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Death
Penalty

THE CHRISTIAN NEWS
February 7, 1983 Page 8

The Morality of Capital Punishment



Haven Bradford Gow

By Haven Bradford Gow

Shortly before midnight on December 6, 1982, convicted murderer Charles Brooks was strapped to a hospital gurney in a room adjacent to the death chamber of the Huntsville, Texas, prison.

At 12:09 a.m., Charles Brooks' right arm received the first lethal injection legally administered in the United States. Seven minutes after the lethal drugs were injected, at 12:16 a.m., Charles Brooks was dead.

Brooks' execution by lethal injection aroused a sharp debate among members of the legal and medical professions. For example, Harvard law professor William Curran, who is considered "the father of American legal medicine," was so disturbed about the Brooks execution that he urged the Texas Medical Assn. to seek to revoke the medical license of any physician involved — directly or indirectly — in the execution.

"Not only is this (execution by lethal injection) unethical, it is illegal," Prof. Curran firmly insists. "There is no medical license that authorizes a physician to use medicines to kill."

Conversely, proponents of execution by lethal drugs maintain that since society morally approves the death penalty lethal injection is the most "humane" way to impose capital punishment. For example, Dr. Ruth Baine, the president of the Texas Medical Assn., observes that she has "so incensed with the inadequacies of our judicial system in handling crime that, with the lethal injection, I think I could vote for the death penalty if I were on the jury." She is quick to add, however, that she believes it is unethical for a physician to play the role of executioner.

Besides Texas, four other states permit execution by lethal injection: Idaho, New Mexico, Oklahoma and Washington. These states insist that execution by lethal drugs is far more humane than by the gas chamber or the electric chair.

According to Dr. Michael Nelson, however, medical ethics are violated even when a doctor does not administer the lethal injection. Dr. Nelson, chief psychiatrist at Lowell General Hospital in Lowell, Mass. and co-founder of Physicians Against the Death Penalty, insists that even when a doctor does not perform the role of executioner, chemical execution nonetheless is "a flagrant abuse of medical technology," that was intended to help people, "not to kill them."

In three closely-related matters:

*Recently, mass murderer Charles Manson once again was denied parole at a hearing in California in which he quite justly and appropriately was described as a "walking advertisement for the death penalty." Manson was sentenced in 1971 to die in the gas chamber for masterminding and participating in the sadistic murders of seven persons, but his sentence unfortunately was reduced to life imprisonment when the California Supreme Court overturned capital punishment the following year.

*In Illinois, convicted mass murderer John Gacy (sentenced to die for raping and murdering over 30 young men and teenagers) was in the news again. A newsman for the Chicago NBC television station, WMAQ, reported that, because of Gacy's legal appeals, it may be several years before the execution of the convicted mass murderer finally is carried out.

*Recently in Maryland, a jury refused to recommend the death penalty for Jack Ronald Jones, who was convicted of kidnapping, repeatedly raping and then murdering college student Stephanie Ann Roper. Instead, the jury and Circuit Judge Walter Haile recommended concurrent sentences of 20 years for kidnapping and life for rape. Ironically and tragically, Jones will be eligible for parole in 12 years.

Certainly, the executions (whether by lethal injection, the electric chair or the gas chamber) of such sadistic murderers as Charles Manson, John Gacy and Jack Ronald Jones would be justified for two reasons: First, the imposition of the death penalty in these cases would help deter crimes like murder. As the late FBI Director J. Edgar Hoover observed, "The professional law enforcement is convinced from experience that the hardened criminal has been and is deterred from killing based on the prospect of the death penalty."

A study conducted by the Los Angeles Police Department in 1970 and 1971 buttresses Mr. Hoover's observation. Ninety-nine criminals participated in the survey, each giving his reason why he committed his crime unarmed or didn't use a weapon. The study revealed a 5 to 1 ratio of deterrence over non-deterrence as reported by people in the best position to make such a judgment: The criminals themselves.

Very significant, too, is the late California Supreme Court Justice Marshall McComb's dissenting opinion in the 1961 case of *People v. Love*. In his opinion, Justice McComb referred to comments made by several criminals who had openly and candidly confessed that they were deterred by the death penalty from murdering others in the course of committing violent crimes.

Second, the executions of sadistic murderers Manson, Gacy and Jones would be justified on moral grounds. To be sure, some believe that capital punishment is "cruel and unusual punishment" and contrary to religious or humanitarian principles. But when, for example, someone has raped and murdered a child, he has relinquished his right to live. Capital punishment in such a case is an act of restitution and demonstrates that a society and legal system are genuinely dedicated to preserving and protecting the rights and safety of the people. Charity must also be displayed towards the victims of crimes and their families.

Clearly, if society has the moral right and obligation to act in collective self-defense against aggression emanating from without (for example, against Nazi and Communist assaults on decency and liberty), then society likewise has the moral right and obligation to defend itself against aggression emanating from within (for example, against people who rape and murder children).

Mr. Gow is a freelance writer in Arlington Heights, Ill.

✓ Will the U.S. Supreme Court overrule Roe v. Wade?

By Haven Bradford Gow

The U.S. Supreme Court recently heard oral arguments regarding the constitutionality of state and local laws seeking to restrict abortion and ensure that abortions will be performed only in safe and legitimate medical facilities. In July, 1982, the U.S. Department of Justice filed a brief in the case, requesting that the High Court defer to state legislatures concerning restrictions on abortion that have been enacted.

During the oral arguments, Justice Harry Blackmun, who wrote the U.S. Supreme Court's January, 1973 *Roe v. Wade* ruling, sarcastically asked U.S. Solicitor General Rex Lee whether the U.S. Department of Justice was in effect asking the High Court to overturn its *Roe v. Wade* abortion decision. But Mr. Lee really was seeking to affirm and defend a principle central to our system of government: namely, the principle of the separation of powers and need for checks and balances.

Mr. Lee's point was that the U.S. Congress and state legislatures have the constitutional right to enact certain restrictions, such as requiring parental notification before a teenager may obtain an abortion and mandating that abortions after the first three months of pregnancy be performed only in hospitals.

However, as legal scholar Hadley Arkes pointed out in an article in the Dec. 19, 1982 issue of *The Washington Post*, "when Congress and the state legislatures seek . . . to restrict the practice of abortion, their efforts are instantly branded as unconstitutional if they seem to be acting on the premise that abortion is wrong." The fact is that, even though a decade has passed since the High Court's *Roe v. Wade* ruling, the heated and violently emotional controversy over the abortion issue simply will not subside. Mr. Arkes rightly observed that "people of serious reflection have simply not found compelling or persuasive the reasons offered by the court (to justify its pro-abortion rulings). A majority of women remain convinced that life begins at conception, that the offspring of *Homo sapiens* cannot be anything other than human from its very beginning, and that the matter cannot be, as (Justice Harry) Blackmun suggested, an inscrutable religious question."

It seems all too clear that the U.S. Supreme Court will not overturn its pernicious *Roe v. Wade* abortion ruling. As a result, we need to work for the passage of anti-abortion legislation, as well as continue to educate the public regarding the moral, religious, legal, social and medical grounds for the "right-to-life" position.

Clearly, enactment of human life legislation (that would outlaw most abortions) would be morally and legally right because it would acknowledge the scientific fact that human life begins at conception; moreover, it would provide legal protection for unborn babies.

Respected medical authorities support the view that human life begins at conception. There can be little dispute that the genetic characteristics and identity of the individual are irrevocably and uniquely determined at the moment of fertilization.

Also, the popular pro-abortion argument that the fetus is simply a part of the mother's body is refuted by the medical evidence, which demonstrates that the cells of an unborn baby have a genetic code different from those of the mother. The fetus is a separate and distinct human being from the moment of conception.

True, anti-abortion laws legislate morality, but only in the same sense that we legislate morality when we outlaw voyeurism, incest, slander, rape, child prostitution, stealing and murder. When we make these activities illegal, we "impose moral, ethical and religious values" on those who engage in these acts.

Mr. Gow is a freelance writer from Arlington Heights, IL.

HEALTH

Continued from page 3

anguish of abortion: "I still have guilt feelings," said one nurse eight years after she had stood by and watched a live aborted baby die, without trying to help the infant; or "I find late abortions pretty heavy weather both for myself and for my patients," commented a physician.

* * * * *

From the families of women who have chosen abortion we are hearing of mental anguish also. Again, extensive reports and research are not available, but those of us engaged in counseling know firsthand of some of the experiences. One mother who had encouraged her teenage daughter to have an abortion told me she had feared being a "premature grandparent" but now suffers from the realization that she momentarily was not thinking of either her daughter or grandchild. "I will never forgive myself," she said. For the parents who find out their daughter has had an abortion, the experience raises many emotional feelings of guilt. How do children feel when they learn their unborn brother or sister has been aborted? These are difficult areas to document, but we know there can be emotional trauma and long-lasting effects.

From husbands or boyfriends, we are learning and hearing more about their frustrations and deep feelings when their wives/girlfriends choose abortion. It often causes problems in the relationship in addition to the personal grief of the man.

* * * * *

Surprising new studies are finding abortion can be an underlying causal factor in kleptomania, impulsive spending and psychosis. Ray Sexton, M.D., and Richard Maddock, Ph.D., contend that "abortions may be producing serious psychological problems previously overlooked by other professionals in the mental health field."

* * * * *

We are seeing the formation of support groups for women who have experienced abortion and are suffering guilt feelings. One such group is Women Exploited by Abortion (WEBA, 1553-24th Street, Des Moines, IA 50311). Two of the women who are leaders of this group related that they decided to be sterilized because of guilt feelings over their abortions. Both also became involved in drugs, one attempted suicide. Their goals of providing support

for women who have "been hurt by abortion" and to promote informed consent laws for women about to submit to abortion demonstrate a form of positive action in the area of psychological problems.

Some churches also have appropriately begun counseling and support services for women experiencing post-abortion trauma. Is there a support group in your church or city?

* * * * *

It is a tragic fact that we will not be able to significantly curb the mental health problems associated with induced abortion until the general public, as well as women seeking abortions, is informed of the situation — and this will come about only as more and more cases are brought to light. Those of us who are aware of the situation must show loving care and understanding for all who suffer the emotional complications of abortion — and we must continue to work for a reversal of the abortion-on-demand society in which we live. If we fail, the physical and emotional health of our country will be added to the list of disasters brought about by abortion.



Coalitions For America

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Padraic Buckley
Director of Operation

Barbara Coleman
Secretary

Elia Dal Bello
Receptionist

April 9, 1982

The Honorable Howard Baker
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Baker:

It has been nearly a year since conservative representatives met with you to discuss an appropriate vehicle for perfecting the President's block grant program.

As we approach the last four months of the 97th Congress, we still do not have such a vehicle. Neither have conservatives had an opportunity to press for passage of legislation dealing with school prayer, family protection, abortion, the death penalty, or labor union violence.

The reason you gave for not fulfilling your promise to consider block grants during the first session was lack of time. Our understanding is that similar time constraints are being cited for non-consideration of other social issues.

In view of this problem, we are alarmed to learn that the Senate is scheduled to consider the criminal code recodification bill, a measure which we deeply oppose.

Consideration of S. 1630 would suggest to us that the Senate has time to debate the creation of a wholly new federally financed program which would include the funding of abortions, but not to discuss measures designed to end abortions -- that the Senate is able to propose prohibiting judges from giving sentences in excess of "the length of such terms actually served" under current law, but not insuring that perpetrators of heinous crimes are given the penalty commensurate with the gravity of the crime.

Just as we are asking key senators to use S. 1630 for the purpose of obtaining votes on key social issues, we are asking you to offer an amendment restoring the President's block grant program to S. 1630.

If the Senate has time to consider tragically bad legislation, it has time to fulfill the promises which were made to us and the people we represent.

Paul Weyrich
Coalitions For America

Howard Phillips
Conservative Caucus

The Honorable Howard Baker
April 9, 1982
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Terry Dolan
National Conservative PAC

Phyllis Schlafly
Eagle Forum

Gary Jarmin
Christian Voice

Ronald Godwin
Moral Majority

Jack Clayton
Christian Legal Defense & Education
Fund

Paul Brown
Life Amendment PAC

Larry Pratt
Gun Owners of America

Bill Billings
National Christian Action Coalition

Judy Brown
American Life Lobby

John Houston
Public Service Research Council

Gordon Jones
United Families of America

Joan Hueter
National Association of Pro America

(names for identification purposes only)

Attorney General Blasts Conservatives, Refuses Their Questions

By John D. Lofton Jr.

Attorney General William French Smith stopped by the February Conservative Political Action Conference in Washington, D.C., fired from the hip a couple of hit-and-run editorial comments and then fled from the scene without taking any questions from the audience. All of which is too bad, because Smith owes conservatives answers about several subjects.

One so-called "unfounded" criticism that really bugs the AG is the charge that his department is populated by appointees that are not Reaganites, not supporters of the president and his views. Calling this allegation "absurd," Smith says:

"I chose our senior officials. And I have supported Ronald Reagan in every election campaign he has waged. The senior officials at the Department of Justice are fully supportive of the president's policies and are doing a masterful job of effecting those policies within the constraints of law."

