New Wave of Legal Repression Looms

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1976

Unbeknownst to the vast majority of people in this country, we've once again over the last few months been inundated with a rash of extremely serious attempts on the part of the state apparatus via bourgeois legalism to further severely limit our personal freedoms.

This time around they're coming at us armed with a triple threat: an attempted compromise between liberal and conservative forces in the Senate to push through the notoriously repressive S-1 Bill; the revival of the death penalty upon the seven-to-two vote of the nine U. S. Supreme Court Justices and, finally; the re-introduction of the old "conspiracy" ploy by a crusading anti-pornography assistant U. S. attorney in Memphis, Tennessee.

Unless you're currently a prisoner on death row, the most pressing concern of the above three developments is the scurrilous wheeling-and-dealing between conservative proponents of S-1 and their liberal opposition in an effort to come to an amicable compromise and eventual passage of the bill.

1 Liberal Compromise on S-1

Originally a piece of legislation conceived by the Nixon Administration (amongst its authors former Attorney-General John "l-didn't-do-nuttin'-wrong" Mitchell), S-1 is easily the most threatening blow to whatever freedoms we still have left in America. Widely expanding the police state powers of government, the controversial bill would more-or-less do away with all forms of political dissidence, publications like the Fifth Estate most definitely included.

The first draft of S-1 was so blatantly authoritarian in its intent that approval of the new Federal Criminal Code was virtually impossible. Even such conservative hacks as Senator Sam Ervin, whose reputation within political circles as being "soft" on civil liberties is known far and wide, has commented that "S-1 is simply atrocious and would establish what is essentially a police state."

What the revised draft of the bill yields, in effect, is a code which still embodies its most repressive features in a less publicized piece of legislation known as the Official Secrets Act while at the same time allowing the Senate and Congressional lames to soothe their liberal conscience. The announced compromise fashioned under the joint leadership of Senate Majority Leader Mike Mansfield and Republican Hugh Scott trades off the most outlandishly repressive features of the bill for some half-assed liberal measures such as the banning of sexual discrimination, the reduction of the number of authorized wire tap situations from 55 to 46, and the abolition of indeterminate sentences for prisoners.

Some of the repulsive, vile and absolutely unacceptable features of S-1 still included on the revised Mansfield-Scott compromise are:

- Leading a Riot: A redraft of the 1968 law which provides for up to three years imprisonment and/or up to a $100,000 fine for "movement of a person across a state line" for the purpose of consummating a "riot." As

defined by S-1, a riot constitutes conduct by as few as ten people which "creates a grave danger of immediately causing" damage to property.

- Contempt: The penalty for refusing to cooperate with Congressional committees such as the Internal Security Subcommittee has been upped to three years imprisonment and a $100,000 fine.
- Sedition: An especially dangerous feature of S-1 which reactivates the Smith "Thought Control" Act of 1940, rendered inoperative by a 1957 Supreme Court decision (Yary vs. U.S.). This section allows for up to fifteen years imprisonment and/or a $100,000 fine for inciting "other persons to engage in imminent lawless conduct that would facilitate" the trashing of Federal or State government. Anyone deemed to have knowledge of such activities would be subject to up to seven years imprisonment and a fine of up to $100,000.
- Marijuana: Possession of any amount of weed for personal use allows for thirty days imprisonment and/ or a $10,000 fine. A second offense increases the penalty to six months imprisonment.
- Illegal Evidence: According to this section, "voluntary" confessions would be admissible even if they were obtained by secret police interrogation in the absence of legal counsel and without having been read one's rights.
- Demonstrations: Under the vague sections of this bill, virtually every type of protest or strike action would be intimidated by the threat of stiff penalties.
- Sabotage: The death penalty or life imprisonment are the consequences for any activity which is labeled as having damaged or tampered with almost any property or facility "used in or particularly suited for national defense." Actions which "interfere with or obstruct the ability of the U.S. or an associate nation to prepare for or engage in war or defense activities" also enter into this category. This clause has particular significance when applied to protests and demonstrations which would, in effect, be curtailed by threat of the severe legal consequences.
- Extortion: Another particularly menacing provision of S-1 which would effectively outlaw all future strikes and pickets. According to the 1937 Hobbs anti-Racketeering Act, extortion is defined as obtaining property from another person "without his consent… by the wrongful use of actual or threatened force, violence or fear." Insidiously, this bill eliminates the word wrongful from its definition of extortion, thus making it infinitely easier for federal prosecution at any time workers walk off their jobs and establish picket lines. This section also makes provisions for the FBI to involve itself directly in labor disputes between workers and their employers.

