

LEGISLATIVE

S. 1: Beyond Joe McCarthy

By IRVING R. COHEN

Under the reasonable and perhaps even faintly attractive name of Criminal Code Revision, a bill now before the Senate Judiciary Committee would:

- Restore the death penalty in a variety of circumstances
- Bring back the anti-Communist Smith Act in an even more virulent and widespread form
- Sharply curtail the functioning of a free press
- Reverse the trend towards elimination of victimless crimes by setting stiff penalties for the possession of marijuana, making the "crime" of prostitution a federal offense
- Impose mandatory terms for a range of criminal offenses, a proposal publicly embraced by the President
- Turn peaceful assemblages into acts of sabotage

And, as if all these were not enough, this mis-shapen offspring of Nixon (Richard) and McCarthy (Joseph) would write into law what is already being called "the Watergate Defense":

- Federal officials would be free from criminal penalties for any illegal acts as long as they believed "the conduct charged was required or authorized by law."

If S.1 sounds like a nightmare in which the Nixon-Mitchell Law and Order Gang is still in possession of the White House, it is because the bill largely derives from the period of that monarchy. The current bill is an amalgam of a Nixon Administration

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bill and one introduced by three Senators: Hruska, McClellan and in a fascinating irony, Sam Ervin. The current version, one of several, was introduced into the 94th Congress by Senator Hruska; the House counterpart (H.R. 3907) is being sponsored by Rep. Charles Wiggins, the Horatius-At-The-Bridge of the House Judiciary Committee hearings on Impeachment.

The bill's origins lie in the Congressional establishment of the National Commission on the Reform of Federal Criminal Laws. The 12-member committee, approximately balanced between liberal and conservative, a la Gilbert and Sullivan, was headed by ex-Governor Pat Brown. In its original form, the Committee's report was considered largely acceptable by the ACLU, but in view of Watergate and the Pentagon Papers, it is no longer such (that version is still before the House in H.R. 333.)

THREE ASPECTS

S.1 presents the most serious legal threat to civil liberties since the days of the Smith Act, the Mundt-Nixon bill, and similar effluvia; in content, if passed as presented, it goes far beyond them in what it would do to constitutionally-guaranteed liberties. The bill goes about its butchering of the Bill

of Rights in three ways:

1. The re-introduction of legislation once considered dead or at least seriously injured, as in the case of a new version of the Smith Act. In this re-writing, fines up to \$100,000 and a prison term up to 15 years for membership in an organization which allegedly advocates the incitement of others to an action which at some unspecified time in the future would facilitate the destruction of the government of the U.S. It is important that full credit be given here for authorship: the term "facilitate" is a key aspect of the actual language of the bill.
 2. The use of increased deterrent and repressive measures, as if history did not exist. The reversal in the treatment of use of marijuana is only one example; perhaps we shall yet return to hanging thieving 7-year olds as a deterrent to other 7-year olds.
 3. The desperate plunge into new waters, perhaps the most chilling of the three areas. The term "national defense information" as used without precise definition in the bill, in effect places into being an "Official Secrets Act."
- Devices of this sort pose the gravest dangers to the democratic concept of the free flow of information. Section 1121 of the Senate Bill, for example, provides exceptionally severe prison terms for one "who knowingly collects national defense information" while at the same time knowing "it may be used to the prejudice of the safety or interest

of the United States." Taking the vagueness of the terms used, and combining them with the repressive intent of the bill, it becomes clear that revelation of Mai Lai or CIA involvement in assassination attempts would come under the proposed law.

TACTICAL PROBLEMS

There are two tactics being used against the bill: (1) an attempt to defeat the bill as a whole, in the view that it is such a bad bill that it is unamendable, and (2) that efforts should be made to amend and delete the more vicious aspects of it.

The second carries many dangers. There are already liberal Senators who at least partially back the bill (Birch Bayh, D., Ind., for example), and who may be willing to sacrifice certain areas to either salvage the usable portions of the bill, or in an effort to avert total loss.

The danger in that approach, especially given the temper of the country, is that the more spectacular assaults will be withdrawn in exchange for the harsher "law and order" elements. That danger is intensified by the approach of the Presidential election, since it can be safely, if unhappily, prophesied that all serious candidates are likely to be beating that particular drum from "piano" to "forte", regardless of party.

WHAT TO DO

As the bill emerges from hearings

and into the public consciousness, growing numbers of opposition groups are likely to coalesce, especially on single issues such as press freedom.

Meanwhile, however, whatever the role of either National ACLU, or ACLU-NC, it is of great importance that individual voices be heard clearly and sharply at this juncture. Letters to both California Senators are of key importance (Tunney is a member of the Senate Judiciary Committee); in addition, letters to other members of the Committee such as Bayh of Indiana, Burdick of N. Dakota, Hart of Michigan, Kennedy of Mass. and Mathias of Maryland are of especial importance at this stage of the battle, since they need either pushing or strengthening as opposite pressures will be put upon them. And it is not too early to write to Representatives from your area.

As the Washington Legislative Office of ACLU points out, editorials in newspapers against S.1 are of large use; chapter boards are urged to talk to local editors to this end. Articles about S.1 have already appeared in *The New York Times*, *The Wall Street Journal*, *The Village Voice*, *Human Events* and others.

When writing to Senators, ask for copies of S.1, and publicize the threat the bill contains to the Bill of Rights. It must be defeated; even a compromise bill would move us further away from traditional civil liberties and closer to a repressive society.