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tional entry."[88] Admission under this provision contemplates eventual adjustment of status to permanent residence and the eventual replacement of the parole method in refugee cases.[89] It is limited, however, to immigrants subject to the annual quota and as such is inapplicable to native Cubans, who are by definition "special immigrants"[90] to which class the quota does not apply.[91]

As a result, the entry of the Cuban refugee will continue to be facilitated through parole and, as such, the case law surrounding the narrow form of parole will continue to have an inherent legal affinity for the refugee-parolee's status and its incidents in immigration litigation. It can only be urged, as a final word, that the technical parolee status not be permitted to obscure the use to which parole has been put in this context. Bearing this in mind, the rights and liabilities of the Cuban refugee should be determined through consideration of the expectations of the person upon whom this technical status has been impressed as a matter of administrative convenience.

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THE GHETTO DISORDERS: A RECONSIDERATION OF POST-RIOT REMEDIES

In August 1965, a routine arrest exploded into one of the most violent and devastating riots in recent decades. The Watts riot was a harbinger of the outbreaks of the three succeeding years — outbreaks that have seriously threatened the economic and social fabric of the American community. More than 164 disorders swept the nation's cities during the first nine months of 1967.[1] The holocaust in Los Angeles, which caused thirty-four deaths, 773 injuries, and $40 million in insured property damage,[2] found its sequel in Detroit where the lawlessness caused thirty-nine deaths, over 2,000 injuries, over 1,250 fires, more than 5,000 arrests, and necessitated a riot patrol force of 14,000 men.[3] Insured property losses were estimated at $33 million.[4] Uninsured property losses were valued at $45 million.[5] The death of Dr. Martin Luther King in April 1968, engendered even greater civil disruption, this

88. 8 U.S.C. §1153 (a) (7) (Supp. II 1966), *amending* 8 U.S.C. §1153 (1964).
89. *Id.*; *see* C. GORDON & H. ROSENFIELD, *supra* note 11, at §2.27h (2).
90. 8 U.S.C. §1101 (a) (27) (Supp. II, 1966), *amending* 8 U.S.C. §1101 (a) (27) (1964).
91. C. GORDON & H. ROSENFIELD, *supra* note 11, at §2.20.

1. NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 65 (Gov't ed. 1968).
2. Sengstock, *Mob Action: Who Shall Pay the Price?*, 44 U. DET. J. URBAN L. 407 (1967).
3. N.Y. Times, July 30, 1967, §4, at 1, col. 2.
4. National Advisory Commission on Civil Disorders, Report 306 n.17 (Gov't ed. 1968).
5. *Id.*

time on a national scale. In the ten days after the death of that proponent of nonviolence, 110 cities in thirty states were torn by riots and destruction.[6]

The social conditions that spawned such massive disorders have received the considerable, if not exclusive, attention of various articles and reports in an effort to ascertain the causes of the riots.[7] It is not the purpose of this note to suggest solutions to the underlying national dilemma. Rather, it will deal with the host of the problems created by riots – problems that, in most cases, demand a legal solution. The tone of reaction to the unprecedented damage to residents of the inner city is one of urgency. Yet most of the proposals to aid these people remain muddled and ill-defined. The maze of legal issues that stands at the threshold of post-riot reconstruction must be traversed quickly, avoiding as many blind passages as possible. To whom are the innocent victims of the looting and burning to look for compensation and new capital? From what sources will they draw the incentive to rebuild? Conversely, who shall bear the burden of such compensation? This note will consider existing and potential remedies for those who have sustained personal injury and property damage as a result of the riots. It will necessarily examine criminal and civil actions against rioters, but will focus upon the feasibility of actions against municipalities, the legal impact of the destruction upon the insurance industry, and finally, the role of the federal government in making remedies available to victims of mass violence.

Criminal and Civil Actions

Perhaps the most evident recourse lies in actions against the rioters themselves, by the state and the victims. Penalties for mob violence existed at common law,[8] and presently statutes in all but eight jurisdictions offer broad substantive definitions of the crime.[9] The crime of riot may consist of many separate offenses, from disturbing the peace to burglary and arson. Although the breadth of these enactments would apparently facilitate criminal convictions, there is a difficulty in successfully applying such laws to the unprece-

6. N.Y. Times, April 10, 1968, at 34, col. 1. In Washington, D. C., after five days of rioting nine persons had died, nearly 1,110 had been injured, and over 6,100 had been arrested. More than 900 fires had destroyed many blocks of Washington's Negro area. Washington Post, April 9, 1968, at 11, col. 1. The estimated damage to property was $13.3 million. Washington Post, April 10, 1968, at 12, col. 1. Baltimore, Maryland, experienced similar conditions and damage. The number of federal troops assigned to both cities during the disorders was in excess of 25,000. *Id.* at 4, col. 1; *Id.* at 8, col. 1.

7. *See, e.g.*, Governor's Commission on the Los Angeles Riots, Violence in the City – An End or a Beginning (1965); National Advisory Commission on Civil Disorders, Report (Gov't ed. 1968); 2 American Behavioral Scientist, March-April 1968. *But see Survey – The Long, Hot Summer: A Legal View*, 43 Notre Dame Law. 913 (1968).

8. Cohen v. State, 173 Md. 216, 195 A. 532 (1937), *cert. denied*, Cohen v. Maryland, 303 U.S. 660 (1938).

9. *See, e.g.*, Fla. Stat. §870 (1967). For a compilation of riot statutes from all jurisdictions, see *Hearings on H.R. 12328, H.R. 12605, H.R. 12721, H.R. 12557 Before Subcomm. No. 4 of the House Comm. on The District of Columbia*, 90th Cong., 1st Sess. (1967). The eight jurisdictions that as of October 1967 had no provisions for the crime of riot were Maryland, Massachusetts, Michigan, Mississippi, New Mexico, North Carolina, Tennessee, and Wisconsin.

dented size and scope of the ghetto riots. One course of the difficulty is historical. The law has long demanded clear identification of the accused and substantial proof of his guilt. A significant problem in the recent riots has been satisfying these two requirements. Inability to arrest the vast number of rioters and to distinguish always between bystanders and participants makes it difficult, if not impossible, to link a certain individual with a specific criminal act.[10] Instead, mass disorders tend to be viewed as an entity, a single act of violence, permitting a degree of anonymity to the individual rioters.

Except for possible solace of retribution, criminal convictions in themselves offer no real remedy to the injured victim. However, in two areas they may lead to more substantial relief. Statutes in several jurisdictions permit compensation to otherwise helpless victims of violent crimes, and a conviction of the wrongdoer would aid the victim in demonstrating his right to compensation.[11] A second possibility is that the offender may be required as a condition of his probation to make restitution to the victim. The Federal Probation Act[12] is presently the only federal or state statute that takes this approach to compensation of injured victims. However, such a remedy is limited by the financial capabilities of the probationer. In all likelihood, most of the rioters are judgment-proof, and thus the efficacy of restitution as a condition of probation is largely illusory. Criminal convictions may serve as deterrents to future violence but will hardly aid the homeless and jobless in areas already stricken by riots.

