U. S. Congress

UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 91st CONGRESS
SECOND SESSION

VOLUME 116—PART 9

APRIL 13, 1970, TO APRIL 21, 1970

(PAGES 11271 TO 12656)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1970

I share the opinion of the Court in *ex parte Shaw*, 209 F. 954, 955 (1913), that—

> The right to bail . . . is subject, like all other personal rights, to being influenced by considerations of public policy and public safety.

I believe that Congress enjoys the full constitutional authority to determine, within reasonable limits, when those considerations shall come into play.

NO-KNOCK PROVISION

A second provision in the House bill which is worthy of Senate support is the provision codifying the common law authority for police officers to enter a premises without knocking to announce their identity and purpose.

When Congress is legislating for the District of Columbia, no effort should be spared in providing a complete and modern code of criminal procedure, a code which sets out with precision the powers of the Government and the rights of the public.

Most of the provisions are simply codifications of existing law which bring our statute books up to date and remove outmoded provisions. All of the enlargements of authority have foundation in case law. They are reasonable. There is a pressing law enforcement need for them.

No one in this Chamber would deny that, as a general rule, police should knock and announce before entering a premises. The general rule, which is a statutory command, is not materially affected by the House bill.

What the bill does is to set out in detail the exceptions to the general rule, the situations in which exigent circumstances justify a no-knock search, so that the police and the public are fully apprised.

There are special circumstances, involving dangerous defendants, in which an announcement by the officer would be "the equivalent of an invitation to be shot." As the court observed in *People* v. *Robinson*, 75 Cal. Rptr. 395, 397 (1969), "Reasonable conduct on the part of a police officer does not require that he extend such an invitation."

Another recognized exception arises in a situation in which critical evidence is likely to be destroyed. In *Ker* v. *California*, 374 U.S. 23 (1963), the Supreme Court upheld an unannounced entry to prevent the destruction of narcotic evidence. In *People* v. *Delago*, 16 N.Y. 2d 289, 113 N.E. 2d 659 (1965), the New York Court of Appeals approved a no-knock entry to seize gambling paraphernalia which was authorized under the State's no-knock statute.

In *People* v. *Clay*, 78 Cal. Rptr. 56, 58 (1969), the court described another relevant situation:

> When Lusardi and two of the other agents approached to within five feet of the house Lusardi heard loud voices and running inside the house; someone yelling "It's the police! It's the police!" and the sound of a shot being fired. Lusardi and the agents entered the house without knocking, announcing they were police or stating their purpose.

Surely, when the occupants of a house are running about inside shouting "It's the police. It's the police," a requirement that the police must knock and announce would be a useless gesture. It would also increase the peril of the officers, and permit the destruction of evidence.

A majority of our States, in statute or in court decision, recognize situations which justify no-knock entries. My own State of Nebraska, for example, has enacted a statute that provides, in part, that a judge may issue a warrant authorizing an officer's entry without giving notice of his authority and purpose, when, upon proof under oath, he is satisfied "that the property sought may be easily or quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice be given." Nebraska Revised Statutes, section 29-411.

U.S. Attorney Thomas Flannery has stated that—

> [T]he passage of [a no knock provision] is necessary for effective enforcement of local and federal narcotics laws. Experience has shown that the time consumed by the executing officers in announcing their authority and purpose and waiting to be refused admittance is used by the dope peddler in disposing of his narcotics down the toilet. All too often law enforcement officers, after finally entering the premises to be searched, find the drug trafficker in his bathroom gleefully watching his drugs vanish from sight. The provision . . . would also be of exceptional value in our efforts against organized gambling.

These considerations have prompted the District government and the District of Columbia Bar Association to endorse specific no-knock authority for the District of Columbia.

ELECTRONIC SURVEILLANCE

In 1968, when Congress approved the Omnibus Crime Control and Safe Streets Act, we enacted a comprehensive provision on electronic surveillance. We also authorized States and other political subdivisions to engage in wiretapping and electronic surveillance if—and only if—the States passed specific statutes which conformed to the standards established by Congress.

The Federal law specified the offenses for which a State could authorize electronic surveillance. They were murder, kidnaping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana, or other dangerous drugs, or other crimes dangerous to life, limb, or property, and punishable by imprisonment for more than 1 year.

In providing for electronic surveillance in the District of Columbia, both the Senate bill and the House bill follow the Federal standards with faithful precision, preserving the limitations and protections set out in our legislation. There are no new departures in terms of procedure. And the only significant difference between the Senate bill and the House bill is that the House bill includes several offenses which the Senate bill does not.

These offenses include arson, blackmail, burglary, destruction of property, receiving stolen property, and robbery.

I am persuaded that in certain situations these offenses may bear a critical nexus to the activities of organized crime. In these situations, society should have the means to employ electronic surveillance. Unless these offenses are included, however, that means will not be available.

As the House Committee report stated:

> Not all burglaries, robberies, larcenies or receiving of stolen property (fencing) . . . arise out of organized crime. But your committee is . . . aware that a number of these crimes clearly are the result of planning and organization by groups of individuals.

