MAY DAY 1971

ORDER WITHOUT LAW

An ACLU Study of the Largest Sweep Arrests in American History

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American Civil Liberties Union
of the
National Capital Area

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INTRODUCTION

Between May 3 and May 5, more than 13,000 people were arrested in Washington, D.C.—the largest mass arrest in our country's history. The action was the government's response to anti-war demonstrations, an important component of which was the announced intention of the Mayday Coalition, organizer of the demonstrations, to block Washington rush-hour traffic.

During this three-day period, normal police procedures were abandoned. Most of the 13,000 people arrested—including law-breakers caught while attempting to impede traffic, possible potential law-breakers, war protestors engaged in entirely legal demonstrations, and uninvolved passersby and spectators—were illegally detained, illegally charged, and deprived of their constitutional rights to due process, fair trial and assistance of counsel. The court system, unable to cope with this grandscale emergency caused by the police, was thrown into chaos. The scale of arrests—and of official illegality—was unprecedented in Washington. Indeed it has few equals in the 20th Century history of our country. All in all, Mayday was a profound blow to civil liberties, and one in which the federal and local governments share responsibility.

The report that follows is an attempt to reconstruct Mayday: to piece it together chronologically; to identify who was arrested, where, and under what circumstances; to describe the conditions of detention and the conduct of the initial courtroom proceedings; to analyze the role of government, both at the city and the federal level; and to follow the long course of the litigation which inevitably ensued, and which is still being conducted.

The American Civil Liberties Union is fully on the record, both in the press and in the series of cases it has brought to court, that the government's actions during Mayday were illegal. The court decisions so far, which have resulted in the dropping of all but a tiny handful of Mayday prosecutions, have vindicated that view.

The purpose of this report, then, is not to express a view already widely known, nor to seek further vindication. Its purpose is to document what happened and to try to understand why it happened. Without this understanding, we cannot determine whether there were real alternatives to Mayday, or whether illegal actions or the threat of them can only be dealt with by countervailing illegality by government.

The material in this report comes chiefly from the more than 1,000 affidavits submitted to the ACLU by those who were arrested. The report also draws upon the transcripts of the Mayday litigation, on interviews with attorneys and other volunteers in the detention centers, and on reports compiled by the Public Defender Service and the Mayor's Commission on Human Relations.

This report is being issued more than a year after Mayday. But even though a full year has passed since the events described took place, it is still too early to assess their full significance. It is possible that Mayday will become just a curious historical footnote. It is equally possible that it will set the pattern for government action from now on. Which course our country chooses for the future will depend in some part on how well we understand what happened a year ago.

I. PROLOGUE TO MAYDAY

In April 1972, the Nation's Capital braced for a week-long series of anti-war protests which the demonstrators called "Mayday." Both the government and the protesters knew it would be a time of confrontation. One group of demonstrators announced that on May 3 it would disrupt rush-hour traffic which would—in their somewhat overblown rhetoric—"stop the functioning of the government." The government responded by announcing that it had drawn up plans to keep the traffic moving "at all costs" and thus—in equally inflated prose—protect "the national existence."

This confrontation was in part a product of the hardening of government attitudes towards demonstrators—a relationship which had been coasting downhill for at least five years.

The high point of government cooperation with demonstrators was the 1963 civil rights "March on Washington" in which almost half a million people demonstrated for civil rights legislation in an atmosphere of good will and order. But as the focus of the demonstrations shifted from civil rights to anti-Vietnam War protests, the facade of cooperation began to crack. Government officials in both the Johnson and Nixon administrations engaged in a series of maneuvers designed to deny anti-war protestors visibility:

In 1967, the government promulgated new regulations drastically limiting the number of demonstrators permitted to gather in front of the White House or across the street in Lafayette Park.

In 1969, the government attempted to deny anti-war protestors a permit to march down Pennsylvania Avenue. Only the personal intervention of Mayor Washington and Police Chief Wilson with Justice Department officials made them grant the permit at the eleventh hour and prevent a direct confrontation.

In 1970, 200 demonstrators were arrested in the Pentagon Plaza for conducting "masses for peace."

Again, in 1970, police arrested 800 individuals at the scene of a peaceful demonstration near the Watergate Apartments. The demonstration was held to protest the trial of the "Chicago Seven" and the war. In many ways, the police response to Watergate was a foreshadowing of Mayday. Police used the sweep arrest technique, in which everybody in the area—demonstrators, bystanders, students going to class at George Washington University—was arrested. Unnecessary police violence was common. In the aftermath of Watergate—as in Mayday—it was impossible for the government to make its charges of "disorderly conduct" stick, since they had abandoned normal arrest procedures.

These episodes serve as signposts on the road to the total breakdown in relationships that was to come with Mayday. Interspersed with them, there were several demonstrations which went off without incident.

The deterioration of the past few years accelerated during the weeks of negotiation before Mayday. An element in its downward course was

the government's failure to distinguish between the various anti-war groups. It viewed all the demonstrators converging on Washington as a single entity, and its view was an openly hostile one.

But there were in fact four discrete organizations connected with the May Week activities, which while unanimous in calling for an end to the Vietnam war, differed sharply as to politics and tactics:

> The Vietnam Veterans Against the War, engaged in peaceful protest and working within the system.
>
> The National Peace Action Coalition and the People's Coalition for Peace and Justice, both offshoots of the New Mobilization Committee Against the War. They had split into separate organizations because of their theoretical and tactical differences. The former, like the Veterans group, emphasized lawful mass protests. The latter stated that the time had come for more militant, dramatic tactics. It was the People's Coalition for Peace and Justice which had announced the traffic-disruption action.
>
> The Mayday Collective, a radical faction within the People's Coalition for Peace and Justice, which rejected the whole political system as unresponsive.

The Vietnam Veterans Against the War notified the government that it would stage a peaceful demonstration on the Mall and would camp out overnight there beginning on April 17. The government obtained an injunction, prohibiting the Veterans from using the Mall, which was initially reversed by the Court of Appeals and then reinstated by the U. S. Supreme Court. But after vigorously pursuing the injunction to the Supreme Court, and insisting that the Veterans' demonstration would threaten the functioning of the city, the government had second thoughts. The public relations aspect of the forcible arrest of Vietnam veterans, many of them seriously crippled during the war, impelled the government to go back to court four days later to ask—shamefacedly—that the injunction be lifted after all.

A week after the Veterans' protest, on April 24, and after heated negotiations about the route, the government permitted the National Peace Action Coalition to stage a mass march of 200,000 people to the Capitol. Although President Nixon angrily told the country a few days later that he would not be "intimidated" by such protests, no attempt was made by the government to interfere with the march, and it occurred without incident.

At about the same time that the government obtained the injunction against the Veterans' encampment at one end of the Mall, it granted permission to the People's Coalition for Peace and Justice for a two-week campout in West Potomac Park, at the other end of the Mall. The government looked the other way while park regulations and the rules of the permit were violated with the pitching of tents and lighting of fires.

By the weekend when April turned to May, between 35,000 to 40,000 people were camped in West Potomac Park. On Saturday night, May 1, Justice Department officials advised the People's Coalition attorney that they saw no problem with the continuation of the encampment. But at 6 a.m. Sunday morning, the permit for West Potomac Park was revoked, although there had been no formal prior consultation with the signers of the permit, as required by the permit's terms. When the police moved in to clear the park, they arrested more than 200 people who refused to leave.

The government's action in first permitting large-scale violations of the permit, and then suddenly revoking it (and closing not only West Potomac Park but all the other parks within walking distance of the encampment) was not as

inconsistent as it seemed on the surface. The goal of the sudden sweep of the Park was, as government officials later acknowledged, to break up the coming May 3 demonstration. The thought was that thousands of demonstrators would leave the city after the raid. This proved to be a miscalculation.

During the last week of April, the People's Coalition staged demonstrations at Selective Service Headquarters, the Internal Revenue Service, the Department of Health, Education, and Welfare, and the Justice Department. There were several hundred arrests as protestors blocked the entrances to government buildings, and in one instance, tore down a police barricade.

On April 28, contrary to previous procedures, Jerry Wilson, Chief of the Metropolitan Police Department of the District of Columbia, refused to allow 220 demonstrators charged with blocking Selective Service Headquarters to obtain their release by posting $10 collateral with the police. Police Department Counsel Gerald Caplan made it clear that the change was designed to make it more difficult for demonstrators to return to the streets in what he called "a turnstile type of game." Chief Wilson requested permission from the D. C. Superior Court to raise the collateral required for the disorderly conduct charge ordinarily used against protestors to $50. The court refused. Instead, the judges of the court uniformly set $250 bonds for the defendants and released them on payment of the usual 10% of this amount.

On April 30, 224 persons were arrested on Independence Avenue outside the HEW building. These HEW arrests were unusual in several respects: For one thing, the demonstrators were not requested to disperse or given an opportunity to do so before they were arrested. This was a marked departure from established practice. Furthermore, the demonstrators were not charged with any violation at the time of their arrest. Only after Chief Wilson had conferred with Gerald Caplan did the group learn that it had been charged with "parading without a permit." Even though Chief Wilson had been refused judicial authorization to raise collateral, the demonstrators were required to post $50 each with the Police Department in order to obtain their release. Later that day, the Superior Court held this action unlawful and ruled that collateral should continue at the $10 level. The court released many of the HEW group on personal recognizance.

The government hoped to thwart the traffic blocking tactic planned for May 3 a) by waiting for the participants to gather in full strength in West Potomac Park and then raiding the encampment and b) attempting to raise the collateral to keep demonstrators from returning to the streets.

In addition, the government placed most of the 5,100 members of the D. C. police force on full alert, brought 4,000 army reservists and 1,400 National Guardsmen into the city, and stationed an additional 4,000 reservists in nearby staging areas. Four hundred U. S. Park Police were also alerted. But no one outside the Justice Department and the top command of the Police Department knew how this extra manpower would be used.

As for the leaders of the demonstration, it seems evident that they selected the illegal tactics of blocking traffic because of their failure to make an impact on the news media and policy with more conventional demonstration techniques; that they saw their tactics as a way to give them the visibility that they had been denied. The leaders clearly expected to be arrested if and when they blocked traffic; indeed, they depended on it to insure media coverage. In any case, they guaranteed police presence by announcing in advance some 21 locations where traffic would be blocked starting with rush hour on Monday, May 3.

The stage was set for Mayday to begin.

II. MAY 3: "QUALIFIED MARTIAL LAW"

On May 3, following their well-publicized plan, the participants in the People's Coalition for Peace and Justice traffic disruption tactic were out in full force by 7 a.m. They concentrated on the areas they had previously stated they would block: Dupont Circle, Mt. Vernon Square, Connecticut and K Streets, George Washington University, Georgetown, the Lincoln-Washington monuments and the 14th Street Bridge area. In several areas, some attempted to block traffic with trash and by linking arms to form human chains. The original intention had been to engage stalled motorists in a dialogue over the Vietnam war. But the objective was ignored in some cases, as the traffic blockers sang and danced whenever they managed to block an intersection. Some did not attempt to block traffic; they handed leaflets to motorists who had stopped for normal traffic signals.

Nobody will ever know how many had planned to participate in the illegal traffic blocking. For it became clear immediately that the government's elaborate plans for handling Mayday did not include any attempt to limit arrests only to those blocking traffic.

Instead, the government elected to clear the key intersections by sweeping the streets clean by mass arrests, without stopping to ascertain whether the individuals swept into the police net were participants, passersby, spectators, etc. Special targets for mass arrest were the young and the long-haired no matter where they were or what they were doing.

Among the various threads running through the May 3 affidavits collected by the ACLU, the most common is that in certain areas, a great many people who had absolutely nothing to do with the demonstration were arrested simply as a means of keeping the streets and sidewalks clear.

Dupont Circle

Diane Curwen, for example, was arrested in the Dupont Circle area on her way to work. She is a teacher's aide for deaf children at Grant School:

> "The bus I take usually goes down Wisconsin Avenue to M Street, but this morning it was rerouted down Massachusetts Avenue. I rode it as far as the area of Dupont Circle and got off there in order to walk back toward G Street. As I came around the Circle, I was very upset, not only at the sight of National Guardsmen lining the Circle, but also at a policeman suddenly dragging a kid into the street, beating him on the head. I never stopped walking and continued down a side street off the Circle. I started crying. A flank of about two rows of policemen was coming up the street towards the Circle. I was walking through them when one of them took my arm and said I would have time to explain myself later."

First Step in Arrest of Pedestrian, May 3 (note policemen with badges removed)

Ms. Curwen never did get a chance to explain. She was confined for 30 hours, most of the time in an outdoor detention center.

Herbert Blumberg, a Ph.D. doing research for the National Institutes of Health, was walking around the Circle, observing police arrest methods. He was wearing a yellow "observer" armband. Suddenly he heard a voice behind him: "I want this one." And he found himself under arrest.

Arthur Schwartz, frightened by the many pedestrians being arrested around him, asked a policeman if he could cross the street and continue around the circle. The policeman said yes, but another officer arrested him.

Robert Foster, a 41-year-old government psychologist, was arrested when he asked a policeman who had ordered him out of the area, "But officer, in a democracy, don't you think people should watch the police?" The police officer thereupon arrested him and replied: "If you want to watch the police, come with me."

Ramelle Adams was arrested while walking through the Dupont Circle area. When she asked why, the policeman said she had entered "a restricted area." Miss Adams protested that she had seen no warning signs. "We are the signs," she was told.

Nancy Craig was arrested in the same area. She was told that the charge against her was "walking on the sidewalk."

Barbara Roselyn was apprehended while waiting with her bicycle for a traffic light near the Circle to turn green. She was charged with "riding a bicycle on the sidewalk and on the street" by the arresting officer. Her bicycle was confiscated by the police and, at the time she executed her affidavit, it had not been located.

Nicholas Binkley, an attorney studying at the Johns Hopkins School for Advanced Studies, helped police clear the streets of debris while on his way to school. On his way through the Dupont Circle area, Binkley witnessed a young man being clubbed by a police officer. Judging by the time, it is likely that this is the same clubbing incident witnessed by Diane Curwen. Binkley stopped to offer to help the clubbing victim and he was immediately seized by the neck from behind and arrested.

George Washington University

Those arrested at Dupont Circle were not told that the area was restricted before they were arrested. This was not the case in the George Washington University area. Some time during mid-morning, the police announced that the GWU area was closed to pedestrians and that the streets had to be cleared. The police began making repeated marches down the streets in the area, sweeping up pedestrians on the way. Chief Wilson personally directed this operation. Several ACLU affiants heard the announcement and tried to leave, but were arrested before they could do so.

Michael and Carol Epstein upon hearing the announcement, immediately went to get their bicycles and were arrested while they were unchaining them.

Several students had moved off the sidewalk and were sitting on the steps of the Law School when squads of police came marching down 20th street. A group of policemen broke off from the rest and began running toward the Law School steps, and the students ran inside. But the police followed and chased the students down the corridors. Many people who witnessed this incident say that it was only then they became truly frightened. It was not to be the only time that police reached out beyond the sidewalks of the GWU area.

Charles Howe III is a GWU graduate student and an assistant physical education instructor. He was standing outside the Physical Education Building when the police sweeps began. He was not on the sidewalk, but at the top of a flight of stairs leading to the building, wearing a jacket which identified him as a member of the Physical Education Department. Several police squads passed Howe without incident. But then two officers came at him from behind and began pulling him down the steps to the sidewalk. Howe grabbed an iron railing and began calling for help. But the railing pulled loose and Howe was yanked down to the sidewalk. Just then, a GWU professor rushed out of the building to advise the police that Howe was an instructor there. The police told the professor, who had been teaching at the University for 25 years, that they would arrest him too if he didn't go back inside, and they dragged Howe to a police vehicle.

Reginald Marshall, Jr., was standing inside his fence-enclosed front yard in the GWU area when the police sweeps began. When ordered by police to get inside, he replied that he was not on the street, that this was his own house and his own yard. Before he finished speaking, a policeman vaulted the fence and clubbed Marshall repeatedly on the head and neck and shoulders until he lost consciousness. He, too, was dragged to a transport vehicle. Several people called the ACLU to report this incident.

Twenty-five patients of the George Washington University Hospital were arrested in the sweep. The hospital administrator stated that these patients were arrested outside the Emergency Room, located on George Washington Circle. They had been treated at the hospital and were awaiting transportation when arrested. The administrator said that doctors went outside and demanded that police release the 25, including one girl in a cast. The police ignored the request.

At the nearby Psychiatric Institute, a private hospital at 21st and K, four patients on their way to treatment were arrested.

Some time during mid-morning, radio broadcasts began quoting police and government officials as saying that everything was "back to normal." Such a broadcast convinced GWU student Harvey Erdman that it was safe to attend his 11 a.m. class. He was arrested at 20th and G Streets. "I said to him that I was going to class and that I could show him my I.D. card," Erdman recalls. "At that, he grabbed me by the pants and brought me to a bus." Several May 3 affiants recall seeing many people with school books on the transport vehicles.

Some arresting officers didn't bother to invent charges against the arrestees. The policeman who arrested Brad Walters at George Washington Circle told him: "Don't worry, we'll think of something to charge you with." When arrested, Walters was returning to Concordia Church, which had been converted to a temporary infirmary, after taking a seriously injured person to George Washington Hospital. He was wearing a stethoscope. Walters was arrested at 2 p.m., five hours after the Washington rush-hour ended.

Earlier that day, a police officer encountered Robert Rosen who was driving to work with a female companion around George Washington Circle. The policeman berated him for not keeping up with the car ahead. Rosen started to protest, but the officer reached through the window and jabbed him several times in the face with a nightstick. A second officer circled the car, opened the door and stuck a can of mace an inch or so from the woman passenger's nose. When Rosen started writing down the badge numbers, the first officer said: "Go ahead—we can take anything you can give us."*

*Throughout this report, we have identified only police officers in command positions. The names and badge numbers of a number of other officers are available for disciplinary proceedings and court actions where the accused will have an opportunity to reply.

There was a difference between arrests made in the GWU area and those made at Dupont Circle. While there were some instances of excessive force at Dupont, almost uniformly, accounts from GWU relate a more brutal police approach in both words and action. There were the Marshall and Howe incidents and the charge into the Law School. In addition, several witnesses report that as police marched through the GWU area, they were swinging their nightsticks at pedestrians and oftentimes finding the mark.

Fourteenth Street Bridge

A third high arrest area on May 3 was south of Independence Avenue near the Fourteenth Street Bridge to Virginia. Early that morning, Mayday participants made several unsuccessful attempts to block bridge traffic, and many of the arrestees undoubtedly participated in those attempts. However, other antiwar groups had scheduled a peaceful rally at the Pentagon, and many people on their way to that rally were arrested before they got there.

For example, a group of students and professors from St. Joseph's College, led by Father Joseph Daoust, were on their way to the Pentagon when they were surrounded by police scootermen and forced to sit down in the gutter. Several members of the group tried to explain their opposition to the traffic blockade, but the police wouldn't listen. A few minutes later, with police still tightly ringing the seated group, Deputy Police Chief Ted Zanders came by and sprayed mace directly into the faces of the seated students and professors. The act was recorded in the now-famous Life Magazine photograph. Zanders was smiling.