The success of civil actions is also hampered by the procedural inhibitions accompanying the criminally derived actions discussed above. There is no specific action at common law for damages suffered in a riot.[13] The plaintiff must proceed upon tort principles of assault, battery, trespass, and conversion. A participant in or instigator of a riot, however, cannot recover for property destroyed by others in a mob.[14] Again the difficulties of proof are apparent. In the ghettos where many inhabitants are themselves rioters, it is difficult to ascertain who is or is not part of the mob. Certainly there should be no legal presumption of criminal conduct on the part of the residents. Yet an affirmative defense of participation by the plaintiff would shift the burden of proof to the plaintiff, and under the broad scope of the riot statutes[15] he may well be considered a participant for civil and criminal purposes.

10. This dilemma was illustrated after the Detroit riot when the city's police commissioner was questioned as to the possible arrest of Negroes who found themselves in possession of televisions and other merchandise. His reply was: "I don't see how we can, we can't prove anything." N.Y. Times, July 28, 1967, at 10, col. 1.

11. *See* text following *infra* subheading MUNICIPAL AND STATE LIABILITY.

12. 18 U.S.C. 3651 (1964). The statute provides in part: "While on probation and among the conditions thereof, the defendant . . . . May be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which the conviction was had; and may be required to provide for the support of any persons, for whose support he is legally responsible." The statute has been employed mainly in tax fraud cases where the Government is the aggrieved party and may seek restitution. *E.g.*, United States v. Stoehr, 196 F.2d 276 (3d Cir.), *cert. denied*, 344 U.S. 826 (1952).

13. S. Birch & Sons v. Martin, 244 F.2d 556 (9th Cir.), *cert. denied*, 355 U.S. 837 (1957).

14. Wing Chung v. Los Angeles, 47 Cal. 531 (1874).

15. Many states, such as Florida, have statutes declaring that one who refuses to aid the

It has been held that all persons responsible for mob violence are liable for the natural consequences of their acts.[16] Thus, a plaintiff could theoretically bring an action against any of the rioters. In fact, he may go so far as to sue a list of all persons arrested during the violence. The size of the group, however, would make the suit expensive and impractical. The causation question may raise additional difficulties. While successful employment of the joinder device may grant an individual plaintiff some compensation, satisfaction of the judgment would vary inversely with the number of other plaintiffs intent upon a civil action and with the solvency of the defendants.

In a civil suit, the question of damages must also be considered. Such damages are governed by tort principles and may even include punitive damages if the rioting offender has not been subjected to prosecution.[17] The usual allegations of injury and damages for temporary loss of employment, loss of transit to and from work, and the reasonable value of property destroyed would permit adequate recovery for those injured were it not that most defendants are judgment-proof. This very practical consideration may explain the infrequency of civil cases evolving from riots. It undoubtedly emphasizes that tort actions alone are insufficient to compensate the injured plaintiff, especially in view of the extent mass violence can occur in the cities today.

MUNICIPAL AND STATE LIABILITY

Many city charters, such as that of New York City,[18] prescribe the duty of the police to suppress riots. The real dilemma of the police and municipal governments has been to fulfill this rather vague obligation to keep the peace and nevertheless remain within the sphere of permissible and reasonable force in quelling the rioters.[19] After the Detroit riots, critics of the police department charged that the disorder raged out of control because the police were under orders, for nearly two days, to hold their fire.[20] On the other hand, a commission on racial disorders in New Jersey charged that police and National Guardsmen in Newark had used "excessive and unjustified force" against Negroes during the riots.[21] While attitudes regarding effective riot control may continue to conflict, from a strictly legal standpoint, failure by police to prevent civil disorder suggests negligence on the part of the municipality. In his search for a legally responsible defendant, the plaintiff thus appears to have a possible recourse against the municipality for negligence. However, recovery may be effectively precluded by the doctrine of state and municipal sovereign immunity.

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police in suppressing a riot is guilty of the offense also. FLA. STAT. §870.04 (1967). *See also Hearings, supra* note 9.

16. Calcutt v. Gerig, 271 F. 220 (6th Cir. 1921).

17. Butte Miners' Union v. City of Butte, 58 Mont. 391, 194 P. 149 (1920).

18. NEW YORK CITY CHARTER §453 (1938). It states in part: "The police department shall have the power and it shall be their duty to preserve peace . . . suppress riots . . . ."

19. NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 157 (Gov't ed. 1968).

20. N.Y. Times, July 28, 1967, at 10, col. 1.

21. St. Petersburg [Fla.] Times, Feb. 11, 1967, at 1, col. 1.

English courts first applied the concept of sovereign immunity to local governmental bodies in 1788,[22] reasoning that "it is better that an individual should sustain an injury than that the public should suffer an inconvenience."[23] The historical justification for such a holding was grounded upon the King's, and thus the government's, divine infallibility and the concept that the sovereign cannot impose liability upon itself.[24] This doctrine has been widely accepted by American courts[25] until recently, when many jurisdictions found that immunity from all claims was often too harsh on those injured by the government's tortious acts. The movement away from governmental immunity in these jurisdictions has been guided by both the legislatures and the courts. Influenced by the Federal Tort Claims Act,[26] seven states have enacted statutes that waive immunity for the state's wrongful or negligent exercise of nondiscretionary functions.[27] But these enactments do not specifically cover municipal liability and, therefore, are inapplicable to most of the injuries resulting from ghetto disorders.

Judicial action in recent years has been more closely aimed at the divestment of municipal immunity. A 1957 Florida case[28] has led to decisional repudiation of the doctrine in a substantial minority of jurisdictons.[29] Yet no court has applied this new common law rule to injuries sustained from a riot, and it appears that a plaintiff may be denied recovery on the grounds that the police were executing a discretionary order. As an early opinion observed, recovery from a municipal corporation for riot damage may best be secured by the legislatures and not by the courts.[30]

In many states statutes specifically grant a right of recovery against a municipality for personal injury and property damage caused by a mob. This legislation had its early beginnings in the thirteenth century in the English Statute of Winchester, which compelled inhabitants of the "hundred" to compensate their neighbors who had suffered injury from a riot.[31] The statute was supplemented by enactments in 1714[32] and 1886.[33] Today, such acts have

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22. Russell v. Men of Devon, 2 Term Rep. 671, 100 Eng. Rep. 359 (1788).

23. *Id.* at 362.

24. Legislation, *Communal Liability for Mob Violence*, 49 HARV. L. REV. 1362, 1369 (1936).

25. *E.g.*, Zywicki v. Joseph R. Foard Co., 206 F. 975 (D. Md. 1913).

26. 28 U.S.C. §§1346, 1402, 1504, 2110, 2401-02, 2671-80 (1964).