I believe the Senate should accept these additional offenses, so that law enforcement officials in the District of Columbia will have this weapon in the unusual cases when it may be needed.

CONCLUSION

These are but three of the proposals to be considered by the conference. Each, in turn, is important to insure that the police have necessary tools.

This bill provides those tools in a way designed to pass constitutional muster.

We should follow the efforts of the conference closely as it is imperative that the President's crime program be considered promptly and favorably.

THE PLIGHT OF THE AMERICAN INDIAN

Mr. HARRIS. Mr. President, we have heard much in recent months about the plight of the American Indian, and many promises of help and assistance in correcting some of the inequities of the past have been forthcoming.

Yet it has been difficult to translate this support into concrete action. In the case of the Blue Lake area in New Mexico which was unjustly taken from the Taos Indians, for example, the Federal Government has acknowledged the claim of Taos Pueblo since 1912. In 1965, the Indian Claims Commission reaffirmed this position.

Since that time, legislation has been introduced to return the Blue Lake area to its rightful owners, but no final action has been taken. Two current bills, S. 750 and H.R. 471 address themselves to this problem. Along with a number of other Members of the Senate, I feel that H.R. 471 provides a much more equitable resolution of this situation. We have explained our reasons in a letter to the Indian Affairs Subcommittee of the Committee on Interior and Insular Affairs, which is presently considering Blue Lake legislation.

Because the time is long overdue to correct this situation and to indicate our good faith in dealing with these Indian people, I believe the Blue Lake matter deserves the attention of all Members of the Senate. Therefore, I ask unanimous consent that our letter to the subcommittee be printed in the RECORD so that it is available to all.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., April 15, 1970.

HON. GEORGE MCGOVERN,
Chairman, Indian Affairs Subcommittee, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We are writing you to request that the Subcommittee on Indian Affairs of the Interior and Insular Affairs Committee take prompt and favorable action on H.R. 471, which would rightfully return

the Blue Lake Area to the Taos Pueblo Indians.

The return of the Blue Lake Area to the Taos Pueblos has been consistently recommended by the Interior Department since 1912. H.R. 471 has twice passed the House by almost unanimous votes. The Indian Claims Commission in 1965 affirmed that the Blue Lake Area was unjustly taken from its Indian owners by Executive Order in 1906. S. 750 is inconsistent with these facts.

We agree with the Taos Indians that S. 750 is objectionable because it fails to recognize that they need and have a rightful claim to the entire 48,000 acre tract and because it fails to preserve the entire tract as a wilderness area. The Taos Pueblo Council said of S. 750:

"First, it reduces the area to be preserved as wilderness to a mere 4,600 acres. Second, within this limited wilderness the religious activities of our people would be squeezed into a tiny unprotected island of 1,600 acres to be set aside for ceremonials. Third, while the bill purports to protect by permit our rights to an additional 34,500 acres, its actual effect would be to segregate the area, strip away its sanctity, reduce our present exclusive-use rights and give the Forest Service new powers for such activities as harvesting timber. Thus the Blue Lake Area would be dismembered and over 90 percent opened to desecration. The opportunity to save an unspoiled wilderness of 48,000 acres, as provided by H.R. 471, would be forever lost."

We believe that the Taos Pueblos should not have to wait any longer for the righting of a wrong that occurred in 1906 and has been recognized by the Federal Government as a wrong since 1912.

We would appreciate it if the Subcommittee would take prompt action on this measure and bring it to the floor.

Sincerely yours,

FRED R. HARRIS,
ALAN CRANSTON,
WALTER F. MONDALE,
EDWARD KENNEDY,
PHILIP HART,
HAROLD E. HUGHES.

INDOCHINA

Mr. HARRIS. Mr. President, on April 2, I introduced for myself and the distinguished senior Senator from Kansas (Mr. PEARSON), Senate Resolution 383, which in taking note of the danger of an expansion of hostilities in Indochina called for affirmative action by the United States to prevent such an expansion of conflict, and further stated that a comprehensive multilateral conference of all interested parties which could consider ways to obtain a true neutralization of Vietnam, Laos, and Cambodia would be the most promising approach for dealing with this grave situation.

On April 8, the names of five additional Senators were added to the list of cosponsors of this resolution. Today, I am pleased to ask unanimous consent that the names of the distinguished junior Senator from Indiana (Mr. BAYH), the distinguished junior Senator from Alaska (Mr. GRAVEL), and the distinguished senior Senator from Texas (Mr. YARBOROUGH), be added as cosponsors of this resolution at its next printing.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARRIS. I appreciate this additional support for Senate Resolution 383 very much, for nothing has happened since the resolution was initially introduced which would indicate either that the danger of a spread of hostilities has lessened or that the administration intends to make a diplomatic initiative which could lead to a multinational conference to deal with the situation.

