

Washington Report

Status of S. 1 Compromise

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As reported in this column April, we were waiting to learn the details of a compromise proposal on S.1 made by Senators Edward Kennedy (Mass.), Philip Hart (Mich.), and James Abourezk (So. Dak.), as well as the response of Senators John McClellan (Ark.), and Roman Hruska (Neb.). The negotiations have resulted in a number of clear victories, partial victories, and defeats.

Among the victories are the deletion of ten sections, including Section 541, which would have allowed public servants to avoid prosecution for illegal acts by claiming they were just doing their duty, and Section 1103, which would have reenacted the Smith Act making it illegal to advocate the overthrow of the government.

The partial victories include the deletion of Sections 1121-1124, which had become known as the Official Secrets Act because of their severe penalties for disclosing government information. In place of these sections, current law on espionage and related offenses will be substituted. The ACLU would have preferred to narrow and improve current law which is vague.

The defeats are the retention of the following sections: Section 1111, sabotage; Section 1112, impairing military effectiveness; Sections 1831-1833, inciting or leading a riot; Section 1842, obscenity; and Sections 3101-3109, wiretapping. The ACLU believes all of these sections should be deleted.

Some Major ACLU Objections Which Have Not Yet Been Dealt With By Compromise Proposals

—The Kennedy-Hart-Abourezk proposal fails to address the various sections of the bill which are aimed at the constitutional right of assembly. Important sections include:

Section 1302 ("obstructs or impairs a government function by means of physical interference or obstacle");

Section 1328 ("pickets, parades, displays a sign . . . or otherwise engages in a demonstration in, on the grounds of . . . a building housing a court");

Section 1861 ("engages for no legitimate purpose in any other conduct that creates a hazardous or physically offensive condition");

Section 1863 ("disobeys an order of a public servant to move, disperse, or refrain from specified activity in a particular place" if the order is "reasonably designed to protect persons or property").

—S.1 would make it an offense to make a false, oral statement to a law enforcement officer, even while not under oath. (Section 1343)

—S.1 imposes a five year mandatory term of imprisonment for carrying a firearm during commission of a crime. (Section 1823)

—S.1 abrogates the rule that criminal statutes are to be strictly construed to only include conduct that is expressly prohibited by the terms of the statute. Combined with vague language used throughout the bill, this change of existing law represents a serious due process threat. (Section 112)

—S.1 makes it easier to obtain a conviction for inchoate crimes— attempts and conspiracies. Conspiracy under existing law is already subject to prosecutorial abuse. The attempt language should be amended to that now used throughout the federal courts.

In addition, the Pinkerton rule which makes coconspirators liable for all crimes of the other participants "if reasonably foreseeable" should be abolished as the American Bar Association, the Brown Commission, and others have recommended. (Sections 1001, 1002)

—War should be defined as "war declared by the Congress pursuant to Article I, Section 8 of the Constitution." (Section 111)

—The sections dealing with civil commitment of persons suffering from mental disease or defect should be substantially amended to give no greater federal authority than now exists in the federal law. In fact, we believe that commitment of "insane" or "dangerous" people is a matter that should be left to the states. (Sections 3613-3616)

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—The present compulsory “use” immunity statutes should be repealed. No person who raises a valid Fifth Amendment claim should be compelled to testify. (Sections 3111-3115)

—Only evidence that is legally obtained under the Constitution should be admissible during sentencing proceedings. This attempt to undermine the Fourth Amendment should be repealed. (Section 3715)

—S.1 applies the Hobbs Act “extortion” provisions to union activities even if engaged in for legitimate labor objectives. This overrules a recent Supreme Court decision. (Section 1722)

Three important meetings have taken place in recent weeks between ACLU leaders and Senator Hart, Senator Kennedy, and their staffs. New changes are expected, dealing with many of our objections. If those changes are acceptable, the reason will be the pressure that we have put on, forcing the liberals to make the demands, as well as leaving the conservatives little alternative if they wish to see a criminal codification come out of the Senate this year.

We face the possibility of a new bill, cosponsored by Kennedy, Hart, McClellan, and Hruska, that will have some chance of passage in the Senate. After all the changes are in, we will have to evaluate whether or not this bill is a gain over current law, neutral, or a loss. I suspect it will be some gain, though nowhere near as far as we would like to see it go. Most likely, it will still not merit our support.

Fortunately, it is unlikely that the House will have time in this session to consider such a bill coming over from the Senate. That should give us an opportunity in the next Congress to further improve the bill, or better yet, to start with H.R. 12504.

(H.R. 12504 is a new version of H.R. 10850 introduced March 15, 1976 with 20 cosponsors. ACLU supports this criminal codification. Urge your representative to sign on.)

In our meetings with Senator Kennedy and his staff, we have made it clear that we would be most unhappy if he attempted to use his prestige in the House to try to push the bill through there this year.

CIVIL LIBERTIES

NUMBER 312

JUNE 1976

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Civil Liberties is published January, April, September, November by the American Civil Liberties Union, 22 East 40th St., New York, N.Y. 10016.

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