With the bill set to come up before a committee vote at any time within the next six months, we're once more faced with a situation where politicians are in the position to callously make deals with our lives and ultimately contrive some sort of compromise which promises to grant even more power to the State.

2. Supreme Court Legalizes Murder

Working towards a 1984 vision of America comparable to the provisions of S-1 is the U.S. Supreme Court. Over the past year the country's highest judicial body has handed down two landmark decisions which potentially bring the spectre of a police state that much closer to reality. Last July, the Court ruled that evidence acquired during police raids could be suppressed only if the officer involved knew that the search violated the Fourth Amendment checks against "unreasonable" search and seizure. The ruling presupposes, of course, that the officer would be totally honest, if, in fact, he had violated someone's constitutional rights.

That decision was followed up in January with the judgment that illegally obtained evidence could indeed be used in questioning witnesses without violating their constitutional rights.

On the heels of those two decisions came the Court's recent review and revival of the death penalty in America. Overturning its 1972 ruling that the death penalty constituted "cruel and unusual punishment" which had been imposed in an "arbitrary, capricious and freakish" manner, the Court now concluded that under certain circumstances, capital punishment was perfectly legal.

The difference in attitude is that in 1972, several of the Justices felt that the death penalty should be outlawed due to its unfair imposition primarily upon the non-white, poor and ignorant population. It was implied that with more specific laws, however, mandatory death sentences for specific crimes could, at another point in time, prove acceptable.

The result was the 35 states, as well as Congress, which imposed a mandatory death penalty for airplane hijacking, revised their death penalty laws. In the words of Supreme Court Justice Potter Stewart, the Court saw this action as a "marked indication of society's endorsement of the death penalty for murder."

Although the Court admitted there was no conclusive proof that capital punishment effectively reduced certain crimes, it said that it nonetheless felt the death penalty was "an expression of society's moral outrage at particularly offensive conduct" and therefore "an extreme sanction suitable to the most extreme times."

While the Court's decision dealt specifically with only a few murder cases in five states and sanctioned the death penalty in but three of those states—Florida, Georgia and Texas—it left the door wide open for the other 47 states to redraft their death penalty laws as well.

Under the new ruling, judges and juries will be allowed more leeway in deciding when the penalty of death is appropriate punishment. Should that penalty be imposed, an appellate review would be forthcoming.

At the time of the ruling, 611 persons were sitting on death row in 30 states according to United Press International. Of those 611, 317 were black, 15 were Chicano, 8 were Native Americans and one was Puerto Rican, thus totalling approximately 55.8% non-white.

In the three states where the death penalty was upheld, 144 prisoners were on death row-67 of them black and five Chicano. Another 150 prisoners still await possible death sentences in states where the laws appear to meet the Court's conditions.

Obviously, the approval and revival of the death penalty in America is a striking blow to the working class—blacks especially. While the government dismisses charges of racism and discrimination in the re-institution of capital punishment, charging that though "blacks are sentenced to death at an apparently high rate, they also commit a disproportionate share of the capital crimes," it never apparently has found it necessary to look into the reasons behind the crimes, such as bigotry, the rapidly rising rate of unemployment and the rapidly deteriorating quality of life of the poor.

More than anything else, the revival of the death sentence is a means by which the system is able to pin the blame for the problems we're all facing on the disadvantaged while cleverly diverting the attention of Americans from the crimes of the real cold-blooded, calculating criminals—the government and big business.

3. Conspiracy Ruse in Memphis

Also on the coattails of the so-called "liberalizing" of S-1 and the resurrection of capital punishment comes yet another legal threat to our freedom. In this instance, the culprit is 32-year-old Assistant U. S. Attorney Larry Parrish, an energetic Evangelist lawyer whose one-man crusade against pornography in Memphis, Tennessee could very well sound the death knell for the First Amendment.

Effectively employing the old conspiracy ruse used in the celebrated Chicago 7 trial, Parrish has already racked up ten convictions in three previous obscenity trials with three more scheduled for the future.

Parrish's most recent victory—and a case which is currently under appeal—was a triumph over twelve individuals and five corporations charged with conspiring to transport "Deep Throat," an allegedly "obscene, lewd, lascivious and filthy motion picture" over state lines. If his appeal is defeated, one of the co-conspirators in the case, actor Harry Reems, faces a prison sentence of five years and a $10,000 fine.