Yesterday, for example, the Washington Post carried news reports of an apparently intensified campaign by Cambodians against their Vietnamese minority, about building North Vietnamese pressure in Laos which is leading to a little noticed deterioration in the Royal Laotian Government's position and about enemy shellings in Saigon. The slow and almost invisible steps by which American involvement in Laos and Cambodia may increase may have already begun, as the Post suggested in an editorial aptly titled "Bordering on Trouble" which appeared on Sunday, April 12. Today, there are reports of Cambodian Premier Lon Nol's appeal for weapons from any country which will provide them. The United States has not been directly asked as yet for this help, but some sources are reported to expect both such a request and a favorable administration response.

As Joseph Kraft has noted in a perceptive column which appeared yesterday in the Washington Post, in the face of some pressures on the one hand for slowing the rate of troop withdrawal from Vietnam and mounting support for a negotiated Indochina-wide settlement such as proposed in Senate Resolution 383 on the other, the administration holds to its dubious policy of Vietnamization.

Mr. President, I ask unanimous consent that the editorial and the column by Mr. Kraft, to which I have referred, be printed in the RECORD.

There being no objection, the editorial and article were ordered to be printed in the RECORD, as follows:

BORDERING ON TROUBLE

Of the two explanations the American Embassy in Saigon offers for the presence of American military advisers with their South Vietnamese military units in Cambodia, we are unsure which is the more troubling. First, the embassy stated that advisers could cross into Cambodia, a country whose neutrality the United States has repeatedly pledged to uphold, in order to "exchange pleasantries (sic) and protocol greetings and not to carry on any substantive discussions or to make any plans or commitments." Well, an exchange of pleasantries, however laudable as an exercise in intercultural understanding, does not strike us as adequate justification for possibly pulling the United States into a wider Indochinese war. For that, of course, is the risk invited by any further erosion of the admittedly arbitrary and imperfect barrier which has so far kept most American fighting men out of Cambodia.

In a second explanation, the embassy in Saigon reported that one adviser in question, wishing to make a "friendly visit," had entered Cambodia "on his own accord." We take this to be more a formula of diplomatic art than an account of reality. Nonetheless, it is unthinkable that, on such an issue as crossing into another country and conceivably getting into the war there, American military men should lack either the instructions or the self-discipline to stay on the Vietnamese side of the border. Americans are well known as a friendly folk, and no doubt the impulse to drop into Cambodia and press flesh with the nice people there at times wells up strong. A little friendliness, though, can be a troublesome thing.

The reasons for super-caution should be plain to anyone who scans the military communiques coming out of Phnom Penh. In brief, the new Cambodian government, having decided to press hard publicly on the Vietcong instead of continuing Prince Sihanouk's policy of diplomatically razzle-dazzling them, finds it has bitten off more than it can chew. That government's authority is said to be evaporating in key regions near South Vietnam, and its army is fulfilling much of its earlier promise of ineffectiveness. It is unsettling enough that General Lon Nol, the new No. 1, may be about to embarrass the United States with a direct appeal to bail him out. It is worse, for being unnecessary, that the United States might get more deeply involved because of an incident arising out of a military adviser who had crossed over to Cambodia to "exchange pleasantries."

Is it really necessary in 1970 to have to point all this out?

VIETNAM PEACE MAY REQUIRE NEW PRESSURE FROM PUBLIC

Storm signals are flying on Vietnam again. But the top figures in the administration are convinced they are on the right track.

So they are forgoing chances to develop the alternate track of negotiating out. And peace will probably require yet another agony of public collision in this country.

This time even the numbers foreshadow some of the dangers. According to the Gallup Poll, public approval for the President's Vietnam policies has been steadily dropping since January. Those in favor are now below 50 per cent. While no one can pretend to read the exact meaning of this dwindling approval, it signifies at the very least that there is a limit to American patience with the continuing war.

But other sets of numbers show no reason to believe that the war will soon be slackening. The enemy has finally adjusted to the spoiling tactics of the American commander, Gen. Creighton Abrams. As a result, the Communists are increasing the pace of their activities. Last week, for example, they killed 754 South Vietnamese soldiers—the highest loss by the Saigon regime since the spring of 1963.

But at the same time, the Communists have learned to cut their own losses. The enemy killed-in-action figure was estimated at 14,000 monthly for 1968, and 12,000 monthly for last year. In the first quarter of this year, the figure was running at an annual rate of 9,000 monthly and still coming down.

No one can be exactly sure of the meaning of these numbers. But it looks as though the other side has settled to a strategy that features keeping up the pressure at a minimum loss for a long, long time. And that impression is reinforced by enemy actions in Laos and against the anti-Communist regime that recently ousted Prince Norodom Sihanouk in Cambodia. These enemy actions have brought a sounding of alarms in many quarters. President Nguyen Van Thieu of South Vietnam has called for a slowdown in the withdrawal of American troops, and a more vigorous assault against the Communist forces in Vietnam. His views are plainly shared by some of the American military in Washington, and not a few of the soldiers and civilians in Saigon.

An almost opposite course has been advocated by certain civilian officials in the State Department and Pentagon. They have pushed for new moves to get the Paris peace talks off dead center. Using the outburst of fighting in Laos and Cambodia as a peg, they have called for revival of the Geneva Conference covering all of Indochina.