citizens that violated the Constitution and federal law.<sup>295</sup> The DOJ ultimately concluded that the FPD, in conjunction with the city's municipal court system, had, over an extended period of time, exhibited patterns of behavior that violated the First, Fourth, and Fourteenth Amendments.<sup>296</sup> Specifically, the DOJ found that an over-emphasis on revenue generation, rather than public safety, contributed significantly to the FPD's unconstitutional conduct.<sup>297</sup> Furthermore, the practices of the FPD and the municipal courts were found to reflect and enhance the "existing racial bias" that permeated Ferguson's law enforcement system.<sup>298</sup> The parallels between the 1965 Clark Report and the DOJ's findings and recommendations for reform are impossible to ignore.

Most telling, the DOJ's Report found — as Ramsey Clark had with Watts — that there was considerable mistrust in Ferguson between the black community and the FPD, which undermined law enforcement's legitimacy.<sup>299</sup> The lack of trust was further found to be longstanding and primarily "attributable to Ferguson's approach to law enforcement."<sup>300</sup> In particular, the DOJ's Report stated that its "investigation showed that the disconnect and distrust between much of Ferguson's African-American community and FPD is caused largely by years of the unlawful and unfair law enforcement practices by Ferguson's police department and municipal court."<sup>301</sup> Notably, even the FPD and other city officials acknowledged the "deep divide between [the] police and . . . black residents."<sup>302</sup>

As in Watts, the DOJ found evidence of a pattern of overly-aggressive police practices disparately directed towards African-American residents of Ferguson.<sup>303</sup> Specifically, almost 90% of documented instances of the use of

<sup>295</sup> See FPD REPORT, *supra* note 278, at 1.

<sup>296</sup> See *id.*

<sup>297</sup> See *id.* at 2.

<sup>298</sup> *Id.*

<sup>299</sup> See *id.*

<sup>300</sup> *Id.* at 5.

<sup>301</sup> *Id.* at 79.

<sup>302</sup> *Id.* at 80. Ferguson's Mayor admitted "that there is 'clearly mistrust' of FPD by many community members, including a 'systemic problem' with youth not wanting to work with police." *Id.*

<sup>303</sup> See *id.* at 28. For specific examples of brutality exhibited by FPD officers, see *id.* at 29–38.

force by the FPD were against members of the black community.<sup>304</sup> A pointed example of abusive force by the FPD is its use of canines in unwarranted situations, exclusively against African-Americans.<sup>305</sup> The FPD's own records reveal that "canine officers use dogs out of proportion to the threat posed by the people they encounter."<sup>306</sup> As further described in the Report, "FPD officers' use of canines reflects a culture in which officers choose not to use the skills and tactics that could resolve a situation without injuries, and instead deploy tools and methods that are almost guaranteed to produce an injury of some type."<sup>307</sup>

Apart from the discriminatory pattern of physically abusive behavior by the FPD, the DOJ found that the general treatment of black residents reflected a level of disrespect that aggravated the tension and mistrust between police officers and the community. The DOJ stated that: "In the documents we reviewed, the meetings we observed and participated in, and in the hundreds of conversations Civil Rights Division staff had with residents of Ferguson and the surrounding area, many residents, primarily African-American residents, described being belittled, disbelieved, and treated with little regard for their legal rights by the [FPD]."<sup>308</sup>

In terms of confrontations between the FPD and Ferguson residents, the Report documented a longstanding propensity of officers to escalate encounters when they perceived subjects to be disobeying their orders or resisting arrest. These escalations disproportionately and overwhelmingly affected black citizens.<sup>309</sup> Furthermore, the Report found there to be a significant disparate impact on African-Americans in Ferguson in terms of encounters with the police.<sup>310</sup> The evidence gathered demonstrated that from 2012 to 2014, "African Americans accounted for 85% of FPD's traffic stops, 90% of FPD's citations, and 93% of FPD's arrests," despite comprising only 67% of the city's population.<sup>311</sup> In addition to the palpable unequal impact, the DOJ's investigation also uncovered ample evidence of racial bias and stereotyping by members of the FPD.<sup>312</sup> Moreover, "[t]his evidence . . . , together with evidence that Ferguson has long recognized but failed to cor-

<sup>304</sup> See *id.* at 28.