Selective Arrests

As previously noted, police tended to concentrate on the young, and on young men with long hair. David Appelbaum, a GWU student on his way to attend a Congressional Committee hearing as part of a course assignment, was stopped by police at 9th and Pennsylvania Avenue. "We were told that Capitol Hill was no longer open to the public and to have a seat on the sidewalk," he recalls. Appelbaum asked the officer what the charges were. The officer replied: "I'm under orders to stop all protesters and, in my opinion, you're a protester."

Lawrence and Carolyn Flood were walking down Pennsylvania Avenue with two other people. A policeman beckoned to the four of them and told them they were under arrest. They asked the charge and the officer said "parading without a permit." They all laughed, including the police officer. But the Floods stopped laughing when they were loaded into a police vehicle. While waiting for it to arrive, they noticed the police plucking occasional pedestrians from the passing stream. The arrestees all were young and all had long hair.

Timothy Ahern gives this account of his post-arrest trip to a detention center: "As the bus traveled down city streets, an officer in the front would stop the bus, point to someone (in the general pedestrian traffic) and have his men drag that person into the bus. One person was arrested while taking a picture of the White House. When we asked the officer why other people walking down the street were not being arrested, he explained to us that they were tourists."

But short hair by itself was no protection against arrest. Paul Rosa, a police cadet from Florida, had short hair. As a police cadet, he had volunteered to help police direct traffic during the early part of the morning and had spent some time doing so. But later that day, Rosa put on an armband given him by some Mayday people he had befriended. The armband was enough to cause his arrest. Rosa was in his car at the time, waiting for a light to change at 19th and E Streets. An unmarked police cruiser stopped beside him, a plainclothes police officer got out and pulled Rosa from his car, beating him on the head and shoulders with a nightstick while he did so. Rosa was put in the back seat of the police car, his car was moved off the road and his keys taken by the police. "I have a prisoner of war," one of the officers radioed, and he asked for a transport vehicle. None came, so they started driving through the city to find one. Meanwhile, Rosa tried to convince the police he wasn't a war protester:

> "I then reached in my wallet and handed him my identification card from the Melbourne, Florida, Police Department. I told them I was a police cadet and that I had committed no wrongful act. The driver said: 'That's tough shit!' We then began turning down sidestreets, looking for a transport vehicle. Somewhere in the vicinity of George Washington University, the driver proceeded into a crowd of people in the street and struck four of these people, carrying them on the hood of his car until they fell off. After turning left, we found a transport unit. The man on my right got out of the car, the man who had been sitting next to me grasped me tightly about the right arm and led me toward the bus. Another man, a caucasian male dressed in blue coveralls, grasped me by the neck and began laughing."

After Rosa's release from the D.C. Jail and the Coliseum the next morning, he tried to find the keys to his car. At the police garage, Rosa was told it would be useless to search through the police cars for the keys since the officers who

arrested him could have been FBI agents, or Treasury Agents or from some other branch. He hired a locksmith to make him a new key. On returning to his car, he found that the arresting officer had failed to lock the car and that $400 worth of camera equipment had been stolen.

Arrests of People in Automobiles

Although the acknowledged purpose of the government's sweep arrest tactics was to clear the streets of pedestrians, 19 ACLU affiants, including Mr. Rosa, were arrested while driving or while in automobiles.

Joseph Haskell, a systems design engineer for the Apollo Program, was pulled from his car at Memorial Bridge and sent to a detention center. Haskell was on his way to work at the time.

Sidney Blumenthal, a consultant for the American Jewish Committee and a writer for the journal, Boston After Dark, was pulled from his car while waiting for the light to change at Dupont Circle.

Michael Ross, an American University student, was also pulled from an automobile. He recalls his experience:

> "I hitched a ride with some young people from New York. The driver of the car got lost and crossed the Chain Bridge into Virginia. We turned around and came back across the bridge. . .The police (of whom there were many in the area) stopped the car in front of us and then our car. A policeman told us to get out. There were four people besides myself in the car. The driver asked the policeman why we had to get out and the policeman grabbed his shirt and shouted for us to get out. With the people in the car in front of us we were taken to a bus down the road. When we asked the police if we were arrested, we were given no answer. There were about fifty other people already on the bus. All of them were young."

Arrest of Medics

Dr. Randy Cope and Dr. Michael Davidson, two coordinators for the Medical Committee on Human Rights, which has provided medical aid during demonstrations in Washington since 1963, were arrested on May 3 while wearing medical armbands.

They had gone into West Potomac Park to remove medical equipment as police cleared the area. Both men were physically assaulted by police. They stated that police used an axe to break open a medical supply box, and scattered the supplies all over the field. In addition, thousands of dollars of medical supplies were confiscated, destroyed or lost, including supplies donated by the District Health Department, Civil Defense Department, American Red Cross and private groups.

Dr. Cope and Dr. Davidson charged that although police had promised access through police lines to all doctors and registered nurses wearing Public Health Department armbands, those wearing such armbands were frequently arrested.

"Why Am I Being Arrested?"

Of the 723 ACLU affiants (covering May 3, 4 and 5) who answered the question, "Were you informed of the nature of the charge against you?" 529 said "no." Of the 194 who answered "yes" more than half were told one charge by

the arresting officer and charged with something else when arraigned or released. Not a single affiant was advised of his or her legal rights at the time of his arrest. Affiant Barclay Colt states:

> "The arresting officers never said anything to us. Never told us we were under arrest. Never asked us our names or addresses. Never filled out any arrest forms or photographed us. Didn't tell us where they were taking us."

When Patricia Arnold was arrested at Dupont Circle, she asked one police officer after another what the charges against her were. No one replied until just before she was herded into the police van. Then an officer told her that only her arresting officer could tell her the charge against her. She asked for her arresting officer and was told that there was no way of telling who that might be.

Elizabeth Jamison spent 58 hours in confinement after her arrest. She was outside for sixteen hours of that time and spent a week in the hospital after her release with a serious case of pneumonia. In the ACLU affidavit, Ms. Jamison supplied details of her arrest, concluding: "Actually, I'm not sure I really was arrested." She went on to say that she had never been told of the charge against her.

The Field Arrest Forms

Starting at 6:30 a.m. of May 3, field arrest forms and polaroid photographs, designed to be used in mass arrest situations, were abandoned. Chief Wilson did not give the order to resume their use until 5:40 a.m., May 4.

The field arrest form and polaroid photographs were procedures developed from the disorders in Washington which followed the murder of Dr. Martin Luther King. A high level committee was appointed by Mayor Washington, Attorney General Ramsey Clark, Chief Judges David Bazelon and Harold Greene. Called the District of Columbia Committee on the Administration of Justice under emergency Conditions, the committee had conducted an exhaustive study of the 1968 disturbances, including the failure of law enforcement officials and the courts to cope with the emergency. Among its recommendations submitted in May, 1968, was the creation of a field arrest form, accompanied by a polaroid photograph of the arrestee and the arresting officer, to substitute for the time-consuming, more cumbersome form used in a single arrest.

A great deal has been written and said by police spokesmen and their sympathizers in the press about the reasons for not using the field arrest form on May 3—the gist of it being that in an emergency such as Mayday, normal procedures had to be abandoned.

But the fact is that the field arrest form is <u>not</u> a normal procedure. The April 1968 disorders, out of which the field form was developed, involved several elements—at least 20,000 participants, violence, arson, no opportunity for advance planning—which made them a far greater emergency. The field arrest form was designed specifically for use in such severe emergencies. But in the much more controllable circumstances of May 3, the field form was not even tried. Not a single May 3 affiant had an arrest form filled out by an arresting officer.

Whatever the motives for abandoning the field arrest form on May 3 were, the results were soon to be evident: chaos in the records of who was arrested, where and by whom; chaos in the detention centers; chaos in the courtroom.

By the end of May 3, over 7,000 had been arrested. The circumstances of their arrests—in which no attempt was made to separate wrongdoers from innocent bystanders, and procedures to identify those arrested or collect evidence against them were abandoned—will be the subject of controversy for years to come.

Two days after the May 3 arrests, then Assistant Attorney General William H. Rehnquist (now a Supreme Court Justice) defended the suspension of arrest procedures because of the "extraordinary circumstances." The mass arrest tactics, he said, were justified by the doctrine of "qualified martial law." This is an extraordinary statement from one of the chief law officers in the country. There is no doctrine of "qualified" martial law. The declaration of martial law requires an official proclamation which informs the population of the temporary suspension of certain rights, privileges and immunities. No such proclamation was made, and no conditions were stated as having been present to necessitate such a proclamation. Martial law is an extreme remedy reserved for armed insurrection or cataclysmic disasters. It is not an appropriate reaction to a traffic blockade. By invoking the doctrine of "qualified" martial law the government was attempting to eat its cake and have it too: to avoid a formal proclamation with its legal requirements, but to impose the conditions of martial law in fact. This doubletalk was a forerunner of the tortuous line the government was to pursue in court to justify its actions.

In a very real sense, government—at least that part of government concerned with the administration of justice—was brought to the point of collapse during May Week. But it was not the demonstrators and their unsuccessful traffic blockades that accomplished this. It was the government itself.

III. MAY 3: POLICE VIOLENCE

Officer Without Badge With
Tear Gas Launcher and Projectiles, May 3

photo by James Adams

Mayday arrests were not accompanied by the kind of wholesale police brutality which marked the Chicago police outbreak during the Democratic Convention of 1968. On the other hand, the claim of several government spokesmen that "no one got hurt" is untrue. Analysis of the ACLU affidavits shows the following breakdowns:

509 affiants said they were not subjected to undue force during arrest.

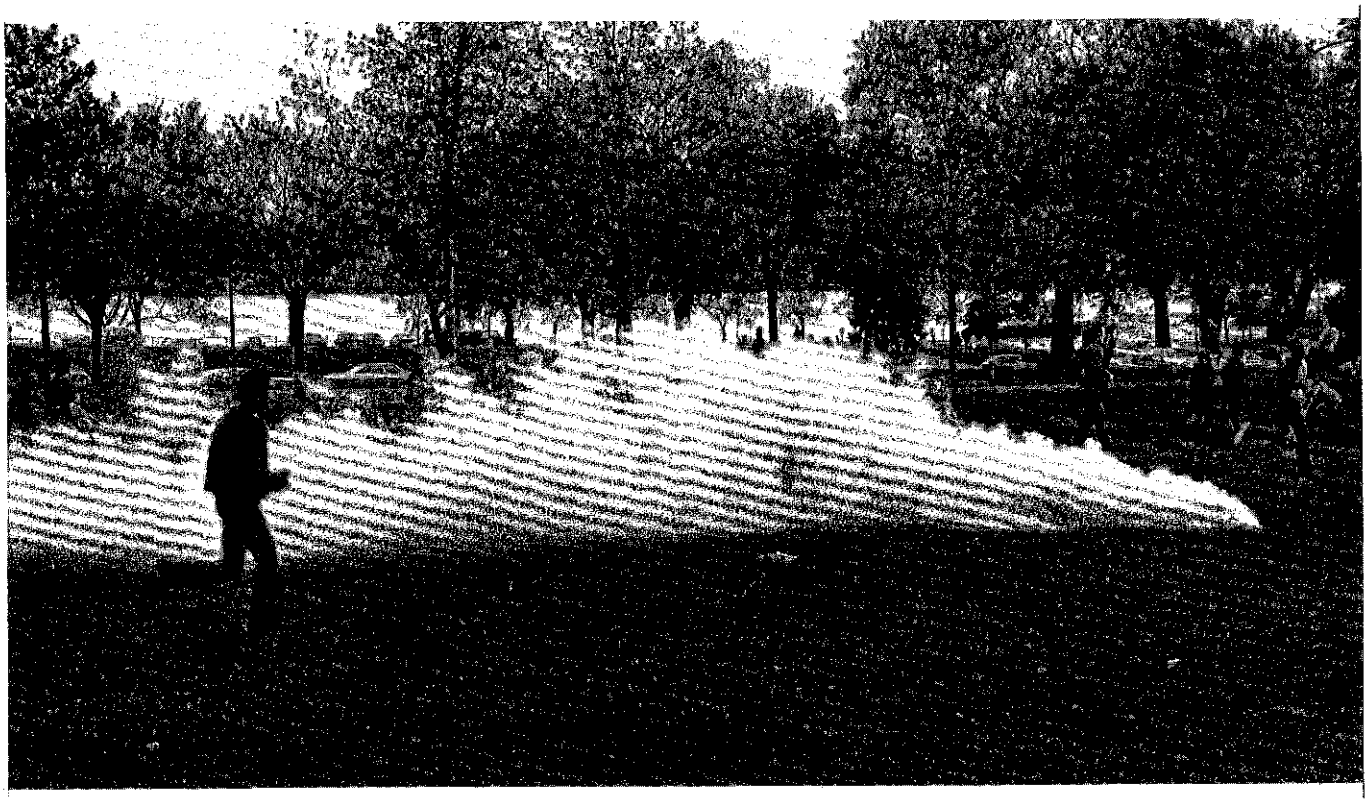
119 said "some" force was used—pulling and dragging.

54 said excessive force was used, but which did not result in bodily damage (shoving, dragging people by the hair, breaking glasses, etc.)

58 indicated the force was violent: clubbing, striking with fists, etc.

In a companion question, affiants were asked whether they witnessed force used against others:

43 said they witnessed none; 25 said they witnessed some force; 47 said they witnessed excessive force; and 106 said they witnessed violence. A comparison of the time, place and circumstances of the arrests indicates that some of the affiants were describing the same incident witnessed by others.



Tear Gas at Washington Monument, May 3
photo by James Adams

Four ACLU affiants were arrested by police in blue coveralls; 41 by plainclothes policemen; and 59 by uniformed officers who were not wearing badges or name tags. Predictably, reports of police violence often involved these coverall, plainclothes or unidentified uniformed officers.

It is not possible to estimate accurately just how widespread police misconduct was during Mayday. The figures cited previously for officers without badges, as well as for those officers engaged in violence are taken from the statements of the 711 affiants who were arrested on May 3 and May 4, out of a total of more than 10,000 arrested those two days. (Only two episodes of police violence were reported on May 5.)

It is reasonable to assume that there were many times the number of episodes of misconduct and violence than those reported by the ACLU affiants. But of course we cannot say whether these were in proportion to the total number arrested, that is, fifteen times as many as our affiants reported.

Most of the affiants describe the use of tear gas or mace in situations where it served no legitimate law enforcement purpose. It was used not only to disperse crowds, but also against people being arrested who were not resisting. It was tossed in the Lincoln-Washington memorial areas, in Georgetown, at George Washington University and at Dupont Circle at times when neither arrests were being made nor crowds being dispersed.

The Park Police

The Park Police Force was singled out by many ACLU affiants as having been involved in the largest number of episodes of unrestrained and

Interior Department Car, May 3 (2 plainclothes policemen, 2 uniformed policemen, 14th Street)
photo by James Adams

unprovoked brutality. Official automobiles of the U.S. Park Police are light green. Some are clearly marked "Police" and carry large red lights on top. Others have no lights and are marked only with a small "Park Police" emblem on each door. Still others have no markings at all. The Park Police is a branch of the U.S. Interior Department, and this agency has other light green official cars not assigned to police use. These automobiles are usually distinguishable from private automobiles by the letter "I" on their license tags. They are assigned to several Interior Department branches, for example to White House gardeners, who are Interior Department employees.

Photographs obtained by the ACLU show numerous Park Police and other Interior Department cars throughout the city on May 3. Some of the photographs show several different Interior Department cars, each carrying four men dressed in business suits.

One photographic sequence, taken by James Adams on the morning of May 3, shows a Park Police car, carrying two plainclothesmen and two uniformed policemen running through several groups of pedestrians along 14th Street. Accompanying Adams at the time he took the photographs were Mrs. Kathleen McVey Finney, a Harvard University student preparing for a Ph.D. in Religion. She describes what happened:

> "I intended to join a group which would march from the Monument grounds across the 14th Street Bridge to the Pentagon. . .To my knowledge, no one had broken any laws, not even jaywalking laws. Unmarked police cars began driving into the larger groups, calling out threats through a bullhorn.

The men in the cars, some in uniform, shouted: 'Break it up. Break it up. We're not going to take any shit from you people today.' Any time that more than three people gathered on the grass, the cars headed for the group. They were driving at 30 mph to 40 mph. They headed right for someone and followed him until he hid behind a tree. I didn't see anyone hit, but the cars came very close to a lot of people, going very fast. The drivers seemed to be engaging in some kind of sport."

Later in the day, members of the Park Police were singled out by witnesses as having engaged in numerous clubbings in the 14th Street area. And the ACLU received reports from several women arrestees of uniformed Park Policemen searching them repeatedly and "most thoroughly" before they boarded the transport vehicles and during their rides to detention centers. There were no similar reports involving members of other police units.

David Brennan, an FBI employee, relates his encounter with two U.S. Park Police patrol cars. Brennan was standing alone beside Rock Creek Parkway, holding a "peace" sign.

"I put down my sign and noticed the Park Police from the second car coming toward me, and those from the first car coming up behind me. So I put my hands in the air and said: 'I surrender.' One of the police then grabbed me by the hair and knocked me down. Another one said: 'Let's make it so he can't walk anymore.' One of them kept hitting me in the back of the neck with his club. He then put the club across my neck and pulled both my arms up over it. They kept yelling and yelling. I kept screaming: 'You don't have to do this. I'm not fighting you.' They started dragging me over the pavement, ripping my pants and cutting my knees very badly.

"I blacked out for a few moments and when I came to, I was lying across the hood of one of the police cars and the club wasn't across my neck and my arms were free. They picked me up a little from the hood and threw me back down against it and handcuffed me. They threw me into the back of the car. In the front seat there were two men wearing some sort of gardener or caretaker uniforms. I struggled into a sitting position on the back seat and one of the men in the front told me to lean forward. I did slightly and he grabbed my collar, pulled me over across the back of the front seat and hit me in the teeth with his fist. I fell into the back seat and he laughed.

"Two policemen then got into the back seat next to me and we drove away from the other car. The police started talking about taking me to a lumber yard near the river, working me over and then throwing me into the river with handcuffs on my legs. At first I thought they were just trying to scare me, but after a while, we did drive into an area near the river where there was a boathouse and a lumberyard. At that point I began to get extremely frightened. One policeman said: 'I've got a pair of handcuffs here. Let's put them on and throw him in the river and forget about it.' The second policeman said: 'No, I want to get in a few licks first.' They started dragging me out of the car. But then a group of young men walked out of the boathouse. The first policeman suddenly said: 'No, we better not do this.' They got back in the car and filled out some sort of form and took me to the precinct jail at 23rd and L Streets."

Hospital records show that Brennan suffered a lymphatic infection in his knee and hip, a badly sprained ankle, and numerous contusions. Several weeks later, he was walking by the White House with a friend when he recognized a man working on the lawn there as one of the two men in the front seat of the patrol car. The groundskeeper seemed to recognize Brennan, stared at him for several seconds and then turned quickly away.

ACLU affiants Dan and Jay Hauben were pulled from their cars by four occupants of a Park Police car in West Potomac Park. It was the morning of May 3 and the Haubens had just picked up two boys who were fleeing tear gas fumes. The Haubens' assailants were wearing gas masks and business suits. They later identified themselves as Park Police. Jay Hauben was pulled from the driver's seat by his hair and thrown against the front of his car. "That pretty face doesn't have long to last," one of the policemen screamed at him, tying his hands behind him with plastic wire.

