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In The Nation: Unto the Least of These

By TOM WICKER

WASHINGTON, Jan. 28—It is a good thing that neither the Bill of Rights nor the Magna Carta is the pending business of the Senate these days. If either were to be presented to the world's greatest deliberative body, in its present mood of political panic and myopia, it would undoubtedly be voted down as a needless restraint in the war on crime.

There was, of course, one notable liberal "victory" in the drug bill. As amended by the Senate, it provides that Federal agents may not break into anyone's house without warning unless a judge has certified in advance that narcotics or other evidence probably "will" be destroyed if a warning is given. Originally, the judge could have issued a warrant for a "no-knock" raid if he found probable cause to believe that evidence "may" be destroyed without it.

Absurd Distinction

This is a distinction with so little difference as to be absurd, since there is no way on earth for even the wisest of judges, whether he is Julius Hoffman or G. Harrold Carswell, to determine whether evidence probably "may" or probably "will" be destroyed if some-

one's constitutional rights are observed.

The no-knock vote followed passage of the so-called anti-crime bill, which only Lee Metcalf of Montana, long a defender of consumers and liberty, had the courage and vision to vote against. Virtually this whole page would be required to detail this bill's dangers and defects.

Dangers of the Bill

It would invade Fifth Amendment rights against self-incrimination by requiring courts, on request of the Government, to force reluctant witnesses to testify in virtually any Federal case, in return for immunity not against prosecution but only against evidential use of the compulsory testimony; and if any person so ordered to testify refused to do so, he could be summarily confined in jail until he submitted, although convicted of no crime whatever.

The bill would overturn a Supreme Court ruling that permits a defendant to see the transcript of an illegal wiretap from which evidence against him might have been derived; and it would establish the rule that evidence obtained, even if illegally, more than five years after an alleged crime, is ad-

missible in court—which is nothing but a statute of limitation on Fourth Amendment prohibition of unreasonable searches and seizures.

The Senate bill would permit grand juries to issue public reports recommending the removal of public officials for misconduct or misfeasance, even when the grand jury had been unable to find evidence sufficient for an indictment—a license to smear that is unlimited by any definition of or restriction on the kinds of misconduct that the jury could consider, much less by any right of cross-examination or confrontation granted to the smeared.

This extraordinary document also would create a class of "dangerous special offenders." It is not entirely clear who such offenders may be, but they include persons previously convicted two or more times of offenses punishable for more than a year in jail, persons convicted once in certain conspiracies, and persons who commit a felony as "part of a pattern" of criminal conduct (which "pattern" may or may not include misdemeanors, and may or may not be proven beyond a doubt). But no matter who these special offenders turn out to be, a judge could sentence one of

them for up to 30 years, regardless of the penalty the law sets for his specific offense; and in making his decision on whether a defendant is such a dangerous special offender, the judge would not be limited to consideration of admissible evidence—he could take into account, for instance, a confession obtained by coercion. If he failed to sentence severely enough, even so, the Government could appeal to seek a stiffer sentence, or even to win the "dangerous special offender" judgment that a lower-court judge had refused to make.

The Rights of All

All of this is necessary, says Senator Hruska for the overwhelming majority, because "we are grasping for survival in the battle against crime." What we are really grappling for a survival against is those who think that the rights of criminals can be suspended or diluted without endangering the rights of all Americans. The rights of criminals are the rights of all Americans and the inescapable truth is that if they are taken away from criminals they are taken away from every one of us.

And unless the House now acts courageously to prevent it, that is just what will have happened.