

# DETROIT REVOLUTIONARY MOVEMENT RECORDS

BOX 15 OF 16

FOLDER 17

NIXON CRIMINAL CODE  
ALLIANCE TO END  
REPRESSION

June 1, 1973

# S.1400-H.R.6046 threat to liberties

## A PRELIMINARY REPORT ON NIXON'S PROPOSED CRIMINAL CODE

### INTRODUCTION:

On March 27, 1973, the introduction of identical bills in the House and Senate -- S. 1400 and H.R. 6046 -- was heralded by a nationwide broadcast by President Richard M. Nixon in which he announced legislation to reinstitute the death penalty and the life sentence without parole for drug offenders as part of his program to deal with criminals "without pity." An earlier draft for revising the criminal code -- S. 1 -- had been introduced on Jan. 4, 1973. These two drafts total 874 pages. Only a brief summary of the civil liberties aspects of S. 1400 - H.R. 6046 can be given here.

### THE DEATH SENTENCE:

To circumvent the Supreme Court decision outlawing past practices in imposing the death penalty as unconstitutional, new procedures are drafted (both in S. 1400 and a companion bill, S. 1401). The death penalty is made applicable to specified heinous crimes, including treason, sabotage, espionage and murder under certain conditions. After a verdict of guilty, a second trial is to be held to determine the presence of "aggravating" and/or "mitigating" factors, supposedly providing uniform standards now lacking. Upon a finding of negative factors and the absence of mitigating elements, the death penalty will be mandatory.

INSANITY PLEA: #502 permits an insanity defense only if the defendant did not know what he was doing. Questions as to existence of a mental disease or defect would be reserved for a separate hearing after determination of guilt or innocence (Chap. 312)

UNLAWFUL ENTRAPMENT REDEFINED: #531 so limits the definition of what constitutes unlawful entrapment to virtually eliminate it as a defense. The fact that undercover agents provocateurs employed deceptions including provision of explosives, firearms or narcotics and solicited criminal conduct "does not in itself constitute unlawful entrapment."

INCREASED PENALTY FOR REFUSAL TO ANSWER IN CONGRESSIONAL HEARINGS: #1333 raises the punishment for contempt of Congress from the present one year maximum to a class E felony punishable by 3 years and \$25,000. Long sought by HUAC/HISC, the stepped up penalty would apply to those seeking a constitutional test of an "investigating" committee's powers.

### WIRETAPPING AND EAVES DROPPING:

#3126 permits the President to wiretap any matters, domestic and foreign, if he deems that they involve "national security." Since the President can define the term, he is granted virtually unlimited authority and may in most cases use the wiretap material as legal evidence. #3127 authorizes the Attorney General or his designee to obtain court sanction to wiretap where there is "probable cause" to believe a felony is being committed. The list includes most federal felonies, including all which relate to "political" offenses. Reports on court authorized wiretaps are required. In emergencies, wiretaps without court sanction are permitted for a 48 hour period. A similar authorization is extended to state officials, including local prosecutors, when a violation of a state felony is suspected. If evidence of a different violation than that cited to the court is uncovered, it may still be used as legal evidence.

OFFICIAL SECRETS ACTS: Acquisition and publication of unauthorized government information, whether or not actually harmful to the U.S., could subject the news source, the reporter and publisher to the penalties of at least eight overlapping criminal statutes, with penalties ranging from death or life imprisonment (#1121 in wartime) to lesser terms of imprisonment.

Three sections, #1122 Disclosing National Defense Information, #1123 Mishandling National Defense Information, and #1124 Disclosing Classified Information combine to give the government almost unlimited discretion to deny public access to information which the government chooses to suppress, as "relating to the national defense." Explicitly included are questions of foreign policy. Severe penalties are imposed upon past or present federal employees who leak information, newsmen who use it, and publishers who print it. Proof that a document was wrongly classified is ruled out as a defense, but persons may be prosecuted for revealing unclassified information. Newsmen could be prosecuted if, upon receiving "defense" information, they fail to report it and the source to the government.

