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Senate Democratic Conference

Mike Mansfield 1903-2001

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January 28, 1976

CONGRESSIONAL RECORD—SENATE

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and law and order, and so little effective action, that the public is becoming convinced that it cannot be done to restore citizen safety from crime. Cyndicism prevails, and any suggestion that legislation, whether federal or state, might promote ju­stice and reduce crime is likely to be greeted with derision.

In the case of members of the bar, how­ever, such a negative attitude is unjustified. The profession is well aware of the impor­tance and efficacy of state adoption of the Model Penal Code. It should be equally supportive of revision of Title 18 of the United States Code, the massive compila­tion of all federal legislation dealing with crime. No excuse should be accepted for a lawyer's ignorance of the compelling neces­sitv for an immediate rewriting of that wholly outdated and ineffectual compilation of criminal law.

Many provisions within the title as it now stands are so unreasonable as to offend all sense of justice. There is gross disparity among the maximum sentences permitted for similar crimes; the provisions for proba­tion are inadequate; the treatment of the problem of vagrancy is thoughtless and unplanned; and the provisions governing infractions and minor offenses are chaotic as the result.

Related offenses are not gathered together in Title 18 alone but are scattered through­out fifty titles. Senator Roman Hruska (R. Neb.) has pointed out that there are in excess of seventy different provisions for dealing with theft, and for the requisite state of mind for criminal offenses, seventy-eight different terms are employed. It is to be hoped that such im­precision of language increases the chances of the guilty going free and the innocent being convicted of offenses.

By revising the criminal code, we will gain an infinitely more effective system of combating crime and create an example for the states which should spur them toward liberal revision. Federal crime is only the tip of the iceberg, but until it is dealt with on an enlightened and effective basis, it will do much to create much adv­ancement on the part of the states.

Unfortunately, a combination of circum­stances has caused a sharp division of opin­ion on the pending federal revision legisla­tion which may hinder or even block the adoption of a new federal code. The follow­ing simplified explanation of the back­ground of the debate in the House and Senate presents the basic controversy which must be resolved if this much-needed legislation is to be enacted as the result of passage.

THE BROWN REPORT

Both Senate bill S. 1 and H.R. 333 grew out of a Study Draft of a revised Title 18 prepared by the National Commission on Reform of Federal Criminal Laws, popular­ly known as the Brown Report after the commission chairman, former California Governor Edmund G. (Pat) Brown. That report, released in 1971, was the product of four years of study by the congressionally­established Commission which had received the advice of many of the recognized crimi­nal law experts of the country.

The Commission’s recommendations were endorsed by the National Political and Profes­sional opinion. By stating some alter­natives in areas of major controversy (such as drugs; gun control; punishment and wire tapping) and leaving resolution of such problems to Congress, the Commission was able to prepare a report. While the opinion among its members differed sharply with respect to several out­standing issues, on ninety per cent of the provisions there was general agreement.

In the House, H.R. 333 was first intro­duced in 1973 by Representatives Kasten­meter (D. Wis.) and Edwards (D. Cal.). It follows the Brown Report closely and incor­porates the preference of a large majority of the members of the Commission on how the controversial issues should be resolved.

The strength of H.R. 333 rests in the fact that every section of Title 18 had been carefully examined by the Commission, brought into harmony and revised to conform to the best thinking of the day. Specifi­cally, the Commission followed closely the recom­mendations of the American Law Institute, as contained in the Model Penal Code, and the American Bar Association Standards Relating to the Administra­tion of Criminal Justice.

The heart of the Brown Report, preserved in H.R. 333, is the creation of a sentencing structure which specifies maxima for certain classified grades of crimes and to which each specific federal offense is tied. Every offense involving a maximum would have a mandatory parole component, reduc­ing to that extent the period during which the prisoner could actually be detained under the sentence. The Commission took the position that the upper ranges within the ordi­nary maximum were to be reserved for the especially dangerous offenders. It also decline­d to insert in that sentencing, prison som­what to exert to the judge was satisfied that it was a more satisfactory disposition than probation.

H.R. 333, among its other key provisions, proposed removal of federal offenses where “exceptional features provide justification” and requires the court to set forth in detail its reasoning in a post­sentence review of sentences; stiffens the govern­ment’s burden of proof in conspiracy cases; in the inordinate delays in the system, few­ ester for drug offenses and rules out incor­poration of petty marijuana offenses; if the murder of a police officer, the production, manufacture and possession of handguns except for military and police use; and provides curtailment of federal involvement in situations having “no substantial federal interest.”

