Kennedy's Version Of S-1: 'A Clean Police State'

Sometime in the next two weeks Senators Ted Kennedy and John McClellan will introduce the "Criminal Code Reform Act of 1977" to the U.S. Senate. This is the so-called Kennedy S-1, the "clean" S-1.

The bill's predecessor, Senate Bill 1, was junked last year following an angry protest campaign conducted by the American Civil Liberties Union and other civil libertarians and the nation's press against the original bill's police-state measures that included an Official Secrets Act.

The Kennedy S-1, like its predecessor, recasts the entirety of Title 18 U.S.C., the federal criminal code. It is therefore a bill of major sociological and constitutional importance, purporting to map the United States' current values and morality by defining what type of offenses society chooses to punish through legal sanctions.

As might be expected given the constitutionally dismal histories of Senators Kennedy and McClellan, the bill is notably successful in providing a detailed map of the dirty mind and dirty tricks of Senator Ted Kennedy and his collaborators on the bill — Harvard Lawyer and criminologist Alan Dershowitz, police counterinsurgency expert James Q. Wilson, and the Carter Justice Department.

The Kennedy bill is the Fabian response to the equally noxious legal constructs embodied in the original S-1. Similar to the split in the German Nazi party between the anarchist Strasserites and the "Blood and Soil" SS, the question is *which* method of population control is appropriate to a particular stage of economic looting: fascism with a democratic face or the police-state variety. Under the cloak of its "white collar crime," "organized crime" and "official corruption" sections, the Kennedy bill institutionalizes such Rockefeller wrecking operations as the Institute for Policy Studies, PROD, the Fund for Investigative Journalism, Common Cause, and Ralph Nader. The legal code words for this process are "equality," "anti-corruption," and "down with special interest groups."

It is noteworthy in analyzing the organizing process underway for passage that the American Civil Liberties Union chapters in Boston and Washington, D.C. are circulating the only available drafts of the bill. While the counter-gangs backing the Kennedy bill do not expect passage of all of its provisions, the measure is dangerous whether or not it gets congressional sanction. It sets the terms for a managed debate on the "current crime situation," a context which legitimizes back-door implementation of its major provisions.

Former Attorney General Edward Levi, through his manipulation of the U.S. Supreme Court and the Justice Department, managed to implement many of the police-state measures incorporated in the last version of S-1 despite the fact that the bill itself was killed in Congress. This insurrectionary strategy is being repeated by the Carter Administration. Trials are now taking place in California and New Jersey which will undoubtedly be pointed to as proof of the inadequacy of current anti-espionage provisons, a major debating point in the Kennedy bill. Pieces of the "official corruption" section of the legislation are already being tested in the Congress, while regulatory agencies and court reformers are trying out the bill's white collar crime and mandatory sentencing provisions.

The Legal Philosophy of the Kennedy-McClellan Bill

Philosophy, and in particular moral philosophy, has concerned itself for centuries with the appropriate relationship between society and the individual and the type of universe presumed by this relationship. From the standpoint of rigor, criminal sanctions have a rational meaning only in the elaboration of a particular society's definition of freedom. In the humanist tradition of moral philosophy embodied in the successive evolutions of Ficino, Dante, Descartes, Spinoza, Kant, Hegel, Karl Marx, and the American Federalists, freedom is the creation of new, lawful orders within the necessities posed by society, with society providing the opportunities for education and socialization which allow the individual to make such contributions. From this standpoint, crime is the function of the morality of a society, its capacity to progress through the mediation of the creative discoveries of the individual and the individual's capacity to assimilate new technologies.

As outlined in the U.S. Labor Party's Law Enforcement Reform Act of 1976, criminal sanctions assume an urgent importance only in a society which is increasingly bestialized, robbed of its capacity for progress, in which the individual is more and more degraded into exercising heteronomic impulses of the individual greed variety. While it is absolutely necessary to check heteronomic disorders through criminal sanctions and rehabilitation, this effort is doomed to be nothing but an expanding system of prisons unless there is a corresponding restoration of the principles of progress and freedom to society as a whole.

The Kennedy bill not only abandons this tradition but is ignorant of even providing its pretense. The closest the bill's "statement of general principles" gets to a universal is its declared purpose to establish "justice" in the federal system. Needless to say, this noun is not repeated once in the rest of the provisions.

The mandatory sentencing provisions establish what "justice" means. The bill sets up a Federal Sentencing Commission to be appointed not by Congress but by the

Judicial Conference of the United States — already preoccupied by Orwellian court reform proposals which stipulate management, efficiency, and economy rather than justice.

