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Congressional Record

PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, SECOND SESSION

HOUSE OF REPRESENTATIVES—*Monday, January 30, 1978*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

He who would love life and see good days, let him turn away from evil and do right; let him seek peace and pursue it.—I Peter 3: 10, 11.

Almighty God and Father of us all, we come to Thee acknowledging our dependence upon Thee and offering unto Thee the devotion of our hearts. May the consciousness of Thy presence strengthen us by lifting us out of any discouragement we may have and by making us ready for the duties of these demanding days. Grant unto us wisdom and courage to fulfill the high positions of political prestige which are ours as leaders of our Nation. Let us not lose heart in our endeavors to work for the good of our people and the welfare of the whole human family.

Continue to bless our President, our Speaker, and Members of this House. Give them peace in their hearts and happiness in their homes as they seek to lead our Nation in the ways of justice, righteousness, and good will. Amen.

CALL OF THE HOUSE

Mr. ROUSSELOT. Mr. Speaker, on the basis of rule I, clause 1, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. WRIGHT. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 17]

Addabbo	Cochran	Hollenbeck
Alexander	Cohen	Holtzman
Ambro	Conyers	Jeffords
Anderson, Ill.	Cotter	Kasten
Andrews, N.C.	D'Amours	Kostmayer
Andrews, N. Dak.	Dellums	Krueger
	Dent	Lehman
Applegate	Derwinski	Long, Md.
Archer	Diggs	McCloskey
Armstrong	Dornan	McDade
Ashley	Drinan	McKinney
Aspin	English	Maguire
AuCoin	Erlenborn	Mann
Beard, R.I.	Flood	Meeds
Bevill	Foley	Metcalfe
Biaggi	Fraser	Mikva
Bingham	Gephardt	Moorhead, Calif.
Boggs	Goldwater	
Boland	Gonzalez	Moorhead, Pa.
Bolling	Guyer	Moss
Brademas	Hagedorn	Murphy, Ill.
Burke, Calif.	Harrington	Murphy, Pa.
Burton, John	Harsha	Ottinger
Cederberg	Heckler	Pepper
Chappell	Hightower	Pursell
Chisholm	Hillis	Quie
Reuss	Shipley	Vander Jagt
Risenhoover	Shuster	Walsh
Rodino	Sisk	Watkins
Roncalio	Skubitz	Waxman
Roybal	St Germain	Wiggins
Ruppe	Steed	Wilson, C. H.
Ryan	Stratton	Wilson, Tex.
Scheuer	Teague	Wydler
Sebelius	Tucker	Zablocki
Selberling	Van Deerlin	Zeferetti

The SPEAKER. On this rollcall, 326 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Chirdon, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 2960. An act to authorize the Secretary of the Interior to memorialize the fifty-six signers of the Declaration of Independence in Constitution Gardens in the District of Columbia; and

H.R. 5054. An act to repeal section 3306 of title 5, United States Code, to eliminate the requirement of apportionment of appointments in the departmental service in the District of Columbia.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2220. An act to authorize the Secretary of the Treasury to designate an Assistant Secretary to serve in his place as a member of the Library of Congress Trust Fund Board.

The message also announced that the Vice President, pursuant to section 1024 of title 15, United States Code, appointed Mr. McGOVERN to fill the vacancy of the majority party membership on the Joint Economic Committee.

LEGISLATIVE PROGRAM

(Mr. UDALL asked and was given permission to address the House for 1 minute.)

Mr. UDALL. Mr. Speaker, the first order of business scheduled today was a motion I was planning to make to suspend the rules and pass the bill, S. 2076.

I just learned a few minutes ago that another committee, the great Committee on Education and Labor, has some questions about the bill and has a jurisdictional problem. In order to see if we can resolve this matter, I am not going to make that motion today, but we hope to have it resolved and bring the bill back on the floor at a later date.

RED CARNATIONS DENOTE CELEBRATION OF McKINLEY'S BIRTHDAY

(Mr. REGULA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. REGULA. Mr. Speaker, today we note the birthday of William McKinley, 25th President of the United States and the last Civil War veteran to be elected as President, by wearing the red carnation, the State flower of Ohio, and a great favorite of the martyred President.

William McKinley, who ably served the 16th District of Ohio for 13 years as a Member of this body, including 2 years as chairman of the Ways and Means Committee, had a distinguished career as a noted trial lawyer, Congressman, Governor of Ohio, and President from 1897 to 1901. He led the Nation through the Spanish-American War and the acquisition of vast overseas territories.

President McKinley shared a common political goal with our distinguished Speaker. His front porch campaign for reelection in 1900 emphasized his slogan, "Good work, good wages, good money and a full dinner pail." According to Congressional Insight in its January 13 publication this year, Speaker TIP O'NEILL's own priorities for the House will emphasize "work and wages." I would add that I hope our leader also adopts the third part of McKinley's platform and supports an anti-inflationary budget resolution that will maintain "good money" for the people of this Nation.

William McKinley was the first President to recognize the role of the

to guess what kind of changes the prisoner will make, and I am not gifted with the power of prophecy. The caseworkers, operating as a team, in the various prisons have impressed me with their knowledgeability. They know prisoners try to fool them and they are hard to fool. I would rather the decision were made by the caseworker team after observing the prisoner in the institution than for me to make it in advance, as a binding decision on my part. I think the present Parole Commission does not give enough weight to the opinions of caseworkers and has been too rigidly bound to its guidelines. I think they have tended to release prisoners on a slide rule basis, rather than a subjective human analysis of the prisoner and his behavior. I realize that subjective judgments are not in fashion presently among many people, but it has been my experience that the only way to predict human behavior is subjectively. It may not be a perfect process, but it is the only way. This is not to imply that some objective standards are not useful in making a subjective judgment.

