

University of Montana

ScholarWorks at University of Montana

Mike Mansfield Speeches, Statements and Interviews

Mike Mansfield Papers

6-25-1975

Congressional Record S. 11488 - Crime the Victim and Gun Control

Mike Mansfield 1903-2001

Follow this and additional works at: https://scholarworks.umt.edu/mansfield_speeches

Let us know how access to this document benefits you.

Recommended Citation

Mansfield, Mike 1903-2001, "Congressional Record S. 11488 - Crime the Victim and Gun Control" (1975). *Mike Mansfield Speeches, Statements and Interviews*. 1262. https://scholarworks.umt.edu/mansfield_speeches/1262

This Speech is brought to you for free and open access by the Mike Mansfield Papers at ScholarWorks at University of Montana. It has been accepted for inclusion in Mike Mansfield Speeches, Statements and Interviews by an authorized administrator of ScholarWorks at University of Montana. For more information, please contact scholarworks@mso.umt.edu.

**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 long last endorsing it?

On thing 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.

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 accord with the provisions of S. 1399 which will come before the Senate later this year.

As one who long ago singled out the criminal victim for legislative concern and attention, I applaud the President for aiding this effort. I look forward to the remainder of this session of the 94th Congress encouraged by the increased prospects for restoring the criminal victim to his proper place within our system of criminal justice and in doing so, for translating what is now citizen apathy and disinterest into citizen concern for crime and violence.

Aside from focusing on victims for "primary concern," the President advocated additional approaches to crime particularly insofar as the criminal defendant is concerned. Among these is a concept which I have long embraced. It relates specifically to the gun criminal—to stricter sentences that would guarantee his incarceration. Some years ago I authored a mandatory sentencing provision to be invoked against those who chose to resort to a gun in committing a crime.

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 was not to be suspended, nor was the gun sentence to be imposed concurrently 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 stand in the way of punishment. Particularly in cases of second offenders is this notion so compelling. In his case there is no room for discretion, there can be no argument based on immaturity, 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 sentencing concepts, particularly as they relate to gun criminals. What I would like to know but cannot seem to ascertain, however, is the experience to date under current 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 received the stricter sentence, how many the mandatory sentence, and so forth.

There is simply no facility within our Federal Government—I am led to believe—that retains this detailed experience record. This is rather startling.

We are so quick to make sweeping generalizations 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 retained by the Department of Justice.

From this, it appears that a very wide gulf exists in our criminal justice system; a gulf widened 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 repeaters, who are not, who use weapons, who do not, and what role judges play in all of this. But these are the questions that must be answered if we are ever as a nation going to begin to resolve the issues of crime, of deterrence and recidivism. Most assuredly the identities of those involved must be guarded with the utmost vigilance. But that is not to say that modifications are not required in our information system as it relates to crime to the end that a better and more practical experience table is obtained in order to provide a more rational basis for all of our decisions.

The need for such information, however, does not diminish, in my judgment, the need to protect society from the gun criminal. He is a danger, per se. And it is to him again that I turn with a suggested modification of the Criminal Code—on that would apply solely to the offender whose choice to use a weapon alone would be singled out for special punishment.

INTRODUCTION OF S 2005

Mr. President, I send a bill to the desk, and ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks. This proposal would permit the preventive detention of a gun carrier who is adjudged a threat to society. This measure would apply to the gun user before trial. It would address the problem of pretrial recidivism—to the repeater who uses his weapon for crime before he is tried for his initial wanton act of violence or while he appeals his conviction. Specifically, in cases where an offender is charged with carrying or using a firearm in the commission of a crime, the judge, under this proposal may find that the defendant poses a threat to the community and order him detained.

In my judgment, one who is found with a weapon during an alleged offense is violent and represents a threat to the community. That is the message which I seek to convey with this proposal. It is the message that guns are tools of violence and that those who resort to guns for criminal actions deserve little leeway. Nor do I believe that such a provision would lie outside the framework of the eighth amendment to the Constitution. There it is prescribed only that—and I quote—"Excessive bail

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 not unreasonable. I might point out, too, that notions of so-called preventive detention have already been enacted insofar as they relate to criminals within the District of Columbia. This bill would narrowly extend the concept to the Federal criminal system.

As drafted, it may be that the measure contains certain impediments; that the procedural protections of due process should be spelled out more fully. I will leave it to the normal distillation and refining process of the legislative system to correct any such impairments. My intention is clear. It is to continue to promote and shape a consistent national policy against gun violence and gun offenders. This proposal would provide an additional element in that policy.

Finally, Mr. President, crime in America must be continually addressed. The President has sought to do just that and is to be commended for highlighting so specifically the neglected criminal victim. Speaking for the countless thousands of victims of crime, we in the Senate welcome his support for this proposal. To that issue and to the question of gun crime I am confident that the Senate will devote the very highest priority.

As to other issues raised by the President 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 remains. To those, for example, that relate to the death penalty, to riot controls, entrapment, wiretaps, document classifications, obscenity and other matters, the most careful attention must be devoted to the end that there is struck an appropriate balance between the rights of the accused, the protection of society, the awareness of the public or whatever pre-eminent constitutional and policy interests are at stake. Those questions are relevant. Their resolution goes to the essential purpose of the legislative process.

It is primarily to the crime victim and the gun criminal that my personal attention 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 his burden must be made intolerable if we are ever to control the violence he espouses.