But what is absurd is the AG's logic. It is a non sequitur for Smith to imply that because he is a Reaganite, therefore the people he has chosen are also Reaganites. This doesn't follow at all.

Take, for example, Deputy Attorney General Edward Schmults, a man who worked for Presidents Nixon and Ford and who had no Reagan connection whatsoever before taking his present job. By most accounts, Schmults is the man who runs the Justice Department on a day-to-day basis.



Attorney
General Smith

Last July, in an article in *Business Week* magazine, Schmults said that potential candidates for the judiciary are being given no litmus tests on the

subjects of abortion, busing or voluntary school prayer. This despite the fact that the 1980 Republican Party platform specifically pledges the appointment of judges to all levels of the judiciary who favor traditional family values and who respect innocent human life. As a candidate and as president, Reagan strongly supported this platform.

In his talk to conservatives, the AG also attacked what he called the "mini-crusade" that has been launched against the proposed reform of the Criminal Code. Says Smith: These conservative critics are "exceedingly misguided." He adds: "They have relied upon mischaracterization, attenuated arguments, and even former provisions of the proposal that have been amended. Worst of all, they misconceive the significant strengthening law enforcement that would flow from enactment of the code now. After more than a decade of debate, we can no longer afford nit-picking that delays reform of the antiquated hodge-podge of federal criminal law."

Okay, so what exactly are the nits that conservatives are picking concerning the Criminal Code reform package backed by the administration? Well, the AG didn't say specifically and, as I have noted, he didn't stick around to be asked this question.

A recent article in the national conservative weekly *Human Events* says of the Criminal Code reform legislation: It contains "a number of mind-boggling problems seldom mentioned by the sponsors...In almost all respects, the changes sought would put a further liberal spin on a federal legal system already tilted to the left."

Example: The newest Senate version of Criminal Code reform would lower the maximum penalties for 75 out of 128 crimes. The House bills would lower penalties for 112 out of 128 crimes. The principal bills would establish a liberal sentencing commission consisting primarily of judges and defense attorneys which could

virtually prohibit law-and-order judges from giving sentences in excess of the prison terms actually being served under current law.

Human Events says that perhaps

**...Smith owes
conservatives answers
about several subjects.**

the most important provision of the Senate bill is the section that mandates a sentencing commission that "shall be guided by...in cases involving sentences to terms of imprisonment, the length of such terms actually served" under current law. This means judges would generally be precluded from giving sentences in excess of the 62-month national average for murder, the 52-month national average for rape and the 23-month national average for felony convictions.

Human Events reports that legal experts note the basic problem with the Criminal Code reform is its concept: The idea of rewriting all our federal criminal law in one sweeping statute, throwing out centuries of case law and creating, as one sponsor puts it, "a clean slate for the federal courts to write on."

"Knowing what we know about the present crop of judges," the conservative weekly observes, "this is hardly reassuring; a fitting project for the French Revolution, perhaps—but not for an American Congress."

As I say, from the point of view of his conservative audience, it's too bad Attorney General Smith didn't take any questions about the subjects he raised. However, from the AG's point of view, his decision was a wise one.

William French Smith's department may be out of control. But this is obviously not something he was going to allow happen to the conservative group to which he was speaking. **CD**

HUMAN EVENTS contacted the State Dept to find out what it might do in response



vent to press, three weeks after the cable delivered, and more than a month after story had been published, the letter still been sent. It hadn't even reached Car-

of the enormous vacuum at the federal-
tigious private group, calling itself the
for Free Elections in El Salvador,"
campaign last week to build public
these elections and to combat media
on.

oup, it is pointed out, although the
ion prepared to wage a campaign on
Administration's El Salvador policy,
ive even a strong helping hand from
use aides or key State Department
ig with Latin America. "The Ad-
ay want to save Central America
mmunist," says one observer, "but
nonstrate through concerted effort
through bold rhetoric—that it

Wending its way through the legislative labyrinth is one of the most explosive—but least-often noted—measures ever to come before the Congress.

The root of the trouble is that the people who have been "revising" the code have taken the opportunity to change it in a number of fundamental ways, affecting such topics as first-degree murder, criminal liability of businessmen, definitions of criminal intent, sentencing procedures, matters of internal security and countless other major items. In almost all respects, the changes sought would put a further liberal spin on a federal legal system already tilted to the left.

In the nature of the case, the bill and the controversy surrounding it touch every aspect of federal law, ranging from capital crimes such as kidnapping, treason and murder, to economic regulation, quotas, gun control, abortion and pornography. This has led to a profusion of charges and countercharges concerning almost every imaginable subject in the legal lexicon.

Another proposed revision, for instance, deals with corporate responsibility for the conduct of an agent, stipulating criminal liability by an organization if its employe does something wrong "intended" to benefit the organization, or fails to do something he is supposed to do. Given these changes and the recent tendency to sock it to businesses in product liability cases, a murder charge against the chairman of a company because of errors in the manufacturing process is not inconceivable.

"Any experienced lawyer passably aware of both criminal and product liability law must shudder at the invitation for abuse provided by the language in this section. For example, the 'extreme indifference' language, as interpreted by product liability case juries, is an extremely low standard; that is, almost any cor-

The national Speaker of the Insurance Laborers' Union of America, who is a member of the Rhode Island Democratic Party, said the party's platform should be to "bring back the jobs that have been lost to the state by the federal government." He said the party should also "bring back the jobs that have been lost to the state by the federal government."

porate conduct is found to manifest an 'extreme indifference.' "

In other words, should these provisions be adopted, the chairman of Ford Motor could be charged with first-degree murder for manufacturing the Pinto!

In similar vein, the bill would impose fines of up to \$1 million per count for regulatory offenses by businesses (up from the present range of \$1,000 to \$10,000). It also contains a provision which would allow a business which committed a regulatory violation two or more times to be declared a "racketeering syndicate" and make it eligible for confiscation by the government.

While tightening up on businessmen, the revision would relax the legal standards prevailing on other fronts. Present statutes which make it a crime to conspire to overthrow the United States government would be repealed. Penalties for rape, trafficking in pornography, and drug dealing would be substantially reduced—steps which have ignited protest from the Moral Majority and other conservative groups.

On the issue of abortion, Moral Majority has charged that the victim's compensation program in the proposed revision would provide free government-funded abortions to victims of consensual teen-age sexual acts who subsequently got pregnant. While staffers promoting the bill deny this, the National Right to Life Committee's attorney, James Bopp Jr., concurs, stating that "[F]unding for these abortions would be available under the definition of 'pecuniary loss' " contained in the bill.

In all, the newest Senate version of the Kennedy bill would lower the maximum penalties for 75 out of 128 crimes. The House bills would lower penalties for 112 out of 128 crimes. The principal bills would establish a liberal sentencing commission consisting primarily of judges and defense attorneys, which could virtually prohibit law-and-order judges from giving sentences in excess of the prison terms actually being served under current law.

Perhaps the most important provision in the bill is the section on page 749 of the Senate version which mandates that the sentencing "commission . . . shall be guided by . . . in cases involving sentences to terms of imprisonment, the length of such terms actually served" under current law.

This means judges would generally be precluded from giving sentences in excess of the 62-month national average for murder, the 52-month national average for rape, and the 23-month national average for all felony convictions.

Because the principal House bill still has a 50 per cent reduction for parole and a 10 per cent reduction for "good time," criminals could end up serving no more than 40 per cent of the time they are currently in prison. This would mean a murderer would be required to be released at the end of two years. Instead of correcting the modern trend toward leniency, the bill would institutionalize it.

The few anti-criminal provisions forced onto the bill by committee conservatives, notably pre-trial detention, are, according to a White House lawyer, so full of holes that they would be thrown out of court.

Also every version of the recodification thus far produced would retain or expand the lax standards against union violence laid down by the *Enmons* case. In that case, property destruction was held not to be a violation of federal law because its pur-

pose—to obtain a wage increase—was legitimate. Sen. Charles Grassley (R.-Iowa) offered an amendment in the Judiciary Committee which would hold union officials involved in murder, arson and other federal offenses to the same standards as other organizations. That amendment, which was defeated in committee by a 6-to-8 vote, will be reoffered on the Senate floor.

Many other such specific charges are also being debated. However, legal experts note the basic problem with the bill is in the very concept: The idea of rewriting all our federal criminal law in one sweeping statute, throwing out centuries of case law and creating, as one sponsor puts it, "a clean slate for the federal courts to write on." Knowing what we know about the present crop of judges, this is hardly reassuring; a fitting project for the French Revolution, perhaps—but not for an American Congress.

This method of revamping the criminal code had its origin in a commission established in 1968 and chaired by former California Gov. Edmund G. "Pat" Brown. The commission's recommendations drew heavily from the liberal provisions of the Model Penal Code, giving the bill a liberal cast from the beginning. It became considerably more liberal when, in 1979, as a condition of sponsorship, Sen. Kennedy retained staff aide Paul Summitt to redraft the bill to meet liberal objections. Assisting Summitt were Deputy Assistant Atty. Gen. Ron Gainer and Attorney Roger Pauley of the Carter Justice Department.

Ironically, when Kennedy lost the chairmanship of the Senate Judiciary Committee in 1981, many well-meaning conservative Republicans took up the cause.

In the Senate, Judiciary Committee Chairman Strom Thurmond (R.-S.C.) hired Summitt to continue working on the project. In the Justice Department, Atty. Gen. William French Smith chose to retain Carter Advisers Gainer and Pauley in the same jobs they held during the Carter Administration.

Thurmond, Kennedy, Sen. Joseph Biden (D.-Del.), Sen. Paul Laxalt (R.-Nev.), and Sen. Orrin Hatch (R.-Utah) entered into an agreement that no amendments would be supported by any of them that were not acceptable to all. This gave Kennedy a veto over conservative amendments to a bill which he had played a major part in writing.

Unable to succeed in adding anti-crime amendments, conservative Sens. John East (R.-N.C.) and Jeremiah Denton (R.-Ala.) took the extraordinary step of withdrawing their co-sponsorship from the bill. The bill now awaits Senate floor action, and is opposed by a cadre of at least eight conservative senators.

On the House side, a comparable process has taken place. Liberal New Jersey Congressman Peter Rodino (D.-N.J.) secured passage in 1980 of a liberal Kennedy-type bill.

In 1981, conservative Rep. Tom Kindness (R.-Ohio) introduced that same bill as his own proposal. Despite the fact that Kindness admitted to a group of 10 conservative organizations that he had not examined the bill carefully enough to be able to cite a single specific conservative provision, he expressed optimism that it could be improved, notwithstanding a liberal House Judiciary Committee, a liberal House Rules Committee which must approve the terms of floor debate, and a liberal Senate version.

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November 10, 1981

THE CRIMINAL CODE REFORM ACT OF 1981 **(S. 1630)**

INTRODUCTION

Congress has been working on a massive recodification of federal criminal laws for well over a decade. The most recent incarnation of this legislative effort is S. 1630, the Criminal Code Reform Act of 1981. Its stated purpose is the consolidation and simplification of all federal criminal laws in order "to establish justice" by "defining and providing notice of conduct that indefensibly threatens harm to those individual or public interests for which federal protection...is appropriate"; "prescribing appropriate sanctions for engaging in such conduct..."; and "establishing a system of expeditious procedures" to enforce the sanctions.

The Act was introduced by Senator Strom Thurmond (R-S.C.), Chairman of the Senate Committee on the Judiciary on September 17, 1981, and is co-sponsored by Senators Biden (D-Del.), Hatch (R-Utah), Kennedy (D-Mass.), Denton (R-Ala.), DeConcini (D-Ariz.), Simpson (R-Wy.), and Specter (R-Pa.).

S. 1630 is 425 pages long and goes far beyond a "recodification" of federal criminal law. A Heritage Foundation Issue Bulletin of July 1980 called S. 1630's predecessor in the 96th Congress, S. 1722, "[o]ne of the most potentially far-reaching -- and, ironically, perhaps one of the least generally understood -- legislative proposals of the past decade...."

The same statement is true of S. 1630. Despite its lengthy history and quantity of co-sponsors, the present reform bill contains all or most of the defects which infected its predecessors. It seeks not only to recodify, but to revise and extend all existing federal criminal law. As such, the Act attempts too much and suffers from major theoretical, practical and philosophical defects. No one, not even the drafters, seems to understand fully the impact of this proposed revision.

To evaluate this legislation is to begin with the question: does it accomplish its purpose? The answer is in part found by examining statements in last year's Judiciary Committee Report on the substantially similar bill from the last Congress, S. 1722.¹

The report of January 17, 1980, states that the purpose of criminal code reform is "to restructure Federal criminal law so as to better serve the ends of justice in their broadest sense -- justice to the individual and justice to society as a whole." The report also quotes remarks by Senator Kennedy published in the May 2, 1977, Congressional Record:

The Criminal Code Reform Act...constitutes the most important attempt in 200 years to reorganize and streamline the administration of Federal criminal justice. It is a major undertaking, of critical importance to our people. As I have repeatedly stated in recent months, I view this legislation as the cornerstone of the Federal Government's commitment to the critical problem of crime in America.

