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Crime Bill

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June 17
Crime Bill

introduced
Cops ~~not~~ by summer? July
- need OMB costs.

3-4 wks - old do by
mid-sept - which will help
Florida, Terry

Brady already standing alone - Schumer

Police Corp $\leftarrow$ Structure - 2 questions
\$

→ how do you keep it from becoming Nat'l Service debate
- why not cover educators, midwives, etc.

Habeas - big move w/ DA's

decide in this room on how to cut it & then everyone
goes out - sells it

key to habeas - "New Rule"

(1 yr. - 1 appeal)

- if you're in the middle of your 1 yr. appeal - Sup. Ct.
makes new rules - if it's minor rules it applies to
petitioner - if not - it's a "clear break" w/ precedence -
it does not apply to pending cases

DA's want:

death penalty - it's in

but it's never enough - habeas corpus is key for them

actual innocence } deal w/ & ignore
coerced confessions } Teague

Senate - why not introduce full Crime bill in July -
rather than just cops piece since bill is 95% there.
Say you'll push corp. to vote in Sept.

If introduced in July → can begin to deal w/ habeas
corpus. but if you introd. in Sept. will take 2
mos. to quiet down habeas opponents

House - must decide on habeas before introducing Crime
→ alter Brady marginally

House need all's to just be quiet - even if they
don't support

Is introducing this bill now
prudent vis vis ABC?

Bruce leans
toward { Introduce identical H & S bills?
or
Introd. bills that are 95% the same - but cops
piece is same? }

Reno will need to get state AG's on board re: habeas
shld be decided by this wk by Reno & DAs

[Need mtgs on Title 1 + cops and habeas corpus]
mid wk

Tough Enough or Too Soft?

(S1241, HR3371; WR 11/30/91 p. 3529; 120 lines)

Law/Judiciary/Supreme Court

Tough Enough or Too Soft?

By Joan Biskupic

If the crime bill were to become law, Oklahoma County District Attorney Robert Macy told a local newspaper, all his death penalty cases would have to be retried.

The Oklahoma prosecutor cited a particularly brutal prisoner who had killed nine people, in one case after herding his victims into a restaurant freezer, and said the inmate would forever avoid execution under a provision that covers inmates' challenges to their convictions.

Although Macy's assertions are unlikely to come true, such sentiments of the president-elect of the National District Attorneys Association were repeated throughout the country by other prosecutors, who mobilized the week of Nov. 25 to oppose the crime bill (HR3371).

The prosecutors, acting in unison with President Bush and Republican lawmakers, blasted the bill as "pro-criminal" and "soft on crime." Democrats said it was the toughest crime bill ever written, expanding the death penalty and imposing new limits on a prisoner's ability to stall execution through habeas corpus petitions.

"I understand that district attorneys like winning," said Mike Synar, D-Okla., a member of the House Judiciary Committee, "but this bill does restrict (inmates') habeas corpus petitions. It doesn't make things easier."

John Bryant, D-Texas, added during floor debate Nov. 27 that opponents had engaged in a "gross misrepresentation of the bill. . . . I can't imagine how you can sleep at night." To that, Republicans began hissing.

The rhetoric aside, both parties' proposals would confront defendants with tougher penalties and a more difficult time challenging their convictions. But the GOP alternative would have favored law enforcement, while the conference bill, written largely by Democrats, would provide a greater regard for defendants' rights. For example, the bill would require that experienced, court-appointed lawyers assist defendants from

trial to final appeals.

Democrats' and Republicans' substantive differences centered on death row petitions and rules for evidence used at trial. These highly legalistic issues have little to do with fighting the street crime that affects most Americans, but they nonetheless have become symbols of a criminal justice system that does not work.

"The American people know that our criminal justice system is failing because convicted criminals are able to escape just punishment through endless delays and repetitive technical maneuvering," said Attorney General William Barr. But Rep. Charles E. Schumer, D-N.Y., said the conference bill is "a heck of lot better than what we have now. . . . Right now there's far more opportunity to delay" an execution than the bill would allow.

Inmates commonly delay their executions through successive habeas corpus petitions. One study found that the average time between conviction and execution is more than eight years; much of the delay comes during state appeals. The Supreme Court in the past three years has made it harder for prisoners to file habeas corpus petitions, upping the ante for members of Congress who want more restrictions (mostly Republicans) and for those worried about infringements on defendants' rights (mostly Democrats). (1991 Weekly Report, pp. 1666, 1829)

Bush's proposal, similar to what the Senate passed in its crime bill (S1241) on July 11, would have prevented prisoners from obtaining federal court review of their cases if a judge believed the prisoner had a "full and fair" hearing in state court. Prisoners would have had to have filed for habeas corpus within six months of exhausting all direct appeals.

Instead, the conferees adopted the more moderate approach the House originally passed Oct. 22. It requires death row petitions to be filed within one year. Current law carries no deadlines.

The conference bill also would limit successive petitions, requiring that a second petition be denied unless one of two conditions were met: The prisoner had not been reasonably aware of the new facts that supported the second claim, or state officials had unconstitutionally interfered with the inmate's ability to bring the first claim. The new petition also would have to raise questions about the prisoner's guilt.

The bill would modify the effects of recent Supreme Court decisions that make it harder for inmates to take advantage of favorable court rulings in other cases. The bill still would limit the use of new court rulings, dictating that prisoners could not base a petition on a ruling that is a "clear break

from precedent . . . that could not have been reasonably anticipated" when the defendant was sentenced.

The other area of dispute involved a longstanding court rule that evidence seized in violation of a defendant's constitutional rights may not be used at trial.

In 1984, the Supreme Court allowed a "good faith" exception to the so-called exclusionary rule. It permits prosecutors to introduce evidence obtained by police who acted in reasonable reliance on a search warrant that was later found to be defective. An example: a magistrate who issued the warrant without the required probable cause that some wrongdoing was under way.

At issue was whether to write that ruling into statute, as Democrats did, adopting part of the original Senate measure, or to take it further and allow a "good faith" exception when police have not obtained a warrant but believe they could have gotten one based on the conditions. Arguing for the latter, Barr said that by disallowing warrantless evidence seized in "good faith," the bill "will handcuff police and increase the number of criminals who escape justice on legal technicalities." GOP members added that by writing a statute rather than relying on case law, Congress would prevent judges from giving prosecutors more latitude to introduce evidence.

But William J. Hughes, D-N.J., countered, "It is important to encourage police to use caution" when entering people's homes and businesses.

Photo, Barr.

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CQ's WASHINGTON ALERT 06/17/93

LAW/ JUDICIARY: Failed Bid To Invoke Cloture
Is Crime Bill's Last Gasp
(HR3371; WR 10/03/92 p. 3060; 120 lines)

Government Operations/Exec Branch

Law/Judiciary/Supreme Court

LAW/ JUDICIARY: Failed Bid To Invoke Cloture
Is Crime Bill's Last Gasp

By Kitty Dumas

Despite an intense lobbying effort by gun-control activists for anti-crime legislation, the Senate could not muster the votes to cut off a threatened Republican filibuster on the crime bill Oct. 2. The vote effectively killed the measure for this year.

