

Let's Jail Anybody Who Says Anything

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A Commentary

By Nicholas von Hoffman

Some people are at work trying to prevent the repetition of a Vietnam; others are at work trying to prevent a repetition of the protests against it when it does come. Their efforts are concentrated on a document known as S.I.

S.I. is a bill currently in the bowels of a Senate judiciary subcommittee "to codify, revise and reform" federal criminal law. Although much of it is acceptable, some of it even desirable, it contains a number of features that make it potentially so dangerous that it might be called the Nixon/Mitchell/McCellan/Hruska law to cork up the opposition.

Under its provisions you can go to jail if convicted of communicating "a statement of fact, if false" concerning our military, our allies or our enemies; or "any other matter of fact that, if believed . . . would be likely to create general panic or serious disruption." If passed, this section of the law would, in the words of the American Civil Liberties Union, "effectively destroy perhaps the most important function of a free press—the obligation to report fully and fairly in times of national crisis the discoverable facts about that crisis. It would make punishable as a major felony good-faith errors in news reports."

Since nobody can be sure what facts are facts in these murky areas, and since this law would be applied not only to congressionally declared wars, but also our routine unofficial presidential wars, any prosecutor stands a good chance of putting anybody in jail who says anything.

But this section is hardly worse than the one outlawing instigating the overthrow or the destruction of the federal government or any other government. You're guilty of that crime if you egg "other persons to engage in conduct that then or at some future time would facilitate" the overthrow of, say, New Jersey. Thus, an anti-Mafia speech directed at

See COMMENTARY, B7, Col. 1

COMMENTARY, From B1

certain public officials in that state might conceivably send the speaker to the big slammer. Now else does one overthrow New Jersey without sending it splashing uninvited into Pennsylvania?

The Nixon/Mitchell/McClellan/Hruska bill is so named because the first two gentlemen thought it up, and, now somewhat rewritten, the old Arkansas anti-subversive and his colleague, the defender of the silent mediocrity, are pushing it. That may explain why it contains clauses to make it impossible for another Daniel Ellsberg to come along and present the nation with a different set of Pentagon Papers.

This bill makes it a crime to pass along or receive "national defense information," a category that includes much more than what we would call "military information." It is so broad it could include almost any sort of political information, or data about cost overruns, kickbacks and graft. It would not only nail an Ellsberg but anybody taking anything from an Ellsberg. "Even members of

Congress and their staffs might (be) prosecuted," the ACLU comments, adding that had the law been in force during the Pentagon Papers affair, "Reporters, editors, publishers, secretaries and probably even printers could have been swept up within the statute's reach."

Under the sabotage section of S.I. people taking part in demonstrations like those massive outpourings that had so much to do with getting the nation to take a second look at the war might be prosecuted for a felony. However, even where S.I. is absolutely retrograde, as with its reaffirmation of the death penalty, it makes little progress in areas of the law of great concern to many.

The marijuana penalties are still harsh. The wiretap provisions are the same as they are now, which is to say inadequate to protect privacy, and nothing is done to prevent the conversion of the grand jury into a legal torture chamber. Under S.I., as under the present law, a person's Fifth Amendment right to clam up is mutilated. By conferring an unsatisfactory immunity on a person, whether he wants it or not, a wit-

ness can be forced to testify about the private, noncriminal beliefs and activities of himself and his friends.

For some years, even though the device has been repeatedly used to plague people for their political beliefs, prosecutors have defended the immunity gimmick on the grounds they have to use it to catch gangsters. One social good does have to be balanced against another, but few gangsters seem to go to jail while many dissidents have gotten and are still getting the grand jury treatment.

S.I. is not on the verge of passage, but its sponsors are determined and tenacious men. They've been nudging this bill along for years, and are about to nudge it out into the full Senate Judiciary Committee where it is not certain there are enough votes to defang it. If it ever gets on the floor it is too complicated to expect it can be fixed up in any very rational form.

Better than killing it would be working it so that it does indeed provide the reform it promises in its preamble.

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