

TOWARD the close of the Senate debate on the campaign reform bill on Thursday, Sen. Herman E. Talmadge (D-Ga.) dropped in an amendment which the Senate ought to weigh very carefully. Sen. Talmadge's intent is to discourage "dirty tricks" such as the circulation of false and malicious statements about candidates for federal office. That is a worthy objective, and legislation toward that end might seem, at first, about as unobjectionable as apple pie. But on closer inspection the idea turns out to be full of worms.

The Talmadge amendment would add a new subsection to the federal criminal code, as follows:

No person shall cause to be published a false and defamatory statement about the character or professional ability of a candidate for Federal office with respect to the qualifications of that candidate for that office if such person knows that such statement is false.

A violation would be a misdemeanor punishable by a fine of up to \$10,000, imprisonment for up to six months, or both.

If by some chance this were enacted, it would be the first federal criminal libel statute since the infamous Seditious Act of 1798. That fact alone suggests that any such proposal should be subjected to extensive hearings and long debate—rather than the 30 minutes of floor consideration which the amendment is now scheduled to receive.

Beyond the general—and perhaps insurmountable—difficulty of drafting any language on this subject which might pass constitutional tests, the specific terms of

the Talmadge amendment bring several questions to mind. To start with, it is lopsided. It would cover false and defamatory statements about candidates, but would provide no similar protection against equally malicious and baseless attacks by candidates on private citizens, or for that matter on officials who are not running for office at the time. Thus a candidate would still be able to engage in "dirty tricks" as long as the target was his opponent's family or chief contributors.

Second, the amendment has far-reaching implications for the press. It might mean that a newspaper or magazine—but not, apparently, a radio or TV station—would be liable to prosecution for accepting an ad or reporting a candidate's statement which contained false and damaging allegations. Would a news organization have to check out and vouch for every campaign statement before transmitting it? What if a newspaper reported a charge which was patently false, and in the next paragraph reported the opponent's denial? Or would the press be better off simply not reporting wild accusations at all, and thus not informing the public that a candidate was seeking votes by slinging mud?

Third, making some kinds of "dirty tricks" into federal crimes would put the burden—and the option—of prosecution, in the heat of a campaign, on the Justice Department. Given the present concern about partisan influences on law enforcement, this alone should make some senators think twice. All in all, rather than cleaning up political debate, this particular approach would only muddy it much more. To whoop through any such proposal would be, by itself, a "dirty trick" which many senators could come to regret.