

THE NEW YORK TIMES, SUNDAY, FEBRUARY 1, 1970

In The Nation: Making Ideals a Fraud

By TOM WICKER

WASHINGTON—In the few days since Congress, roasting from the heat of the anticrime wave, returned from its mid-winter recess, it has raised the greatest threat in many years to American liberty. The legal establishment in America, which ought best to understand this menace, has a special responsibility for exposing the lasting consequences of momentary political hysteria.

Not since corrosive notions of "national security" came to prevail in the fifties, bearing with them loyalty oaths, witch-hunts, and Joe McCarthy, has there been anything like the hysterical spree in which Democrats and Republicans alike, with approving nods from the Nixon Administration, have tried to be (in Senator Sam Ervin's phrase), "... so zealous in their efforts to enforce the law that they would emulate the example set by Samson in his blindness and destroy the pillars upon which the temple of justice itself rests."

First, the Senate — despite amendments supported in vain by men so disparate as Mr. Ervin, Philip Hart of Michigan, Edward Kennedy of Massachusetts, and Charles Goodell of New York—approved with only one dissenting vote an omnibus anticrime bill that limits the Fourth Amendment, erodes the Fifth, threatens the Eighth, and in numerous other ways com-

bats crime by assaulting constitutional rights.

Next, the Senate—with upright Thomas Dodd of Connecticut waving around what he said was \$3,000 worth of marijuana, the possession of which could have put him away for years if he had not had the immunity of the Senate floor—passed a drug control bill that granted police the right to burst into any premise without warning if a judge could be persuaded that such a warning would result in the destruction of evidence.

The Inherent Dangers

This is a flagrant legislative example of the philosophy that the end justifies the means—catching the criminal validates any invasion of the rights supposedly guaranteed to all of us. How long will it be, as a result, before agents come bursting without warning into the houses of political dissidents, contending under this law that any other procedure would have resulted in the destruction of pamphlets, documents, and the like, needed by society to convict?

But perhaps as one respected Senator said casually to a reporter, "Oh, the House will fix it all up." This is a thin reed to lean upon; why should the House be more courageous than the Senate?

One day after the drug bill was passed, a House subcommittee on District of Columbia

matters approved a proposal that would permit Washington judges to jail "dangerous" criminal suspects for up to sixty days before trial. This measure, which suspends the presumption of innocence, was patterned on the Nixon Administration's "preventive detention" bill and was limited to the voteless, helpless District of Columbia only because the broader measure is stalled in the House and Senate Judiciary committees.

At the same time, as if to show the temper in which it will receive these travesties of justice, the House whipped through by 274 to 65 a measure that overruled the Supreme Court and resurrected the discredited program of barring so-called "subversives" from jobs in defense plants.

As a result, any one who even picketed a napalm plant has about as much chance of getting a defense job as of getting one with the Subversive Activities Control Board; and whether he picketed or not, he can be fired from a defense job without even the right of confronting his accuser or knowing who he is, if a Federal official decides that disclosure of the accuser's identity would be "substantially harmful" to the national security.

When the redoubtable Bob Eckhardt of Texas tried to have the question of disclosure of an accuser's identity determined at least by a Federal

court rather than by a bureaucrat, the House voted him down by the thundering majority of 27 to 13, out of 435 vitally concerned members. Who cares about a few subversives, any more than about a few crooks?

Who Cares?

Who cares, to take the question beyond Congress, if a Federal judge rules that a prospective defense witness has nothing to say that a jury may hear, even before that witness can testify? Why should agitators like the Chicago Seven have the right to call such witnesses as a former Attorney General, if he might say something useful to their defense?

Is the legal establishment of America, in particular, going to watch all this silently, relying on the Supreme Court to rectify it years from now, if ever, and only after untold damage to individuals at the hands of the state, after further demonstration of this kind of "justice" to young people, many of whom already believe American ideals are a fraud?

That is exactly what these actions in Congress, none of which are as yet conclusive, would make of those ideals. Lawyers, scholars, the press—all have special responsibilities, therefore, to counter hysteria with the reason they so often extol, upon which they so heavily depend.