In my G.A.O. interview I expressed some views recommending change in the present guideline system of the Parole Commission. On the other hand, I strongly urged that the Commission not be abolished and that we not substitute a system of relatively short sentences without parole for a system of longer sentences which assume that at some point, assuming good behavior predictive of further future good behavior, there would be a release on parole prior to the end of the sentence in a great majority of cases. I admit that the present system can be criticized. I believe, however, that there is more to criticize in what I perceive as the proposed new system.

I have read widely on this subject since being appointed almost five years ago, because I understand the seriousness of my task in sentencing people. I am a strong believer in probation for those who are entitled to it, and the probationers of this court have succeeded in over 95 percent of the cases since I have been on the court in completing their probationary terms successfully. In fact, the record of the court for 1964 through 1974 was 98 percent successful completion! I have never refused probation to a defendant who had a favorable recommendation from a probation officer of this court because of the tremendous success we have had, as indicated by these figures. On the other hand, I have imposed some very long sentences in appropriate cases. There are five judges, including one senior judge, of this court imposing criminal sentences. Of the five, over the past two years I have averaged longer sentences than any other judge. The disparity is not great, and all of us are around the national median, but I do wish to point out that I am not "soft" on the subject. I believe in protecting the public. I also know from experience that many people convicted in my court can be rehabilitated, and know of specific examples of those who have. This is true especially of those placed on probation but is also true of many of those sent to prison.

In other words, I have not completely given up on rehabilitation, athough I am not blind to the fact that there are some people who simply need to be "warehoused" and kept out of society. I have identified these "warehouse" cases and have given them very long sentences, which raises my average and makes me appear to be the hardest sentencing judge on this court.

I say this by way of background. I believe there is rehabilitative benefit in keeping a man on parole after he is released from prison. I also believe there is benefit to society by keeping him in fear of having to go back. He is less likely to commit a crime if he is under supervision and afraid of having to go back. In other words, I would rather see a man get a 15-year sentence with release on parole after five years and 10 years continuous supervision than to see him get a five-year sentence, all of which he must serve, but with no continuous supervision after his release. I use these figures only for illustration. It is my fear that the sentencing commission will put such strictures upon us that the senences which will actually result from this new system will be relatively short and the beneficial aspects of parole in the present system will be virtually eliminated.

I hope I have understood the article incorrectly. If I have, then this part of my letter may be ignored. If, on the other hand, I have understood it correctly, I do appeal for a reconsideration of the basic approach to the parole system contemplated by this bill.

Sincerely,

J. Foy Guin, Jr.

P.S.—Not only do I plead that the 120-day sentence reduction provision be retained—I strongly urge that the Congress permit this to be extended to judgments of modification reducing a sentence to probation or to a sentence including probation, such as a split sentence. The Supreme Court has held twice that a judge cannot modify a sentence so as to impose probation. On reconsideration of a sentence the judge should have the full panoply of the options that he has initially, including the right to impose probation in place of custodial sentence or to impose a split sentence, which is a combination of custodial sentence with probation.

Mr. ALLEN. Mr. President, I call attention to one paragraph which has reference to the amendment that I have offered.

Not only do I plead that the 120-day sentence reduction provision be retained—I strongly urge that the Congress permit this to be extended to judgments of modification reducing a sentence to probation or to a sentence including probation, such as a split sentence. The Supreme Court has held twice that a judge cannot modify a sentence so as to impose probation. On reconsideration of a sentence the judge should have the full panoply of the options that he has initially, including the right to impose probation in place of custodial sentence or to impose a split sentence, which is a combination of custodial sentence with probation.

This amendment would allow the court to reduce a sentence within 120 days after the sentence is imposed, unless a notice of appeal has been filed for review of the sentence under section 3725.

I have discussed this matter with the distinguished manager of the bill, and I understand that he is agreeable to accepting the amendment.

Mr. KENNEDY. Mr. President, this would restore current law. The reason it was dropped is because of the guidelines, which give us a sense of predictability and certainty not found today. The ability to appeal if the sentence goes below or above the guidelines and to give the right of appeal even within the guidelines if the guidelines have been wrongfully applied, make a motion to reduce unnecessary.

Now, the Senator would permit up to 120 days for reduction by the same sentencing officer. As I understand, this is so only if there has not been a filing for an appeal.

Mr. ALLEN. That is correct.

Mr. KENNEDY. I have no objection to it. It is an additional protection for the defendant, but I do not think—given the fact that we will have guidelines—that it is really necessary. But I have no objection to the amendment.

Mr. THURMOND. Mr. President, the amendment is acceptable to us.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama.

The amendment was agreed to.

UP AMENDMENT NO. 1159

Mr. HATCH. Mr. President, I call up an unprinted amendment and ask unanimous consent that it be in order to be considered at this time.

The PRESIDING OFFICER. Without objection it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah (Mr. Hatch), for himself and Mr. Helms, proposes an unprinted amendment numbered 1159.

Mr. HATCH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 171, line 27, after the semicolon add the following language:
"and shall include non-profit means of mass communication;".

Mr. HATCH. Mr. President, what this amendment does is close one of the loopholes of the obscenity part of the statute. Under the definition of "commercially disseminate" it means to disseminate for profit. We would add at this point that it should include nonprofit means of mass communications as well, which will close one of the loopholes we were able to find today.

