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SENATOR MANSFIELD TESTIFIES BEFORE SUBCOMMITTEE ON JUVENILE DELINQUENCY

Mr. MANSFIELD. Mr. President, on Wednesday, July 23, I appeared before the Subcommittee on Juvenile Delinquency of the Committee on the Judiciary, of which the distinguished Senator from Connecticut (Mr. Dodd) is chairman, to speak in behalf of gun crime legislation, the application of the ammunition aspects to the gun law now in effect, and also to suggest to the subcommittee that it begin hearings as soon as possible on the bills introduced by the distinguished minority leader, the Senator from Illinois (Mr. DIRKSEN), and the distinguished Senator from Indiana (Mr. BAYH) having to do with pornography.

I might say that, under the leadership and the sponsorship of the distinguished senior Senator from Utah (Mr. BENNETT), an endeavor is being made to correct an abuse with regard to the ammunition sections of present law. I think they have been grossly misinterpreted.

I would hope that a mandatory sentencing law for gun crimes would be enacted soon. I would hope that the question of registration would be resolved soon; registration imposed under the ammunition provisions of present law which, in my opinion, was adopted arbitrarily by the Internal Revenue Service.

I would hope, too, that legislation would be reported shortly having to do with the question of pornography. It's about time that the responsibility for reporting obscenity is shifted from the recipient—the unwilling and unwitting receiver of pornographic smut—and that penalties would be made applicable as are provided in the bills introduced by the distinguished Senator from Illinois (Mr. DIRKSEN) and the distinguished Senator from Indiana (Mr. BAYH). I understand that under those measures the sender—and I repeat "sender" and not the recipient—would be the one liable for punishment and have to assume full responsibility for what he does. In that way it would not be necessary for the unwilling and unwitting recipient to have to go to the post office personally and in that way attempt to protect himself from smut.

Mr. GORE. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. GORE. Does the Senator think that among the rights of American citizens it would be reasonable to hold that a citizen should have the right to have his home free from receipt through the mails of unwanted, unsolicited, vile, and obscene literature?

Mr. MANSFIELD. I certainly do. I think it is going to a tremendous extreme. I have looked at some of this literature. I receive much mail in the way of complaints from the people of my State, and strangely enough much of those complaints come from doctors of medicine. I think it is unfair. Whether or not it is constitutional is another matter. I am looking at the reality and not the legality of the situation. I think the

Government, which has control of the mails, has the right to exercise on its own responsibility suzerainty or sovereignty, or whatever one wishes to call it, over the sender of this type literature. The burden should not be on the recipients who have no control. They can only make complaints and perhaps get action that way. It is time for this situation to be corrected.

Mr. President, I ask unanimous consent to have printed in the RECORD the statement I made on these subjects before the Subcommittee on the Committee on the Judiciary.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

GUN CRIME LEGISLATION

(Statement of Senator MIKE MANSFIELD)

Let me first thank you for your invitation, Mr. Chairman. I appreciate having this opportunity to testify at the beginning of this series of hearings on firearms legislation and especially on my bill, S. 849.

The gun law thus far has asked a sacrifice on the part of the law-abiding gun owner in return for what hopefully will be a measure of control over the inordinate flow of weapons into the hands of the lawless and untrained, the addict, the drunkard, the incompetent and the criminal. Providing such legislation at the Federal level has provoked numerous questions and the debate still rages on.

What is clear so far is that the burden imposed by the present law on the law-abiding gun owner has not been distributed equally. We in Montana, for example, seldom experience the use of guns by the criminal and unfit. At the same time we Montanans pride ourselves in the responsible use of weapons for sport and even for self-defense. Unfortunately, that is not the case elsewhere in the land. Our large metropolitan centers have been wracked by crime and violence perpetrated by hoodlums having no notion of the responsible use of weapons. Yet we in Montana are asked to bear the full measure of the burden of gun legislation. What we stand to benefit from its hoped-for objective—a reduction in gun crime—is greatly disproportionate when viewed solely within the geographical confines of Montana. Nevertheless, may I say that in Montana the sacrifice asked by this law has been made. It has been made by Montanans though to some the whole notion of gun legislation may be repugnant. It has been made simply because Congress recognized that the ease with which guns are made available to the lawless has become not only a state and local problem, but a national problem as well.

And just as Congress recognized that the ease of gun accessibility by the lawless has reached national proportions justifying Congressional action, so does the penalty for the criminal use of guns warrant equally close attention by the Congress. And that is just what my bill, S. 849, aims to do.

Gun crime is a national disgrace. And with this bill I offer another approach to curtailing the gun crime rate—an approach that says to the criminal in terms that are clear and simple that his resort to a gun will be met automatically with punishment that fits such an act of violence. In contrast to the present gun law, no burden is imposed on the law-abiding gun owner. No sacrifice is asked. The burden falls squarely where it belongs—on the criminal and the lawless; on those who roam the streets, gun in hand, ready and willing to perpetrate their acts of violence.