The need to "streamline" federal criminal laws by virtue of a wholesale overhaul is based upon the belief expressed in the Judiciary Committee report that present "statutory criminal law on the Federal level is often a hodgepodge of conflicting, contradictory, and imprecise laws with little relevance to each other or to the state of the criminal law as a whole." If the goal of the criminal law reform is to streamline the administration of criminal justice in order to better address the problem of crime in America, then the answer to whether S. 1630 will achieve these goals is open to serious question.

To the extent that the bill would eliminate genuinely archaic provisions of the present code or do away with needless duplication and conflicting or vague language, the legislation is laudable and little ground for substantive controversy exists. However, the bill in fact fails to clarify the vagaries of criminal law and, as previously noted, goes far beyond recodification and clarification. In addition, despite the widespread belief that violent crime is America's most critical law enforcement problem, the bill appears to ease standards and penalties for such offenses while simultaneously adopting a strong anti-business posture by significantly expanding the potential criminal liability of businesses.

The Act also would repeal provisions which make it illegal to conspire to overthrow the United States government and to teach or advocate overthrow. Meanwhile, penalties for crimes such as rape, importing pornographic materials, and drug trafficking would be reduced. Yet S. 1630 is much tougher on "white

¹ A Judiciary Committee Report has not yet been issued on S. 1630.

collar crime." It would allow corporations to be prosecuted for the acts of agents acting without the authority of the company as well as for offenses like "racketeering" based upon two or more technical violations of the securities laws. Business fines would be increased radically and a new civil action would require companies to notify customer/victims of alleged company offenses.

These are only a few of the many provisions which have been inadequately examined.

HISTORY OF CRIMINAL CODE REFORM

S. 1630's long history dates from 1952 when the American Law Institute began drafting a "Model Penal Code." Ten years later, the Council of the American Law Institute published the "Proposed Official Draft" of the Model Penal Code.

In 1966, Congress created the National Commission on Reform of Federal Criminal Laws. The Commission, whose chairman was former California Governor Edmund G. Brown, submitted its recommendations to Congress and the President in a Final Report on January 7, 1971. The Report was intended as a "work basis" for congressional choices. Extensive hearings by the Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee followed during 1971 and 1972. On January 4, 1973, Senators John McClellan, Roman Hruska, and Sam Ervin, all of whom served on the Brown Commission, introduced S. 1, the first in a series of omnibus bills to reform, revise, and recodify the Federal Criminal Code. Similar bills have been considered -- without passage -- in each succeeding Congress.

During the 95th Congress, the Criminal Code reform bill was known as S. 1437. It was reported favorably by the full Judiciary Committee on November 15, 1977, and was passed by the Senate on January 30, 1978. None of the various bills, however, has ever reached a vote on the floor of the House of Representatives.

The history of this legislation and the many changes that have been worked on successive versions are evident in the hearings and reports of the Senate Judiciary Committee and its Subcommittee on Criminal Laws and Procedures, a record that encompasses some 11,750 pages of testimony, statements, and exhibits in 18 volumes of hearings conducted during 1971, 1972, 1973, 1974, 1975, 1977, and 1979 under the overall title Reform of the Federal Criminal Laws. During the 93rd, 94th, 95th, and 96th Congresses, these hearings have been supplemented by detailed Committee reports of great length and comprehensiveness; the most recent report (Senate Report No. 96-553, Criminal Code Reform Act of 1979, January 17, 1980) runs 1,517 pages. (The hearings recently held on S. 1630 have not been transcribed.) The hearings contain detailed pro and con analyses by some of the nation's most eminent legal authorities, representatives of concerned special interest groups, and officials of the Department of Justice.

An examination of selected provisions of the bill underscores the deficiencies characteristic of the entire bill, the changes it will effect in existing law, and its anti-business bias.

WORDS AND DEFINITIONS

Perhaps the most fundamental deficiency in S. 1630 is that it replaces statutory language enhanced and illuminated by hundreds of years of common law development with new words and definitions subject to de novo interpretation by a modern federal judiciary which already is unable to keep pace with its caseload. Furthermore, the definitions in different sections relate to one another in such a way that cross reference is necessary to fully understand the bill. Chapter 3 of the bill, for instance, defines the culpable states of mind and the proof necessary for each. It identifies four states of mind: intentional, knowing, reckless, and negligent. It then applies these states of mind to three possible situations: conduct, an existing circumstance, and a result. The state of mind necessary to convict varies with each situation.

Not only is this type of codification confusing, it eliminates the traditional concepts of mens rea (guilty mind or criminal intent) and culpability developed over the last 400 years of Anglo-American jurisprudence. Chapter 3 alone could alter federal criminal law fundamentally as each federal district judge struggles to define the new terms in his own fashion. Numerous states of mind now exist which apply to particular offenses and which have been developed through case law as needed. Eliminating this body of law through "codification" may simplify the process, but it certainly will not improve criminal justice and may well be a step backward.

Under the bill, each federal criminal law has been codified and defined to be comprehensive and inclusive. These definitions have extended the reach of each federal violation; just how far and what conduct the new interpretation will reach will depend on innovative and aggressive prosecutors who may attempt to expand their authority. At this time, however, it is impossible to foresee all the areas of potential abuse.

Reviewing a few offenses covered by the bill exposes some of the difficulties which should be examined carefully by Congress.

INCHOATE OFFENSES: EXPANSIONS

S. 1630 contains three inchoate offenses: attempt, conspiracy, and solicitation. The proposed code expands federal jurisdiction in defining these crimes and in its procedural approach to these inchoate offenses.

Attempt

S. 1630 creates a federal "attempt" statute. Currently, no such federal statute exists; only specific attempts in relation to particular crimes are punishable. The most important conceptual problem with the "attempt" provision is that it mixes contradictory concepts. While requiring as a culpable state of mind that an individual "intentionally engages in conduct," it also provides that such conduct need only "in fact, constitute a substantial step toward the commission of the crime."² Section 302(a)(i) provides that conduct is "intentional" if it is a "conscious objective or desire to engage in the conduct." Section 303(a)(1), on the other hand, provides that "no state of mind must be proved with respect to a particular element of an offense of... specified...as existing or occurring 'in fact.'" These two sections contradict each other, thus badly confusing the definition of "attempt" as embodied in S. 1630.

This section also eliminates the common law defenses of legal impossibility and merger. Under common law, legal impossibility has constituted a defense to an attempt charge. Legal impossibility exists if the defendant did -- or could do -- all of the things he intended to do but nonetheless actually did not violate the law. Now, Section 1001(c)(1) provides that even if completion of the act would not violate the law, "if the crime could have been committed had the circumstances been as the actor believed them to be" then the actor is guilty of breaking the law. Thus, individuals can now be convicted of what might be termed "thought crime."

Similarly, Section 1001(c)(2) eliminates the merger defense by which an individual cannot be held legally accountable under common law for both attempting and completing a crime; the attempt was logically held to be merged into the greater offense. All of the above points raise the question of whether the attempt statute will streamline the administration of justice.³

Conspiracy

The language of the proposed conspiracy provision, Section 1002, could be interpreted in ways which greatly expand the

² "Substantial step" is not defined.

³ It bears noting that Section 1001(b), which provides an "affirmative defense" to attempt, contains a trap in connection with Section 1325 of the Act which makes it a crime to tamper with physical evidence. For instance, under the code, a manufacturer of a product could manufacture an item that turns out to violate some statute. While he lacked intent to violate the law, it has "in fact" occurred and he could be guilty of "attempt." Assuming he discovers the problem prior to shipping the product and proceeds to destroy it, he could be charged and convicted for tampering with physical evidence as that offense is described in the proposed Section 1325.

concept of conspiracy beyond its current meaning in common law. As written, this section could cover unilateral activity by a single co-conspirator.

Solicitation

Criminal solicitation is an entirely new concept. The definition of solicitation embodied in Section 1003 is extremely broad and subject to abuse. For example, under the common law, conduct preparatory to an inchoate offense is not criminal -- one cannot be guilty of attempted conspiracy. Now, it seems, two inchoate offenses, taken together, could constitute criminal conduct.

INCHOATE OFFENSES: LIMITATIONS -- NATIONAL SECURITY IMPLICATIONS

Unlike the provisions which expand federal jurisdiction, Section 1004 of S. 1630 dramatically changes the common law in a way that has grave implications for national security. The Act provides that there can be no attempt, conspiracy, or solicitation for a number of specified offenses. Almost all of these offenses relate to the national security interests of the government or to matters affecting public order and the administration of justice. For example, attempting, conspiring, or soliciting to obstruct military recruitment, to incite mutiny or desertion, or to fail to register for the draft, among other things, would not constitute criminal activity. Soliciting to defraud the government would also be legal. In short, unless a person participates directly in anti-government activities, he cannot be held responsible. Thus, these limitations invite pressure groups to provoke unlawful anti-government conduct without being held accountable for their actions.

ANTI-RACKETEERING AND RELATED PROVISIONS

A number of provisions in the bill related to anti-racketeering efforts constitute, when read together, a threat to business interests. Under Section 1802, a company could be convicted of racketeering based upon two technical securities violations simply because the definition of racketeering activity is so exhaustive. Moreover, a new civil damage action is created by Section 4101 for anyone injured in his personal business or property by "racketeering" activity. Relief includes treble damages as well as attorney and investigative fees.

Section 4011 authorizes the Attorney General to initiate a civil injunctive proceeding to restrain "racketeering" activities. Section 4013 provides the Attorney General the additional authority to serve a Civil Investigative Demand requiring any person to produce any material relevant to the civil proceeding under Section 4011. The Attorney General may therefore obtain discovery in a civil action which can be used in a subsequent criminal

action. The potential for abuse of such a powerful tool is awesome.

LIABILITY OF ORGANIZATION FOR CONDUCT OF AGENT

Section 402 of the proposed Act, which provides for criminal liability of an organization for the conduct of an agent, lacks a statutory predecessor and appears to expand the law of agency. The entire section is riddled with vague language subject to broad interpretation. It provides criminal liability for an offense if the agent's conduct:

occurs in the performance of matters within the scope of the agent's employment or authority and is intended by the agent to benefit the organization.

Three separate determinations, all subject to a broad reading, are required: is the act within the scope of employment; is it within the agent's authority; is it intended to benefit the corporation?

The latter two points are most troublesome. Under present law, a corporation may not be held criminally liable for the conduct of an agent acting with only "apparent" authority; for liability, the authority must be "actual" or "implied." This distinction is not made in Section 402. Hence, a company could specifically forbid certain conduct and, though not criminally culpable in any meaningful sense, still be branded and punished as a criminal.

Moreover, experience with the "intended to benefit the corporation" language teaches that it is subject to abuse. The conduct of an employee wholly motivated by self-aggrandizement may always be interpreted as benefiting the company in some way, even if the company is being cheated by the agent. While senior management may not have desired the dubious benefits which flow from illegal conduct, the agent will likely maintain during investigation and trial that his actions were intended to benefit the organization.

Finally, Section 402(b) holds a corporation criminally liable for the failure of its agent to perform a duty specifically imposed on an organization by law. Taking the broad range of regulatory and other duties imposed by law, together with other sections of S. 1630 which provide that reckless ignorance of circumstances is no bar to prosecution, the impact of this provision could be enormous.

In short, Section 402 is a boon to prosecutors who are politically ambitious, hostile to "big business," or hungry for the publicity emanating from indicting a corporation. The Department of Justice, moreover, has always favored expanding corporate criminal liability for the acts of agents and employees.

MURDER

The murder statute, Section 1601, significantly expands federal jurisdiction. The traditional common law terms "kill" or "killing" are replaced by the phrase "intentionally causes the death of." In addition, under the Act murder is committed if one "engages in conduct by which he causes the death of another person under circumstances manifesting an extreme indifference to human life." Any experienced lawyer passably aware of both criminal and product liability law must shudder at the invitation for abuse provided by the language in this section. For example, the "extreme indifference" language, as interpreted by product liability case juries, is an extremely low standard; that is, almost any corporate conduct is found to manifest an "extreme indifference." To extend this interpretation to criminal law hardly seems to serve the public interest.

SENTENCE OF FINE

The proposed Section 2201 dramatically increases criminal fines for corporations and organizations from their current level of between \$1,000 and \$10,000 to \$1,000,000 for a felony and \$100,000 for a misdemeanor. With the myriad of federal regulations, technical violations are increasingly likely. The new high fines would impose an enormous burden on the nation's business community.

Under present law, the number of times a particular statute has been violated is often at issue in cases of alleged regulatory violations. For instance, if a company mails 100,000 copies of an allegedly deceptive advertisement on a single day, is it guilty of one violation or 100,000 violations? Prosecutors usually claim the latter in order to increase their leverage and force a company to settlement. That power, together with the increased fine, makes it likely that companies will be forced to settle, rather than fight for their rights against the government.

ORDER OF NOTICE TO VICTIM

Section 2005 proposes to vest authority in the courts to require corporations to notify victims of a corporate offenses of the company's conviction. This section has no counterpart in current law and will constitute an open invitation to civil damage lawsuits even though the company will likely have paid a large criminal fine.

