

March 9, 1977

"In pursuit of First Amendment Rights
to oppose repressive laws and inquisitorial activities of government."

MEMO TO: NCARL STAFF & OFFICERS, OTHER INTERESTED INDIVIDUALS AND ORGANIZATIONS
FROM: ESTHER HERST, WASHINGTON COORDINATOR
RE: CARTER/MONDALE POSITION ON CIA, COVERT OPERATIONS, SECRECY

I am enclosing a paper written by the Center for National Security Studies and the ACLU documenting the switch in positions on CIA and secrecy since Carter and Mondale were campaigning. During the campaign they both came out against secrecy, certain kinds of covert operations, and the use of the CIA to carry out secret foreign policy.

With the recent revelations of CIA payments to King Hussein and other foreign leaders, Carter and Mondale have taken a new and very threatening stance: that these kinds of operations are alright and that the problem is, instead, with the "leaks" and the number of people who have access to classified or sensitive information. Admiral Turner, the new Director of Central Intelligence, has agreed that there is a need for an "official secrets act" and was invited to draft such a bill by Sen. Inouye and the Senate Select Committee on Intelligence.

Constituent pressure is critically needed on President Carter, Vice President Mondale and ALL Senators and Representatives to carry out the original Campaign positions of Carter and Mondale and to take meaningful action to end covert operations abroad and to eliminate the secrecy that is corroding our democratic system.

I urge that you distribute this document as much as possible. Get this information into your newsletters, magazines or other media outlets you have. And, finally, please write letters, send wires, or directly phone your elected representatives to express your concern and dismay at this turnaround in Administration policy.

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formerly National Committee to Abolish HUAC/HISC (House Committee on Internal Security)

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Nov. 9, 1977

MEMO TO: NCARL OFFICERS & STAFF, OTHER ORGANIZATIONS & INDIVIDUALS
FROM: ESTHER HERST, WASHINGTON COORDINATOR, NCARL
RE: S 1437, CRIMINAL CODE REFORM ACT OF 1977

On Nov. 2, the Senate Judiciary Committee voted 12-2 (Sens. Allen and Abourezk opposing, Sens. Byrd, Culver, and Scott absent) to favorably report S 1437 to the full Senate. The Committee had held three days of formal mark-up and seven days of informal discussion and consideration of amendments. Over 70 amendments covering a broad range of issues were submitted and Sen. Kennedy, the bill's chief sponsor, accepted, without full committee debate or vote, those which he believed were "non-controversial." Any amendments which would have made significant changes in the bill were subjected to the full committee's scrutiny.

The process of "marking-up" S 1437 illustrated its complexity and revealed how little the committee members understood the dangerous effects it could have on our system of criminal justice. The lack of unity among the "liberals" on the committee resulted in the defeat or compromise of many progressive amendments. Kennedy directed the mark-up and frequently invoked the sanctity of the "fragile compromise" which he had arranged with Sen. McClellan and the Carter Administration. The Administration participated fully in the marking-up process through the Justice Department attorneys who had drafted S 1437 and its predecessor S 1. These attorneys would echo Sen. Kennedy's opposition to meaningful amendments. In spite of this powerful and usually effective blocking of substantive changes in S 1437, the committee did make some improvements.

It is important to remember that all of the changes finally made by the committee came after pressure and heavy lobbying by NCARL, the ACLU, and other national organizations. No serious challenges to the bill were even contemplated by committee members prior to meetings and discussions with representatives of anti-S 1437 groups.

AMENDMENTS TO S 1437 ACCEPTED BY SENATE JUDICIARY COMMITTEE

Judiciary Committee members were most interested in changing provisions which would subject the press to criminal penalties for disobeying "gag orders." The committee voted to provide a special "affirmative defense" to the crimes of Criminal Contempt (1331) and Disobeying a Judicial Order (1335) if the order was "invalid and it constituted a prior restraint on the collection or dissemination of news." This clearly applies only to the media but it does offer greater protection against arbitrary gag orders than the original S 1437. A journalist or newspaper would still be subject to criminal prosecution, of course, if a higher court subsequently determined that the order which had been violated was legitimate.

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Sec. 1301, Obstructing a Government Function by Fraud, was amended to protect the press and "leakers" from prosecution by barring prosecution if the offense was committed solely for the purpose of disseminating information to the public. The committee also agreed to a definition of "fraud" which limits the application of this section to "misrepresentation, chicanery, trickery, or other dishonest means."

No amendments of substance were offered to guarantee a journalist's right to protect confidential sources. Criminal prosecution for refusing to reveal such sources could result from Hindering Law Enforcement (1311), Criminal Contempt (1331), and Refusing to Testify or to Produce Information (1333). Also, the present vague and overbroad laws on espionage and disclosing classified or national defense information were left intact by the Judiciary Committee and can still be used, as they were in the Pentagon Papers case, against those who "communicate" information without authorization. Leakers face prosecution for Revealing Private Information Submitted for a Government Purpose (Sec. 1525) and journalists could be liable when this provision is coupled with the inchoate offenses.

The Committee agreed to some changes in those sections which pose a serious threat to freedom of assembly. It limited the "peacetime" application of Impairing Military Effectiveness (1112), a second-degree sabotage offense, to cases of damage to "major weapons systems." At the same time, however, the committee eliminated the definition of "war", leaving unclear and up to the courts and the government the question of when a state of war exists and, in turn, when section 1112 can be applied without limitation.

Sec. 1861, Disobeying a Public Safety Order, has been limited by defining a "public safety officer" as a "law enforcement officer or a public servant assigned public safety responsibilities." The extension of federal authority and the threat of arbitrary application of this provision remain unchanged.

Finally, a narrow amendment to Sec. 1302, Obstructing a Government Function by Physical Interference, was accepted after lengthy debate. In cases of "non-violent demonstrations" which do not "significantly" impair or obstruct a government function, the penalty will be only five days instead of one year. The word "significant" is not defined and the threat of prosecution under this section will have a dangerous chilling effect on the right to assemble. An effort to make the inchoate offenses inapplicable to Demonstrating to Influence a Judicial Proceeding (1328) was defeated.

There was one substantive improvement in the inchoate offenses (Chap. 10). Sec. 1001, Criminal Attempt, was changed to require that a "substantial step" toward the commission of the crime occur before a prosecution may take place. This language brings S 1437 closer to the Brown Commission and to HR 2311, the alternative House bill. However, efforts to delete or narrow the offense of Solicitation (1003) were defeated and no one even attempted to amend the Conspiracy section (1002). An amendment to delete the definition of "voluntary and complete," a key part of the "renunciation" defense to the inchoate crimes was accepted. This is a minor improvement in the very narrow defense and will not eliminate the potential for abusive prosecutions now posed by the inchoate crimes, themselves.

Minor improvements were made in several other sections. The committee provided a defense to an Obscenity (1842) prosecution when the obscene material being disseminated is legal in the state in which it is being disseminated. The committee let stand, however, the repressive "community standards" test which had been articulated by the Supreme Court.

An amendment to require that law enforcement officers warn people before questioning them that making a false oral statement (1343) is a crime was accepted. This will not prevent the "my word against yours" situation when a police officer or FBI agent claims a false statement was made and the defendant claims otherwise. Unchanged is this section's unwise grant of power to police and government officials to prosecute people for allegedly false statements made without oath, witnesses, or presence of counsel.

An amendment to decriminalize marijuana which passed once and then was reconsidered and compromised has received tremendous publicity. S 1437 now makes possession of up to one ounce of marijuana a "criminal infraction," but, unlike any other criminal infraction, the penalty will be only \$100 fine. It also provides for automatic expungement of the record for first and second time offenders and, after a specified period of time, for further offenses. One question often asked about the expungement provision is how judges will know a particular act is a third offense if the previous offenses have been "expunged." Transfer or sale of small amounts of marijuana for personal use is still criminalized and federal jurisdiction can still preempt state laws on marijuana possession if the federal government wants to get involved.

Finally, the sentencing provisions of S 1437, which have received the most favorable publicity, are, in fact, seriously deficient and dangerously severe compared to existing law. Efforts to amend the sentencing system to make it less discretionary and less reliant upon incarceration generally met with defeat. The virtual elimination of parole as a form of early release and the significant decrease in the amount of good time available coupled with uncertainty about the Sentencing Commission's membership and guidelines and the presumption in favor of lengthy incarceration could have the effect of increasing the federal prison population by more than a third. By not decriminalizing victimless offenses, by not lowering sentences across the board, and by increasing the numbers and types of people who will enter the criminal justice process, S 1437 belies the label "reform" and instead perpetuates or worsens the existing discriminatory and oppressive system.

ACTION NEEDED NOW

For those who had hoped that the Judiciary Committee would listen to public objections and act to significantly amend S 1437, this review of major amendments will be a disappointment. Any changes made were the result of intensive pressure and were arduously opposed by Kennedy and the Carter Justice Department. Major provisions of the bill which have been labeled "repressive" such as the threats to labor, the expansion of federal jurisdiction, and the infringements on the right to assemble were not even examined. Other dangerous sections like wiretapping, forced use immunity, and the abrogation of the rule of strict construction received cursory debate and were left as they are in the bill. Only Sen. Abourezk was committed enough to the principles of his amendments to oppose the entire bill when the committee voted. Other liberal members caved in to the Kennedy-Carter pressure.

The bill now goes to the full Senate which will reconvene Jan. 17, 1978. Atty. Gen. Bell has said that he expects a Senate vote by Feb. 1. Massive constituent pressure is critically needed on all Senators to delay a Senate vote and to demand defeat of S 1437.

1. Visit your Senators during the recess. Broad-based delegations giving Senators specific reasons to oppose S 1437 have been successful in countering Kennedy's positive publicity.
2. Write, wire, and phone your Senators. Pressure stopped S 1. Pressure forced even the limited amendments passed by the Judiciary Committee. Pressure will stop S 1437!
3. Make sure your organizations are working against S 1437. Many groups which opposed S 1 have not taken a position on S 1437 yet. They need to hear that their members are concerned.
4. Visit and write to your local newspapers to oppose S 1437. Many are coming out against the bill when confronted with evidence of its dangers. More editorials are needed.
5. House hearings are likely to resume early in the new year. Now is a good time to let your representatives know that you are against S 1437.

March 21, 1979

MEMO TO: NCARL STAFF & OFFICERS, OTHER CONCERNED INDIVIDUALS & ORGANIZATIONS
FROM: ESTHER HERST, NCARL WASHINGTON COORDINATOR
RE: UPDATE ON CRIMINAL CODE LEGISLATION, INTELLIGENCE CONTROLS, 96th CONGRESS

CRIMINAL CODE LEGISLATION

After a period of uncertainty, Rep. Robert Drinan (D-Mass), chairperson of the House Judiciary Subcommittee on Criminal Justice, has decided to draft an omnibus bill to revise, codify, and reform the federal criminal laws. His Subcommittee began the drafting process on Feb. 23, after 4 days of preliminary hearings. In those hearings, the Subcommittee heard from the Justice Department, former Sen. Roman Hruska, the ABA Criminal Justice Section, and former California Governor Pat Brown. All these witnesses urged the Subcommittee to support omnibus legislation, that is, a bill which rewrites all the federal criminal laws at once. They steadfastly opposed "incremental reform," an issue-by-issue approach which had been endorsed by the House Criminal Justice Subcommittee in last year's 95th Congress.

Since Feb. 23, the Subcommittee has been meeting 4 to 5 times a week, reviewing material on criminal laws prepared by the subcommittee staff. These materials consist primarily of charts which outline the various positions on specific issues (such as definitions of crimes, or recommended sentences) of several "model" proposals: the recommendations of the Brown Commission (the National Commission on Reform of Federal Criminal Laws), S 1437, the Model Penal Code (a draft state code prepared 20 years ago by the American Law Institute), last year's HR 2311 (a bill written in 1975 as a "liberal alternative" to S 1), and present law. The members consider each option and then pick and choose their preference. Options besides these 5 are rarely offered and there has been no formal opportunity for outside groups to recommend different approaches or ideas.

The discussion in Subcommittee resembles a multiple choice quiz - members picking a, b, c, d, e, or "none of the above", depending upon their mood at the moment and which members are present for the debate. There are few votes taken; the Subcommittee tries to reach consensus agreement as often as possible. The Subcommittee staff is preparing a draft bill as each issue gets settled. When there is no consensus on an issue, the staff writes in brackets each alternative suggested. The Subcommittee will return to those "bracketed" issues after the entire bill has been drafted, and they will agree then on final positions.

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Rep. Drinan is moving at a breakneck pace. Few of the Subcommittee members have had time to study the many issues in criminal law reform in any depth. Often, they receive the staff materials only a few minutes before the meetings, with no time available for study. The 3 volumes of hearings on S 1437 held by last year's Subcommittee were just printed and finally made available to members today. The Report of that Subcommittee, which rejected the substance and approach of S 1437, has not been printed or seen by the members yet. They have heard no testimony on the many controversies that have plagued criminal code legislation since 1973 and Nixon's S 1400. The only reference to controversy was a recommendation in the preliminary hearings that certain volatile issues not be considered because they could destroy the consensus necessary to pass an omnibus bill. Those issues include the death penalty, gun control, and obscenity.

The Subcommittee staff has prepared a schedule which provides for early consideration of "non-controversial" crimes, such as tax laws, international offenses, and crimes against property and persons. They include as non-controversial the offenses against labor: extortion and blackmail. The staff does recognize the controversiality of national security offenses (espionage, sabotage and draft evasion) and crimes which protect government functions. They have scheduled debate on these for later in April, hoping that the members can become better prepared by that time. The tentative schedule calls for a bill to be completely drafted by the end of May, with hearings in July and a final report out of the Subcommittee in September. The full Judiciary Committee could then mark-up and report a bill in October and the House could consider it early in 1980.

Because of the speed with which the Subcommittee is proceeding, the lack of meaningful preparation for debate by the Subcommittee members, and the insistence on following an omnibus format based upon S 1437, the bill drafted by the Subcommittee is likely to be a hodge-podge of good and bad provisions. Until this week, the debate has focused on abstract, technical issues such as states of mind, defenses and bars to prosecution, and general rules of construction. The issues of jurisdiction and the role which the federal government can or should play in law enforcement have been put off until later in the process. The inchoate crimes of attempt, conspiracy, and solicitation have been considered, but, beyond an agreement to drop the crime of solicitation which is a victory for civil liberties, the members have made no final decisions.

Until the Subcommittee begins debate on the "controversial" issues, it is hard to predict what the effects of their bill will be. It is clear, however, that the members are not sensitive to the enormous impact code revision could have on the federal prison population and on the exercise of Constitutional rights. By drafting a bill without a deeper understanding of the complex issues involved and in an atmosphere of increasing pressure from Sen. Kennedy and the Justice Department, the Subcommittee members seem to be showing a dangerously lax attitude towards the legal and philosophical intricacies of criminal law reform.

It is now critical that the people who have long opposed repressive criminal code legislation register their continuing concern about the bill being drafted. The Subcommittee members have been told by Brown Commission staff director, Prof. Louis Schwartz, that the opponents of past bills, S 1 and S 1437, are either "perfectionists or paranoids." The Congresspeople need to know that, to the contrary, the opponents of those bills are the true defenders of the Bill of Rights and a just criminal code. Letters to Subcommittee members and to your own Representatives should stress the problems of past criminal code legislation as examples of how dangerous omnibus bills can be. Letters should ask also for copies of the Report of the 95th Congress Criminal Justice Subcommittee, which is not printed yet. This report will document the flaws in S 1437's approach and should be read by the Subcommittee members before they proceed any further with this mark-up.

DEATH PENALTY LEGISLATION: S 114

A bill to provide a "constitutional procedure" to implement a federal death penalty, S 144, was introduced on Jan. 23, 1979. It is sponsored by Sens. Dennis DeConcini (D-Ariz), Strom Thurmond (R-SC) and S. I. Hayakawa (R-Cal). In his introductory statement, Thurmond referred to a "commitment...made on the floor during debate on the criminal code reform bill" to report a death penalty bill out of the Senate Judiciary Committee in 1978. Because of a threatened filibuster

by Sens. Abourezk and Metzenbaum, no bill was reported last year.

Sen. Kennedy has said recently that he would "do everything he could to see legislation reported out of the committee." Right now, S 114 is in the Senate Criminal Justice Subcommittee, chaired by Sen. Joseph Biden (D-Del), an opponent of capital punishment. No hearings are planned, but, if Kennedy or the bill's sponsors start to push, it will be difficult to stop a bill in either the Subcommittee or full committee. Letters are needed to your Senators telling them to oppose S 114 or any other death penalty legislation.