Criminology circles are currently enmeshed in a phony "right and left" debate about the activities of this Commission, involving the appropriate utilitarian mix of punishment and rehabilitation for the bothersome human cattle who keep intruding on the efficiency experts' fine-tuning of the criminal justice system.

The "left" criminology school is in favor of more rehabilitation and less punishment, utilizing the counter-insurgency brainwashing methods and behavior modification techniques which have already shown their efficiency in spawning scores of terrorist groups out of the nation's prison system. This school of thought is also preoccupied with a definition of crime as caused by the individual's environment. But one should not misinterpret this notion: here the environment means not the world economy, but the isolated community from which the individual comes and to which he will return under the parole system advocated by these "left" criminologists, to reestablish his roots. The "right" criminology faction favors punishment only, complete computerization of crimes, including subjective designs and mitigating circumstances, and sentences delivered via a printout.

Kennedy does not take a stand in this "debate." This bill allows experimentation with both methods, with reports to the Sentencing Commission on which one proves most effective.

According to the guidelines in the bill, sentences are to be determined by the grade of the offense (each and every federal crime is graded by the bill into class A, B,C, D, and E felonies, class A, B, and C misdemeanors and infractions — a veritable calculus of public morality established by Ted Kennedy), the community view of the gravity of the offense, the public concern generated by the offense, the deterrent effect a particular sentence may have on the commission of a crime by others, and the current incidence of the offense in the community and nation as a whole. The same criminologists employed in the bogus punishment versus rehabilitation debate will make the sentence determinations outlined by these guidelines.

The Crime of Offending Rockefeller

The Kennedy S-1 white collar crime, corporate accountability, and organized crime sections are a gussied up version of Jimmy Carter's "get the rich off our backs" populism. Both are calculated to induce popular stupefaction about the actual state of the country and the world and untrammeled paranoia against advancing technology, by creating a "little man's war" against complexity and bigness.

Every one of the Rockefeller faction's Fabian operations for the past 50 years — wars on "corrupt labor," wars on "big business," wars on "monopoly capital," wars on "organized crime" — despite their moral pretensions were mounted only to consolidate Lower Manhattan's control over the economy. Now Kennedy's S-1 codifies those operations which were successful with new law introduced to cover the troublesome loopholes in existing provisions.

The Kennedy bill's conspiracy law is remarkable in three aspects. First, it outlaws use of these laws to deal with "dissident" and "political activity." Second, it expands the law's watergating potential by stipulating that a charge of conspiracy can be defended against only if the accused has moved affirmatively to stop *every aspect* of the conspiratorial plan. Since most conspiracies, whether they are undertaken by intelligence agencies or are alleged of private corporations or private individuals, operate on a "need-to-know" basis, the potentials of this law are obvious.

Finally, the law reveals its lineage in its exclusionary sections. According to the law it is not a crime to "conspire" to conspire. Since most Rockefeller operations work on the basis of setting into motion a middle-level network of agents who may employ still other agents to implement whatever specific dirty work is involved, this portion of the law controls such middle-level agent operations while protecting the actual high-level source.

Kennedy also goes after competing corporations and organized unions in the commercial and labor bribery sections of these provisions. The broad commercial bribery provision involves any "incentive" in the private sector which gives a competitive advantage. The labor bribery provisions induce federal investigation of a trade union if there is even a hint of patronage system by which trade unions normally operate. Bribery is defined to include job manipulation and job placement by a union official in reward for services performed for the union. The immediate experiential referents for these proposals are the Lockheed scandal destabilizations and the activities of PROD against the Teamsters Union.

No Kennedy-McClellan joint anti-crime measure could be complete without an organized crime provision. These laws formalize the organized crime investigations carried on through McClellan's racketeering committee and later Justice Department operations, which consolidated banking control over the "crime industry" and smeared political opponents and trade unions by alleging links to organized crime activities. In addition to criminal sanctions against racketeering, the laundering of racketeering proceeds, and the facilitation of racketeering by violence, Kennedy and McClellan revive Bobby Kennedy's white knight campaign of the 1950s, which set up Teamster leader Jimmy Hoffa for assassination and started attempts to crush the Teamsters Union, with provisions for civil remedies, including injunctions, civil forfeitures, and private damages suits, against organized crime activities.

With these laws stacked against organized political opposition, the Kennedy bill moves to rip apart the moral fabric of American society with "victimless crime" decriminalization measures. Under the Kennedy bill, carrying around a few joints of marijuana is perfectly legal, while possession of larger amounts will get the accused probations and, after a year, expungement of the offense. Cocaine does not receive explicit treatment in the bill aside from its decategorization as a Schedule 1 (high criminal penalty) drug.

