

Law and Order, 1973

AUGUST 27, 1973

A WHILE BACK I wrote a piece about secrecy and the Nixon Administration wherein I noted some provisions from a law and order measure now before the Senate. I characterized this measure as "the most outspoken attack on the Bill of Rights in our history." The bill was drafted in major part in the office of former Attorney General John Mitchell. Several readers have asked to know about other provisions of this pending bill.



Under the guise of long overdue reform of the Federal Criminal Code, this bill would turn back the clock of justice on a wide range of progressive judicial precedents and legislative enactments in the area of criminal law. The following provisos have been excerpted from the "Criminal Code Reform Act of 1973—S. 1400; H.R. 6046—by the National Committee Against Repressive Legislation.

- On entrapment, the burden of proof is placed on the defendant to prove that he was "unlawfully entrapped," even though undercover agents provocateur employed "deception," provided "a facility or an opportunity," and used "active inducement" to get a crime committed.

- Provides one year and/or fine or \$10,000 for possession of minor amount of marijuana for personal use and three years and/or \$25,000 if arriving or departing from a trip out of the country.

- Nullifies two Supreme Court decisions by making the death penalty mandatory for certain crimes in certain conditions, without appellate review, and reviving the Smith Act. The new Smith Act provides 15 years and/or \$100,000 fine for mere advocacy or membership in an organization that allegedly calls for revolutionary change "as speedily as circumstances permit . . . at some future time."

- Defines a "riot" as "an assemblage of five" which "creates a grave danger" to "property." It stiffens a 1968 law to provide three years and/or \$25,000 fine for the "movement of a person across a state" line, or for even the use of the mail or telephone in the course of "the planning, promotion" of a "riot."

- On wiretapping, permits President to wiretap domestic activities which he thinks are a "danger to the structure" of government. The Attorney General's authority is widened to wiretap alleged offenses protected by the First Amendment, for which read upply reporters.

Also permits 48-hour "emergency" taps with-

out court approval, and compels telephone workers and landlords to cooperate "forthwith" and "unobtrusively" with government wiretappers.

- Demonstrations. Virtually every kind of civil rights, peace or other protest action would be threatened with severe penalties under a series of vaguely drafted infringements on the right of assembly. See Sections 1111, 1115-7, 1302, 1328, 1335, etc.

- The penalty for failure to cooperate with Congressional Committees like the House Un-American Activities, House Internal Security and Eastland Committee is increased to three years and/or \$25,000 fine.

- By eliminating the insanity defense, the measure would steer clearly sick people to jail rather than to hospitals. As noted earlier, the measure specifically rejects effective national control of handguns. In the morals field, it would make criminals of all persons who in any way disseminate any material describing sexual intercourse or depicting nudity.

Perhaps the most retrograde proviso of all is the section which allows any cop anywhere to use deadly force to prevent the escape of a person arrested for any crime, however petty, and without regard to the danger to the life of others. When this law of flight was applied in Latin countries, we used to regard it as the very ensign of a dictator-controlled totalitarian state.