INTELLIGENCE AGENCY CONTROL

Charters

The Senate Intelligence Committee, the Carter Administration, and the various intelligence agencies are in the process of redrafting last year's S 2525. The legislation would define the foreign intelligence functions of the federal intelligence community. Such legislation should also limit those functions so as to prevent future abuses of constitutional rights. Unfortunately, the trend in Congress and the Administration is towards fewer controls on agency activities. It is likely that covert actions will not be abolished and there may not be a strict criminal standard required before agencies can spy on American citizens abroad.

A separate charter to determine the domestic security role of the FBI is being prepared by the FBI and the Senate Judiciary Committee. It is not clear how soon any charter bills will be introduced. Letters to all Senators and Representatives demanding that they place strict controls and limitations on intelligence agencies are necessary to counter a growing perception that the agencies are not functioning properly and must be given more authority in order to protect our "national security."

Auditing the FBI Informant Program

The House Judiciary Subcommittee on Civil and Constitutional Rights, chaired by Rep. Don Edwards (D-Cal), has requested that the General Accounting Office (GAO) review the FBI's use of informants. Revelations have shown how informants, by infiltrating legitimate organizations, have disrupted political activities and fomented violence. The FBI has refused to cooperate with the GAO, and, without such cooperation, the GAO will not be able to make an effective investigation. Letters are needed to Rep. Edwards commending him for his initiative in this matter and for his continuing efforts to stop FBI abuses. Letters should also go to Atty. Gen. Griffin Bell demanding that he approve the GAO audit and force the FBI to cooperate. Only outside review of this kind can provide the public and Congress with the information needed to legislatively stop FBI infringements on civil liberties.

Federal Tort Claims Act Amendments: HR 2659 & S 695

Bills have been introduced, once more, to amend the Federal Tort Claims Act in such a way as to immunize against civil suits government agents who violate constitutional rights. HR 2659, sponsored by Rep. Peter Rodino (D-NJ) and George Danielson (D-Cal), and S 695, by Sen. Kennedy, would allow groups or individuals whose rights have been violated to sue the federal government instead of the agent responsible. The legislation must provide, at the very least, a choice of suing either the government or the individual employee and a meaningful disciplinary mechanism to punish the individual employees for rights violations. Without such provisions, the bills would create a "Nuremberg defense" for public employees, destroying the traditional concept of individual accountability. Neither HR 2659 nor S 695 have those protections and they must be opposed.

FOIA Attack

There is a mounting attack on the Freedom of Information Act. The FBI has maintained that revealing documents through FOIA has interfered with its law enforcement capability. The agency claims that it is having trouble recruiting informants because it can not protect their identities from FOIA disclosure. William Webster has asked, therefore, for a 10-year moratorium on release of investigative files from the FBI, starting as soon as possible.

In addition, the FBI has begun to destroy files: field office files which are more than 5 years old are already being destroyed and the FBI is seeking permission from the Senate Judiciary Committee to destroy files at the national headquarters which are 10 years or older. Such destruction of files dangerously hampers the ability of groups and individuals to get complete information about FBI disruption of their political activities. Suits to reopen the Rosenberg and Hiss cases are suffering because valuable evidence is being lost. This destruction must be opposed. Letters should be sent to the Senate Judiciary Committee, demanding that the FBI be stopped from destroying any more files and to your own Congresspeople, urging that they protect, rather than limit, the FOIA.

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WRITE TO REPRESENTATIVES AT: U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, DC 20515

WRITE TO SENATORS AT: U.S. SENATE, WASHINGTON, DC 20510

Oct. 4, 1979

A C T I O N A L E R T A C T I O N A L E R T A C T I O N A L E R T

TO: NCARL STAFF & OFFICERS, OTHER CONCERNED INDIVIDUALS & ORGANIZATIONS

FROM: ESTHER HERST, NCARL WASHINGTON COORDINATOR

RE: RUSH TO PASSAGE OF CRIMINAL LAW REFORM LEGISLATION

The effort to pass a bill to reform and recodify federal criminal laws has accelerated in recent weeks. In the House, the Judiciary Subcommittee on Criminal Justice has begun "mark-up" (debating and amending specific provisions) of its draft legislation. This legislation was written by the subcommittee over a 6 month period and was distributed publicly after August 24, 1979. Hearings were held on Sept. 6, 7, 10, 11, 12, 13, 14, and 17. Mark-up began a week later on Sept. 24. The subcommittee has agreed to consider first those issues in the bill that pose less controversy, and to debate the more complex matters after further hearings. Rep. Drinan (D-Mass), chair of the subcommittee, insists upon holding those hearings at the same time as the mark-up of the controversial features (hearings in the morning and mark-up in the afternoon), thus preventing subcommittee members from fully digesting the statements of witnesses before voting on those issues.

In the Senate, on Sept. 7, 1979, Sen. Kennedy (D-Mass) introduced S 1722, a redraft of S 1437 with cosponsors Thurmond, Hatch, DeConcini, and Simpson. Kennedy also introduced S 1723, a bill almost identical to the Drinan subcommittee draft, complete with all of its brackets. Hearings on both bills were held in the Senate Judiciary Committee on Sept. 11, 13, 18, 20, 24 and Oct. 5. The Committee is scheduled to begin its mark-up on Oct. 15, with the expectation that the bill, probably S 1722, will be reported to the Senate on or about Nov. 1. A Senate floor vote is expected in November.

The House legislation has not yet been introduced and it, therefore, has no number. That will happen after the Criminal Justice Subcommittee completes its mark-up and removes all of the hundreds of "brackets" presently in the draft. Rep. Drinan has been aiming to complete the subcommittee mark-up by the end of October and, in a new and very disturbing development, the schedule most recently circulated among House Judiciary Committee members listed Nov. 6, 7, and 8 as the dates for the full committee to debate the Drinan bill. While there is a strong possibility that that schedule will not be met, given the press of other committee work and the complexity of the issues still to be debated by the subcommittee, it is indicative of the pressures now on members of the House Judiciary Committee to accept both the substance and the form of the Drinan bill. A Committee mark-up can be expected between Thanksgiving and Christmas.

The Drinan bill, as was noted in testimony before the subcommittee, is a significant improvement over S 1473, now S 1722. Most of the serious dangers presented by S 1722 to the exercise of First Amendment rights have been removed, at least tentatively, in the Drinan bill. The sentencing provisions are subject to grave criticism, however, due to their elimination of both parole and good-time release and their lack of any meaningful encouragement of alternatives to prison. Whether the civil liberties improvements will remain as the mark-up progresses is questionable.

NATIONAL COMMITTEE AGAINST REPRESSIVE LEGISLATION (NCARL)

formerly National Committee to Abolish HUAC/HISC (House Committee on Internal Security)

"In pursuit of First Amendment Rights
to oppose repressive laws and inquisitorial activities of government."

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Already, in the issue of Criminal Contempt, Sec. 1731, the subcommittee refused to add a defense to a prosecution for "disobedience or resistance to" a court order, when the order is "constitutionally invalid." A similar, though narrower defense exists for Criminal Contempt in S 1722's Sec. 1331, and that defense also appears in the Drinan bill's Sec. 1735, Disobeying a judicial order. While this is not considered a major issue, the lack of such a defense poses problems for the press as well as unions and other organizations which choose to disobey or counter a court order in the belief that it is constitutionally invalid.

The subcommittee's decision in relation to the contempt issue indicates the serious possibility that, during the removal of brackets or while substantively amending the bill, many of the gains for civil liberties initially made by the Drinan bill will be rejected. Also, it indicates that the efforts to improve the sentencing sections of the Drinan bill may not be successful, leaving those provisions as bad as their counterparts in S 1722. The possibility of worsening amendments and the difficulties of passing improving amendments has always been a concern of those monitoring the effort to draft an omnibus criminal code bill. Similarly, the existence and likely Senate passage of S 1722 present the danger of amendments from that bill being added to the Drinan bill in the House committee or on the House floor. The Conference Committee which will meet to eliminate the differences between the two bills will also result in many provisions from S 1722 being accepted by the House conferees in the interests of achieving final passage of a criminal code reform bill in this Congress.

S 1722 is identical to S 1437 with the following exceptions:

1. The offense of Disobeying a Public Safety Order is deleted.
2. The general offence of Criminal Solicitation has been narrowed so that it will not apply to such First Amendment crimes as Obstructing a Government Function by Physical Interference, Obstructing a Proceeding by Disorderly Conduct, Inciting and Engaging in a Riot, and Demonstrating to Influence a Judicial Proceeding.
3. The crime of Making a False Statement has been narrowed to require that the government prove that the person making the statement know that it was false.
4. Three of the amendments added to S 1437 during the 1978 Senate debate has been deleted: Preventive Detention, the Logan Act, and the Comstock Act (prohibiting the mailing of abortion-related materials).
5. The bill has been shortened by the elimination of close to 300 pages of Technical and Conforming Amendments and this, coupled with several substantive changes, will cut back considerably on S 1437's expansion of the scope of federal jurisdiction. S 1722 still expands federal jurisdiction over what it presently is.

From the above description, it is clear that most of the objections raised to S 1437 remain in S 1722. It must be opposed and it must be defeated as early as possible. Its threats to the exercise of Constitutional rights and its potential for drastically increasing the federal prison population provide ample justification for stopping this bill. As NCARL stated in testimony on both S 1437 and S 1722, "We do not believe that the task of reforming our criminal laws is so urgent that it should be accomplished at the price of sacrificing American democratic principles or taking ill-considered action with respect to our penal structure."

ACTION ON BOTH BILLS IS CRITICALLY NEEDED IMMEDIATELY!!!!

1. Since the Senate Judiciary Committee is about to begin debate on S 1722 and the full Senate will consider it shortly thereafter, LETTERS, WIRES, DELEGATIONS AND CALLS must go to ALL Senators, especially those on the Senate Judiciary Committee. Senators should be told that S 1722 is unacceptable and must be defeated.
2. Since there is a good chance that the House Judiciary Committee will consider the Drinan bill in November or early December, letters are needed to all members of that committee as well as to your own representatives. If your representative is on the Judiciary Committee, set up a meeting with him/her to discuss the problems in this whole legislative struggle. Representatives should be told about the breakneck pace of the subcommittee's deliberations, about the lack of broad-based hearings with adequate opportunity for members of the subcommittee to consider and react to witness' statements, about the dangers of amendments from S 1722 and the omnibus approach, in general, and about the unacceptable sentencing provisions in the Drinan bill. Tell them that, as long as S 1722 is the Senate bill, the Drinan bill, even though it has significant improvements, must be stopped also.
3. NCARL is now preparing mass literature which will be available soon highlighting the threats to our rights from S 1722. Contact your nearest NCARL office for copies.
4. NCARL cannot continue this struggle, now in its 7th year, without your financial and organizational support. Involve your community in this fight to protect our rights and PLEASE contribute to insure victory once again.

Los Angeles Times

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4—PART V

SUNDAY, AUGUST 31, 1980

Keeping the Constitution in Mind

Under legislation approved by the House Select Committee on Intelligence and, in somewhat different form, by the Senate Intelligence Committee, identifying covert agents of U.S. intelligence agencies or informants of the FBI would be a criminal offense.

Little controversy has been aroused by provisions of the bills that would make it a crime for a government official or former official who had access to classified material to reveal the identity of intelligence agents. But the legislation also would punish private citizens, including journalists, who had no access to classified information, for the same disclosure.

This provision raised immediate doubts as to both its constitutionality and its wisdom. The application of the law to present or former government officials is one thing. To extend it to private citizens is another. Calling the provision "clearly unconstitutional," Rep. Don Edwards (D-Calif.), chairman of a House subcommittee reviewing the legislation, deleted it from the

House bill with the support of four other members of the committee.

It is an open question whether the deletion, if sustained by the House Judiciary Committee, can survive a showdown on the House floor. The provision affecting private citizens was written in an angry reaction against a Washington newsletter, Covert Action Information Bulletin, which has disclosed the names of what it asserts are CIA agents abroad—deduced, the newsletter's staff says, from unclassified biographical information available to anyone. As we have said before, we share the anger directed at the contemptible practice of exposing the identity of an agent for the sake of exposure that could place his life in jeopardy.

But the danger is that the legislation could be applied to journalists who expose intelligence abuses, or to critics of intelligence operations. It is not a simple task to shape legislation under which our intelligence agents must operate, but the authors should always begin and end with the Constitution in mind. □

6 Part II

FRIDAY, SEPTEMBER 5, 1980

Unwise, Unconstitutional—and Unfair

Despite the opposition of its chairman, Peter W. Rodino Jr. (D-N.J.), and other ranking members, the House Judiciary Committee approved a bill Wednesday that would make it a crime to disclose any information, even if obtained from unclassified sources, serving to identify Central Intelligence Agency officials working abroad.

We believe that the bill, as applied to private persons with no access to classified information, is, first, unwise and, second, unconstitutional. If the legislation, approved in slightly different versions by the House and Senate Intelligence committees, is enacted, we have no doubt that it will be challenged in court as a violation of the First Amendment.

The bill has two provisions. One would make it a crime for a government official or a former government official who had access to classified material to disclose the identities of CIA agents. Stiff penalties would be provided—10 years in prison and a \$50,000 fine.

But the statute also would permit the prosecution of any journalist or other "outsider" who disclosed the name of a secret operative "with the intent to impair or impede the foreign intelligence activities of the United States." The bill provides maximum penalties for this offense of three years in prison and a \$15,000 fine.

The language of this section lends itself to broad interpretation. Rodino and his supporters argued

that, had the proposed law been in effect at the time of the Watergate break-in, it would have prevented the investigation and disclosure of the CIA connections of some of the Watergate burglars. A zealous prosecutor could apply the provision to a journalist who disclosed an agent's identity in revealing intelligence agency abuses.

The Justice Department, testifying on the legislation earlier this year, raised doubts about the constitutionality of punishing private citizens for obtaining and publishing information in the public domain. This provision, the Justice Department suggested, could "chill speech" by those critical of CIA operations.

The impetus behind the measure stemmed from the angry reaction against a Washington newsletter that has disclosed the names of officials identified by it as CIA agents. The newsletter's staff asserts that all its information comes from unclassified public information, and that, furthermore, not one CIA agent has been harmed as a result of such disclosures. But exposure of the agents for the sake of exposure is not a tactic that earns our admiration, and such disclosure could, of course, put the lives of intelligence agents in danger.

Yet the law could be used, as the Justice Department noted, to impair free speech and intimidate CIA critics. We believe that no law that punishes the communication of publicly available information will stand up in the courts. □

Bill to Ban Disclosure of Secret Agent ID's Sent to House Floor

From Times Wire Services

WASHINGTON—A bill providing stiff penalties for the public disclosure of identities of U.S. secret agents passed a crucial test Wednesday in the House Judiciary Committee.

The measure was approved 21 to 8 and sent to the House floor after the committee easily turned back a move aimed at limiting the bill's scope to ex-CIA agents who reveal the names of spies.

Civil libertarians and news media representatives contend the measure as passed Wednesday could chill efforts to expose abuses in the intelligence community.

But proponents of the bill, led by Rep. Henry J. Hyde (R-Ill.), said the legislation is needed to protect American agents from unwarranted attacks.

Opponents of the nation's intelligence services "should not be permitted to hide behind the First Amendment," Hyde said. "The clear and present danger is easy to discern. I don't think we have to wait for a bloody body to give them (the agents) the protection they deserve."

Aimed at Publications

Drafters said the measure is particularly aimed at publications such as Covert Action Information Bulletin, which regularly carries listings of Americans working in U.S. embassies identified as alleged CIA agents.

Covert Action frankly states its aim is to destroy the CIA's covert capabilities.

The legislation, in addition to protecting the identities of CIA agents working under cover, would also shield the identities of other U.S. intelligence agents, including FBI foreign counterintelligence or counterterrorist agents working abroad.

Backers of the bill are hoping for a prompt vote on the House floor with Congress planning to recess in early October. A similar bill has already passed the Senate Intelligence Committee.

The proposal, which previously passed the House Intelligence Committee, provides for heavy fines and up to 10 years in prison for an intelligence insider who leaks spy identities, and up to three years for a private citizen. The proposal has the support of the CIA and FBI.

Reps. Don Edwards (D-Calif.) and Robert F. Drinan (D-Mass.) offered substitute proposals to eliminate the FBI from coverage and to bar criminal sanctions for individuals or organizations publishing the identities of spies.

They said it would be unconstitutional to prosecute someone in the news media for printing the identity of an agent whose name was available from unclassified sources.

But Hyde said the amendment would make the bill worthless.

Hyde and other backers of the legislation said it is not aimed at hampering legitimate exposure of intelligence agencies' abuses.



The New York Times

News Summary

THURSDAY, SEPTEMBER 4, 1980

Safeguards for intelligence agents were backed by the House Judiciary Committee. It opposed strongly attempts to narrow the scope of a bill that could make the publication of nonsecret information a crime if it revealed the identity of a "covert agent" of a Government agency. The House is expected to approve the measure by a large majority. The legislation is also pending in the Senate. [A1:3.]

