

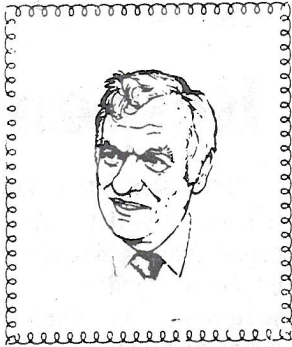
Charles McCabe

Himself

Bill of Rights, Revised

LIKE A VAST and implacable iceberg, the first great revision of the Federal Criminal Code is approaching us. This is the most important bit of law dealing with human rights since the Bill of Rights. In many respects the bill is intended as a revision of the Bill of Rights, and in retrograde fashion, if you happen to believe in the B. of R.

The bill is 750 pages long. It took more than four years in the drafting and many more in preliminary study. Most of the important work on it was done in the days when John N. Mitchell was Mr. Nixon's attorney general. Much of the thinking in the measure reflects the Nixon Administration hysteria in the face of the student anti-war disturbances of the late 1960s.



The sponsors of the code hope to get it through before the 1976 election. The code is expected to reach the Senate floor by July, with the House starting committee hearings even before this Senate action.

The progress of this measure is something for the citizen to watch. To say it is controversial is to say the least of it. As now drawn. As now written the code would:

- Overturn the 1972 Supreme Court decision to abolish the death penalty. The death penalty would be reinstated for the federal crimes of treason, sabotage, espionage and murder under certain circumstances.

- Changes the whole nature of the insanity defense. Defendants who in the future raise it successfully could still be found guilty and then sent to prison rather than found not guilty and committed to a mental hospital.

★ ★ ★

THE MOST controversial part of the new criminal code contains limitations placed on the freedom of the press, which is absolutely guaranteed under the First Amendment.

The bill provides that a reporter could get a fine up to \$100,000 and seven years in jail for making unclassified "national defense information" public if he knows that information "may be used to the prejudice of the safety of interest or to the advantage of a foreign power."

It would establish a new category of "national defense information" about military strength, weapons and intelligence that carries no security classification and makes it a felony to disclose such information "to a person not authorized to receive it."

★ ★ ★

THE BILL would also class as espionage, punishable by maximum jail sentences of 30 years to life, offenses in wartime. These would include the collection of unclassified "national defense information" that may help a foreign power, knowing that it "may be communicated to such a power," without any knowledge or any requirement that the collector plans such communication.

The American Civil Liberties Union, in a submission to the Senate, was emphatic about these press proposals. The power of criminal sanctions against the press, the ACLU declared, "delivers to Congress and the administration the exclusive power to determine who shall and who shall not learn, speak or write about a vast array of politically as well as militarily sensitive information."

The ACLU concluded: "To state this proposition is to refute it. The Constitution permits no such law."

★ ★ ★

ON THE OTHER HAND, Federal District Judge Alfonso J. Zirpoli, favors the bill on the whole. Judge Zirpoli is the chairman of the criminal law committee of the influential Judicial Conference of the U.S. Judge Zirpoli told the Senate subcommittee in hearings that the measure represents "the best thinking of legal scholars and practicing attorneys" and had "the general approval" of the Federal court system, "with some reservations."

It can safely be predicted that President Ford, who as a congressman, voted the Nixon way on more measures than any congressman save one, will put the full power of the White House behind this largely Nixon measure.