The loss was no surprise to senators and others familiar with the longtime fight over the bill (HR3371). Democrats and Republicans have been at an impasse since last November.

In the end, in a presidential election year in which crime has fallen behind the economy as an issue that can mobilize voters, neither Democrats nor Republicans wanted the bill badly enough to hammer out a compromise.

In a replay Oct. 2 of last year's Senate battle over crime, Democratic senators led by Judiciary Committee Chairman Joseph R. Biden Jr., D-Del., failed to win enough votes to cut off an expected Republican filibuster on the bill. The 55-43 cloture vote fell five votes short of the 60 needed to stop debate and move to consideration of the bill. For the second year, Democratic senators from Alabama and Louisiana voted against the cloture motion. On Nov. 27, the Senate failed 49-38 to invoke cloture. Also on that date, the House barely eked out a 205-203 win for the conference agreement on the bill. (1991 Weekly Report, p. 3528)

The crime bill would have imposed new gun-crime penalties, extended the federal death penalty to more than 50 crimes and restricted death row inmates' ability to challenge their sentences - but not enough for Republicans' liking. The measure includes legislation, known as the Brady bill, that would establish a five-day waiting period for handgun purchases to allow for a police background check. It was named for President Ronald Reagan's press secretary, James S. Brady, who was wounded during an assassination attempt on the president in 1981.

In the end, the same issues divided the two parties. Republicans did not support the handgun control provisions and Democrats did not want tough Republican restrictions on the ability of death row inmates to ask for federal review of their sentences under habeas corpus provisions.

President Bush had said he would accept the Brady language if it were part of a crime package that included the tougher habeas corpus restrictions.

Gun control proponents led by Biden and Sarah Brady, James Brady's wife, blamed the bill's troubles on the gun lobby led by the National Rifle Association. "It's about the NRA," Biden said of Republicans' opposition.

But Strom Thurmond of South Carolina, ranking Republican on Judiciary, said the bill was not tough enough. Passing it,

Thurmond said, would be "tantamount to handing the jailhouse keys to thousands of convicted felons."

Compromises Rejected

The Senate floor was the scene of a high-stakes political gambit in which both sides were bluffing, as Biden and Thurmond threw out compromise agreements only to have them summarily rejected by the other side.

Biden held a news conference Oct. 1 with the nation's top police groups, including the Fraternal Order of Police and the National Association of Police Organizations. He offered to strike all habeas corpus provisions from the bill to neutralize that issue. Biden, whose staff had been negotiating for weeks with Attorney General William P. Barr on the bill, also offered to negotiate throughout the night with Barr and his staff. The heads of the police organizations, led by FOP President Dewey R. Stokes, offered to mediate.

Biden said Oct. 2 that the talks ended at 2:30 a.m. with no resolution.

Stokes, who helped mediate, said the two sides disagreed over several small issues. No matter what was tried, he said, the sides never fully compromised.

Then on the Senate floor, Biden again made his offer to Thurmond to take out habeas corpus provisions. He also offered to throw out provisions that would bar the use of coerced confessions at trial, reversing a Supreme Court decision in *Arizona v. Fulminante*. The provisions had been strongly opposed by Republicans.

But Thurmond continued to denounce the measure. He finally refused Biden's offer, saying that habeas corpus must be addressed in the bill.

Biden then argued that Thurmond's refusal to agree proved his assertion that Republicans were still holding out over the Brady provisions.

Thurmond then offered to introduce a new bill including Brady, but also the habeas corpus provisions that Bush wants. Biden refused. "There you go," Thurmond said.

During the vote, Sarah Brady said she would continue lobbying until adjournment for passage of the Brady provisions by themselves.

She dismissed Thurmond's proposal to Biden and said she understood Biden's refusal to accept it. "That was not a serious proposal," she said.

BOXSCORE

Bill: HR3371 (H Rept 102-378) - Omnibus anti-crime bill.

Latest action: Senate cloture vote failed 55-43.

Next likely action: None.

Background: Republicans and Democrats have been at an impasse on sweeping anti-crime legislation since November, when Congress failed to pass the conference report.

Reference: Weekly Report, pp. 2624, 732, 540, 410; 1991

Almanac, p. 262.

GRAPHICS: Photo, Actor Beau Bridges and James and Sarah Brady, seated left to right, held a news conference Sept. 28 (R. Michael Jenkins).

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CQ's WASHINGTON ALERT 06/17/93

Senate Begins Annual Ritual

Of Toughening Crime Law

(S1241, S635, HR7; WR 06/22/91 p. 1665; 270 lines)

Law/Judiciary/Supreme Court

Senate Begins Annual Ritual

Of Toughening Crime Law

By Joan Biskupic

LAW/JUDICIARY: Democrats win first round with defeat of Bush plan, face challenges on gun control, other issues

Senate Democrats, bidding for the politically resonant role of crime fighter, have won a round over Republicans by scuttling President Bush's version of anticrime legislation. But the Democrats now face a potentially more daunting challenge: fending off efforts to remove gun control from their own bill and modify its other key features.

In what has become a yearly ritual, the Senate on June 20 began debate on the parties' competing crime bills. The Democrats' version (S1241) and the Bush counterpart (S635) both are aimed at stiffening laws not already tightened by five major crime and drug bills in the past 10 years.

Among other things, both bills would expand the list of crimes punishable by death and make it easier for states to carry out executions.

As the chamber took up the legislation, Republicans sweetened their offering, adding more than \$3 billion for federal and local law enforcement. That made it more like the Democrats' bill. But the majority Democratic Senate was not swayed and rejected Bush's bill 40-56. (Vote 103, p. 1710)

First, to strengthen the Democrats' hand against the Bush bill, the Senate voted 55-41 to delete a provision from S1241 that would have permitted death row inmates to challenge their sentences as discriminatory if they showed that a higher proportion of their race are sentenced to die. Several moderate senators had said the provision would undermine capital punishment. (Vote 102, p. 1710)

When they resume action on the bill, senators plan to vote on several controversial issues. Among them are an assault weapons ban, death row inmates' appeals and whether to loosen rules that keep illegally obtained evidence out of court.

A vote is set June 25 to allow a "good faith" exception to the exclusionary rule so that evidence seized without a warrant could be used against a defendant.

The Senate debate comes as the Supreme Court already has lengthened the reach of law enforcement agencies. Indeed, as senators began weighing whether to let police use evidence seized without a warrant against a defendant, the court handed down a decision expanding the right of police to search the bags of bus passengers. (Court actions, p. 1666)

"We're engaged in a crass political contest over whether Democrats or Republicans hate crime more," said Howard M. Metzenbaum, D-Ohio, sounding a familiar complaint as debate on the overall bill began.