27. ALASKA STAT. §§09.50.25 to 09.50.300 (1962); HAWAII REV. LAWS §§245A-1 to -17 (Supp. 1965); ILL. ANN. STAT. ch. 85, §§1-101 to 10-101 (Smith-Hurd 1966); KY. REV. STAT. §44.070 (1963); N.C. GEN. STAT. §143-291 (1958); UTAH CODE ANN. §§63-30-1 to 63-30-34 (Supp. 1967); WASH. REV. CODE §4.92.090 (1963) (all governmental immunity waived).

28. Hargrove v. Town of Cocoa Beach, 96 So. 2d 130 (Fla. 1957).

29. *E.g.*, Molitor v. Kaneland Community Unit Dist. No. 302, 18 Ill. 2d 11, 163 N.E.2d 89 (1959), *cert. denied*, 362 U.S. 968 (1960); McAndrew v. Mularchuk, 33 N.J. 172, 162 A.2d 820 (1960); Muskopf v. Corning Hosp. Dist., 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961); Williams v. City of Detroit, 364 Mich. 231, 111 N.W.2d 1 (1961).

30. New Orleans v. Abbagnato, 62 F. 240 (5th Cir. 1894); *accord*, Fette v. City of St. Louis, 366 S.W.2d 446 (Mo. 1963).

31. 13 Edw. 1, c. 2, 3 (1285).

32. English Riot Act of 1714, 1 Geo. 1, c. 5.

33. The Riot Damages Act, 49, 50 Vict., c. 38 (1886).

found legislative approval in fifteen states,[34] and related statutes exist in five other jurisdictions.[35] Generally, the fifteen statutes may be separated into two major groups: four states permit an action for negligence,[36] and eleven make the municipality strictly liable.[37] A second distinction lies in the type of injury compensated: six jurisdictions grant a right of recovery for both personal injury and property damage,[38] while nine states allow recovery for damaged property only.[39] In four states the statutes of limitation are short;[40] nine offer the town a defense that is similar to contributory negligence,[41] but it is no defense that suppression or prevention of damage was impossible because the violence amounted to an insurrection.[42] Eight states explicitly permit subrogation by the municipality.[43] Finally, the United States Supreme Court has held such statutes constitutional, both as to their abrogation of municipal immunity and as to the power of the municipality or county to subject its inhabitants to taxation in order to indemnify the private parties.[44] The disparity of these statutory approaches is self-evident. Combinations of the above distinctions allow the injured plaintiff only limited or no recovery in one jurisdiction and full compensation in another. Nevertheless, they afford the fortunate qualifying plantiff some remedy and form a basis for more substantial legislation. Uniformity of recovery would seem to be a viable goal, as would adoption of the best features of these statutes in other jurisdictions. These considerations have given rise to a proposal from Professor Frank S. Sengstock in the *Journal of Urban Law*:[45]

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34. CONN. GEN. STAT. REV. §7-108 (1958); KAN. GEN. STAT. ANN. §12-201 (1949); KY. REV. STAT. ANN. §411.100 (1963); ME. REV. STAT. ANN. tit. 17, §3354 (1964); MD. ANN. CODE art. 82, §§1-3 (1957); MASS. ANN. LAWS ch. 269, §8 (1965); MO. REV. STAT. §§537.140-160 (1959); MONT. REV. CODES ANN. §11-1503 (1947); N.H. REV. STAT. ANN. §§31:53-55 (1955); N.J. STAT. ANN. §§2A:48:1-7 (1952); N.Y. GEN. MUNIC. LAW §71 (McKinney 1909); PA. STAT. ANN. tit. 16, §11821-26 (1956); R.I. GEN. LAWS ANN. §45-15-13 (1956); S.C. CODE ANN. §16-106-07 (1962); WIS. STAT. ANN. §66-091 (1961).

35. MINN. STAT. ANN. §373.28 (1966); NEB. REV. STAT. §§1001-09 (1943); N.C. GEN. STAT. §162.3 (1952); OHIO REV. CODE §3761.01-10 (Anderson 1965); W. VA. CODE §61-6-12 (1966). The enactments in these five states are directed specifically at lynching.

36. Connecticut, Kentucky, Maryland, New York.

37. Kansas, Maine, Massachusetts, Missouri, Montana, New Hampshire, New Jersey, Pennsylvania, Rhode Island, South Carolina, Wisconsin.

38. Connecticut, Kansas, Maine, Missouri, South Carolina, Wisconsin.

39. Kentucky, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island.

40. Connecticut - 30 days; New Jersey - 3 months; New York - 3 months; Wisconsin - 6 months.

41. Kentucky, Maine, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, South Carolina, Wisconsin.

42. 38 AM. JUR. *Municipal Corporations* §656 (1941).

43. Maine, Massachusetts, Missouri, New Hampshire, New Jersey, Pennsylvania, Rhode Island, South Carolina. Wisconsin permits subrogation by judicial decision. Northern Assurance Co. v. City of Milwaukee, 227 Wis. 124, 277 N.W. 149 (1938).

44. City of Chicago v. Sturges, 222 U.S. 313 (1911); State of Louisiana *ex rel.* Folsom v. Mayor of New Orleans, 109 U.S. 285 (1883).

45. Sengstock, *Mob Action: Who Shall Pay the Price?*, 44 U. DET. J. URBAN L. 407, 411 (1967).

> It is dishonest to fictionalize the injuries of the victims of these riots as decrees of fate. These injuries and the riots that produced them are the proximate results of the failure of the power structures that dominate local and state politics to meet the challenge of the alienated masses of our society with resourceful action prior to the eruption of mob violence. *Victims of mob disorders should be entitled to compensation from local units of government independent of negligence as a matter of absolute liability imposed by statute.*

This proposition is sweeping in scope and may offer the greatest possibility of recovery to the victims of ghetto violence. But it cannot be viewed in a vacuum. The present financial condition of municipal governments, coupled with the enormous number of injuries and amount of damage caused by the riots are necessary considerations that perhaps should temper the breadth of the proposal.

Initially, it cannot be dogmatically declared that the riots are due solely to the negligence of state and local authorities. And, while a sociological approach may make it logically possible to blame governments for the failure to alleviate ghetto conditions, can that failure reasonably create liability that, in effect, *punishes* the municipalities for their neglect of social and economic conditions in the inner city? Certainly there is no clear answer to this question. However, in a search for a remedy for riot victims, it may be dangerous to permit a failure in social duty to give rise to such stringent legal responsibility. Practically, the municipal tax burden of so compensating injured plaintiffs may be unreasonable. If a statute granting a right of recovery to those injured in Detroit made the city strictly liable (1,670,177 population in 1960) and if the tax were a per capita assessment in order to meet the property damage claims conservatively estimated at $45 million,[46] the minimum tax per person would be nearly twenty-seven dollars. Concern over the burden placed upon municipalities is reflected in recent actions limiting or repealing existing statutes. Among the seventeen states that had riot compensation laws in 1965,[47] those in both Louisiana and Illinois have since been repealed.[48] Similarly, the New York statute has been rendered ineffective by the provisions of the New York State Defense Emergency Act.[49] California's statute, which made the municipalities strictly liable, was repealed in 1963.[50] Rejection of the enactments in these states in anticipation of continued violence

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46. NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 66 (Gov't ed. 1968). Early estimates indicated that the damage would exceed $400 million. *Id.*

47. *See* statutes cited *supra* note 34.

