

JOHN V. TUNNEY
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United States Senate

WASHINGTON, D.C. 20510

November 18, 1975

Dear Friend:

Thank you for your letter concerning S.1. I apologize for having to reply with a form letter, but the public's concern about this bill has resulted in an enormous amount of mail and it is not possible for me to answer each letter individually.

As presently drafted, the bill is pernicious, and I strongly oppose it. Major reform may be possible through amendments, and I shall offer and support those that will remove fatal flaws in the present bill. The reform, however, will have to be complete and total. For, as it now stands, the bill attacks fundamental civil rights, and I do not believe this nation can fight crime if it weakens the muscle and fibre of our constitutional heritage.

There are several areas of particular concern in the bill:

1. "National Security" Violations - While some improvements have been made in Sections 1121-1128 ("Espionage and Related Offenses") since S.1 was originally introduced, there still are several serious defects which pose an unwise and probably unconstitutional threat to freedom of speech. The provisions, for example, could lead to the imprisonment of reporters or publishers who exposed the secret B-52 bombings of Cambodia. We have all seen how claims of "national security" can be abused for political purposes, and I believe any provisions outlawing conduct on "national security" grounds should be so tightly drafted as to preclude their use for cover-up or for political retribution.
2. Incursions on Freedom of Speech - Like the "national security" sections, the provisions on "subversive speech" (Sections 1102-1103) are much too broad. The proposals not only undercut the Supreme Court's decision in Brandenburg v Ohio 395 U.S. 444 (1969), but punish allegedly subversive speech not even likely to produce violent conduct. These sections obviously are vulnerable to abuse, and I firmly oppose them.
3. Wiretapping - Section 3108 provides a disturbing "national security" exception to the general requirement that all wiretaps must receive the approval of a federal judge. The use of wiretaps must be kept in check; in light of the history of wiretap abuses the past few years, this exception must be deleted.
4. Insanity Defense - The criminal law traditionally has punished only those defendants who are "morally blameworthy" for their conduct. Beginning with the McNaughton case in the mid-19th century and developing through the past 100 years, courts have refused to permit convictions of defendants

lacking in moral responsibility because of insanity or severe mental illness. Section 522 of S.1 proposes to revert to the 19th century status, for all practical purposes, by removing the insanity defense entirely. Present law, approved by the Brown Commission, the American Law Institute, and all the Federal Circuit Courts of Appeal, acquits the defendant - with appropriate provision for civil constraint - if, because of a mental disease or defect, he "lacked substantial capacity to appreciate the character of his conduct or to control his conduct." The failure to accord such a defense, it seems to me, ignores the relevance to guilt of moral responsibility and the power to choose, and I shall introduce or support an amendment to retain the notion of blameworthiness.

5. Death Penalty - S.1 imposes the death penalty for certain serious federal crimes, such as treason, sabotage, and murder in certain circumstances. I have always opposed the death penalty and will continue to oppose its inclusion in S.1.

6. Miranda - Section 3713 of S.1 essentially overturns the 1966 Miranda decision, which requires law enforcement authorities to inform all suspects of their basic constitutional rights, a practice the F.B.I., for example, has followed since its inception. By undercutting Miranda, S.1 is saying: "Those with the education to know their rights will be guaranteed them; the poor and the ignorant will lose them." I support the Miranda decision and will oppose this attempt to undercut it.

7. Sabotage - Under the present Section 1111, antiwar demonstrators who blocked traffic by their very numbers could be prosecuted for sabotage, a major felony. The standard is simply too vague and must be tightened.

There are other problems with S.1, particularly in the sentencing area. The areas I have listed are only those needing most immediate attention, and I shall offer or support amendments in all of these areas.

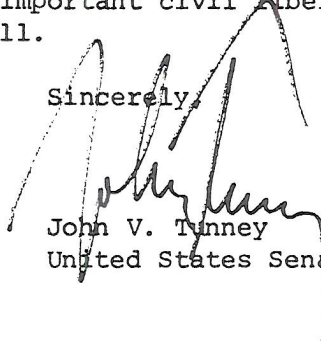
I should also stress that, with the possible exception of the gun control and drug trafficking provisions, I do not view S.1 as a major weapon in the fight against crime. S.1 does not deal with prisons, juvenile delinquency, law enforcement resources or techniques, or judicial dockets; indeed, the problem of crime in this country is so complex that I frankly am not sure dealing with these problems would significantly affect the rate of crime. But S.1, in its present form, simply ignores the important forces relating to crime in this country.

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S.1's most important effects would come in the civil liberties area and, unless the bill is defeated or amended substantially, these effects would abrogate many fundamental liberties. Codification - making order out of the federal criminal law quagmire - is needed certainly, but S.1 in many cases goes beyond the present law to the disturbing point of threatening important civil liberties. I urge your support in opposing this bill.

Sincerely,

A handwritten signature in dark ink, appearing to read 'John V. Tunney', written over the typed name and title.

John V. Tunney
United States Senator

JVT:mgt