If the senators' penchant for combating crime and divisions over how to do it have been played out before, their sentiment on handgun control has not. The Brady bill, requiring a seven-day waiting period for handgun purchases, is the greatest unknown.

Sarah Brady, chairman of Handgun Control and the wife of James S. Brady, for whom the bill was named, buttonholed potential swing voters outside the chamber June 20, urging them to support the waiting period as it is in S1241.

She compared the situation with that of the House a few days before its vote on a related bill (HR7). "Everything is so fluid, and it's going to be very close," Sarah Brady said. Ultimately, the House gave HR7 a decisive endorsement, passing it by 239-186 on May 8.

The Senate, where hunting-state senators have more clout, is a tougher nut to crack, Sarah Brady acknowledges.

Supporters say background checks will keep handguns out of the control of felons and stem violent crime. The National Rifle Association (NRA) and other opponents say the waiting period would infringe on the Second Amendment right to bear firearms and do little to curb crime.

Democratic sponsors of the waiting period were exchanging proposals with opposing senators and the NRA toward a compromise that could bring on reluctant senators.

Possible modifications would be a shortening of the waiting period and a firm expiration date, at which time an instantaneous background check of prospective purchasers would take effect.

Who's Toughest?

As anticipated, the first day of action on the politically charged legislation was marked by senators on both sides of the aisle asserting that their bill would do more to fight violence in the streets. Metzenbaum said it sounded as if members were posturing to be the "toughest kid on the block."

"I have no reservations about defending the Democratic crime bill as the tougher crime bill," said Judiciary Committee Chairman Joseph R. Biden Jr., D-Del., reiterating that he could count more death penalty crimes in S1241, which he sponsored.

Strom Thurmond, R-S.C., countered that his proposal, written by the White House, was "the toughest legislation to deal with violent crime in our nation." Biden's bill "actually expands the rights of criminals at the expense of the law-abiding," Thurmond contended.

Majority Leader George J. Mitchell, D-Maine, observed that the proposals before the Senate would do little or nothing to reduce crime. "Violent crime is a subject for state jurisdiction," he said.

Nonetheless, polls show that crime and drugs are a No. 1 public concern and that the memory of Bush's effective use of Willie Horton against 1988 Democratic presidential nominee Michael S. Dukakis has not faded.

Bush had issued a 100-day challenge to Congress to pass his crime bill, which would expand the federal death penalty to more than 40 offenses and restrict federal court review of death row inmates' cases.

Biden countered with his bill, also seeking to expand the death penalty to more than 40 offenses and to curb death row appeals. In addition, it would authorize \$3.2 billion for state

and federal law enforcement, \$1 billion of which would be set aside for local police.

Bush's deadline was June 14. But when it came time for the Senate to act on the president's bill June 20, Republicans didn't want to vote on it.

Thurmond said he wanted to amend the measure to win more votes.

He added money for state and local law enforcement, patterned after Biden's proposals, and removed two particularly controversial provisions. One would have allowed for closed deportation hearings for foreigners suspected of terrorism and another would have allowed illegally seized firearms to be used as evidence at trial.

Civil libertarians and some editorial writers had denounced the proposals as threats to due process of law. A Washington Post editorial June 19, calling the terrorism plan "a nightmare that could allow the worst kind of injustice," particularly got the administration's attention, GOP aides said.

Thurmond said he made the changes to make S635 as pleasing as possible. He insisted that it was still the administration's bill, even though the administration up to the day before the vote had said the extra \$3 billion for law enforcement was neither necessary nor available. Appropriators have not been able to find enough money for current law enforcement programs.

Phil Gramm, R-Texas, said the Thurmond offering was still the only way to go "if you want a tough, grab-'em-by-the-throat bill."

Democrats at first protested that Republicans were too cowardly to put up their original "draconian" bill and that by including most of Biden's language, the GOP was offering a strange hybrid neither side really wanted.

Keeping with the debate's hyperbolic tone, Biden ripped the cover off his bill and said Thurmond might as well staple it to the back of the GOP bill because he had taken "95 percent of it." Of Republicans' reluctance to vote on the original bill, Biden said, "What are they so afraid of?"

Mitchell chided Republicans, saying he was reminded of the adage that a person ought not ask for something that he really doesn't want because he might get it.

The 40-56 vote fell mostly along party lines, with Democrats losing Ernest F. Hollings, S.C., and Richard C. Shelby, Ala. Joining the Democratic majority were four Republicans: John H. Chafee, R.I.; Dave Durenberger, Minn.; James M. Jeffords, Vt.; and Warren B. Rudman, N.H.

Thurmond and other Republicans will try next to do piecemeal what they could not do wholesale. They expect to offer parts of

Bush's bill as individual amendments to Biden's.

The first will be Bush's proposal to relax the exclusionary rule and allow evidence found at a crime scene without a warrant to be used if the search or seizure was undertaken in the reasonable belief that it conformed to the Fourth Amendment.

'Racial Justice' Issue

When he first wrote his bill, Biden had included a section that said "racial problems pervading the implementation of the death penalty . . . require the government to counteract the lingering effects of racial prejudice in order to enforce the constitutional guarantee of equal justice for all Americans."

The bill would have allowed death row prisoners to make a prima facie case that their sentence was the result of bias by showing that people of their race in a county or other jurisdiction are more likely to be charged with murder or sentenced to die.

A state or federal entity could rebut the showing by establishing with "clear and convincing" evidence that factors unrelated to race caused the disproportionate statistics.

Edward M. Kennedy, D-Mass., the sponsor of the provision, cited studies that showed that black people were more likely to be sentenced to death than whites and that defendants accused of killing whites are more likely subjects for capital punishment than those accused of killing blacks.

"Race discrimination is unacceptable everywhere, and it is particularly unacceptable in capital punishment - the awesome decision by a free society of those whom government can legally kill," Kennedy said. "If that decision is to be made at all, it must be made without racial bigotry."

Bob Graham, D-Fla., who offered the motion to strike the "racial justice" section from the bill, asserted that it would "effectively end the ability of the states to constitutionally apply the death penalty."

He said prosecutors would have difficulty rebutting statistics, which he said distort situations. "The decision to execute is an individualized decision-making process . . . taking into account the character and record of the murderer and the circumstances of the offense."

Graham and other senators said the criminal justice system already has built-in safeguards to protect defendants from racial discrimination.

He prevailed; the Senate deleted the section, 55-41. But Graham lost some ground from last year, as the same provision was struck from a 1990 crime bill by 58-38.

Gun Control

Although none of the gun control provisions were officially called up, they were at the fore of debate.

Ted Stevens, R-Alaska, said, "In my mind, this (Democratic) bill has little to do with controlling crime and much to do with controlling guns."