48. The Louisiana statute, LA. REV. STAT. §33:5065 (1950), was repealed in 1966. La. Acts 1966, No. 458, §1. The Illinois law, ILL. ANN. STAT. ch. 24, §1-4-8 (Smith-Hurd 1966), was repealed in 1967. Ill. Laws, 1967, act 1283, §1.

49. The New York State Defense Emergency Act ch. 784, §113 (1951), *as amended,* has suspended N.Y. GEN. MUNIC. LAW §71 (McKinney 1909) until 1968. The suspension of the riot liability act was held valid in a suit arising from the mob violence in Rochester in 1964. Mr. Paint Shop, Inc. v. City of Rochester, 44 Misc. 2d 684, 254 N.Y.S.2d 728 (Sup. Ct. 1964).

50. CAL. GOV'T CODE ANN. §§50140-145 (Deering 1962) repealed by Cal Stats. 1963, ch. 1681, §18.

in the cities suggests that the legislatures are presently unwilling to subject their municipal governments to inevitable large-scale losses and perhaps even bankruptcy. Additionally, one purpose of riot compensation is to discourage and prevent mob violence by making the citizen-taxpayer liable for a ratable share of the loss, thus instilling in him a sense of obligation to preserve peace in the community.[51] One means by which this obligation could be discharged is by an adequate and efficient police force to insure against contingencies of violence. Yet police forces in the cities are considered inadequate in proportion to the population.[52] Low salaries have discouraged many persons from engaging in police work and have caused others to leave the forces for more lucrative jobs.[53]

Absolute liability statutes, with corresponding tax burdens on the community should also stimulate individuals to attempt to alleviate conditions from which the riots have begun. The fact remains that the statutes have not fulfilled this objective. Many were enacted before the turn of the century,[54] but the crowded and squalid slum areas have not been improved. Instead, urban areas have degenerated with the influx of more Negroes from the rural South.[55]

Riots are indeed an urban problem, and perhaps it is that relation between cities and violence that permits the initial inference that the city should be legally responsible for damage caused. That inference may have been proper when riots were small and localized,[56] but if someone is at fault for allowing ghettos to exist, it is not necessarily only *today's* urban residents. Furthermore, any restraining influence of rural areas on state government precludes resting blame for inertia solely on city dwellers. Today, the magnitude and number of mass disorders, kindled by complex economic and social conditions, make them a national problem. If existing statutes are to be effective, they must be regarded as part of a remedy to a national problem. They must be viewed in relation to the new type of mass violence and questioned as to their continuing viability and acceptability within the community. Perhaps a municipal government by itself can no longer grapple with the issues of compensation to such a large number of injured individuals.

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51. *E.g.*, Marshall v. City of Buffalo, 50 App. Div. 149, 64 N.Y.S. 411 (1900).

52. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 106 (1967). Today there are 420,000 police working for approximately 40,000 separate agencies throughout the United States. *Id.* at 91. The present police-population ratio is 1.7 per 1,000 inhabitants, a figure that the Commission deems too low to meet the increasing crime rate. *Id.* at 107.

53. *Id.* at 107.

54. Connecticut, 1903; Kansas, 1862; Kentucky, 1893; Maine, 1954; Maryland, 1867; Massachusetts, 1839; Missouri, 1881; Montana, 1895; New Hampshire, 1854; New Jersey, 1877; New York, 1909; Pennsylvania, 1841; Rhode Island, 1896; South Carolina, 1871; Wisconsin, 1863.

55. NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 115-41 (Gov't ed. 1968).

56. An analysis of early cases indicates that the "riots" often consisted of celebrations that grew out of control. City of Madisonville v. Bishop, 113 Ky. 106, 67 S.W. 269 (1902). In many other instances the destruction was caused by small roving bands, strikes, or by mobs with a particular grievance. Palmer v. City of Concord, 48 N.H. 211 (1868); Brightman v. Inhabitants of Bristol, 65 Me. 426, 20 Am. Rep. 711 (1876).

State legislation regarding compensation to victims of violent crime may serve to supplement the limited recovery against municipalities. Although such statutes are far from taking hold throughout the country, California,[57] New York,[58] and Hawaii[59] have initiated the process, based upon similar compensation laws in Great Britain and New Zealand.[60] Theoretically, the enactments recognize a social duty to aid persons who have suffered at the hands of a criminal, and seek to insure that such individuals will again become productive members of the community.[61] Though not designed for riot victims, the most serious weakness of the compensation plans in California and New York has been their funding. California appropriated only 100,000 dollars for the 1965-1966 fiscal year.[62] New York financed its legislation with 500,000 dollars for the 1966-1967 fiscal year.[63] Such minimal allocations would be a little aid to the great majority of riot victims. Moreover, recovery is limited to personal injury,[64] perhaps upon the presumption that the extensive property damage will be sufficiently covered by insurance. Hawaii's compensation plan, based upon proposed federal legislation,[65] offers by far the most significant remedy to victims of crime. Like other states, Hawaii requires proof of the criminal act as a necessary condition to recovery.[66] Contributory negligence is not a bar, but evidence of it reduces the amount of recovery.[67] Unlike New York and California, Hawaii provides reparation for property damage,[68] but only if it ensues from the personal crimes of violence enumerated in the statute.[69] Successful operation of the compensation laws in these three jurisdictions will undoubtedly encourage similar legislation in other

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57. CAL. WELF. & INST'NS CODE §11211 (West 1966).

58. N.Y. EXEC. LAW §§620.35 (McKinney Supp. 1967).

59. Criminal Injuries Compensation Act, Hawaii Laws 1967, act 226.

60. *See* Samuels, *Compensation for Criminal Injuries in Britain,* 17 U. TORONTO L.J. 20 (1967).

61. THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, CRIME AND ITS IMPACT — AN ASSESSMENT 157 (1967).

62. *Id.* at 168.

63. *Id.* at 170.

64. *Id.* at 168, 170.

65. Senator Ralph W. Yarborough introduced the Criminal Injuries Compensation Act, S. 2155, 89th Cong., 1st Sess. (1965). For a text of the pertinent parts of the bill *see* Yarborough, *S. 2155 of the Eighty-Ninth Congress — The Criminal Injuries Compensation Act,* 50 MINN. L. REV. 255, 266-70 (1965). The Hawaiian act is similar in wording and form. It is prefaced by the following statement of purpose: "The purpose of this chapter is to aid victims of criminal acts, by providing compensation for victims of certain crimes or dependents of deceased victims . . . for personal injury or property damage suffered. . . ." *Supra* note 59.