6 House Democrats, Alarmed by Scope of CIA Secrecy Bill, Seek to Tone It Down

From the Washington Post

WASHINGTON—Alarmed by what they consider the repressive scope of a new CIA secrecy bill, senior Democrats on the House Judiciary Committee are making a last-ditch effort to curtail it.

Chairman Peter W. Rodino Jr. (D-N.J.) and other ranking committee members believe the measure to be unconstitutional but recognize that it has formidable support.

The bill would make it a crime to disclose any information, even if obtained from unclassified sources, that serves to identify CIA officials or any other U.S. intelligence operative who has been working abroad.

Protest Letter Sent to Colleagues

In a letter sent to other committee members recently, Rodino and five other senior Democrats on the panel protested that the bill could bar the disclosure of a wide range of CIA misdeeds.

Had it been in force at the time of the Watergate break-in, Rodino and the others argued, it could have prevented investigation and disclosure of the CIA connections of some of the Watergate burglars.

The bill, approved in slightly differing versions by the House and Senate Intelligence committees, is aimed in large measure at suppressing anti-CIA periodicals such as the Covert Action Information Bulletin, which regularly prints the names of CIA officers on overseas assignment.

The stiffest penalties in the bill—10 years in prison and a \$50,000 fine—are reserved for past and present government officials who learned the identities of covert agents in the course of their work.

Journalists Could Be Jailed

But to suppress publications such as the Covert Action Information Bulletin, the bill would permit the prosecution of any journalist or other "outsider" who discloses the name of a secret operative "with the intent to impair or impede the foreign intelligence activities of

the United States." Such offenses would carry a maximum penalty of three years in prison and a \$15,000 fine.

This is the section that Rodino and his allies—Reps. Don Edwards (D-San Jose), Robert W. Kastenmeier (D-Wis.), John F. Seiberling (D-Ohio), Robert F. Drinan (D-Mass.) and Elizabeth Holtzman (D-N.Y.)—are fighting as unconstitutional. They say it would even have made the disclosure of the CIA's campaign years ago to destabilize the government and economy of Chile a criminal offense.

The group said the real problem was "disclosure of sensitive government information based on privileged access . . . by faithless government employees" and contended that the bill should be restricted to unauthorized disclosures by past and present government officials.

But, beyond that, Rodino's group maintains, it is the job of the CIA and the President to keep the names of covert agents out of public records, such as old State Department Biographic Registers.

So far, however, the tide has been running in favor of the more sweeping proposal. It has the support not only of congressional Republicans but also of prominent Democrats, such as House Majority Leader Jim Wright (D-Tex.) and House Intelligence Committee Chairman Edward P. Boland (D-Mass.).

Much of the impetus for it came from the July 4 machine-gun attack on the home of the CIA station chief in Jamaica, whose name had just been disclosed by a Covert Action editor.

Despite a boycott by GOP members, Edwards' House Judiciary subcommittee on constitutional rights voted 5 to 1 last week to restrict the penalties in the bill to past and present government officials. The full committee, which must approve the bill by midnight today or face loss of jurisdiction over it, will meet this morning to take it up.



The New York Times

Founded in 1851

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Wrong Rush to Revise the Federal Criminal Code

To the Editor:

Your Aug. 18 editorial urging speedy Congressional action on the proposed revision of the Federal criminal code encourages a thoughtless approach to a massive piece of legislation that can affect our nation for generations. As you noted, this legislation — complex, lengthy (the House bill is 461 pages) and controversial — needs extensive debate. Yet you advocate hasty consideration merely in order to get the legislation passed, regardless of the merit of the bill.

With the bipartisan support of 34 House members, I have asked the House Rules Committee to allow open and unlimited debate on the bill and the number of amendments that will be offered to it. We strongly believe that the House should have the opportunity to consider fully each of the bill's provisions, many of which are indeed controversial. In fact, many of the issues discussed by the House Judiciary Committee were resolved by only one- or two-vote margins. It is our view that debate and amendments are the appropriate means of accomplishing the important task of reforming our criminal laws.

I must also take exception to your suggestion that the differences between the House and Senate versions can probably be reconciled with ease. The Senate bill contains numerous features, not currently in the House bill, that severely threaten civil liberties. These include the criminalization of certain conduct now protected by the First Amendment that could be used against political activities and activists, a broad definition of the crimes of attempt and solicitation, a right by the Government to appeal sentences and a dangerous rewrite of existing bail

provisions. There is little reason to think that the Senate will not insist upon a majority of these repressive provisions when they are considered by a joint House-Senate conference.

Although the effort to codify all Federal criminal law is commendable, the omnibus approach is unsuited to this task. This opinion was also reached in 1978 by the House Judiciary Subcommittee on Criminal Justice, headed by Representative Mann.

After rejecting S.1437, the predecessor to the bill currently before the Senate, the Mann subcommittee issued a report which concluded that sound criminal law reform could not be practically accomplished if all the laws were reconsidered at once in a single comprehensive bill. Based on its analysis of the Senate bill and previous attempts to recodify the criminal code, the subcommittee determined that the omnibus approach inevitably resulted in legislation that was ill-considered, unsound or unpredictable.

I wholeheartedly concur with its conclusions that "the tremendous time, energy and emotion that goes into an omnibus bill results in a tremendous pressure to agree to things in order not to hold up the legislation."

Reform of the criminal code is much too important an undertaking to compromise. A few positive and substantive reforms do not compensate for many ill-conceived proposals that are being labeled as reforms. Unless the House and Senate have adequate time to discuss and debate the merits of each "reform," the citizens of our nation will be better off with current law, even in its unstructured form, than with a comprehensive revised criminal code that threatens fundamental constitutional rights.

TED WEISS
Member of Congress, 20th Dist., N.Y.
Washington, Aug. 21, 1980

New York's Rep. Weiss!

As he did in the 95th Congress against the "child of S. 1," Rep. Weiss continues in the forefront of our battle against S. 1722/H.R. 6915.

Fortunately, the N.Y. Times' terrible editorial of August 18th - has at least opened up valuable column space!

fw

The New York Times

Founded in 1851

ADOLPH S. OCHS, Publisher 1896-1935

ARTHUR HAYS SULZBERGER, Publisher 1935-1961

ORVIL E. DRYFOOS, Publisher 1961-1963

NATIONAL ACLU

- CHALLENGES -

The New York Times

Letter: On a Federal Criminal Code

Why the Haste?

To the Editor:

In an Aug. 18 editorial, The Times urged Congress to get on with the job of passing a new Federal criminal code. Everyone can share The Times's desire for a new code, since the existing one is inconsistent and anachronistic in many respects. But at what price?

The Senate version of the proposed new code still contains many new laws that would violate fundamental civil liberties. It would, if passed, authorize preventive detention — the jailing of people accused of crimes before their trials merely because the government can convince a judge they are "dangerous." Think of how a Nixon Administration might have used that provision!

The Times acknowledges this unacceptable "reform" and opposes it. But there are many other serious civil liberties violations contained in the Senate bill as well, which The Times ignores. Many of these would grant the government unprecedented powers to investigate and prosecute constitutionally protected activity.

Neither The Times's brief editorial, nor this briefer letter is sufficient to discuss all those complicated provisions, but readers are urged to examine the 54-page analysis prepared by the American Civil Liberties Union, and to judge for themselves.

What is troubling about The Times's haste to enact a new criminal code now is its naïve assumption that the fundamental civil liberties violations contained in the Senate bill can be removed before final passage.

The House bill, sponsored by Representative Robert Drinan, is much better. It leaves out most of the civil liberties violations that are in the Senate bill. But Drinan's bill is about to be debated on the floor of the House. There it will inevitably be subject to amendments that will introduce some of the Senate bill's provisions, and make the bill worse for civil liberties.

Afterwards, the House bill, as amended, will go to a joint House-Senate conference committee, and will be further compromised in the effort to resolve the differences between it and the Senate bill. Even for those who find

Representative Drinan's bill minimally acceptable now, there is almost no chance for the Drinan bill to emerge intact from the political process.

The Times makes light of the differences between the House and Senate bills, and blithely tells its readers not to worry: most of the differences can be "reconciled." But how? If they are reconciled in the direction of the Senate bill, as is likely, fundamental new civil liberties violations will become part of our law.

So why the haste? The effort to enact a bill that reforms the criminal code without sacrificing important liberties is a long process. If we get impatient now, as The Times suggests, and rush to pass some bill, we will likely do lasting damage to our liberties. We should be patient a while longer, and insist that the price of our support is the removal of those provisions in the pending bills that would, if enacted, weaken liberties that have stood for nearly two centuries.

IRA GLASSER
Executive Director
American Civil Liberties Union
New York, Aug. 19, 1980

A Criminal Code in Sight

- August 18, 1980 -

As Congress enters the legislative home stretch today, its members have a heavy date with the Federal criminal law. They can now give the whole body of that law a clarity it has lacked for decades. Bills to modernize the crime laws and organize their scattered chapters are ripe for action both in the Senate and House. That itself is a remarkable achievement after years when few dreamed that any legislation so difficult could ever advance so far.

The major obstacle now is that there is not much time before Congress must quit for the fall election. The most divisive issues have been skillfully sidestepped or postponed after hearings and negotiations spanning at least four Congresses. But any legislation so laden with controversial subjects — capital punishment, obscenity, and abortion, for instance — invites extensive debate. It is also vulnerable to sabotage from short-run, election-year politicking. To prevent reopening long-settled questions will take strong leadership and great restraint.

Statesmanship or lack of it won't make or break anyone politically, but earthly rewards do exist. Edward Kennedy, chairman of the Senate Judiciary Committee, can boast a major legislative achievement if he will now apply himself to finishing this job. Robert Drinan, retiring chairman of the key House subcommittee, can crown his Congressional career by pressing his bill to passage. President Carter also can share credit because his Justice Department has fought hard but fairly over matters vital to Federal prosecutors. Republicans Strom Thurmond and Orrin Hatch in the Senate and Thomas Kindness in the House will deserve praise for their constructive work.

Title 18 of the United States Code will never make

light summer reading, but it can make more sense. Consider what the reformers have proposed.

They would clarify the lines between Federal and state criminal jurisdiction. They would scale all the crimes according to their relative seriousness. They would attempt to minimize the notorious disparity of punishments meted out for like offenses. They would toughen Federal civil rights laws and repeal some irrelevant or mischievous old laws. These range from the quaint crime of detaining a carrier pigeon to the 1940 Smith Act, which could still be trotted out to harass citizens for discussing revolution. The reformers would make it a crime to assassinate a foreign leader. They would establish a Federal system for compensating crime victims.

To avoid ideological battles that would doom any large-scale reform, the drafters have readopted existing law in matters like espionage, wiretapping and the death penalty. Purists and diehards on both sides may be unhappy about that and want this noxious law repealed or that cherished one strengthened. But Congress can fight those individual fights some other day, issue-by-issue, against the backdrop of a modern code.

There are many differences between the House and Senate versions of the criminal code reform. Probably all can be reconciled, with one glaring exception. The Senate's purported "bail reform" is a badly disguised preventive detention bill that would make it easier for Federal judges to jail defendants before trial on mere suspicion of dangerousness. The full Senate should not enact that notion, or if it does, should yield to the House version when the time comes.

COMING IN THE CHRISTIAN SCIENCE MONITOR

The Monitor's Editorial Page editors have asked NCARL's Esther Herst for this critique of S. 1722/H.R. 6915's basic problem: "the omnibus approach." fw

FEDERAL CRIMINAL CODE REFORM: DANGERS IN PROCESS AS WELL AS SUBSTANCE

Legislation to rewrite the federal criminal code has been under consideration since 1973. The issues in each bill introduced since then, S 1 and S 1400 in 1973, S 1 in 1975, S 1437 in 1977 and S 1722 and HR 6915 currently, have been debated in the press, in citizen organizations, in Congressional committees, and, in 1978, on the Senate floor. Congress is now close to passage of S 1722 and HR 6915, but the Congressional leadership would be wise not to schedule either bill for final floor consideration.

Opposition to these bills, especially S 1722, because of their controversial provisions is known to those familiar with the decade-long debate. A unique coalition of civil liberties, religious, labor, business, legal, and press organizations has urged defeat of S 1722 because it poses serious threats to freedom of speech, assembly and the press. It curtails current law protections of labor strike activities and subjects currently legal business practices to federal prosecution. It expands federal criminal jurisdiction, "lay(ing) the foundation for a national police force," according to the National Conference of State Legislatures, and "result(ing) in a fundamental realignment of the relationship between state and federal government," according to the Illinois State Bar Association.

In the heat of the debate over the dangerous details of S 1722, the relationship between its substance and its ambitious approach has often gone unnoticed. Its comprehensive or "omnibus" format for criminal law reform was endorsed by the National Commission on Reform of Federal Criminal Laws in 1971. Every bill mentioned earlier was comprehensive. Each rewrote all the federal criminal laws, revamped the entire federal sentencing system, redefined the terminology describing the necessary "states of mind," and provided a new format for the exercise of federal law enforcement powers. To gain bi-partisan support for such a vast undertaking, the drafters incorporated substantive changes in the law which may not have represented the soundest criminal justice policy but which did satisfy the special interests of a variety of political perspectives.

Most of S 1722's critics, while generally supportive of criminal law reform, now recognize that some of S 1722's flaws are a result of its omnibus nature. They join the House Judiciary Subcommittee on Criminal Justice in the 95th Congress,



which unanimously rejected S 1437, in recommending the more measured and careful "incremental" or issue-by-issue approach to reform.

Such an approach can be free of the legislative horse-trading that characterized the drafting of S 1722 and its predecessors. While political compromises are basic to the legislative process, the propriety of trade-offs depends upon the impact of an issue on our society. Omnibus tax or civil service reform bills are appropriately subject to political bargaining. Criminal law revision is not. Compromises needed to pass an omnibus tax code, for instance, do not usually result in the loss of individual liberty through imprisonment. Changes in criminal laws do. Agreements made to enact civil service reform legislation rarely undermine cornerstones of our legal and constitutional system. "Reforms," such as preventive detention, incorporated into S 1722 because of political expediency, will.

"Federal criminal laws," according to the 1978 Criminal Justice Subcommittee, "ought not to be the product of extensive horse-trading." Yet, that is precisely what S 1722 is. By offering changes in the law desired by particular interest groups, the sponsors hoped to create a commitment to passage of the entire package, regardless of the impact of the rest of the bill.

In fact, because of the breadth of this legislation, its true impact probably cannot be known before enactment and implementation. Certainly in the limited time left to this Congress, there will not be the opportunity to scrutinize each provision to measure its political, constitutional, and financial effect and to ensure that it represents good public policy.

More likely, House and Senate consideration of HR 6915 and S 1722 will resemble the Senate's passage of S 1437. The debate will be hurried and poorly attended, replete with back-room bargains over controversial issues and last minute amendments to satisfy an intransigent faction or to score political points in a tough election year. The long-term consequences of the legislation will be forgotten in the rush to finally resolve this complex issue.

Will it lead to an increase in our federal prison population? Will it shift the balance of law enforcement from state and local to federal authorities? Will it erode freedoms guaranteed by our Bill of Rights? Those questions ought to be raised anytime federal criminal laws are rewritten. They can best be answered when the proposed revisions are limited enough in scope to allow for thoughtful analysis and agreed to on their individual merits, rather than as part of a surprise package of unknown quantities.

LEGISLATIVE
BULLETIN

HOUSE ACTION ON CRIMINAL CODE REFORM BILL NEARS

On July 2, 1980, the House Judiciary Committee approved HR 6915, the Criminal Code Revision Act of 1980. The vote was 20 in favor and 11 opposed to the legislation. The Committee spent 18 days debating the bill, after the Criminal Justice Subcommittee spent more than 130 days drafting it. The bill now goes to the House Rules Committee, which determines how much time will be allotted for a House floor debate and how many amendments to HR 6915 may be offered on the floor. It will then be scheduled for full House debate. Because of the Congressional recesses for the conventions this summer, it is not likely that the House will begin that debate until after August 18, 1980 - when both conventions are over.

House Bill Not As Repressive As Senate Bill, But Still Poses Threats

HR 6915 is not as damaging to basic constitutional freedoms as is S 1722, its Senate counterpart. Many of S 1722's threats to First Amendment rights of speech, assembly and press are not found in HR 6915. This does not mean, however, that HR 6915 is acceptable from a civil liberties standpoint. For instance:

* HR 6915 writes into the law recent Supreme Court decisions on Obscenity, increasing the government's right to punish the publication of "obscene material."

* HR 6915 carries forward current law relating to opposition to the draft and certain military activities, allowing prosecution of those who counsel and thereby "incite" resistance to the draft or military authorities.

* HR 6915 provides mandatory minimum sentences of two or four years when guns or explosives are used in the commission of a crime.