The Institution of Watergate

If an opposition force cannot be disposed of in the private sector, Chapters 11, 12, 13, and 14 of the bill detail of-

fenses in the public sector which can be utilized for the same purposes.

The "Offenses Involving the National Defense" section of the bill, with a nod to liberal protestation against the old S-1's broad definition of treason (which would, it might be added, result in President Carter's indictment), returns this crime to its constitutional definitions and difficult proofs. Sabotage provisions are given an equally difficult *intent* criterion of proof. But the espionage laws preserve the basis of jailing selected political opponents on a national security basis. Espionage includes "communication and receipt of restricted data with intent to injure the United States or to secure an advantage to a foreign nation," with atomic energy matters particularly cited. Similarly, this section contains heavy sanctions against the dissemination or receipt of classified information, specifying receipt by a "communist organization." The bill does not specify that the information be duly classified, nor does it define the nature of a communist organization.

It would not be out of character of the bill's general knee-jerk Rockefeller content to posit that the U.S. Labor Party and the ridiculous Rudakov affair were in the forefront of Kennedy's mind when this provision was written. It opens the door to prosecution for telling the truth about current Soviet military advantage due to fusion technology development, and to prosecution of those who heard Soviet scientist Rudakov detail Soviet fusion-related researches to U.S. scientists before the U.S. Energy Research and Development Administration hurriedly classified his disclosures.

Chapter 12, "Offenses Involving International Affairs," is a compendium of the Church Committee reorganization of the intelligence establishment, with offenses such as attacking a foreign power, conspiracy against a foreign power, and entering or recruiting for a foreign armed force provided as a litany of Church Committee-documented covert operations abuses.

Independent moves toward developing the international economy also come under attack. Engaging in international business transactions involving prohibited exports, including technological information to countries in the Soviet bloc or the Third World covered by the Trading with the Enemy Act and the Export Administration Act of 1969 will result in heavy sanctions. In addition, it is declared illegal to disclose a foreign diplomatic code or correspondence, regardless of whether or not disclosure in the relaying of the contents of the correspondence. The national security provisions are also notable in their anticipatory criminal penalties against nuclear terrorism, despite the fact that such an incident has never occurred and could only occur with government collusion.

The preferred Kennedy-Carter method of political watergating is not raised in the bill's national security sections, however. National security prosecutions carry the penalty of high political risk. The preferred method is proposed in Chapter 13's "Offenses Involving Government Processes" provisions, and takes its lead from regulatory agency and Naderite operations against private industry over the past period. The shift in this section comes in the perjury, false swearing, and related offenses covering testimony or reports to Congress, the courts, or to regulatory agencies.

Requirements for proof in perjury and false swearing eliminate former requirements for corroboration. A statement becomes material evidence for prosecution of this crime if it is a "falsification, omission, concealment, forgery, alteration, or other misleading matter regardless of the admissibility of the statement or object *under the rules of evidence,* if it could have impaired, affected, impeded, or otherwise influenced the course, outcome, or disposition of the matter in which it is made, or in the case of a record, if it could have impaired the integrity of the record in question."

This insane provision parallels recent Rockefeller advances in environmental law which make a crime out of "omission." It establishes a similar principle in business dealings with government, requiring paranoid "conservation" of "all alternatives," no matter how irrational, in order to avoid prosecution under laws which are deliberately vague and overbroad, such as the Natonal Environmental Policy Act.

The Official Corruption Sections of the Kennedy bill employ the sanctimonious, born-again morals of the Carter Administration to totally divorce politicians from legitimate constituency groups, known in Carter-Kennedy circles as "private interest groups." There are three crimes dealing with relationships between public officials and "outsiders," outlawing "trading in government assistance" (securing an advantage by offering to write or suport legislation), "trading in public office" (securing an advantage by being offered or offering a political office), and "trading in special influence" (securing an advantage through lobbying or through a political party or a public servant reciprocating in this arrangement).

It is also illegal to "tamper" with a public servant. Tampering includes everything from spreading false assassination reports to deceiving a public servant in order to influence his action. Threats against public servants are fine, however, if they are "lawful" and intended "to make the public servant do his job."

It is a telling irony that the Kennedy bill contains specific prohibitions against vote fraud and obstruction or harassment of a political campaign, methods Carter used against the Labor and Republican Parties to gain his present position. But in the fantasies of Kennedy and Carter there will be no need for another election by the time 1980 rolls around.

— Barbara Boyd