CONCLUSION

The above points are only a glimpse at the problems in S. 1630, a legislative package of monumental scope. The provisions examined, however, represent the types of changes made to existing

law as well as the types of interpretive problems likely to be caused by S. 1630. Whether the Act will accomplish its goal of streamlining criminal law to effect better and fairer criminal justice remains to be seen. What is certain, however, is that a measure as monumental as criminal code reform absolutely needs deliberate and careful consideration. Haste, in this case, will be the enemy of responsible legislation. This is particularly true because all federal legislation of the type and magnitude of S. 1630 has a "teaching" effect on the states. Many states can be expected to use S. 1630, if adopted, as model legislation and the bill's defects will ripple across the nation.

Prepared at the request of
The Heritage Foundation by
Nicholas E. Calio,
Litigation Counsel,
Washington Legal Foundation



*Annual
Code
Revision*
THE MORAL MAJORITY, INC.

P R E S S R E L E A S E

FOR MORE INFORMATION CONTACT:
LOUISE ROPOG 484-7511

FOR RELEASE: IMMEDIATELY

MORAL MAJORITY CITES MAJOR INCONSISTENCIES IN SENATE COMMITTEE VERSION OF CRIMINAL CODE REVISION.

DR. RON GODWIN, VICE PRESIDENT OF MORAL MAJORITY, TODAY SAID "THE SENATE JUDICIARY COMMITTEE AMENDMENTS TO S1630, THE REVISION OF THE CRIMINAL CODE, RECOGNIZED THE VALIDITY OF THE MORAL MAJORITY'S OBJECTION TO THE BILL. UNFORTUNATELY THE CHANGES MADE BY THE COMMITTEE ARE ONLY SLIGHTLY MORE THAN COSMETIC AND POINT OUT THE INCONSISTENCIES IN THE BILL." GODWIN EXPLAINED, "THE COMMITTEE VALIDATED OUR CHARGE THAT A 12 YEAR MAXIMUM PENALTY FOR RAPE IS SOFT ON CRIME BY INCREASING THE MAXIMUM TO 25 YEARS. THIS IS STILL LESS THAN THE MAXIMUM PENALTY IN THE CURRENT LAW."

"THE COMMITTEE HAS CONCEDED THAT THERE IS NO CONSISTENT LOGICAL RATIONALE TO THE SENTENCING STRUCTURE IN S1630 BECAUSE THEY DID NOT COMMESURATELY INCREASE THE PENALTIES FOR OTHER VIOLENT CRIMES WHEN THEY DOUBLED THE PENALTY FOR RAPE."

GODWIN CHARGED "THE COMMITTEE VERSION OF S1630 IS SOFT ON CRIME IN OTHER RESPECTS. IT ALSO CONTAINS ANOTHER MAJOR INCONSISTENCY. SECTION 1841 OF THE BILL, IN EFFECT, REPEALS MANY STATE CRIMES NOW ASSIMILATED INTO FEDERAL LAW AND REDUCES THE MAXIMUM PENALTY FOR ALL OTHER ASSIMILATED CRIMES TO 6 YEARS EVEN IF UNDER CURRENT LAW THE MAXIMUM IS LIFE IMPRISONMENT.

"WHILE ELIMINATING SOME CRIMES ENTIRELY, S1630 ADDS FOR THE FIRST TIME STATE ELECTION FELONIES NEVER BEFORE INCLUDED IN FEDERAL LAW AND INCREASES THE PENALTIES FOR SOME OF THESE.

"THE BOTTOM LINE," GODWIN CONCLUDED, "IS THAT THIS BILL IS STILL SOFT ON CRIME AND RIDDLED WITH INCONSISTENCY, IT IS NOT A RECODIFICATION - IT IS A MASSIVE LIBERALIZATION OF THE EXISTING LAW. WE WILL WORK TO DEFEAT S1630."

MORAL MAJORITY COMPARISON OF DC ACT 4-69, S.1630 AS INTRODUCED, AND
S.1630 AS AMENDED AND REPORTED FROM THE SENATE JUDICIARY COMMITTEE.

A. DC Act 4-69 reduces the maximum penalty for rape from life imprisonment to twenty years.

S.1630 reduces the maximum federal penalty for rape from death to twelve years. Its House counterpart, H.R.1647, reduces the maximum penalty from death to 13 1/3 years.

S.1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: CONCEDES, IN SECTION 1641, THAT THE MAXIMUM PENALTY FOR RAPE WAS TOO SOFT BY DOUBLING THE MAXIMUM PENALTY FROM 12 YEARS TO 25 YEARS. THIS IS STILL LESS THAN THE MAXIMUM OF LIFE IMPRISONMENT UNDER CURRENT LAW. BY DOUBLING THE ORIGINAL PENALTY FOR RAPE IN S.1630, THE COMMITTEE HAS CONCEDED THAT THERE IS NO CONSISTENT LOGICAL RATIONALE OR INTERRELATEDNESS WITH REGARD TO THE SENTENCING STRUCTURE IN S.1630 BECAUSE THE COMMITTEE DID NOT COMMENSURATELY INCREASE THE PENALTIES FOR OTHER VIOLENT CRIMES. THIS PROVES THAT S.1630 IS NOT A RECODIFICATION BUT INSTEAD IS A MASSIVE LIBERALIZATION OF THE CRIMINAL CODE. THIS LIBERAL PHILOSOPHY CONTINUES TO BE THE DRIVING FORCE BEHIND THE RUSH TO PASS S.1630.

B. DC Act 4-69 repeals DC laws prohibiting sodomy, bestiality, adultery, fornication, seduction, and seduction by a teacher.

S.1630 may be held to repeal bestiality, adultery, fornication, seduction, sodomy, seduction by a teacher, and incest for purposes of federal law if a court determines that "in light of other federal statutes relating to similar conduct," these laws were intended to be excluded from federal law. At the very least, S.1630 would--

reduce the maximum federal penalty for sodomy
from twenty years in the District of Columbia
to one year;

reduce the maximum federal penalty for bestiality
from twenty years in the District of Columbia to one
year;

reduce the maximum federal penalty for seduction
by a teacher in the District of Columbia from
ten years to one year; and

reduce the maximum federal penalty for seduction
in the District of Columbia from three years to
one year.

B. - continued

S.1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: CONCEDED IN SECTION 1861 THAT THE ORIGINAL MAXIMUM PENALTY FOR ALL ASSIMILATED CRIMES OF ONE YEAR WAS TOO SOFT BY INCREASING THE PENALTY TO SIX YEARS. HOWEVER, THE COMMITTEE DID NOT DELETE SECTION 1861 (a) (3) WHICH, BASED ON SENATE COMMITTEE REPORT 96-553, PAGE 910, IS INTENDED TO EXCLUDE MANY STATE LAWS NOW ASSIMILATED INTO FEDERAL LAW BY 18USC13. SPECIFICALLY, TO BE EXCLUDED ARE ALL CONSENSUAL SEX CRIMES SUCH AS SODOMY, FORNICATION, ADULTERY, SEDUCTION OF A STUDENT BY A TEACHER, ETC. EVEN THE COMMITTEE AMENDMENT TO INCREASE THE PENALTY TO SIX YEARS IN MANY CASES REDUCES THE MAXIMUM PENALTIES IN CURRENT LAW.

THIS SECTION CREATES A MAJOR INCONSISTENCY WITH SECTION 1513 WHICH FOR THE FIRST TIME ASSIMILATES ALL STATE ELECTION LAW FELONIES AND IN SOME CASES INCREASES THE MAXIMUM PENALTIES OVER THOSE IN CURRENT STATE LAW. SECTION 1861 AND 1513 TAKEN TOGETHER SHOW THAT THERE IS ABSOLUTELY NO CONSISTENT RATIONALE TO S.1630 BECAUSE IN SECTION 1861 YOU DO NOT ASSIMILATE STATE CRIMES NOW ASSIMILATED AND IN SECTION 1513 STATE LAWS NEVER BEFORE ARE ASSIMILATED AND THE STATE PENALTIES ARE INCREASED.

THE CURRENT LAW 18USC13 SHOULD BE RECODIFIED OR AT LEAST SUBSECTION (a) (3) SHOULD BE DELETED FROM SECTION 1861.

C. D.C Act 4-69 leaves the D.C. statutory rape provisions essentially untouched.

S.1630 reduces the maximum federal penalty for statutory rape from thirty years to six years. H.R. 1647, the House counterpart, would reduce that figure to 3 1/3 years. In both bills, the maximum penalty for a rapist under 21 is one year, and there is no penalty at all if the rapist is within three years (five years in the House bill) of the age of the victim.

S.1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: CONCEDED IN SECTION 1643 BY DELETING THE WORDS "AND WHO IN FACT IS AT LEAST THREE YEARS YOUNGER THAN THE ACTOR" THAT S1630 DID EFFECTIVELY REPEAL THE AGE OF CONSENT. THEY ALSO CONCEDED THAT A ONE YEAR MAXIMUM PENALTY FOR AN ACTOR BETWEEN 18 AND 21 YEARS WAS TOO SOFT AND NOW THE STANDARD PENALTY WILL APPLY TO 18 TO 21 YEAR OLD PERSONS. HOWEVER, THAT STANDARD PENALTY HAS BEEN REDUCED FROM A MAXIMUM OF 15 YEARS (30 FOR A SECOND CONVICTION) IN CURRENT LAW TO SIX YEARS AND FOR THOSE UNDER 18 THE MAXIMUM IS REDUCED TO ONE YEAR.

THE PENALTY REDUCTION AND MASSIVE PENALTY REDUCTION FOR CERTAIN TEEN-AGERS GIVE A SEMI-OFFICIAL SEAL OF APPROVAL TO TEENAGE SEX WHICH CAUSES BABIES HAVING BABIES, OR AS FORMER HEW SECRETARY CALIFANO HAS CALLED IT, "THE EPIDEMIC OF TEENAGE PREGNANCY IN AMERICA". THE PENALTY SHOULD REMAIN THE SAME FOR EVERYONE CONVICTED OF THIS CRIME. THERE ARE OTHER PROCEDURES IN S1630 TO DEAL WITH YOUTHFUL OFFENDERS.

D. D.C. ACT 4-69 does nothing relating to abortion.

S.1630 creates a new program which would, among other things, provide federally funded abortions to victims of consensual sexual acts.

S.1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: SLIGHTLY CHANGED THE LANGUAGE IN SECTION 4115 WHICH IS SAID TO NOT INCLUDE PAYMENTS FOR ABORTIONS. HOWEVER, THE COMMITTEE REFUSED TO ADOPT A FLAT OUT PROHIBITION (HYDE TYPE AMENDMENT) TO FUNDING ABORTION. THIS REFUSAL CONVINCES US THAT SECTION 4115 COULD BE INTERPRETED TO ALLOW ABORTION FUNDING AND ONE MEMBER OF THE JUDICIARY COMMITTEE STAFF HAVE IN MEETINGS CONCEDED THAT THIS INTERPRETATION IS A POSSIBILITY. WE CONTINUE TO INSIST ON A FLAT OUT PROHIBITION BE INCLUDED IN SECTION 4115.

E. D.C. Act 4-69 makes it slightly more difficult to prosecute prostitution.

H.R. 1647 repeals the federal prostitution statute. S.1630 would allow federal prosecution for prostitution only if the individual played a pivotal role in a prostitution business.

S1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: CONCEDES IN SECTION 1843 BY ADDING "ENGAGES IN PROSTITUTION" THAT S1630 AS INTRODUCED WOULD NOT ALLOW PROSECUTION OF INDIVIDUAL PROSTITUTES. HOWEVER, EVEN AS REPORTED, S1630 MAKES PROSECUTION MORE DIFFICULT BECAUSE THE MANN ACT IS REPEALED. S1630 ALSO REDUCES THE MAXIMUM PENALTY FOR INDIVIDUAL PROSTITUTION FROM FIVE YEARS TO ONE.

WE BELIEVE THE CURRENT LAW (MANN ACT) SHOULD BE RECODIFIED IN S1630.

F. D.C. Act 4-69 does nothing to remove federal court jurisdiction over pornography prosecutions.

S.1630 and H.R. 1647 would explicitly remove the jurisdiction of most federal courts to hear cases such as the Memphis Deep Throat prosecution.

S1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: ENTIRELY CONCEDES THE VALIDITY OF OUR OBJECTIONS BY STRIKING TWO SENTENCES FROM SECTION 3311. THIS IS ONE OF ONLY _____ OF OUR OBJECTIONS THAT WAS COMPLETELY ELIMINATED BY ACTION OF THE COMMITTEE.

G. D.C. Act 4-69 does nothing to loosen child pornography laws.

S.1630 reduces maximum penalties for sexually exploiting a child from ten years (fifteen years for the second offense) to six years (twelve years for the second offense). H.R. 1647 would further reduce maximum penalties to 6 2/3 years under any circumstances. In addition, the Senate bill would repeal the prohibition against explicit pictures of the pubic areas of little children.

