

S. 1: 'Who Is Spreading Misinformation?'

To the Editor:

In his June 11 letter, Richard Thornburgh, an Assistant Attorney General, accused both The Times and the American Civil Liberties Union of contributing to the "multiplication of misinformation and misimpression" about Senate Bill 1, the criminal code bill. Mr. Thornburgh's alliteration is impressive; his accuracy is not.

Who is spreading misinformation? Mr. Thornburgh claims that S. 1 improves existing law because incitement to riot would only be punishable if a riot in fact results. That is simply untrue. S. 1 has an attempt section (§1001) which, when applied to the riot provision, would punish incitement which produces no violent activity. The Senate Draft Report (p. 841) itself points this out:

"Riot incitement activity that is merely inchoate in nature may be punishable, however, under the general attempt, conspiracy, and solicitation sections of the proposed code."

"Attempted incitement" carries the same penalty, up to three years' imprisonment, as does actually causing a riot by incitement.

Mr. Thornburgh also states, misleadingly, that S. 1 would not punish "purely private transactions" in obscene materials between consenting adults. What he must mean are gratuitous transfers of such materials; a sale even to a willing adult remains an offense, as does importation for personal use.

He also argues that S1302, which punishes with up to one year imprisonment any person who "obstructs or impairs a government function by means of physical interference or obstacle," will not interfere with protected First Amendment demonstration activities. If that is his understanding of this section, then we welcome him to join us in urging the Senate to adopt more specific language defining what—and what is not—intended to be covered by this section.

We are sure that with the aid of the Department of Justice the sponsors of S. 1 can be readily persuaded to adopt such an amendment.

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