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Mr. MANSFIELD. Mr. President, on a number of occasions the President of the United States referred to the fact that he had yet to receive one of his major recommendations on crime legislation covering the District of Columbia. The President was correct.

After today it is my hope that that statement will no longer be correct. If this conference report is agreed to it will be the first comprehensive measure
CONGRESSIONAL RECORD — SENATE

July 23, 1970

Dealing with crime in the District of Columbia placed on his desk, I hope it is signed most expeditiously. Much has been said about the constitutional rights of individuals; there has been said about how we ought to consider the constitutional rights of society as a whole.

But there are many who ask about the constitutional rights of the raped. About the robbed. And what about the murdered? And the murdered? Do they have any rights?

Mr. PRESIDENT, I know it is fundamental that an individual be presumed innocent until proven guilty. And I know that as a whole the matter will be taken to the courts and a decision will be rendered accordingly.

Mr. President, there is much to be said in the pending antinecrime measure. No one, for example, has disputed the merit of the greater share of the law enforcement tools it provides. Revamping many parts of the local criminal code, the creation of a public defender agency, an enlarged District of Columbia ball agency, an expanded and more efficient Court system, are just a few of the features that hopefully will restore needed confidence in the crime-fighting capacities of the Nation's Capital.

Of course—as I have implied already—the measure is in its infancy without review of the Constitution. And the expressions, no-knock and pretrial detention characterize what most of that controversy has been all about. Nor can these provisions be treated lightly. If they are in fact unconstitutional—as is said by some—then eventually they will be rendered the fate associated with any other law enacted by Congress that has similarly been ruled to fall outside the Constitution. They will be struck down by the high court. In the circumstances and to avoid such an adverse ruling by the Court, these provisions must necessarily be attacked and be provided with such no-knock authority. It is available in my own State of Montana. I am going to ask that this conference report is completed. I am going to support it because upon examination, I am convinced that the provisions that have been here challenged have been safeguarded to the extent that they are not, in fact, constitutionally impermissible. I am going to support it as well because the drastically rising crime rate, Mr. President, has been documented time and time again.

In this Chamber day in and day out we have talked a good deal about District crime. We have passed a great number of crime proposals. So it's about time that we put together a package that can be sent to the President and again demonstrate to this body that recorded is your outstanding record on anticrime proposals.

Before yielding the floor, I would only add that it would be helpful at this time to again set forth the Senate's outstanding record on anticrime proposals. The Senate has now passed and sent to the President proposals requested and supported by the administration with a single exception and two minor exceptions which will be considered this session without fail. The major exception is the proposal that would extend the preventive detention procedure to all Federal courts—not just to the District of Columbia. With certain individual items combined into major packages, the general acceptance of this proposal will serve to deter the commission of gun crimes.
dealing with crime in the District of Columbia placed on his desk. I hope it is signed most expeditiously.

I fully share the concern, expressed in the debate and the report, I am going to support it because the measure is not without controversy. Of course, as I have already implied—

the measure is not without controversy. And the expressions, no-knock and pretrial detention characterize what most of that controversy has been all about. Nor can the provisions be tried lightly. If they are in fact unconstitutional—as is said by some—then eventually they will receive the same fate accorded any other by Congress that has similarly been ruled to fall outside the limits of the Constitution. They will be struck down by the high court. In the circumstances and to avoid such an adverse ruling by the Court, these provisions and the others similarly attacked deserve the Senate's and each Senator's most serious attention.

From a constitutional standpoint, the provision that appears most troublesome to me deals with the incarceration of criminal defendants before trial.

Recently, along with what was contained in the debate and the report, I researched this article on this subject appearing in the Georgetown University Law Journal. Its author is Mr. Patrick Hickey, a member of the bar of the District of Columbia. It is the whole question of so-called pretrial detention is examined with the closest scrutiny. The many questions about permitting such a provision are raised with a great lack of understanding. As an alternative to detention, the author clearly would prefer a procedure that would provide any defendant pending a high risk of crime on

ball, a trial that would take place far more expeditiously than is obtainable in today's clogged courts. By adopting the expeditions the provisions in sugar- coated, the whole matter of preventive detention may be avoided since the accused will have had his trial presumably before an impartial court while free on bail. I ask unanimous consent, Mr. President, that this very fine article be printed in the Record at the conclusion of my remarks.

The PRESIDENT. Without objection, it is so ordered.

(See explanation.)

Mr. MANSFIELD. Mr. President, unfortunately, may I say, we are not today faced with a choice of alternatives. We must consider whether or balance the Constitution would allow what is termed the "pretrial detention" section of this particular bill. I am not a lawyer and there is no need to conceal the fact that I approach the resolution of close legal and constitutional questions with some hesitancy. As I said, I have read a great deal and the increased number in reviewing this particular provision in this measure is the fact that there do appear to be safeguards.

For example, there is a guarantee of a due process hearing, a guarantee of right to counsel, a preliminary determination that the defendant is dangerous, an expedited trial provision which would provide that, if so determined, he would have to be tried within 60 days. With these safeguards—and I may be wrong —I feel that any constitutional impediments of this provision have been overcome.