SI630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: CONCEDES THAT SECTION 1844 DECREASED THE MAXIMUM PENALTY FOR CHILD PORNOGRAPHY BY INCREASING THE MAXIMUM PENALTY IN THE BILL TO 12 YEARS - 2 YEARS MORE THAN PRESENT LAW FOR A FIRST OFFENSE BUT 3 YEARS LESS THAN THE MAXIMUM FOR A SECOND OFFENSE UNDER CURRENT LAW. SI630 AS AMENDED REPEALS THE HIGHER PENALTY FOR A SECOND OFFENSE. WE BELIEVE THAT THE SECOND OFFENSE SHOULD BE PUNISHED AT A MAXIMUM OF EIGHTEEN YEARS (THE SAME RATIO AS IN CURRENT LAW).

H. D.C. Act 4-69 does nothing to loosen obscenity laws.

S.1630 rewrites federal pornography laws to --

- repeal prohibitions against mailing or transporting vile objects and substances;

- legalize pornography containing explicit representations of defecation;

- repeal explicit prohibitions against mailing or transporting abortifacients;

- scale back federal ability to restrict use of the mails to distribute pornography;

- limit the reach of federal law to exclude persons taking materials from the mails or from interstate and foreign commerce with the intent to distribute that material; and

- repeal the federal prohibition against mailing matter in wrappers or envelopes containing filthy language on the outside.

SI630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: NOW INCLUDES DEFECATION AS PROSCRIBED OBSCENITY. THE COMMITTEE DID NOT CHANGE SECTION 1842 TO PROHIBIT ANY OTHER OF OUR OBJECTIONS TO THE CHANGES IN THE OBSCENITY LAW. UNDER SI630 AS REPORTED FILTHY WORDS CAN BE ON THE OUTSIDE OF WRAPPERS AND ENVELOPES AND ABORTIFACIENTS ARE STILL ABLE TO BE MAILED. AT THE THE LEAST WE WANT A COMPLETE RECODIFICATION OF THE EXISTING ANTI-PORNOGRAPHY LAWS, 18USC 1461-1465.

I. D.C. Act 4-69 would do nothing to repeal the death penalty.

S.1630 and H.R. 1647 would both remove from the federal criminal code itself all references to the death penalty that currently exist.

S1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE:
EFFECTIVELY REPEALS THE DEATH PENALTY FOR ALL CRIMES, EVEN MURDER
OF THE PRESIDENT. WE BELIEVE ANY RECODIFICATION OF CRIMINAL LAW THAT
IGNORES THE QUESTION OF THE DEATH PENALTY IS FATALLY FLAWED. THE EX-
ISTING DEATH PENALTY SHOULD BE CARRIED FORWARD IN S1630 IN A CONSTI-
TUTIONALLY VALID MANNER.

*Criminal
Code*



THE MORAL MAJORITY, INC.

P R E S S R E L E A S E

Contact: Louise Ropog
202-484-7511

October 23, 1981

MORAL MAJORITY OPPOSES REWRITE OF THE CRIMINAL CODE.

DR. RONALD GODWIN, VICE PRESIDENT OF THE MORAL MAJORITY, INC. TODAY RELEASED THE TEXT OF A LETTER SENT TO CHAIRMAN STROM THURMOND (R-SC) OF THE SENATE JUDICIARY COMMITTEE SEVERELY CRITICISING S. 1630 THE RECODIFICATION OF THE U.S. CRIMINAL CODE.

DR. GODWIN'S LETTER URGED NO ACTION BY THE COMMITTEE AND ASKED THAT S. 1630 BE RECOMMITTED TO THE CRIMINAL LAW SUBCOMMITTEE FOR FURTHER HEARINGS ON THE OBJECTION RAISED BY THE MORAL MAJORITY.

THE TEXT OF THE LETTER AND ATTACHMENTS FOLLOW:

JERRY FALWELL, PRESIDENT

400 SOUTH CAPITOL STREET, SUITE 101, WASHINGTON, D.C. 20002 (202) 484-7511



THE MORAL MAJORITY, INC.

October 23, 1981

Hon. Strom Thurmond, Chairman
Committee on the Judiciary
United States Senate
209 Russell Senate Off. Bldg.
Washington, D.C. 20510

Dear Senator Thurmond,

I understand that the Judiciary Committee may take action on S. 1630 the Recodification of the Criminal Code. The Moral Majority is strongly opposed to favorable action by the Committee or Senate adoption of S. 1630 as presently written.

Recodification should mean that no substantive changes are made in existing law. S. 1630 however makes many changes in Title 18, the Criminal Code, which substantially reduce or in some cases eliminate entirely certain crimes or penalties therefor.

For example rape is a brutal vicious crime, S 1630 reduces the current maximum penalty from death or life imprisonment to twelve years maximum. Further this is a greater reduction in the maximum penalty for rape than the reduction from life imprisonment to 20 years maximum contained in D. C. Act 4-69 which you indicated you opposed by cosponsoring (on Sept. 11, 1981) S. Res. 207 to disapprove D.C. Act 4-69. As you said on September 14th in connection the reduced rape penalties in D.C. Act 4-69. "I am amazed that some have so little respect for women and so little concern for the seriousness of the crime of rape." The same applies even more so to the rape and statutory rape provisions of S 1630.

S. 1630 also reduces the maximum statutory rape penalties from 15 years to 6 years and to a maximum of one year if the defendant is under 21 years of age (even if the victim is 3 or 4 years old) and in addition no prosecution would lie if the actors were within three years of age of each other. This in effect repeals the existing "age of consent". Such a repeal of the age of consent was found so repugnant by the District of Columbia City Council that they removed it from D.C. Act 4-69 before submitting it to Congress.

There are many other provisions of S. 1630 that are highly objectionable to the Moral Majority many of our objections to S. 1630 are strikingly parallel to our objections to D.C. Act 4-69 which was disapproved by the House of Representatives by a vote of 281 to 119. I enclose a 3 page comparison of the objectionable parts of D.C. Act 4-69 and the similar provisions of S. 1630 which are equally objectionable.

JERRY FALWELL, PRESIDENT
499 SOUTH CAPITOL STREET, SUITE 101, WASHINGTON, D.C. 20003 (202) 484-7511

It is not only these provisions to which we object. We also oppose many other provisions of S. 1630. I also enclosed a list of 25 other provisions that we oppose. I stress this is not an all inclusive list.

For the record we feel that the two House Recodification bills H.R. 1647 and H.R. 4711 are much worse than S. 1630. This means that even if S. 1630 were changed to meet every objection we have raised the Senate version would still have to go to conference with what is likely to be a totally unacceptable House version and in the nature of conferences the resulting product will be in our judgement worse than current law.

Given the questions we have raised and your indicated opposition to D.C. Act 4-69 which contains similar provisions to parts of S. 1630, we strongly urge that the Judiciary committee not Act on S. 1630 and respectfully request that this measure be recommitted to the subcommittee on criminal Law for further hearings on the issues we have raised.

Sincerely,

Ronald S. Godwin

Dr. Ronald S. Godwin, Ph. D.
Vice President and
Chief Operations Officer

RSG:tv

Enclosures

cc All Senate and House
Judiciary Committee Members

D.C. Act 4-69 repeals D.C. laws prohibiting sodomy, bestiality, adultery, fornication, seduction, and seduction by a teacher.

S. 1630 may be held to repeal bestiality, adultery, fornication, seduction, sodomy, seduction by a teacher, and incest for purposes of federal law if a court determines that "in light of other federal statutes relating to similar conduct," these laws were intended to be excluded from federal law. At the very least, S. 1630 would--

reduce the maximum federal penalty for sodomy from twenty years in the District of Columbia to one year;

reduce the maximum federal penalty for bestiality from twenty years in the District of Columbia to one year;

reduce the maximum federal penalty for seduction by a teacher in the District of Columbia from ten years to one year; and

reduce the maximum federal penalty for seduction in the District of Columbia from three years to one year.

D.C. Act 4-69 reduces the maximum penalty for rape from life imprisonment to twenty years.

S. 1630 reduces the maximum federal penalty for rape from death to twelve years. Its House counterpart, H.R. 1647, reduces the maximum penalty from death to 13 1/3 years.

D.C. Act 4-69 leaves the D.C. statutory rape provisions essentially untouched.

S. 1630 reduces the maximum federal penalty for statutory rape from thirty years to six years. H.R. 1647, the House counterpart, would reduce that figure to 3 1/3 years. In both bills, the maximum penalty for a rapist under 21 is one year, and there is no penalty at all if the rapist is within three years (five years in the House bill) of the age of the victim.

D.C. Act 4-69 removes intraspousal immunity for rape, as demanded by the militant feminists.

S. 1630 and H.R. 1647 both remove intraspousal immunity for rape.

D.C. Act 4-69 makes it slightly more difficult to prosecute prostitution.

H.R. 1647 repeals the federal prostitution statute. S. 1630 would allow federal prosecution for prostitution only if the individual played a pivotal role in a prostitution business.

D.C. Act 4-69 does nothing relating to abortion.

S. 1630 creates a new program which would, among other things, provide federally funded abortions to victims of consensual sexual acts.

D.C. Act 4-69 does nothing to loosen obscenity laws.

S. 1630 rewrites federal pornography laws to--

- repeal prohibitions against mailing or transporting vile objects and substances;

- legalize pornography containing explicit representations of defecation;

- repeal explicit prohibitions against mailing or transporting abortifacients;

- scale back federal ability to restrict use of the mails to distribute pornography;

- limit the reach of federal law to exclude persons taking materials from the mails or from interstate and foreign commerce with the intent to distribute that material; and

- repeal the federal prohibition against mailing matter in wrappers or envelopes containing filthy language on the outside.

D.C. Act 4-69 does nothing to loosen child pornography laws.

S. 1630 reduces maximum penalties for sexually exploiting a child from ten years (fifteen years for the second offense) to six years (twelve years for the second offense). H.R. 1647 would further reduce maximum penalties to 6 2/3 years under any circumstances. In addition, the Senate bill would repeal the prohibition against explicit pictures of the public areas of little children.

D.C. Act 4-69 does nothing to remove federal court jurisdiction over pornography prosecutions.

S. 1630 and H.R. 1647 would explicitly remove the jurisdiction of most federal courts to hear cases such as the Memphis Deep Throat prosecution.

D.C. Act 4-69 would do nothing to reduce maximum criminal penalties for large drug traffickers.

S. 1630 would reduce the maximum penalty for a second-time dealer in schedule I or II narcotics from 55 years to twenty-five years. That figure would be further reduced to 13 1/3 years in the House bill.

D.C. Act 4-69 would do nothing to implement the more radical implications of the Equal Rights Amendment.

H.R. 1647, in the hands of a liberal court, could be used to close down hotels and dormitories for women, YWCAs and segregated women's athletic facilities, and even segregated restrooms.

D.C. Act 4-69 would do nothing to repeal the death penalty.

S. 1630 and H.R. 1647 would both remove from the federal criminal code itself all references to the death penalty that currently exist.

D.C. Act 4-69 would do nothing to reduce criminal sentences for most crimes.

H.R. 1647 would reduce maximum prison sentences for 112 out of 128 crimes.

S. 1630 would--

1. Create an abortion funding program in the procedural and technical amendments.

In cases of both rape and statutory rape, a victim could receive "all appropriate and reasonable expenses necessarily incurred for ambulance, hospital, surgical, nursing, dental, prosthetic, and other medical and related professional services related to physical and psychiatric care..." This is boilerplate pro-abortion language, and has been so held to be in Harris v. McRae, 100 S.Ct. 2671, 2684 (1980); Roe v. Casey, 464 F.Supp. 487, 795, 500, 502 (1978); and Preterm v. Dukakis, 591 F.2d 121, 126 (1st Cir. 1979). Proponents of S. 1630 have steadfastly refused to accept a Hyde amendment to this section, claiming that such an addition was not politically feasible.

2. Deny venue for anti-pornography trials such as the Memphis Deep Throat prosecution.

Deep Throat was specifically prosecuted under conspiracy to violate 18 U.S.C. 1461 and 1462. Responding to its distaste for this form of prosecution, the Levi Justice Department added a provision to the recodification which would have denied venue over this case to the Memphis court because a "substantial portion of the conspiracy" did not occur within Memphis. This provision is carried forward in section 3311 of S. 1630.

3. Rewrite the substantive federal anti-pornography laws to--

- (a) repeal prohibitions against mailing or transporting vile objects and substances;
- (b) legalize pornography containing explicit representations of defecation;
- (c) repeal explicit prohibitions against mailing or transporting abortifacients;
- (d) scale back federal ability to restrict use of the mails to distribute pornography;
- (e) limit the reach of federal law to exclude persons taking materials from the mails or from interstate and foreign commerce with the intent to distribute that material;
- (f) repeal the federal prohibition against mailing matter in wrappers or envelopes containing filthy language.

It is clear that the right to possess literature, substances (such as gasoline), and communications (such as threats against the life of the President) is not coextensive with the right to mail that literature, those substances, or those communications. This is not to say that the Miller language has never been used to justify dismissal of a prosecution which falls below both the threshold at which the government can prohibit possession of material and the threshold at which the government can prohibit mailing of material.

In addition, the S. 1630 standards are, on their face, more narrow than the Miller standards, seemingly allowing commercial distribution of representations of defecation, for example.

