

SENATE BILL S-1437:

Senate Bill S.1437, a reworked version of the notorious Senate Bill 1, created to codify, revise and reform federal criminal law (sorely in need of reworking), carries forward most of the repressive criminal guidelines that prevented S1 from reaching the Senate floor. This time, though, with the backing of Senator Ted Kennedy, some behind the closed doors maneuvering (no advance notice was given prior to bringing the bill to the Senate floor for consideration on January 19 of this year), and with the aid of Senate conservatives, the bill was successfully steamrolled to a 72 to 15 affirmative vote on Jan 30. The 682 page bill is so complex and confusing that most Senators weren't able to muster strong enough objections - "There aren't five Senators there who have any idea what's going on," Sen. James B. Allen (D-Ala.) said. Pushed just as rapidly into the House, the bill suffered a setback - after 23 days of hearings, the House Judiciary Subcommittee decided to take a slow and independent look at the reform and not simply ratify the Senate action. Rep. Henry J. Hyde (R-Ill.) said the bill was a "giant leap in the dark."

Many of the provisions of S.1437 are overgeneralized, and not only treat already punishable activities, but create new ones that sweepingly limit activities that are essential to the exercise of democratic rights. Some of the proposed laws seriously curtail freedom of speech and association, infringe on political freedoms, and pose threats to the operations of labor organizations.

Some of the salient features of this Giant Leap In The Dark:

SECTION 1002 (Criminal Conspiracy)

Under this section, an individual is guilty of a crime if he or she agrees with others to commit an offense (like an illegal demonstration) and then engages in any preparation which shows the intent that the offense be committed. Purchase of train tickets to travel to a protest rally in front of a courthouse could lead to conviction, even though a person never participated in the actual demonstration. Persons doing nothing more than holding discussions of strike or organizing tactics could be prosecuted, by making everyone associated with the group liable for the offenses of a few militant members, or for the conduct of an agent provocateur. These have, in short, a chilling effect on legitimate political expression - in the last few years we have seen the federal government use the charge of conspiracy to prosecute people when it did not have enough evidence to convict them of a crime.

SECTION 1111 (Sabotage)

Sabotage includes impairing or interfering with the government's ability to prepare in or engage in defense activities, by damaging any property used for defense, or by damaging any public facility that is used or suited for national defense. Huge amounts of money are spent by the government each year for defense, and striking workers in industries that have government contracts could be threatened by this section. This also could be read to include the opposition to the development of weapons (such as the Neutron Bomb).

SECTION 1115 (Obstructing Military Recruitment Or Induction)

Makes it an offense if a person, in time or war and with intent to hinder or interfere, "creates a physical interference or obstacle to the recruitment, conscription, or induction" of persons into the armed forces, or "incites others" to evade military service. Picketing in front of an induction center could be held illegal under this section. Likewise conduct such as signing the "Call to Resist Illegitimate Authority," the urging of young men to turn in or burn their draft cards, and counseling a conscientious objector not to register for the draft, would all fall within the prohibition. Effective opposition to a war deemed unjust could thus be suppressed.

SECTIONS 1121 - 1122 - 1123 - 1124 - (Espionage, National Defense Information, and Classified Information)

Makes it a criminal offense for a government employee to disclose and a newspaper or any person to publish national defense or classified information, and that no intent to aid a foreign power need be shown. On this basis The New York Times, The Washington Post and other newspapers could be prosecuted for publishing the Pentagon Papers. Journalists would face prosecution for refusing to reveal confidential sources, thereby cutting off the flow of information to the press.

SECTION 1302 (Obstructing A Government Function By Physical Interference)

Government employees would be especially vulnerable to prosecution under this section should they engage in strikes, or other actions that interfere with the work schedule. Any physical interference or obstacle which impairs any Federal government function, under any circumstances, is the basis for imprisonment. For example, this section would subject to criminal prosecution participants in a picket line that partially blocks a post office, a continuation of picketing after an obviously invalid injunction issued by a judge "acting in good faith," a work stoppage or slow-down in a government agency, even an influx of cars carrying demonstrators could trigger the broad scope of this section.

SECTION 1328 (Demonstrating To Influence A Judicial Proceeding)

A person is guilty of an offense if, "with intent to influence another person in the discharge of his duties in a judicial proceeding," he or she pickets, parades, displays a sign, uses a sound amplifying device, or otherwise demonstrates within 100 feet of a Federal courthouse, while any judicial proceeding is in progress, or at any time within 100 feet of a building occupied by a judicial officer.

SECTION 1331 (Criminal Contempt)

The definition of "contempt" has been broadened and provides for strong penalties for resisting or disobeying a court order even if that order is clearly invalid. The term "resist" could include any form of opposition to a court order, such as an article in a shop newspaper or a speech before a union meeting which calls for opposition to the court's action.

SECTION 1343 (Making A False Statement)

Any statement made to an FBI agent or any other Federal employee engaged in law enforcement, deemed by him or her to be false or later found to be false, would subject the citizen to risk of Federal prosecution. The outcome of such prosecution would depend on the citizen's word against the agent's word. No oath, no witness corroboration, no presence of counsel are required. The term "statement" is defined as "including a declaration or representation of opinion, belief, or other state of mind."