66. Clearly, evidence of an injury proximately caused by a crime would be necessary to weed out spurious claims. But none of the statutes define what would constitute adequate proof of a crime. Since convictions are unlikely in all instances, this burden of proof may give some difficulty to the petitioner. *See* statutes cited *supra* notes 57, 58, 59.

67. Criminal Injuries Compensation Act, Hawaii Laws 1967, act 226.

68. *Id.*

69. *Id.* The list of applicable wrongs range from aggravated assault to murder. Of the fifteen enumerated crimes, six are sexual offenses.

states.[70] But, at present, when placed beside the damage claims resulting from the recent riots, the effect of these laws is de minimis.

INSURANCE AS AN ALTERNATIVE

At a glance, the problem of compensating victims of civil disorder appears to be solved most readily and adequately by insurance. By paying a premium, the property owner remains secure while the insurance industry bears the risk of loss. Insurance is essential to the property owner today; it supplies the financial keystone for loans and for the extension of credit. However, the fact exists that "[T]here is a serious lack of property insurance in the core areas of our nation's cities."[71] The riots have heightened the possibility of an even greater deficiency of insurance in the future. Insurance losses sustained from riots during 1967 were estimated at nearly $75 million, much less than the $715 million drain on the industry caused by Hurricane "Betsy" in 1965.[72] While one may conclude that insurers are unduly alarmed about riot losses, the losses did deplete thirteen per cent of the entire underwriting profit made during 1966.[73] Moreover, hurricanes are foreseeable events; the large scale riots were not. Certainly a company whose success or insolvency is grounded wholly upon the factor of risk would today show little enthusiasm to insure ghetto properties.[74]

The insurance industry, to be run successfully, must insure predictable risks. But it is the very unpredictability of mob violence that compels the companies to regard riot-area property as too great a gamble to be insurable at a normal premium if at all.[75] Thus, cancellation of policies by insurers, while arousing the fears of many, has been justified on the grounds that a single, large-loss riot could well put many companies in a losing position.[76] Approximately seventeen per cent of those insured in Watts before the riot had one or more of their policies cancelled as a result of the extensive property damage.[77] After the Detroit riot, a Pennsylvania company cancelled as many as fifty "poor risk" policies in that city's slum area.[78] And despite assurances from industry spokesmen that there should be little or no further

70. The jurisdictions that are considering such legislation are Illinois, Maryland, Massachusetts, Michigan, New Jersey, Oregon, Pennsylvania, Rhode Island, Wisconsin. *Supra* note 61, at 172.

71. REPORT BY THE PRESIDENT'S NATIONAL ADVISORY PANEL ON INSURANCE IN RIOT-AFFECTED AREAS, MEETING THE INSURANCE CRISIS OF OUR CITIES 1 (1968) [hereinafter cited as ADVISORY PANEL ON INSURANCE].

72. *Id.* at 4.

73. *Id.*

74. The ADVISORY PANEL ON INSURANCE notes that insurance has not functioned well in the urban core. *Id.* at 52. The insurance industry blames this fact upon tight rate regulations by the states that are not responsive to the high risks involved in insuring ghetto property. Instead, the industry desires greater premium flexibility. *Id.* at 49.

75. *Hearings on S.J. Res. 102 Before the Senate Comm. on Commerce,* 90th Cong., 1st Sess., 53 (1967) [hereinafter cited as *Hearings*].

76. *Id.* at 13.

77. *Id.* at 83.

78. N.Y. Times, Aug. 30, 1967, at 66, col. 4.

cancellations[79] a large company revoked the policy on a $110 million housing development in the core city of Philadelphia, explaining that it was unable to obtain reinsurance.[80] Such acts underscore the possibility that policies might be cancelled at a moment's notice, with the insured rendered helpless by revocation after the riot had begun but before damages were inflicted.[81] Though the insured could sue for breach of contract, this remedy would in most cases be insufficient to compensate for the damage done. If the insured decides not to enforce the policy, he can only recover the amount of premiums paid or an equivalent in damages.[82] And even if he pursues his equitable remedy of specific performance, the expense of litigation would negate a significant part of the recovery.[83] The real necessity, therefore, is to preclude the possibility of cancellation before it becomes a matter for the courts. Yet the authority of state insurance commissioners to prohibit termination of policies is not clear. Statutes in many states have stopped the great number of automobile insurance cancellations, but these restraints have not yet been extended to property coverage.[84]

The riots have also given rise to the popular report that insurance companies with insurrection exclusions in their fire and extended coverage policies will seek to argue that many of the major disorders were insurrections.[85] The law in this area has never been developed,[86] and, on the basis of present information there is no evidence that an allegation of insurrection by insurance companies would be successful. Clearly the evidentiary problem — proving that the disorder was in fact an insurrection — may discourage insurers from litigating the issue.[87]

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79. *Hearings* at 77.

80. *Id.* at 54.

81. *Id.* at 66. This kind of situation occurred in July 1968, when Royal Globe Insurance Co., a British firm, one of the fifteen largest property insurers in the United States with policies totaling $406 million, cancelled policies in the potential riot areas with notice of only five to ten days. In Detroit alone, 318 policies were cancelled. Other cities involved were Washington, New York, Newark, Chicago, and St. Louis. Royal Globe justified its action by referring to the $7 million riot losses it suffered in 1967. Cancelled policyholders admitted it was impossible to secure coverage from other large companies at the same rates. Instead they must turn to "excess" firms that charge double and more for the same coverage. C.B.S. Television News Report, July 4, 1968. *See also* Washington Post, July 5, 1968, at 16, col. 3.

82. 29 AM. JUR. *Insurance* §428 (1960).

83. ADVISORY PANEL ON INSURANCE at 50.

84. On Aug. 11, 1967, the attorney general of Michigan declared cancellation would be illegal during a riot period. But this does not apply after a riot period, and the authority to make such a ruling has not been tested in the courts. *Id.*

85. *Hearings* at 4-6.

86. The only real case in point, Home Ins. Co. of N.Y. v. Davila, 212 F.2d 731, 736 (1st Cir. 1954), involved an action to recover against the insurer for fire damage caused by a small uprising of Puerto Rican nationalists. The court distinguished riot from insurrection, declaring the latter to be "a movement accompanied by action specifically intended to overthrow the constituted government and to take possession of the inherent powers thereof." Other cases are of historical interest only. *See* Boon v. Aetna Ins. Co., 40 Conn. 575 (Conn. Cir. 1874), *rev'd*, Insurance Co. v. Boon, 95 U.S. 117 (1877); Spruill v. North Carolina Mut. Life Ins. Co., 46 N.C. 126 (1853).