State statutes which have withstood constitutional test, such as the Texas statute, are infinitely preferable to the S. 1630 formulation because (1) they are broadened to cover articles and substances, rather than merely literature, and (2) they more closely track the broader Miller prohibitions against obscene literature.

18 U.S.C. 1463, prohibiting mailing materials in envelopes containing dirty language is almost certainly constitutional, although S. 1630 repeals it without replacing it with any comparable proscriptions.

4. Replace the Mann Act prohibitions against interstate transportation of prostitutes with nearly useless provisions requiring proof that the defendant is conducting a prostitution business.

Current law, which has been used by the District of Columbia to enforce its prostitution laws, prohibits knowingly transporting across state lines "any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose." (18 U.S.C. 2421) S. 1630 would require proof that the defendant played some important role in a "prostitution business."

5. Reduce maximum prison sentences for the most serious classes of opiate traffickers.

Currently, when a schedule I or II narcotic is involved in a case involving narcotics trafficking, the penalty is ordinarily up to fifteen years in prison. A special parole term of at least three years must also be imposed. If the offender has previously been convicted of any felonious violation of the Drug Abuse and Control Act of 1970 or other law of the United States relating to narcotic drugs, marijuana, or depressant or stimulant substances, and the conviction has become final, the maximum prison sentence is increased to thirty years plus a minimum special parole term of at least six years. In addition, current law contains "dangerous special drug offender" provisions, authorizing the imposition of up to twenty-five years' imprisonment.

Besides repealing the "special dangerous drug offender" provisions, S. 1630 would set maximum drug penalties of twenty-five years under any circumstances and, generally, twelve years for the first offense.

6. Increase penalties for businesses by, on the average, 99,999%.

Criminal fines are raised from the current level of between \$1000 and \$10,000 in most cases to a new level of \$1,000,000 applying only to organizations. Obviously, this increase is not intended to primarily address street crime (or even organized crime), but rather regulatory offenses violated by large corporations. This will fundamentally

expand the ability of the government to use criminal law to go after corporations themselves, as opposed to individual officers within corporations responsible for culpable conduct. Unfortunately, the stockholders and consumers who will suffer from this expanded use of criminal law against organizations will, by and large, not be the persons responsible for the criminal violation.

7. Lower the maximum penalty for rape from death or life imprisonment to twelve years maximum.

8. Remove the intraspousal immunity for rape.

S. 1630 thereby codifies the statute under which Rideout was prosecuted in Oregon. In that case, as a result of a rapprochement, the defendant was sleeping with his wife during or shortly after being prosecuted for the same conduct. When force is involved, an assault or battery charge is always available to deal with the conduct.

9. Reduce the maximum statutory rape penalties from fifteen years (thirty years for the second offense) to six years (one year if the defendant is under 21, even if the victim is only three or four years old).

In addition, no prosecution would lie at all if the actors were within three years of one another. This provision stirred so much controversy in connection with the D.C. sexual assault law that the City Council was forced to delete it.

Finally, it reverses common law by extricating the defendant if he "believed, and had substantial reason to believe" that the person of "of age," whether she was actually "of age" or not.

10. Reduce maximum penalties for sexually exploiting a child from ten years (fifteen years for the second offense) to six years (twelve years for the second offense).

In addition, it would reduce the coverage of prohibitions against abusing minors to allow pictures of their public areas or acts simulating intercourse, bestiality, sodomy, etc. Prosecution of the former could not occur at federal law. Prosecution of the latter would have to occur under the lower penalty of section 1842 (Disseminating Obscene Material).

11. Codify the Enmons case insulating unions from prosecution under the Hobbs Act.

The insertion of the word "wrongful" under section 1722(c)(2) specifically recodifies the language under which United States v. Enmons, 410 U.S. 396 (1973), was decided. That case held that the federal government could not prosecute under the Hobbs Act for an incident of union violence involving the destruction of a transformer.

12. Expand the jurisdiction of the controversial Bureau of Alcohol, Tobacco, and Firearms.

S. 1630 would extend to BATF inspectors, IRS inspectors, and officers or employees of the Office of Inspector General in the Department of Labor newly created authority to make arrests without warrants with respect to any offense, whether or not within their jurisdiction and whether or not the unlawful activity was discovered "in respect to the performance of (their) duty." It would also extend their authority to encompass enforcement of any type of order and "perform(ance of)" any other law enforcement duty that the Secretary ... may designate."

13. Extensively expand federal proscriptions against legitimate corporate anti-strike activities.

Current law prohibits transporting a strikebreaker across state lines. There have been no prosecutions under current law for strikebreaking, as 18 U.S.C. 1231 requires the strikebreaker to be employed for the purpose of obstructing peaceful pickets and then transported across a state line. The new provision contained in section 1506 of S. 1630 would allow the prosecution of any employee who interferes with a peaceful picket, even though the picket was unlawfully trespassing on company property, so long as the employee crossed a state line at some point. Hence, security guards and plant managers would fall within the provision's ambit.

14. Strip the criminal code itself of all death penalty provisions which currently exist.

It is a fallacy to believe that the Supreme Court has held the death penalty unconstitutional with respect to any offense but rape. Rather, the constitutional references to the death penalty currently contained in 18 U.S.C. require a procedural mechanism for constitutionally implementing them. By repealing the death penalty entirely with respect to every offense but one which is continued outside the criminal code (espionage), we are at least sending a strong symbolic message. In addition, we may be making it strategically and practically more difficult to bring the death penalty back.

15. Set the stage for massive new civil penalties to enforce regulatory offenses.

Under section 1802, General Motors could be convicted of racketeering if it committed two or more securities violations. Because section 4101 provides for a new private action involving treble damages against anyone who, by a preponderance of the evidence, can be shown to have engaged in racketeering, we will have effectively created a new treble damage remedy for securities offenses. Also, the Attorney General can bring a civil action to restrain racketeering under section 4011, and the decision of the court will be binding on the subsequent court trying the private treble damage action.

16. For the first time, create a general principle of federal criminal law that a businessman is held liable for his unintentional conduct, even if he believes that the facts are such that he is acting in accordance with the law.

Suffice it to say, this new provision has little to do with mugging, robbery, and burglary, which are seldom done unintentionally. Rather, it is designed to establish a new business responsibility for eliciting facts needed to insure that he is not inadvertently violating one of the myriad regulatory offenses.

17. Allow the Attorney General to seize all of a company's earnings from a product if he can prove, by a preponderance of the evidence, that the company has failed to make a statement in its advertising which is derogatory of its product but necessary to clarify the other advertising representations which it made.

There is no requirement under these provisions that the Attorney General demonstrate a factual misstatement of fact on the part of the company in connection with any of the statements requiring "clarification." In addition, any property used for the manufacture of the product or "possessed in the course of" the manufacture of the product could be seized.

18. Repeal a major portion of the Hatch Act, while only reinserting bits and pieces of the Act.

19. Overturn the Barlow case prohibiting warrantless inspections by OSHA in cases in which a plant guard blocks the entry of an inspector conducting an unlawful inspection.

So long as the inspector can prove he is acting in "good faith" (the "clean heart-empty head standard"), the guard can exercise no more resistance against the inspector than a murderer could exercise against a policeman who witnessed the murder.

20. Massively expand the jurisdiction of federal officers on Western lands.

21. Require a businessman to sequester his own records on behalf of a government agency, at a point long before any agency action had been brought against him, if he determined that the record would be useful to the agency if such a proceeding were ever brought.

22. Overturn the result in Friedman v. United States, 374 F.2d 363 (1967), thereby allowing prosecutions of businessmen for misleading oral statements to an agency with no regulatory or adjudicatory power over the area in which the misstatement is made.

23. Write the word "sex" into the criminal penalties for all of the federal civil rights laws, without specifying that "sex" does not mean "sexual preference" or creating a clear defense for a person operating a sexually segregated hotel or athletic facility or making an employment decision on the basis of sex which may or may not be in violation of Title VII of the Civil Rights Act.

24. Specifically create statutory remedies whereby a court could order corporations convicted of certain regulatory offenses to notify their customers to sue them.

25. Allow all of a company's assets to be forfeited to the federal government because it engaged in a payment to a foreign official which was not considered unlawful or inappropriate in the country in which it was made.

This specific enumeration of problems with S. 1630 is by no means a comprehensive list of known deficiencies. Furthermore, analyses conducted to date have only scratched the surface of problems which may be present in the procedural and technical sections of the bill. Note that this is where most of the problems with abortion funding, pornography, and the Hatch Act were found.

Finally, the bill's most serious deficiency is that it takes statutory language subject to eight hundred years of court decisions and replaces it with words which will be interpreted de novo by an extremely liberal federal bench. This author can and has identified some of the potential liberal abuses of the new language, but it is impossible for any one person to foresee even a significant portion of potential abuses.

October 23, 1981

Oct. 23, 1981

HR 1647 and S. 1630 and the Assimilative Crime Statute

Under the existing Assimilative Crime Statute (18 USC 13) if someone were arrested for Sodomy in the Longworth House Office Building (or any other Federal Building, Military Base, National Park or Forest, etc) the US Attorney may prosecute such a defendant in Federal court using the applicable state statute. In the Longworth Building example the D.C. Sodomy statutes provides a maximum sentence of 10 years. Upon conviction the defendant in Federal court could be sentenced for up to the same maximum as provided in the applicable state statute.

S 1630 changes the maximum Federal penalty in all cases under the Assimilative Crime Statute to one year maximum - even if the applicable state statute maximum penalty is life imprisonment.

Penalty Changes in S. 1630 and HR 1647

Of 128 penalty changes in S. 1630, recodification of the US Criminal Code, 75 are changes downward and 53 increased penalties.

In HR 1647 there are 112 downward penalty changes and only 16 increased penalties.

TESTIMONY BY DR. RONALD S. GODWIN, VICE PRESIDENT, MORAL
MAJORITY, INC., ON HR 1647, HR 4711 AND S 1630 - THE RECODIFI-
CATION OF THE FEDERAL CRIMINAL CODE BEFORE THE SUBCOMMITTEE ON
CRIMINAL JUSTICE, U.S. HOUSE OF REPRESENTATIVES, DECEMBER 14,
1981.

We are pleased to have the opportunity to testify this afternoon with respect to HR 1647 and HR 4711. In our view, these bills are important both for their specific provisions and for the general statement they inevitably make about the values our society desires to protect.

There may be no better measure of the moral values of a society than those laws establishing standards the violation of which give rise to possible fine, imprisonment, or death. In defining criminal acts and assigning penalties for those acts, therefore, the elected representatives of the people reflect, or should reflect, the values and traditions of the society. Both symbolically and in reality criminal laws serve as a marker and guidepost for those values our American society cherishes most highly.

After review of the bills, we are deeply troubled by HR 1647 and HR 4711. These bills, as presently drafted, would permit a wide range of obscene materials to be transmitted through the public mails, would inhibit local communities in the prosecution of the dissemination of pornography, would

substantially lessen currently prescribed penalties for rape and statutory rape, and would in several other areas alter existing law to lessen the public perception of the seriousness of crimes involving moral turpitude.

These bills do not recodify the law; instead they massively liberalize existing law. For example, HR 1647 reduces the maximum penalties for 112 crimes including huge reductions for violent crimes (such as rape) and increases penalties for only 16 crimes (mostly non-violent white collar crime.)

With such radical and extremely inconsistent changes in penalties, calling these bills recodifications literally tortures the English language. Just what consistent philosophy justifies these erratic penalty changes? Are you, across the board, reducing penalties or are you increasing them? A true recodification bill cannot properly do both. Obviously someone with far more than recodification on their mind is attempting to radically and selectively alter the penalties in these bills.

Our general objections to these bills are twofold: First, these bills eliminate words, phrases, and concepts that have been defined, refined, and developed over 800 years of British and American legal practice and replace them with new language and concepts that may be interpreted de novo by a liberal, activist federal judiciary. How much tradition, how many precedents, and how much accountability are you willing to sacrifice in the interest of neatness and order.

Secondly, we are experiencing a violent crime wave that is sweeping America, that is being felt by everyone. It is instructive to note that the New York Times took a poll during this year's New Jersey gubernatorial election which stated that 50% more blacks than whites believed that crimes was their chief concern. Bills that massively reduce penalties for crimes and that duck the issue of the death penalty give entirely the wrong signal to violent criminals; these bills, in effect say to the criminal element in society that their criminal activity is not all that bad - that somehow society will just have to cope with increased crime. We reject that attitude categorically; we call for a restoration of existing maximum penalties and insist that all existing death penalties be carried forward in a constitutionally valid manner.

Restoration of existing penalties is absolutely essential because of the ingrained system of plea bargaining that is endemic to our criminal justice system. By reducing maximum penalties, all one really does is reduce the starting point for plea bargaining. The current maximum penalty for rape is life imprisonment, but the average time served is only slightly more than four years. If you reduce the maximum sentence to 13 and one-third years as in HR 1647 or HR 4711, you will see brutal rapists getting out of prison in 3 years or less. This is particularly true because neither HR 1647 nor HR 4711 repeal the parole system.

Now I am aware that S 1630 supposedly repeals parole. However, it, in actuality, does not, as I will explain shortly.