I understand both the majority manager and the minority manager will accept the amendment.

Mr. KENNEDY. We have no objection. Obviously, the definition of "commercially disseminate" should apply to both the profit and nonprofit networks.

Mr. THURMOND. We have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Utah.

The amendment was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. I would appreciate if the distinguished manager of the bill would engage in a short colloquy with respect to the introduction of an amendment I have prepared. I would like to inquire of the distinguished manager of the bill inasmuch as the bill in its very first section here, section 101, amends title 18, and the amendment is, in effect, a repeal because it says "title 18 of the United States Code which may be cited as '18 U.S.C. —' or as 'Federal Criminal Code —,' is amended to read as follows," so that any provision of title 18, which is the section on Federal crimes, if every single provision of title 18 is repealed, except to the extent that it is carried forward in S. 1437, because title 18 will be no more except as it is brought forward in this bill, I would like to ask the distinguished manager of the bill a question.

I think it is very important that this information be elicited. I would like to

ask the manager of the bill how many separate acts embodied in title 18 were dropped from S. 1437, and if the Senator does have that information please supply the identification of the acts which were not carried forward in S. 1437?

I might state I have had called to my attention the fact that the Logan Act, which prevents private citizens from carrying on foreign relations negotiations with foreign countries is dropped from S. 1437, it is not carried forward.

Since that is an important omission I am just wondering how many other omissions there are.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the best estimate we have is that approximately 10 to 12 crimes are repealed, archaic provisions such as interfering with a government carrier pigeon, seducing a female passenger aboard a ship, the Logan Act, and so forth.

Mr. ALLEN. The Senator thinks that ought to be permitted?

Mr. KENNEDY. Is the Senator offering an amendment to restore it?

[Laughter].

This is the type of section eliminated.

I want to point out that with regard to the Logan Act, that was agreed to be taken out of S. 1 and the legislation which preceded S. 1; it is not a part of the agreement I entered into with Senator McClellan.

It was urged upon us by the Justice Department. It has been on the books since 1799, and they urged us to strike it. I think it should be stricken.

Mr. ALLEN. Would the Senator be kind enough for the Record to insert a list of the acts——

Mr. KENNEDY. Yes.

Mr. ALLEN. A list of the provisions of title 18 that were not brought forward in S. 1437?

Mr. KENNEDY. I will do so as soon as a comprehensive list can be prepared.

Mr. President, before proceeding further, I wish to comment further on the amendment of Mr. HUDDLESTON'S, agreed to last week which deals with the witness protectio program.

The amendment would permit a plaintiff in a civil suit brought against a relocated witness for a cause of action arising before the witness was relocated to use the Attorney General to serve process on the witness so that the suit can go forward. In addition, if a judgment results and the Attorney General determines that reasonable efforts to satisfy the judgment are not being made by the witness, then the Attorney General, in his discretion after weighing the danger that could result to the witness, may release his new name and location to the plaintiff for collection purposes.

The amendment seeks to draw a balance between the importance to law enforcement of the witness relocation program and the need to protect otherwise innocent civil litigants who are left with no one to sue. The Department of Justice wishes to protect those in its relocation program while at the same time not wishing to have the program misused by the relocated witnesses to avoid paying their just debts.

This amendment draws the balance adequately. It permits the plaintiff to serve process against the witness who can then adequately defend himself while still shielded under the relocation program. When it comes to satisfying the judgment, if one is rendered against the relocated person, he would be expected to behave like any other citizen. Only if he fails to make reasonable efforts to satisfy the judgment will the Attorney General consider further action. Here is the heart of the amendment. It grants discretion to the Attorney General to release the identity and location of the witness to the plaintiff so that he may collect from a recalcitrant judgment debtor.

However, that discretion is to be exercised only after an examination of the risks to the life and safety of the relocated person. If the risk of retaliating action is too great then the identity must remain secret; quite bluntly the right to property and money cannot be raised above the right to life. Moreover, if the relocated witness is penniless there is no reason to release his new name and endanger him. The Attorney General must take care that those seeking to kill a witness who has testified against them cannot pursue a sham civil action to judgment as a vehicle for finding the witness.

If the danger has passed, and if the safety of the witness can be assured, then it is expected that the discretion of the Attorney General will be exercised in favor of release. The threat of release of the new identity is also a powerful weapon for the Attorney General to use to persuade the judgment debtor to make reasonable efforts to satisfy the judgment.

As long as the ultimate decision to release the new identity is left to the Attorney General's discretion to be exercised in terms of the ultimate safety of the relocated person, then the amendment is acceptable.

I would also like to clarify the record as to the application of the extortion amendment, No. 1085, passed by the Senate on January 19. That amendment makes clear that "the pendency of a labor dispute, the outcome of which could result in the obtaining of employment benefits by" an individual committing an act of damage is not, in and of itself, probative of extortion. The amendment is intended to avoid an implication that if violence occurs incidental to a labor dispute, the violence could be attributed to the union as a tactic for extortion where there was no evidence that that was the purpose of the violent conduct. The amendment means that more than the mere coincidence of a labor dispute and violence is needed to show that violence was intended to be a means of extorting anything from the employer. A case of extortion could not be proved in a labor dispute situation just because fighting or other violence occurs—this is the intent of the amendment.