Fifteen-year old Dan Hauben was pulled from the middle of the back seat by his hair, punched and then clubbed in the face, thrown to the ground and kicked in the groin. Three women with the Haubens, one of them Jay Hauben's wife, were pulled to the opposite side of the car. Dan and Jay Hauben could hear them screaming.

Medical reports confirm that Dan Hauben suffered a double fracture of his nose on May 3. The occupants of the Hauben car were taken to the Third Precinct, where an arrested medic managed to stop the bleeding from Dan Hauben's nose. Coincidentally, David Brennan was taken to the same jail. His affidavit tells of a young boy on the floor of one of the cells, bleeding profusely. It was probably Dan Hauben.

Some affiants from out of town were victimized by Park Policemen although they could not identify them as such at the time. Steve Vernon from Lansing, Michigan reported an encounter with police from "some federal agency." He was removing some things from the trunk of his car which was legally parked near 27th Street, N.W. Two patrol cars drove up and a police sergeant, wearing no badge or other identification, got out of one of the cars. "What are you doing parking on my beat?" he yelled at Vernon. Before Vernon could reply, the sergeant grabbed his coat, tearing off all the buttons but one and began hitting him repeatedly with a nightstick. Finally, the sergeant released him and Vernon quickly started for the driver's seat. But once again the policeman began hitting him with the nightstick until Vernon finally managed to close the car door and drive away. During the scuffle, he had managed to get the license numbers of the police cars, 5190-I and 23. They are patrol cars of the U.S. Park Police.

William Jones, Jr., Bob Lewis, Linda Hoefert and Joan Kraynanski came from Youngstown, Ohio, to join the Mayday demonstrations. Their original intention had been to blockade traffic at the Theodore Roosevelt Bridge. They parked their car on 17th Street and walked toward the Lincoln Memorial. But the large number of police near the Memorial discouraged them and they decided to go back to their car and leave Washington.

On their return walk along the Reflecting Pool, two Park Police cars came at them from behind along the grass. The occupants of one car threw a tear gas cannister at the group and drove away. The second car pursued William Jones. Four Park Policemen jumped out and clubbed him repeatedly with their nightsticks until he lost consciousness. Joan Kraynanski first screamed at the police to stop, but when they made a move in her direction, she followed the others to the safety of some bushes. When the Park Police went away, they rejoined Jones, who was stunned and injured. Now the group was more anxious than ever to leave the city. But Jones had been struck severely in the kneecap and couldn't walk very far. They sat down to rest in front of the Pan

American Building. Their encounter with the Park Police was over. But an even worse encounter with the D.C. Police was to come.

Unidentified Police

Some people who were assaulted by the police on May 3 did not have a chance to memorize license plate or badge numbers or to distinguish between the various police uniforms. Joseph Collins and Sidney Anson, two magazine writers, were getting out of a taxi at the Lincoln Memorial when they were charged by several policemen. Anson was immediately knocked to the ground, maced in the face and handcuffed. Collins ran for safety behind a hedge. But a policeman pursued him, struck him with his forearm, threw him to the ground, handcuffed him with plastic wire and dragged him to a transport vehicle.

The policeman put Collins face-down in the center aisle of the bus and, during the ride to the detention center, the same officer walked over Collins' back several times. The plastic wire had been secured so tightly around Collins' wrists that he suffered permanent nerve damage in one hand. Collins reports that the arresting officer used obscene and threatening language to all the arrestees on the bus. There are similar reports about the behavior of officers on transport vehicles from May 3 arrestees which specifically identify the officers on the buses as Park Policemen, but Collins could not so identify this one.

An incident involving the occupants of government vehicle, a white Ford, license tag 519075 (D.C.) which carried two men in old army jackets around the city on May 3 was the subject of eight independent reports. These reports state that the car pulled into Dupont Circle, its occupants got out and clubbed two young men and a girl to the sidewalk with nightsticks, turned the three victims over to uniformed police and left.

About a mile north of Dupont Circle, John Wentworth was standing on the balcony of his Columbia Road apartment. He was watching a group of youths passing out leaflets to motorists waiting for a traffic light to change. Suddenly, Wentworth saw a car coming up Columbia Road at high speed. The car headed directly for the leafletters, screeched to a stop and two men wearing old clothes leaped out waving nightsticks. The youths ran away and the two men jumped back into their car and sped away after them. Wentworth did not get the license number but he recalls the car, a Ford, either white or pale green.

The license number of the Dupont Circle automobile, verified by several witnesses, is attached to what a Motor Vehicle Bureau clerk describes as "a security car." The clerk's response to a request for information about it: "I don't care who you are, you're not going to find out about that number."

D. C. Police

Other incidents of police misconduct on May 3 involved police officers who were clearly identifiable by uniform as members of the D.C. Metropolitan Police Department. One of them involves the four people from Youngstown—William Jones, Bob Lewis, Linda Hoefert and Joan Kraynanski—whose encounter with the Park Police was described earlier.

Just as the group sat down to rest, a squad of about twenty Metropolitan Policemen, wearing riot gear, came down 17th Street. One of the officers asked the group to move. They got up and began walking away. They didn't get very far.

"Do we want those motherfuckers?" one of the officers screamed. "Yes," the squad replied, and several policemen ran after the group. They

tried to run. Joan Kraynanski got the furthest, but she stopped when she heard the screams. She turned and found her friends spread along the sidewalk behind her. William Jones, unable to run with his injured leg, had been caught first. He was on his back, a D.C. policeman holding him down with his knee while swinging his club down on Jones' head.

A few feet past him, Linda Hoefert was being held by the arm. Nearest to Joan Kraynanski, Bob Lewis was lying on the sidewalk, half-conscious, a policeman jumping up and down on his legs and ankles. As she stood there, an unidentified member of the police squad ran up to her. "Get out of here," he screamed at her. "Don't you see? Get out of here!" But she was too stunned to move and just then, another D.C. policeman, whose name-tag she noted, came up from behind the first policeman and led her to the transport vehicle. Bob Lewis and William Jones couldn't determine the names or badge numbers of their attackers. Linda Hoefert got the name and number of the policeman who arrested her. The four of them were taken to the Third Precinct Jail.

Three blocks away from the scene of the attack on the Youngstown group, Fred Wilcox was victimized by a particularly brutal police assault. Wilcox had come to Washington from Buckingham, Pennsylvania. His wife had not joined him because she feared there might be violence during the demonstrations. She had pleaded with her husband to stay home, too, but he felt he had to come.

He explained: "I am 30 years old, anything but a teenager. But I have never in my life read as much about, considered as long, and been as disturbed over anything as much as the war in Southeast Asia. I came to Washington not to abuse anyone or anything, but to challenge a policy."

Fred Wilcox was standing alone by the Washington Monument near the corner of 15th Street, on the morning of May 3. A D.C. Police patrol car came up to him and stopped. A policeman got out of the car and came to Wilcox menacingly, tapping his nightstick across the palm of his hand.

"I surrender," Wilcox cried, raising his hands over his head. "I give up," he cried. "Nonviolence." As the police officer drew near, Wilcox memorized his badge number and the license tag of the patrol car—752—before the policeman smashed him across the knee with his club. Wilcox crumbled to the ground.

"Get the fuck up," the officer screamed. "It's time for me to kill you." And slowly, deliberately, he pounded Wilcox with the nightstick first across Wilcox's arm-covered head, then over the ribs and finally across the knees and shins. "Get the fuck up," he screamed again.

Wilcox tried to tell him he couldn't. But before he could, the officer jerked him to his feet, threw him against the patrol car and held him there to search him. When the officer released him, his legs gave way and he fell to the pavement. He found that one leg wouldn't move and he begged the policeman to radio for an ambulance. The officer sneered and drove away. A few minutes later a medic saw Wilcox crawling along the sidewalk and arranged transportation to a hospital where it was discovered that his kneecap was fractured.

One case involving a D.C. Police officer was reported by several ACLU affiants and witnesses. A motorcycle policeman made too sharp a turn at 18th and H Streets and fell, unhurt, off his vehicle. Pedestrians in the area broke into laughter and, enraged, the policeman charged the people on the sidewalk, clubbed Garry Gilbert on the knee and, when Gilbert fell to the sidewalk, continued to club him repeatedly on the head and shoulders.

From the Dupont Circle area there are several eyewitness accounts of D.C. policemen taking

arrested, unresisting pedestrians behind trees and wreaking vengeance with nightsticks.

Films and video tapes from the GWU area show several clubbing incidents during police sweeps. One particularly vivid sequence shows a youth sedately riding his bicycle through the area and a policeman yanking him from the bicycle by the neck.

IV. MAY 4: AN UNLAWFUL ASSEMBLY

On the morning of May 4, there were a few attempts at further traffic blockades, and some scattered arrests resulted. There were also several arrests of groups of long-haired youths on the streets in which no blockade was threatened. But, in general, the government adopted two tactics which it had not employed on May 3: it cordoned off key intersections and bridges which made blockading impossible, and, instead of arresting protestors at some other intersections, it simply ordered them out of the area. The main focus of anti-war activity on May 4 was a mass gathering at the Department of Justice.

There was an initial protest meeting around noon at Franklin Park, at 14th and K Streets. Most of those who attended joined in the march to the Justice Department. The marchers took special care to keep on the sidewalks and obey all traffic signals. Along the way, police assisted the march by stopping motor traffic now and then, and by generally escorting the marchers en route.

The group arrived at the Justice Department at about 1:30 p.m. A large number of people had already gathered there and speeches were being given over a small amplification system. The police had closed off 10th Street between Pennsylvania and Constitution Avenues to all motor traffic so that the meeting could be held there. When the marchers arrived from Franklin Park, the police opened the barricades on the Pennsylvania Avenue side to let them in.

It was a sunny day, and despite the tensions of the day before, the crowd was in a happy mood. There was singing and chanting. Many of the people could not hear all of the speeches, so they just sat in the sun and spoke among themselves. Some stretched out and dozed. Many of the ACLU affiants who attended the meeting were not protestors. They saw the crowd, came over to find out what was happening and decided to watch for awhile. Some of the affiants emphasized that they stayed because it was peaceful and everyone seemed to be having a good time. But outside the barricade, it was not so tranquil.

On the fifth floor of the Justice Department, Police Chief Jerry Wilson and Deputy Attorney General Richard Kleindienst were conferring. By noon, when it had become apparent that the traffic blockades they anticipated would not materialize, the government forces were withdrawn from bridges and key intersections. Metropolitan Police were deployed to escort the march from Franklin Park and to contain the Justice Department rally. FBI units were sent out in search of John Froines, a Mayday leader whom the government intended to arrest on charges of having conspired to interfere with the civil rights of Washington motorists and pedestrians. (The government had arrested Rennie Davis on the same conspiracy charge the day before.)

Soon after the Franklin Park group arrived at the Justice Department, Chief Wilson ordered arrestee transport vehicles to the area. Six buses were moved to 10th Street and Constitution Avenue, six to 10th and E Streets, and two to 3rd and C Streets. A short time later, 120 Civil Disturbance Unit policemen, in full riot gear, were deployed on both the Pennsylvania and Constitution Avenue sides of the Internal

Justice Department Arrests, May 4
photo by James Adams

Revenue Service Building on 10th Street, opposite the Justice Department. The building kept the police out of the view of the demonstrators. At 2:18 p.m., an undercover FBI agent spotted John Froines among the demonstrators. Two minutes later, Kleindienst summoned Chief Wilson, who had been overseeing deployment of his men, back to the Justice Department.

At 2:40 p.m., the FBI radioed that it was ready to pick up John Froines. Within seconds, riot police moved out from behind the Internal Revenue building and closed off 10th Street at both ends. They immediately began putting on gas masks. At 2:40 p.m., the FBI radio announced that police would be moving into the crowd "to lock everyone up." During the follow-

ing four minutes, FBI undercover agents slipped through the crowd and arrested Froines.

At the same time, the riot police at the Pennsylvania Avenue end of 10th Street dropped at least one tear gas cannister and charged into the crowd. Seth Many was among the first to feel the impact of the charge. He was clubbed and dragged between two lines of police where two policemen continued to club and punch him as he lay on the ground.

Sandra Carter, another ACLU affiant, was also caught up in the charge. She recalls:

> "I was grabbed rather roughly by a policeman and pulled into the police line. He hit me in the side several times with his club and then pushed me away. I was then caught between two lines of police, I saw two police officers bending over one demonstrator who was on the ground, beating him with clubs."

Robert Poususney and his wife, Cathy, were a few feet away from the police line. Although they were not assaulted, they witnessed "a couple of policemen pushing a woman and beating a man who had long hair." The victims were probably Seth Many and Sandra Carter.

Jeffrey Macy was also near the police lines when the charge began. He relates in his affidavit:

> "When the police line began to move, I placed my arms over my head and bent my head forward onto my legs. At this point, I was struck by a police officer's nightstick across my back. I was then struck by the same officer on the head. I picked up my head to see what was happening and another police officer sprayed mace, first in the direction of my face and then into my ear. My recollection fades at this point. The mace caused me to lose my clarity of vision and my ability to move. I remember standing up and putting my hands on my head, at which point a police officer struck me with a nightstick in the stomach. I doubled over and fell through the police lines where an unidentified civilian led me to Pennsylvania Avenue where I collapsed on the sidewalk. I was not arrested."

Several other ACLU affiants described how they were clubbed, pushed or maced during the police charge from Pennsylvania Avenue. Macy was the only one to escape arrest.

Several newspaper accounts report an incident which occurred at this time. William C. Sullivan, a top FBI official, seized a youth outside the Justice Department and dragged him into the courtyard. Before the courtyard doors were closed, witnesses and reporters saw Sullivan and several agents on top of the youth, who was lying on the ground. Later, Sullivan referred to the incident as "just a little sport."

After the initial charge, the police line drew back. The charge and the clubbings took only a few minutes. Meanwhile at 2:43 p.m., Chief Wilson had ordered arrests to commence "in five minutes." At 2:45, he directed an armored police car to enter the area and order the demonstrators to disperse or be arrested. According to both the FBI and Metropolitan Police radios, the announcement to disperse was made at 2:47 p.m. "This is an unlawful assembly," the announcement began.

Available radio logs do not pinpoint the exact time that arrests were actually begun. A freelance photographer who was outside the police perimeter noted the time lapse between announcement and arrests as three minutes. He recorded the announcement at 2:47, which coincides with the police radio, and the commencement of arrests at 2:50. That the period in which

people within the police lines were permitted to leave was either very brief or non-existent is supported by statements of ACLU affiants.

Lynn Bell was sitting with five of her friends in the crowd. When they saw the police lines forming, they became frightened and went to the Pennsylvania Avenue end of 10th Street. The police officers there were donning gas masks, apparently in preparation for their charge into the crowd. They refused to allow the six young women through and told them to try the other end of the street. At the Constitution Avenue end, they were again refused permission to exit. They sat down in the middle of the street and waited to be arrested.

Dr. Kendall Marsh tried the Constitution Avenue side first. "I asked three officers if I could leave pursuant to the police order to disperse," he recalls. "I was refused each time. I then went to the north end of the street and asked permission to leave twice and I was refused twice." Dr. Marsh then sought out a policeman who arrested him. He realized that arrest was inevitable and he wanted to be processed as soon as possible.

Most ACLU affiants did not try both ends of the street. Many of them on the Pennsylvania Avenue end concluded after the initial police charge that there would be no hope of exit, at least from that end. Some of these people went as quickly as they could to the other end of the street, where they were turned away. Others say the police charge convinced them there would be no exit from either end.

John McClure asked a police officer how he could get out and the officer pointed to the far corner of the Constitution Avenue police line. "We worked our way through the crowd," McClure wrote. "But when we neared the specified corner, a young man in front of us was clubbed into the bushes when he attempted to leave."

Other affiants relate how rumors of police clubbings and macings convinced them that it would be safest just to stay put and not risk injury. Still others say they were told by their companions that people were being turned away from the police lines and that it would be useless to try leaving.

Observers standing outside the police perimeter on Constitution Avenue stated that about twenty people were allowed to leave the area after the announcement was made. According to these observers all of the people who passed through were dressed in business suits. People on the Pennsylvania Avenue end did not see anyone being allowed out there.

Most of the people at the center of the demonstration said that because of the chanting there they did not hear the announcement to disperse.

It appears that the police lines were not really open for even those few minutes, and that only well-dressed people, undercover agents or media representatives were allowed through. And there is no doubt at all that there was no real chance for everyone who wished to leave and avoid arrest to do so. There were 3,000 people sitting in the area and getting out meant walking over and through that crowd.

Added to the physical crush was the confusion caused by the initial police charge and the sight of police with gas masks. Also, the protest leaders, fearing that 3,000 people surrounded by riot police might panic, tried desperately to keep the crowd calm and seated.

The chronology of the events at the Justice Department makes it clear that the order to disperse was purely pro forma; that the government had no intention of permitting the demonstrators to leave. The personal supervision of the operation by Chief Wilson and the presence of Justice Department officials on the scene is totally inconsistent with the suggestion

Closing Off The Justice Department, May 4
photo by James Adams

that the lack of opportunity to disperse was the result of a breakdown of police communications and strongly suggests a planned government strategy of arresting as many demonstrators as possible.

What remains an open question is whether the police deliberately led the group of marchers from Franklin Park into the area so they, too, could be arrested. On the one hand, for almost an hour after they arrived, people were free to enter or leave the area. On the other hand, transport vehicles for arrestees were being stationed around the perimeter as the marchers were arriving. The unanswered question is whether the decision to arrest the Justice Department demonstrators was made before or after the Franklin Park marchers arrived.

The Field Arrest Forms

Unlike May 3, a field arrest form was filled out and a polaroid photograph was taken for each person arrested. When first announced in the press and in the courtrooms, it seemed that the government would have the evidence to justify its arrests as it had not been able to do the day before.

But closer examination of the arrest procedures proved them worthless. A significant number of policemen on the scene had removed their badges and other identification. Instead of ordering all police officers to replace their badges, the government simply assigned a few officers to pose for photographs with arrestees, others to fill out arrest forms, and the remainder to make the actual arrests.

This process defeated the purpose of the arrest form-photograph procedure. That purpose is to identify the person being arrested as the individual who was doing something wrong, as identified by the officer who filled out the charge on the form and who was photographed with him. The officer, in testifying in court, should be able to say: "Yes, this is the arrestee, this is me, I saw him there committing the wrongful act and I made the arrest." It also is designed to protect the accused from anonymous accusers and from police misconduct.

But for most, if not all, of the May 4 arrests, the police officer in the photograph would only be able to say: "Yes, this is me. But the arrestee was brought to me by someone else, and that other officer told me . . ." What some other (unidentified) officer might have said is not proper evidence in court.

According to the statements from government officials as reported in the newspapers, 2,700 people were arrested at the Justice Department on May 4.

V. MAY 5: THE STEPS OF THE CAPITOL

The final mass Mayday arrests were made at the United States Capitol on May 5.

The events leading to the arrests began in early afternoon with a mass meeting on the Mall. During the meeting, it was announced that a group of Congressmen had agreed to meet the anti-war protesters on the steps of the House of Representatives in order to receive a People's Peace Treaty from the protesters and to participate in an accompanying ceremony.