Mr. Chairman, your bill and HR 1647 are even more devastating in their approach to sentencing. Your bill and HR 1647 don't even abolish parole, they just flatly reduce 112 maximum penalties. This reflects a fatalism toward violent crime and perversion to which we strongly object.

The American people are painfully aware that our crime-ridden streets are not the product of the law's inadequate scope, but rather the failure of judges to adequately enforce it through stiff penalties.

Ironically, all three bills would substantially decrease the length of time served by dangerous offenders.

All start with maximum penalties representing a massive decrease in permissible prison sentence. The House bills reduce maximum sentences for 112 out of 128 crime experiencing sentencing changes. The Senate bill decreases maximums in 75 out of 128 instances.

On top of that, the bills create bodies to promulgate sentencing guidelines. These bodies are composed primarily of judges and defense attorneys. The House's seven-man Committee on Sentencing is appointed wholly by the Judicial Conference, and four of its members are required to be judges. In the Senate bill, the Sentencing Commission consists of three judges chosen from a list provided to the President by the Judicial Conference, one defense attorney, and three others.

In both cases, a majority of members are from institutions which have traditionally favored lenient sentencing. In both cases, even a strong "law and order" President would be unable to appoint a majority of members in favor of tough sentencing.

The sentencing commissions would promulgate guidelines specifying recommended terms of imprisonment, and an anti-crime judge wishing to impose sentences exceeding those guidelines would be faced with the prisoner's right to appeal and overturn his sentence if an appeals court found it to be "unreasonable." The standards for unreasonableness are nowhere laid out in either piece of legislation, but it is fair to assume that sentence exceeding commission guidelines would become virtually non-existent.

What standards, other than a preordained judicial inclination toward leniency, would guide the sentencing commissions? On page 322 of the Senate bill, Subsection (1) states that the "Commission.....shall be guided by.....the length of such terms actually served (under current law)." In other words, despite the fact that the Senate bill abolishes parole, it mandates that the results of the existing lenient parole system be frozen into the sentencing system. (Given that the House bill does not abolish parole, if these same standards were used, the average sentence for a particular crime would automatically be reduced by two-thirds).

Currently, according to the Justice Department, the average time served nationwide for murder is 62 months. The average for rape is 52 months. These could become the maximum

under both the House and Senate bills. And presumably, in the case of crimes for which maximum penalties are substantially dropped, such as rape, the sentencing guidelines would be considerably below the time currently served.

As if this weren't bad enough, the Senate bill contains additional instructions for the sentencing commission. On page 321, it requires the Commission to "insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense." The best interpretation which can be put on this language is that only felons or second offender go to jail. Given that the word "felon" is not used, it may be that substantial number of felons will go free, as well. Among other factors deemed "inappropriate" as criteria for determining that imprisonment is proper are: the usefulness of a prison sentence in achieving rehabilitation; the defendant's lack of a job, any vocational skills, or any educational skills likely to assist him in obtaining a job; and the defendant's lack of family or community ties. Prison crowdedness, however, would also be required to be taken into account.

In short, both S. 1630, HR 1647 and HR 4711 would, as an element of their intrinsic structures, massively reduce prison terms and let dangerous felons loose on the streets.

So fundamental are the problems with these legislative proposals that I would regard improvement by amendment to be

virtually impossible. Even if your subcommittee were willing to make the hundreds of changes necessary to restore current law, what guarantee could you provide that the Senate, the House Judiciary Committee, the House Rules Committee, the full House, and the Conference Committee would concur? (It is particularly interesting to note that, on the Senate side, Senator Kennedy has refused to delete the provision freezing current prison sentence lengths in perpetuity.) We understood Senators Thurmond, Hatch, Laxalt, Biden, and Kennedy have entered into an agreement not to accept amendments not acceptable to all of the others. Thus, Kennedy's opposition to tougher sentencing takes on an even more ominous tone.

Senator Thurmond and Congressman Kindness are not the most liberal members of their respective Houses. If they were unable to establish strict sentences at a time in which they had the unilateral ability to make such determinations, how is it that we can expect to achieve strict sentences at a stage in the process which requires the approval of legislators considerably more lenient than they are?

We will now address several specific provisions in H.R. 1647 and H.R. 4711. It is important to note that many of the points and principles of H.R. 1647 and H.R. 4711 which we will address today, were present in S. 1630 - the Senate bill. We presented our views to members of the Senate and in many instances changes were made by the Senate Judiciary Committee in recognition of the validity of our objections. We submit that the Senate changes did not go far enough. We hope that

this subcommittee will not only recognize the validity of our criticisms as the Senate did, but will go even further toward assuring that the bills pending before it are made to reflect the true values of our American people.

With respect to H.R. 1647 and H.R. 4711, we have numerous questions and objections. These bills classify aggravated criminal sexual conduct (less euphemistically known as forceable rape) as a Class B felony punishable by a maximum prison sentence of 160 months, that is 13 1/3 years. Further sexual abuse of a minor (statutory rape) is punishable as a Class D felony (40 months) if the offender is 21 years or older and as a Class A misdemeanor (12 months) if the offender is under 21 years of age. In addition, an offender cannot be prosecuted for statutory rape if the offender is within five years of the age of the victim.

While we recognize that there are not many federal prosecutions for sexual offenses, we submit that the treatment of these sexual offenses by Congress will be watched by state governments for an indication of a proper approach toward overcoming the massive problems of violent sexual abuse and of seduction of minors. These two provisions, therefore, are most significant. These provisions would drastically reduce the penalties for these most serious offenses and would inevitably be interpreted as signalling a lessening of Congressional outrage against these offenses. In both these areas the Senate Judiciary Committee reflected at least some appreciation for the difficulties created by such a signal.

It doubled the originally proposed maximum penalty in S. 1630, changing the penalty from 12 years to 25 years. This is still less than the maximum of life imprisonment under current law, which we advocate, but at least it did reflect some appreciation of the symbolic and real importance of the statutory maximum penalty.

Our comment with respect to these penalties applies to many other sections of the bills. We think penalties for such acts as sexual exploitation of children and prohibited sexual conduct involving minors as well as many other sections must be increased to protect the public and to signal Congress' serious concern lest anyone conclude that the American society is moving toward acceptance of such abuses.

These reductions in penalties are even more significant in the House bills than in the Senate bill because the House bill continues to provide for parole. We strongly support Mr. Lungren's view that parole should be eliminated from the criminal code.

If the massively reduced sentences currently set forth in H.R. 1647 and H.R. 4711 are considered in light of continuation of parole, one can easily perceive a devastating impact upon the criminal justice system. The Moral Majority, therefore, advocates that the bills be changed to recodify existing penalties for rape, statutory rape and other offenses. We further most urgently submit that parole should be eliminated from the bills.

Before leaving these provisions, we further note that the bills distinguish between "aggravated sexual criminal conduct" and "criminal sexual conduct". Criminal sexual conduct is punishable as only a Class C felony (80 months). This sets up an excellent opportunity for crime bargaining with the lesser crime carrying half the penalty for what existing law calls rape. We state most emphatically that any recodification of the criminal code must, in our opinion, properly reflect the absolute seriousness of sexual violations. Also, we would ask that with respect to statutory rape the House follow the Senate lead and eliminate the requirement of an age differential by sentencing all defendants convicted of statutory rape on the same basis. There are other provisions in these bills for dealing with youthful offenders.

Another provision found in both bills which is particularly troublesome because of its real and symbolic importance is section 5906 relating to venue for offenses involving the transfer or exhibition of obscene material. Before discussing our specific objections to the venue provision we note that H.R. 4711 would entirely delete from the criminal code the offense for the transfer or exhibition of obscene material. Certainly we strongly oppose such a deletion. We cannot believe the Congress of the United States could possibly endorse such an action.

With respect to the venue provision the effect of section 5906 would be to preclude the use of time tested, law enforcement techniques and virtually to prohibit prosecution of the

of the actual pushers of obscene material in most states. Section 5906 would prevent prosecution for the distribution of obscene material if the transfer takes place at the instigation or request of an employee or agent of the government. In every day terms, this means that a law enforcement officer's purchase of obscene material could not form the sole basis of prosecution. Instead, the prosecution would have to find an individual willing to publicly testify that he had voluntarily purchased obscene material. Surely, the intention of such a provision can only be to interfere with the prosecution of the dissemination of obscenity. We cannot understand why the Congress would have any interest in taking such an action, and I am positive Congress would not endorse a similar bar to prosecution of drug pushers.

In addition, by limiting prosecutions for conspiracies to disseminate material to a district in which the conspiracy was entered or a substantial portion of the conspiracy occurred, these bills would permit persons to operate from a home base and distribute material throughout the United States without fear that such actions could be prosecuted in those states where the material debases the community. Although S. 1630 originally contained a limitation upon the prosecution of conspiracies, the Senate Judiciary Committee has now deleted that limitation from the bill. We think that deletion of both these limitations from both House bills is absolutely necessary.

We now turn to the substantive provision underlying the venue provision. Section 2743 of H.R. 1647 should be amended to provide a prohibition against distribution of obscene material in the strongest possible language. We advocate change of section 2743 to provide a stronger and more definitively stated prohibition.

We are also concerned that section 2761, the assimilative crimes provision, could result in the failure to bring forward into federal law, state provisions prohibiting such acts as bestiality, sodomy, adultery, fornication, seduction and seduction by a teacher. This possibility is very real because the House bill contains language identical to the Senate bill relative to assimilative crimes. The report last year on the Senate bill specifically stated that "The Committee notes in this regard its further resolve that sections 1641-1646, punishing various sex offenses, be viewed for purposes of this section as indicating the intent of Congress that no other type of sexual conduct in private between willing adults not closely related by blood be penally proscribed." Since the bills have identical language to the Senate bill we conclude they also have an intent identical to that stated in the Senate report.

Two additional specific points must be recognized. H.R. 1647 and H.R. 4711 apparently eliminate prostitution as a federal crime unless it involves an individual under 18 years of age. We again fail to understand why Congress would possibly consider eliminating prostitution as a federal offense. offense. Surely, the members of this subcommittee would not

offense. Surely, the members of this subcommittee would not endorse such a proposition if it were placed before the legislature of their respective states and such an action is not warranted at the federal level.

Both House bills delete from existing law the crime of burglary and replace that crime with section 2511 "Criminal entry" which requires intent to commit "(1) a Federal felony, if federal jurisdiction existed; or (2) theft." The burglary section of S. 1630 requires only intent to "engage in conduct constituting a federal, state or local crime." Therefore, fewer individuals would be prosecutable under the House substitute for the crime of burglary.

Section 2511 of the two House bills carries a maximum penalty of a Class C felony.

We see no consistent rationale or logic to punish this crime at the same maximum sentence as section 2722(a)(1) of the two House bills which make it an offense to transport or possess a firearm or ammunition with intent to commit a federal or state felony.

The firearms crime seems to be much more serious than "Criminal entry" so if there were a logical scheme to the sentencing structure the House bills should punish the firearms offense more severely - but they don't.

Now for the record let me address nine major objections to the recodification bills in the context of D.C. Act 4-69 which was disapproved by the House of Representatives on October 1, 1981. Mr. Chairman, I request permission that the next five pages of my prepared testimony be placed in the record at this point.

A. DC Act 4-69 reduces the maximum penalty for rape from life imprisonment to twenty years.

S.1630 reduces the maximum federal penalty for rape from death to twelve years. Its House counterpart, H.R.1647, reduces the maximum penalty from death to 13 1/3 years.

S.1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: CONCEDES, IN SECTION 1641, THAT THE MAXIMUM PENALTY FOR RAPE WAS TOO SOFT BY DOUBLING THE MAXIMUM PENALTY FROM 12 YEARS TO 25 YEARS. THIS IS STILL LESS THAN THE MAXIMUM OF LIFE IMPRISONMENT UNDER CURRENT LAW. BY DOUBLING THE ORIGINAL PENALTY FOR RAPE IN S.1630, THE COMMITTEE HAS CONCEDED THAT THERE IS NO CONSISTENT LOGICAL RATIONALE OR INTERRELATEDNESS WITH REGARD TO THE SENTENCING STRUCTURE IN S.1630 BECAUSE THE COMMITTEE DID NOT COMMENSURATELY INCREASE THE PENALTIES FOR OTHER VIOLENT CRIMES. THIS PROVES THAT S.1630 IS NOT A RECODIFICATION BUT INSTEAD IS A MASSIVE LIBERALIZATION OF THE CRIMINAL CODE. THIS LIBERAL PHILOSOPHY CONTINUES TO BE THE DRIVING FORCE BEHIND THE RUSH TO PASS S.1630.

B. DC Act 4-69 repeals DC laws prohibiting sodomy, bestiality, adultery, fornication, seduction, and seduction by a teacher.

S.1630 may be held to repeal bestiality, adultery, fornication, seduction, sodomy, seduction by a teacher, and incest for purposes of federal law if a court determines that "in light of other federal statutes relating to similar conduct," these laws were intended to be excluded from federal law. At the very least, S.1630 would--

reduce the maximum federal penalty for sodomy
from twenty years in the District of Columbia
to one year;

reduce the maximum federal penalty for bestiality
from twenty years in the District of Columbia to one
year;

reduce the maximum federal penalty for seduction
by a teacher in the District of Columbia from
ten years to one year; and

reduce the maximum federal penalty for seduction
in the District of Columbia from three years to
one year.

