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LEGIS

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*Letters to the Editor***Of S.1 and the First Amendment**

To the Editor:

It is distressing that, shortly prior to the announcement by several Senators of significant progress toward reaching a constructive compromise on S.1, your recent editorial "Issues '76: Liberty" reiterated the unfounded charge that S.1 contains "many questionable sections that are incompatible with the First Amendment."

As noted by the former chairman of the National Commission on Reform of Federal Criminal Laws, Edmund G. Brown, in a letter to The Times: "A great deal of misinformation has been spread about S.1. . . . Defeat would be a severe blow to criminal law reform in this country."

Unfortunately, your editorial contributes to the multiplication of misinformation and misimpression about the bill. For example, the obscenity provision in S.1 would significantly narrow present Federal law by eliminating purely private transactions in such materials among willing adults from Federal proscription.

Likewise, S.1's provisions on riot offenses, far from restricting the right of peaceful assembly, substantially ameliorate existing Federal laws. Under 18 U.S.C. 2101-2102, a riot may consist of as few as three persons, and mere interstate travel with intent to incite a riot, followed by the performance of any overt act in furtherance of such intent, establishes the offenses. Under S.1 the minimum

number of persons is increased to ten, and S.1's indictment provision requires that a riot in fact result from the incitement.

Similarly, Section 1302 of S.1, which punishes obstruction of a Government function by physical interference, would only perpetuate at a misdemeanor level the scope of several existing Federal statutes (e.g., 18 U.S.C. 111), often carrying greater penalties, punishing physical interference or obstruction with specific Federal Government functions.

Prof. Archibald Cox of Harvard has written of this section to Senator Hart: "The A.C.L.U. criticism of Section 1302 is, in my opinion, a forced and false interpretation which would appear plausible only to one determined to find reasons for seeking to defeat the bill."

There is nothing in S.1, as now before the Senate Judiciary Committee, to justify the charge that the bill contains provisions inimical to the First Amendment. Quite the contrary is true. I hope that the recent proposal by several Senators to effect significant further modifications of the bill in the areas about which you evinced concern will cause you to re-evaluate your attitude toward this most important piece of legislation.

RICHARD THORNBURGH
Assistant Attorney General
Washington, June 3, 1976

SEE LETTER, 21 JUN 76, 24 JUN