Although the *Fifth Estate* hardly holds a great deal of sympathy for persons making their living by aiding the churning out of offensively sexist garbage such as "Deep Throat," we do, however, recognize the familiarly devious

machinations of the State at work here and can see a more pressing issue involved—the expansion of the powers of the State in our daily lives.

So dynamic is the impact of this case on our civil liberties that Harvard Law School Professor Alan Dershowitz has taken up the cause. Recognized chiefly as a moderate by his legal colleagues, Dershowitz nevertheless feels strongly about the outcome of Reems' appeal, as do many others in his profession.

In a piece concerning the case in *The Village Voice* (June 28, 1976), Bruce Kramer, a Memphis trial lawyer and president of the city's American Civil Liberties Union affiliate, concisely summed up the implications of the affair:

"The most dangerous element in this case," Kramer explained, "is the way conspiracy laws are being used to harass and even jail people whom the government could not get at otherwise."

> "They're now applying the conspiracy statute to obscenity the way they used it against anti-war dissenters. And if the higher courts allow Larry Parrish to continue what he's doing, a lot more than obscenity will be suppressed.
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> "Since you're dealing with ideas here, this sort of government action is bound to kill innovative expression. Some people may not think that so-called obscenity is innovative expression, but suppression is contagious. They're already talking about banning violence from the screen. What kind of violence? There's no end to it.
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> "I tell you that if Dershowitz doesn't win this appeal, by the end of the decade a lot of people are not going to be doing and saying a lot of things for fear of becoming another Harry Reems."

It just so happens that Reems is currently bearing the brunt of the criminal charges. That might not ultimately be the case, though. As Parrish realizes only too well, a conspiracy rap when dealing with the motion picture industry encompasses cameramen, scriptwriters, copywriters, members of the production crew, distributors, etc. in addition to the actors and actresses. And whereas Parrish has thus far not chosen to prosecute any others beyond the original twelve individuals and the corporations (because, he wisecracked, "we'd need the Coliseum to try them all"), he does have the legal right to do so at any given future date.

"Let me put it this way," remarked one of Reems' defense lawyers in the *Voice*. "When they get around to trying 'obscene' books for crossing state lines, imagine a large percentage of the staff of Random House on trial down here (Memphis). Maybe then you New Yorkers will understand what's been brewing in Memphis for the last three years."

A particularly interesting facet of the Reems case is that it points out the distinctively mendacious nature of the new change of direction of the obscenity law. From 1957 to 1973 the Supreme Court held that any form of expression was protected under the First Amendment unless it was proven to be "utterly without redeeming social value." The burden of proof, then, was on the prosecution.

In 1973 that all changed. In the case of Miller vs California, the new Burger Court (stacked with four new conservative appointees courtesy of Richard Nixon) removed the "utterly without redeeming social value" and substituted the ruling that a work was obscene if it had no "serious literary, artistic or scientific value."

The new ruling couldn't have made prosecuting attorneys happier. What the prevailing sentiment of the Court means is that the burden of proof is now on the defense and all the responsibility for defining "obscene" is in the hands of local juries.

The clincher is that in prosecuting a case of this sort, Parrish is able to draw almost unlimited amounts of cash from state funds while Harry Reems is forced to deplete all his financial resources until he's bankrupt. At that juncture his defense falls by the wayside even as dogs like Parrish are able to press on.

In the three years involved in his three previous obscenity trials, Parrish has raided state coffers for over $4 million. In this current legal action, he's gone through $1 million already. As for Reems, he's depleted his savings of around $35,000 and is now forced to rely on a defense fund organized in his behalf to sustain his appeal.

Nearly every day new legal actions appear aimed at gaining more control over our lives. Only recently Chicago's City Council at Mayor Daley's request passed an ordinance prohibiting children under eighteen years of age from viewing films regarded by a five-member commission within the police department (presently made up of women

in their 60's) as containing too much violence. It must be understood that the suppression of violence in films could quite readily be applied to documentaries portraying public disturbances as well as war footage such as that seen in "Hearts and Minds." In this light, Chicago's new code could be construed as a form of political censorship. There's no telling how far the ordinance could extend.

In the end, it all comes down to the question of "rights," which implies the State's granting of allowances within its self-regulated guidelines as opposed to "liberties" or natural freedoms.

We don't now, nor have we ever felt as though we have to live our lives within the boundaries of the rules and regulations set down by the professional directors of other peoples' lives. As the screws tighten like a vise on our freedoms, it only goes to reinforce further our absolute distaste for the system and all its sick by-products. Until the State lies in ruin there will be no true freedom.

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Fifth Estate #275, August, 1976

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