I am no expert in crime control, I am not even a lawyer. But I know there is something

wrong when the FBI tells us that while our gun crime rate continues to spiral upward, our prison population shrinks proportionately. I hope this trend is reversed. I would think an assured prison sentence for criminals who choose to resort to firearms would help establish such a reversal or at least stem the tide. That is the purpose of my bill.

Under its provisions, for a first offender the penalty would be 1 to 10 years in prison; for a subsequent offense—a mandatory 25 years. The proposal varies from present Federal law in two major respects. Under no circumstances can the sentence for using a firearm be suspended or assessed concurrently with the sentence for the commission of the crime itself. The criminal gun user will be sentenced solely for his choice to use a gun. Moreover, the subsequent offender will be compelled to serve 25 years for making such a choice. In this regard, it just seems to me that no leeway or discretion is necessary when it is found that a criminal has chosen a second time to use a firearm lawlessly.

I would add that for the most part I agree with gun legislation; especially in its stated objective: to assist Federal, State and local law enforcement agencies in their fight against crime and violence. At the same time I do object when a Federal agency—when any Federal agency—misinterprets or misconstrues the law in the name of enforcement. That is why I joined as a co-sponsor of the bill, S. 845, offered by the distinguished Senator from Utah, Mr. Bennett, to strike down the ammunition regulations issued by the Secretary of the Treasury pursuant to the Gun Control Act of 1968. In my opinion those regulations fall squarely beyond any authority granted by Congress under the law. Indeed, Congress voted down registration; and registration, in my opinion, is precisely what the Treasury regulations call for.

On February 4, the distinguished senior Senator from Utah (Mr. Bennett) introduced S. 845. It seems to me to indicate that registration by another name is being required by a regulation of the Internal Revenue Service. This regulation covers ammunition for pistols, rifles, shotguns and some components, including primers, propellant powders, cartridge cases, and bullets.

Under sections 992(b)(5) and 923(g) the dealer is required to record the name, age, and address of the buyer of firearms or ammunition, while section 923(g) authorizes the Secretary of the Treasury to issue regulations relative to record keeping by dealers. The regulations issued by the Secretary of the Treasury call for far more than sections 922 and 923 require and, in my judgement, go considerably beyond the intent of Congress in passing the Gun Control Act of 1968.

For example, the regulations issued by the Secretary of the Treasury call for the following: Date; manufacturer; caliber, gage, or type of component; quantity; name; address; date of birth; and mode of identification, driver's license, and so forth.

It seems to me that this goes far beyond "the name, age, and address" of the law and covers a good deal more territory which, in effect, amounts to registration.

If there is to be registration, let it be in the open and on the table, and let everyone be aware of it. Congress, in my opinion, opposed registration under the Gun Control Act of 1968, and this regulation, in my judgement, would go far beyond what Congress intended.

This is back-door registration and should be corrected. In my judgement, it is necessary to correct an unnecessary burden and a deceptive form of registration and to bring the regulations in line with the intent of Congress at the time the bill was passed.

With that said, let me again reiterate that I think the objectives sought by the 1968 law are wholly correct. I hope they are met; though it is premature now to make a judgement on that score.

And it is only to complement the objectives of the existing law that I offer my proposal for mandatory jail sentences against perpetrators of violent gun crimes. The message it brings to the criminal gun user is clear. For ultimately the decision to resort to a firearm is up to him. If he finds the penalty so severe as to deter his use of this deadly weapon, only then can society be protected from the violence it produces. The State of Alaska I understand has already adopted such an approach. Other states are in the process of joining the effort. Mr. Chairman, I urge you and your subcommittee—already so distinguished for your leadership in this area—to steer this proposal through the full Judiciary Committee and on through the Senate.

By offering mandatory jail terms in return for gun violence at the Federal level, the Congress will provide, I believe, a splendid model for all fifty states to follow.

Mr. Chairman, another piece of proposed legislation which I would urge the Judiciary Committee to face up to relates to unsolicited obscene and pornographic literature being sent through the U.S. mails. I have received numerous protests from my constituents in Montana, and I believe the situation has reached such a magnitude that it demands action on the part of the Federal Government.

First of all, it is important to protect children against this kind of traffic in smut. Furthermore, I see no reason why the average citizen should have to put up with this kind of unsolicited material sent through the mail. The responsibility for keeping this material out of the mail should be placed on the sender, not the unsuspecting boxholder as is now the case.

It would be my hope, Mr. Chairman, that very shortly hearings on S. 2073 and S. 2074, introduced by the minority leader (Mr. Dirksen) and other Senators, and S. 2057, introduced by the Senator from Indiana (Mr. Bayh) and other Senators, will be held, and the bills given the immediate and considerate judgment which they deserve.