In fact, the Government would not even attempt to prosecute as extortion most cases of violence associated with a labor dispute. The amendment is a recognition that tempers often flare in labor dispute situations. In a case where there was evidence that there was an agreement among people involved in the labor dispute to use violence against the employer as a means of achieving the goals of the labor union, such as dynamiting a plant, that evidence would establish a prima facie case.

In the absence of such evidence, a defendant would be entitled to dismissal of the case. In fact, in the absence of such evidence, such matters should be left to the States, which are fully capable of dealing with disorderly conduct, assault, property destruction, and other lesser crimes. And that is what these minor offenses are in the absence of a plan or conspiracy to extort.

Mr. President, one other matter. In light of questions that have been raised as to the effect of the modification of the language of the present 18 U.S.C. 1961 by section 1806(e), I wish to stress that under the code we intend the courts to follow the limiting gloss on the present law stated by Judge Pierce in *United States* v. *Stofsky*, 409 F. Supp. 609 (S.D.N.Y.):

> This court therefore construes the word "pattern" as including a requirement that the racketeering acts must have been connected with each other by some common scheme, plan, or motive so as to constitute a pattern and not simply a series of disconnected acts.

Moreover, it should also be noted in this connection that while the word "conducts" in section 1802 is, as stated in the committee report—page 776—to be construed "broadly," it does not include acts by officers and employees for their own financial benefit which do not increase their domination of the organization's affairs or further unlawful activity by the organization.

Mr. CRANSTON. Mr. President, I would like to ask the distinguished floor manager several questions which have been raised by members of the press who have expressed some concerns over certain provisions of S. 1437.

Mr. KENNEDY. I will be glad to respond to the Senator's questions.

Mr. CRANSTON. I would like to ask the floor manager a question regarding section 1311, hindering law enforcement. Specifically, paragraph (1)(D) of subsection (a) which is an offense for altering, destroying, concealing a record or document if the conduct is done to interfere with or hinder the discovery, apprehension, prosecution, conviction, or punishment of another person when the actor knows that the other person has committed a crime or is charged with or is being sought for a crime. The question is: would a reporter be guilty of concealing a document containing evidence of unlawful conduct if he did not turn in his notes regarding Government corruption which he had obtained in an interview with a confidential source?

Mr. KENNEDY. No. The formulation of this offense including the altering,

destroying, or concealing of evidence is based upon the Model Penal Code and the Brown Commission. Its purpose is to prohibit such things as the destruction or alteration of the Watergate tapes, attempts to "deep six" evidence and other such conduct. There is no evidence that the Brown Commission intended this offense to interfere with the right of reporters to maintain the confidentiality of their notes. As used in this offense, concealing requires some affirmative conduct so it would not interfere with the ability of investigative reporters to protect the confidentiality of their sources.

Mr. CRANSTON. Would a reporter be guilty of concealing if, under persistent questioning by Federal investigators, he refused to divulge the identity of a source or a suspect or refused to make his notes and other material available?

Mr. KENNEDY. No. So long as his conduct consists of keeping silent on the subject, the reporter has not engaged in conduct constituting concealing.

Mr. CRANSTON. Would a reporter be guilty of an offense if he destroyed his notes or erased tapes or other work product knowing that these contained evidence sought by law enforcement agencies?

Mr. KENNEDY. No, unless the evidence had been subpenaed or otherwise lawfully requested. And, if the reporter destroyed his notes in the normal course of his work and did not destroy them with the intent to prevent law enforcement agencies from obtaining them through proper process, no offense would have been committed since the requisite intent was absent.

Mr. CRANSTON. I thank the distinguished floor manager.

Does section 1324, an offense for retaliating against a witness, apply to a newspaper which reports the testimony of a witness. Specifically, subsection (a)(2) makes it an offense to "improperly" subject another person to economic loss or injury to his business because a person has testified as a witness in an official proceeding. Would the press be subject to this offense if publication of the witness' testimony, which included evidence of his own unlawful conduct, caused economic loss to the witness?

Mr. KENNEDY. No. It is not "improper" to publish information including the testimony of a witness even if such publication causes humiliation or economic loss to the witness. The offense is designed and intended to prohibit retaliation against a witness on account of his appearance as a witness. In a situation of publication by a newspaper of a witness' testimony, the newspaper would not be retaliating for his appearance as a witness, but merely publishing information made available through the witness' testimony. This is precisely why the term "improperly" is included in the offense.

Let me give some examples of what this offense would apply to. First, if a public servant testified before Congress concerning corruption in a Government agency or cost overruns on a Government project, it would be an offense if his superiors discharged such a person or denied him promotion because of his appearance to give testimony which was embarrassing to the agency. Another example might be a situation where a farmer reported kickbacks given by the operators of a grain elevator to grain inspectors and the subsequent cancellation and breach of a contract between the grain elevator and the farmer because of his testimony.

Mr. CRANSTON. I would like to ask another question of clarification. The contempt section provides a specific defense for gag orders. Would a reporter be able to claim a reporter's privilege?

Mr. KENNEDY. Yes. Section 1331, contempt must be read together with section 1333 refusal to testify which provides an affirmative defense if information is privileged. Nothing in the code is intended to preclude the judicial development and recognition of a newman's privilege and the specific privilege for gag orders in section 1331 is not intended to override any privilege that a witness may have under the law. The bill is silent on this.

It is also important to note that section 104 states that the code is not intended to affect the civil contempt authority of courts which they may choose to utilize in those cases where there is a good faith claim of privilege.

Mr. CRANSTON. Does either section 1331, contempt, or section 1333, refusing to testify, eliminate any right of a newsman to claim a privilege for confidential information?