After the announcement, those going to the Capitol formed a line and proceeded to Independence Avenue and then uphill towards the Capitol. The marchers stopped for all traffic lights and stayed on the sidewalks. Again, they were assisted en route by members of the Metropolitan Police and the U. S. Capitol Police forces.

When the front of the line reached the intersection of Independence and New Jersey Avenues, at the entrance to the Capitol grounds, at about 2:50 p.m., it was stopped by Inspector Herman Xander, a Metropolitan Police officer permanently assigned to the Capitol Police. Xander asked why the group was approaching and was told that a Congressional delegation had agreed to meet with it. At this point, Reps. Ronald Dellums, Parren Mitchell and Bella Abzug came down from the Capitol to meet with Xander. They confirmed the fact that they had arranged to meet with the group on the House steps. Xander then radioed James Powell, Chief of the Capitol Police. Powell advised Xander to allow the group to proceed.

Led by the Congressional delegation, the marchers moved onto the Capitol grounds, up one of the access roads and finally onto the House steps. They reached the steps shortly before 3 p.m. It took several minutes for the marchers to fill the steps and find seats. There was a delay of several minutes more while the small amplification system used by the demonstrators was located and brought to the top of the steps. Police photographs establish that the first speaker of the day, Congressman Charles Rangel, began his address shortly before 3:10 p.m.

Meanwhile, on orders from Chief Powell, Inspector Xander went to the office of House Speaker Carl Albert to advise Albert's aide, Michael Reed, that "a group, loud and boisterous, were going onto the steps." According to Xander: "Mr. Reed went onto the House Floor (presumably to get instructions from Mr. Albert). He came back and told me that if the group was being addressed by members of Congress not to disturb them."

Police radio logs show that at 3:15 p.m., Xander radioed his associates to locate Chief Powell and advise him that the Speaker did not want the group disturbed. According to Xander, he located Powell himself a few minutes after the radio message was broadcast. When Powell heard the Speaker's instructions, he immediately went into the Capitol himself and found Zeke Johnson, Sergeant at Arms of the House of Representatives. He told Johnson that he wanted to remove the group from the steps and he requested the

Presentation of "People's Peace Treaty", Capitol Steps, May 5
photo by P. B. Lee

Speaker's authority to do so. Johnson relayed the message and Speaker Albert gave his approval. Albert was not told that members of Congress were in the middle of addressing the group.

Powell returned to the House steps and, at 3:28 p.m., after consulting with Chief Wilson on the scene, he ordered his men to begin making arrests. As this order was given, several lines of riot police sealed off the area. According to newspaper accounts, 1,200 people were arrested.

The crucial question about the Capitol Steps arrests turns on whether the gathering was, as the government claimed, "disruptive" and an "intolerable interference with the proper functioning of Congress." If it was, then the protestors had forfeited their right to be there, and were legitimately subject to arrest. If it was an orderly gathering which did not interfere with Congressional activities, then the protestors had every right to be there.

The Capitol steps constitute a traditional gathering place for large groups of every description. There are frequent non-political rallies—school children, Girl Scouts, marching bands, escorted tours. The steps are also used for political protests: policemen petitioning for higher wages; anti-war groups; anti-busing groups and so on.

The question of the temper of the crowd was exhaustively explored during the trial of eight defendants arrested on the Capitol steps. The strongest testimony to support the government's contention that it was indeed a "disruptive" gathering came from Chief Powell. At one point, during direct examination, Powell told the jury:

> "At that time, the behavior or the conduct, the noise was what it had been. If anything, it had gotten worse. I could not discern any person making a speech to the group. They were just chanting and cheering and some groups singing and some groups clapping their hands. And the microphone was apparently being used to pick up the noise produced by these chants and cheers."

Powell was describing the situation which he said existed some time between 3:00 and 3:30 p.m., after he had returned from speaking with Zeke Johnson. According to Powell, the situation became worse a few moments later when "the crowd appeared to me to have worked itself up into a near frenzied state than they had been." Powell testified that there were no speeches given by members of the Congressional delegation until after 3:28 p.m. when the arrests began. He said the crowd was "completely out of control" from the moment it entered the Capitol grounds.

Chief Powell's testimony was supported by Assistant U. S. Attorney Gilbert Zimmerman. Zimmerman testified that no Congressional speeches were made until after 3:28 p.m. He too characterized the gathering with phrases such as "great commotion" and "extremely disorderly and unruly group."

The defense countered the government witnesses by introducing police photographs which showed, contrary to the testimony of Powell and Zimmerman, that Congressional speeches had been in progress since at least 3:10 p.m., when Congressman Charles Rangel was speaking to the crowd. (As part of normal police procedures the precise time each photograph was taken was noted on its reverse.) Police photographs also showed Reps. Abzug, Mitchell, and Dellums addressing the group after Rangel. The Congressmen's testimony was that Rep. Abzug was still giving her speech when the arrests began, and that the crowd was orderly when it arrived and quiet and attentive while the speeches were going on. Rep. Dellums testified on these points:

Q: Could you describe for the jury what the conduct of the group was as they went onto the steps?

A: People were just walking up the steps. The noise level in fact was very low because people were coming on the steps in groups of two, three, five or maybe ten people, so it was small groups just walking up the stairs. I don't know any other way to describe it except it was a normal group of people normally walking up some stairs.

Q: Could it by any stretch of the imagination be described as "charging" up the steps?

A: Not in any way. I would consider any accusation in that regard as a blatant lie. I was there and I observed the whole thing.

Q: During the speeches, would you characterize for the jury the conduct of the crowd.

A: It was a crowd, not unlike hundreds of crowds I've addressed, political rallies, speeches I have given. It was a normal crowd outdoors hearing a politician speak. They applauded when we made relevant comments and they cheered where we made comments they agreed with. For the most part they were listening very carefully to what we had to say and they

reacted when they felt it was appropriate to react.

Rep. Dellums then went on to testify at some length about other demonstrations, including some which had taken place on the Capitol steps which were much noisier than the May 5 meeting.

Rep. Dellums' testimony was supported by Eric Marcey, an Assistant U. S. Attorney who was with Gilbert Zimmerman at the Capitol steps. Marcey testified that Bella Abzug was speaking while the arrests were being made and on cross-examination he also contradicted Powell, Zimmerman, and other prosecution testimony about the behavior of the crowd:

Q: During the time the crowd was being addressed by speakers, would it be correct to characterize the crowd as orderly at that time?

A: In the sense that any crowd of that size listening to political speeches would be orderly.

Q: And by that you mean that they were seated almost entirely?

A: Except standing for applause occasionally.

Q: Let me focus on the Congressmen's speeches for a moment. I take it while they, as you indicated, were speaking, the crowd would be quite attentive?

A: Yes.

Defense attorneys then introduced testimony from several members of the House Ways and Means Committee who said that, although they were aware of the gathering outside, there was no interference with conducting the day's committee business. In fact, they testified, noise from tourists who every day troop through the hallways of the Capitol was usually much more distracting than that from the May 5 demonstration. Most of the government witnesses conceded that they had learned to live with a high level of everyday noise and distraction, an inevitable concomitant of working at the Capitol.

Finally, the defense introduced a sound film of the 120-member Los Angeles Chinese Drum and Bugle Corps playing on the steps of the Capitol four weeks later. All of the witnesses had to agree that the sound it made was substantially louder than that of the May 5 gathering.

The Order to Disperse

Chief Powell testified that he announced to the crowd at 3:00 p.m. that "this is an unlawful assembly" and warned the demonstrators to disperse or face arrest. Eric Marcey, the Assistant U. S. Attorney, was standing next to Powell at the time and confirmed that Powell did make the announcement. But at 3 p.m., the crowd was still coming onto the steps and settling into seats. Marcey testified that most of the people on the steps could not have heard the announcement.

Chief Powell testified that he made a second announcement when he returned from his conference with Zeke Johnson. Powell set the time of this second announcement at 3:14 p.m. This part of Powell's testimony is demonstrably untrue.

According to both Powell and Xander, the second announcement was not made until after (1) Xander radioed the Speaker's instructions; (2) Xander relayed those instructions personally to Powell; (3) Powell went into the Capitol to find Zeke Johnson; (4) Johnson went to find Albert; (5) Powell and Johnson conferred; and (6) Powell returned to the Capitol steps.

Police radio logs set the time of the first of these events—Xander radioing the Speaker's instructions—at 3:15 p.m., one minute after Powell says he made the second announcement. It appears much more likely that Powell's second announcement was made simultaneously with the area being sealed off and the beginning of the arrests. The May 4 tactic used at the Justice Department—warning people to leave or face arrest, and then making it impossible for them to leave—was repeated on May 5.

The testimony about Chief Powell's warning to disperse also covered whether it could be heard. Powell and Zimmerman both testified that the crowd could hear the second announcement and, in fact, reacted to it. However, David Larimer, another Assistant U. S. Attorney, testified that he was within fifty yards of Chief Powell between 3:00 and 3:45 and heard no announcement at all.

Officer Ronald Eades of the Capitol Police said he was sitting on his motorcycle, 150 feet from the steps, during the same period. Eades said that he could clearly hear Bella Abzug speaking and could see Chief Powell speaking through a bullhorn, but that he could not hear Powell's announcement.

Steven Green, a reporter for the Washington Star, testified that he did hear the second announcement. He was standing right next to Chief Powell at the time. He testified further to a conversation he overheard between Chief Powell and Chief Wilson as follows:

Q: And at that point, either just before or just after the arrests started, what did Chief Powell say to Chief Wilson?

A: He asked Chief Wilson if he should warn the people on the steps again because he didn't think that a lot of them had heard him.

Arrests on The Capitol Steps, May 5

Q: And after Chief Powell said to Chief Wilson what you have just related, that he thought maybe he should warn them again because a lot of them hadn't heard him, what did Wilson say in response?

A: He said: "No. Let them tell their story in court."

None of the Congressmen addressing the group heard the announcement either. When Rep. Abzug finished her speech, she turned the microphone over to Rep. Mitchell and went down the steps. It was there she learned for the first time that people were being arrested. She found Chief Powell and said to him: "I think the least you can do is make clear that they are subject to arrest. The least you can do is make this announcement and I urge you to do so." She was told that an announcement had been made and she, in turn, told Powell that no one had heard it.

At the top of the steps, Congressmen Mitchell and Dellums had finished speaking and were being presented with the People's Peace Treaty. Dellums' aide, Michael Duberstein, glanced down the steps at this time and noticed people being arrested. He testified:

> "I walked back and told Ron: 'Congressman, they're making arrests down there.' And he said: 'What?' He came over to the edge, too, and then said he was going to find out. So he went down the middle of the steps and approached the police officials. I couldn't get through the crowd in the middle. So I went to the edge of the steps and went down towards where the Congressman was trying to talk to members of the police. When I got near the bottom of the steps, a crowd of policemen grabbed me and shoved me down the rest of the steps. I said I was a member of the Congressman's staff. One of the policemen kept grabbing me and the Congressman ran over and said, 'Hey, that's a member of my staff. Get your hands off him. I'm a United States Congressman.' And the policeman looked at him and said: 'I don't give a fuck who you are.'"

The policeman then hit Dellums in the side with his nightstick and pushed him down some stairs, too.

The Congressmen then proposed to Chief Powell that he give another order to disperse "loud and clear." They offered to help by adding their own request to disperse. Rep. Dellums testified as to how that conversation went. Chief Powell responded to the proposal by saying:

"I'm sorry, I cannot do that."

Dellums: "Why can't you do it?"

"Well, if we do it, we'll violate the civil liberties of a dozen people we already have on the bus (police vehicle)."

Dellums: "What do you mean, you want to arrest a thousand people and you only have twelve in this bus?"

Powell: "Well, we already gave the order."

In his testimony Chief Powell corroborated Dellums' recollection that the reason he didn't make another announcement or allow the Congressmen to do so was because it wouldn't have been fair to the people already arrested.

Both government and defense witnesses testified that one man in the crowd, early on in the proceedings, had taken off all his clothes. For some reason, he was not arrested, although he provided the only instance in which the government and defense counsel agree that the law was being broken.

There were apparently only two incidents involving violence on the Capitol steps. One was the police manhandling of Mike Duberstein and Rep. Dellums. The other occurred earlier in the day when Rep. G. V. "Sonny" Montgomery from Mississippi struck a demonstrator in the mouth with his fist. A police officer who witnessed the incident came up from behind Montgomery and maced the fallen demonstrator. Montgomery was not arrested. The demonstrator was.

VI. THE DETENTION CENTERS

The people who were arrested were taken to several different kinds of detention centers: (a) to one of fourteen police precincts; (b) the Central lock-up at police headquarters; (c) the U. S. District Court lock-up; (d) the Superior Court lock-up; (e) the outdoor practice field adjacent to Robert F. Kennedy Memorial Stadium; (f) the D. C. Jail outdoor exercise yard; (g) the D. C. Coliseum, a large indoor arena normally used for sporting events, the circus, etc.

The several thousand May 3 arrestees originally detained outdoors at RFK Stadium and the D. C. Jail exercise yard were transferred, starting at about 10 p.m., to the Coliseum. The transfers continued from ten until about 3 a.m. They joined an additional 1,000 to 1,500 prisoners who had been confined to the Coliseum from the beginning of their arrest. Volunteer lawyers estimate that at the highest point, the number of people in the Coliseum was about 3,000.

Conditions of Outdoor Detention

Carolyn Flood describes her confinement in the RFK practice field:

> "First of all, I was physically uncomfortable—cold, tired, hungry. But the worst part for me was . . . 'the show of force.' This was the first time I had been in this type of situation. Shortly after we got to the practice field, some people started bending the fence and we were all gassed. From that point on, I was afraid we were going to be hurt. The guards held cannisters of tear gas in their hands, they had a fire hose ready, clubs. A helicopter hovered over our heads. I was very frightened the whole time. I resented the newspapers that reported it looked like another Woodstock."

The worst problem for those confined in outdoor detention centers was the cold.

Henry Allen, a Washington Post editor, arrested while trying to leave the GWU area, was confined in the D. C. Jail exercise yard. "Night was coming on cold," Allen wrote the next day. "We huddled around fires built from wood pallets the guards grought in. The people lay down in groups together under their blandets in the cold." That night, temperatures fell to the mid-30's. Fewer than a third of the people in the outdoor detention centers had blankets.

Mary Evans recalls:

> "I became very ill at the practice field due to exposure. I asked for a blanket again and again, but I never got one. When I got to the Coliseum, I collapsed and went to sleep on the cold cement floor. When I woke up, I was shivering uncontrollably and my teeth were chattering. I was coughing like crazy. A medic saw me and was so concerned that he offered to pay my $10 collat-

RFK Stadium, May 3

eral for me. I refused because I was being detained illegally and didn't want to cooperate. The medic went to Chief Jerry Wilson and when he saw me he released me without processing. I was sick for a week and a half."

Many of those arrested suffered the aftereffects of exposure.

Ramelle Adams spent sixteen hours at RFK. Sometime during her stay there, she began shaking and became feverish. She was taken to the hospital where the doctor told her she probably had contracted mononucleosis. She was then returned to the practice field where she continued to suffer in the cold. She was in bed for a week afterwards with a bad case of strep throat.

Janet Kurczaba spent fourteen hours at the practice field and the following week in bed with bronchitis.

Elizabeth Jamison spent sixteen hours at the practice field and afterwards was hospitalized with pneumonia.

May 3 arrestees who were brought early to the RFK practice field had to wait eight hours for portable toilets to arrive, as did the arrestees at the D. C. Jail exercise yard. However, some of the guards at the D. C. Jail allowed the women prisoners into the building to use the toilets.

The early arrivals on May 3 at the outdoor detention centers were fed one hot meal by the government. For the rest of May 3, 4 and 5—and at all the other indoor facilities from the beginning—arrestees were fed only lunchmeat sandwiches and water. In some facilities, there were ten hour waits for food. A newspaper story in the Washington Star revealed that the Metropolitan Police Department relied exclusively on a small restaurant located in nearby Prince Georges County, Maryland, to provide food for thousands of demonstrators. This restaurant is under contract with the Police Department to feed whatever prisoners the department controls and normally provides food for only 100 people a day. After the restaurant supplied sandwiches for one day, the Prince Georges County Health Department ruled that it was operating over capacity and could not meet sanitation standards, and ordered a halt to its stepped-up operations.

The Coliseum, May 3
photo by P. B. Lee

Conditions at the Coliseum

The cement floor of the Coliseum was ice cold, but the air above it was hot, smoky and low in oxygen. Tear gas and pepper gas clung tenaciously to the clothes of Mayday arrestees and the fumes made many people ill. There were not enough toilets and not enough food.

Lawrence Speiser, then Staff Director of the Senate Subcommittee on Juvenile Delinquency, and former Director of the National ACLU Legislative Office, was one of the few volunteer attorneys permitted access to the Coliseum. His affidavit describes the conditions:

> "Between the hours of 10:30 p.m. on May 3 and 4:30 a.m. on May 4, some 2,500 to 3,000 young people appearing to be between the ages of 15 to 25 years were imprisoned by a combination of police and National Guards. They were primarily confined to the floor of the stadium which is concrete and extremely cold. Most of them lay down without blankets or any covering . . . Several lines, some as long as 100 persons were waiting to use the restrooms (although others testified there were unused restrooms) . . . I observed at least 25 people who were ill, who were lying on the concrete floor, some on blankets, but most not. There were volunteer medics who were attending them. Congressman James Corman (who was part of a visiting Congressional delegation) left and purchased some medicine at his own expense for the sick . . . There did not appear to be sufficient water or food for the people imprisoned."

Processing the Prisoners

At about 9 p.m. on May 3, the government permitted five volunteer attorneys to come into the Coliseum to advise the thousands of people being detained there of their legal rights. Until that time, the arrestees had communicated with no one from the outside, as they were not permitted to use the telephones. Initially, only five volunteer attorneys were given access to the Coliseum. But as the evening wore on, a handful of additional volunteer lawyers was allowed in.

All of the volunteer attorneys and many of the ACLU affiants reported that most arrestees had to stand in line for processing (sitting in the line was not permitted) for 3½ hours to five hours.

Many ACLU affiants were advised by the police that if they elected to stand trial, rather than forfeit collateral, they would have to return to the end of the line. Others were told that only those electing to forfeit would be processed at all.

Those who refused to give information to police processors beyond the normal name and address required of them were told to return to the end of the line. They feared—and their fears were realized—that they would be given an arrest record, even though they had not had an arrest record filled out, and even though they had not been charged with any offense.

James Heller, then Chairman of the ACLU of the National Capital Area, was one of the five attorneys first permitted into the Coliseum. In his affidavit, he gives the following account of the processing:

> "At approximately 9 p.m., one other attorney and I were asked by a Justice

Department Attorney, James Turner, to explain to the arrestees what procedures would be used to book and release them on charges of disorderly conduct, $10 collateral, and what their choices were. We were told by Mr. Turner that everyone would be charged with disorderly conduct only, and released if he had or said he had $10 collateral to be paid at Police headquarters after release; that no one had to answer any questions asked by the booking teams of Justice Department lawyers; that the choices available were to elect to forfeit the collateral or to stand trial; and that if the person elected to stand trial and the charges were dropped or he appeared at trial and was acquitted, collateral would be refunded; that a person could elect to stand trial and later change his mind and forfeit collateral before trial."