87. Letter from John R. Williams, Law Department, Aetna Life & Casualty, to Thomas

To the threat of cancellation and the argument of insurrection must be added the problem of arbitrary and unreasonable discrimination by insurance companies as to the property they will insure. Because particular areas of cities are believed to have higher crime rates and poorer housing, companies refuse to risk covering these areas. The procedure used, known as "red lining," involves marking out these sections and then denoting them uninsurable risks per se.[88] The procedure is objectionable because it uses the novel standard of locale in determining insurability.[89] The socially unacceptable criteria utilized in "red lining" raise questions concerning governmental authority to regulate such practices. The Presidential panel set up to study the insurance crisis in the cities has strenuously recommended that insurance companies not be permitted to deny coverage arbitrarily to commercial and residential property in slum areas.[90] However, it is doubtful whether the panel, or even the federal government, possesses the authority to force companies to insure ghetto properties. In fact, the key issue is whether a government at any level can force a private party, in this case an insurance company, to contract. The common law concept of freedom of contract militates against such coercive measures in the absence of an overriding social and constitutional obligation.[91]

In the field of automobile insurance the Supreme Court has recognized just such an overriding obligation. The Court ruled in *California State Automobile Association Inter-Insurance Bureau v. Maloney*[92] that an insurer must submit to a reasonable assigned risk plan enacted by the state. Rejecting an argument that the plan violated the due process clause of the fourteenth amendment, the Court recognized the quasi-public nature of the insurance industry: "The case in its broadest reach is one in which the state requires in the public interest each member of a business to assume a *pro rata* share of a burden which modern conditions have made incident to the business."[93]

Prior to the *Maloney* case the Supreme Court had held insurance to be interstate commerce and therefore subject to federal control.[94] But in the McCarran-Ferguson Act of 1945,[95] Congress nullified the decision and ex-

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J. Sherrard, Jan. 2, 1968.

88. NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 307 (Gov't ed. 1968). *See also Hearings, supra* note 75, at 46-49.

89. Generally, the common standards of insurability include regulations of housing and building codes, presence of faulty wiring or inflammable material, and inaccessability of firefighting equipment. *Hearings, supra* note 75, at 46-49. For a detailed list of conditions affecting insurability, *see* ADVISORY PANEL ON INSURANCE at 60.

90. ADVISORY PANEL ON INSURANCE at 7.

91. Freedom of contract has already been subordinated to the recognition of a greater social obligation in the Fair Housing Provisions of the Civil Rights Act of 1968, Pub. L. No. 90-284, Title VIII, §§801-19 (April 11, 1968).

92. 341 U.S. 105 (1951).

93. *Id.* at 109. The Court further argued that the state has authority to become a public insurer and leave nothing to private industry. A fortiori the state may place restraints upon insurance practices. *Id.* at 109, 110.

94. United States v. South-Eastern Underwriters Ass'n, 322 U.S. 533 (1944).

95. 16 U.S.C. §1012 (1963). The statute reads: "(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States . . . . (b) No Act of Congress shall be construed to invalidate, impair or supersede any law enacted by

pressly returned the power to regulate the insurance industry to the states, many of which have requested companies to refrain from cancellation and discriminatory underwriting practices.[96] But compliance by insurers with this type of request is not guaranteed. The *Maloney* case affords minimal help because it was based upon a specific California statute that required all automobile insurers to join the assigned risk plan.[97] Thus, it is not certain whether state insurance commissioners have authority to prohibit "red lining" and other unreasonable underwriting procedures.[98] Possibly they can act under "unfair practice" laws, but the statutory framework at the state level has been inadequate to require companies to contract in poor risk areas.[99]

In an attempt to correct this situation, insurance associations in several jurisdictions have effected "urban area plans" that provide fire and extended coverage insurance to all "insurable" city property.[100] A preferable alternative is the Boston Plan of 1960, which forbids discrimination by location and makes available insurance for all property that meets reasonable standards of insurability.[101] License suspension has proved an effective deterrent to companies that otherwise may not comply with the plans.[102] However, the urban area plans apply almost exclusively to coverage of residential property.[103] Inasmuch as ghetto businesses have suffered the greatest losses, the President's Advisory Panel on Insurance has recommended the institution of Fair Access to Insurance (FAIR) Plans.[104] These plans would apply to both dwellings and businesses, placing a maximum limit on premiums and supplementing coverage of the urban area plans by providing burglary and theft insurance.[105] A particular goal of the FAIR Plans is to eliminate "red lining" by encouraging greater cooperation between government and the insurance industry and, where necessary, closer state supervision of underwriting practices.[106] At present, FAIR Plans are merely recommendations. They are valuable because they give the state an active role in the protection and reconstruction of property in the cities, and simultaneously encourage owners of substandard housing to improve their property to meet the minimum requirements of insurability.

If the goal is indeed to provide insurance to a greater number in the slum areas at reasonable rates, then a vital question must be posed: Who will bear the financial burden of making this possible? At present, it appears

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any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance . . . ."

96. *Hearings* at 77.

97. CAL. INS. CODE §§11620, 11625, 11626 (West 1954).

98. ADVISORY PANEL ON INSURANCE at 50.

99. *Id. See also* FLA. STAT. §624.0217 (1967).

100. *Id.* at 56.

101. *Id.* By Dec. 1, 1967, urban area plans were in effect in thirteen states: California, Delaware, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, New York, North Carolina, Ohio, Pennsylvania, Wisconsin. *Id.*

102. *Id.*

103. *Id.* at 9.

104. *Id.*

105. *Id.* at 9, 10.

106. *Id.*

that the property owner has had to bear the brunt of the increased cost. The rates in the Watts area serve as an example. In the curfew sector, fire insurance premiums have increased three to five times over what they were before the riots in 1965.[107] No risk is covered above 150,000 dollars.[108] Increased rates, coupled with the marginal or submarginal nature of the ghetto businesses, mean that many of the property owners must remain uninsured or with such minimal coverage as to be substantially without protection.[109] If the owner does purchase insurance, he may have no capital with which to expand the volume of his business. Without insurance coverage he faces the possibility of losing everything. Clearly, during this period of reconstruction of the ghetto, both economically and socially, the inhabitants should be relieved of as much of the burden of loss as possible. "[W]e need, in simple equity, to see that individuals whose property is looted, burned, and vandalized in an outbreak do not bear the sole risk for individual unreimbursed loss."[110] The real interest of a revised program of insurance coverage in ghettos must be in the creation of better business conditions, revitalization of the business communities and development of adequate housing in residential neighborhoods.[111] If the owner of a business is compelled to pay prohibitive premiums, he may instead choose to leave that part of the city, resulting in a substantial loss of commercial activity and services in the inner city.