And at one point when the Republicans were amending their proposal, Biden asked if it wasn't an effort simply to squeeze out the firearms restrictions.

The two main gun proposals before the Senate would require a seven-day wait for the purchase of handguns and, separately, would ban the production or importation of nine classes of assault-style semiautomatics. Fourteen types of firearms would be affected.

Last year, by narrow votes, the Senate kept the assault weapons ban in a crime bill (it was later gutted in a House-Senate conference committee).

This year, Majority Leader Mitchell helped craft a compromise on the Brady bill that would require a mandatory background check during the seven-day waiting period and authorize \$40 million to update state criminal records toward an instant-background check system.

The modified Brady bill was added to S1241 with the endorsement of the Bradys, Handgun Control and key House sponsors.

Aides to senators who support the waiting period and lobbyists for Handgun Control said on June 21 that they believe they are close to getting majority support and would not have to modify the bill.

A NRA lobbyist said that it was too close to call and that the group was discussing with members possible changes in both the handgun waiting period and assault weapons sections.

In the past, the administration opposed a waiting period, in favor of an instant background check. Bush said early this year he will only consider the Brady bill if it comes to him with his crime bill. He has not said whether the Biden bill would be good enough.

BOXSCORE

Bill: S1241 - Omnibus anticrime.

Latest action: Senate floor debate June 20-21, to continue June 25.

Background: Republicans and Democrats, competing the crime

issue, have passed five major bills in the past decade.

Reference: Supreme Court actions, p. 1666; comparison of proposals, Weekly Report, pp. 1591, 1592; Bush challenge, p. 1558; Mitchell gun-control proposal, Weekly Report, 1503; Brady bill, p. 1196; Bush and Brady bill, p. 921; last year's crime bill, 1990 Weekly Report, pp. 3615, 3223, 2919, 2223.

GRAPHICS: Illustration (Patt Chisholm); two photos, Sponsors of the competing bills: Biden, at left, and Thurmond.

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CQ's WASHINGTON ALERT 06/17/93

LAW/JUDICIARY: House Members Duel on Crime;
Assault-Gun Ban Is Rejected
(S1241, HR3371; WR 10/19/91 p. 3038; 230 lines)
Law/Judiciary/Supreme Court

LAW/JUDICIARY: House Members Duel on Crime;
Assault-Gun Ban Is Rejected

By Holly Idelson

The House began work on a major anti-crime bill Oct. 16-17, joining the political contest for the title of best crime-buster.

The Senate in July passed a crime package that drew on legislation proposed by the administration. But the House Judiciary Committee took a more independent tack in crafting its bill (HR3371), stressing crime prevention programs and preserving more of the current legal protections for accused criminals.

On the floor, Republicans assailed the committee's bill as a criminal-coddling measure. With help from some Democrats, they proceeded to broaden the number of cases that could be eligible for the death penalty and to allow prosecutors more leeway in using illegally obtained evidence.

Republicans also provided the political heft to squash the bill's ban on certain assault-style weapons and automatic loading devices. Despite emotional references to a gunman's murder of 22 people in a mass shooting in Texas the day before, members voted 247-177 on Oct. 17 to strip out the ban. (Vote 318, p. 3080)

"Let's not fall into the politically expedient device of blaming an inanimate object for the behavior of human beings," said Dick Schulze, R-Pa.

But the House narrowly rejected another item on the Republican crime wish list, blocking an amendment that would have greatly restricted appeals by inmates on death row.

Members plan to finish consideration of the bill on Oct. 22. Still to be debated is a controversial measure that would let death row inmates challenge their sentences on the grounds of racial discrimination.

As approved by the House committee, the bill would authorize \$1.2 billion, about a third of the amount in the Senate version.

It is the fifth time in seven years that the House has debated a major crime or drug package. The measure is always a political jousting match, often with Democrats on the defensive as "soft on crime."

Charles E. Schumer, D-N.Y., who chairs the Judiciary Subcommittee on Crime, says Democrats have blunted those charges this year by presenting alternatives to some Republican crime proposals. "This time we didn't just say no, no, no," Schumer said.

Schumer and other supporters said the committee bill seeks to prevent crimes, rather than simply punish criminals, through mandatory drug treatment for inmates and programs to put more police officers on patrol.

Nevertheless, there has been ample political bickering.

Republicans complain that many of the Democrats' provisions are political sops because Congress is unlikely to find the money to pay for them.

President Bush has taken Congress to task for not enacting a crime bill sooner. But Bush has little fondness for the bill approved by the House Judiciary Committee and warned that "the American people will not accept a crime bill that is tougher on law enforcement than it is on criminals."

In the House, the partisan sniping began before the bill reached the floor.

House leaders had scheduled the bill for Oct. 15, but pulled it off the calendar amid controversy about the rule governing debate on the measure.

The Rules Committee and Judiciary Chairman Jack Brooks, D-Texas, placated some Democrats who were unhappy with the debate format, but Republicans were left fuming.

"This is blatant partisan politics at its worst," Gerald B. H. Solomon, R-N.Y., said on the House floor Oct. 16.

Solomon and other Republicans complained that the debate was rigged to undermine their amendments, particularly on limiting

death row appeals, and block them from debating other issues altogether.

The rule was approved 233-193 after a bitter fight. (Vote 310, p. 3078)

Assault Weapons Ban

Several hours into the debate news broke that a man wielding an automatic pistol had opened fire in a cafeteria in Killeen, Texas, killing 22 and wounding at least 20 more before killing himself.

Each camp found its own message in the tragedy.

George W. Gekas, R-Pa., seized upon the story as proof that the House should back his amendment to make more crimes eligible for the death penalty. Under the committee-approved version of the bill, Gekas suggested, that might not be an option.

Schumer disputed that contention, and argued that the shooting spree bolstered the case for his assault weapons provisions in the committee bill. Although the Glock semi-automatic pistol used in Killeen would not be covered by the ban, Schumer said his ban on automatic feeding devices would have slowed the gunman's lethal advance.

Schumer's bill language would have banned 13 assault-style semi-automatic weapons and limited gun clips to seven rounds of ammunition.

The vote on the weapons ban came the next day, with plenty of talk of the Killeen tragedy.

"Twenty-two people died. Maybe they didn't have to," Schumer said. "This House will decide today whether they died in vain."

Harold L. Volkmer, D-Mo., who sponsored the amendment to strike the provisions, urged his colleagues not to be swayed by such appeals.

Volkmer and others said that killers can always find ways to kill and that honest gun-owners should not be penalized for others' abuses. And they complained that language authorizing the administration to ban copies of the 13 weapons would open the door to banning many sporting weapons.

The shooting incident did sway one vote - Democratic freshman Chet Edwards, who represents Killeen.

Edwards had planned to vote against the ban and used to cite statistics suggesting that state gun bans did little to deter crime. But he said his own justifications could not withstand the reality of the shooting.

