

Washington Report**Action needed to block S. 1 compromise**

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In February, Senators Mansfield and Scott sent a memorandum to Senators McClellan, Hruska, Hart and Kennedy suggesting that they liberalize S. 1 (the bill that would codify the criminal code but prove extremely detrimental to civil liberties) by giving it a new number and making the following deletions "thereby retaining in status quo. In sum, the new bill would contain most of what is now contained in S. 1 except the following features":

Section 521—Mistake of Fact
Section 522—Insanity
Section 541—Exercise of Public Authority
Section 542—Protection of Persons
Section 543—Protection of Property
Section 551—Unlawful Entrapment
Section 552—Official Misstatement of Law
Section 1101—Treason
Section 1121-1128—Espionage and Related Offenses: Official Secrets Act
Section 1842—Obscene Material
Section 2001-2403—These provisions on sentencing should be "shaped up"

Section 3101-3109—Wiretapping
Section 2401-2403—Death Sentence

There are several problems with this compromise. First, it will continue, for a substantial body of law, the inconsistent and irrational aspects of present law, including sentencing disparities. After all, this is what codification was supposed to eliminate.

Second, the items specified by Mansfield and Scott do not include many sections which we have attacked and, even in those sections which they suggest dropping in favor of current law, such as wiretapping, leave us with the same terrible law applying only to fewer crimes.

Third, the Mansfield-Scott proposal is at best vague: what do they mean by "shape up."

At a meeting in the second week of March, Kennedy and Hart presented a number of suggested changes that reportedly went further than those offered by Mansfield and Scott in liberalizing S. 1. Mansfield told the others at the meeting that they had only a few weeks to work out a compromise or, in his judgment, criminal codification would be dead for this session of Congress.

As this was written we were waiting to learn what the Kennedy-Hart changes were and how McClellan and Hruska would respond.

The Kennedy-Hart staff seem to be operating under the assumption that it is necessary to pass a criminal codification in 1976. While they credit us (ACLU and others) with creating the condition in which the advocates of S. 1 (McClellan, Hruska, and the Justice Department) must compromise in order to get their bill passed, the liberals feel they must work to push that compromise in order to get what they consider to be the best possible bill.

It is our view that there is no need to get a criminal codification in 1976. Certainly it can wait until 1977. We do not believe that the liberals should cooperate in a compromise, rather it should be left to McClellan and Hruska. If S. 1 is stopped in this session of Congress, we would then see H.R. 10850 (a codification bill that respects civil liberties) re-introduced in the House in 1977 and a companion Senate bill introduced in the Senate. In 1977, we believe that the conservatives would be forced to amend H.R. 10850 rather than the other way around.

ACTION

1. Contact all liberal members of the Senate Judiciary Committee: Abourezk, Burdick, Bayh, Hart, Kennedy, Mathias, and Tunney and urge them to oppose the compromise.
2. Contact Senator Mansfield as Senate Majority Leader and urge him not to effectuate this compromise.
3. Contact House members Kastanmeier, Edwards, and Mikva and urge them to oppose the compromise publicly.
4. Contact all of your representatives and urge them to contact Congressman Kastanmeier's office and become co-sponsors of H.R. 10850.
5. Alert your local press to the dangers of this compromise and, more importantly, to the differences between S. 1 and H.R. 10850. (A reprint of the Feb. 24, 1976 Congressional Record showing the differences between the two bills is available from the ACLU's Washington Office, 410 First St., SE, Washington, DC 20003.)