

D.C. crime bill

No-Knock: blueprint for a police state

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"Why don't the judges spend a few hours on the street each day, pointing out the citizens they suppose will break the law if allowed to remain free?" —William Raspberry, *Washington Post*.

On July 24, 1970, President Nixon signed into law the "District of Columbia Court Reform and Criminal Procedure Act of 1970," commonly referred to as the D.C. Crime Bill. Among the bill's major provisions are preventive detention, no-knock, mandatory jail sentences, and expanded wiretapping powers for the police. While Attorney General Mitchell praised the bill and called it a "model program for other cities," Senator Sam Ervin (D-NC) called the bill a "blueprint for a police state," and said its passage represented a "victory for repressive criminal procedures." Although the bill only covers the District of Columbia, it was planned as a prototype for similar bills elsewhere, and state legislatures are expected to adopt the bill's two major provisions—preventive detention and no-knock.

Preventive Detention provides that any judicial officer may jail a suspect (after a judicial hearing) for a maximum of 60 days if the judicial officer feels the defendant would be a danger to other persons in the community. To qualify for preventive detention, a defendant must fit into one of three classes: first, that the defendant is charged with a "dangerous crime"; second, that the defendant is charged with a "crime of violence," or third, that there is a threat that the defendant will threaten the witnesses or otherwise obstruct justice.

Concerning the first class, that of a defendant charged with a "dangerous crime," the bill states that "...a person charged with a dangerous crime can be detained only if the judicial officer finds...after

considering past and present conduct, that no condition... will reasonably assure the safety of the community... Such an order must be based on past conduct of the defendant." The bill does not delineate, though, the precise past conduct which may justify preventive detention. It does say that detention may be justified for a defendant with a prior misdemeanor record.

Concerning the extension of the 60-day period, if the defendant files a motion to suppress illegally obtained evidence or files a motion for dismissal, the delay caused may make it necessary to hold someone past the 60 days. It should be noted that these would be delays at the request of the defendant.

About the restrictions against the use of preventive detention, Ed Cray, attorney for the American Civil Liberties Union (ACLU), said, "There is no question at all that the provisions for preventive detention are vague. They are catchalls, they are impossible to define."

Jerome Shestack, representing the American Bar Association, said that the organization opposes preventive detention.

Voicing an opinion favorable to the measure was Sen. Joseph Tydings (D-Md.). He said that preventive detention was far less hypocritical than the currently-accepted system of keeping prisoners in jail under astronomical bail.

Frank Wilkinson, of the National Committee Against Repressive Legislation (NCARL; formerly called the National Committee to Abolish HUAC/HISC), said, "Here a person is being held in jail prior to trial, on the assumption, not that he is innocent of a crime, but that he is possibly guilty of a crime yet to be committed. It's a total violation of the Sixth Amendment. ... This is something we have been accustomed to in fascist regimes. Salazar rose to power in Portugal in 1932 by the use of preventive detention. He arrested his political opponents, charged them with being a threat to the Portuguese government, and held them in jail pending trial. This is exactly what Mitchell has now put over in the DC Crime Bill, which he hopes to make applicable in all Federal jurisdictions."

No-Knock provides for inclusion of no-knock (the right of an officer to enter the premises without knocking, identifying himself or stating his purpose) into a search warrant if one of the following conditions exist: first, that evidence will be destroyed if the officer announces himself; second, that identifying himself would endanger the life of the officer; third, that if the officer identifies himself, the suspect might escape; or fourth, that it would be useless for the officer to identify himself. In addition, if an officer has "probable cause" to believe any of the above four conditions exist, he may "no-knock" on his own.

On the question of no-knock, many diverse opinions were expressed. Proponents of the bill cite the 1963 Supreme Court decision of *Ker vs. California*, and say that the decision permits no-knock. Concerning the safeguards imposed on no-knock, Louis Speiser of the Washington Branch of the ACLU wrote, "Since almost any evidence could fall under this loosely drawn standard, the effect will be to permit 'no-knock' searches in almost every case."

Sen. Tydings said that no-knock "actually adds additional safety for our rights of privacy."

Rep. Podell (D-NY) said that any police officer that entered his home without knocking would be shot.

While our elected representatives were discussing the pros and cons of no-knock, Attorney General Mitchell appeared before a House Committee and told them that the term "no-knock" had become widely misunderstood. He promised a renaming to "quick entry."

During the 1968 Presidential campaign, Nixon called the District of Columbia the "crime capital of the nation" and pledged to rectify the situation if he was elected. Out of this campaign promise came the DC Crime Bill. The original proposal for the bill was constructed

by the Justice Department and was introduced in Congress last July.