Mr. KENNEDY. No. Section 1331 in general, simply restates the existing contempt power in section 401 of title 18. It would not alter or diminish the right of a newsman to claim a privilege.

Second, section 1333 specifically provides an affirmative defense if a witness has a privilege not to testify. This is intended to cover lawyer-client. doctor-patient, and other such privileges. In 1974, when Congress enacted the Federal rules of evidence, it included rule 501, which left the recognition and development of privileges up to the courts. Nothing in section 1333 would alter this authority. A number of first amendment commentators have concluded that a qualified newsman's privilege is emerging. This is based on such civil cases as *Baker* v. *F & F Investment,* 470 F.2d 778 (2 Cir. 1972), cert. denied, 411 U.S. 966 (1973), and *Cervantes* v. *Time, Inc.,* 464 F.2d 968 (8th Cir. 1972) cert. denied 409 U.S. 1125 (1973). There have been a few Federal criminal cases directly addressing this point subsequent to Branzberg, but in one notable State case. Justice Poff of the Virginia Supreme Court, a former Congressman and member of the Brown Commission, recognized a privilege. See *Brown* v. *Commonwealth,* 204 S.E. 2d 429 (1974), cert. denied 419 U.S. 966 (1974).

In sum, the answer is that nothing in the code would alter or eliminate any privilege which a reporter is entitled to claim, nor the authority of the courts to continue to develop the law in this area.

Mr. JAVITS. Mr. President, I would like to express a concern that I have with section 1525 of this bill. That section would provide for criminal penalties for the release by Government employees of certain information where confidential treatment of that information is mandated by another statute, regulation, rule, or order.

The area of confidential treatment of information in government files is currently a complex and confusing one. There already is a statute on the books—18 U.S.C. 1905—that prohibits the release of confidential information by government employees on pain of criminal penalties, and this bill preserves that section. A large number of other statutes also prohibit individual agencies from releasing certain types of confidential data in their files.

Further, it has been held by some courts that the exemptions from mandatory disclosure contained in the Freedom of Information Act also prohibit the release of certain information. Both 18 U.S.C. 1905 and the Freedom of Information Act exemptions have been cited by those who, for one reason or another, wish to restrict the release of information in Government files, and the court decisions interpreting those sections have been contradictory.

I believe that Congress should carefully review the whole subject of Government information policy on information received by the Government as confidential with a view toward clearing up present ambiguities, and making available to the public as much information as possible, while protecting from disclosure information that is legitimately entitled to confidential treatment. I am concerned that the addition of yet another confidentiality statute proposed by section 1525 of the bill to the current law, without an adequate analysis of the relationship between that section, section 1905, the Freedom of Information Act, and prohibitions on individual agencies, may further confuse an already confusing area.

Although I do not propose to offer an amendment to strike section 1525, I would hope that the conferees will consider carefullv whether or not there is a need for this additional section, and will spell out in detail how this section relates to existing law. I believe that the public interest will best be served if the law enables all interested parties to know with greater certainty what information is public, and what information is properly confidential and not to be released.

In the event that neither the House committee in their deliberations on this bill nor the conferees address the question that I have raised here, I would consider requesting the Governmental Affairs Committee to look into this matter in detail.

Mr. ALLEN. I have only one more amendment, in view of the Senator's explanation. I will not offer it at this time. I have only one more amendment, and that is to reinsert the provisions of the Logan Act. The Logan Act provides that a private individual may not carry on negotiations with a foreign government with regard to the foreign relations policy of the U.S. Government.

To knock this act out or to fail to bring it forward would, in effect, not make every man a king, as was the cry of some candidates of the past, some public figures of the past, but it would make every man a secretary of state. So I do not believe we need to have millions of secretaries of state running about carrying on foreign negotiations with foreign governments.

They say, "Well, there have not been any prosecutions under it." I believe it is a deterrent.

I was talking with one of the distinguished Senators who went down to Panama, and he said before going down he called the President of the United States and asked him to send someone down with his part to represent the State Department. He did not want to be charged with carrying on foreign relations negotiations.

I do believe it will serve as a deterrent against having private citizens carry on or seek to carry on negotiations of a foreign relations nature with foreign governments.

I believe that is the prerogative of the President of the United States and the State Department, subject to the control of Congress in approval of treaties by the Senate, and the power of the purse that Congress has.

That is the only amendment I have remaining, and on the adoption of that amendment I would offer no further amendments and would not seek to see the bill carried over for another day.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, much as I would like to move the process forward, I would have to resist this amendment.

This provision has been on the books since 1799, and the Justice Department tells me that there has not been one prosecution under it. Not one. They say it is one of the most antiquated provisions in the current code. They asked Senator McClellan, Senator Hruska, and the rest of us to take it out.

If we talk about the opportunities for mischief in terms of governmental prosecution, I look at the Logan Act. Businessmen or laborers or commercial interests may visit different countries, trying to work out commercial agreements with another nation. I mean there are a thousand different fact situations where this particular provision, in the wrong hands, could be abused.

I think the most compelling factor for its repeal, Mr. President, is that it has been on the books since 1799 and has never been used. But it still lies there. This amendment is strongly recommended by the Justice Department. I think, in a recodification of the criminal code, sentimentality about a particular provision, "the good old Logan Act," has no place. We are either serious in terms of trying to deal with these issues, or not.

I respect the sincerity of the Senator from Alabama on this issue, but I feel that we should repeal it. I am reminded that in the report is says:

Although the Act enjoys a venerable history dating from 1799, it has not been used for prosecution and is constitutionally suspect, both on grounds of vagueness and undue interference with free speech.