As for the no-knock provision of the bill, it seems clear to me that what the conference has here achieved is a codification of what is recognized as existing law in many parts of this country. Further, it is a procedure that has been upheld by the Supreme Court, in the case of Ker against California as being completely compatible with the fourth amendment. In all, about 30 States have provided such authority. It is available in my own State of Montana.

I am going to support this conference report. I am going to support it because upon examination, I am convinced that the provisions that have been here challenged have been safeguarded to the extent that they are not, in fact, constitutionally impaired. I am going to support it as well because of the drastically rising crime rate, Mr. President, has been documented time and time again. To say it bluntly: crime stalks the streets of this Capital and it is imperative that every effort be employed to reduce its tragic consequences.

In this Chamber day in and day out we have talked a good deal about District crime. We have passed a great number of crime proposals. So it's about time that we put together a package that can be sent to the President and again demonstrate that on this issue, the record of this body is outstanding.

Certainly the bill before us does not represent a panacea for crime in the District of Columbia. But it does offer an approach that says to the criminal in terms that are clear and simple that this Nation and this city have committed themselves to an all-out fight against crime. And we can make more of an effort and devote more of our resources to rooting out the causes of crime—a matter that has hardly been mentioned.

I must say, that I noted with some sense of pride the provision of this bill that would impose mandatory sentences in cases of criminals who use a gun when committing acts of crime and violence. Patterned after the Mansfield-gun crime bill which passed the Senate last November, this provision would make the offender serve a separate and additional sentence for the mere act of using a gun. I am delighted that the conferences accepted this provision. I believe it will serve to deter the commission of gun crimes.

Recovering the floor, I would only add that it would be helpful at this time to again set forth the Senate's outstanding record on anticrime proposals. The Senate has passed a number of crime proposals requested and supported by the administration with a single major exception and two minor exceptions which will be considered this session without fail. The major exception is the proposal that would extend the preventive detention procedure to all Federal courts—not just to the District of Columbia. With certain individual items combined into major bills, the list of these proposals—including the District of Columbia proposals—reads as follows:

Goldwater-Mansfield Anti-Obscene Mail Act of the Postal Reform Act (H.R. 17923);
Organized Crime Control (S. 30); Drug Bill (S. 2697, S. 2698);
District of Columbia Court Reorganization (S. 2601);
Public Defender, District of Columbia (S. 2602);
Criminal Law Revision, District of Columbia (S. 2869);
Juvenile Code, revision (S. 2981);
Omnibus Judgeship bill (S. 953);
Federal Immunity Act (S. 2122);
Sources of Evidence (S. 2392);
Corrupt Organizations Act (S. 1861);
Penal Justice Act amendments (S. 1461);
Illegal Gambling Control (S. 2022);
Increasing Penalties, Firearms and Trust Act (S. 3036, Senate passage expected this session);
Tobacco Tax Amendments (S. 1623, Senate passage expected this session).

Mr. President, I urge as strongly as possible that the Senate continue action on this particular conference report that the conference report be agreed to and
Mr. BASKIR. Is it possible for a judge to determine that detention cannot be justified in the provisions of our bill or would not be proper upon review based upon the statements made by a representative of the executive branch and the people.

Mr. SANTARELLI. Necessary for what, flight or dangerousness?

Mr. BASKIR. Dangerousness, and so he can, as under existing law, impose a high money bond and say this is not for dangerousness but for nonappearance. I have no determination on flight, nevertheless the man would be detained because he cannot raise it. Is that possible under your legislation?

Mr. SANTARELLI. Abuse is always possible. Mr. BASKIR. Is that existing practice?

Mr. SANTARELLI. It seems to be the existing practice.

Mr. BASKIR. This is what the Deputy meant by the hypocrisy situation?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. Hypocrisy by courts may go on no matter what statutes we pass. What we have done is give the courts an alternative to a bond for appearance, an honest practice, open and reviewable?

Mr. SANTARELLI. You can eliminate that by prohibiting money bond—what is the point of a flight as well. That would—Is that possible?

Mr. BASKIR. Is anything possible, Mr. BASKIR. We did not do that because it is the overturning of a constitutional provision that we contacted, including Members of Congress who were not of our party, and people who have what we want to do. We have no money bond, that money bond continues to have a value under general suretyship concepts, under the theory for assuring specific performance; namely, return for trial.

Mr. BASKIR. Now, would you object—I will drop that.

At any rate—Mr. SANTARELLI. Let me add for the record specific material. Mr. Kleinheider intended to submit. They consist of three cases in which the courts of different jurisdictions have expressed opinions that we think are relevant to a consideration of this issue of bail reform and pretrial detention.

Mr. BASKIR. The chairman has asked me to adjourn these hearings until tomorrow morning at 10 a.m. at room 2250.

Mr. FROUTY. Mr. President, I yield back the remainder of my time.

Mr. TYDINGS. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Maryland has 25 minutes remaining. The Senator from North Carolina has 21 minutes remaining.

Mr. TYDINGS. Mr. President, I yield 15 minutes to the distinguished senior Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana is recognized for 15 minutes.

Mr. MANSFIELD. Mr. President, on a number of occasions the President of the States referred to the fact that he had yet to receive the major recommendations on crime legislation covering the District of Columbia. The President was correct.

After today it is my hope that that statement will no longer be correct. If this conference report is agreed to it will be the first comprehensive measure