* HR 6915 creates mandatory imprisonment for anyone convicted of a Class A felony - prohibiting the use of fines, probation, or conditional discharge instead of incarceration.

NATIONAL COMMITTEE AGAINST REPRESSIVE LEGISLATION (NCARL)

formerly National Committee to Abolish HUAC/HISC (House Committee on Internal Security)

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James Jackson & David Collins, *Coordinators*
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Cambridge, Mass. 02140 - Phone: (617) 661-6130

Duluth-Superior Coalition Against S. 1
Belinda Poropudas, *Chairperson* - P.O. Box 553
Superior, Wisc. 54880 - Phone: (715) 392-4663

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Florida 33162 - Phone: (305) 949-6596

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Robert McKay, *Coordinator* - P.O. Box 1027,
Madison, Wisc. 53701 - Phone: (608) 255-8171

Montanans Opposed to Repressive Legislation (MORL)
Michael Kreisberg, *Coordinator* - 820 Defoe Street
Missoula, Montana 59801 - Phone: (406) 721-4757

South Jersey Coalition to Defend the Bill of Rights
Rose Paul, *Coordinator* - 1102 Nelson Ave.
Mays Landing, NJ 08330 - Phone: (609) 625-1698

Southern Organizing Committee for Economic & Social Justice
P.O. Box 11308, Louisville, Ky. 40211
P.O. Box 811, Birmingham, Ala. 35201

Many Reforms Lost in Committee Debate

One of the major justifications for drafting an "omnibus" criminal code bill is the need for "reform" of the laws: repealing outdated statutes, recognizing society's changing perspectives on what ought to be criminal conduct, and improving the procedures of the criminal justice system to correct past injustices.

The drafters of HR 6915 originally attempted to do these things, but many reforms were lost during the Judiciary Committee debate.

* HR 6915 as reported by the Criminal Justice Subcommittee took an important step towards reform of the grand jury system by allowing a witness before the grand jury to be accompanied into the grand jury's chamber by an attorney. After heavy and unrelenting lobbying in opposition to this reform by the Department of Justice, the Committee deleted it from the final bill.

* HR 6915 initially lowered the penalty for possession of small amounts of marijuana to a small fine or imprisonment of less than 6 months, depending upon the amount possessed. The Committee, echoing a growing opposition to liberalization of drug laws, increased the penalty to 1 year in prison (as it is in current law) and a \$25,000 fine.

* HR 6915 originally repealed the Logan Act, a law on the books since 1799 which criminalizes the "correspondence" relating to foreign policy between American citizens and heads of foreign countries. Although the Logan Act has never been used, it has been raised as a threat against those who travel to foreign nations while espousing foreign policy views different from those of the current administration. The Judiciary Committee, acting in response to former Attorney General Ramsey Clark's recent trip to Iran, voted to reenact the Logan Act.

Controversial Issues To Be Raised on House Floor

Many issues considered by the House Judiciary Committee were resolved on the basis of one or two vote margins. It is expected that those issues will be re-raised on the House floor, where the votes will be harder to predict and less likely to reaffirm the civil liberties position.

* The Judiciary Committee opposed giving the government the right to appeal lenient sentences, a provision which is in S 1722 and which is a high priority for the Department of Justice. The votes on this issue were consistently 16 against and 15 in favor, making this a likely House floor amendment.

* HR 6915 now restates current law on Extortion in such a way that the rights of labor unions to organize and strike are protected. When HR 6915 was approved by the Criminal Justice Subcommittee, it did not carry forward this protection. Labor's rights were only guaranteed by the full Committee, however, by votes of 16-14 and 16-15, ensuring that this issue too will be re-raised on the House floor.

* Parole is retained in HR 6915, although it is eliminated in S 1722 and the Republicans and the Department of Justice both prefer the Senate approach. The Committee voted to continue the parole system, 17-12, and the issue is expected to be debated on the floor again.

* The Judiciary Committee soundly defeated two efforts to incorporate a federal death penalty into HR 6915. Much of the opposition came from members who support capital punishment but felt such an amendment would make HR 6915 too controversial for floor action. Since there is no separate death penalty bill pending before the Committee, as S 114 was before the Senate Judiciary Committee during deliberations on S 1722, it is possible that capital punishment proponents will offer an amendment to HR 6915 on the floor as the only way to bring this issue before the full House.

Timetable Uncertain

The earliest time for the Rules Committee to meet and discuss the details of a House floor debate on HR 6915 is July 21, 1980. It is not likely that the Committee will meet that early, however. The week of July 28 is more realistic. It is even possible that the Committee will not consider HR 6915 until Congress returns from the Democratic Convention, August 18. If the Rules Committee acts in July, floor debate can be scheduled for August 18 and thereafter; if there is delay in the Rules Committee, there will be delay on the House floor.

It is possible that the Senate will debate S 1722 at the same time the House considers HR 6915 - in late August or early September. With Congress due to adjourn on October 3, there is time during September for Congressional approval and for Conference Committee action. Any delay in this schedule, however, either because the legislation is too controversial or because debate consumes too much time, may be the key to killing this bill.

ACTION

1. All members of the House must hear from their constituents, opposing HR 6915 and S 1722 and urging that HR 6915 not be scheduled for floor action. Despite the fact that HR 6915 does not contain many of the sections of the S 1722 which would damage our Constitutional liberties, the risks of a House floor debate on this omnibus bill are enormous. It must be stopped.
2. Rep. Ted Weiss is circulating a "Dear Colleague" letter to members of the House urging that the Rules Committee give HR 6915 an "open rule" providing for full and comprehensive debate on all of the complex issues in this bill. Only through such a debate can Representatives see the many implications of this kind of legislation and can they be convinced to oppose it. Urge your Representative to join with Weiss on this Dear Colleague letter. Enough co-signers can have meaningful influence over the Rules Committee and the House leadership.
3. Your Representatives will be in their home districts over the July 4th recess, beginning July 3 and ending July 20. They will be home again around the time of the Democratic Convention, August 1 to August 17. Visit them, question them at community forums, urge them to oppose any omnibus criminal code reform legislation.
4. Special attention needs to be focused on the members of the House Rules Committee and the House leadership. If your Representative is not among those listed below, make a copy of the letter you send to him/her and send it to Rep. Thomas P. O'Neill, the Speaker of the House. He needs to hear from concerned citizens across the nation.

House Rules Committee

Richard Bolling - MO	James H. Quillen - TN
Claude Pepper - FL	Delbert Latta - OH
Morgan Murphy - IL	Trent Lott - MS
Gillis W. Long - LA	Robert E. Bauman - MD
John Moakley - MA	Gene Taylor - MO
Shirley Chisholm - NY	
Christopher Dodd - CT	
Leo Zeferetti - NY	
Butler Derrick - SC	
Anthony Beilenson - CA	
Martin Frost - TX	

House Leadership

Thomas P. O'Neill, Speaker of the House
James C. Wright (D-TX), Majority Leader
Thomas S. Foley (D-WA), Chairman of the House Democratic Caucus
Shirley Chisholm (D-NY), Secretary of House Democratic Caucus
John J. Rhodes (R-AZ), Minority Leader
John Brademas (D-IN), Majority Whip
Daniel Rostenkowski (D-IL), Chief Deputy Majority Whip
William Alexander (D-AR), Deputy Whip
George Danielson (D-CA), Deputy Whip
Benjamin Rosenthal (D-NY), Deputy Whip
Robert Michel (R-IL), Minority Whip

MF

THURSDAY, JULY 3, 1980

3,314 SUNDAY

House Panel OKs Total Revision of Criminal Law

WASHINGTON (UPI)—The House Judiciary Committee Wednesday approved a total revision of federal criminal law—setting the stage for possible enactment of the measure this year after more than a decade of congressional effort.

Attempts to bring order into the current disarrayed patchwork of criminal statutes have been under way since 1966, when Congress created a study commission headed by former California Gov. Edmund G. (Pat) Brown.

The Senate took up the challenge for years—with the battle highlighted by a tradeoff in which liberals eventually agreed to some provisions for stiff criminal penalties if conservatives would desist from fighting civil rights provisions.

The initial draft passed by the Senate was widely criticized. Another draft was passed later and now a third effort is ready for floor action in the Senate.

Rep. Robert F. Drinan (D-Mass.), chairman of a subcommittee that spent more than a year drafting the new House proposal, conceded Wednesday it has a number of controversial provisions.

It has been criticized, for instance, for including the never-used 1799 Logan Act, which forbids U.S. citizens from making deals with foreign governments, although courts have

House Committee Passes Revision of Criminal Law

Continued from First Page

cast doubt on its constitutionality.

Drinan conceded numerous efforts may be made to amend the code on the House floor this summer, but he insisted: "There is no compromise of civil liberties in this bill. It is a rational approach to law."

Drinan hailed provisions in the proposed code, including new sentencing guidelines to reduce inconsistencies in punishment handed down by different judges and provisions reducing from 66 to four the possible "states of mind" recognized by criminal law.

The bill also pares 80 theft statutes down to one and cuts 130 counterfeit and forgery laws to two. It would phase out paroles over five years. The Senate version would abolish paroles immediately.

In another difference, the Senate bill would allow "preventive detention" of prisoners; the House bill would not.

John Shattuck, an American Civil Liberties Union spokesman, said he preferred the House bill to one approved by the Senate Judiciary Committee, but added: "The bill remains extremely controversial."

He said it contains "dangerous provisions such as mandatory prison for certain classes of felonies."

Civil liberties groups dislike the House bill's provision for stiff punishment for crimes that are attempted but never actually committed. There is no such law at present.

If enacted this year, the code would take effect Jan. 1, 1984.

The House version of the proposed new code, intended to replace the existing hodgepodge of overlapping, inconsistent and sometimes outdated statutes, consists of 475 big pages of small print.

The bill was favored 20 to 11 in a committee test vote and then adopted by voice vote

It is expected to reach the House floor for debate in late July—about the time the Senate votes on its version.

The committee had debated the measure for 45 hours in 18 meetings in which it considered 230 amendments. The subcommittee that drafted the bill had worked for 147 meetings for this version, starting in February, 1979.

Rep. John F. Seiberling (D-Ohio), complaining he did not "understand the implications of all the things in this bill," sought in vain to delay a final vote so he could study it during the forthcoming recess.

"Every time we lift up a stone we find a bunch of worms under it," Seiberling said. Rep. John Conyers Jr. (D-Mich.), agreed.

"We have uncovered many mistakes which we have corrected in the full committee," Conyers said. "It contains several hundred provisions of constitutional importance. At the very least, we ought to have our work understood."

But the delay motion was defeated, 23 to 6.

Congress of the United States
House of Representatives
Washington, D.C. 20515

July 31, 1980

Honorable Richard Bolling
Chairman
House Committee on Rules
H-313
The Capitol

Dear Mr. Chairman:

35 Members of Congress - REPUBLICANS & DEMOCRATS - Join in Call for "Open Rule" to Guarantee Full Debate on H. R. 6915 - the Drinan/Kindness Matching Bill to the Kennedy/Thurmond S. 1722!

Urge YOUR Representative to Do the Same!

Congress Reconvenes August 18th!

H. R. 6915 & S. 1722 CAN BE STOPPED!! fw

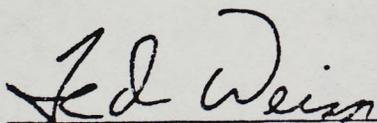
We are writing to ask the Committee on Rules to approve an open rule for H.R. 6915, the criminal code reform bill, with no limit on the number and substance of amendments.

The bill that has been reported by the Committee on the Judiciary is very complex and contains an extraordinary number of issues. Regrettably, the Committee has requested a modified open rule which will sharply limit debate on this important subject. We believe any limitation on debate and consideration of amendments to this bill is unwarranted and unwise.

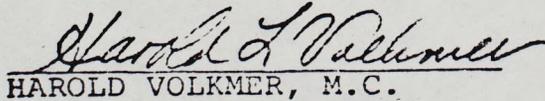
The House should have an opportunity to fully consider each provision, many of which are highly controversial. Indeed, many of the issues discussed in the House Judiciary Committee were resolved by one vote margins which further reflect the controversial nature of the bill.

It is our view that debate and amendments under an open rule are the appropriate means by which to accomplish the important task of reforming our criminal laws.

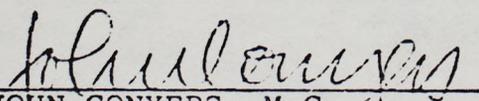
Sincerely,



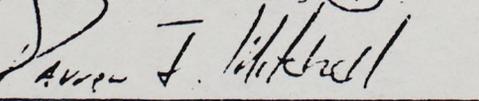
TED WEISS, M.C.
(Democrat, N.Y.)



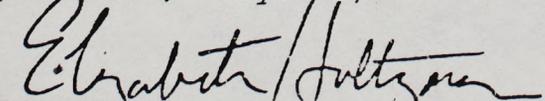
HAROLD VOLKMER, M.C.
(Democrat, Missouri)



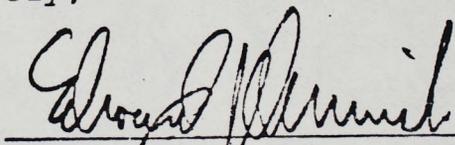
JOHN CONYERS, M.C.
(Democrat, Michigan)



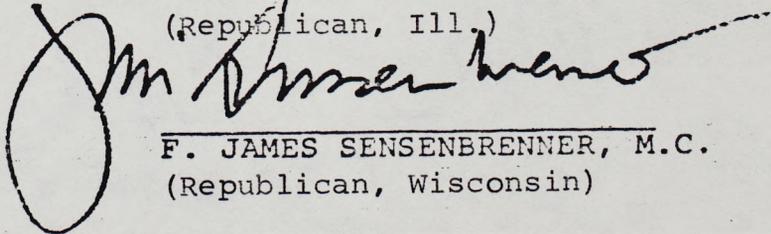
PARREN MITCHELL, M.C.
(Democrat, Maryland)



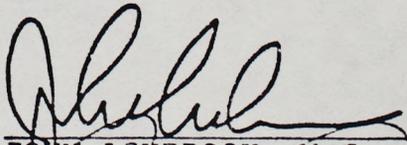
ELIZABETH HOLTZMAN, M.C.
(Democrat, N.Y.)



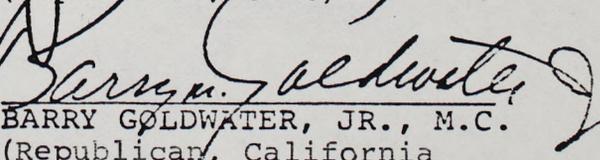
EDWARD DERWINSKI, M.C.
(Republican, Ill.)



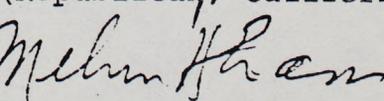
F. JAMES SENSENBRENNER, M.C.
(Republican, Wisconsin)



JOHN ASHBROCK, M.C.
(Republican, Ohio)



BARRY GOLDWATER, JR., M.C.
(Republican, California)



MELVIN EVANS, M.C.



Benjamin Rosenthal
BENJAMIN ROSENTHAL, M.C.
(Democrat, N.Y.)

Ronald Dellums
RONALD DELLUMS, M.C.
(Democrat, California)

George E. Brown Jr.
GEORGE BROWN, JR., M.C.
(Democrat, California)

James Oberstar
JAMES OBERSTAR, M.C.
(Democrat, Minnesota)

Andrew Jacobs, Jr.
ANDREW JACOBS, JR., M.C.
(Democrat, Indiana)

Mike Lowry
MIKE LOWRY, M.C.
(Democrat, Washington)

Mary Rose Oakar
MARY ROSE OAKAR, M.C. - (Democrat, Ohio)

Jim Weaver
JAMES WEAVER, M.C.
(Democrat, Oregon)

Bob Edgar
BOB EDGAR, M.C.
(Democrat, Pennsylvania)

Mickey Leland
MICKEY LELAND, M.C.
(Democrat, Texas)

Will H. Gray
WILLIAM GRAY, M.C.
(Democrat, Pennsylvania)

Gerald Solomon
GERALD SOLOMON, M.C.
(Republican, N.Y.)

Carl Pursell
CARL PURSELL, M.C.
(Republican, Michigan)

Ken Kramer
KEN KRAMER, M.C.
(Republican, Colorado)

Bill Green
S. WILLIAM GREEN, M.C.
(Republican, N.Y.)

Bill Royer
BILL ROYER, M.C.
()

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NORMAN SHUMWAY, M.C.
(Republican, California)

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(Republican, Illinois)

Dan Quayle
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(Republican, Indiana)

Keith Sebelius
KEITH SEBELIUS, M.C.
(Republican, Kansas)

Bud Shuster
BUD SHUSTER, M.C.
(Republican, Pennsylvania)

Matthew Rinaldo
MATTHEW RINALDO, M.C. -
(Republican, N.J.)

