

Within Recent Times newspaper headlines have carried titles such as "Another Riot Breaks Out In Watts." Underneath the headlines the story begins:

"As usually has been the case in these racial outbursts, Tuesday night's violence was neither organized nor planned."

Smoldering frustration, a rock through a car window, a policeman called to the scene—suddenly scuffling, looting and even killings. In many cities of the nation this chain of events has been repeated, spontaneous and deadly, without plan or program.

From Elizabethport, New Jersey, according to The Associated Press, came the story late in August of 1965 that large groups of youths drove through a section of Elizabethport in the early morning, hurling gasoline bombs, stones and bottles. They tossed firebombs through four store windows creating fires which were quickly extinguished. The rioters stoned the firemen when they attempted to save the burning property.

Throughout the incident, people clustered in small groups along the seven-block strip of the main business district and the city police were hampered in their attempts to disburse these groups because they were outnumbered.

The first Watts riots which took place early in August of 1965 were, according to reports, a series of riots amounting almost to insurrection for a period of virtually six days when a small segment of the population estimated by officials to be not more than 1 per cent of the inhabitants of the city caused 34 deaths and 45 million dollars damage to private property. Eighty-five police officers, a large number of city firemen and 757 civilians were injured. Property stolen by looters exceeded the value of 200 thousand dollars.

In New York City the shooting of a young Negro boy by a police officer triggered off a riot in Harlem.

Nor are these incidents restricted to civil rights episodes. From throughout the United States have come stories of a growing tendency on the part of youths in many areas of the land to gather together in large numbers in small resort communities and villages with insufficient police personnel and equipment to control them. In these instances the youthful mobs may even outnumber the local population. Thrown stones and empty bottles, wielded weapons of all types, have resulted in store windows being smashed, buildings being set on fire, and other extensive damage throughout the affected communities.

Locally, here in Cleveland, Ohio, during the construction of a school in the Lakeview area, extensive rioting and public commotion took place resulting in the death of a minister, the demolishing of many stores, extensive property damage throughout the area, and even complete loss of businesses. These examples illustrate that we are living in a tense, heated, explosive atmosphere—especially so in view of the unrest of the Negro in his quest for complete and equal civil rights—the results of which have been extensive property damage, personal injury and loss of life as a direct result of rioting and mob violence and civil disobedience.

This article is addressed to the concept of the liability of a municipality for damage and injury caused by these riots and mob violence, and attempts to point out how the law has evolved and what we can expect in the future.

The protection by a community of life and property within its boundaries has traditionally been considered a governmental function rather than proprietary; therefore the traditional theory of immunity has gone with it. Up to now, all authorities have indicated that there is no common-law right to recovery on the part of the injured, but by statute some states have already ended this immunity on the part of the municipality.

The common-law rule that a municipality is not liable for damages resulting from mob violence or riots is founded on the traditional notions of sovereign immunity which shield the local government from liability for failures which are peculiarly governmental.¹ Therefore, in the absence of a statute abrogating this immunity, an injured citizen had no action against a municipality no matter how derelict it had been in maintaining order. Many states now have statutes which impose liability on a municipality for damage or personal injury by riots and mob violence.² The constitutionality of such statutes has been upheld by the

¹ 52 A.L.R. 562 (1928); 38 Am. Jur., Municipal Corporations Sec. 652 (1961).

² Conn. Gen. Stat. Rev. Sec. 7-108 (1958); Ill. Ann. Stat. Ch. 24 Sec. 1-4-8 (1965); Kan. Gen. Stat. Ann. Sec. 12-201 (1949); Ky. Rev. Stat. Ann. Sec. 411-100 (1963); La. Rev. Stat. Sec. 33:5065 (1950); Me. Rev. Stat. Ann. Ch. 136, Sec. 8 (1954); Md. Ann. Code Art. 82, Secs. 1-3 (1957); Mass. Ann. Laws Ch. 269, Sec. 8 (1956); Mo. Rev. Stat. Secs. 537.140-160 (1959); Mont. Rev. Codes Ann. Sec. 11-1503 (1947); N.H. Rev. Stat. Ann. Sec. 31:53 (1955); N.J. Stat. Ann. Secs. 2A:48-1 to 48-7 (1952); N.Y. Munic. Law Sec.