Mr. Heller and the four other volunteer attorneys then began pre-interviewing each arrestee to explain these alternatives to them. They were joined by a team of Justice Department lawyers who volunteered to do this counselling. Mr. Heller's affidavit continues:

"At that time, I did not know Chief Judge Greene of Superior Court had issued a show cause order requiring the release of anyone by 8:00 p.m. Tuesday, May 4, for whom there was no arrest record. When I learned of this order and also learned from my first 15 or so interviews that no one had had such a field arrest form filled out, I called all the other attorneys together and insisted we advise everyone that they could avoid any arrest record and criminal charge and collateral, in all probability, by waiting until the next day at 8 p.m. if they wished. I used voice, bullhorn and finally the Coliseum public address system to tell everyone this.

"During the evening, I spent over 1½ hours trying to no avail to get Mr. Turner and Mr. Wilson (Will Wilson, Assistant Attorney General in charge of the processing at the Coliseum) to agree to some procedure for releasing the vast majority of those in the Coliseum for whom there was no field arrest record. Mr. Wilson simply would not agree to any such procedure.

"As the evening progressed to early morning, long lines of people began to join up at the three turnstiles at the main entrance where collateral receipt machines were being used . . . Every one of the 44 people I interviewed (most of whom stated they had not been doing anything but driving, walking or standing near the spot where they were arrested; and that they had not been advised of the charges) elected to accept an arrest record, disorderly charge and collateral requirement rather than await the deadline of Judge Greene's order because they found the prospect of another 16-24 hours in the Coliseum intolerable . . . "

Several of the Justice Department lawyers, including several from the Civil Rights Division became increasingly disturbed at the role they were playing in the booking proceedings, and their volunteered affidavits about the orders they had been given were filed in court. From the affidavit of Justice Department lawyer Eileen M. Stein:

"Before volunteering to advise detainees, I had been briefed on how to fill out arrest reports (Form 255) by the police. I was given a list of seven policemen and instructed to fill in their

> names in rotation in the "Arresting Officer" blank on the form. When someone questioned this, he was told that these were the Attorney-General's instructions and those who didn't like it could leave. Later we were told to cross out the word 'Arresting' in the form and substitute the word 'Court'."

The pre-interviewing and filling out the (fictitious) arrest record was only the first step. When the arrestee had finished the interview, he lined up at another table where fingerprint cards were filled out. Then he stood in line for fingerprinting and then for photographs. Then he stood in line before a cashier to pay the $10 collateral, have a receipt filled out and be released. The serial numbers on the Collateral Receipt forms indicated that as of 3:30 a.m. on May 4, only 351 persons of the more than 3,000 held there had been processed and released.

The government's motives for the processing procedures were quite clear: (1) to slow down the processing in every way they could to prevent potential demonstrators from getting back on the streets; and (2) to get photographs and fingerprints of as many of the arrestees as they could, without concern for whether the individuals had been participating in demonstrations, or whether the charges would stand up in court.

Assistant Attorney General Will Wilson was overheard telling an assistant: "I don't want any of them taken to court until you get fingerprints and mugshots. Don't release anybody for any reason without getting them. I want to see what we turn up here."

This motive is underscored by the fact that persons charged with "disorderly conduct" are not normally subjected to fingerprinting and photographing. In fact, an Assistant D.C. Corporation Counsel has stipulated in open court, in an ACLU suit involving previous demonstrations, that unlike the usual case with such minor offenses, D. C. police are ordered to fingerprint and photograph all persons arrested in connection with mass demonstrations.

The Central Lock-Up

Most of the affiants confined at the Coliseum did not complain about the attitude of the police and National Guardsmen assigned to duty there, and several affidavits especially commented that some of the National Guardsmen were kind and sympathetic. At Central lock-up, however, not only the physical conditions but also many of the guards were brutal.

The cells were about six feet square. The number of occupants varied from 12 to 20. With only 2 or 3 square feet floor space per person, there was no room to lie down, and the arrestees took turns sleeping or sat during their entire confinement, which for most of the arrestees at Central was for over 40 hours. There were no blankets. Toilets were functioning in only some of the cells. The air at the rear of the cells was almost unbreathable. Those who arrived at Central at 8:00 a.m. on May 3—and there were many—were forced to wait eleven hours for food. Those in cells without operable sinks waited many hours for water.

At the Coliseum and outdoor facilities, some medical attention was available from arrested medics, who were able to convince the authorities that seriously ill arrestees should be taken to a hospital. But at Central, several people who became quite ill were ignored by the guards or refused medical attention. One man who went into convulsions was viewed by three police officers before he was taken to a hospital an hour later. The first officer to see him (badge number on file) said: "Let him die," and walked out of the cell. But he returned half an hour later with another police officer. They waited another half hour to come back with a third officer who ordered him removed.

Affiants tell of arrestees with asthma attacks, fainting, heat prostration and other illnesses being refused medical attention.

Many of the male arrestees confined at Central relate the guards' threats: "We're gonna put you in cells with murderers," and "You're gonna be raped in here, they're gonna make sissies out of you." Later on, Central guards repeatedly told arrestees awaiting arraignment that judges were handing out six-month sentences. Women arrestees reported constant harassment by the guards, and there were several physical assaults by Central guards against the male arrestees. Many of them took place in the fingerprinting room.

Some Mayday arrestees had been advised by lawyers that they were under no obligation to cooperate with police processing, at least until the legality of the Mayday arrests had been determined by the courts. But those who attempted to refuse processing at Central were treated brutally: Rick Kean witnessed the following incident:

> "On the evening of May 3, 1971, I was being booked and fingerprinted at Washington D. C. Central. As I was being fingerprinted, another man from my cell was brought in. When the attendant grabbed his hand, he drew back and said he didn't want to be processed. The attendant immediately grabbed him around the neck, and aided by another police officer, pulled him down backwards, using a stranglehold. He was thrown against the floor hard enough to bounce his head. He was then picked up by one officer and shaken by the other who yelled in his face: 'The Supreme Court says you have to be fingerprinted.' The man kept struggling, obviously afraid, and he kept asking, 'What are you going to do, kill me?' I was taken back to my cell then and the man joined me about 20 minutes later. He had marks and scratches on his neck and later red marks appeared under his eyes. A doctor in our cell who had been arrested said that the man had a head injury. We asked for medical assistance over and over. No one came for about an hour. Then they looked at him and took him away."

Kean did not know the name of the man he saw thrown to the floor. But by comparing affidavits, ACLU researchers discovered that Stephen Boehm had been in Kean's cell and had been assaulted in the fingerprint room. Boehm's affidavit corroborates Kean's. Boehm then describes the assault which continued after Kean left the room:

> "Now I began to get worked over by at least four policemen. They had me down on my stomach and they twisted my arms back and tried to pry my fingers open. Someone kept hitting me with his fist. After about five minutes of this, they started talking about 'putting me to sleep.' They then turned me over, held down my arms and legs and one of the policemen put his hands around my throat and cut off the air. I couldn't breathe. This went on for about 30 seconds, during which time the police kept making jokes about what color my face was turning. Finally I opened my left hand to show that he should stop choking me, that he could have the prints. He waited about ten seconds and then stopped choking me. They took my fingerprints, made a photograph and brought me back to my cell."

Boehm identified one of them involved in this incident as Officer X (name on file). There were numerous reports from ACLU affiants confined at Central about Officer X, several of them also mentioning his badge number.

When David Denhartigh called for medical assistance for a man in his cell suffering an asthma attack, Officer X opened the cell door, grabbed Denhartigh's arm and smashed the door against his wrist. He then pulled Denhartigh from his cell and X and another guard beat him with their fists.

Other witnesses report that X was involved in the beating of two arrestees in addition to Stephen Boehm in the fingerprint room. The arrestees, Michael Morrison and William Dopler, had refused to allow their prints taken.

Michael Horowitz allowed his fingerprints to be taken and was then told by the police officers that he was within his rights to have refused to have them taken. On the way back to his cell, Horowitz tried to warn another arrestee to demand information on his rights before submitting to fingerprinting. Officer X heard the warning and hit Horowitz in the face with his fist. "Wreck him for me," X ordered the guard who was with Horowitz. But the guard allowed him to return safely to his cell.

Several affiants report that X also refused food to certain arrestees who displeased him for various reasons.

Conditions in the Precincts

Not all of the lock-ups were officered by brutal guards. From the Second Precinct, for example, came affidavits commending police officers. Several arrestees confined there mention Officer George Ward as being especially kind. At the Second Precinct, medical attention, drinking water and toilets were readily available. Unlike Central, police officers allowed arrestees to make telephone calls and kept the cell doors open to provide additional ventilation.

Similar comments came from people who were confined in the Ninth Precinct.

Other precinct jails fell somewhere between the conditions at Central and those at the Second Precinct. The Eleventh Precinct seems to have come very close to duplicating the atmosphere at Central. The guards laughed at a young woman who went into convulsions and did not give her medical attention for over an hour. The toilets weren't working and arrestees were allowed trips to functioning toilets only after very long waits. One woman affiant was permitted to use the toilet only three times during her forty hours of confinement.

In the Third Precinct, initial tension ran high on May 3. Several arrestees were maced in their cells. At least one cell and its occupants were drenched by police water hoses. The worst moment came in mid-afternoon on May 4 when one officer marched down the corridor with tear gas cannisters and a gas mask. He warned the arrestees that if they didn't stop singing, they would all be gassed. Some of the people in the cells continued to chant. "Okay, you bastards, here it comes." And a tear gas cannister rolled along the floor into one of the cells. It was a dummy cannister, but the arrestees had no way of knowing that. Several reacted to it hysterically.

Later that same day, police closed all windows in the jail cell area and directed high intensity lights into the cells to raise the already high heat.

However, on May 5, those who remained in the cells report a dramatic change in police attitude and conduct. They say the guards allowed them more air, room, water and exercise. For the first time, arrestees were given access to telephones. No explanation was given for the change, although one element of it may have been the knowledge that various habeas corpus actions were being pressed by the Public Defender Service and the ACLU, based on the

cruel and unusual punishment being inflicted on the arrestees.

One such action was brought by the D. C. Public Health Association on behalf of Mayday prisoners detained in the U. S. District Court House lock-up. The action was brought before U. S. Superior Court Judge James Belson, who personally visited the detention facility. He found that "the approximately 600 persons presently detained prior to arraignment . . . are being held under conditions which grossly violate the minimum standards properly applicable even to temporary detention facilities . . . It is concluded that the petitioners are experiencing cruel and unusual punishment and irreparable injury by reason of their being held in the detention facility described above."

Processing in Court Houses and Precincts

While the physical conditions and the attitudes of the guards varied from precinct to precinct, almost every single affiant records extreme pressure to answer questions not properly asked of individuals charged with disorderly conduct, and an equal amount of pressure to forfeit collateral:

Thomas Lloyd and many others at the Fifth Precinct were advised that those pleading "guilty" would be taken first and others would have a very long wait.

James Stonaker, also at the Fifth Precinct, was told that Federal criminal charges would be filed against him if he refused to give all requested information. There are numerous reports from this precinct of a like nature.

Numerous witnesses report that at Superior Court cell block, one officer simply checked the "forfeit" box on the collateral receipt even when an arrestee told him that he wished to stand trial. Several affiants report that they were told repeatedly by police in various detention centers that if they didn't forfeit, they would have to stay in jail indefinitely. Almost without exception, ACLU affiants who elected to forfeit say they did so under some sort of pressure or because they didn't understand what their choice entailed.

The pressure was worst at Central lock-up. We have already described some of the events in the fingerprinting rooms. Others were beaten for refusing to answer questions during processing. Some of the questions may well have been invented by the interviewers. For example, a common question at Central was whether the arrestee was a Communist. Some female arrestees at Central were told that all their belongings would be destroyed if they didn't cooperate. Others were told that they would be kept in jail for weeks.

Of the 739 affiants whose hours of detention were tabulated, 39 were detained for from 1 to 10 hours; 331 were detained from 11 to 20 hours; 188 were held from 21 to 30 hours; 101 for 31 to 40 hours; 42 for 41 to 50 hours; and 21 from 51 to 62 hours. The average length of detention was 23½ hours.

VII. THE COURTS

Our system of justice was the chief victim of Mayday. All of the illegal techniques employed by the government—the sweep arrests of the innocent along with the violators; the lack of arrest forms and the consequent lack of any evidence against those arrested; the illegal detention of thousands of individuals not charged with any offense; the deprivation of arrestees of their right to counsel—all these were thrown into the court system and acted like a giant monkey wrench in the machinery of justice.

Initially, as described earlier, the government tried to conceal the magnitude of its illegal actions from the courts, first by pressuring or misleading those arrested into forfeiting collateral, and thus removing them from the courtroom process; and second by fabricating evidence by inserting fictitious names into field arrest forms filled out many hours after the arrests had taken place.

Neither of these desperation measures worked: many arrestees forfeited collateral under government pressure; thousands more did not. And the fiction of the field arrest forms was soon exposed by affidavits from the Justice Department lawyers who had been instructed to participate in the charade.

But even though the courts ultimately threw out virtually all of the cases against those arrested, it took the judges of the Superior Court an inordinately long time to realize that they were being used by the government. The few hundred arrestees who were arraigned on May 3 faced judges who uniformly set bond at $250. Local residents were sometimes allowed to obtain their freedom by posting ten percent of this amount. This was hardly ever done in the case of a non-resident, unless he promised to leave town immediately.

Judge Alfred Burka made clear on several occasions that this policy was designed to keep "troublemakers" off the streets until the anti-war demonstrations had ended. In applying this policy, few judges on May 3 took the trouble to examine the validity of the charges or the arrests. The majority of arrestees arraigned on May 3 were unable to post bond and were forced to remain in jail until their trials.

At 6 p.m., on the evening of May 3, the Public Defender Service, acting with extraordinary speed and efficiency, filed a suit for Habeas Corpus on behalf of the approximately 1,700 detainees confined adjacent to RFK stadium against the Chief of Police, the U. S. Attorney and the D. C. Corporation Counsel. A hearing on the suit was set for 7:30 p.m. of May 3 before Judge Harold Greene, Chief Judge of the Superior Court. At the time of the hearing, the suit was enlarged to include all those arrested on May 3, wherever they were detained.

After hearing evidence about the lack of probable cause for the arrests, the lack of field arrest forms, and the fictitious forms filled in later, Judge Greene handed down an order, about 11 p.m., finding that: "It is extremely unlikely that a successful prosecution can be brought

under the circumstances without a field arrest form or the equivalent and a photograph" and "that the interest of justice requires that persons against whom charges cannot be sustained should not be held in confinement.

Judge Greene then gave the government until 8 p.m. on Tuesday, May 4 to show cause for any detention continued beyond that time. Thus, the language of the order made it plain that the government had erred in detaining people without probable cause. But the effect of the order was to allow the continued detention of people without probable cause for an additional twenty-one hours. There was no justification whatsoever for this judicial compromise of a fundamental principle of our legal system. The corruption of the writ of habeas corpus was one of the most dangerous legacies of Mayday.

At about 2 a.m., Lawrence Speiser, the former ACLU Washington office director, telephoned a judge of the D. C. Court of Appeals and asked for an immediate hearing on a motion to modify Chief Judge Greene's order so that all people against whom the government did not have a case would be immediately released.

The D. C. Court of Appeals agreed to meet on Tuesday at 8 a.m. and Public Defender Service lawyers, joined by ACLU lawyers, submitted affidavits about the conditions of detention and the processing techniques. The Court of Appeals denied modification of the order and the detention of all those who refused to be pressured into forfeiting collateral continued until 8 p.m., the time set for a hearing on Judge Greene's show cause order.

The hearing ended at midnight, and shortly thereafter Chief Judge Greene ordered that the detainees be released without collateral or bond. He also ordered that they be fingerprinted and photographed, but added qualifying clauses: any person refusing to submit to such processing was to be brought the following day, May 5, to court; in another paragraph, Judge Greene added that the government was:

> "Ordered and directed that any information secured from any . . . (fingerprinting and mug shots) shall not be disseminated to the Federal Bureau of Investigation or otherwise, unless and until such person shall have been convicted for an act or acts committed on May 3, 1971, and shall be submitted to the Superior Court for destruction ninety days from this date."

ACLU and Public Defender lawyers then went back to the Coliseum to tell the arrestees about this order and to advise arrestees to permit themselves to be processed under its protection. From 1 a.m. on Wednesday, May 5 to about 4 a.m., some 400 to 600 people permitted themselves to be processed and were released.

At 4 a.m., the government secured by telephone from the D. C. Court of Appeals, a stay of Judge Greene's order pending a 7 a.m. hearing in the Court of Appeals. The speed with which the D. C. Court of Appeals responded to the government was impressive. Matters were not as easily facilitated for Public Defender Service and ACLU attorneys, who were greeted at 8 a.m. on May 4 just before their emergency appeal by the anxious and hostile Court Clerk, Alexander Stevas, who told them that they must first find a way to file a notice of appeal form with the Superior Court Clerk's office, or they would appear before the appellate court only "over my dead body."

When word of the stay reached the Coliseum at 4 a.m., processing came to a virtual halt.

The next morning the D. C. Court of Appeals issued an order permitting release without collateral, but requiring that the arrestees, to avoid being brought to court, give information beyond their names, fingerprints and photographs. It also

reversed that part of Judge Greene's order which had assured that no official police record would be maintained and which prevented dissemination of fingerprints to the FBI and provided for the destruction of all fingerprints and photographs where there was no conviction.

The D. C. Court of Appeals made no exception even for those who had accepted processing in the belief that their records would be destroyed if there was no conviction.

Among the hundreds of people who refused to forfeit collateral there were some who refused even to give their names, much less their fingerprints or photographs. On Wednesday, May 5 at about 6 p.m., 383 of these people were finally brought before the Superior Court.

The government's case sounded like the one devised by the Red Queen in "Alice in Wonderland." These unnamed people were charged with obstructing the use of a thoroughfare in the District of Columbia, but the government did not know which thoroughfare. There were no witnesses to their offenses, nor any arresting officers. The government introduced the novel theory of "mass probable cause" evidently meaning that if at some later date some probable cause to prosecute one or two of these 383 should be discovered, then there was probable cause at the outset to proceed against every single one.

The Court, after angrily lecturing the Corporation Counsel's office about "the abuse of prosecutorial discretion for seeking criminally to charge persons against whom specific evidence was totally absent" dismissed the informations against the John and Jane Does. Thus, 383 of the more than 7,000 arrested on May 3 were released without having given their names, fingerprints and photographs. Their stubbornness had won them a significant victory. The price they paid was longer detention than many of the other prisoners—between 50 and 60 hours.

But not many of the demonstrators had the stamina to face confinement for an uncertain period—and many had been told that they would be kept in detention "indefinitely" if they did not cooperate. The treatment these arrestees were given varied widely from judge to judge.

Judge Alfred Burka continued to use his judicial powers, in the absence of any evidence, to defend the sweep arrests and punish the demonstrators. Many of those who were arraigned before him on the morning of May 5 were told in unmistakable terms that he was sending them to jail for a while so they would be unable to participate in the demonstration on the Capitol steps that day.

On the other side, Judge James Washington was throwing cases out of court and calling the Mayday police procedures "a charade."