<sup>305</sup> See *id.* at 31 (noting that "in every canine bite incident for which racial information is available, the subject was African American").

<sup>306</sup> *Id.* at 31.

<sup>307</sup> *Id.* at 33.

<sup>308</sup> *Id.* at 79. Cf. *supra* note 138 and accompanying text (noting the non-physical, demeaning treatment to which black residents of Watts were subjected).

<sup>309</sup> See FPD REPORT, *supra* note 278, at 28 ("Many officers are quick to escalate encounters with subjects they perceive to be disobeying their orders or resisting arrest."); see also *id.* at 26 ("That FPD officers believe criticism and insolence are grounds for arrest, and that supervisors have condoned such unconstitutional policing, reflects intolerance for even lawful opposition to the exercise of police authority.").

<sup>310</sup> See *id.* at 62 ("African Americans experience disparate impact in nearly every aspect of Ferguson's law enforcement system.").

<sup>311</sup> *Id.*

<sup>312</sup> See *id.* at 71 ("Our investigation uncovered direct evidence of racial bias in the communications of influential Ferguson decision makers. In email messages and during inter-



rect the consistent racial disparities caused by its police and court practices” led the DOJ to conclude “that the discriminatory effects of Ferguson’s conduct are driven at least in part by discriminatory intent in violation of the Fourteenth Amendment.”<sup>313</sup>

Given the DOJ’s exclusive focus on issues related to law enforcement in Ferguson, it did not directly address the source of the civil unrest that occurred in the wake of Michael Brown’s shooting. Nevertheless, it is clear that, as in Watts, toxic police-community relations contributed substantially to the rioting.<sup>314</sup> These relations inevitably created feelings of despair and diminished self worth. When combined with the same underlying problems present in 1965-Watts — namely, poverty, unemployment, poor education, and a sense of alienation<sup>315</sup> — it should come as little surprise that an act of police violence against an unarmed black man that goes unpunished, whether justified or not, would generate a similar community response in 2014.

The DOJ’s findings regarding the FPD led it to proffer a number of recommendations for reform, which were later embodied in a federal Consent Decree agreed to by the City of Ferguson. The essence of many of these proposals could have been lifted from recommendations contained in the Clark Report.

The most dramatic example, however, relates to the emphasis in both reports on the critical importance of establishing a culture of community policing. In this regard, the Clark Report called for, among other things, the “[c]ultivation of programs designed to provide broad and frequent social contact between citizens and individual policemen”<sup>316</sup> and human relations training of police officers to enable them to better understand and empathize with the community they served.<sup>317</sup> The DOJ’s Report recommended that the FPD “increase opportunities for officers to have frequent, positive interactions with people outside of an enforcement context, especially groups that

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views, several court and law enforcement personnel expressed discriminatory views and intolerance with regard to race, religion, and national origin.”).

<sup>313</sup> *Id.* at 52.

<sup>314</sup> See Elijah Anderson, *What Caused the Ferguson Riot Exists in so Many Other Cities, Too*, WASH. POST (Aug. 13, 2014), <https://www.washingtonpost.com/posteverything/wp/2014/08/13/what-caused-the-ferguson-riot-exists-in-so-many-other-cities-too/>, archived at <https://perma.cc/ZR6Q-YLV3> (maintaining that “[u]nder authoritarian oversight and normalized police harassment, a generation of young people were bound to get fed up and respond with the violence and turmoil we are witnessing in Ferguson”).

<sup>315</sup> See Gerald Early, *Why Ferguson was Ready to Explode*, TIME (Aug. 14, 2014), <http://time.com/3111727/ferguson-missouri-michael-brown-hyper-segregated/>, archived at <https://perma.cc/3QK9-4M7K>. Cf. Henson, *supra* note 283, at 1013–14 (observing that there remains a “reservoir of underlying grievances” in black communities, including, most prominently, “police practices and underemployment or unemployment”) (internal citations omitted).

