NEWS from
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TWO DOLE AMENDMENTS TO CRIMINAL CODE REFORM PASS SENATE

Following an intense debate between Senator Dole and Senator Kennedy, the Senate passed two amendments offered by Senator Dole.

The first amendment clarifies Federal law on obscenity. The amendment allows state and local standards to determine what material is obscene. The Supreme Court in Miller v. California ruled that use of state and local standards of obscenity is constitutional. Subsequent decisions have also permitted use of a national standard. The Dole amendment ensures that for all federal prosecutions, the local standard for the community where the prosecution is undertaken would control on whether the material is obscene.

The second amendment expands the types of offenses for which pretrial release may be denied. The offenses are murder, rape, armed kidnapping, armed robbery, or when a hostage is seized to negotiate the accused's release. For persons charged with these offenses, the government will be allowed to show that the defendant presents a continuing danger to the community. If the federal judge is convinced, that the offender is dangerous, he would be authorized to deny pretrial release. In other cases, the accused would be released on those minimal conditions necessary to assure his appearance at trial.

Following are Senator Dole's statements on the amendments:

Amendment on Obscenity

Mr. Dole. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

Section 1842 of S. 1437 substantially rewrites current Federal law on the dissemination of obscene material. The Judiciary Committee stated that the reason for drawing back from current law is that the federal interest in this a ea is "less urgent and pervasive." The Committee concluded that recent cases have enabled state and localities to prosecute obscenity cases more effectively and thus reduce the need for federal action.

SUPREME COURT HAS CHANGED VIEWS

The test used by the Supreme Court has for many years required the jury to apply "contemporary community standards." While the word "community" does not seem inherently vague, the Supreme Court has struggled with a proper definition for it. In the cases preceeding Miller v. California, the Court interpreted community to mean a national standard. Since the Miller case in 1973, it has been constitutionally permissible to use the state or local community standard.

A subsequent case, Jenkins v. Georgia, held that Miller does not mandate use of state or local standards but merely allows use of such standards. Therefore, the current state of the obscenity standa is that "state or local standards" may be used in the jury instruction but such an instruction is not constitutionally required.

AMENDMENT CONSISTENT WITH SUPREME COURT DECISION

Section 1842 defines obscene material in accordance with the Miller v. California decision. However, the bill fails to define what "community" is the appropriate "community" for federal obscenity prosecutions. My amendment provides that "community" means the state or local community in which the publication was disseminated. For federal obscenity prosecutions, "community" shall not be interpreted as meaning the nation as a whole. This amendment would allow the citizens of each town the opportunity to decide what publications they feel are obscene.

Amendment on Pre-Trial Release

Mr. Dole. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration. Mr. President, S. 1437 carried over the basic structure of the Bail Reform Act of 1966, 18 U.S.C. 3141-3149. Sections 3502 and 3503 of S. 1437 relate to release pending trial in non-capital and capital cases, respectively. The Committee Report accurately states that the effect of Section 3502 is "in non-capital cases a person is to be released under those minimal conditions reasonably required to assure his presence at trial". In other words, the only important discretion left to the judge is to set the conditions of release.

STRICTURE PROCEDURE FOR CAPITAL CASES

The procedure, found in Section 3503, is significantly different in capital cases. For offenses punishable by death, the government has the opportunity to show that the person poses a danger to the community. If the judge is convinced, pre-trial release may be denied.

ONLY ONE CAPITAL CRIME IN S. 1437

Certainly crimes punishable by death are so serious that pre-trial release may have to be denied in some cases. Yet, S. 1437 virtually repeals the death sentence. The only crime which carries a constitutionally adequate death penalty is aircraft hijacking if another persons dies. The absence of any death penalty provisions makes Section 3503 effectively a dead letter at this time.

SERIOUS CRIMES AGAINST THE PERSON COVERED

The Senator from Kansas does not intend to raise the issue of capital punishment here. Nevertheless, I strongly believe that certain crimes are so inherently serious that pre-trial release may be inappropriate for some offenders. Individuals accused of serious crimes against the person may represent such a danger to others that no conditions of release may be adequate to prevent further criminal activity.

The amendment I am offering expands the types of offenses for which pre-trial release may be denied. These offenses represent very serious crimes against the person. The offenses are murder, rape, armed kidnapping, armed robbery, or when a hostage is seized to negotiate the accused's release.

SAME PROCEDURE AS FOR CAPITAL CRIMES

Persons who have been charged with these serious offenses will be subjected to the same bail procedure as those charged with a capital offense. Bail would not be automatically refused. Rather, the very structure already in place both in the Bail Reform Act and in S. 1437 is used.

Many of those who testified also mentioned the low prices in the cattle industry and their feeling that beef imports are hurting the price. I feel this Committee needs to take a look at beef imports and also the movement of live cattle from Canada and Mexico.

One farmer, Gerald McCathern of Hereford, Texas, stated, "As you know, approximately [illegible] billion pounds of red meats, processed and boned, are imported annually...our U.S. producers cannot compete price-wise with this unfair competition without being drawn down to the same living standards which exist in those exporting nations. Consequently, we see our cattle herds depleted and U.S. cattle producers forced out of business.

Patty Stulp, of Yuma, Colorado closed her statement this way, "The American Agriculture Movement has made their demands known. Nothing has been done to relieve the economic crisis. I have gone on strike. I will not sell anymore agriculture products, I will not buy any production equipment, supplies, or non essential items. I do not intend to produce another year at below the cost of production. I have talked with farmers in Colorado, Kansas, Wyoming, Nebraska, and Michigan. Many of them have already committed themselves to a 50% reduction in planting this Spring. I feel this will cause serious consequences for this country.

It is a drastic action. It is an action the American producers have been forced to take. I would hope the Senate Agriculture Committee and the Congress of this country will realize the irrevocable damage this will cause and act with the speed the urgency of this situation requires."

A. A. Anthony, Jr., President of the Grain Sorghum Producers Association, said, "Our association represents grain sorghum farmers throughout the sorghum belt of the United States, and at this time our producers are in extremely poor economic condition. They need help immediately or many of them will not be able to start this year's crop."

The above quotes are but a brief collection of statements made at the hearings. They do represent the testimony that was given. All of those who testified agreed that agriculture is in serious financial trouble. They all agreed that quick action is necessary to save many family farmers. Most of them felt that government policies of the past had not always been to the benefit of farmers and that farmers many times were the victims of government policies that were ill-advised, and ill-timed.

I hope we can learn from the testimony and see what action is necessary to correct the situation farmers find themselves in. I hope that we can agree on a few proposals and ideas and not have many suggestions that agreement cannot be reached on. This is a time for unity and harmony.

Farmers have repeatedly stated that they do not want a government handout. They deserve the gratitude of all Americans for calling attention to the seriousness of the situation on the farms and in rural America. Since we cannot have a healthy national economy without a healthy agricultural economy, all Americans, particularly consumers, have a vital interest in the issues of concern to farmers.

I know the statements made in the hearing will help this Committee in its work toward assisting the farmer receive a fair return for his labor and investment.

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