P.S. to the NEWS
by PHYLLIS SCHLAFLY

Box 618, Alton, Illinois 62002
Phone: 618-462-5415

RELEASE: APRIL 18, 1980

THE FEDERAL CRIMINAL CODE REVISION

As soon as Senator Edward Kennedy puts his presidential campaign on the back burner, he will probably be up front again, in his capacity as chairman of the Senate Judiciary Committee, with his sponsorship of the complete revision of the federal criminal code (S. 1722 and H.R. 6233). This idea, which has been haunting the halls of Congress for several years, will probably become a prime Kennedy legislative project.

Recodification of the criminal code was a good idea originally, in order to eliminate inconsistencies and redundancies and to promote parallel structure for similar offenses. What has happened in Kennedy's hands, however, is the addition of many new provisions which should not be included, a toughening of the code where it should be more flexible, and a weakening of the code where it should be tougher.

The pornography provision, Section 1842, considerably loosens the standard set by the U.S. Supreme Court in the Miller case, which is the current operative law. Under 1842, smut peddlers could not be prosecuted if their obscenity were lawful in the state in which it was disseminated. The federal government would be effectively stymied from prosecution of importers of obscene materials so long as they dispose of their materials in New York and it is not obscene by New York standards.

Second, through a juggling of the language, 1842 arguably leaves it open for very hardcore pornographic magazines to be lawful because they do not appeal to the prurient interest of the average person. Section 1844 considerably reduces the criminal penalties for child pornography.

Section 2301 repeals the death penalty. Section 1621 redefines kidnapping so that the crime is to "restrain another person with intent to commit a felony." This is too broad and would make anyone who tied up a victim during a burglary guilty of a Class A felony, whether or not the burglar possessed a gun. With no death penalty, and since murder would also be a Class A felony, there would be little incentive for the felon not to bring a gun and kill the victim.

(more)

For hundreds of years, the crime of murder has been defined as "the unlawful killing of a human being with malice aforethought." We know what this means because of centuries of English and American law. Section 1601 would redefine murder as "conduct by which [a person] knowingly causes the death of another person." Why embark upon uncharted judicial waters? What about a construction project in which it can be actuarily demonstrated that someone will die? What about the Pinto case?

Rape is another area where the crime is redefined to make it too tough in the wrong areas and too loose in the wrong areas. Section 1642 effectively reduces the crime of rape to sexual assault, thus allowing certain types of real rapists to get away with a lesser penalty. On the other hand, Section 1641 ambiguously sets it up for the courts to hold that rape can be committed between husband and wife.

Section 1624 (which has no precedent in current federal criminal law) would greatly increase the jurisdiction of the federal government to enforce state court family law determinations. Section 1643 would loosen statutory rape with respect to several elements of the offense.

Section 1843 would make it considerably more difficult to prosecute a person who "transports any woman or girl [in interstate commerce] for the purpose of prostitution or debauchery, or for any other immoral purpose." Under the new provision, such conduct would not be unlawful unless the accused could be proved to be conducting a prostitution business.

Section 1811 decreases current penalties for opium violations. Section 1812 decreases the penalties for trafficking in less than 100 grams of marijuana from an A misdemeanor to a B misdemeanor.

Section 1813 decreases to a Class C misdemeanor the possession of less than 150 grams of marijuana, and decreases to an infraction the possession of less than 30 grams. It prohibits the arrest of persons guilty of the infraction, and reduces fines for each of the marijuana offenses.

Consideration of such a major and controversial recodification of the federal criminal code should be delayed until 1981, a non-political year, when it can be given the time and attention that such a massive piece of legislation deserves.

(end)