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Retirement of Nick Zapple

Mike Mansfield 1903-2001

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CRIME: THE VICTIM AND THE GUN CONTROL

Mr. MANSFIELD. Mr. President, last week the President expressed his views on crime in America and how he intended to deal with it. I read his message with interest and choose now to make a few observations on some of the issues raised.

Included in his remarks, to begin with, was an emphasis on the criminal victim, on the plight of those most directly affected by violence—the poor, the old, the young, the disadvantaged minorities, the people who live in the most crowded parts of our cities." To them is owed, said the President, "protection and personal safety"—measures they cannot provide for themselves.

In this fashion the President has advocated revising the criminal justice system, changing it so as to take into account the needs of the victims of crime. He urges us—here in Congress—to pass legislation to meet the uncompensated economic losses of victims through a fund provided by fines imposed against convicted offenders.

May I say, Mr. President, that insofar as the U.S. Senate is concerned, these words of the President expressed in behalf of the victim were uttered not a moment too soon. Indeed, five times in the past has the Senate responded to the victim's plight. On five past occasions the Senate expressed this same deep concern for the neglected member of the criminal justice system—the victim.

Five times the Senate voted overwhelmingly to compensate the economic losses of those ravaged by crime and violence in our society. There was the Victims of Crime Act of 1970; the Victims of Crime Act of 1971; the Victims of Crime Act of 1972; the Victims of Crime Act of 1973; and the Victims of Crime Act of 1974. All recognized the special needs of the victim. All would have compensated his personal suffering and loss. All passed the Senate of the United States. This year, there is the Victims of Crime Act of 1975—S. 1399—now pending before the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary.

What has the Senate said with this record and what is the President saying by at last last endorsing it?

On this that is said, of course, is that society has failed utterly in its efforts to provide protection and personal safety. Your chances of being mugged, robbed, raped, assaulted, or murdered are pretty good—about 1 in 250 by conservative estimate, as much as 1 in 50 by more realistic appraisal. If you are poor, they are even better.

What recourse have you? About all you can do is sue your assailant—the one who fractured your skull, slit your throat, or blinded or paralyzed you. But to do that you have to catch him. And even if you do, what are the prospects for recovery? Less than 2 percent according to one study.
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The bill passed so often by the Senate
would have remedied this. The concept
embraced last week by the President
would remedy this. His views are in ac-
cord with the provisions of S. 1389 which
will come before the Senate later this year.

As one who long ago singled out the
criminal victim for legislative concern
and action, I feel the President for
aiding this effort. I look forward to
the remainder of this session of the 94th
Congress encouraged by the increased
prospect for restoring the criminal victi-
men to the justice system. I am con-
mvinced that crimes and in doing so,
for translating what is now citizen
apathy and disinterest into citizen con-
cern for crime and violence.

Aside from focusing on victims for
"primary concern," the President advo-
cated additional approaches to crime
particularly insofar as the criminal de-
defendant is concerned. Among the con-
cepts which I have long embraced. It
relates specifically to the gun criminal—

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The act itself of using or carrying a
-gun became a crime and if found guilty,
the perpetrator was compelled to face
prison. In the case of second offenders,
the sentence to be imposed nor was
the gun sentence to be imposed con-
currently with the sentence meted
out for the underlying crime. That
is the law today. Insofar as those who
carry guns and other deadly weapons
are concerned, it is a correct approach.

It says to perpetrators of violence
that their mere act of selecting such a
weapon is wrong and will be punished
no matter what. No ifs, ands, or buts will
be in the way of punishment. Parti-
cularly in cases of second offenders is
this notion so compelling. In his case
there was no discretion, there can be
no argument based on priority,
ignorance or whatever. The second
or subsequent gun offender is a threat,
a danger to society. He did not learn.
He made that clear by choosing a gun
for his crime not once but twice or
more.

So I sympathize with stricter sentenc-
ing concepts, particularly as they relate
to gun criminals. What I would like to
know but cannot seem to ascertain, how-
ever, is the experience to date under cur-
crrent stricter sentencing laws—under
the mandatory sentencing provisions now
on the books. To this end I have written
the Department of Justice, I have
written to the Federal Judicial Center
and to the Administrative Office of the U.S.
Courts.

The response to each of these requests
has indicated that no such records are
retained on the mandatory sentencing
sections of the Criminal Code. There is
no way to determine, I am informed, how
many defendants have been indicted
under the gun-crime sections, how many
have been convicted, how many have re-
ceived the mandatory sentence, and so forth.

There is simply no facility within our
Federal Government—I am led to be-
lieve—that retains this detailed experi-
ence record. This is rather startling.

We are so quick to make sweeping gen-
eralizations about judges being too rough
or too lenient or both. We are so ready
to conclude that criminals are deterred
or not deterred by sentencing factors.

Even the Attorney General has entered
this dialog and yet when I requested a
breakdown to prove or disprove these
questions, I was advised that no relevant
data in these areas has been compiled or
released by his Department of Justice.

From this, it appears that a very wide
gulf exists in our criminal justice sys-
tem; a gulf widen by our neglect in
failing to draw upon past experience
of analyzing who commit crimes and
why, who are found guilty, who serve
sentences, who do not, who are repea-
ters, who are not, who use weapons, who
will survive, who will not, etc. I see
how those who serve do not diminish,
in my judgment.

For the concept, that is violent
criminal, I am confident that the Senate
will devote the very highest priority.

As to other issues raised by the Presi-
dent and to those now pending in the
Senate in the context of S. 1 and other
crime-related measures, a great deal of
investigation, review and analysis re-
mains. To those, for example, that relate
to the death penalty, to riot controls, en-
trapment, wiretaps, document classifica-
tions, obscenity and other matters, the
most careful attention must be devoted
to the end that there is struck an appro-
priate balance between the rights of the
accused, the protection of society, the
awareness of the public or whatever pre-
eminent constitutional and policy issues
are at stake. Those questions are rele-
vant. Their resolution goes to the essen-
tial purpose of the legislative process.

It is primarily to the crime victim
and the gun criminal that my personal at-
tention is directed. To the victim because
he has been too often the forgotten,
though most affected party involved;
to the gun criminal because I think this bur-
den must be made intolerable if we are
ever to control the violence he espouses

should not be required, nor excessive
fines imposed, nor cruel and unusual
punishments inflicted.

Surely, to detain a gun offender before
trial because he poses a genuine threat
to his fellow citizens is unreasonable.
I might point out, too, that notions of so-
called preventive detention have already
been enacted into law as they relate to
criminals within the District of Colum-
bia. This bill would narrowly extend the
concepts to the whole of the United States.