Viable alternatives are threefold: ghetto losses can be spread over all policyholders by a ratable increase in premiums; insurance companies can form assigned risk pools similar to the one presently operating in the Watts area; and the industry can seek reimbursement from federal and state governments in the form of reinsurance.[112] Spreading the loss over large groups of policyholders has not been favored.[113] It militates against individually rating insurance risks and in effect becomes an added "tax" upon even those policyholders who have not sought insurance against riot and consequent fire damage. Both the pools and federal insurance proposals are forms of reinsurance where the reinsurer contracts with the original insurer to indemnify it in whole or in part for any losses suffered.[114] Most insurance companies prefer the pooling arrangements because of the absence of federal aid and its accompanying regulatory measures.[115] The typical example of a private insurance pool is that initiated in Watts. Property that companies are unwilling to insure for any reasonable premium is placed in a pool, which is really a marketing device where one company agrees to cover all the assigned risks

107. *Hearings* at 23. A white druggist in Watts explained, "I'm paying as much as [*sic*] a month for insurance as for a year before the rioting."
108. *Id.* at 3.
109. *Id.* at 63.
110. *Id.* at 2 (remarks of Senator Vance Hartke).
111. ADVISORY PANEL ON INSURANCE at 1.
112. *Hearings* at 70.
113. *Id.* at 78.
114. W. VANCE, LAW OF INSURANCE §207 (3d ed. 1951).
115. *Hearings, supra* note 75, at 67, 69.

in the area; this company in turn is reinsured by 109 other companies.[116] The effectiveness of the Watts pool remains uncertain, however, since it covers only $14 million of property worth $25 million.[117] And as noted previously, the rates on many types of businesses are still prohibitive. Nevertheless, the industry is seeking its own solution to the problem, while admitting that continued losses from future mob violence may necessitate federal assistance.[118]

> We prefer to solve the problem ourselves, insofar as we are able. However we recognize that the insurance mechanism can operate successfully only in an atmosphere of law and order. If large-scale riots continue to occur, or if such disorders remain a serious threat to life and property in many communities the financial risk involved is so catastrophic that insurance companies would find it very difficult to maintain an adequate insurance market without some kind of government back-up at the local, State or Federal level.

FEDERAL ASSISTANCE

The role of the federal government in compensating riot victims must necessarily be a limited one. Initially, and unless it repeals the McCarran-Ferguson Act of 1945, Congress lacks the power to regulate the insurance industry.[119] Furthermore, the determination of individual, municipal, and insurance liability for riot damages, as well as the enactments to compensate victims of violent crimes, are traditionally made by state law. If the federal government is to have any role in the post-riot remedial scheme, it must be justified upon the grounds that the riots and the increasing crime rate have become matters of intense national concern.[120] Congress has recognized the need to rejuvenate and improve slum conditions, especially since the mob violence has accentuated the urgency of the problem. The injured riot victim may have several remedies at the federal level, but a distinction should be made between relief based upon federal liability for tortious conduct and other broader forms of federal assistance.

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116. Smith, *The Watts Pool, Solution or Experiment*, 28 J. INS. INFORMATION 22 (1967). *See also* ADVISORY PANEL ON INSURANCE at 75, 76.

117. *Hearings* at 23. Moreover, on September 15, 1967, there were only 480 policies in force out of nearly 22,300 eligible business risks in the Watts 46-square mile "curfew area." ADVISORY PANEL ON INSURANCE at 78.

118. *Hearings* at 69. NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 198 (Gov't ed. 1968) has endorsed private insurance as sufficient to compensate for riot losses. In addition, many of the industry's leading insurers have agreed to invest as much as $1 billion in ghetto real estate for urban development projects in cities throughout the nation. N.Y. Times, Sept. 14, 1967, at 1, col. 1. However, in September 1968, Broward Williams, Insurance Commissioner for the State of Florida, proposed that a federal program to provide property coverage in riot-prone areas be administered by a "pool" of Florida insurance companies. The program, which has been approved by Congress, would permit the federal government to underwrite up to eighty per cent of the insurable losses in such areas. St. Petersburg [Fla.] Times, Sept. 24, 1968, at 11-B, col. 6.

119. *See* 15 U.S.C. §1012 (1964).

120. ADVISORY PANEL ON INSURANCE at 84 (summarizes proposals for federal legislation).

The Federal Tort Claims Act (FTCA) [121] is the source of federal liability. It grew out of discontent and impatience with the private bill, formerly the only means of securing personal relief from the federal government.[122] The notorious clumsiness of the private bill, the increasing frequency with which such bills were introduced, and mounting pressure to submit claims against the government to adjudication forced Congress to replace it with the FTCA.[123]

The riot victim suing under the FTCA can be successful only if he proves that the damage was caused by an agent of the United States in the exercise of a nondiscretionary function.[124] Undoubtedly, in a massive disorder, suppression by police and soldiers will cause some damage. But if the injuries and damage are caused by the National Guard, the FTCA affords no recovery. National Guardsmen, unless called to duty by the President, are not considered federal employees for purposes of the FTCA.[125] And even in the few instances where federal troops do inflict injury, proof of causation and damage during a riot may be an insurmountable burden for the plantiff.

In the realm of federal taxation, statutes exist that may serve at least to mitigate some losses that are not covered by insurance. Section 165 of the Internal Revenue Code[126] permits deductions for both business losses and personal losses arising from causalties. Riot losses would most likely be deductible under section 165.[127] How much these deductions would benefit the absentee landlords over the ghetto dwellers and lessees of business property is not clear. A real tax advantage would appear to accrue to the owners of the slum properties who may deduct substantial sums. The ghetto residents who have lost their rented dwellings would find little relief from a loss

121. 28 U.S.C. §§1346, 1402, 1504, 2110, 2401-02, 2671-80 (1964).

122. The procedure for securing relief permits individuals to petition their congressional representatives for assistance. The Congressman at his discretion may then introduce a bill before Congress that grants relief for the particular person or persons involved.

123. For a discussion of the private bill and the historical antecedents of the FTCA, *see* Dalehite v. United States, 346 U.S. 15, 24, 25 (1953); Feres v. United States, 340 U.S. 135, 139, 140 (1950).

124. 28 U.S.C. §2680 (1964).

125. *See* 10 U.S.C. §3500 (1964); Maryland, for the use of Levin v. United States, 381 U.S. 41 (1965); LeFevere v. United States, 362 F.2d 352, 354 (5th Cir. 1966).

126. INT. REV. CODE of 1954, §165 states in part: "(a) General Rule. - There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise. . . . (c) In the case of an individual, the deduction under subsection (a) shall be limited to - (1) losses incurred in a trade or business; (2) losses incurred in any transaction entered into for profit, though not connected with a trade or business; and (3) losses of property not connected with a trade or business, if such losses arise from fire, storm, shipwreck or other casualty, or from theft. A loss described in this paragraph shall be allowed only to the extent that the amount of loss to such individual arising from each casualty, or from each theft, exceeds $100."

Corporations are not limited to the amount or type of loss for which they may take deductions under this section.