Gene Snyder
GENE SNYDER, M.C.
(Republican, Kentucky)

Thomas Petri
THOMAS PETRI, M.C.
()

Louis Stokes
LOUIS STOKES, M.C.
(Democrat, Ohio)

NAT HENTOFF:

*Last Chance To Save the Bill of Rights from Teddy***Stop Teddy's
Crime Bill.***Say Something
Loud.*

By Nat Hentoff

Having lost the Presidential nomination, Edward Kennedy, to keep his spirits up, is going to try to bring down part of the Constitution before year's end. The drive is back on to ram Kennedy's Criminal Code Reform Bill (S.1722) through Congress. This massive restructuring

of all Federal criminal law is aimed at protecting the Government from the citizenry in myriad, pernicious ways—from limiting the rights of assembly and speech to enacting preventive detention.

Because of a certain urgency to this matter—if Kennedy prevails, this will become a quite different country—I have delayed until next week the conclusion to the fierce battle between Bronx D.A. Mario Merola and Judge John J. Walsh concerning proper judicial behavior in a case involving a cop as the defendant in a double murder (*Voice*, July 9 and July 16).

It is useful to remember, as we chart the crucial weeks ahead, that the Kennedy Criminal Code is the product of an alliance between Strom Thurmond and Orrin Hatch (two of the Senate's most unreconstructed Tories) and the resplendently "liberal" Mr. Kennedy. Because of this bipartisan juggernaut, the bill sailed through the Senate Judiciary Committee on December 9 of last year. Nearly everyone involved—supporters and opponents—expected the full Senate to rubber-stamp S.1722 in early 1980. But Kennedy, the indispensable floor leader of the bill, was distracted from his legislative duties for months as he searched the countryside for those voices he had heard the year before assuring him he would be King.

The delay gave some of us time to get word out on what this Grandson of S.1 (the

notorious 1976 attempt to enact a new Criminal Code) actually contained. Like, an end to the presumption of innocence by allowing judges to deny a defendant bail before trial and jail him, even if there is no evidence at all that he would skip bail. And, also for the first time in the nation's history, Kennedy would give the Government power to appeal what it considers "lenient" sentences. But, Senator, to allow the prosecution to take two bites at the defendant places him in double jeopardy.

Another index of Kennedy's just plain dumbness about essential liberties—and there are more than enough examples to fill a complete issue of this paper—is a provision of S.1722 aimed specifically at anti-nuclear demonstrators. As explained by John Shattuck, head of the Washington office of the ACLU:

"An anti-nuclear group is conducting a very vigorous demonstration at Seabrook, and one of the speakers takes it upon himself to urge the demonstrators, or anyone in the audience, to enter the grounds of the facility and attack part of the physical plant, like chomping through a pipe. No one accepts the invitation. Nothing of the sort happens. Yet, under S.1722, the speaker can be charged with *soliciting* the crowd to engage in *criminal entry* of Seabrook in order to commit *aggravated property destruction*. The criminal charge itself would empower the FBI—under the Kennedy bill's ominously expanded Federal police powers—to infiltrate the organization holding the demonstration in order to monitor its future activities. And that organization, because of the one speech, could be officially targeted as a terrorist group."

The anti-nuclear illustration was part of a series of three columns I wrote on the Criminal Code Reform Bill as Kennedy was taking to the hustings. (*Voice*, January 14, January 21, January 28). I later heard from friends and advisers of Kennedy, as well as indirectly from the candidate himself, that those columns had hurt him. Around the country, opponents of S.1722 reproduced the pieces in large quantities, and Kennedy found that one of his "natural" constituencies, civil libertarians (let alone anti-nuke folk), were suddenly quite skeptical about his credentials as one of them humanistic paladins of everybody's freedoms.

Actually, I'm sure I didn't hurt Kennedy much. He's far more effective at that than anyone else. But I did have qualms for a while, figuring Carter or Reagan,

(especially Carter) is much more likely to blow us all up, and so I'd rather stay alive to battle the anti-constitutionalist, even from a cell after one of his judges had refused to grant me bail. But now that Kennedy's out of it and I've read through S.1722 again, all the old anger is back, and more. This is one dangerous man. Not as terminally menacing as Carter and Reagan, but dangerous enough to be stopped, completely, in his latest attempt to disembowel the Bill of Rights.

But this isn't only a Senate operation. Father Robert Drinan has been pushing and hauling his version of a Criminal Code Revision Act (H.R.6915) through the House. On March 11, he got it past his House Judiciary Subcommittee on Criminal Justice by a 7 to 1 vote. (The admira-

ble dissenter was John Conyers of Michigan, but it should be no surprise that the House's resident expert on John Coltrane is a supporter of individual liberties.) Then, on July 2, the full House Judiciary Committee passed Drinan's bill by a 20 to 11 vote. It is now on the way to the House floor.

There is no question that the Drinan measure is not nearly so destructive as Kennedy's, but that's very much like saying that William Webster is not nearly so frightening as J. Edgar Hoover was. Sure he isn't, but do you feel all that secure in your liberties these nights because Webster is head of the FBI? Even if you don't live on Morningside Avenue?

The Drinan bill has more than a little bad news in it, much of that being a re-enactment of current law. But if this is supposed to be a *reform* criminal code, why retain some of the worst of current abuses? Furthermore, as Carole E. Goldberg-Ambrose, Professor of Law at UCLA Law School, warns, the Kennedy-Drinan omnibus codes—if passed—will have such a weighty, long-lasting effect that re-enactment of present bad laws will probably immunize them from re-consideration for years to come. "Having invested so much energy in criminal law revision," she notes, "the Congress, in the years ahead, is unlikely to take up the cause of reforming individual provisions that infringe on civil liberties."

Your grandchildren will be living under the Grandson of S.1.



An example of what Drinan has enshrined in his code bill is an obscenity provision that bases arrests and convictions on community standards, wherever our latter-day Comstockians pounce. This gives the First Amendment an entirely different meaning in, let's say, Memphis, than in New York. It puts authors, publishers, filmmakers—no matter where they originate their work—at the mercy of an untold number of local censors.

Then there is the present power of law-enforcement officials to engage in what is charmingly called "one-party" consent to eavesdropping. A plainclothes cop or an informant is wired and comes to see you. He doesn't tell you he's wired and he tapes your conversation with him. He does not need a judicial warrant because he has consented to the taping. Drinan, who does have some knowledge of the Fourth Amendment, tried to get that stricken from the proposed code, but he lost. So it's in there, and Drinan can live with it, so eager is he to get the damn thing through.

And there are more dangerous provisions in Drinan's unfortunately chosen memorial to his Congressional career. (If the Pope was going to act at all, why didn't he pluck the Congressman out a year earlier?) Indeed, no one yet really understands all the details of this House bill, that, as John Conyers has pointed out, contains hundreds of "provisions of enormous constitutional importance which determine new ways in which the citizens may be subject to prosecution. Every time we lift up a stone we find a bunch of worms under it."

On July 2, Conyers and John Seiberling of Ohio were trying to convince their fellow members of the Judiciary Committee to delay sending H.R.6915 to the floor because, Seiberling said, "I don't understand the implications of all the things in this 475-page bill, and I honestly think no other member of this committee does." But Drinan was in a devilish hurry, and the motion to delay failed, 23 to 6.

"If the members of the Judiciary Committee don't know what they've done after spending 45 hours on the bill," a member of Congress told me last week, "how the hell is the rest of the House going to know what it's voting on? Huge as it is, most of the members haven't even looked into the bill, and there's been hardly any press coverage of it. So when are we supposed to have time to study it in what's left of this session, which will be broken yet again by the Democratic convention? Is this the way to recodify, for who knows how many generations, the whole body of Federal criminal law?"

Nonetheless, Drinan's baby is going to the House floor. He is hoping earnestly that the Rules Committee—which decides how a bill goes on the floor—will give H.R.6915 a closed rule or a modified closed rule. That is, only a certain number of specific amendments to the bill will be considered while it's being debated on the floor. Drinan's opponents are pressing hard for an open rule. That means full, time-consuming, delaying debate.

The main point of this open-rule strategy is that if all kinds of awful amendments—death penalty, anti-busing, anti-abortion (why should the mother live if that kind of choice has to be made?), school prayers—are draped around the Drinan code, then the House leadership may never allow it to come to a vote. With the election coming up, and Democrats in great trouble anyway, it may occur to Tip O'Neill at that point to ask himself: "Is this a controversial bill worth the Democratic Party losing control of the House?"

As of now, there's no telling whether the open rule tactics are going to work—or backfire. (A Christmas tree full of gargoyles could be paraded through the House in a lust for the unspoiled past.) In any case, much credit is due to Congressman Ted Weiss of Manhattan—who has been active from the beginning in attempts to kill the bill—as the key organizer of a letter to the leadership from a wide range of Congressmen asking for an open rule. (By contrast, the Phileas Fogg of the House, Stephen Solarz, that stylish liberal from Brooklyn, has not been of much discernible help in this freedom struggle, although he did manage to focus his will and spirit to vote in favor of draft registration. I trust his constituents will bear in mind Solarz's loyalty to the only President he's got.)

Back in the Senate, Bonnie Prince Teddy is in no immediate hurry to move S.1722. Nor are his accomplices, Thurmond and Hatch. They would now prefer that the House vote first, because what eventually slithers out of the Senate floor may well frighten some House members. While Teddy's been away these months, various Senate conservatives have been planning stern additions to his code bill, dealing with pornography, abortion (including a ban on mailing information about abortion), and God knows what other threats to the republic.

If enough of these amendments get tacked onto the Kennedy bill during Senate floor debate, those House liberals who, until now, have chosen to ignore pending criminal code legislation in the hope that it would fade away, might be so appalled at the Senate version that they'd vote against the Drinan bill in order to kill any chance of a code being passed by Congress this year. (If Drinan's bill dies in the House, Kennedy's goes under, too.)

In any case, there will be a vote on the Senate floor, and it may precede action by the House. And, if Ted Weiss and his allies are unable to get the House leadership to asphyxiate the Drinan code before a vote by that body, the House is likely to pass it. There would then be a Senate-House conference committee to work out a compromise between the two bills. For openers, the Kennedy bill—even if there are no successful amendments—is horrendous as is. Second, the Senate conferees will be much more committed to a harsh code bill than those designated by the House. Thurmond, Hatch, and Kennedy will come on much more strongly and authoritatively than Drinan and most of the other likely House conferees. For the Senate posse, this is a holy war against the criminal element. Drinan may have God on his side, but the Old Man doesn't have the votes on this issue.

Furthermore, the full lobbying weight of the Justice Department will be behind the Senators. Jimmy Carter, the Attorney General, and all the folks downstairs are unyieldingly convinced that the Drinan code is too weak. And the lawyers from the Justice Department are going to be listened to carefully, because, as they will tell the conferees from the House, it is the Justice Department that will have to implement the bill. As in the public schools, the professionals know best.

So, as the *Los Angeles Times* said as far back as February, "If the Drinan bill reaches conference with S.1722, the Senate measure likely will prevail."

Those are the odds. The best chance left now is to make sure that Drinan's memorial never gets out of the House. But lean on the Senate, too. That means letters, telegrams, phone calls, visits to your own member of the House and to both Senators. (In this state, Moynihan may not be hopeless on this, and Javits, though he has been disgracefully compliant on criminal code matters in the past, might yet be reached on behalf of the Constitution, because this is, after all, his last hurrah.)

Ask Liz, Bess, and John too. The public questioning will help bring more attention to the code battle and will also provide further clues as to what kind of Senators they'd be. Liz knows all about it, having almost single-handedly killed Kennedy's previous monstrosity, S.1437. Bess will have to be briefed by the Garth industry, though they may have to find somebody to brief them. And Lindsay, he might even be for the code.

Also contact members of the House leadership—Tip O'Neill; Richard Bolling (Missouri); James Wright (Texas); Thomas Foley (Washington); Peter Rodino (New Jersey); Shirley Chisholm (tell her now that Kennedy is out of the big race, she can vote her conscience); John Rhodes (Arizona); John Brademas (Indiana); Daniel Rostenkowski (Illinois); William Alexander (Arkansas); George Daniels (California); Robert Michel (Illinois); and Benjamin Rosenthal (the State of Queens).

Rosenthal is on the side of the Bill of Rights in this one, but silently. Tell him to speak up. Tell him to be a leader. Even if Ed Koch yells at him again.

Obviously, mail and other contacts with the people's surrogates is all the more important this time around, because it's an election year. And by the way, Carter and his associates should be hammered again and again, about the Criminal Code's attack on all those American liberties the Whited Sepulchre mumble about. It's not Reagan's Justice Department that helped draft, and is rooting so hard and diligently for, S.1722.

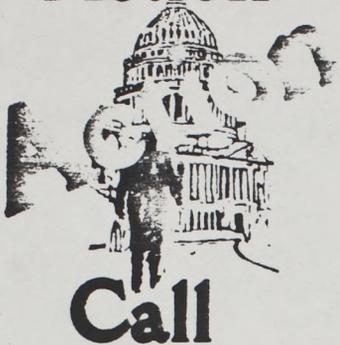
Mario Cuomo, where are you now that we really need you? You sent me a note applauding my January columns on the Kennedy bill, but this is Carter's bill, too. So say something.

When the foul ancestors of S.1722—S.1437 and S.1437—were moving through Congress, the odds against stopping them were always high. Very high. With scant exceptions, the press, as now, was asleep or in favor of these criminal code bills. The main organizational forces aimed at exterminating them were, as now, the American Civil Liberties Union and the National Committee Against Repressive Legislation. And hardly anyone in Congress, including its few civil libertarians, thought these groups could create nearly enough noise to make a difference.

Yet, through the NCARL and the ACLU, all kinds of enraged citizens—from labor, women's groups, church cadres, and the dauntless unaffiliated—did make themselves heard and did kill both those bills. It only has to be done once more. An omnibus criminal code doesn't make this session, no one is likely to try again for a long, long time.

It's up to you. If you'd rather not lose your liberties, say something. Loudly. Often! And if necessary, let's move a Election Year Bill-of-Rights March on Washington before Ted Kennedy, who has been turned into Modred, blights Jefferson's Camelot for generations to come.

Action



ISSUE:

BUSINESSMEN'S INJUSTICE ACT OF 1980

CRIMINAL CODE REVISION (S. 1722, H.R. 6915)

ACTION
NEEDED:

Contact your Senators and Representative. Urge them to work to delete the anti-business provisions of this massive legislation. Failing that, ask them to reject the legislation when it reaches the floor.

Conservative Opposition to S. 1722/H.R. 6915 Is Growing!

July 2, 1980

In addition to the U.S. Chamber of Commerce (below), Barron's Business Round Table, Human Events are involved. fw

Criminal Code Revision, or Recodification of the Criminal Code as it is also called, sounds like legislation that would tie up some loose ends in criminal statutes and be of interest mostly to lawyers or students of the justice system -- legislation business people wouldn't be interested in. Right?

Wrong!

S. 1722 (Kennedy, D-Mass.) and H.R. 6915 (Rodino, D-NJ, Drinan, D-Mass.) are the latest versions of bills that have wandered through Congress for six years. They are over 400 pages long and the Senate committee report runs 1,503 pages -- a formidable reading assignment that few people would tackle.

But if they did, they would be astonished to learn that S. 1722 would convert honest disagreements and accidents involving businessmen into federal criminal cases. And the House bill isn't much different. The Justice Department has decided that many business dealings now covered by state law and federal regulations ought to be covered by federal criminal law. The apparent objectives: Bring more businessmen into criminal court...make it easier to obtain criminal convictions...send more businessmen, large and small, to jail.

THE LEGISLATION

Here are just a few examples of the potential problems S. 1722 and H.R. 6915 would raise for business people:

- Endangerment. Sec. 1617 of S. 1722 would create a new crime, a felony, punishable by up to five years in federal prison, for anyone who "knowingly" places anyone in "imminent danger" of death or serious bodily harm, and whose conduct demonstrates an "unjustified disregard for human life." The offenses would be against any of five regulatory statutes -- OSHA, Federal Mine Safety and Health Act, Federal Hazardous Substances Act, Public Health Service Act and the Federal Food, Drug and Cosmetics Act -- plus nine environmental laws, including Clean Air, Clean Water and Toxic Substances.

A critical element of Sec. 1617 is its vague, imprecise language and absence of definitions of such terms as "unjustified disregard." One cannot imagine a defendant businessman successfully arguing that his alleged disregard of human life was justified!