On those bases, Mr. President, I would hope that the amendment would be defeated.

Can we have a voice vote?

Mr. ALLEN. I have not offered it yet.

Mr. KENNEDY. Oh, I see. I thought the Senator had.

Mr. ALLEN. Mr. President, what is the pending amendment?

COMMITTEE AMENDMENT—PAGE 78, LINE 15

The PRESIDING OFFICER. The pending question is on agreeing to the committee amendment on page 78 at line 15.

Mr. ALLEN. I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to, as follows:

On page 78, line 15, after "assigned" insert "noncriminal";

The PRESIDING OFFICER. The clerk will state the next committee amendment.

The legislative clerk read as follows:

On page 78, line 19, after "and" insert "in fact";

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. ALLEN. Mr. President, I wonder if the manager of the bill would explain the amendment. I think the Senate would be interested in knowing what it is.

Mr. KENNEDY. Is it on page 79, did I understand?

The PRESIDING OFFICER. Page 78.

Mr. KENNEDY. For clarification. The amendment on line 19 is to clarify the words that follow it.

The PRESIDING OFFICER. The question is on agreeing to the amendment. Without objection, the amendment is agreed to. The clerk will state the next committee amendment.

The legislative clerk read as follows:

On page 78, line 23, after "omits" insert "a material fact necessary to make a written statement not misleading,";

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum. This will be a live quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. HELMS. Mr. President, will the Senator withhold that just one moment?

Mr. KENNEDY. I withhold it.

Mr. HELMS. Mr. President, as we conclude consideration of S. 1437, it is well to remember that many Senators who took an active part in this debate were not notified that the bill would be considered until 2 days before it was taken up. Many Senators had only 1 or 2 days' notice to consider the many detailed and technical provisions of this bill which contains more than 280 pages of criminal laws—laws by which millions of Americans may one day have the legality of their conduct measured.

Mr. President, although codification and revision of the Federal Criminal Code has been a goal of the Senate for some time and many States have already codified their criminal laws, the clear lesson of this process is that codification is not automatically reform and revision is not automatically improvement. The provisions contained in this bill affect Americans' fundamental civil, political, economic, and constitutional rights. Through this code the U.S. Government seeks to fulfill its responsibility to protect and preserve the life, liberty, and property of its citizens.

In so doing, it is essential that Congress maintain the proper perspective regarding the role of the National Government in our delicate federal system. Historically, the primary responsibility for the protection of people from criminal activity has rested with the States. Cautious exceptions to this primary State jurisdiction were made over time, but with an ever-watchful eye toward the possibility of Federal preemption in the area of criminal law and an accompanying national police force.

In considering this bill, I believe we have not been cautious enough regarding the large increases in Federal jurisdiction which it establishes. We have not been jealous enough, as representatives of the States, of the primacy of State jurisdiction in the criminal law. Furthermore, we have failed to take the careful, systematic analysis of the provisions of this bill, which I believe our responsibility to preserve the freedoms of Americans requires. Therefore, when S. 1437 is considered for final passage, I must vote against it.

We have considered S. 1437 for more than a week beyond what was originally scheduled. During this time the Senate has approved important changes in the bill to protect the liberties of Americans.

We provided that local areas could apply their own standards of obscenity in accord with recent Supreme Court rulings regarding the dissemination of obscene materials.

We sought to protect communities from criminal violence by permitting judges to deny pretrial release to persons charged with serious crimes such as rape, kidnapping, armed robbery, when those persons pose a continuing danger to the community.

We maintained the traditional common law rule to protect innocent defendants from overly broad criminal laws by specifying that criminal statutes be strictly construed with ambiguities interpreted in favor of the defendant.

We rejected a de facto Gun Control Act proposed in the bill which would have imposed a 2-year mandatory prison sentence for possession of a firearm during the commission of a Federal crime. For example, until amended, a hunter arrested for reckless driving on Federal property, and found to have his shotgun in his car, would have been subject to the 2-year mandatory sentence for "possession of a firearm" during the commission of a misdemeanor.

During the past several days much has been done to correct deficiencies in S. 1437, yet substantial defects remain in the bill.

The bill makes it a crime to make a false oral statement to a law enforcement or other Government official, even without the presence of an attorney or a corroborating witness. Regardless of legislative history attempting to explain this provision, it nevertheless would give broad power to FBI agents, OSHA investigators, IRS and customs officials and many other Federal investigators. The addition of the word "knowingly" improves the provision, but by no means sufficiently. Prosecution of this offense invites abuse by setting up a "my word against yours" situation where the defendant and the Federal official are the only witnesses. Finally, unlike present law, this provision would make persons criminally liable for honest mistakes, since it does not require a finding that the defendant made an "intentionally" false statement.

The National Commission on Reform of Federal Criminal Laws recommended that this provision apply only to official Government proceedings, and to statements relating to such violations as false fire alarms, bomb scares, and incrimination of innocent people. Unfortunately, the bill does not reflect the Commission's advice.

Elsewhere, the bill subjects businessmen to criminal liability for honest mistakes and unintentional violations of very technical and complicated laws involving securities and investments. Many of these laws presently require an intentional violation before a businessman may be arrested and criminal proceedings begun.