<sup>316</sup> CLARK REPORT, *supra* note 12, at 51.

<sup>317</sup> See *id.* at 60 (observing that “[w]hile such training cannot guarantee a reduction in the conflict between police and all segments of the Negro community, experience shows that it can make a contribution to the lessening of tensions and increased respect and support for police”).

have expressed high levels of distrust of police.”<sup>318</sup> The Report also expressed the need for police training in “crime-prevention, officer safety, and anti-discrimination advantages of community policing.”<sup>319</sup>

At their cores, both Reports expose the existence of an endemic and debilitating ethos of distrust between the black community and law enforcement. The Clark Report proposed methods for alleviating this fundamental concern, not only in South Los Angeles, but also in urban areas throughout the country. The fact that the DOJ is singing the same tune in 2015 is disheartening, to say the least, but more ominously, it demonstrates the powerful preemptive effect of the politics of law and order.

## VI. CONCLUSION: LAW AND ORDER IS THE PROBLEM, NOT THE SOLUTION

Law and order today remains a code phrase that, to many, connotes legal control of the less powerful, the marginalized — by and large, black people. Contemporary calls for such control are not far removed from other forms of socioeconomic and political restraint employed throughout history by the white majority against African-Americans. Slavery and Jim Crow clearly represented the politics of law and order by another name.<sup>320</sup> In the aftermath of the Watts riots, the palpable embodiment of the mantra was political condemnation of black civil disobedience, accompanied by calls for stronger law enforcement measures to legally constrain that behavior as well as the uncivil disobedience being employed by black rioters.

The law-and-order rhetoric evaded the underlying problems that plagued black America and sustained the combustible mixture that recurrently erupted into urban unrest. It was easier and more expedient politically to focus on and exploit the symptom rather than work to provide a cure. It was also a familiar historical pattern. Whenever blacks were perceived as getting out of line, the proverbial response was to crack down. When slaves rebelled, the whips were cracked. When Jim Crow was breached, brutal beatings and jail soon followed. When black urban frustration manifested itself in rioting, a paramilitary show of force was in order to quell the disturbance and to deter similar outbreaks in the future. In short, when African-Americans behave in a manner that can be characterized as unlawful, the habitual response has been to emphasize and reinforce the concept of law and order.<sup>321</sup>

Ramsey Clark understood, perhaps like no other white person, the absurdity and futility of this approach. In investigating the Watts riots, he lis-

<sup>318</sup> FPD REPORT, *supra* note 278, at 90.

<sup>319</sup> *Id.*

<sup>320</sup> See ALEXANDER, *supra* note 15, at 22–35.

<sup>321</sup> See generally 13TH (Netflix 2016) (chronicling the various methods by which blacks have been subjugated throughout American history, including the nation’s approach to criminal justice).

tened to black people and learned of the debilitating hopelessness and despair about which President Johnson had waxed so eloquently during his Howard commencement address. Clark felt their pain and alienation and recognized that the devastating combination of unemployment, poor education, rampant poverty, and antagonistic police-community relations were the real problems — not the looting or burning or acts of civil disobedience. The latter were simply efforts to be heard. Law and order, therefore, served only to silence the very purpose behind the unrest.

The Clark Report issued a daunting prescription for the ills of Watts and black America in general. To meaningfully address the urban discontent, everyone — local and national political leaders, civic organizations, white people, and black people — would have to be willing to work together to undertake the massive, sustained effort needed. More than anything else, what was required was a wholesale commitment to making things right, or at least better, for African-Americans. And, as the Kerner Commission pointedly stressed, this entailed white America being willing to acknowledge and accept responsibility for the pernicious effect of racism on blacks, which was viewed as a fundamental component of continuing urban distress.

