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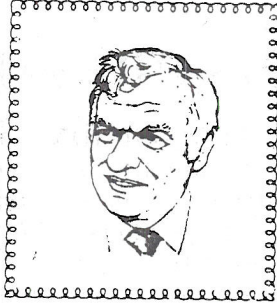
Charles McCabe

Himself

More on SB1 (2)

"ONLY LEWIS CARROLL could invent such a travesty of common sense and only Dean Swift's pen could accurately appraise us Yahoos for suffering it." Thus John R. Ellington, Professor Emeritus, Criminal Law Administration, University of Minnesota, on Senate Bill 1, the bill designed to reform our criminal justice code which incidentally repeals a good deal of the Bill of Rights.

And the following from Vern Countryman and Thomas Y. Emerson, professor of law at, respectively, Harvard and Yale Law Schools:



"The enactment of SB 1 would constitute an unparalleled disaster for the system of individual rights in the United States . . . The objective of the draftsmen was to incorporate into the criminal code every restriction upon individual liberties, every method and device, that the Nixon Administration thought necessary or useful in pursuit of its fearful and corrupt policies.

" . . . The bill is inherently unamendable and should be recommended for complete overhaul and redrafting."

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BESIDES having revolutionary proposals affecting the First Amendment, the Senate Bill 1 contains noxious features in other areas. Consider, for example, the so-called "Watergate Defense."

This, had it been enacted before Watergate, would have gotten everyone involved off scot-free, even if the crimes could have been brought to court. Persons are exempt from prosecution if their law-breaking conduct was based on "official misstatement of law" by a public official, or resulted from "an official grant which they relied upon in good faith."

The illegal conduct could also be based on "written interpretation" issued by the head of a government agency. This could be the President and hundreds of other officials. SB 1, as written, would circumvent the 1972 end of capital punishment in which the Supreme Court held this to be "cruel and unusual" because it was "so wantonly and so freakishly imposed." It would provide *mandatory* executions for certain crimes under certain conditions. Capital crimes include treason, espionage, sabotage, and murder under certain conditions, if a jury finds "no mitigating factors."

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THE DEATH PENALTY would continue to fall hardest on poor, black and nationally oppressed people. It would, moreover, now apply to anti-war activities because of the definitions of treason, sabotage and espionage — the defendant having "knowingly created a grave risk . . . to the national security." Under this section, Ellsberg and Russo could have had the gas chamber for giving out the Pentagon Papers.

The bill would enact a newer and stronger Smith Act. This infamous 1940 measure made conspiracy to "advocate and teach" the violent overthrow of government a crime. SB 1 provides for up to seven years in prison for those who incite "imminent lawless conduct that would *facilitate* the forcible overthrow or destruction" of government, "with intent" to bring about such overthrow.

This would apply to anyone who organizes, leads or recruits, or participates as a member in an organization with the above purposes. The original wording of the section was broader in scope, but the present formulation still provides punishment for "incitement" or advocacy, rather than for actual armed revolution.

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WHAT TO DO, in the face of these extraordinary sections of a bill designed to make sense of the massive and archaic criminal code? Depending on your feelings, you can either ask Senators to rewrite or amend the measure. Representatives should be placed on guard against SB 1 and get in touch with the House Judiciary Committee to start intensive public hearings to prepare new legislation to reform the U.S. Criminal Code.