The bill also grants broad authorization to the Internal Revenue Service to use paid informants in obtaining criminal charges against taxpayers. Late last year, an extensive Government Accounting Office report found substantial misuse of informants by the IRS. Although the use of informants is important in cases regarding organized crime, the serious risks to all taxpayers' rights—which the use of informers poses—require strong controls, not the broad authorization this bill establishes.

The bill repeals present Federal law making it a crime to advocate the violent overthrow of the Government. In light of the rigorous standards and supervision which the Supreme Court has given this law to protect academic or innocent speech not intended to produce violence or subversive activity, it is difficult to understand why it should be summarily repealed.

The bill provides defenses to pornographers which may undermine recent Supreme Court decisions enabling local communities to protect themselves from obscene materials; see for example, *Smith* v. *United States* 45 L. W. 4495 (1977).

The bill repeals the present Federal sanctions against engaging in prostitution on U.S. military bases.

It greatly increases the power and discretion of prosecuting attorneys by establishing such criminal laws as "Section 1623, Criminal Restraint—A person is guilty of an offense if he restrains another person." What are the implications of that section, Mr. President?

Organizations so diverse as the American Civil Liberties Union and the Americans for Constitutional Action have voiced concern about procedural aspects of the bill as well as the definitions of many crimes.

Furthermore, the sentencing mechanism which the bill seeks to establish is a novel one representing a major departure from existing practice. Presently, several States have instituted new sentencing procedures and standards which have not yet been proven by experience. I believe that it would be wiser to study the results of these State initiatives before enacting such a substantial redirection of the Federal sentencing system. Very little time has been spent during the past several days discussing the merits and potential risks in adopting the proposed sentencing plan.

Mr. President, we have not squarely faced issues such as the substantial increase in Federal jurisdiction; the increase in prosecutorial discretion; the drafting of broad rather than specific criminal statutes; and the removal of "intentionality" and "knowledge" as elements from many offenses.

This bill may very well be an improvement over its predecessor S. 1, however, this is not sufficient reason to pass this legislation at this time.

Mr. KENNEDY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UP AMENDMENT NO. 1160

Mr. THURMOND. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. Does the Senator ask unanimous consent that the amendment may be considered at this time?

Mr. THURMOND. Yes, I do.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the amendment.

The second assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. THURMOND) proposes an unprinted amendment numbered 1160.

Mr. THURMOND. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 164, strike out lines 32 through 37, as amended, and insert in lieu thereof the following:

"(1) a Class C felony in the circumstances set forth in subsection (a)(1);

"(2) a Class D felony in the circumstances set forth in:

"(A) subsection (a)(2), if the violation is of a provision set forth in subsection (a) through (i) of section 1103 of the Organized Crime Control Act of 1970, as amended (15 U.S.C. ——); or

"(B) subsection (a)(5);

Mr. THURMOND. Mr. President, all this amendment does is to correct an error that was made in a Javits amendment that the Senate has adopted. It is purely a technical amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Carolina. Without objection, the amendment is agreed to.

The question recurs on agreeing to the committee amendment on page 78, at line 23. Without objection, the amendment is agreed to.

The clerk will state the next committee amendment.

The legislative clerk read as follows:

On page 78, line 27, after "false" insert "or it";

The PRESIDING OFFICER. The question is on agreeing to the amendment. Without objection, the amendment is agreed to. The clerk will state the next committee amendment.

The legislative clerk read as follows:

On page 90, line 9, strike "or";

The PRESIDING OFFICER. The question is on agreeing to the amendment. Without objection, the amendment is agreed to. The clerk will state the next committee amendment.

The legislative clerk read as follows:

On page 92, line 9, strike "in fact";

The PRESIDING OFFICER. The question is on agreeing to the amendment. Without objection, the amendment is agreed to. The clerk will state the next committee amendment.

The legislative clerk read as follows:

On page 92, line 21, strike "in fact";

The PRESIDING OFFICER. The question is on agreeing to the amendment. Without objection, the amendment is agreed to. The clerk will state the next committee amendment.

The legislative clerk read as follows:

On page 96, line 24, strike "to be" and insert "is";

The PRESIDING OFFICER. The question is on agreeing to the amendment. Without objection, the amendment is agreed to. The clerk will state the next committee amendment.

The legislative clerk read as follows:

On page 96, line 26, after "Class" strike "A misdemeanor" and insert "E felony";

The PRESIDING OFFICER. The question is on agreeing to the amendment. Without objection, the amendment is agreed to.

UP AMENDMENT NO. 1161

Mr. ALLEN. Mr. President, I send to the desk an amendment and ask unanimous consent that it be in order to consider it at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) proposes an unprinted amendment numbered 1161: Amend amendment No. 1624. On page 333 between lines 11 and 12 add the following new section:

"SEC.—REENACTMENT OF LOGAN ACT—

Mr. ALLEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amend Amendment No. 1624. On page 333 between lines 11 and 12 add the following new section:

"SEC.—REENACTMENT OF LOGAN ACT—

Any citizen of the United States, wherever he may be, who, without authority of the United States, directly or indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent thereof with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

"This section shall not abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects."

Mr. ALLEN. Mr. President, this amendment would reenact the Logan Act, which prevents a private citizen from carrying on or seeking to carry on relations with foreign governments having to do with the foreign relations policy of the U.S. Government. Without this amendment reinstating the Logan Act, which was dropped by the bill, as I pointed out, every man in the country or every woman in the country would be a secretary of state. They would not be precluded from personally seeking to carry on negotiations with foreign governments. With this provision, which, it has been pointed out, has not had any prosecutions under it, I would feel that the existence of the act is a deterrent to individuals, whether they be in an official capacity, outside of the State Department or the President, from seeking to carry on foreign negotiations.