The Clark Report was suppressed and the Kerner Report quickly became a historical relic. Working to cure a disease that might ultimately prove incurable was not a recipe for election to high office. Re-characterizing the malady as a menace and calling for its containment was much more electorally savvy. And that is the path that national leader after national leader has taken, from President Johnson through a succession of subsequent Presidents and candidates. The politics of law and order, thereby stagnated any hope for progress, and America today is essentially where it was fifty-one years ago.

Men and women of color continue to be unjustly targeted and brutalized by law enforcement. When outrage is voiced and “black lives matter” is chanted in response to the law-and-order chorus, many still refuse to listen. Instead — missing the point yet again — law-and-order politicians reflexively counter with “all lives matter,” highlighting the fact that they are unwilling to listen.<sup>322</sup> And so the status quo marches on.

At the conclusion of the Kerner Report, the Commission included a quote from the testimony of noted African-American psychologist Dr. Kenneth Clark in which he compared the history of urban unrest and response in America to Alice in Wonderland:

I read that report . . . of the 1919 riot in Chicago, and it is as if I were reading the report of the investigating committee on the Harlem riot of '35, the report of the investigating committee on the Harlem riot of '43, the report of the McCone Commission on the Watts riot [of '65].

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<sup>322</sup> See, e.g., *supra* text accompanying note 293.

I must again in candor say to you members of this Commission — it is a kind of Alice in Wonderland — with the same moving picture re-shown over and over again, the same analysis, the same recommendations, and the same inaction.<sup>323</sup>

His assessment is a powerful indictment of the effect of the politics of law and order. They have kept American society stationary and the DOJ's Report does not offer much in the way of contemporary hope. If anything, it only serves to confirm the societal stagnation.

Is change possible, or is America hopelessly destined to have the present continue to repeat the past when it comes to race relations? History suggests the latter, but it also reveals that if there is to ever be even a glimmer of optimism, political leaders must finally acknowledge the wisdom within and accept the challenge posed by the Clark Report. They need to recognize the importance of giving a real “voice” to the unheard and accept the immense difficulty of the vital task ahead — the necessity for patient, determined, and massive effort.

For race relations to genuinely progress in America, leaders must commit with compassion and courage to engaging in the hard work that is necessary to do what is right.<sup>324</sup> More importantly, however, individual citizens must take stock of who they are and what they believe, seek to understand one another, and disregard their differences to work together side by side. As Ramsey Clark simply and eloquently put it in reference to Watts:

Ultimately, the problems [that] exploded into violence in Los Angeles are problems of how human beings treat one another, not only through the institutions of their society, but individually. Hope for the future rests on the good will and hard work of all our people.<sup>325</sup>

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<sup>323</sup> KERNER REPORT, *supra* note 7, at 483.

<sup>324</sup> In remarks following the Baltimore riots in April of 2015, President Obama ventured off the familiar path and candidly stated what he felt needed to be done in order to address the ills at the heart of such urban unrest, while at the same time acknowledging the countervailing attractiveness of a law and order response:

But if we really want to solve the problem, if our society really wanted to solve the problem, we could. It's just it would require everybody saying this is important, this is significant – and that we don't just pay attention to these communities when a CVS burns, and we don't just pay attention when a young man gets shot or has his spine snapped. We're paying attention all the time because we consider those kids our kids, and we think they're important. And they shouldn't be living in poverty and violence. . . .

But I think we all understand that the politics of that are tough because it's easy to ignore those problems or to treat them just as a law and order issue, as opposed to a broader social issue.

President Barack Obama, Remarks by President Obama and Prime Minister Abe of Japan in Joint Press Conference (April 28, 2015), <https://www.whitehouse.gov/the-press-office/2015/04/28/remarks-president-obama-and-prime-minister-abe-japan-joint-press-confere>, archived at <https://perma.cc/B7GL-67LG>.

<sup>325</sup> CLARK REPORT, *supra* note 12, at 3.

If this simple truth is not recognized and embraced, especially by America's leaders, the lyrics may change, but the song will remain the same. Politicians must resist the expedient allure of the law-and-order melody so they can listen to the voices of the unheard. Only then will they be able to compose a more optimistic and constructive anthem.