"I'll never see this issue quite the same again," Edwards said. "Statistics don't mean as much to me now."

But there were no other obvious conversions.

Proponents of the ban said election and redistricting concerns persuaded some members not to back gun restrictions. But members generally cited the National Rifle Association (NRA) as the most powerful deterrent.

The gun lobby's powerful mystique was eroded somewhat by this year's House vote to support the so-called Brady bill, which would mandate a seven-day waiting period for handgun purchases. But lobbyists and members for gun control said that vote works against them as well because some members now feel they must make amends with the NRA.

The Senate-passed crime bill would ban nine assault-style weapons, and gun control advocates hope that some limitation may still be agreed to in conference.

The Ultimate Punishment

Like the Senate bill, the House measure would enlarge the list of federal crimes that can draw the death penalty.

In one of the tighter floor battles, the House voted 213-206 to adopt language that goes further still. (Vote 313, p. 3080)

Among its key provisions, the amendment lowers the threshold of eligibility for capital punishment - namely that the defendant show a reckless disregard for human life, rather than the more stringent "intent to kill."

Critics said the language went too far and cited hypotheticals of accidental deaths that could be punished by death if the amendment were adopted.

But Gekas, who sponsored the amendment, said many of the murders in question are heinous enough to warrant capital punishment and reminded members that his proposal would not require the death penalty, simply allow it.

Harley O. Staggers Jr., D-W.Va., offered one of the few amendments aimed at killing fewer convicts. In every place that the bill allows the death penalty, Staggers sought to replace it with life imprisonment without parole.

But Brooks joined Republicans in speaking against the proposal. "Society cannot send out mixed or ambiguous signals about how certain despicable acts will be treated."

The amendment was defeated 101-322. (Vote 311, p. 3078)

Republicans won another victory on an amendment by Bill McCollum, R-Fla., to make it easier for prosecutors to use illegally obtained evidence in court. McCollum argued that criminals are being set free because of procedural oversights by police. His amendment, approved 247-165, would create a "good faith" exception to the so-called exclusionary rule that normally prohibits the use of illegally obtained police evidence

in court. (Vote 320, p. 3078)

The committee bill would have allowed a good-faith exception only for evidence sought with a warrant that was later found to be invalid. This basically would have restated current law. McCollum's amendment would extend it to searches in which there had been no warrant.

'Tough on the Constitution'

But Republicans could not muster enough support for another key amendment to restrict death row appeals.

Henry J. Hyde, R-Ill., complained of endless death penalty appeals, often retrying the same issues repeatedly. His amendment sought to bar federal courts from rehearing a claim that had received "full and fair" consideration in the state courts.

"There must be an end to litigation. There must be finality," Hyde said.

But many members, including some who had supported Hyde's proposal on the issue last year, said this year's version went too far.

"The Hyde amendment is not going to be tough on crime; it's going to be tough on the Constitution," said William J. Hughes, D-N.J.

Judiciary members said they had already included provisions to cut down on excessive appeals.

As members filed onto the floor to vote, Butler Derrick, D-S.C., stood by the door and gestured thumbs-down to his colleagues.

The amendment failed 208-218. (Vote 316, p. 3080)

Members adopted another Hyde amendment, 281-137, that would allow states to use federal funds for prosecutors to fight death row appeals. It would also require that money equal to the federal funds that go to help death row prisoners pursue such appeals be available for prosecutors. (Vote 319, p. 3080)

Brooks persuaded members to lump 26 proposed amendments together for a single vote. The House voted 216-207 to approve the amendments. (Vote 317, p. 3080)

Included in the package were proposals to:

- * Channel money from the Justice Department's forfeiture fund to drug abuse treatment and prevention.

- * Create a new offense of providing material support, such as money, weapons or training, to terrorists.

- * Authorize a study to consider whether there are sporting or law enforcement uses for flame-throwing ammunition such as "Dragon's Breath."

BOXSCORE

Bills: HR3371, S1241 - Omnibus anti-crime.

Latest action: House floor, Oct. 16-17.

Next likely action: House floor.

Background: Republicans and Democrats, vying to be tough on crime and drugs, have passed five major bills in the past decade.

Reference: House committee action, Weekly Report, pp. 2787, 2171; Senate action, pp. 1898, 1757; Senate provisions, p. 2102; House Brady bill, p. 1196; 1990 crime bill, 1990 Almanac, p. 486.

GRAPHICS: Photo, Rep. Charles E. Schumer, D-N.Y.

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CQ's WASHINGTON ALERT 06/17/93

LAW/JUDICIARY: House Republicans Lead Charge
To Toughen Anti-Crime Bill
(HR7, HR3371, S1241; WR 10/26/91 p. 3132; 190 lines)
Law/Judiciary/Supreme Court

LAW/JUDICIARY: House Republicans Lead Charge
To Toughen Anti-Crime Bill

By Kitty Dumas

House Republicans took control of a major Democratic anti-crime measure and recast it to their liking, increasing the chances that President Bush will sign a crime bill into law this year.

The House passed the measure (HR3371) on Oct. 22 by 305-118, after striking controversial provisions, including a ban on assault-style weapons and language allowing prisoners on death row to challenge their sentences over racial discrimination. (Vote 327, p. 3154)

The Bush administration had threatened to veto the bill as reported by the House Judiciary Committee, branding it soft on criminals. But the removal of the language on race-based sentencing and adoption of other amendments brought the bill more in line with the Senate's version (S1241), passed in July,

which drew on administration proposals.

"We do think the bill was substantially improved through the House floor action," said Paul J. McNulty, deputy director of the Justice Department's Office of Policy Development, adding that the administration would support it if further changes are made. In House-Senate conference, he said, the administration will push for tighter limits on habeas corpus appeals of death sentences.

Like the House bill, the Senate measure would authorize the death penalty for about 50 crimes, among them retaliatory murders of witnesses, crime victims and informants; terrorist murders abroad; and drug trafficking drive-by shootings.

Still, several differences remain.

Republicans say death penalty challenges seem endless, and the administration wants limits. It supports a Senate provision to restrict successive habeas corpus filings and prevent a death row inmate from obtaining federal court review if the federal judge believes the prisoner had a "full and fair" state hearing. The House bill takes a less sweeping approach, setting deadlines and limiting issues brought up in such challenges.

The bills also differ over the use of illegally obtained evidence if police acted in "good faith." The Senate would allow use of the evidence if a search warrant later turned out to be invalid; the House would also allow it without a warrant.

On gun control, the Senate would ban nine types of assault-style semiautomatic weapons. A ban on 13 types of weapons was struck from the House bill Oct. 17 after heavy lobbying by the National Rifle Association.

The Senate bill would require a five-day wait to buy a handgun. The House, which had separately passed a seven-day waiting period - the so-called Brady bill (HR7) - later included it in the crime bill. Bush has said he would only consider signing the Brady bill with a tough crime bill.