Some time during May 5, the court and prosecutors made it known that arrestees could obtain immediate release by pleading nolo contendere—no contest—before certain judges who would then sentence the arrestee to time already served in jail. As a general rule, this type of plea by an arrestee against whom there is no evidence is a questionable tactic since it is taken as an admission of guilt for practical purposes. Once such a plea is entered, an unlawful arrest becomes a conviction which will prejudice the individual with such a record in seeking employment, licenses, credit, etc. But after two days in miserable confinement, it was difficult for many arrestees to be concerned about conviction records and future employment.

Some of those who continued to proclaim their innocence and refused to plead nolo contendere often changed their minds under judicial pressure. An attorney who represented several Mayday arrestees before Judge Nicholas Ninzio on May 6 relates in an affidavit:

> "The first of this group to be arraigned was Sheila Gropper. She told me she

wished to stand trial. At her arraignment, I told the court that she waived the formal reading of the information, wished to plead not guilty, and a trial date was set. Judge Nunzio then set a money bond of either $300 or $500, I cannot recall the exact amount. I objected to the setting of the money bond, stating that the defendant was being forced to waive her right to go to trial. Each of the remaining defendants told me that he or she wished to enter a nolo contendere plea and each did so. Judge Nunzio made no inquiry into the factual basis for these pleas. Each defendant was sentenced to time served. Miss Gropper's case was then recalled for a change of plea. Miss Gropper entered a plea of nolo contendere. No inquiry was made into the factual basis for the plea. She received a sentence of time served."

From these and other incidents, it is clear that Judge Nunzio was aware that numerous arrestees were admitting guilt in order to avoid further confinement. Indeed, he was pressuring them into doing so by setting high bonds for those who chose to plead not guilty.

Another judge who was accepting nolo contendere pleas on May 5 was apparently not aware that arrestees were adopting this course of action out of desperation. Several days later, Judge Charles Halleck angrily accused the Corporation Counsel's office of pressuring such pleas from arrestees who had appeared before him. At the same time, Judge Halleck began dismissing Mayday cases for lack of evidence. Of these later cases, many arrestees had initially entered nolo contendere pleas and had changed their minds after Judge Halleck advised them of their rights and what a nolo contendere plea could mean to their futures.

Even during the early hours of Mayday, Judge Tim Murphy was warning arrestees that they should consider their pleas carefully and that any plea which could be taken as an admission of guilt would result in a permanent police record. Judge Murphy is generally regarded as one of the Superior Court's finest jurists, a conservative "law and order" judge who is both thoughtful and fair. During Mayday, Judge Murphy urged the Superior Court to abandon arraignment hearings and instead, hold all night trials of the Mayday arrestees. This procedure would have eliminated the pressured pleas and the necessity of later Mayday trials. Immediate trials would also have exposed the fact that the government would never have been able to present evidence of guilt and would have given the judges an accurate picture of what had occurred. Judge Murphy's suggestion was rejected by the Superior Court.

By rejecting Judge Murphy's proposals and going on with arraignment hearings, trial dates were set for several thousand criminal cases during May and the following months. These additional trials meant that the backlog of cases in Superior Court would worsen considerably, and other litigants would be forced to wait even longer for their day in court.

Many Mayday defendants were from outside Washington and appearing for trial required substantial expense and time. Despite all this, the Corporation Counsel's office allowed nearly all the Mayday prosecutions to remain on the dockets, forcing defense lawyers, defendants and judges to invest time to prepare for cases that didn't exist. During the three weeks following the Mayday demonstrations, 1,000 cases came to trial. One defendant was found guilty. The remaining 999 criminal actions were either withdrawn by the Corporation Counsel at the time of trial or dismissed by the judges. In a great many of these cases, the prosecuting attorney walked into court with no evidence at all against the defendant and no explanation of why the defendant wasn't notified before he

made the trip from New York or Massachusetts or California.

Numerous ACLU affiants relate how they came to Washington from distant places only to have the charges against them withdrawn by the prosecution at the last moment. Some of them had come to Washington to participate in the demonstrations. Many others were college students going to school in Washington who were arrested during the May 3 police sweeps but had returned home by the time their cases came to trial. Other ACLU affiants describe how they came to court, waited all day for their cases to be called and were finally advised that neither the court nor the Corporation Counsel's office had a record of their cases.

As the pile of withdrawn and dismissed Mayday cases grew, without any sign that the Corporation Counsel intended to initiate a change of policy, Superior Court judges began to lose patience. On May 24, Chief Judge Greene accused Corporation Counsel Francis Murphy of prosecuting "hundreds upon hundreds of cases which he knew and must have known completely lacked any evidence whatever that would stand up in court."

In evaluating the performance of the Superior Court through Mayday, it is fair to say that the Court demonstrated an inflexibility—or at the very least a lack of initiative—to the courtroom crisis it knew was coming. Even worse, too many judges displayed an injudicious deference to the government's unsupported promises that evidence would eventually be forthcoming. As noted above, it rejected the proposal by Judge Murphy that trials, in which the factual basis (or lack of it) for the government's case would have become known, be held through the night. By insisting on the arraignment process, and by imposing exorbitant bond, many judges imposed needless burdens on arrestees and thereby abandoned their role as impartial dispensers of justice.

On May 24, the ACLU mounted its legal counterattack against the prosecutions, as well as a series of actions to recover damages and expunge the arrest records of those illegally arrested and to enjoin the government from engaging in illegal arrests in the future. The account of the ACLU legal counterattack will be related in Chapter IX.

VIII. THE DECISION-MAKERS

The District of Columbia differs from any other American city in that it has no autonomous local government. Its city officials, including the "Mayor" and the City Council, are appointed by the President of the United States and need not respond to the desires of the residents, who cannot vote for local officials (only for President, Vice-President, one non-voting delegate in Congress and the school board). There is additional outside control from the House and Senate District Committees which dole out the funds for the operation of the city's bureaucracy and supervise many of the details of that operation.

It is clear that it was the federal government which made the decisions on Mayday; which decided on the mass arrest techniques; which decided on the abandonment of regular arrest procedures; which arranged for the detention centers; which was in charge of the processing of prisoners; which made the decision to use fictitious arrest forms in the detention centers; which, finally, was unconcerned with whether it had legitimate cases against the arrestees. The government's main objectives were to imprison them for several days and to punish them with arrest records.

These objectives square with the political philosophy of some high Justice Department officials. A New York Times article by Fred Graham on February 20, 1972, reported that in 1969 with mass protests looming, Deputy Attorney General Richard Kleindienst (now Attorney General) urged a policy of mass arrests. "What about the Constitution?" he was asked. "We'll worry about the Constitution later," replied Mr. Kleindienst.

The federal responsibility can be clearly traced. But after having assumed the responsibility, the federal government—that is, the Justice Department—made another decision. It publicly stated that D.C. Police Chief Jerry Wilson had directed the entire Mayday operation and had made all the decisions on his own. Chief Wilson was extravagantly praised by the President, by Attorney General Mitchell, and by department and agency heads for his "brilliant," "firm," "fair," "vigorous," "efficient," "effective," handling of the demonstrators. And when things began to go wrong in court, it was not Justice Department officials who were blamed for bringing cases with no evidence whatever, although it was clearly they who made the decisions. It was D.C. Corporation Counsel Francis Murphy, the city's chief legal official, who was castigated by the courts and the press for his "irresponsible," and "vindictive" prosecutions.

This chapter will document that it was indeed the federal government, at the instance of President Nixon, through the Justice Department, that made the decisions on Mayday, and we will try to analyze why it was so important to the President and the Justice Department that it be made to seem that the decisions were made by Chief Wilson and Corporation Counsel Murphy.

Chief Wilson was a willing participant in the decision-making charade. On May 5, he stated:

> "In response to numerous inquiries and to clear up erroneous statements which are finding their way into the media, I wish to emphasize the fact that I made all the tactical decisions relating to the

recent disorders. The decision to temporarily suspend the use of field arrest forms and to immediately arrest all violators of the law was mine and mine alone."

However, both Wilson and D.C. Mayor Walter Washington agreed that the Mayor was not consulted in the major decisions to cope with the demonstrators, nor was any other member of the D.C. City Council or the local government. All the consulting Wilson did was with the Justice Department. He interrupted his supervision of trouble spots during the three-day Mayday demonstrations with many visits to the Justice Department.

Long before the anti-war Vietnam Veterans began gathering in Washington on April 17, President Nixon issued an executive order specifically assigning responsibility for the law enforcement response of the entire executive branch during the spring protests to Attorney General John Mitchell.

Two months before Mayday, FBI agents began focussing their attention on Mayday organizers. On March 1, several FBI agents stationed themselves outside the newly opened Mayday offices on Vermont Avenue and interrogated a number of people who left the building as to their roles in Mayday.

On March 2, five FBI agents picked the front-door lock of the home of Ms. Jane Silverman, a Mayday volunteer, and entered the house. When Ms. Silverman began screaming, they left.

Later the same day, two agents stopped several Mayday workers who were leaving the Vermont Avenue building. The people were questioned and searched thoroughly and then set free.

On March 5, three people leaving the same building were stopped by FBI agents. One was forced into the back seat of his own car and driven around town while the agents questioned him.

On March 6, two FBI agents forced their way into a house where several Mayday people were living. They searched the house and its occupants. A young female visitor from out of town was taking a shower at the time. One of the agents demanded that she come out of the shower and into one of the bedrooms for questioning. She and her hosts adamantly refused, and the agents left angrily. "If you think this is repression," one of them said, "you haven't seen anything yet."

We have already outlined the Justice Department's role in securing the injunction of the Veterans' encampment on the Mall, and then asking that the injunction be lifted; and then granting the permit for West Potomac Park and suddenly revoking it. These pre-Mayday episodes, it must be stressed, were not a usurpation of the city's power, since they involved federal sites. But they had a profound effect on the operations of May 3. The injunction against the veterans and the revocation of the permit served as the final stroke by which the government severed its channels of communications with the protesters. It indicated to protest groups that agreements with the government were unreliable and that negotiations with the Justice Department were futile.

The decisions about the Mayday demonstrations were made in a series of Justice Department strategy sessions starting in late April. Several Justice Department attorneys were always present. Deputy Attorney General Richard Kleindienst was usually among them and Attorney General John Mitchell sometimes attended. Presidential advisor John Dean was at most of the meetings. President Nixon was never physically present, but he was advised of all developments. "He (President Nixon) had the veto power," said one government official. "Mitchell and Kleindienst made the decisions, the police did the dirty work and Nixon had the veto power." City officials sometimes attended these meetings, and Chief Wilson was usually there.

When Police Chief Wilson took to the streets on May 3 to deploy his men, he was accompa-

nied by Justice Department official, Fred B. Ugast. Ugast is head of the Justice Department Tax Division, and is hardly qualified for police advisory work during mass demonstrations. But he is one of Kleindienst's closest friends. According to one government official, Ugast was expected to keep Kleindienst advised of the situation on the streets so that the Justice Department could base its decisions on reliable information. This does not square with the government's contention that Chief Wilson was on his own during Mayday. On May 4, police radio logs establish that Chief Wilson did not begin to deploy his men around the Justice Department until after he had been summoned to confer with Kleindienst.

It was another Justice Department official—Assistant Attorney General Will Wilson—who determined that all May 3 arrestees should be fingerprinted before arraignment. He gave those instructions not to the city prosecutor or Chief Wilson, but to Assistant United States Attorney (and former U.S. Marshal) Luke Moore. The U.S. Attorney is under the direct supervision of the Attorney General and ordinarily prosecutes only federal offenses. The arrestees were being charged with violating a local ordinance, and D.C. Corporation Counsel Francis Murphy was ostensibly in charge of their prosecution.

At 2 p.m. on May 3, D.C. Police Counsel Gerald Caplan got in touch with the attorney for the leaders of the People's Coalition. Caplan advised him that the government would abandon further prosecution of May 3 arrestees if Mayday leaders would cancel all future demonstrations scheduled for that week and direct protesters from outside Washington to return home. If this were done, said Caplan, all arrestees would be released immediately upon posting $10 collateral and no felony charges would be brought against Mayday arrestees. A few minutes after Caplan's offer was rejected by the People's Coalition leaders, Rennie Davis was arrested by the FBI on charges of conspiracy. The next day, the FBI arrested another Mayday leader, John Froines on conspiracy charges and added a charge of assaulting a federal officer with a dangerous weapon—a megaphone.

Mr. Caplan did not reveal on whose behalf he was acting in making the offer. It wasn't really necessary. Neither Caplan, nor his client, Chief Wilson, had authority to immunize Mayday leaders from felony prosecutions. Only the Justice Department could do that. And, of course, it was the FBI that arrested the two men, not the D.C. Police, and the charges against them were filed by the Justice Department, not the D.C. Corporation Counsel.

According to Public Defender Service lawyers, Justice Department attorneys were constantly at the elbow of the Corporation Counsel in court and participated in all the courtroom decisions.

All of this evidence paints a picture in which at every juncture of government decision-making during Mayday, a Justice Department official was present to monitor police and law enforcement actions.

But following Mayday, there was a concerted government campaign aimed at holding up Chief Wilson as the primary Mayday strategist. Chief Wilson launched the drive himself with several public statements in which he accepted full responsibility for the May 3 decisions. Attorney General Mitchell, in a speech a week after Mayday, praised Wilson for the Mayday decisions which, Mitchell said, were solely Chief Wilson's. President Nixon and Deputy Attorney General Kleindienst followed by heaping praise on Wilson for his decisions.

Politically oriented people like President Nixon and Attorney General Mitchell do not ordinarily give other people credit for what they have done themselves. But in the case of Mayday, there was a very good reason for misdirecting the attention of the Washington press corps to Chief Wilson. It

is clear that one of the Administration's chief goals during Mayday was winning the public relations battle with the protesters.

With this purpose in mind, Chief Wilson was an ideal champion for the government's cause. Since taking office, Wilson has been a favorite of Washington journalists—the very image of a modern, thoughtful, and moderate police officer. Part of that image, ironically, grew out of Wilson's activities in insuring peaceful mass demonstrations in Washington before 1970. The media, and particularly the Washington Post and the Washington Star, started with a bias in favor of Chief Wilson, and an unwillingness to believe that he or his department would participate in illegal tactics or excessive force.

On the other hand, Attorney General Mitchell and Deputy Attorney General Kleindienst have been targets of much press criticism. Their sponsorship of the D.C. Crime bill—with its repressive features, including preventive detention—have made them unpopular with most Washington editorial writers and viewed as antithetical to the best interests of the residents of Washington. By transferring Chief Wilson's role from director of Mayday operations into that of decision-maker, the Nixon administration created a buffer between itself and the Washington press. In the main, it was a successful tactic.

The Role of the Press

What follows is a brief analysis of how Washington's two major newspapers, the Post and the Star, covered Mayday in both their editorial and news columns. This is obviously not the whole story of media coverage, but these two papers have been selected for study because they are the most influential with law-makers; they are read by judges and officials; they devoted, by far, more space to Mayday than the third Washington paper, or the out-of-town papers and television and radio.

The first news accounts of May 3 appeared in the May 3 edition of the afternoon Washington Star. Those who read that edition—including, presumably, the Superior Court judges who sat on the bench that afternoon—first saw the headline: "City Shutdown Foiled, 6,000 Protesters Held." The article ran on for a page and a half. The only indication that non-protesters had been arrested was a reference to some arrestees being charged with jaywalking and other minor offenses. One photograph in the Star showed a motorist with long hair being arrested near Key Bridge. The caption said the motorist was an "anti-war demonstrator."

On page three of the May 3 Star, there was a story of conditions in the RFK practice field. It began: "Cheering and yelling, more than 2,000 persons rounded up in today's mass arrests turned their prison area into a game field." Deep in the body of the article there were references to some claims by arrestees of brutality and unsanitary conditions. But these were few and obscure, and the false image conveyed by the article was, as one affiant complained bitterly, that of another Woodstock.

The May 4 edition of the morning Washington Post contained two articles providing readers with views of the street action from helicopters. There was in addition, a front page story which described what happened on the streets. It made no mention of the arrests of innocent bystanders and, like the Star, referred to all arrestees as "protesters." The Post article on the detention centers echoed the Star's report of the previous evening, with considerable emphasis on the chanting and singing, on the temperature being in the mid-fifties, on the "generally good spirits." Neither the Post nor the Star mentioned—let alone protested—in their news or editorial columns that the press had been barred from the

outdoor detention centers and that their stories had, of necessity, been written from a distance. One Post reporter did manage to avoid the guards and get into the Coliseum, but his story of conditions on May 4 did not appear until Sunday, May 8.

There were two straightforward articles on May 4 in the Post on the events in Superior Court the day before. Two-thirds of the way down in one of these lengthy pieces was the only reference in Washington's two major newspapers to the arrest of innocent bystanders. That article ended with an anecdote: a police sergeant tells a private that there is a lot of tear gas in the air. The private replies it isn't tear gas but the Potomac River he is smelling. This amusing anecdote was overheard in an area where at least twenty ACLU affiants were beaten by the police.

The impression one gets from leafing back through the May 3 Star and the May 4 Post is that of a sports event. This is partly because both newspapers devoted an inordinate amount of space to the traffic-flow game, usually from a distant observation post where the human beings were only players. Then there were the rosy views of the detention centers, also viewed from a distance. And added to the carnival atmosphere, were photographs with inappropriately jaunty captions. The May 4 Washington Post, for example, captioned a photograph of a clubbing incident with "A helmeted policeman takes a swat at a protester in Georgetown." Whoever read that caption derived as much a sense of pain from it as he would from watching one circus clown "swat" another with a balloon.

A notable exception to the general level of reportage was the coverage of the courts by Sanford J. Ungar of the Washington Post. His articles in the days that followed the arrests gave a clear account of the weakness of the government's evidence. In addition, he uncovered the Justice Department's controlling hand in the Mayday operations.

The Washington Post lead editorial on May 4 was about Mayday. In it, the editorial writer reproached the demonstrators for having hurt their own cause and, accepting the demonstrators' own inflated rhetoric, called the traffic blockades "a rampage calculated to close down a city and a government . . ." It commended the police: "With some exceptions, forbearance was the word yesterday, for which all of us, and not least of all the main body of the demonstrators, owe some debt to the skill and discipline of the police and other security forces. It is not a debt the movement is likely to acknowledge, of course, which is part of the tragedy—this profound alienation which has put an end to rational, purposeful discourse."

This passage epitomizes the a priori assumptions of the two papers. They searchingly analyzed the goals of the traffic blockaders and correctly criticized the illegality of their actions. But they accepted on faith, and against the evidence of any moderately observant bystander, the "forbearance," "skill," and "discipline" of the police.

By the evening of May 4, Washington newspaper readers began receiving a somewhat revised picture of Mayday. The Star ran an article by staff writer Angus Phillips who had been arrested in Georgetown on May 3 because, as he wrote, he happened to be "in the wrong place at the wrong time." Phillips wears a beard and long hair. Through Phillips, readers learned for the first time that innocent people were arrested on May 3 and that detention centers were cold, crowded, short of food and unsanitary. A similar article appeared in the Post the next morning. It was written by assistant features editor Henry Allen, who also wears his hair long and who was also arrested on May 3.