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Changes in definitions and alterations of language also make other statutes applicable to the unauthorized acquisition and publication of government information. Thus #1121 Espionage could be applied to newsgatherers and publishers. The definition of "property" includes "intellectual property or information," making #1731 Theft applicable to those who make unauthorized use of information, as well as #1732 Receiving Stolen Property. #1742 Unauthorized Use of a Writing punishes unauthorized possession of a government document. #1301 Obstructing a Government Function by Fraud would apply to unauthorized publication of information.

**OBSCENITY:** #1851 Disseminating Obscene Material bans explicit representation of sexual acts or genital organs and places the burden of proof on the disseminator to prove non-obscenity. Belief that material is not obscene is ruled out as a defense. The new, greatly broadened definition of obscenity is a serious threat to the press, authors, booksellers, underground papers, graphic artists and others. It offers an easy vehicle for political censorship.

**PUNISHMENT OF PUBLIC ASSEMBLY AND PROTEST ACTIONS:**

Virtually every form of protest action which became widespread in opposition to the Vietnam War, in seeking civil rights remedies and on related issues is covered in a series of overlapping laws, with penalties ranging from life imprisonment and \$100,000 in fines to 5 days and \$500.

#1111 Sabotage, in addition to the overt acts covered in the past now includes obstructing a government service or defense facility and delivery of defense materials of the U.S. or an "associate nation" (S. Vietnam or Cambodia) with intent to harm the defense effort. #1112 Impairing Military Effectiveness is sort of a second degree sabotage law, punishing the same acts as in #1111 with somewhat lesser penalties when committed without intent.

#1115 Evading Military Service punishes draft and military violations. #1116 Obstructing Military Recruitment or Induction would punish, among other offenses, sit-ins and mass picketlines at induction centers or at campus military recruitment drives, with sentences ranging up to 15 years and \$100,000 fines. #1117 Inciting or Aiding Mutiny, Insubordination or Desertion appears to be aimed at GI underground papers, rank-and-file peace-civil liberties organizations of military personnel, and GI coffee houses, among other objectives.

#1302 Obstructing a Government Function by Physical Interference appears to have been drafted with future possible "Mayday" type protest demonstrations in mind. #1335 Obstructing a Proceeding by Disorderly Conduct punishes conduct impairing an official proceeding, including those guilty of excessive "noise." #1328 Demonstrating to Influence a Judicial Proceeding would punish persons demonstrating (even silently carrying a sign) within 200 feet of a courthouse where a trial is in session, or within 200 feet of a judge's residence.

#1801 Inciting or Leading a Riot is a re-draft of the present "crossing state lines with intent to riot" law, dealing --not with overt violent acts per se --but speech, intent, and non-violent participation in demonstrations not presently covered. No riot or violence need occur; the "threat" is sufficient to trigger application of the law. #1804 Failing to Obey A Riot Control Order provides the grounds for mass arrests upon failure to disperse, even though no riot or violence has occurred. Title 3 #209 Temporary Residence of the President would ban all demonstrations within sight or sound of the President, even if he is just passing through, if the Secretary of the Treasury officially designates the area as off limits.

#1103 Inciting Overthrow or Destruction of the Government is a re-write of the Smith Act to circumvent the Supreme Court decision which made it inoperative since 1957. It punishes "inciting" overthrow at some future unstated time and such non-violent acts as mere active membership in an organization accused of such objective, recruiting members, etc. It deals solely with speech, communication of ideas and other areas protected by the First Amendment.

**LEGISLATIVE STATUS:** Hearings are in process before the House and Senate Judiciary Subcommittees, and should continue after the summer recess. Senator McClellan, subcommittee chairman, hopes to bring S. 1400 to the Senate floor in October. Write your Senators and Representative asking for a copy of the bill and for opinions on some provisions.

**THE ALLIANCE TO END REPRESSION**

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