The House bill would authorize about \$1.4 billion in fiscal 1992. The Senate bill includes \$3.3 billion.

Despite the differences, Rep. Henry J. Hyde, R-Ill., predicted that the measure will be enacted this year, saying, "It's early enough so that it can't get lost in conference."

Race-Based Sentencing

Challenged by Bush to enact a crime bill in 100 days, the House Judiciary Committee crafted legislation emphasizing crime-prevention programs, such as mandatory drug treatment for inmates and putting more police officers on patrol. It also sought to preserve defendants' protections.

Republicans assailed the bill as coddling criminals. When the bill reached the floor, Republicans, with help from some Democrats, pushed through amendments to broaden the number of cases that could draw the death penalty and to give prosecutors more leeway to use illegally obtained evidence.

House consideration of the bill began Oct. 16-17. In the most emotional debate of those two days, Republicans overcame references to the murders of 22 people in a Texas shooting and squashed the assault-gun ban.

When debate resumed Oct. 22, the most controversial amendments dealt with race and the death penalty.

One amendment, offered by Bill McCollum, R-Fla., and adopted 223-191, eliminated the bill's "racial justice" provision. (Vote 322, p. 3154)

The same amendment, offered by F. James Sensenbrenner Jr., R-Wis., was rejected last year.

The bill would have let a prisoner challenge his death sentence based on statistics showing that the sentences were meted out to disproportionately more people of his race or as punishment for crimes against people of one race more than others.

"Comparing similar cases, blacks consistently get the death penalty where whites do not," said Don Edwards, D-Calif., chairman of the Judiciary Subcommittee on Civil and Constitutional Rights, arguing for the racial-justice provision. "The bill allows courts to look at that evidence."

McCollum and his allies countered that the committee's bill would effectively bar the death penalty.

"Once one case is thrown out, the statistics can never change, and capital punishment for one race in that jurisdiction will be forever outlawed," said Craig T. James, R-Fla.

"If somebody takes a .45 and puts it to my head and wants to blow my brains out and does, I do not care what color of skin that person has," Hyde said. "He ought to get the chair."

"This amendment amounts to nothing more than an attempt to legally lynch," Craig Washington, D-Texas, responded to Hyde.

Washington failed to sway either many Democrats or Republicans.

Twenty-one Democrats and six Republicans who voted to leave racial-justice language in the bill last year voted to delete it this year. Among those Democrats are Ways and Means Committee Chairman Dan Rostenkowski, Ill., and William H. Natcher, D-Ky. Among Republican switch votes were New Jersey members Christopher H. Smith and H. James Saxton.

Freshman members also broke in favor of McCollum's amendment, with 29 voting for it and 18 against. Maxine Waters,

D-Calif., did not vote.

Seven members, among them John D. Dingell, D-Mich., chairman of the Energy and Commerce Committee, voted to kill racial-justice language last year and switched this year.

Another Republican amendment, offered by Hyde, struck from the bill provisions crafted by Howard L. Berman, D-Calif., that would have allowed death row prisoners to use racial discrimination as grounds to challenge their sentences in habeas corpus filings. Hyde's amendment was adopted 238-180. (Vote 324, p. 3154)

Also on Oct. 22, the House adopted, 369-51, an amendment to establish a Police Corps to provide a federal college scholarship of up to \$10,000 a year in exchange for a four-year commitment to serve on a state or local police force. The administration opposes this provision, to cost \$100 million in fiscal 1992, arguing that participants could leave after four years. (Vote 325, p. 3154)

The conservative coalition, Republicans and Southern Democrats who traditionally vote together on anti-crime measures, was a strong factor in this year's voting. Last year the coalition appeared on 12 votes on the crime bill and was defeated only once. The coalition appeared and won on seven votes on the bill this year.

That left some liberals to put a pragmatic face on their floor defeats. Charles E. Schumer, D-N.Y., chairman of the Judiciary Subcommittee on Crime and sponsor of the bill, said political pressures and risks of appearing soft on crime were too great for many members. "I think the bill came at an inauspicious time when members felt under political assault," he said. "We're close to an election year and a presidential election year."

Many members also face redistricting. With the potential of new constituents, Schumer said, many members did not want to take chances.

The "battering that Congress has taken in the last month" over the check-bouncing scandal and the nomination hearings on Supreme Court Justice Clarence Thomas made members wary, Schumer said. "Members sort of had the attitude of batten down the hatches instead of reaching for stars."

Washington said the Congressional Black Caucus did not meet before the vote to plot strategy. "On reflection, maybe we should have," he said.

He said he was also concerned that the vote could be a sign of a more disturbing trend. "The mood of the country is shifting toward intolerance," he said, citing the Louisiana primary showing of a former member of the Ku Klux Klan. "David Duke's

recent success is evidence of that."

Diann Rust Tierney of the American Civil Liberties Union also saw the bill as "wound up in the politics of racial discrimination." But she said that "when we get to conference the politicking will stop, and I hope some serious discussion of the Constitution will take place."

BOXSCORE

Bills: HR3371, S1241 - Omnibus anti-crime.

Latest action: House approval, 305-118, Oct. 22.

Next likely action: House-Senate conference.

Background: Republicans and Democrats, vying to be tough on crime and drugs, have passed five major bills over a decade.

Reference: Earlier House action, Weekly Report, p. 3038; committee action, pp. 2787, 2171; Senate action, pp. 1898, 1757; Senate provisions, p. 2102; House Brady bill, p. 1196; 1990 crime bill, 1990 Almanac, p. 486.

GRAPHICS: Illustration.

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Death Row Issue Divides Hill,
Halts Crime Bill Progress
(HR3371; WR 2/22/92 p. 410; 265 lines)

Law/Judiciary/Supreme Court

Death Row Issue Divides Hill,
Halts Crime Bill Progress

By Joan Biskupic

LAW/JUDICIARY: Democrats and Republicans disagree on how many chances prisoners should have to fight their executions

Controversies over handgun sales and prosecution powers captured most of the attention last year as members of Congress fought over legislation to toughen federal laws against crime. At bottom, however, the biggest obstacle to passage involved an arcane Latin term: habeas corpus.

That's because on Capitol Hill and in certain corners of the

American justice system, the phrase evokes two gut-wrenching words: death penalty.

The death penalty is the ultimate punishment, representing society's desire for swift and sure retribution against the worst kinds of crimes. Democrats and Republicans alike have responded to that impulse in the pending crime bill (HR3371) by proposing to authorize the death penalty for more than 50 federal crimes.

But the death penalty also elicits equally keen passions for protecting the rights of the accused. And it is through a writ of habeas corpus - "you have the body" - that an individual contests unlawful imprisonment.

