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TRADE SCHOOL NEWS

"Nick Dixon?"
--Dwight David Eisenhower

Who's Afraid Of House Bill 511? Everybody! Berrigans, Ahmed, Move Over!

by Terrence L. Saron
Editor-in-chief

Two weeks ago, the Cleveland Chapter of the National Lawyers Guild sponsored a Prison Conference, which, if nothing else, served as a consciousness-raising exercise for the Cleveland legal community with regard to precisely how bad things are on the inside. This much is clear: there is a concensus among people active in the area of prison reform that the institution of "judicial confinement" must be starved into non-existence; alternatives thereto must be implemented, and the concept of "criminal" must be re-defined in the context of this nation's pervasive corporate and military criminality.

Yet Senate hearings are now in process, and Senate action is expected during this session on House Bill 511 (Amended Substitute), which, by the most conservative estimate, is anticipated to double present Ohio prison populations at a time when California is forced to close new hundred-thousand dollar prison facilities for lack of inmates to fill them. "Written like a goddam insurance contract," inveighs lawyer-activist Ben Shearer, the 266 page criminal code revision (not to be confused with the new Criminal Rules) will accomplish the foregoing through "upgrading" of offenses by definition of culpable mental states. By defining in an extremely ambiguous manner the terms "knowingly" and "recklessly," minor offenses are transformed into serious crimes. Own a swimming pool, buddy? Failing to put a fence around it, into which a trespasser falls and is drowned, becomes involuntary manslaughter (recklesslessly--i.e.with heedless indifference to consequences--causing death of another, a felony). Thus accidental injury becomes a crime.

The following analysis, submitted by Profs. Geltner and Quigley of OSU College of Law, demonstrates how these "mental state" words have been used to make the law harsher, and how a number of new crimes have been created thereby:

2923.01 - CONSPIRACY. A nifty prosecutor's law, which is being innovated at a time when most states have either abolished it or are in the process of doing so. Present Ohio Code provides liability only for conspiring to commit certain specified offenses. Here, it would be a crime to conspire to commit any felony. All that is required is that the actor agree with another person to commit a crime, and that one of them do some act in furtherance of the conspiracy. Whether the crime was ever committed is irrelevant, conspirators need not know each other, and it is no defense that "in retrospect, commission of the offense which was the object of the conspiracy was impossible under the circumstances." J. Edgar would have been proud! Such a law, needless to say, lends itself to abuse of the worst order.

2921.22 - FAILURE TO REPORT A CRIME. Makes it a crime recklessly to fail to report a felony, offense of violence, or theft that the actor has reasonable cause to believe (but is not sure) has been committed. This means, gentle reader, that citizens will be required to report on each other, including members of their own families (except a spouse). "With such a provision," opines Prof. Quigley, "when police arrest an individual, they will often be able to arrest such of that person's acquaintances who have 'reasonable cause to believe' that the person committed the crime."

2923.02 - ATTEMPT. Makes it a crime to attempt to commit any offense. Does not state how close the actor must come to completing the offense, and could make persons liable whose acts are only remotely related to completion of the offense. "Persons engaged in innocent activity may be charged with intent to commit an offense and thereby prosecuted for criminal attempt," says Prof. Quigley.

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H.B. 511
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2913.02 - THEFT. Here, "property" is now defined to include both real and personal (Ohio law presently regards the taking of personal property only as theft). Law is transformed into powerful landlord's weapon. Under new definition, a tenant who overstays his lease, or remains in leased premises when his legal right to do so has expired, could be prosecuted for theft. Whew! In addition, and perhaps even more frightening, this section punishes not only the taking of property, but the taking of services. This is new to Ohio law. Service is defined to include labor, personal services, food and drink, transportation and entertainment. Thus it would be theft to fail to pay your phone bill, inter alia. Even if the bill is in dispute, an individual would be risking criminal prosecution if he fails to make prompt payment.

2917.11 - DISORDERLY CONDUCT. This is defined so ambiguously, says Prof. Quigley, that it may well be held unconstitutional.