On May 5, both editorial pages in a kind of not-so-instant replay, analyzed the arrests of May 3 again, and revised, but did not entirely scrap, their earlier conclusions: The Post:

"Chief Wilson and his men are not to blame. With some exceptions, the Police Department as well as other area police forces and the military units all performed commendably, given the job they had to do. There were some serious lapses in which individual policemen used their clubs too readily and in which innocent bystanders, particularly if they happened to have long hair were arrested without cause. The task which Chief Wilson was given—to keep the city's traffic running at almost any cost—was a formidable one."

The editorial then went on to characterize as "one piece of poor judgment" the abandonment of the field arrest forms which resulted in herding thousands of people into detention centers.

"These dragnet arrests did serve the purpose of clearing the streets and keeping traffic flowing. But some of those carted away would have been released promptly as bystanders if records had been kept."

This revised view of the May 3 operation, however, had no criticism to make of the whole concept of mass arrest and the consequent suspension of Constitutional rights, nor did it suggest that there might have been some alternative way to keep the traffic moving.

The May 5 Star editorial echoed the same views by terming police brutality "unfortunate and perhaps predictable" and the arrest of innocent people as "probably unavoidable." The Star editorialist continued:

"The majority of those temporarily detained unquestionably deserved precisely what they got, even if the charges cannot be made to stick in court."

The editorialist did not explain how he knew that the majority of those arrested were not innocent. Nor did he say whether the "deserved" treatment that "they got" included the beatings in Central lock-up, the clubbing in the streets, and up to three days of imprisonment without charges.

On May 9, the Post ran another replay. In a long editorial, the Post said:

"We are not inclined, as some are, to denounce the tactics adopted by Chief Wilson. . .He and his men, with some important exceptions, carried it (their assignment) out well. It is true that there were instances in which individual bystanders were wrongfully arrested on Monday in the massive police sweeps and on some subsequent occasions. . ."

But while still defending Chief Wilson (thus vindicating the Administration's decision to make it appear that Wilson was in charge) the Post reserved its editorial wrath for the detention and court procedures which followed. ". . .it is unfortunate that the exigencies of Monday required the police to abandon the policy that would have permitted this (punishment of the actual violators who blocked traffic) to occur. . .but this was not an excuse for the prosecutors to set themselves up as judge and jury to punish people by holding them in confinement illegally."

The Post could not, or would not, make the connection that the illegal arrests begat the illegal detention which begat the courtroom chaos, and that the whole government operation from start to finish was planned without any regard whatever for individual Constitutional rights, or any intention of releasing those arrested until 24 to 60 hours had passed.

The Star's May 9th editorial also took more careful note of "the repression in the streets," the "cruel and inhumane" conditons of detention and the "chaos" in the justice system. It

acknowledged that probably a large majority were improperly arrested and denied their constitutional rights." The editorialist's solution was: "A declaration of emergency by the civilian authority of the city whereby demonstrators could be removed from the streets and held in protective custody without formal charges for the duration of the disturbance." This is, of course, a restatement of Mr. Rehnquist's remarkable invention, "qualified martial law."

On May 23, the Post agonized some more over Chief Wilson's actions:

> "It is quite obvious that the police did a remarkable job of maintaining order. . .when the mob set out to tie up traffic and close down the government. It is also obvious, or so it seems to us, that this was achieved on that day only because some of the procedures established by the Constitution and the laws were set aside."

This last point may indeed have been "obvious," but the editorials of May 4, 5, and 9 did not mention it.

> The editorial continues:
> "We were not prepared then, nor are we now, to second-guess Chief Wilson on the mass arrest tactics he adopted. . .It is easier now to suggest that he would have been wiser to use them in specific situations rather than generally that day and in any case, his men should have used them with more selectivity."

The editorial does not explain how "mass" arrest tactics may be used with selectivity.

In a letter to the Post entitled "The Illusions of Mayday," James Heller, then Chairman of the ACLU of the National Capital Area, responded to all the Post's editorials. He summarized five editorial "illusions," stressing the last one:

> "The fifth and much more serious illusion is that the Constitution is but a rule of the road and can be suspended during rush hour to move traffic. For this is the plain implication of the Post's refusal to question Chief Wilson's decision to do just that. Does the Post really mean to say that the only way to counter planned obstruction of the street is to turn off the Fourth Amendment like a signal light at the corner?"

Heller's piece concluded that in addition to Mayday, the Post has some illusions about itself. His remarks, although directed at the Post, apply equally to the Star:

> "The last illusion concerns the Post as it sees itself. It has been rather too possessive about the general welfare of this city, too ready to patronize official misconduct undertaken in what it deems to be the public interest. Perhaps this is an inherent tendency of all establishment newspapers, but one can hope the Post will do a better job in the future of resisting it.
>
> "When all three branches of government either cooperate in or bless wholesale official illegality, the Fourth Estate should be fulfilling its role as vigorous critic and corrective, not writing avuncular editorials about their good intentions."

IX. THE LEGAL COUNTERATTACK

The government's arrest of 7,000 demonstrators on Monday, the largest number ever arrested in this country in one day, surprised the ACLU as it did everyone else. The ACLU had been expecting the arrests of those who blocked traffic, and since blocking traffic is illegal, it did not expect to have to deal in any large way with constitutional questions. Law enforcement agencies would have been perfectly within their rights to make such arrests.

On May 3, without any prior arrangement, ACLU lawyers—including volunteers—began heading for the Coliseum and the courtrooms to see what they could learn from the arrestees about the activities of the day and to offer what legal assistance they could. Among those who spent the next three days at the Coliseum were James Heller, the ACLU chairman; Ralph Temple, the ACLU Fund Legal Director; and Lawrence Speiser, the former Director of the National ACLU Washington office. Others were also moving into action. Covering the courts were: Monroe Freedman, who was to become ACLU's special counsel for all Mayday litigation; Barbara Bowman and Norman Lefstein of the Public Defender Service; and Philip Hirschkop, who had been retained to represent two of the Mayday demonstrator groups.

From the beginning, the ACLU saw its role as that of taking affirmative action to (a) seek a court declaration that the Mayday arrests were illegal, as well as the detention which followed it; (b) to enjoin the use of such techniques in the future; (c) to seek expungement of the arrest records of the demonstrators where they were not followed by a legitimate conviction after trial; (d) to seek the setting aside of guilty pleas, nolo contendere pleas and collateral which was forfeited through coercion or misdirection; and (e) to seek damages for arrestees falsely arrested and detained.

The ACLU did not seek (with two exceptions) to play a role in the defense of individual arrestees either being arraigned or whose trial dates were set for the ensuing months. This function came under the mandate of the Public Defender Service, and Public Defender Service attorneys carried out the difficult task of representing hundreds of individual Mayday defendants conscientiously and with remarkable success. The Georgetown Legal Interns also represented individual defendants.

Before any court action could be filed, the ACLU needed accounts from individuals of their May 3 experience. It got those accounts from individuals in response to a full-page advertisement published in the Washington Post on May 17. The advertisement is reproduced on pages 60 and 61.

The response was extraordinary. 1,200 individuals sent for affidavit forms and 800 returned them filled out and notarized. The appeal for funds to support the litigation resulted in $12,000 in contributions, usually in small amounts—most were for between $2 and $10.

THE VIETNAMIZATION OF AMERICA

In the aftermath of the Mayday disturbances in Washington, the President of the United States and his Attorney General are congratulating each other on their handling of the crisis. They have no reason to do so. They botched the job. They had the problem of enforcing the law against traffic disruptors through legitimate law enforcement methods. They had advance notice, resources, manpower and the experience of previous disturbances at hand, and they still made a mess of it.

They have jubilantly told the American people that they kept the traffic moving. What they haven't told us is the terrible price we paid for traffic control. They achieved their "victory" by suspending the rights guaranteed to us all under the Constitution and by imposing on us a domestic version of the techniques used on the helpless people of Vietnam:

• **The Free Arrest Zone:** Like the free fire zone in Vietnam, the objective was to pick several areas and arrest everybody in them, including the bystanders and people on the way to work. The maneuver netted lawyers, government workers, students, newspaper reporters, medical observers and children. We say categorically that the majority of those arrested were not committing any offense whatever, and the government knew it when they swept them up and knows it now.

• **The "Gooks":** Anybody with a beard, long hair or unconventional dress was marked for immediate arrest, no matter where they were or what they were doing—or not doing. They were the "enemy" just as all civilian Vietnamese—North or South, men, women and children—are the enemy—"gooks," "slants," and "slopes."

• **The Body Count:** We've gotten used to the routine falsification of records in Vietnam. Now it has been brought to America. Police didn't bother with field arrest forms; after they herded those arrested into detention centers, they simply made up the forms. They used the names of six or seven policemen on a rotating basis as the arresting officers. These arrest records are false.

The successful adaptation of Vietnamization to America reached its peak when more than 7,000 American citizens were illegally penned into detention centers without shelter, adequate food or water, sanitary facilities or medical attention, without the chance to notify their families or call a lawyer. Thousands of them were held without arrest forms, without any possibility that they could be connected with the disturbances, let alone prosecuted and convicted.

IT DID HAPPEN HERE

There have been police excesses before—in Chicago at the Convention and here in Washington after the assassination of Dr. King. This was different. There can be no excuse of "over-reaction" or "pressing the panic button." This time, the violations of the law and of the Constitution were carefully planned and coldly executed.

Above all, it wasn't necessary.

The same amount of planning could have produced a workable method for apprehending only the actual wrongdoers. Instead, the President and the Attorney General made a calculated decision that it served their political ends to escalate a troublesome disturbance into a massive show of governmental power. Now the Attorney General is encouraging police officers all over the country to follow his lead in jettisoning the Constitution and ignoring the law.

WE DON'T INTEND TO LET THEM GET AWAY WITH IT

The ACLU will challenge every violation of the Constitution by the police and the government. We are preparing damages suits on behalf of those swept up in the police dragnet and held incommunicado under inhuman conditions. We will file an injunction suit against the police, the Justice Department, the custodial authorities and the courts to prevent the massive breakdown of our system of justice again. We will pursue these legal remedies with whatever it takes, for as long as it takes.

WE NEED YOUR HELP

We have already collected scores of accounts of illegal arrests and detention. We need hundreds more. We need evidence—carefully documented facts—and we need it fast.

If you were arrested during the disturbances, please let us know.

If you know anybody who was arrested—even people who have since left town—please give us their names and addresses.

If you witnessed sweep arrests without cause, or any other police misconduct, please let us have your story.

Just call the special numbers below, or come into the ACLU office and talk to us, or mail in the coupon.

WE NEED YOUR SUPPORT

The fight to restore the Constitution as the law of the land will be a long, uphill task. It will take all the energy, talent and resources we have. Above all, it will take money. We will fail without the support of thousands of citizens who care about what happened here, and who are determined that they won't let it happen again.

We ask you to send your contribution now—as much as you can—to give the American people their day in court.

AMERICAN CIVIL LIBERTIES UNION OF THE NATIONAL CAPITAL AREA

James H. Heller, Chairman — Florence B. Robin, Executive Director — Ralph J. Temple, Legal Director, ACLU Fund

AMERICAN CIVIL LIBERTIES UNION COMMITTEE TO PROTEST THE VIETNAMIZATION OF AMERICA

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Betty Ann Ottinger

(committee in formation)

AMERICAN CIVIL LIBERTIES UNION

Edward J. Ennis, National Chairman • Ramsey Clark, Chairman, National Advisory Council • Aryeh Neier, Executive Director

If you were arrested, call 483-3832 or 483-3833

or come to the ACLU office or return this coupon . . .

I was/know someone who was ☐ arrested ☐ a witness.
Please send _____ (quantity) affidavit form(s) to:

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

MAIL TO: American Civil Liberties Union
of the National Capital Area
1424 16th Street, N.W.
Washington, D. C. 20036

If you want to help . . .

Here is my check to help stop the Vietnamization of America.

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

MAIL TO: American Civil Liberties Union
of the National Capital Area
1424 16th Street, N.W.
Washington, D. C. 20036

ACLU Washington Post Ad

Independently, the People's Statehood Party led by Julius Hobson had begun to collect affidavits, and these too, were turned over to the ACLU. The Public Defender Service referred individual defendants interested in affirmative action to the ACLU, and these referrals accounted for more than 100 affidavits. Altogether, the ACLU collected over 1,000 affidavits to support its litigation and this report.

Sullivan v. Murphy

On May 24, the ACLU argued its first affirmative suit in U.S. District Court. It was called Sullivan (Nancy Sullivan) v. Murphy (Francis Murphy, D.C. Corporation Counsel) and was a class action suit to enjoin the prosecution of all those who had been illegally arrested on May 3 and against whom there was no evidence. (A class action suit is one in which a small group of individuals sue to vindicate not only their own rights, but the rights of a much larger group having similar claims.) The suit was brought to end the government's practice of forcing people to come from long distances to appear for trial, only to find that their cases had been dropped.

But beyond that, if a defendant did not appear for his or her trial date, the government without exception insisted that in this particular case it had all the evidence it needed and demanded that collateral be forfeited resulting in a "guilty" verdict.

Sullivan v. Murphy was argued before U.S. District Judge George Hart by Monroe Freedman, the ACLU's special Mayday counsel. Judge Hart denied the ACLU's request, and Freedman sought and obtained an emergency appeal to the U.S. Court of Appeals.

On May 26, a three-judge panel of the U.S. Court of Appeals, Chief Judge Bazelon and Judges Wilkey and Tamm, unanimously reversed Judge Hart and in effect granted the Temporary Restraining Order by granting an injunction to go into effect immediately, which stopped the government from maintaining prosecutions that were not "in good faith," i.e., those in which there was no evidence and no possible hope of securing a conviction and where the cases had been brought for purposes of harassment. It required that in order for a prosecution to be a good faith prosecution, the government must screen all the cases to determine those in which there was bona fide evidence.

There was a courtroom exchange that illuminated the government's position. Questioning Mr. Freedman, Judge Bazelon said, "I gather that what you are asking this court, Mr. Freedman, is for a minimum delay in which the government would have time to screen its cases to determine which of them are good faith prosecutions." Mr. Freedman replied, "Even less than that, your honor. If the government is prepared to tell this court in good faith that it has cases which can be prosecuted, we will be prepared to exclude those bona fide cases from our request for relief right now."

The Court then asked Mr. Sutton, the government prosecutor—on the basis of his previous strong assertion that all of his cases were "good" cases—to specify which cases would be brought to trial. Mr. Sutton first answered that he could not respond directly. When pressed by the Court, he replied, "We prefer to deal in generalities, your honor, not specifics."

The Court of Appeals dealt with the government's practice of not notifying defendants that their cases had been dropped. It required the government to notify each defendant whose case had been dropped, in time for him to avoid the trip to Washington, that he need not appear.

By requiring the government to show in each case that it had "a good faith" prosecution, the Court of Appeals, in theory anyway, put an end to the whipsawing of the defendants.

The Corporation Counsel's office, in compliance with the Court of Appeals' ruling, was compelled to drop 2,400 May 3 cases, but maintained it had neither the staff nor the manpower to notify all the defendants. Out of his concern for all the people who had been penalized by forced trips to Washington, Mr. Freedman volunteered that the ACLU would do the notifying.

Those who got the ACLU notice and followed its instructions eventually got their collateral returned to them. But illegible lists, lost files in the Corporation Counsel's office and a bureaucratic attitude of elephantine slowness compounded by hostility caused the process to take between six and nine months.

Many of those whom the ACLU could not reach read about the Court's decision in the newspapers and called the Clerk of the Superior Court directly. The ACLU learned that the Clerk of the Court would respond to the question: "I read that my case was dropped. Does that mean that I don't have to appear for trial?" with this bit of doubletalk: "Yes, you must come for trial on the date set down in your collateral receipt."

Independent checks by the ACLU staff, which made calls to the Clerk's office and posed the same question, confirmed that the Court staff was indeed not complying with the Court of Appeals ruling. After three weeks of additional demands and finally threats of contempt petitions, correct instructions were issued to the clerks. In the meantime, scores of defendants had come into town to appear for trials which were no longer scheduled.

Simultaneous with the announcement of the dropping of 2,400 May 3 cases, the Corporation Counsel's office announced that it would bring 24 "good" May 3 cases to trial—cases which had been carefully screened in advance and in which the evidence was found to be conclusive enough to lead to a conviction. The first of these cases was that of Michael McCarthy, Senator Eugene McCarthy's son. Mr. McCarthy had been arrested with two or three other young people whose cases were dropped. Mr. McCarthy appeared in Superior Court on the day set for trial. He was met at the door of the courtroom by a representative from the Corporation Counsel's office who informed him that the case had been "no-papered," that is, dropped because they had no evidence. To our knowledge, the Corporation Counsel has not brought any of the remaining 23 so-called "good" cases to trial.

The original filing of Sullivan v. Murphy had been confined to May 3 arrests, with no initial decision having been made by ACLU lawyers on what to do about the May 4 arrests in front of the Justice Department. The indecision was caused by the newspaper accounts which stated flatly that the demonstrators had been given notice to disperse, and that only those who refused to disperse and were blocking the street were arrested. In addition, the newspapers reported that field arrest forms were filled out and contemporaneous photographs taken.

But as the affidavits began to flow into the office, an entirely different picture emerged. Affiant after affiant swore that he had tried to leave and was prevented from doing so. Still others attested that they had not heard the order. Then the facts emerged in individual court cases, defended by the Public Defender Service and confirmed in the affidavits, that the field arrest forms were not made out by the arresting officers nor were the photographs taken with the arresting officers. As a result of these facts and the follow-up investigations done by the ACLU of the affidavits, the ACLU amended its original Sullivan v. Murphy complaint to include the May 4 Justice Department arrests. It also asked for the expungement of all arrest records which were not followed by convictions.

The amended complaint was drawn up by Edward Genn, an ACLU volunteer lawyer, who argued the case before the U.S. District Court Judge Corcoran. The judge turned the Temporary Restraining Order into a preliminary injunction

but limited the relief asked to that already granted in the original Temporary Restraining Order. His ruling meant that the expungement of arrest records, which had not been dealt with by the Court of Appeals, was excluded as a form of relief for the Mayday cases.

Mr. Genn and Mr. Freedman appealed Judge Corcoran's ruling to the U.S. Court of Appeals. On October 1, the Court of Appeals panel, composed of Chief Judge Bazelon and Judges Leventhal and Robinson, heard argument and issued a sweeping order the same day. The order confirmed the previous order and broadened it, and it also considered the question of expungement.

The Court of Appeals directed the District Court to issue a whole series of orders to the D.C. Corporation Counsel:

1. Not to prosecute anyone until his or her case had been fully screened, including, as a minimum, interviewing prospective witnesses.

2. To complete this screening process in time to notify defendants whether or not they were required to appear for trial.

3. To set aside forfeited collateral in all cases except those which the screening process determines there is a bona fide case against the person who forfeited the collateral.

4. To enjoin the dissemination of arrest records except where the individual was convicted of an offense.

5. To have all copies of arrest records returned to the D.C. Police Department except the records of those convicted. (This part of the order applied primarily to the FBI.)