Habeas corpus is a time-honored process, derived from the Constitution and written into an 1867 statute, by which a prisoner argues to a federal judge that a state court infringed upon his constitutional rights by making errors in his trial and conviction. The objective is to get a lesser sentence or out of prison altogether. (Box, p. 412)

The issue for Congress is how many opportunities a death row inmate should have to challenge his conviction and sentence through a federal habeas corpus petition. For many Republicans and conservative Democrats, habeas corpus petitions have come to signify justice delayed. Their use can mean more than a decade between death sentence and execution.

"The notion that you can keep filing habeas petitions to delay execution really makes a mockery of the law," said Rep. Henry J. Hyde, R-Ill., a leading advocate of scaling back habeas corpus privileges.

The feeling is shared most intensely by state attorneys general and county prosecutors, whose convictions are at stake when inmates file habeas corpus petitions. They want Congress and the federal courts to leave the states alone.

"Federal habeas litigation in capital cases engenders much unnecessary delay and repetition," California Deputy Attorney General Dane R. Gillette complained to Congress in testimony last year. "Unfortunately, no matter how careful and exacting the trial, no matter how detailed the state . . . review, all of this has simply become the prelude to federal habeas corpus."

Safety Net or Stall Tactic?

While most Democrats acknowledge that the system is sometimes abused by repetitive and frivolous filings, they also say that federal court oversight is an individual's last protection against unjust punishment.

And the more that/ Democrats accept and help advance the use

of the death penalty itself, the more they insist that it be administered with prudence.

"Often we do not catch up with errors until the federal level," says Rep. William J. Hughes, D-N.J., a former county prosecutor and proponent of the death penalty.

The battle was joined last year when President Bush, in his crime bill proposal, called for major restrictions on habeas corpus reviews by federal courts. If a federal judge decided the prisoner had received a "full and fair" hearing in a state appeals court, the administration argued, he should be able to summarily deny a habeas corpus petition.

Republicans and conservative Democrats helped push Bush's proposal through the Senate, but moderate-to-liberal Democrats prevailed in the House and in conference with a less restrictive approach: It would set a deadline for filing petitions and limit second claims but otherwise leave the current federal review system in place.

The House adopted the conference report on HR3371 on Nov. 27 by a squeaky close 205-203. Senate Republicans threatened a filibuster, in part because of the habeas corpus provisions, and the bill stalled at the end of the session. It is still in limbo. (1991 Weekly Report, p. 3528)

The Supreme Court vs. Congress

Meanwhile, the Supreme Court, led by Chief Justice William H. Rehnquist, has raised the stakes for Congress. Rulings handed down over the past three years have barred habeas corpus petitions for most prisoners who already have filed one petition and for those who did not follow state procedural rules when first appealing their cases.

Another Supreme Court test is on the way. On March 24, the justices are scheduled to hear a dispute in a Virginia case that could lead to a new requirement that federal courts show more deference to state court rulings.

Rehnquist, in speeches and writings, has asked Congress to legislate more cutbacks in habeas corpus opportunities. Yet as long as the court continues its course, say key Republicans on Capitol Hill, there may be no need. "The urgency just isn't there with the court doing what it is doing," said Hyde, ranking Republican on the House Judiciary Subcommittee on Civil and Constitutional Rights.

On the other hand, the conservative court rulings have given liberal Democrats a new agenda. They are now trying to use the crime bill - traditionally a tool for law-and-order conservatives - to build new safeguards into the habeas process

and to reverse the Rehnquist court.

The House-Senate conference agreement on HR3371, which Democrats were able to push through the House on the last day of the session, would require states to provide competent, monitored legal counsel for indigent prisoners at all stages of litigation. It also would counter court rulings that prevent defendants from challenging their convictions by citing principles established in subsequent court decisions involving other cases.

Both are bill-killing provisions as far as the White House is concerned, but they have become a crusade for Democrats.

Rep. Don Edwards, D-Calif., chairman of the Judiciary Subcommittee on Civil and Constitutional Rights, said he had never voted for a crime bill until last fall. He backed this bill because of its protections for habeas corpus, and he now says it is the only reason to keep the bill alive. "A crime bill will not become law unless it has our habeas proposal in it," he said.

Republicans have labeled the Democratic crime bill "pro-criminal" and refused to back it. The Bush administration supported the Senate GOP filibuster last year, insisting that the president would veto the bill if the Democratic provisions on habeas corpus remained.

No compromise options have emerged; sponsors of the crime bill say that the habeas corpus disagreement is almost an irreconcilable one.

"It could be the most important battle of the decade," Edwards said.

Death Penalty and Habeas Corpus

The congressional controversy over habeas corpus dates to the Reagan administration, when Attorney General William French Smith and his successor, Edwin Meese III, pushed to restrict prisoners' habeas corpus filings.

The death penalty, which the Supreme Court had struck down in 1972 because existing state laws gave juries too much leeway in deciding when it was warranted, had been reinstated by many states. To correct past errors, those states added procedural safeguards involving a two-step process - a trial at which guilt was determined, followed by a separate proceeding to decide whether capital punishment was warranted.

Yet Meese and others complained that the condemned were still able to avoid execution through repeated state appeals and habeas corpus petitions.

The country's most egregious crimes were going unpunished,

Meese said. Between 1976, when the Supreme Court approved state laws using the two-stage capital punishment procedure, and the end of 1991, there were 157 executions in the United States. About 2,500 individuals remain on state death rows.

Of the executions, two-thirds occurred after 1985. And most of the inmates had spent several years awaiting, and avoiding, execution. A Justice Department report found that the 23 inmates put to death in 1990 had spent an average of eight years awaiting death.

A prisoner's ability to file seemingly unlimited habeas corpus petitions in both state and federal appellate courts is responsible for the delay, say the White House and Republicans on Capitol Hill. (Box, p. 411)

The Bush plan, incorporated last year into the Senate crime bill (S1241), would make it more difficult for death row inmates (and all other state prisoners) to obtain federal court review of their cases. Rather than routinely examining the merits of a state court ruling, a federal court would be allowed to assess only the process by which the state court arrived at its results. The federal court could consider the merits of a prisoner's claim only if the state's procedures were faulty.

The Senate bill also would have limited an inmate to one federal petition and allowed a second claim only when it professed to offer new evidence showing the innocence of the defendant. Prisoners would have had to file their one allowable petition within six months of exhausting all direct appeals.

Deadlock Possible

Only once in the past decade did Congress fail to clear an omnibus anti-crime bill in a biennial election year. The exception was in 1990 when habeas corpus, among other tough issues, tripped up an adjournment-eve conference. (1990 Almanac, p. 486)

Current sentiment on Capitol Hill is that the November elections will drive a crime bill to passage. But when members and their aides are asked how a compromise can be reached on the habeas corpus issue, there are no answers.

"Given the present composition of Congress and the fact that we had a good run at it last year," Hyde says, "I'm not sure we can have any progress on habeas corpus this time."

Senate Judiciary Chairman Joseph R. Biden Jr., D-Del., says the next move is up to Senate Republicans: to either drop their filibuster threat or to offer a compromise.