SECTION 1723 (Blackmail)

Blackmail is defined to include the gaining of property "by threatening or placing another person in fear that any person... will improperly subject any person to economic loss or injury" to one's business. "Property" is defined as "anything of value." Including higher wages as property, labor strikes especially fall within the scope of this section. This provision has been written in such a way that trying to subject an employer to economic loss or even publicizing a true fact that might hurt his or her reputation or subject him or her to ridicule could make a union guilty. This provision

ARTISTS' RIGHTS THREATENED

Don't think that "I'm an artist, this bill won't threaten my art work," or "There's nothing I can do." Typically, in times of recession and inflation, with the concomitant preoccupation with economic crises (and conservative thinking), bills such as S.1437 slip by in the name of control and law enforcement. Blind faith in generalization, and simple remedies for complex problems (such as the overwhelming support of Proposition 13 in California) prevent people from delving further into the ramifications of such legislation as S.1437. But when such bills are passed, artists are the first to go. The aftermath of Proposition 13 is already causing many cutbacks in Government supported art programs, and S.1437 would affect artists in a myriad of ways.

Art works involving nudity or sex, and art publications dealing with these topics, could be prohibited, and the artists/editors thrown into jail. Meetings of artists discussing Marxist cultural theories could be deemed to be a criminal conspiracy, theatre and poetry critical of the government's military adventures could be considered sabotage. A performance piece blocking a Federal building could result in an audience being booked. Suing a gallery owner for default of payment for a work of your art, or demanding that the owner sign a resale rights agreement, could be construed as blackmail. Arguing with an IRS investigator as to the validity of your art tax deductions could result in arrest for making a false statement.

Farfetched? Don't be fooled. If the most political thing you've ever done is publish a book of your art, then get out there and help the anti-S.1437 forces.

could be used against activities like the Coors, Gallo and J.P. Stevens boycotts. In addition, a strike necessarily threatens an employer with "economic loss or injury." Whether the conduct of a union is "improper" or not may depend on the court's attitude.

SECTION 1842 (Disseminating Obscene Material)

Prohibited is the commercial dissemination of "obscene material," which is defined in part as material that "appeals predominantly to the prurient interest of... the average person, applying contemporary community standards." This is the first Federal obscenity statute based on widely varying "community standards." The result is that every publisher and distributor is liable to criminal prosecution in every city and town which wishes to impose more strict standards than prevail nationally.

SECTION 1831 (Leading A Riot)

The vague and broad terms in this section would allow tremendous government discretion to prosecute activities or labor organizers who cross state lines or use the mail or telephones to organize or participate in a "riot." Riots are defined as "public disturbances that involve ten or more persons involved in tumultuous conduct that threatens to hurt people or damage property." Anyone who participates in activities called riots would be guilty.

SECTION 1861 (Failing To Obey A Public Safety Order)

No comparable offense exists under Federal law. Members of the press and public could be ordered to disperse by a Federal "public safety officer" whenever the officer believes there is a risk of serious injury or damage to property on any Federal property such as parks, buildings, Indian reservations, Federal offices. This could be used to block press access, disperse gatherings, forbid picketing or parading, and to prohibit leafletting, even if the danger is imagined.

TITLE 39, SECTION 6035 (Abortion "Advertising" Prohibited)

This amendment to S.1437, passed by the Senate, revives an old obscenity provision which makes it a felony to mail any materials, printed or written, which "directly or indirectly" give any information about procuring abortions. The statute expressly prohibits "every written or printed card, letter, circular, book, pamphlet, advertisement, or notice" of any kind giving abortion information. Anyone mailing any article, instrument, or drug intended for producing abortion "or for any indecent or immoral purpose" could also be prosecuted for a felony.

WHAT TO DO:

Popular controversy against S1 prevented it from reaching the Senate floor in 1977. Mass opposition again is the only way to stop S.1437. Most "liberal" newspapers have come out in favor of the bill (except the Los Angeles Times, which broadly attacked the bill in an editorial on May 24) - supporters have included the New York Times and the Washington Post. Here's what you can do:

Urge your U.S. Representative to oppose S.1437 (called H.R.6869 in the House) and to join other members of Congress in introducing legislation to disapprove S.1437/H.R.6869. A bill currently before the House Judiciary Committee is resolution H.R.1066 calling on that committee to "disapprove" S.1437/H.R.6869 and "to conduct full and complete hearings regarding the revision of the Federal Criminal code." Co-sponsors of this bill are Reps. John Burton, Ron Dellums, Leo Ryan, "Pete" Stark, Henry Waxman, and Yvonne Burke. Write your congressman (and others) at the House Office Building - Washington, D.C. 20515 and write or call their local offices.

Write "Letters to the Editor" of newspapers and other publications. Help circulate petitions against S.1437/H.R.6869. Call the Bay Area Coalition to Stop S.1437 at (415) 626-3131, your local chapter of the American Civil Liberties Union, or write the National Committee Against Repressive Legislation, 1250 Wilshire Blvd., Suite 501, Los Angeles, CA 90017 for more information.

Poster and information reprinted courtesy of the National Committee Against Repressive Legislation and the Bay Area Coalition to Stop S.1437.

The READ IT AND WEEP poster overleaf was originally created by NCARL to demonstrate how S.1 would have abridged the Constitution.