B. - continued

S.1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: CONCEDED IN SECTION 1861 THAT THE ORIGINAL MAXIMUM PENALTY FOR ALL ASSIMILATED CRIMES OF ONE YEAR WAS TOO SOFT BY INCREASING THE PENALTY TO SIX YEARS. HOWEVER, THE COMMITTEE DID NOT DELETE SECTION 1861 (a) (3) WHICH, BASED ON SENATE COMMITTEE REPORT 96-553, PAGE 910, IS INTENDED TO EXCLUDE MANY STATE LAWS NOW ASSIMILATED INTO FEDERAL LAW BY 18USC13. SPECIFICALLY, TO BE EXCLUDED ARE ALL CONSENSUAL SEX CRIMES SUCH AS SODOMY, FORNICATION, ADULTERY, SEDUCTION OF A STUDENT BY A TEACHER, ETC. EVEN THE COMMITTEE AMENDMENT TO INCREASE THE PENALTY TO SIX YEARS IN MANY CASES REDUCES THE MAXIMUM PENALTIES IN CURRENT LAW.

THIS SECTION CREATES A MAJOR INCONSISTENCY WITH SECTION 1513 WHICH FOR THE FIRST TIME ASSIMILATES ALL STATE ELECTION LAW FELONIES AND IN SOME CASES INCREASES THE MAXIMUM PENALTIES OVER THOSE IN CURRENT STATE LAW. SECTION 1861 AND 1513 TAKEN TOGETHER SHOW THAT THERE IS ABSOLUTELY NO CONSISTENT RATIONALE TO S.1630 BECAUSE IN SECTION 1861 YOU DO NOT ASSIMILATE STATE CRIMES NOW ASSIMILATED AND IN SECTION 1513 STATE LAWS NEVER BEFORE ARE ASSIMILATED AND THE STATE PENALTIES ARE INCREASED.

THE CURRENT LAW 18USC13 SHOULD BE RECODIFIED OR AT LEAST SUBSECTION (a) (3) SHOULD BE DELETED FROM SECTION 1861.

C. D.C Act 4-69 leaves the D.C. statutory rape provisions essentially untouched.

S.1630 reduces the maximum federal penalty for statutory rape from thirty years to six years. H.R. 1647, the House counterpart, would reduce that figure to 3 1/3 years. In both bills, the maximum penalty for a rapist under 21 is one year, and there is no penalty at all if the rapist is within three years (five years in the House bill) of the age of the victim.

S.1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: CONCEDED IN SECTION 1643 BY DELETING THE WORDS "AND WHO IN FACT IS AT LEAST THREE YEARS YOUNGER THAN THE ACTOR" THAT S1630 DID EFFECTIVELY REPEAL THE AGE OF CONSENT. THEY ALSO CONCEDED THAT A ONE YEAR MAXIMUM PENALTY FOR AN ACTOR BETWEEN 18 AND 21 YEARS WAS TOO SOFT AND NOW THE STANDARD PENALTY WILL APPLY TO 18 TO 21 YEAR OLD PERSONS. HOWEVER, THAT STANDARD PENALTY HAS BEEN REDUCED FROM A MAXIMUM OF 15 YEARS (30 FOR A SECOND CONVICTION) IN CURRENT LAW TO SIX YEARS AND FOR THOSE UNDER 18 THE MAXIMUM IS REDUCED TO ONE YEAR.

THE PENALTY REDUCTION AND MASSIVE PENALTY REDUCTION FOR CERTAIN TEENAGERS GIVE A SEMI-OFFICIAL SEAL OF APPROVAL TO TEENAGE SEX WHICH CAUSES BABIES HAVING BABIES, OR AS FORMER HEW SECRETARY CALIFANO HAS CALLED IT, "THE EPIDEMIC OF TEENAGE PREGNANCY IN AMERICA". THE PENALTY SHOULD REMAIN THE SAME FOR EVERYONE CONVICTED OF THIS CRIME. THERE ARE OTHER PROCEDURES IN S1630 TO DEAL WITH YOUTHFUL OFFENDERS.

D. D.C. ACT 4-69 does nothing relating to abortion.

S.1630 creates a new program which would, among other things, provide federally funded abortions to victims of consensual sexual acts.

S.1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: SLIGHTLY CHANGED THE LANGUAGE IN SECTION 4115 WHICH IS SAID TO NOT INCLUDE PAYMENTS FOR ABORTIONS. HOWEVER, THE COMMITTEE REFUSED TO ADOPT A FLAT OUT PROHIBITION (HYDE TYPE AMENDMENT) TO FUNDING ABORTION. THIS REFUSAL CONVINCES US THAT SECTION 4115 COULD BE INTERPRETED TO ALLOW ABORTION FUNDING AND ONE MEMBER OF THE JUDICIARY COMMITTEE STAFF HAVE IN MEETINGS CONCEDED THAT THIS INTERPRETATION IS A POSSIBILITY. WE CONTINUE TO INSIST ON A FLAT OUT PROHIBITION BE INCLUDED IN SECTION 4115.

F. D.C. Act 4-69 makes it slightly more difficult to prosecute prostitution.

H.R. 1647 repeals the federal prostitution statute. S.1630 would allow federal prosecution for prostitution only if the individual played a pivotal role in a prostitution business.

S1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: CONCEDES IN SECTION 1843 BY ADDING "ENGAGES IN PROSTITUTION" THAT S1630 AS INTRODUCED WOULD NOT ALLOW PROSECUTION OF INDIVIDUAL PROSTITUTES. HOWEVER, EVEN AS REPORTED, S1630 MAKES PROSECUTION MORE DIFFICULT BECAUSE THE MANN ACT IS REPEALED. S1630 ALSO REDUCES THE MAXIMUM PENALTY FOR INDIVIDUAL PROSTITUTION FROM FIVE YEARS TO ONE.

WE BELIEVE THE CURRENT LAW (MANN ACT) SHOULD BE RECODIFIED IN S1630.

F. D.C. Act 4-69 does nothing to remove federal court jurisdiction over pornography prosecutions.

S.1630 and H.R. 1647 would explicitly remove the jurisdiction of most federal courts to hear cases such as the Memphis Deep Throat prosecution.

S1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: ENTIRELY CONCEDES THE VALIDITY OF OUR OBJECTIONS BY STRIKING TWO SENTENCES FROM SECTION 3311. THIS IS ONE OF ONLY _____ OF OUR OBJECTIONS THAT WAS COMPLETELY ELIMINATED BY ACTION OF THE COMMITTEE.

G. D.C. Act 4-69 does nothing to loosen child pornography laws.

S.1630 reduces maximum penalties for sexually exploiting a child from ten years (fifteen years for the second offense) to six years (twelve years for the second offense). H.R. 1647 would further reduce maximum penalties to 6 2/3 years under any circumstances. In addition, the Senate bill would repeal the prohibition against explicit pictures of the pubic areas of little children.

S1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: CONCEDES THAT SECTION 1844 DECREASED THE MAXIMUM PENALTY FOR CHILD PORNOGRAPHY BY INCREASING THE MAXIMUM PENALTY IN THE BILL TO 12 YEARS - 2 YEARS MORE THAN PRESENT LAW FOR A FIRST OFFENSE BUT 3 YEARS LESS THAN THE MAXIMUM FOR A SECOND OFFENSE UNDER CURRENT LAW. S1630 AS AMENDED REPEALS THE HIGHER PENALTY FOR A SECOND OFFENSE. WE BELIEVE THAT THE SECOND OFFENSE SHOULD BE PUNISHED AT A MAXIMUM OF EIGHTEEN YEARS (THE SAME RATIO AS IN CURRENT LAW).

H. D.C. Act 4-69 does nothing to loosen obscenity laws.

S.1630 rewrites federal pornography laws to --

- repeal prohibitions against mailing or transporting vile objects and substances;

- legalize pornography containing explicit representations of defecation;

- repeal explicit prohibitions against mailing or transporting abortifacients;

- scale back federal ability to restrict use of the mails to distribute pornography;

- limit the reach of federal law to exclude persons taking materials from the mails or from interstate and foreign commerce with the intent to distribute that material; and

- repeal the federal prohibition against mailing matter in wrappers or envelopes containing filthy language on the outside.

S1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE: NOW INCLUDES DEFECACTION AS PROSCRIBED OBSCENITY. THE COMMITTEE DID NOT CHANGE SECTION 1842 TO PROHIBIT ANY OTHER OF OUR OBJECTIONS TO THE CHANGES IN THE OBSCENITY LAW. UNDER S1630 AS REPORTED FILTHY WORDS CAN BE ON THE OUTSIDE OF WRAPPERS AND ENVELOPES AND ABORTIFACIENTS ARE STILL ABLE TO BE MAILED. AT THE THE LEAST WE WANT A COMPLETE RECODIFICATION OF THE EXISTING ANTI-PORNOGRAPHY LAWS, 18USC 1461-1465.

I. D.C. Act 4-69 would do nothing to repeal the death penalty.

S.1630 and H.R. 1647 would both remove from the federal criminal code itself all references to the death penalty that currently exist.

S1630 AS AMENDED AND REPORTED BY THE SENATE JUDICIARY COMMITTEE:
EFFECTIVELY REPEALS THE DEATH PENALTY FOR ALL CRIMES, EVEN MURDER
OF THE PRESIDENT. WE BELIEVE ANY RECODIFICATION OF CRIMINAL LAW THAT
IGNORES THE QUESTION OF THE DEATH PENALTY IS FATALLY FLAWED. THE EX-
ISTING DEATH PENALTY SHOULD BE CARRIED FORWARD IN S1630 IN A CONSTI-
TUTIONALLY VALID MANNER.

In closing, may I respectfully point out to the committee that the leadership of the Moral Majority is completely aware of the complexity of these pieces of legislation, and we are fully aware that men of sincere purpose and good will have traditionally argued over points of law in civilized societies. However, we firmly believe that the HR 1647 and HR 4711 would impose on the nation much of what the House of Representatives refused to allow to be imposed on the District of Columbia when it defeated D.C. Act 4-69.

By promoting the passage of a measure that would drastically reduce the penalties for a number of sex-related crimes, Moral Majority believes that the House of Representatives would not only impose the provisions of the D.C. Act 4-69 measure on the country but would, in some cases, go far beyond that proposal to drastically reduce penalties in prostitution and child pornography cases.

The defeated Washington, D. C. measure would also have repealed laws against sodomy, bestiality, adultery, fornication, and seduction of a student by a teacher.

As noted, all three recodification bills may be held to do the same thing. Some of the worst, most objectionable, parts of D.C. Act 4-69 would be foisted on the entire country. I would note that four out of the seven members of this subcommittee voted to disapprove D.C. Ac 4-69 (House Roll Call 232 page 6762 October 1, 1981 Congressional Record).

At the very least, these three bills would sharply reduce federal penalties for such acts within the nation's capital which already has a horrendous crime rate problem. Even D.C. Act 4-69 failed to address abortion, but S 1630 would, among other things, provide for federal funding of abortions to victims of crime, such as rape and statutory rape. Other outrages in these bills include reductions in the maximum penalty for child pornography cases involving second offenders, and they liberally rewrite federal pornography laws to repeal prohibitions against mailing or transporting vile objects and substances. It would repeal explicitly prohibitions against mailing or transporting devices used to cause abortions (18USC1461), and it would scale back the ability of the federal government to restrict the use of the mails to distribute pornography and repeal the federal prohibition against mailing matter in wrappers or envelopes containing filthy language on the outside.

Finally, I would ask this committee, where is the public outcry in support of these radical revisions? If there is such widespread support why did five Senators on the Judiciary Committee - more than ever before - vote against S 1630? This is not a bill whose time has come, rather it's time has come and gone. Where are the teeming thousands of citizens who demand such a sweeping verbalization of the criminal code?

When one listens, he hears a thunderous silence. On the other hand, numerous citizen, business, moral, and religious groups, manufacturing associations, and other organizations are outraged by what is being done in the name of tidiness.

The sobering truth is that a lot of good Congressmen and Senators will have to run for re-election having voted for a bill that is soft on crime, that invites judicial activism, and that shows almost total disregard for traditional moral and social standards. And they will have to do this, not because the public has demanded such changes, but because certain Congressmen and Senators have turned these pieces of legislation into annual projects.

Gentlemen, these bill are political time bombs designed to be activated during this session of Congress and set to go off when you run for re-election.

I suggest that you check your mailboxes and assess for yourselves whether or not there is a strong demand for these radical revisions. Obviously, there was not such a demand for the previous eleven years and the nation muddled by somehow with an untidy Criminal Code. Shouldn't you ask yourself then why this Congress should be the one to set such a political time bomb ticking?

I strongly urge this subcommittee, notwithstanding the instructions of the full committee, to not report any of the pending recodification bills or if you must make a report, I urge you to report HR 1647 and HR 4711 with the recommendation that they not be enacted.