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LEGIS

Plastic Surgery for S.1?

After months of intense national debate about the merits of S.1, the bill to reform the federal criminal laws, it appears a pivotal point is near as the Senate Judiciary Committee approaches a final decision.

Thanks to a variety of critics, some of the worst atrocities of S.1 have been exposed. But even so, efforts to defang the S.1 monster should not obscure the fact that a monster without some of its

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fangs is still a monster. Unfortunately, there is an apparently new and growing campaign to gloss over the inherent and pervasive defects in S.1 and to speed the bill to final Senate approval.

Most recently, The Washington Post announced its support for S.1. — minus a number of its "worst" provisions. This followed by several weeks a similar endorsement of S.1 by the former chairman of the National Commission for Reform of the Federal Criminal Laws, former California Gov. Edmund G. Brown. Gov. Brown now maintains that S.1. incorporates a "very substantial portion" of the national commission's recommendations and that the "few" repressive sections of S.1 will not doubt be amended in committee or on the Senate floor.

As a former member of the "Brown Commission" (as the National Commission is frequently called), I have admiration and respect for Pat Brown's leadership on criminal law reform. Unfortunately, I cannot share Gov. Brown's current view (which is held by others, too) that S.1 warrants passage because it includes a major portion of the Brown Commission's recommendations. Nor are there grounds for the optimism that the blatantly repressive sections of S.1 will be adequately sanitized by amendments in committee or on the Senate floor.

Back in 1971, after four years of study, the Brown Commission produced a thoughtful compromise, reflecting a variety of views. The real strength of the final product was that it struck an overall balance that tended to outweigh the deficiencies of any particular provision. It was a compromise that produced a product greater than the sum of its parts.

But the fact that the Brown Commission's findings were a compromise, that they did not at all add up to an ideal civil libertarian document, cannot be overlooked. Therefore, S.1, at best, represents nothing more than a bad compromise of an earlier compromise. From a civil libertarian point of view, if Brown was somewhere near the 50 yard line, S.1 is now in the end zone—and the wrong end zone, to be sure.

So even if S.1 includes major portions of the Brown Commission recommendations, it means that S.1 would only be approaching the original compromise of five years ago. But what about the admittedly repressive features of S.1 not in the Brown Commission compromise? Is it realistic to expect that all, or even most, of these features would be deleted by amendments? In all probability, the answer is no.

S.1 is a 753-page bill replete with both well-known and not-so-well-known evils—evils that in the heat of debate, will be overlooked or compromised. Such provisions as the official secrets act, the abolition of the insanity defense and the numerous infringements of free speech in the name of national security are well known and likely to receive the Judiciary Committee's attention.

But there are scores of lesser known provisions in S.1 that are just as damaging to personal liberty and that may well escape close scrutiny. S.1, for example, greatly expands federal authority to order involuntary confinement of mentally ill persons who have been

Taking Exception

acquitted of all federal charges or have completed their prison terms. S.1 grants appellate judges the power to increase sentences imposed by the trial judge. And S.1 so stretches the conspiracy laws that mere thought becomes a crime in certain situations.

Last November, Reps. Robert Kastenmeier, Don Edwards and I introduced a civil libertarian alternative to S.1. One of the reasons for introducing a new bill at this late date was to point out the difficulty, if not impossibility, of purging S.1 of all its pernicious provisions. This new bill, which exceeds 700 pages in length, makes over 1,000 changes in S.1. And even with all these changes, several remnants of what might be called the Nixon administration-John Mitchell philosophy of criminal law reform escaped attention and remained in a "thoroughly" revised bill.

There is an urgent need for criminal law reform in this country. There was such a need in 1967, too, when the Brown Commission began its work, and in 1971 when the commission reported its recommendations. But a new urgency is to dispel notions that decent reforms can emerge from "a better S.1." S.1 started as a monster and no amount of plastic surgery is going to change its character.