We have seen some Senators going abroad and, apparently, seeking to advocate policies contrary to the policy of the U.S. Government. This would be some sort of deterrent to that type of activity.

I am hopeful that the distinguished manager of the bill will reconsider his previously stated opposition to the amendment and will see the wisdom of accepting the amendment.

Mr. KENNEDY. Mr. President, I am reminded that the Senate has to do business and that there is a busy schedule. I move that we accept the amendment and I hope that my good friend from Alabama is going to be in the conference to fight for it fiercely so it will not get lost on the way over to wherever that conference is.

Mr. ALLEN. I am afraid if it is left up to the Senator from Massachusetts, it will get lost. We do seek to keep it in.

I appreciate the graciousness and courtesy of the distinguished manager of the bill. Also, I commend the distinguished majority leader for pushing this bill along. It has taken only some 8 days to finish and the distinguished manager of the bill had allocated 3 weeks to it. I feel that the Senate has acted expeditiously, but I do believe that carrying the matter over for as long as we have has allowed constructive amendments to come in. I am hopeful that the bill is a much improved one from the bill that came out of the committee. It has not been improved to the point where the Senator from Alabama can vote for it, but I do believe that it is a much better bill.

I appreciate the cooperation that the distinguished manager of the bill has given me in my efforts to make some small changes in the bill.

Mr. KENNEDY. I thank the Senator from Alabama. There have been some valuable contributions made to this legislation. I thank the Senator from Alabama for his involvement in its development here, on the floor, and in the committee.

Mr. President, I send to the desk technical amendments——

Mr. ALLEN. Mr. President, I do not believe we have had a unanimous vote on my amendment yet.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama.

The amendment was agreed to.

Mr. ALLEN. Mr. President, I ask unanimous consent that the remainder of the committee amendments may be considered en bloc.

Mr. SCOTT. Mr. President, reserving the right to object.

Several days ago, I offered an amendment that would restore the death penalty in a number of instances. It is my understanding that the distinguished Senator from Massachusetts opposed this. It was not adopted, even though he indicated at the time that he would make every effort to see that the bill was reported out of the committee, but he would vote against the amendment.

There is a large amendment here—it is amendment No. 1624—by the distinguished Senator from Massachusetts. It would take a long time to read this; it is 333 pages long. I believe it takes unanimous consent to waive the reading of an amendment. It would take a long time to vote on it if we had a division of the amendment. I understand that, somewhere within these 333 pages, there is a provision that does away with the crime of murder, except for skyjacking, where someone is killed when an airplane is taken over in an unlawful manner.

If that is true, that would mean that the bill, as proposed by former Senator McClellan and 19 cosponsors, would not be properly drawn. This is something that concerns me. I should not want to ask that this entire amendment be read. I would not want to take the time of the Senate by asking that the amendment be divided so that we would have a separate vote on each portion of this 333-page amendment. Yet, I think that, in fairness, the portion of this amendment that would require that the McClellan death penalty bill be rewritten should be eliminated in the event that it is in this amendment, as I understand it to be.

I wonder if the distinguished Senator from Massachusetts will address himself to this.

Mr. KENNEDY. I am not sure what the particular question is that the Senator from Virginia asks.

Mr. SCOTT. I have just gone over it. Perhaps the Senator had some other business that he was transacting at the time.

The distinguished Senator will remember that a few days ago, I did offer an amendment that would reestablish the death penalty for murder in those instances where murder is made a Federal crime under present law, provided that certain procedures were followed as set forth in a rather extensive bill that had been offered by the late Senator McClellan. The distinguished Senator from Massachusetts saw fit to oppose the amendment, but he said at the time that, even though he would vote against the amendment, he would work to see that the death penalty bill was reported out of the Committee on the Judiciary. Yet I am told that, in this comprehensive amendment 1624, there is a provision that eliminates the crime of murder as a Federal crime, except for hijacking, when murder is committed when an airplane is hijacked.

Am I wrong in my assumption that that is in this amendment?

Mr. KENNEDY. The Senator is correct that the provisions of the death penalty that have been included in this bill are limited to the skyjacking provisions because that is the only death penalty bill that has been passed subsequent to the Supreme Court decision on the death penalty. With regard to the pending Senate death penalty bill, I am certain it will be recodified into this law at the appropriate time.

We will be passing additional laws, obviously, concerning different crimes and they will be codified into this law.

The Senator is correct in stating that the only provisions on the death penalty in S. 1437 are the provisions that have been passed subsequent to Supreme Court decision.

Mr. SCOTT. The death penalty is still in the code as presently enacted.

Mr. President, I must apologize for my voice. I have had a cold over the weekend and I am taking medication that makes my throat dry.

Mr. President, it is my understanding that within the Federal code as it presently exists, the crime of murder where the death penalty is provided is set forth in a number of instances, that the proposed amendment by the distinguished Senator from Massachusetts, this lengthy amendment which I have not read, but contains 333 pages, has a provision in it that would strike out the death penalty except where death is during the skyjacking situation.

I would ask that that portion be deleted so that we would still have the crime of murder in the instances where it is presently in the code, even though it may be that the death penalty would be contrary to some recent decisions of the Supreme Court, because these violations of the Constitution would be cured by the McClellan bill. There is no use to offer a bill to make lawful a matter that is in the code now, but is being stricken by this amendment that is proposed by the Senator from Massachusetts. I am sure that the staff member of the com-