The Court of Appeals then turned to the question of expungement. It directed the government (and also invited ACLU counsel) to file within twenty days a memorandum setting forth the following:

- the total number of persons arrested in connection with Mayday activities from April 28, 1971 to May 5, 1971

- the disposition of all cases, indicating the number of dismissals, no-papers, convictions, acquittals and forfeitures of collateral

- the number of dismissals, nol prosses and no-papers attributable to the lack of field arrest forms, photographs or inability of witnesses to identify the persons charged

- the number of persons who had sought expungement in the Superior Court and the number of cases in which it had been granted

- a statement of what legitimate governmental interests would be served by maintaining the arrest records of persons who were

  a) arrested without probable cause

  b) arrested on probable cause which later proved to be insufficient to warrant trial

  c) arrested on probable cause and not convicted.

The ACLU filed a lengthy memorandum on the legal aspects of expungement, but the government secured a delay of many months. Despite this extra time, it failed to come up with the answers to the Court's questions about who had been arrested, and the disposition of their cases. The government has still not explained discrepancies in its figures, and has not yet provided a day-by-day breakdown of the disposition of the cases:

- According to an affidavit filed by the Corporation Counsel on June 10, a total of 13,245 individuals were arrested from April

28 through May 5. But according to the police computer run-off approximately 14,164 individuals were arrested in the same period, leaving 919 individuals not accounted for in Mr. Murphy's affidavit.

- A breakdown of arrests prepared by the Executive Officer of the District of Columbia Courts, shows a total arrest figure of 13,436, creating another total different from both that of Mr. Murphy and the police.

- No correlation has been made between the arrests on a given day and the disposition of the cases. Thus, for example, the District of Columbia Courts' breakdown shows that of the 13,436 individuals they say were arrested, only 128 were found guilty after trial. One might speculate that these 128 verdicts stemmed from arrests made on April 28-30 and May 2, and not from the May 3, 4, or 5 arrests, but based on the present information supplied by the Corporation Counsel's office, there is simply no way of telling.

Finally, on March 24, 1972, ACLU counsel Freedman and Genn, joined by volunteer attorney William Sollee, filed a document containing the items of information and statistical data that it believed could be agreed to by both sides, plus a listing of information and data which should have been, but was not, supplied by the government. At the time this report was prepared, the government was preparing a response to that document. This case will then be decided by the Court of Appeals.

Defense of Capitol Hill Arrestees

The first eight cases of individuals arrested on May 5 on the steps of the Capitol were tried together. Monroe Freedman undertook the defense of two of the eight. Much of the material quoted in Chapter V of this report is taken from the transcript of the trial of the eight Capitol steps defendants—the police permission and assistance to gather on the steps, the cordoning off of the area and the simultaneous arrest of the audience, the inaudibility of the notice to disperse, and all the other events described in the earlier chapter were brought out at this trial.

Following the thirteen day trial, it took the jury less than four hours (including lunch) to acquit all eight defendants.

Four weeks later, on August 27, the U.S. Attorney's office announced that it had dismissed charges in the 800 Capitol steps cases still pending with the statement: "Jury verdicts of guilty in the remaining cases are highly unlikely."

Jeanette Rankin Brigade v. Powell

On June 8, 1971, the ACLU represented Reps. Bella Abzug and Ron Dellums in intervening in an ongoing case, which challenged the statute barring assemblages on the Capitol grounds and its selective enforcement as a violation of the First and Fifth Amendments. As we have noted earlier, the Capitol steps is the traditional gathering point for rallies of every description, and the statute was invoked by the government only on occasions when it disapproved of the particular demonstration. The suit sought an injunction against the selective enforcement of the statute. John Quinn was the volunteer attorney in this case; Ralph Temple, the ACLU Legal Director, argued it in U.S. District Court.

On May 9, 1972, a three-judge federal court issued an order declaring unconstitutionally vague the Capitol grounds "disorderly assembly" statute and enjoining, among others, Chief Powell of the Capitol Police, from interfering with those who

peaceably assemble on the Capitol grounds to petition the government for a redress of grievances.

Dellums v. Powell

On November 11, 1971, the ACLU filed an individual action on behalf of Rep. Dellums, and a class action on behalf of the 1,200 people arrested on the Capitol steps while listening to Dellums and other Congressmen speak. The suit, handled by Monroe Freedman, Warren Kaplan and Philip Hirschkop, argued on Dellums' behalf, that the government violated Rep. Dellums' right to speak with his constituents and to discharge his duties as a member of Congress.

On behalf of the class, the suit charges false arrest, false imprisonment, unlawful searches and seizures, assault, battery, malicious prosecution, negligence and conspiracy. It further charges violation of the class' First Amendment rights to peaceable assembly, free speech and petition for redress of grievances.

The suit asks for money damages against the government to compensate the class for the violation of their rights and for the injuries they sustained; and

For an order insuring the recall and destruction of arrest records; and

For judgment declaring the arrest and criminal accusation null and void, so that each member of the class may assert that he or she has not been "arrested" within the reasonable and lawful meaning of that term.

McCarthy v. Kleindienst

Sullivan v. Murphy, described in some detail earlier in this chapter, sought to enjoin the prosecution of May 3 and May 4 arrestees and have their arrest records expunged. In addition, on Monday, May 1, 1972, the ACLU filed a class action damages suit which, in addition to asking money damages for each of the 7,000 individuals arrested on May 3, also seeks to enjoin future police misconduct and the illegal conditions of detention.

Allnut v. Wilson

A separate damages and injunction suit on behalf of May 4 arrestees at the Justice Department asking for the same relief as in McCarthy v. Kleindienst was filed on May 3, 1972, by Mr. Freedman and Mr. Temple.

The three cases described above are all pending in U.S. District Court in the District of Columbia.

Other Litigation

West Potomac Park: A Public Defender Service attorney represented several hundred people arrested in West Potomac Park on May 2, 1971. At the conclusion of a three-week hearing, Chief Judge Greene granted his motion to dismiss the charges, ruling that the Government had violated its contract with the Mayday demonstrators by failing to consult with their representatives before revoking the permit.

Lafayette Park: James Johnstone, an ACLU volunteer attorney, defended test cases from a group of 200 Quakers arrested in Lafayette Park on May 2, 1971, in a Mayday-related case. The government, aware that the federal courts were dismissing Mayday cases almost without exception, elected to bring the Quaker case in D.C. Superior Court. The government's case was dismissed on the basis that the Park regulation is a federal regulation, not within the jurisdiction of local courts.

Individual Damages Suit: The law firm of Rauh and Silard has brought an individual damages suit on behalf of about 30 people arrested on May 3. This case is pending in U. S. District Court.

Medical Committee on Human Rights: Rauh and Silard are also representing the Medical Committee on Human Rights which was denied access to arrestees despite an agreement with the government to permit them to give them medical aid.

* * *

The initial suits brought by the ACLU to enjoin the prosecution of those arrested during Mayday resulted in vindication of the ACLU position that the arrests were illegal.

The affirmative suits were brought out of our conviction that vindication is not enough. It is not enough for the people who were subjected to arrest, detention and the attempt to brand them with arrest records for the rest of their lives. And it is not enough for the government, which has demonstrated a stolid ineducability about the sanctity of individual rights.

So the first purpose of the affirmative suits was to compensate those arrested—to the limited extent that money damages can compensate—for the injuries they suffered.

The second purpose is to drive home to the government the high cost of violating individual rights.

The third and most important purpose of the ACLU's litigation is to end the collection and dissemination of arrest records. We do not need to speculate on whether the mass arrest and processing techniques which characterized Mayday were motivated primarily by the government's desire to add to its dossiers on political dissidents. We do know that this has been the result.

X. CONCLUSION

In the aftermath of Mayday, the President, the Attorney-General and the Washington press drove home the vision of a well-disciplined police force responding to a national emergency with "firmness" and "restraint." The President and the Attorney-General lauded the Mayday operation as a "model" to be used in similar situations in the future. It is hardly surprising, in the face of this propaganda barrage that three weeks after Mayday a national opinion poll found that 76% of those queried approved of the Government's handling of Mayday.

In the past year, perhaps the vision has become somewhat less distorted. The systematic litigative response of the ACLU that resulted in the dropping of all the charges, and the systematic rejection by the courts of the Government's position in each legal test, have had a measurable impact. Also, the re-examination by the press of Mayday—belated and reluctant though it was—raised new doubts about the wisdom of the Government's actions.

But the myths of Mayday persist, obscuring the truth of the events just past and increasing the risk that the Government will feel free to repeat the Mayday operation in the future.

Among the most dangerous myths of Mayday:

- "The National existence was at stake." The government was faced with a disruptive, illegal tactic which threatened to slow rush-hour traffic. The government chose to escalate a difficult police and traffic problem into a national emergency. Whatever other reasons motivated the government's course, better law enforcement was not among them.

- "There was no other way." No other way was contemplated, let alone tried. The government force of police, special police and National Guard on May 3 numbered more than 14,000—that is two officers for every single person arrested, more than enough to effectuate individual arrests of every single traffic blockader.

  With advance notice of the exact points of planned traffic blockage and modern technology, including television recording of events, it is inconceivable that no other method could have been devised to prevent traffic blocking than sweep arrests. Indeed, sweep arrests caused that very condition law enforcement agencies should have prevented: they made certain traffic areas dangerous for innocent persons to be in. The simple expedient of cordoning off the sidewalks and allowing crossing only at heavily controlled intersections would have been sufficient to keep the traffic moving without sweep arrests of non-violators.

- "The police behavior was exemplary." The police behavior was a striking example of the abdication of law enforcement leadership. Police violence does not flourish without the open or tacit acquiescence of police officials. Where officers are made to understand the limits of their authority, and the

disciplinary consequences of overstepping that authority, police misconduct can be kept to a minimum. No such restraints were imposed on the police during Mayday and we do not know of a single officer who was disciplined for his excesses.

- "The Government has a right to suspend the Constitution in an emergency." That right is narrowly restricted to the gravest of emergencies and only when martial law has been declared. But the government did not declare martial law because it had no basis for doing so. Within the microcosm of Mayday itself, we can observe how erosive of our individual rights this particular piece of mythology is: The Constitution was suspended on Monday on the false ground of an emergency. On Tuesday, in front of the Justice Department, and on Wednesday on the Capitol steps, even these false grounds could not be fabricated. But by then, the government had had a taste of illegal powers, and emboldened by it, did not hesitate to suspend the Constitution again.

This report was written to dispel the mythology of Mayday. When a report such as this analyzes the background and chronology of a social disturbance, it traditionally concludes with a chapter of recommendations about how the problem could have been avoided in the past and how it can be averted in the future. The studies of the disorders following Dr. King's murder and of the more recent Attica prison uprising, are two examples of such carefully drawn recommendations.

But recommendations are useful only if it is recognized by the responsible authorities that the event being analyzed was a disaster and ought to be avoided in the future. There is no evidence whatsoever that the government, even now, regards its actions as having been inappropriate.

Furthermore, such recommendations are useful only if they set forth new ideas about how to deal with the problem. But during Mayday, the government had available to it some old, but perfectly workable ideas, many of them developed from the investigation of the 1968 disorders. These already existing recommendations would have proved invaluable during Mayday if the government's goal had been to safeguard individual liberties while enforcing the law. Clearly that was not the government's goal.

We have no recommendations to the government about traffic control, or arrest forms, or humane conditions of detention. The appropriate and legal ways of dealing with these aspects of Mayday were known to the government then and are known to it now.

This Report's Conclusion, therefore, is not a recommendation, but an admonition: It is the duty of our leaders and the function of law enforcement to uphold the law and to enhance adherence to law and lawful means. When government resorts to lawlessness in combatting lawlessness, it does more to undermine the spirit of law and respect for the rights of others than acts of civil disobedience or even violent crimes. In today's violent atmosphere in which the Rule of Law is becoming increasingly attenuated, the Government has an especially important responsibility. For, as Justice Brandeis said, government is "the omnipresent teacher. . .If the government becomes a law breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

* * *

We have talked about the distorted vision of Mayday that has been widely accepted by the public. There is another, less widespread, but equally serious distortion: The people who came here to blockade traffic did so because they had a nightmare vision of America society—unresponsive leaders, violent police, inhuman prisons and corrupt courts. Mayday transformed their nightmare into reality, not only for themselves, but for its innocent victims as well.

APPENDICES

APPENDIX 1. FIELD ARREST FORM

P.D. 4/68

METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D.C.
FIELD ARREST FORM

DATE	TIME ☐ A.M. ☐ P.M.	SER. NO. 1,000

SER. NO.

NAME GIVEN AT TIME OF ARREST

NAME IF FOUND TO BE DIFFERENT FROM ABOVE

CHARGE

LOCATION OF ARREST

COMPLAINANT'S NAME OR BUSINESS ADDRESS

BRIEF DESCRIPTION OF CIRCUMSTANCES OF ARREST

BADGE #/S OF WITNESSING OFFICERS

ARRESTING OFFICER	UNIT

TRANSPORTED BY	TRANSPORTED TO

PROPERTY

☐ PRISONER/'S PROPERTY ☐ ABANDONED
☐ EVIDENCE ☐ SUSPECTED PROCEEDS

OWNERSHIP ☐ KNOWN ☐ UNKNOWN ☐ POSSIBLE OWNER	OWNER NAME (IF KNOWN)

BRIEF DESCRIPTION OF PROPERTY

APPENDIX 2. U. S. COURT OF APPEALS ORDER IN SULLIVAN V. MURPHY

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-1632 September Term, 1971

Nancy Sullivan, et al. Civil Action 1022-71

Appellants

v.

C. Francis Murphy, Corporation Counsel of the District of Columbia, et al.

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 1 1971

Nathan J. Paulson

Before: Bazelon, Chief Judge, Leventhal, and Robinson, Circuit Judges

O R D E R

This cause came on for consideration of appellants' motion for summary reversal of partial denial of preliminary injunction and of appellees' motion for summary affirmance, and the Court heard argument of counsel.

On consideration of the foregoing, it is

ORDERED by the Court that the order of the District Court denying the injunctions requested is reversed and vacated to the extent that such denial is inconsistent with the injunctions hereafter provided for, and it is

FURTHER ORDERED by the Court, it appearing that for each case still pending a field arrest report and contemporaneous photograph exist, that the District Court enter an order providing further protection by enjoining appellees from prosecuting appellants or any member of the class they represent until a screening by appellees, which shall include at least interviewing prospective witnesses, discloses that a prima facie case exists against the person charged, and it is

FURTHER ORDERED by the Court that the District Court direct that the screening process be done in sufficient time before the date the person must appear so that adequate notice can be given to the person charged whether he is or is not required to appear and that appellees take all reasonable steps to assure that such notice is given to the person charged, and it is

FURTHER ORDERED by the Court that the District Court issue an injunction directing appellees to set aside forfeited collateral unless appellees, after a screening of the case, have both assured that probable cause existed for the arrest and also; after interviewing the witnesses who would have been called, determined and represented to the court in good faith, that a prima facie case existed against the person who forfeited collateral, and it is

FURTHER ORDERED by the Court that the District Court direct appellees to submit a report within a reasonable time demonstrating compliance with the injunction entered pursuant to our earlier order in this case and the injunction to be entered pursuant to our present order, and it is

FURTHER ORDERED by the Court that the District Court enjoin appellees from disseminating the arrest records of any member of the class to any person, group or agency for any purpose unless and until the party is convicted of the offense with which he is charged, and it is

FURTHER ORDERED by the Court that the District Court direct appellees to determine whether any party to whom the records had been disseminated made copies or otherwise retained the records and if so to enter an order that such copies be returned to the District of Columbia Metropolitan Police Department except for the records of those persons convicted of the offense charged, and it is

FURTHER ORDERED by the Court that both appellants' motion for summary reversal and appellees' motion for summary affirmance of the District Court's ruling that the question of expungement was not properly before it are held in abeyance pending further consideration, and the Government is directed to file a memorandum with this Court within twenty (20) days from the date of this Order setting forth the following, relevant to the issue of expungement:

-- the total number of persons arrested in connection with May Day activities from April 28, 1971, to May 5, 1971

-- the disposition of all cases, indicating the number of dismissals, nol prosses, no-papers, convictions, acquitals, and forfeitures of collateral

-- the number of dismissals, nol prosses and no-papers attributable to the lack of field arrest forms, photographs or inability of witnesses to identify the person charged

-- the number of persons who have sought expungement in the Superior Court and the number of cases in which it has been granted.

-- a statement of what legitimate governmental interests could be served by maintaining the arrest records of persons who were

(a) arrested without probable cause
(b) arrested on probable cause which later proved to be insufficient to warrant trial
(c) arrested on probable cause and not convicted.

(If they so desire, appellants may file a memorandum within this twenty day period responding to this question.)

Per Curiam

APPENDIX 3. ACLU AFFIDAVIT

AMERICAN CIVIL LIBERTIES UNION

Please Return This To:

The American Civil Liberties Union Telephone: 483-3830
Suite 501, 1424 16th Street, N.W.
Washington, D.C. 20036

If there is not enough space for details, please use backs of pages. Add any information you think lawyers should know. List any witnesses with addresses and phone numbers. If you were not arrested please give information from personal observations as to the questions.

I. GENERAL INFORMATION.

1. Name:

2. Home address:

3. Home telephone number:

4. Local address:

5. Local telephone number:

6. We plan to use this information for lawsuits or publicity. May we (a) publish this information under your name?_____ (b) ask you to testify about it? _____ (c) use this affidavit in suits? _____

7. Are you willing to be a plaintiff in an action for relief, including expungement of arrest record and possible damages? (a) Yes _____ (b) No _____ (c) Not sure _____

II. ARREST.

8. Date, time and place of arrest:

9. Describe in detail the circumstances of your arrest, including where you were, what you were doing, where you were going, how many others were with you, etc.

10. Name and badge number of arresting officer.

11. Was a field arrest form filled out? Or were you otherwise asked for identification?

12. Describe any mistreatment or violence at time of arrest.

13. Were you informed of any charges and if so what?

III. BOOKING.

14. Date, time and place where you were "booked" or "processed."

15. Was an arrest form filled out and if so was it an 8 1/2 by 11 inch form?

16. What was the charge, time, place and arresting officer?

17. Were you fingerprinted and photographed?

18. Comments about processing:

IV. DETENTION.

19. Names and address of places where you were detained?

Name	Address	Date & time of arrival	Date & time of departure

20. Total time from arrest to release (hours):

21. Approximate number of demonstrators in each facility:

22. Approximate size of cell or enclosure:

23. Number of people per cell or enclosure:

24. Services available (describe each and note if only part of group had access to it, or did everyone):

a. Shelter and blankets:

b. Toilets:

c. Water (how often):

d. Food (when, what, and from what source):

e. Medical attention (any specific incidents):

f. Legal counsel (when, who, where from):

g. Other relevant items (bail interview, violence, etc.):

25. Describe conditions and treatment during detention other than above:

V. <u>FOR EACH, TELL WHEN, HOW OFTEN & WHO ALLOWED IT</u>:

26. Were you allowed a phone call?

27. Could you see a lawyer on request?

28. Were legal proceedings that were to take place in court described to you? By whom?

29. How, where, by whom, and under what conditions or stipulations were you released?

I swear or affirm that the foregoing information is true to the best of my knowledge, information and belief:

Signature _____

Subscribed and sworn before me, a notary public in and for the District of Columbia this _____ day of _____, 19 ____:

_____

Notary Public

ACLU-NCA — 1424 Sixteenth Street, N.W.
Washington, D. C. 20036

American Civil Liberties Union
of the
National Capital Area
1424 - Sixteenth Street, N.W.
Washington, D.C. 20036