Essentially, this section would submit a broad range of unavoidably hazardous business activity to criminal felony prosecution, whether or not injury or death had occurred. If a jury determined the activity was "unjustified," the businessman would go to jail. (No Endangerment provision in H.R. 6915)

- Failing to Appear as a Witness. Sec. 1323 considerably expands the jurisdiction of federal agencies to issue self-enforcing legal processes, such as subpoenas to appear as a witness and produce documents. The subpoena need not be approved by a judge. It could be issued by a mid-level bureaucrat in OSHA, FTC, FDA or some other federal agency. If a businessman believed, correctly, that the order was invalid and failed to appear, he could be charged with a federal offense and brought to trial as a criminal defendant. (Sec. 1723 in H.R. 6915)



- Trafficking in Stolen Property. Sec. 1732 would make it highly hazardous for a businessman to buy merchandise at a very cheap price from an unknown source. If the merchandise turned out to be recently stolen, and the businessman was not able to explain satisfactorily his possession of the goods, he would be presumed to be aware of the fact that they were stolen. Further, the prosecutor would not have to prove that the businessman intended to traffic in stolen property -- only that he was "reckless" in obtaining it. The burden of proof would be on the defendant -- that he did not know the true nature of the goods, and that he was not "reckless." (Sec. 2532 in H.R. 6915)
- Liability of an Organization for Conduct of an Agent. Sec. 402 would make a company responsible for an action of an employee even if the action were specifically prohibited by the company. A jury would decide if the company watched its employees closely enough, or if it "recklessly" failed to oversee its employees' actions. (Sec. 502 in H.R. 6915)
- Obstructing a Government Function by Physical Interference. Sec. 1302 has no exact counterpart in, and is a significant expansion of, current law. In cases such as the Barlow case, an individual forceably keeping an OSHA inspector off his property would have to prove not only that the inspection was unlawful, but also that the inspection was conducted in bad faith, to keep from going to jail. This section seems to say that the government is presumed right, and the individual presumed wrong, in a question of the individual's legal and property rights. (Sec. 1701 in H.R. 6915)
- Sentence of Fine. Sec. 2201 sets a maximum criminal fine on a individual up to \$250,000 per act. Fines for a corporation are set at up to \$1,000,000 per act for felonies and up to \$100,000 per act for misdemeanors. (Sec. 3502 in H.R. 6915 provides for up to \$25,000 per act for misdemeanors.)
- Extortion. Sec. 1722 would virtually exempt labor unions from prosecution under federal extortion statutes. Labor violence would be sanctioned in labor disputes unless there was "clear proof" that death or serious injury was intended. Further, there would be no federal jurisdiction unless the state's attorney general was unwilling or unable to prosecute the perpetrator of the act. (Sec. 2522 in H.R. 6915)

STATUS

S. 1722 has cleared the Senate Judiciary Committee and could be brought to the Senate Floor at any time. We do not expect this to happen before July 21. H.R. 6915 is in markup before the House Judiciary Committee.



YOUR ROLE

Phone, wire or write your two Senators and Representative promptly. Let them know you are extremely concerned about the criminal code revision legislation -- about the potential problems it raises for business people.

Whether deliberate or not, many provisions seem aimed at (1) imposing unfair liabilities on businessmen, (2) limiting their rights to challenge demands of an already oppressive government, and (3) restricting their ability to deal with illegal union activities.

Tell your Senators and Representative you want all such anti-business provisions deleted. Otherwise, you want them to vote against the legislation on the floor.

For further information, phone Jeff Perlman (202) 659-6125.

Distribution: Local and State Chamber and Association CAC chairmen, members and staff; regional Public Affairs Task Force members; Corporate CAC chairmen; Washington Corporate Representatives.

P.S. We would appreciate a copy of your letter -- and a copy of any replies you receive.

Here's what you and your union can do:

- 1 Urge your U.S. Senators to oppose S.1437 by sending union resolutions and individual letters!

ADDRESS: Senate Office Building—Washington, D.C. 20510

ALTERNATIVE LEGISLATION IS AVAILABLE: It is unlikely that S. 1437 can be successfully amended. Omnibus legislation of this nature is subject to very limited change in the legislative process. Hence the only satisfactory procedure is to start the legislative process with an acceptable bill. We believe that the Kastenmeier-Edwards-Mikva bill, introduced in the House last year as H.R. 12504, and in the present session by Rep. Cohen as H.R. 2311, can serve this function in *considering* Federal Criminal Code Reform.

- 2 Urge your U.S. Representatives to oppose H.R. 6869 (House version of S. 1437), and to support H.R. 2311—in *considering* criminal code reform!

ADDRESS: House Office Building—Washington, D.C. 20515

- 3 Order literature and arrange for a speaker before your union!

- 4 Contribute generously to the campaigns of NCARL and other organizations working to defeat S. 1437 (H.R. 6869)!

"In pursuit of First Amendment Rights
to oppose repressive laws and inquisitorial activities of government."

NATIONAL COMMITTEE AGAINST REPRESSIVE LEGISLATION (NCARL)

formerly National Committee to Abolish HUAC/HISC (House Committee on Internal Security)

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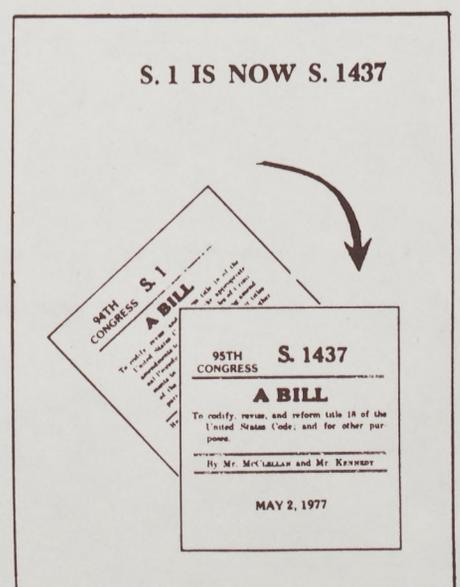
National Office Coordinator
Betty Rottger

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This flier is based upon excerpts from the Testimony of Professor Thomas I. Emerson (Yale Law School), before the Senate Judiciary Subcommittee on Criminal Laws & Procedures. June 21, 1977. Endorsed by Professors Vern Countryman (Harvard Law School) and Carole E. Goldberg (UCLA Law School).

NOTE: In prefacing the examples cited under their "12 Categories of Repression," Professors Emerson, Countryman, and Goldberg emphasize: "... the drafters of a provision may be concentrating on a specific form of conduct and may not mean to cover other forms of activity within their prohibition. The actual impact of a proposed provision, however, cannot be judged on the assumption that prosecutors or juries will make refined distinctions about the mental state of the accused, especially an unpopular accused, or that courts will limit the scope of a provision to the primary focus of the original authors. Nor is it safe to pass laws on the theory that only wise and benevolent government officials will be the ones to enforce them. If we are to preserve our system of individual rights a far more demanding standard must be applied."

Labor's right to strike
is in danger!
S.1437 must be
stopped!



Repressive S. 1437

Despite the overwhelming public outcry that stopped Senate Bill 1 in the last Congress, Arkansas' arch-conservative Senator John McClellan and Massachusetts liberal Senator Edward Kennedy are pressing hard for quick Senate passage of their revised S.1, the so-called "Criminal Code Reform Act of 1977," S. 1437. S.1 was designed to impose a Watergate-type straitjacket on the American people. S. 1437 retains far too many dangerous provisions to be acceptable!

IF S.1437 IS PASSED INTO LAW,
WHICH OF THESE FEDERAL CRIMES COULD YOU BE CHARGED WITH?

Criminal Contempt

Sec. 1331

This section would put union locals and members at the mercy of every judge. It makes it a crime not only to disobey, but also to resist any court order. The term "resist" could include any form of opposition to a court order, including an article in a shop newspaper or a speech before a union meeting which calls for opposition to the court's action. It is not a defense to show only that the court order is "clearly invalid."

Extortion

Sec. 1722

On its face, this section can be applied to a broad range of labor union activities. It provides that a person is guilty of an offense "if he obtains property of another . . . by threatening or placing another person in fear that any person will be subjected to bodily injury . . . or that any property will be damaged." Any strike, walkout, or other labor action which is accompanied by violence, whether instigated by union members or provoked by the employer, would clearly violate this section and bring penalties of up to 12 years in prison and/or \$100,000 fine. An affirmative defense, which must be proven by the defendant (the union), stating that the injury or damage was "minor" and "incidental" to peaceful picketing or other activity in the course of a "bona fide" labor dispute, does not protect unions from government harassment and repression. The government is allowed to decide whether a labor dispute is "bona fide" or not, and "minor" and "incidental" violence are not defined, thereby leading to reliance on the government's definition of these terms. In addition, since unions use strikes or the threat of strikes to induce an employer to give up some of his profits for higher wages or benefits, the charge of "extortion" could easily be used to attack the basic economic weapon of the labor movement.

Sabotage

Sec. 1111

This section would allow the charge of sabotage to be placed against many labor disputes (where minor damage to property is not unusual), and also perhaps, to other labor activities such as boycotts. A grossly overbroad definition of sabotage includes damage to "property or a public facility used in or particularly suited for use in the national defense." Stiff federal penalties can be applied to damage to most government property, all police and fire facilities, and to an enormous sector of American industry.

Obstructing Government Function by Physical Interference

Sec. 1302

Government employees would be especially vulnerable to prosecution under this section should they engage in strikes, or other actions that interfere with the work schedule. *Any* physical interference or obstacle which impairs *any* federal government function, under *any* circumstances, is the basis for up to a year in prison. For example, this section would subject to criminal prosecution participants in a picket line that partially blocks a post office, a continuation of picketing after an obviously invalid injunction issued by a judge "acting in good faith," or a work stoppage at a factory engaged in producing something to fulfill any government contract.

Blackmail

Sec. 1723

This section, taken together with the section on Extortion, would put the Federal Government in the business of intervening in the conduct of labor disputes on a massive scale. These two sections would place labor unions in a very vulnerable position, far worse than at the present time, inviting criminal prosecution for legitimate collective actions that are currently exempted under the Hobbs Act. Blackmail is defined to include obtaining property of another "by threatening . . . or placing another person in fear that any person . . . will improperly subject any person to economic loss or injury to his business or profession." A strike necessarily threatens an employer with "economic loss or injury." Whether the conduct of the union is "improper" or not may depend on the court's attitude.

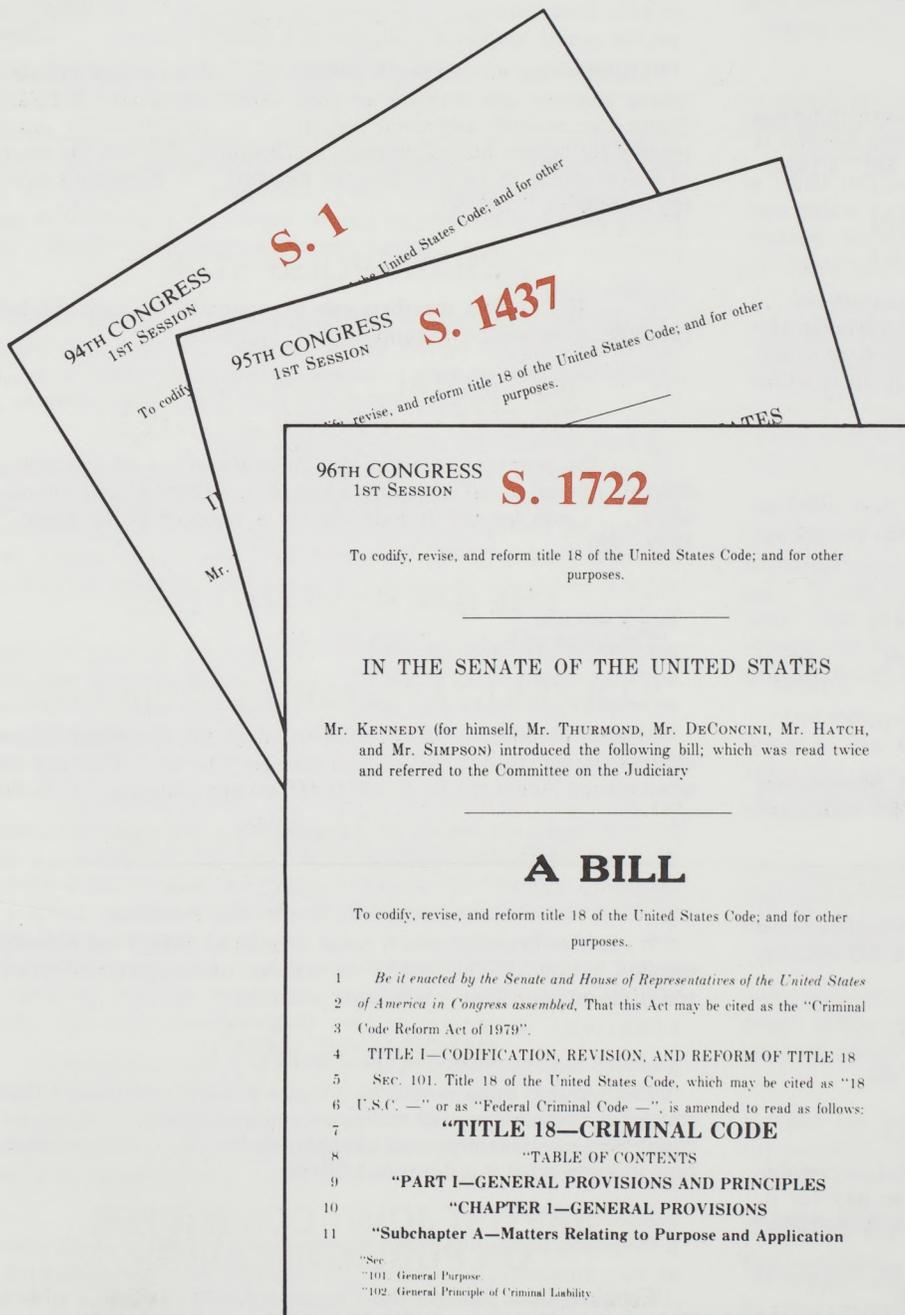
Leading and Engaging in a Riot

Sec. 1831, 1833

The vague and broad terms in these sections would allow tremendous government discretion to prosecute leaders of many kinds of labor activities, such as union organizers or officials, as long as they have crossed a state line. These sections, known as the "Federal Riot Act," define a "riot" as a "public disturbance" that involves as few as ten persons. This would allow, for example, comprehensive federal jurisdictional involvement down to the level of barroom brawls. A section supposedly included to exempt labor groups from this Act, in fact, contains so many loopholes that it would be completely ineffective.

Dangerous S. 1722

Senate Bill 1722 — Another reworked version of the Nixon Administration's notorious Senate Bill 1 — will soon be debated by the U.S. Senate under the sponsorship of Sen. Edward Kennedy and South Carolina's arch-conservative Sen. Strom Thurmond. Public pressure has forced *marginal* changes, but passage of S. 1722 would result in grave and unacceptable risks to our civil liberties!



In the last Congress, the House Judiciary Subcommittee on Criminal Justice rejected a similar bill steam-rolled through the Senate by Kennedy and Thurmond (S. 1437). This year's House Subcommittee under Rep. Robert Drinan has ignored the judgment of its predecessor, which recommended a cautious, step-by-step approach to criminal code reform so as to avoid "legislative horsetrading" evident in prior omnibus bills, and, instead, has approved a comprehensive bill, HR 6915, which was drafted by the Subcommittee during 1979.

While originally aimed at eliminating the multitude of repressive features in S. 1 and S. 1437, H.R. 6915 itself contains some of the same threats to constitutional rights, such as a broad Obscenity statute and a removal of current law protections of labor organizing activities. Its sentencing provisions are seriously flawed, without a presumption in favor of alternatives to incarceration.

Experience warns that such massive legislation as an omnibus criminal code reform bill will likely be worsened as it moves through the legislative process. If H.R. 6915 goes to conference with the dominant Kennedy/Thurmond S. 1722, it could be subjected to total compromise.

How S. 1722 will affect you 

If S. 1722 becomes law, which of these federal crimes could you be charged with?

PEACEABLE ASSEMBLY

Opposition to War, Registration, or the Draft — S. 1722 restates current law which could criminalize people who, during a war and with intent to oppose that war, “physically interfere” with recruitment or induction, or “incite others” to evade military service. Picketing at an induction center, urging young people to turn in or burn their draft cards, or counselling conscientious objectors not to register for the draft could be held illegal (Sec. 1115). Sentences/Fines: up to 5 years—\$250,000.

Likewise, any civilian writing or speaking against a war or conditions on a military installation, and whose actions could be interpreted by military and law enforcement authorities as “inciting” “subordination” can be threatened with severe sanctions, similar to those in current law (Sec. 1116). Sentences/Fines: up to 10 years—\$250,000 if committed in time of war (which is not defined in S. 1722), otherwise up to 5 years—\$250,000.