2921.13 - FALSE SWEARING. This makes any false statement to a police officer or other public official a crime, and is subject to abuse, since it will be the citizen's word against the officer's in many cases (play it straight with your tax assesser last year? Huh?). At the present time, there is no such provision on the books. It may well make citizens reluctant to talk with police officers since they will be under threat of prosecution if the statement they make turns out to be false.

...many, many more...

Among other provisions in the new code, it is stipulated that in determining whether to show mercy for capital murder (2929.03), and in setting terms and fines (2929.05), the court shall consider, among other things, "the history, character, and condition of the offender." Of this, Prof. John Martinson, Chairman of the Sociology Department, CCNY, and speaker at the May 6 Prison Conference, stated:

"However well-intentioned, this [statutory language] is an open invitation to the kind of judicial discrimination now practised against those without wealth, family or standing in the community...Our criminal justice system, juvenile and adult, has been a dragnet for the poor and ignorant. That the selection has been largely unconscious, is no excuse to perpetuate in the foreseeable future the discrimination and injustices which have disgraced the past."

Contact Terry Gilbert at 687-2342 for further information on H.B. 511 and what you, John Q. Citizen, can do to nip it in the bud!

"THEY WANTED FACULTY EVALUATIONS? THAT PIE HAPPENS TO BE STATISTICALLY SIGNIFICANT TO THE .005 PERCENTILE!"

T.S. NEWS SUPPLEMENT

REPORT OF SPECIAL COMMITTEE

The Special Committee on the Feasibility of Establishing a Procedure for Reviewing the Character and Fitness of Candidates for Law School Admission Prior to their Acceptance as Students has submitted the following recommendations.

Excerpts from their report are as follows:

1. That nonetheless, approved law schools should, as a part of their function in the legal profession, cooperate with the authorities charged with responsibility for character evaluation of those seeking a license to practice law, by administering to their students such uniform tests or questionnaires (without being required to evaluate or make judgments on the results thereof) as the appropriate admission authorities may find useful and relevant and which are within the constitutionally permissible scope of inquiry.

2. That, based upon such information as the suggested studies reveal, the National Conference of Bar Examiners be urged to continue to develop recommended uniform character questionnaires (and investigations, to the extent feasible) for first year law students to be given as early as possible after matriculation.

3. That (while probably beyond the scope of this Committee's assignment) the organized bar and the Supreme Courts of the various jurisdictions be urged to continue and increase their efforts to root out the known, as distinguished from the potential, character risks already engaged in the practice of law.

WE ENDORSE THE FOLLOWING STATEMENT OF THE COMMITTEE FOR A FREE AND INDEPENDENT BAR IN OPPOSITION TO THE ABA SPECIAL COMMITTEE REPORT

The "Report on the Feasibility of Establishing a Procedure for Reviewing the Character and Fitnessof Candidates for Law School Admission Prior to their Acceptance as Students," is a dishonest and frightening document. It is dishonest in that it cloaks in the vaguest psychological language the intent to impose a silting political conformity in law schools and the bar, and to continue to exclude from the bar members of minority racial, social and economic groups who are likely to have "dangerous" predictive profiles. (ironically, this proposal comes at that moment in history when the inclusion of formerly excluded classes, including women, in the legal profession is slowly becoming something of a reality). The Report is frightening in that it opens the whole of a law student's political and private life, what he or she believes, says, or does, to a wide-ranging examination conducted in accord with undefined, ambiguous and illegal standards. Most frightening of all are the evident assumptions of the committee that drafted this report: that there are no moral or legal objections to the assembling of "100,000 dossiers annually," other than the impracticality because of the numbers involved; that there are no moral or legal objections to the pre-judging of human beings as to their possible actions three or more years in the future, other than its "feasibility."

This proposal does not arise in a political or historical vacuum. It comes at a time when the number of lawyers willing to defend unpopular clients and causes is increasing, as are the attacks on this courageious minority; when proposals for control data banks, private and governmental, on personal credit, and political and criminal activities are multiplying; and when detention camps for 6-year olds with "criminal proclivities" are seriously being suggested.