The House passed the bill and sent it on to the Senate. The Senate passed five separate bills, none of which included the controversial preventive detention. Last March a joint committee of Senate and House members met to hammer out a single bill from those passed by the individual bodies. Three months later the joint committee emerged with a "Conference Report" and submitted it to the Senate and the House for final approval. On July 15, the House approved the bill by a resounding 332-64 margin. On July 23, the Senate passed the bill by a 54-33 margin, and on July 29 the President signed it into law.

Written into the law is the fact that the most controversial provisions—preventive detention, no-knock, expanded wiretapping and mandatory jail sentences—will not go into effect for six months.

While the Conference Report—i.e., the final version of the bill—was passed amid great controversy over its content, some Congressmen criticized the way in which it was passed.

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to be removed or destroyed if not seized forthwith."

Along the same line of searches, the bill will make it possible for "an officer executing a search warrant [to] seize any...evidence of crime, or contraband, discovered in the course of the search which he reasonably believes are subject to seizure."

As far as getting arrested, the law says that "before taking an arrested person to a judicial officer, a law enforcement officer shall perform all recording, fingerprinting, photographing, and other preliminary police duties." This activity can only be undertaken if the officer feels there is "probable cause."

On electronic surveillance, the bill authorizes wiretaps by the police with court approval, but re-

stricts their use when the communication involves a physician and his/her patient, an attorney and client, a clergyman and parishioner, or husband and wife.

The law also provides for a mandatory five-year sentence for anyone convicted of a second armed crime, and an automatic life sentence for anyone convicted of a third serious felony.

While these and other measures have become law for Washington, DC, other Administration proposals now pending before Congress could make preventive detention (and other features of the bill) law in all Federal jurisdictions.

Sen. Ervin, along with other Congressmen, points out that this bill is the policy of the Nixon Administration. "The Attorney General holds this bill up as a model for all the states of the nation," Ervin stated recently.

Two past Supreme Court Justices have attacked the bill—Arthur Goldberg and Justice Clark. Goldberg said the bill is "clearly unconstitutional" and has "totalitarian" aspects, while Clark said that preventive detention is unconstitutional because it would abridge a person's right to bail.

But although it is the policy of the Nixon Administration, and other bills are in various stages of completion in Congress, this bill only applies to Washington, DC.

For more information on the DC Crime Bill (as well as other bills pending before Congress), call the National Committee Against Legislative Repression, 555 S. Western, 462-1329.

Senator Sam Ervin (D-NC) reproached Senator Joseph Tydings, the Senate sponsor of the bill, for his handling of the measure. Ervin accused Tydings of being "impatient" and "secretive" with the bill, and said that the Senate sponsor "should have brought no-knock to light when the bill first passed the Senate." Ervin further charged that the bill passed the Senate the first time "because they hadn't told anyone that no-knock was in it." Regarding the final copy of the bill, Ervin accused the sponsors of suppressing information because "they wouldn't let me see the Conference Report until it was printed."

While speaking on the Senate floor, Tydings emphasized other issues of the bill. Speaking in the Senate chamber on July 14, Tydings said that the "main and dominant feature of this bill... is a total and complete overhaul of the archaic and hopelessly inadequate court system in the National Capital."

Complaints concerning the passage of the bill were also lodged in the House of Representatives. Rep. Adams of Washington, speaking on the House floor on July 15, said, "The report has not been printed in the *Record*. The statement is not going to be read and he (Rep. Abernethy) has asked that it not be printed. I would like to find out at some point the contents of the report. . . . Some of the members ought to know what finally came out of the conference, and I think the public should, too."

Because of Rep. Adams' speech, parts of the Report were then read on the House floor. Apparently it was then distributed, because Rep. Adams then said, "I just got the report in the back of the chamber, and I will bet that there are not ten members who have ever seen the report." Despite this, House debate on the bill was limited to one hour, with the vote taking place after the debate.

After the vote was taken in the Senate, two spectators, who were wearing swastikas, began chanting "Heil Hitler" and "Heil Spiro." They were quietly ejected from the chamber.

The bill, which is now law, contains many provisions other than the previously mentioned preventive detention and no-knock.

In the line of court reform, the President can name three more judges to the District of Columbia Court of Appeals, and ten more judges to the Court of General Sessions. This will certainly help to take the overload off the already overburdened judges of that district. Furthermore, the bill will enlarge and expand the Public Defender's office and make legal assistance open to more people.

In another vein, the bill provides that a 16-year-old will no longer be tried in juvenile court but instead will stand trial as an adult if he is charged with certain dangerous crimes. The bill also provides for a "nighttime search warrant" if (a) the "warrant cannot be executed during the hours of daylight" or (b) "the property sought is likely

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