Obstructing a Government Function by Fraud — Engaging in “misrepresentation, chicanery, trickery, deceit, craft, overreaching, or other dishonest means” and thereby obstructing any government function, becomes a crime broader than similar statutes presently in effect. Giving misleading directions to a postman, using a trick to avoid surveillance by an FBI agent, making a misleading statement on a government questionnaire—all could raise the threat of federal prosecution (Sec. 1301). Sentences/Fines: 5 years—\$250,000.

Obstructing a Government Function by Physical Interference — Physical interference with any government function involving the “performance of an official duty” by most public officials, including law enforcement officers, is prohibited. A demonstration which blocks a post office or federal building, refusal to open a door to a marshal serving a subpoena, holding a rally in violation of a court order, could all become federal crimes, as could much similar conduct that is not criminalized by current federal laws. (Sec. 1302). Sentences/Fines: 1 year—\$25,000.

Demonstrating to Influence a Judicial Proceeding — Picketing, parading, displaying a sign, or otherwise demonstrating within 100 feet of a federal courthouse while any judicial proceeding is in progress is prohibited as it is currently. S. 1722 reaffirms that demonstrations around political trials or controversial legal issues such as reproductive rights or affirmative action can be cause for federal prosecution, even though the present statute outlawing such demonstrations has never been used and may not even be needed for the protection of judicial proceedings from improper influences (Sec. 1328). Sentences/Fines: 6 months—\$25,000.

Obstructing a Proceeding by Disorderly Conduct — S. 1722 vastly expands current law by making impairment of any federal official proceeding by unreasonably noisy, violent or tumultuous conduct or “similar means” a federal crime. Political activity at any federal government function—a court hearing, Congressional activity, regulatory agency meeting, etc.—could be penalized (Sec. 1334). Sentences/Fines: 6 months—\$25,000.

Conspiracy and Attempt — The planning and discussion of certain activities could become criminal through the Conspiracy offense and a new general Attempt crime. While this may be necessary in cases of violent crimes, such preliminary actions should not be criminalized when they apply to political rights protected by the First Amendment. Conspiracy, especially, which, in S. 1722, is at least as broad as in current law, would make criminal the planning of a demonstration or rally that could become a disruption of a government function or a proceeding or could influence the judiciary, even if the demonstration or rally never occurs (Sec. 1001, 1002). Sentences/Fines: dependent upon the “crime” being planned.

Anti-Nuclear Activities — S. 1722 targets anti-nuclear activists and utilities reformers for *special* investigation and prosecution. Any property damage that takes place at a nuclear facility or any energy-production or distribution facility could become a new federal crime. The inchoate crimes of Conspiracy, Attempt, and Solicitation (which criminalizes “persuading” another to commit a crime) would apply to this offense. That means that the planning or organizing of anti-nuclear demonstrations which result in violence or damage to property become federal crimes (Sec. 1702). Sentences/Fines: up to 5 years—\$250,000 for individuals, \$1,000,000 for organizations.

FREEDOM OF THE PRESS

Protecting News Sources — The confidentiality of news sources is vital to a free press. Under S. 1722, as under current law, reporters could be accused of “hindering law enforcement” if they refuse to identify sources (Sec. 1311) or of “defrauding the government” if they disclose government information secretly leaked to them and they had a purpose, in addition to or other than informing the public, such as revealing corruption or influencing government policies (Sec. 1301). Sentences/Fines: up to 5 years—\$250,000.

National Defense or Classified Information — By reenacting the 1917 Espionage Act and the HUAC-written Mundt-Nixon Subversive Activities Control Act of 1950, S. 1722 leaves intact laws which were the product of repressive periods of our history. It also may institute an “Official Secrets Act.” These laws were used to prosecute Daniel Ellsberg for releasing the Pentagon Papers and have been interpreted by the Justice Department, in the past, to cover communication, such as publication, of a broad spectrum of information relating to the national defense. This could lead to the same result as the more explicit “Official Secrets Act” of the now discredited S. 1: a prohibition on the release of much information which the public needs to make informed judgments about foreign policy (Sec. 1121-24). Sentences/Fines: up to 10 years—\$10,000.

Obscene Material — S. 1722 cements into statutory law the controversial *Miller* decision of the U.S. Supreme Court. The Court’s definition of “contemporary community standards” has been narrowed to mean the “local community” standard. Thus, the viewpoint of one “local” community could force

prosecution of a national publication and dictate the artistic standards for the nation! (Sec. 1842). Sentences/Fines: up to 2 years—\$250,000 for individuals, \$1,000,000 for the publisher.

Information Regarding Governmental Wrongdoing — Public servants who “blow the whistle” on official corruption or government wrong-doing, and investigative journalists who receive such information, could be charged with the broadened crime of “Revealing Private Information Submitted for a Government Purpose” (Sec. 1525). Sentences/Fines: 1 year—\$25,000.

LABOR’S RIGHT TO ORGANIZE AND STRIKE

Extortion — In 1973, the Supreme Court’s *Enmons* decision invalidated Atty. Gen’l. John Mitchell’s prosecutions of trade unions for extortion. S. 1722 overturns that decision by removing the word “wrongful” from the definition of Extortion. This expands federal jurisdiction over labor disputes and could allow the FBI to investigate labor activities in case any union actions surrounding the dispute could be viewed as “extortionate.” While an amendment passed in the Senate Judiciary Committee offers more protection to unions than previous code bills, S. 1722 continues to present greater threats to labor organizing than current law. (Sec. 1722). Sentences/Fines: up to 10 years—\$250,000 for individuals, \$1,000,000 for the union.

The Anti-Riot Act — S. 1722 reenacts the infamous “Rap Brown Act” of 1968, sponsored by Sen. Strom Thurmond and passed by Congress after the ghetto uprisings which followed the assassination of Martin Luther King, Jr. While increasing the size of a “riot” from three persons to 10, S. 1722 leaves intact provisions which were used to prosecute peace activists, Viet Nam war veterans, and Native Americans. Special provisions enacted in 1968 to prevent prosecutions in labor disputes have been deleted from S. 1722 by Kennedy and Thurmond. S. 1722 further expands the law by making it applicable to people “engaged” in a riot, even if they didn’t know that the rally, meeting, or demonstration in which they participated was considered a “riot” by law enforcement officers (Sec. 1831-34). Sentences/Fines: up to 2 years, \$250,000.

SENTENCING

S. 1722 sets high maximum penalties and fines (up to \$1,000,000 for organizations), eliminates parole, severely limits good-time early release, and requires mandatory minimum sentences in certain cases. It creates a “determinate” sentencing system, by establishing a U.S. Sentencing Commission to develop sentencing guidelines for federal judges to follow. This takes discretion over sentencing away from judges and gives it to prosecutors, who may charge persons with crimes on the basis of the sentence recommended by the Commission. Despite the present high rate of incarceration and prison overcrowding, S. 1722 does not encourage alternatives to prison, and, according to a 1978 House Criminal Justice Subcommittee study, could result in a significant (62.8% to 92.8%) increase in the federal prison population.

CRIMINAL JUSTICE PROCEDURES

Wiretapping — S. 1722 reaffirms the 1968 law, which permits wiretapping to investigate certain crimes. As does current law, S. 1722 requires telephone companies and landlords to cooperate “forthwith” and “unobtrusively” with government wire-tappers and provides for compensation for such cooperation (Sec. 3101-3109).

Immunity — S. 1722 continues the present practice of forcing witnesses to testify before a grand jury, court, or Congressional committee, even when those witnesses have claimed their Fifth Amendment right against self-incrimination. It allows the government to imprison witnesses who refuse to exchange their Fifth Amendment right to remain silent for this “grant” of *partial* immunity from prosecution (Sec. 3111-3115).

Illegal Evidence — S. 1722 incorporates present laws designed to make “voluntary” confessions admissible even if obtained by secret police interrogation in the absence of counsel and warnings prescribed by the *Miranda* case. It also makes admissible eyewitness testimony regardless of prior police irregularities in suggesting identification (Sec. 3713-3714).

Government Right to Appeal Sentences — S. 1722 allows the government a new right to appeal some sentences to a higher court. Defendants may abandon their right to appeal their convictions in the face of government threats to raise their sentences through appeal. A similar though narrower provision in current law has been found unconstitutional by a U.S. Court of Appeals (Sec. 3725).

Making a False Statement — S. 1722 codifies the most repressive interpretation of current law relating to false statements by making it a crime to make a false *oral* statement to a law enforcement officer. Though some corroboration that the statement was made must be offered, this can be the assurance of another law enforcement officer. Criminalizing false oral statements without an oath or the presence of a lawyer invites abuse by government agents (Sec. 1343). Sentences/Fines: up to 2 years—\$250,000.

Preventive Detention — S. 1722 gives judges broad new discretion to deny bail and to imprison persons accused of any crime, before they have been tried. A judge may place conditions on persons, including a condition of incarceration, and may imprison those who violate any condition without any trial or finding of guilt. This undermines a fundamental principle of our system of justice: that a person is innocent until proven guilty (Sec. 3502).

Death Penalty — Immediately after the Senate Judiciary Committee approved S. 1722, it approved a bill to reinstitute a federal death penalty (S. 114). It is expected that S. 114 will either be offered as an amendment to S. 1722 or be considered by the Senate immediately after the Senate votes on the Code. S. 114 provides a death penalty for certain federal crimes including treason, espionage (even in peace-time and where no death occurs) and murder, and for kidnapping, hijacking, and certain explosives offenses when a death takes place.

Legislative history; What others say; What you can do



Legislative History of S. 1722

A Record of Misrepresentation, Outright Falsification, and Legislative Chicanery

JULY 4, 1966 — Congress created National Commission on Reform of the Federal Criminal Laws (Brown Commission) to “improve the federal system of criminal justice” and “better serve the ends of justice.”

JANUARY 7, 1971 — Brown Commission’s Study Draft & Final Report transmitted to President Nixon and Congress. Nixon called upon Attorney General John Mitchell to rewrite nation’s criminal laws.

JANUARY 4, 1973 — Outvoted Senate members of Brown Commission (McClellan, D.-Ark.—Hruska, R.-Neb.) introduced their minority recommendations as the *original* S.1, characterized by director of Brown Commission as “an outright rejection of the Commission’s basic approach to criminal law.”

MARCH 14, 1973 — Nixon sent Mitchell Justice Department’s bill to Congress, calling for quick action and declaring “Law and order are code words for goodness and decency . . . the only way to attack crime in America is the way crime attacks our people—without pity.”

MARCH 27, 1973 — McClellan and Hruska introduced Nixon/Mitchell bill as S. 1400, describing it “as a monumental effort by the Administration . . . particular accolades should go to former Atty. Gen. John Mitchell.” Brown Commission director declared that S. 1400 “contradicts in every respect . . . the recommendations of the National Commission on Reform of Federal Criminal Laws . . . [It’s] a program of primitive vengefulness.”

OCTOBER 21, 1974 — 10 weeks after Nixon’s resignation, President Ford’s Justice Department announced “consolidation” of McClellan/Hruska’s *original* S. 1 and Nixon/Mitchell’s S. 1400.

JANUARY 15, 1975 — Consolidated bill introduced as S. 1 by McClellan and Hruska, Majority Leader Mansfield, Minority Leader Scott, and 7 other Democratic and Republican Senators.

JUNE 1, 1975 — Professors Vern Countryman of Harvard Law School and Thomas I. Emerson of Yale Law School, advisors on constitutional law to NCARL, declared: “The enactment of S. 1 would constitute an unparalleled disaster for the system of individual rights in the United States. Furthermore, the bill is inherently unamendable . . . the pervasive taint cannot be amended out. . . . Congress should start with a bill that has been drafted by people who are committed to preserving American rights.”

JUNE 19, 1975 — President Ford called upon Congress “to act swiftly,” on S. 1, adding “I do not talk about law and order . . . I turn to the constitutional guarantee of domestic tranquility . . .”

AUGUST 19, 1975 — Senator Bayh (D.-Ind.) withdrew his sponsorship of S. 1, declaring “The more people I talked with around the country, the more I became convinced that my judgment was wrong.”

SEPTEMBER 15, 1975 — Senator Sam Ervin (D.-N.C.), former member of Brown Commission, attacked the bill: “S. 1 . . . is a hideous proposal which merits the condemnation of everyone who believes in due process of law and a free society. . . . S. 1 is simply atrocious and would establish what is essentially a police state.”

SEPTEMBER 1975 — Speaking on behalf of the U.S. Judicial Conference, U.S. Supreme Court Chief Justice Warren E. Burger declared enactment of S. 1 “could lead to judicial anarchy.”

MAY-OCTOBER 1975 — Groundswell of opposition to S. 1 developed nationally, included hundreds of newspaper editorials, the AFL/CIO Executive Board, major religious organizations, and hundreds of community and professional associations. Cartoonists had a field day, and columnist Arthur Buchwald said it best: “‘Do you think Congress will vote for S. 1?’ I asked. ‘Why not? If they’re dumb enough to propose it, they’re dumb enough to pass it.’”

NOVEMBER 20, 1975 — Representatives Mikva, Edwards, and Kastenmeier, former Brown Commission members, introduced H.R. 10850 as an “alternative” to prove the problems in S. 1—estimating that it contained more than 1,000 substantive amendments to the repressive features in S. 1.

DECEMBER 1, 1975 — Senate Judiciary Subcommittee on Criminal Justice reported out S. 1 to the full Committee “without recommendation.” *Note:* Although a member of the Subcommittee from 1971 through 1975 during which time S. 1 developed into legislation, Senator Kennedy attended only 3 of the 41 days of hearings on the bill.

FEBRUARY 9, 1976 — Private memorandum from the Senate’s Majority and Minority leaders to McClellan, Hruska, Kennedy, and others, revealed negotiations to rewrite S. 1. The memo candidly called for “1. *A New Number* . . . To change its number would help to diminish . . . a source of pain and controversy;” and, “2. *Draft A New Measure*” which would eliminate 13 “highly controversial features” of S. 1. The memo then proposed a voluntary pact of silence: “It should be understood and agreed by the Senators,” that thereafter “none of the heretofore controversial aspects of S. 1 would be raised.”

MARCH 2, 1976 — *New York Times* reported that release of the private memorandum had “boomeranged,” and quoted staff aides as saying, “Its result was chaos. . . . McClellan was furious, considering the memo a stab in the back . . . Kennedy went bananas because the negotiations were his idea, and he accused Mansfield of trying to pull a fast one.”

APRIL 20, 1976 — *Boston Globe* headlined “Kennedy Retreats from Criminal Code,” based on report that his staff had failed to win support on the McClellan/Hruska negotiations from Massachusetts’ Democratic Party, civil liberties leaders, and some Harvard Law School faculty; a *Globe* editorial then praised Kennedy for “deferring action.” Kennedy subsequently denied the *Globe* report.

MAY 4, 1976 — Senator Walter Mondale, later to be chosen as Vice-Presidential running mate, issued statement condemning S. 1: “I am opposed to passage of this bill in any form. Further, I do not think that this bill is salvageable by amendment and I would not support any attempt to do so.”

AUGUST 1976 — A “Jimmy Carter Presidential Campaign” leaflet issued from Georgia quoting Carter, stated: “S. 1 threatens to disrupt civil liberties guaranteed by the Constitution . . . I oppose the bill,” and concluded, “S. 1 is designed to make government more—not less—secret!”

JANUARY 11, 1977 — Prior to the inauguration of President Carter, his nominee for Attorney General—Griffin Bell—testified as follows before Senate Judiciary Committee: “*Senator Kennedy:* I would like to have your comments now about the importance of the recodification of the Criminal Code. *Judge Bell:* . . . S. 1 has been around a long time . . . I think it is time for it to move. *Senator Kennedy:* We don’t have to move S. 1 necessarily? *Judge Bell:* With some things taken out, I think it will work out. . . .”

MAY 2, 1977 — Kennedy press release announced that he and McClellan introduced S. 1437 as an “alternative to S. 1 . . . an altogether new bill. . . . The major objectionable provisions of S. 1 have been modified or eliminated entirely . . . the so-called Official Secrets Act has been deleted (but see March 6, 1978) . . . The Logan Act is repealed (but see January 30, 1978) . . . The Smith Act has been repealed (but see May 2, 1977, below) . . . the death penalty has been eliminated (but see May 2, 1977, below; January 29, 1979; December 4, 1979). . . . Perhaps most importantly, the size of this bill has been reduced from the 800 pages of S. 1, to a much more manageable 300 pages . . . by deleting the technical conforming amendments (but see January 30, 1978).”