Under the existing American penal sys­tem, increases in violent crime and recidivism have become a part of our way of life. The Brown Report accepted the thesis of modern penologists that constant increase in the severity of punish­ment is not an intelligent way to attain a re­duction of crime.

THE SENATE BILL

In the Senate, Senator McClellan (D. Ark.) presented a Senate Bill (S. 1) prepared by the National Commission on Reform of the Criminal Laws. Again, it should be observed that there do exist serious defects in the bill as it is now written. It is the purpose of the legislative process to remedy these de­fects and if reform of the criminal laws is to occur during this Congress, those defects must be remedied.

Mr. President, these materials are well worth reading on this issue and I ask unanimous consent, therefore, that the complete article by Mr. Voorhees, to­gether with the letter from former Gov. Pat Brown, be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

It CMIUDE THE WAR ON CRIME—THE BATTLE OVER THE CRIMINAL CODE

(1y Theodore Voorhees)

There has been so much talk in recent years about crime prevention, penal reform,
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Mr. Mansfield.

Mr. Mansfield. Mr. Chairman, I would like to make an
explanatory statement regarding the latest developments
in capital punishment, and State and Federal legislation
to deal with it.

Mr. Mansfield. That this is a subject which has been
concluded is a debatable issue, but I would like to
record that Senator Mansfield has been deeply interested
in the death penalty for a long time, but he has recently
stated that he believes that the death penalty should be
abolished. Mr. Mansfield has been active in the legisla
tion dealing with this matter, and has introduced a
bill to repeal the death penalty in the Senate.

The Wall Street Journal editorialized on August 11, in
the subject of the bill and condemned it roundly. In calling
for the repeal of the bill, it stated, among other things:
"... the entire bill in its present form goes well beyond present law
in restricting First Amendment rights, reducing public
understanding of the workings of government and revising civil rights
principles.

The following comment was offered in reply by Professor Louis B. Schwartz,
Benjamin Franklin Professor of Law at the University of Pennsylvania and
director of the National Commission on Reform of Federal Criminal Laws:
"On the other hand, 95 percent of S. 1 is a
competent non-controversial ordering and modernizing of the
antiquated, and a parody of a Federal nervous-pot is the present current
crime system which has never been worked well by present law in
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To the Senate:

As chairman of the National Commission for Reform of Federal Criminal Laws, I have watched with deep concern the efforts of some civil libertarians and representatives of the press to kill S. 1, the pending bill to recodify Title 18 of the U.S. Code. That bill incorporates a very substantial portion of the recommendations of our commission, and 95 percent of its provisions constitute a major improvement over existing Federal criminal law. Those provisions have been found acceptable by all who have studied the legislation and they are really beyond the realm of serious controversy.

I, of course, agree with some of the bill's critics that there are a few sections of S. 1 which may be characterized as repressive, but these are limited to a small number and in all likelihood will be taken care of in the Senate Judiciary Committee or by amendment on the Senate floor. The contention that the whole bill must be defeated because of these few sections is, in my opinion, without semblance of validity.

Recognizing the urgency of criminal code revision at this session of Congress, Senators McClellan and Hruska, the sponsors of S. 1, have informed me of their willingness to accept some modifications which would meet the objections of the press and other critics. With a similar sense of responsibility, Senators Kennedy and Hart are working toward securing the amendments necessary to make this bill perfectly acceptable to their liberal constituencies.

There are some areas of the criminal law which presently pose serious problems for the sponsors of code revision. The most obvious examples are national security, wire tapping, gun control, traffic in drugs and capital punishment. While Congress must eventually resolve these issues, it is certainly unnecessary for the whole code to be held up until total agreement can be reached. They might more properly be left to separate legislation to be introduced, debated and enacted at a later date.

A great deal of misinformation has been spread about S. 1. As the members of the Senate Judiciary Committee have studied this comprehensive and important legislation, the chances of its passage in somewhat modified form have been greatly enhanced. Defeat would be a severe blow to criminal law reform in this country.

EDMUND G. BROWN.

(P.S.—The writer is former Governor of California.)