127. As of August 3, 1968, there were no decided cases or Internal Revenue Service Rulings specifically considering property losses in riots. Such losses would typically be from fire and theft (specifically covered by INT. REV. CODE of 1954, §165 (c) (3), (e)), and vandalism losses deductible as casualty losses: Burrell E. Davis, 34 T.C. 586 (1960); Charles Gutwirth, 40 T.C. 666 (1963). *Contra,* Edward W. Banigan, 10 CCH Tax Ct. Mem. 561 (1951).

deduction. The net operating loss carryover provisions of section 172 of the Internal Revenue Code[128] offer some help to both groups. Under these provisions an individual or a business may allocate over-all losses incurred in a particular year or years to offset gains realized in the three years preceding, or five years following the loss year. To large landowners and successful business enterprises, the eight year carryover period may be enough time to compensate for the riot losses. Since low income ghetto residents normally have a small income base, the loss carryover provisions would be of less benefit to these individuals.

A second and more significant kind of federal assistance is federal riot insurance.[129] In recent years there has been a desire by many Congressmen to initiate a program of disaster insurance.[130] Initial attempts at effecting such programs have ended in failure. A great deal of enthusiasm greeted the passage of the Federal Flood Insurance Act[131] in 1956. However, nine months after it was established, the Federal Flood Indemnity Administration was dissolved, and no successor has replaced it although the Act remains on the books.[132] The purpose of the flood insurance legislation was to find a workable insurance program so that the Government would no longer have to rush into disaster areas with emergency programs.[133] Apparently, the reason for the failure of the commission was the inability of private insurance companies to find a premium that all who were interested could pay.[134] The question is whether the establishment of a riot insurance program would also end in failure. The recent violence has certainly raised a greater public demand that Congress discover and enact a successful solution. Further encouragement for the success of such a program stems from the fact that there is no precedent for using federal disaster funds after the riots, and the Administration has been reluctant to do so.[135]

The Commission on Civil Disorders has recommended amending the Federal Disaster Act to allow federal assistance during and after major civil disorders.[136] A responsive program would supply food, medicine, emergency equipment, temporary housing, and manpower for cleaning up and repair where state and local resources are inadequate. Long-term reconstruction can best be handled through low-interest loans from the Small Business Adminis-

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128. INT. REV. CODE OF 1954, §172.

129. *See generally Hearings.*

130. *Hearings on H.R. 7397 and S. 408 Before the Subcomm. on Small Business of the House Comm. on Banking and Currency*, 89th Cong., 1st Sess., 5 (1965).

131. 42 U.S.C. §§2401-21 (1964).

132. Ely, *The Prospects for a Federal Disaster Insurance Program*, 32 INS. L.J. 598, 600 (1966). Congress has recently held hearings in order to amend the 1956 act to provide a more effective national flood insurance program. *Hearings on S. 1985, S. 1290, S. 1797 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency*, 90th Cong., 1st Sess. (1967).

133. *Hearings, supra* note 130, at 8.

134. *Id.* at 9.

135. N.Y. Times, July 30, 1967, at 52, col. 4.

136. NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 197-98 (Gov't ed. 1968).

tration.[137] Individuals and businesses in Detroit have already received loans of this kind.[138]

Another possibility is federal reinsurance. During the summer of 1968, Congress was considering a reinsurance proposal that would allow the Government to underwrite a portion of the casualty losses in the riot areas. The reinsurance would be effected by individual contracts between private insurers and a federal reinsurance agency. In return, states would be required to develop insurance pools and similar plans to allow ghetto property owners a fair opportunity to obtain coverage.[139] Reinsurance by the federal government has been well received by private insurers.[140] However, federal insurance proposals — permitting the Government to compete with private industry — have not been favored. Federal control in this area is antithetical to the present allocation of insurance regulation to the states. Moreover, recent hearings have indicated that if the Government is to become a pure insurance company, Congress must set the standards of insurability, type of coverage, and amount of premiums.[141]

That some federal help is needed for reconstruction of riot damaged cities cannot be denied. However, conflicting interests among the federal government, state governments, and private industry will need to be resolved before the door can be readily opened to permit substantial and successful assistance for riot losses at the federal level.

CONCLUSION

The avenues of recovery available to those injured by mob violence are numerous. Remedies exist at every level of government, from private insurance and from suits against the wrongdoers. Nevertheless, there is no

137. *Id.* at 198. For an extremely thorough consideration of housing and urban development problems including housing construction, urban planning, mortgage financing, and rent supplements *see Hearings on H.R. 15624, H.R. 15625, and Related Bills Before the Subcomm. on Housing of the House Comm. on Banking and Currency*, 90th Cong., 2d Sess. pt., 2 (1968). Recent proposals have emphasized the desire to encourage private investment in low income housing. The Kennedy bill, S. 2100, 90th Cong., 1st Sess., seeks to secure private investors by providing tax incentives in the form of tax credits and accelerated depreciation in order to make the investments profitable. *See* Note, *Government Programs To Encourage Private Investment in Low-Income Housing*, 81 HARV. L. REV. 1295 (1968).

138. President Johnson directed the Small Business Administration to make loans available in Detroit after the riot for rebuilding houses and small businesses. N. Y. Times, July 30, 1967, at 52, col. 2.

139. S. 2270, 90th Cong., 1st Sess. The bill, introduced by Senator Ribicoff (D. Conn.), was allegedly the foundation for the five-point plan recommended Jan. 26, 1968, by the Presidential Advisory Panel on Insurance in Riot-Affected Areas. Ribicoff, *Federal Role in Riot Insurance Protection*, 4 TRIAL MAGAZINE 25, April-May 1968. The recommendations, considered elsewhere in this note, included: (1) the FAIR code, to widen underwriting practices, (2) state insurance pools, (3) the National Insurance Development Corp., to provide federal reinsurance, (4) tax incentives to encourage insurers to establish special riot reserves, (5) steps to recruit and train urban core residents as insurance agents. 24 CONG. Q. 170 (1968).

140. The Wall Street Journal, July 11, 1968, at 30, cols. 1, 3.

141. *Hearings, supra* note 130, at 5.

coordination among remedies to offer the greatest possible compensation, and each remedy, standing alone, is clearly inadequate to meet the needs of the riot victims. Not only do the success of recovery and the amount recoverable by injured plantiffs vary from state to state, but also each form of relief has such a small sphere of successful operation. Reparation for personal injuries and for property damage often must be pursued through different channels, a fact that leads to multiplicity and perhaps confusion. The thrust of this criticism is not to abrogate existing methods of relief, but merely to emphasize the need for cooperation and coordination. Comprehensive insurance coverage of urban property should be the focal point. Restitution for personal injuries, when not covered by insurance, could be recovered under municipal liability and criminal injuries compensation laws. In effecting an over-all solution, however, the remedies should be reassessed with one essential point in mind — that of assuring compensation to those injured by mob violence at the least possible cost to them.

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