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In The Nation: The Crime-Fighters' Folly

By TOM WICKER

WASHINGTON, June 10—In the absence of any formal position by the American Bar Association, a committee of the Bar of New York City has partially filled a conspicuous gap by testifying strongly against major portions of the proposed organized crime control act.

This measure, (S.30), as the New York committee report puts it, "reflects a single-minded concern with the problems that from time to time plague prosecutors in their efforts to convict leaders of organized crime" and therefore shows a regrettable "impatience" for constitutional and procedural safeguards. Nevertheless, the Nixon Administration strongly supports S.30, which whizzed through the Senate, and the President actually has importuned the A.B.A. to help push it on through the House.

After the testimony offered to the House Judiciary Committee by Sheldon H. Elsen, chairman of the New York Bar's Committee on Federal Legislation, and by Robert J. Geniesse of that committee, it is hard to believe that the A.B.A. could conceivably heed Mr. Nixon and support this dragnet bill.

Mr. Elsen and Mr. Geniesse were on the staff of Robert M. Morgenthau when he was the Federal attorney in New York City, and therefore can hardly be called soft on organized crime. Yet, their prepared testimony strikes at the heart of S.30, characterizing it as containing "the seeds of official repression." Here is the summation of their indictment:

Kafkaesque Provisions

"Some of the aspects of the system of criminal justice S.30 would seek to impose are almost Kafkaesque: A public official could be publicly condemned on the basis of accusations of the grand jury which he had no opportunity to rebut at a trial; a grand jury witness could be imprisoned three years for civil contempt without a trial and without bail; a defendant could be prevented from raising constitutional objections to evidence introduced against him—even after having established conclusively that an unconstitutional search and seizure had taken place; and one convicted of any Federal felony could be sentenced to thirty years imprisonment on the basis of 'information' which could never be used against him at a trial."

Only one example of the kind of detailed objections made in the bar committee report is the section commenting on a provision of S.30 that would make illegally obtained evidence admissible in court if the crime at issue in a trial occurred more than five years after the evidence was illegally obtained.

This, the report pointed out, would "place a statute of limitations on the assertion of rights guaranteed by the Constitution. The result would be to cleanse illegally evidence of all taint so long as the evidence had been retained long enough and was used only to obtain other leads and new evidence which established an event occurring five years after the illegality."

This proposal, the report continued, was "especially disturbing in view of fast developing electronic data storage techniques" because it might "encourage the collection by illegal means of masses of computer-stored and processed information on the theory that such information would be valuable in detecting future crimes." Indeed it might.

Speaking of that proposal specifically, but in words that might apply to the whole bill, the report said that "it deals with basic constitutional rights as if they only mattered when asserted by mob leaders in criminal cases. The suggestion is that the innocent do not need such rights and the guilty do not deserve them. But the right to be protected from illegal searches and seizures and from unlawfully compelled testimony is designed to protect all citizens and is an absolute right. Infringement of this right threatens the innocent as well as the guilty."

But it is not just the Nixon Administration and the Congressional sponsors of S.30 who are such eager crime-fighters that they cannot see clearly what they are doing. A few weeks ago, when Representative John J. Rooney of New York hustled through the House the appropriations bill for the Departments of State, Commerce and Justice, Representative James Scheuer of New York rose to challenge the fact that the Administration's request for $19 million for scientific and technological research on the problems of crime had been reduced to $7.5 million.

Policemen, Not Professors

Mr. Rooney replied: "The committee felt that the action grant programs are far more important. We need policemen to keep law and order—and not professors writing books and creating expensive nonproductive studies."

Which may help explain why we know so little about the causes and prevention of crime, much less about corrections and penal systems. Tear gas and riot guns, like loopholes in the Bill of Rights, are poor substitutes for an effective attack on the real problems of crime.