FROM: Phyllis Schlafly

68 FAIRMOUNT, ALTON, ILLINOIS 62002 / (618) 462-5415

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DEFEAT OF CRIMINAL CODE RECODIFICATION

The recent defeat of the Criminal Code Recodification Bill is quite an example of how a coordinated conservative grassroots effort can outmaneuver the liberal establishment, even after it had already made an ad hoc political alliance with the Justice Department, the White House, the Senate and House Judiciary Committees, the Senate Majority Leader, and the entire U.S. legal establishment.

Details about this remarkable legislative victory are just coming to light. They provide a good lesson in legislative strategy and tactics, plus much optimism for future conservative activism.

At an April 26 staff luncheon with the President, assistant Ed Harper assured Ronald Reagan that the Justice Department's Criminal Code Recodification Bill would easily pass the Senate without substantial opposition. Within 26 hours, however, the Senate had refused to cut off debate on whether or not to consider the bill. The issue was then jerked off the Senate floor.

Conservatives had become involved in the Criminal Code fight because they felt that it was too lenient on criminals convicted of serious offenses (such as sex crimes), while being too tough on legitimate businessmen found guilty of regulatory violations. Conservative pro-family organizations alerted their members to action.

The Reagan Administration had committed its support of the Criminal Code Recodification on the advice of two lawyers in the Justice Department who were holdovers from the Carter Administration. These men had written a major portion of the bill.

The writing of the 425-page Criminal Code Recodification Bill had extended over ten years. The men who wrote the bill had more interest in getting it enacted into law than they had in conservative or Reaganaut principles.

Conservative analysts submitted section-by-section objections to the bill, but their criticisms were dismissed. Conservative legal scholars opposed the bill particularly because it would throw out most current federal criminal law and replace it with a cluster

of broad generalizations which would have the effect of giving the federal courts a clean slate on which they could invent new legal definitions without regard to precedent.

The Justice Department lawyers used Attorney General William French Smith to make a nasty counterattack. In a February 25 speech to the Conservative Political Action Conference in Washington, Smith called conservatives "more-conservative-than-thou," "less than truthful," "misguided" nit-pickers who had launched a "mini-crusade" based on "mischaracterization, attenuated arguments, and even former provisions of the proposal that have been amended."

Even after one of the bill's sponsors admitted publicly that the Criminal Code Recodification "would create a clean slate for the courts to write on," the Justice Department higher-ups appeared to remain blissfully ignorant of valid criticisms of the bill and the political power of the conservatives who were making them.

Ironically, at the same time, the Attorney General was making public speeches in which he was taking a "holier than thou" position against the activism of federal courts. Smith accused the courts of having "removed policymaking from the will of the majority expressed through popularly and regularly elected legislative bodies." Conservatives believe that the Criminal Recodification would open up endless opportunities for federal courts to engage in more of such activism.

On April 22, sponsors of S. 1630 -- the Senate version — made their move to force the bill to the Senate floor. In a brilliant strategic move that will go down in the annals of Senate history, Senators Jesse Helms (R-NC) and Jeremiah Denton (R-AL) threatened to attach conservative amendments, such as the death penalty and the Human Life Statute.

The sponsors of S. 1630 needed 60 votes to stop the Helms-Denton filibuster. The S. 1630 sponsors failed by a vote of 45 to 46 -- fifteen votes short of the 60 they needed to end debate. Terrified liberals flocked to support Helms and Denton in their effort to prevent consideration of S. 1630. Even Senator Edward Kennedy (D-MA), a cosponsor of the Criminal Recodification, voted against his own bill, rather than cast recorded votes on the Helms and Denton amendments.

The juggernaut that was to have rolled so quickly over conservative opposition could not even succeed in making S. 1630 the pending business of the Senate.