MAY 2, 1977 — McClellan reported on *minor* changes between S.1 and S. 1437: “[T]he Majority and Minority leaders of the Senate . . . suggested . . . that some 13 controversial provisions be deleted or returned to current law . . . Senator Kennedy and others increased the points in controversy . . . from 13 to 22. [S]ixteen of the 22 . . .

were resolved” by “retaining current law. . . . The remaining . . . issues are resolved . . . in a balanced approach . . .” For example, “the so-called ‘Smith Act’ was deleted . . . The Supreme Court so severely restricted it [in 1957] . . . that no prosecutions have been brought in more than 15 years.” Further, “As an accommodation . . . I am willing to process separately a capital punishment bill (*Note*: McClellan and others had already introduced such a bill on April 28th; and see January 29 and December 4, 1979).”

JUNE 7 to 21, 1977 — Only 5 sessions of public hearings were held on the omnibus 682-page bill. The ACLU, was given just 5 minutes before one member, Thurmond.

NOVEMBER 2, 1977 — Senate Judiciary Committee approved S. 1437, 14 to 2. According to the *Congressional Quarterly*, debate was limited: “Kennedy and McClellan both recognized that the Judiciary Committee could never reach agreement if each of the controversial sections of the bill were debated on its merits and liberals and conservatives both adhered to matters of principle.”

DECEMBER 1977 — Kennedy and Thurmond—the senior Republican on the Committee who had replaced the dying McClellan as co-sponsor—met with Senate Majority Leader Byrd, advising him that S. 1437 was “non-controversial,” and secured his agreement to place the bill as the first item of business when Congress reconvened, January 19, 1978, with no advance notice to other Senators or the public.

JANUARY 19, 1978 — The Senate reconvened, with the 682-page S. 1437 scheduled for “2 hours’ debate,” as the first order of business, and the final vote set for the following day. 20 Senators were not present, and those in attendance had not heard of the scheduling until 3 days before. Liberals and conservatives alike reacted in anger: when told that the bill was considered “noncontroversial,” the Majority Whip’s office declared, “If this is the leadership’s idea of noncontroversial legislation, I’d hate to see something controversial. There’d be blood on the floor.” Another stated, “This is one of the most important pieces of legislation . . . and the leadership is trying to steamroller it through.” Another added, “It’s unseemly to say the least . . . There’s a hell of a lot done in this bill. Most Senators haven’t even looked at the table of contents.”

When asked why the Senators had been “caught off guard . . . scrambling to put together amendments,” which *Congressional Quarterly* reported “apparently was what the sponsors of the bill intended,” Thurmond’s office was candid: “By not making an announcement, we felt we could cut off a lot of outside interest group opposition. We’re not trying to sneak anything by, but we didn’t want to get caught in a PR war.”

Kennedy opened the debate, declaring “S. 1437 reflects a net gain for civil liberties . . . the bill does not contain any new provisions that can truly be called repressive (but see December 15, 1978).”

JANUARY 30, 1978 — Senate approved S. 1437, 72 to 15. With exceptions of Cranston (D.-Ca.) and Riegle (D.-Mi.), most of the opposition came from the Senate’s more conservative members. According to *Congressional Quarterly*, “during the 8 days of debate . . . there were rarely more than a handful of Senators in attendance . . . the traditional allies of civil liberties groups were in scant evidence . . . Where accommodations could be made” between Kennedy and Thurmond, “they made them. Where they felt they would endanger the bill, they squelched them.”

In the process, S. 1437 was worsened: *Preventive Detention*—permitting judges to deny bail, in contradiction to Eighth Amendment guarantees; *Obscenity*—expanding this already severe section to make local community standards applicable; *Logan Act*—reenacting obsolete 18th century law barring private communications with foreign governments (*Note*: “Kennedy had viewed the repeal of the Logan Act as symbolic of the effort to eliminate ‘archaic’ statutes.”—*C.Q.*); *Comstock Act*—reenacting patently unconstitutional law proscribing mailing of information relating to abortion.

Immediately prior to the final vote, Kennedy proposed amendment No. 1624, adding 333 pages of “technical” amendments to S. 1437, thereby restoring the bill to the comparable length of the original S. 1. —Following the vote, Kennedy paid tribute to those who shared responsibility with him for drafting S. 1437: “We are mindful of the strong commitment of Attorney General Bell, as well as the President . . . through the direct intervention of . . . Bell . . . S. 1437 has received

SEPTEMBER 15, 1977 to APRIL 24, 1978 — The House Judiciary Subcommittee on Criminal Justice, chaired by Rep. Mann (D.-S.C.), held 23 days of hearings and heard over 100 witnesses, regarding legislation to revise and recodify Federal criminal laws.

AUGUST 17, 1978 — After 19 days of intensive study and mark-up, while under pressure from the Senate Judiciary Committee and the Justice Department, the Subcommittee unanimously rejected S. 1437, and introduced its own H.R. 13959, to improve the organization of present law, repeal outmoded law, and make substantive changes in the area of sentencing, to initiate a step-by-step or “incremental” approach to criminal code reform.

Speaking for the Subcommittee, Mann declared: “Federal criminal laws ought not to be the product of extensive horse trading. . . . This sort of pressure was clearly evident during the Senate’s debate. . . . frankly, the record does not reflect that the Senate had . . . information and data necessary to make a reasoned assessment of the impact of the bill. . . . on the Federal prison population . . . that will result in increased crowding. . . . Likewise, no analysis appears to have been made . . . of the sharp curtailment of judicial discretion . . . and the power of the prosecutor. . . . One particularly important area . . . is the extent to which the legislation expands Federal criminal jurisdiction at the expense of the States . . . this expansion is unwise.

“For these and other reasons, the subcommittee unanimously and firmly concluded that the omnibus approach pursued by the Senate is fraught with pitfalls and is not legislatively feasible in the House of Representatives.”

OCTOBER 4, 1978 — Full House Judiciary Committee commended the Subcommittee “for their excellent and conscientious work,” and directed it to issue a report on its “findings and recommendations.”

DECEMBER 15, 1978 — Letter sent by Kennedy’s office to Rep. Drinan (D.-Ma.)—due to accede to chair of House Judiciary Subcommittee on retirement of Rep. Mann, reported efforts to induce Drinan to support an omnibus bill with Kennedy and to reject the *incremental* stand taken by the Mann Subcommittee. “The goal,” the letter candidly urged, is to make it very clear that you are *not* simply endorsing last year’s Kennedy bill; that as a condition of support you . . . expect major changes . . . [I] size (last year’s bill of almost 700 pages is simply unworkable); [II] jurisdiction (the major objection of House critics last year was that the Kennedy bill unnecessarily expanded federal criminal law); and, [III] substantive civil liberties objections (that there are simply too many sections posing a threat to civil liberties).

“This list is not exclusive . . . you might require additional items to be included in any new reform package.”

JANUARY 29, 1979 — *Washington Post* headlined “Death-Penalty Legislation To Be Pushed by Kennedy,” based on interview with Kennedy: “Sen. Edward M. Kennedy says he will use his new powers as Judiciary Committee chair to try to bring a death-penalty bill before the Senate even though he opposes capital punishment.

“In an interview, Kennedy recalled that during last year’s Senate debate on his proposal to revise the U.S. criminal code [S. 1437], he promised some allies he would work for consideration of a capital punishment bill . . .”

FEBRUARY 14, 1979 — New House Judiciary Subcommittee on Criminal Justice chaired by Drinan launched hearings on an omnibus criminal code bill, rejecting the unanimous recommendations of the 1978 Subcommittee. Invited to lead off the hearings were Sen. Hruska and the Justice Department’s Gainer.

JUNE 1, 1979 — The American Bar Association’s *Judge’s Journal* obtained a copy of the still unpublished Report of the 1978 Mann Subcommittee, rejecting S. 1437, and called upon Professor Carole E. Goldberg-Ambrose of UCLA Law School and an advisor on constitutional law to NCARL, to review it. In summary, Goldberg-Ambrose reported: “The Mann Subcommittee has described and documented . . . fundamental and serious shortcomings . . . It seems premature for the current Subcommittee . . . to be proceeding with . . . yet another omnibus bill, before the Report has been assimilated and analyzed, and the alternatives to omnibus reform given serious consideration.” [*Note*: at that point, the Drinan Subcommittee had held an unprecedented number of sessions writing an omnibus bill.]

What the press and others think about S. 1722 . . .

LOS ANGELES TIMES

"The short of it is that S. 1722 should be defeated. . . . Under the proposed radical revisions of federal criminal law now before Congress, we would be less free and ultimately less secure." 2/3/80

THE AFRO-AMERICAN

". . . we had enough of a 'police state' during the black revolts in the cities . . . when other protests were in vogue. If you thought things were bad then, just try and visualize what things would be like under S. 1722." 4/5/80

NEW YORK TIMES

"Senator Kennedy proposes to let a Federal judge imprison a suspect before trial . . . The preventive detention section is the most conspicuous shortcoming of the Kennedy bill." 4/10/80

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

"S. 1722 would permit the federal government to intervene . . . if the offense is committed on a facility that is involved in the production . . . of energy whether under construction or otherwise not functioning. . . . such broad-based federal jurisdiction . . . is inappropriate." 3/3/80

DETROIT FREE PRESS

"CRIME: It may take time, but the proposed new criminal code needs repair . . . the bill under closer scrutiny has turned out to be full of pitfalls." 12/25/79

THE SALT LAKE TRIBUNE

"The revised code is so complex that lawmakers . . . cannot possibly know what they are voting for or against. . ." 3/13/80

SPOKESWOMAN

". . . increased opportunities for government prosecutors and investigators to interfere with political activities which are protected by the First Amendment." 3/80

ANOTHER MOTHER FOR PEACE

"The most frightening part . . . is the secrecy with which Senate Bill 1722 was skillfully manipulated WITH NO PRESS COVERAGE . . ." 2/80

MINNEAPOLIS TRIBUNE

"Kennedy's criminal code: unnoticed threat" 2/17/80

THE NEWSPAPER GUILD

"Criminal-code reform is an important goal. But surrender of any portion of our liberties too high a price to pay for it. . . . The Executive Board urges the Senate to reject S. 1722." 1/30/80

WASHINGTON LETTER AMERICAN BAR ASSOCIATION

"The ABA and the ACLU agree that sentencing judges should be required to consider alternatives to imprisonment, but neither [S. 1722 or H.R. 6915] embodies this concept." 2/1/80

THE CHICAGO SUN-TIMES

"Crime Code: another failure . . . In short, it's as repressive as anything the Nixon people designed—and then some." 1/27/80

ST. LOUIS POST-DISPATCH

"A Flawed Criminal Code . . . defenders of the Bill of Rights need to be on guard against enactment of legislation designed to convey a law and order message while ignoring the precepts of justice." 12/23/79

BOSTON GLOBE

"Maneuvering on the death penalty . . . Without any subcommittee hearings and with no advance word, the Senate Judiciary Committee recently approved legislation to reestablish the death penalty for certain federal crimes . . . The quick vote was the result of a deal struck in 1978 by Senator Kennedy . . . Kennedy's strategy is complex." 1/2/80

INDIANAPOLIS STAR

". . . If Congress members can be persuaded to read the bill carefully, there will be no support . . ." 11/28/79

NATIONAL CONFERENCE OF STATE LEGISLATURES

". . . the proposed revision may have the effect of expanding federal criminal jurisdiction into areas of traditional state responsibility . . . and lay the foundation for a national police force." 1979-1980

THE SACRAMENTO BEE

"Grandson of S. 1. . . ." 2/5/80

ILLINOIS STATE BAR ASSOCIATION

"Federal Criminal Code: Motion to adopt the recommendation of the Criminal Justice Section and strongly oppose S. 1722 and an unnumbered House bill [H.R. 6915] carried unanimously." 1/26/80

NATIONAL ASSOCIATION OF BROADCASTERS

Statement by Vincent T. Wasilewski, President

"It contains language which could be used to bolster the recently misused power of the courts to impose unconstitutional prior restraints on your First Amendment and ours."

BUSINESS WEEK

"The sensible thing would be to pass a basic restatement that embodies nothing new and makes no major changes . . . Congress could then consider proposed changes one by one, taking enough time to know what it is doing." 1/28/80

BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

"Criminal Code Reform Bill Threatens Civil Liberties . . . Must Balance Law Enforcement, Democratic Rights" 2/80

For copies of the full texts on the above and others—write NCARL's Los Angeles National Office

has been tucked away here in the Capitol on number of Justice Department staff. Ron Gainer . . . an encyclopedia of knowledge about S. 1437. We are very grateful for his work." (Note: Gainer was one of those responsible for drafting the original S. 1400 under Atty. Gen. John Mitchell.)

MARCH 6, 1978 — NCARL's Professor Thomas I. Emerson testified against S. 1437 before House Judiciary Subcommittee, "S. 1 was designed to impose a Watergate-type straitjacket upon the people of this country. S. 1437 retains too many of those provisions to be acceptable. . . . There is no reason why codification of the Federal criminal law cannot be accomplished in a manner that strengthens, rather than undermines, democratic institutions in America."

Challenging assertions that S. 1437 no longer contained an "official secrets act," he declared that by *reenacting* existing laws which the government has consistently claimed already imposed an official secrets act, and by interpreting the term "communicates" to cover "information that Congress had determined should not be revealed . . . through publication," the *New York Times*, *Washington Post* and other newspapers could be prosecuted for publishing the Pentagon Papers; and, we would thus find ourselves with an official secrets act on the books.

JUNE 15, 1979 — Mann 1978 Subcommittee reported published.

AUGUST 1, 1979 — Drinan and Kennedy et al held press conference to announce introduction of a preliminary, unnumbered House bill.

SEPTEMBER 6 to OCTOBER 25, 1979 — Drinan Subcommittee held hearings on an *omnibus* criminal code bill—which had been made public on August 24.

SEPTEMBER 7, 1979 — Kennedy and Thurmond introduced S. 1722, a reworked version of S. 1437.

DECEMBER 4, 1979 — The full Senate Judiciary Committee approved S. 1722, 14 to 1. There had been no press coverage of the Committee's actions on the measure. Immediately following the action on S. 1722, and with only a 2-minute explanation, Kennedy called the roll to report out as a companion bill, S. 114—the Thurmond death penalty legislation. [S. 114 was never subjected to hearings or to even Subcommittee debate.]

MARCH 11, 1980 — Drinan House Subcommittee reported out H.R. 6915, an *omnibus* criminal code bill.

NATIONAL COMMITTEE AGAINST REPRESSIVE LEGISLATION (NCARL)

formerly National Committee to Abolish HUAC/HISC (House Committee on Internal Security)

"In pursuit of First Amendment Rights
to oppose repressive laws and inquisitorial activities of government."

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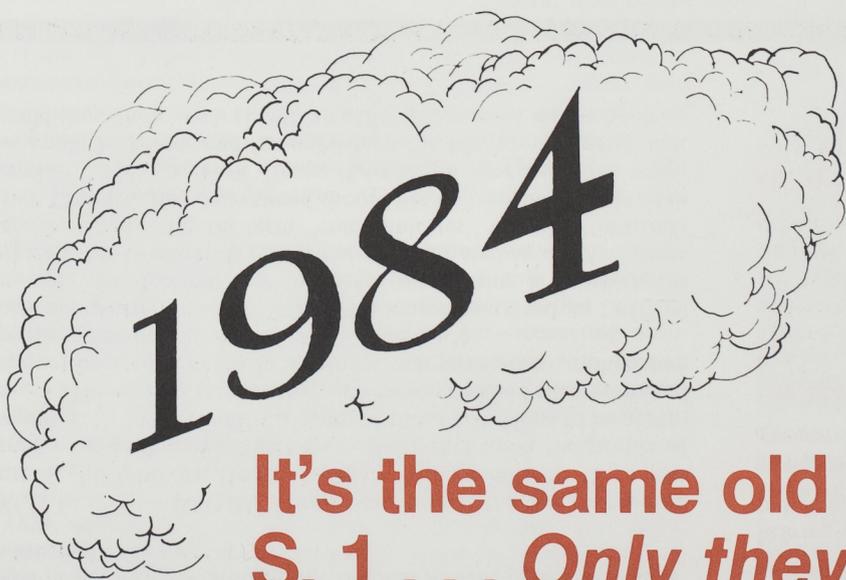
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P.O. Box 811, Birmingham, Ala. 35201

Your IMMEDIATE action is needed! Here's what YOU can do:

- 1 Write, wire, phone & visit YOUR Senators and Representative!
Call upon them to take a leadership role to STOP S. 1722 & H.R. 6915!**
ADDRESS: Senate Office Building — Washington, D.C. 20510 **PHONE:** Area 202 224 3121
House Office Building — Washington, D.C. 20515 (Local — Consult Directory)
- 2 Call the NCARL office (above) nearest you to order copies of this literature
and to arrange for a speaker before your organization!**
Literature is available for a donation of exact printers' cost + postage!
- 3 NCARL is in critical need of your financial support! Contribute generously
to NCARL and other organizations working to STOP S. 1722 & H.R. 6915!**



**It's the same old Nixon/Mitchell
S. 1 . . . Only they call it S. 1722!**