But Republicans are dug in. South Carolina's Strom Thurmond, ranking GOP member on the Senate Judiciary Committee, calls

habeas corpus the "most important" issue of the bill. He has vowed to block the Democrats' provisions for new requirements for court-appointed lawyers and reversal of the Supreme Court on habeas rulings.

Other issues also divide Democrats and Republicans and thus complicate the crime bill's future. One provision of the conference agreement would bar the use of coerced confessions at trial. Supported by Democrats, it seeks to overturn a 1991 Supreme Court ruling, in *Arizona v. Fulminante*, that the use of a compelled confession may be "harmless error" and not require a new trial.

The conference bill also would not allow prosecutors greater use of illegally seized evidence, as Republicans had proposed and the House earlier had adopted.

A further complication could arise from the bill's restrictions on handguns. Majorities in both chambers approved a provision requiring a waiting period for the purchase of handguns, but the proposal has stalled before, and the National Rifle Association has not dropped its opposition.

Court Ruling Awaited

In the meantime, all eyes are on the Supreme Court. The Virginia case, *Wright v. West*, to be argued March 24 could further limit prisoners' access to federal courts.

Although the case does not involve a death row inmate, it could have ramifications for all prisoners, including the condemned, who seek writs of habeas corpus. The prisoner involved, Frank West, was convicted of grand larceny in 1979 in Virginia. State courts denied his appeals, and he is now trying to get federal courts to review his conviction.

The state of Virginia is arguing that state court judgments that were fair and reasonable at the time they were issued should not be subject to new federal review.

If a majority of the justices agree with Virginia, it would be a large step toward the Republican proposal that a federal court be able to dismiss a habeas petition if a state court has given it a "full and fair" hearing.

Liberal justices have argued that Rehnquist and other conservatives would just as soon take the place of Congress on habeas corpus anyway.

Justice Thurgood Marshall wrote in a dissent to one case last April, *McCleskey v. Zant*, that a six-justice majority was exercising "legislative power" by providing a tougher standard for prisoner appeals.

"Confirmation that the majority today exercises legislative

power not properly belonging to this court is supplied by Congress' own recent consideration (in 1990) and rejection" of legislation that would restrict habeas corpus review, Marshall said.

Rehnquist maintains the federal habeas corpus system invites repetitious litigation and burdens the courts, so the courts have a direct interest in stemming the tide.

Agreed Hyde: "Normally, I don't like courts to legislate, but . . . as long as the court is moving my way. . . ."

GRAPHICS: Photo, Robert Sullivan had 10 years of appeals before his 1983 execution in Florida (Stephen Gettinger); photo, Rep. Henry J. Hyde (R-Ill.), "I'm not sure we can have any progress on habeas corpus this time".

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CQ's WASHINGTON ALERT 06/17/93

House Panel Bucks Bush, GOP
Over Anti-Crime Measure
(HR3371; WR 09/28/91 p. 2787; 320 lines)
Law/Judiciary/Supreme Court

House Panel Bucks Bush, GOP
Over Anti-Crime Measure

By Joan Biskupic

LAW/JUDICIARY: Republicans vow a floor fight over provisions that bolster rights of defendants

The House Judiciary Committee on Sept. 26 approved legislation that takes a less stringent approach to fighting crime than President Bush and the Senate want.

The bill (HR3371) would allow prisoners to challenge their death sentences as racially motivated, make sure that coerced confessions are never used at trial and extend other protections to defendants. House Republicans, who can count on some backing from moderate Democrats, say they will try to strike these provisions, as well as a ban on certain types of assault-style weapons, when the bill comes to the floor in mid-October.

The legislation would expand the federal death penalty to an

estimated 50 crimes, mostly involving murder, raise other criminal penalties and authorize more money for local law enforcement. The bill would curtail death sentence challenges by setting a one-year deadline for prisoners to file habeas corpus petitions in federal court after exhausting appeals of their state convictions and by restricting successive petitions.

Republicans and Democrats, competing on the crime and drug issues, have passed five major bills over a decade. Some House Democrats were reluctant to take up another measure, but Bush pressed Congress to enact anti-crime legislation this year.

HR3371 goes partway toward Bush's goals. But it also reflects the agendas of the Judiciary Committee Democrats, who argue that defendants' rights are being trampled in the government's rush to rein in the nation's escalating crime.

That puts the bill at odds with Senate legislation (S1241), approved 71-26 on July 11. The tougher Senate bill, endorsed by the White House, is also nearly three times more costly than the \$1.2 billion House measure.

The most contentious House provision would allow defendants to challenge their death sentences as discriminatory if they could show that a disproportionate number of people of their race are condemned to die. The Justice Department says this "racial justice" provision would halt capital punishment in most states. Bush strongly opposes the provision, and the Senate rejected it 55-41.

Another key difference is the House committee's refusal to adopt a Senate plan that would give federal prosecutors jurisdiction with states over any murder committed with a firearm that had crossed state lines. The Senate bill would enable prosecutors to seek the death penalty even if the offense occurred in a state that did not have capital punishment.

Federal judges say that proposal would swamp the federal courts and violate states' rights. Chief Justice William H. Rehnquist on Sept. 19 wrote to the House committee asking members not to adopt it.

Last year, deadlocked over crime issues as the 101st Congress was trying to adjourn, House and Senate conferees gutted crime legislation. While it is unlikely that members would allow the politically popular crime initiative to founder again, major differences between the two bills seem to make a difficult conference inevitable.

Charles E. Schumer, D-N.Y., chairman of the House Judiciary Crime Subcommittee, insisted that the new committee bill, approved by voice vote, is "every bit as tough as" Republican and Senate proposals.

But Bush aides disagree and say the president would veto

MEMORANDUM

TO: WAVES

CC: Tom Keating
House Sgt. at Arms

FR: Kathleen O'Neill
Legislative Affairs
East Wing - Room 112
ext. 6620

DT: 6/17/93

RE: Drivers

The following Members of Congress will be coming to an announcement at the White House tomorrow (6/18) at 10:45 am. The announcement will be in the Roosevelt Room. The members will be driven in a House Sgt. at Arms van driven by a Capitol Hill Police Officer. They should be cleared through the Northwest gate and are expected at 10:30 am.

Rep. Brooks
Rep. Fish
Rep. Mazzoli
Rep. Schumer
Rep. Bryant
Rep. Sangmeister
Rep. Nadler
Rep. Becerra
Rep. Smith (TX)
Rep. Gallegly
Rep. Canady

Members who were invited but are unable to attend:
Rep. McCollum

the House bill if it arrives on his desk as written.

During four days of deliberations, the House committee rejected GOP amendments that would have made it easier to impose the death penalty and harder for condemned prisoners to pursue habeas corpus appeals.

Serving notice that they are likely to try to offer most of those GOP proposals as floor amendments, Republicans are spoiling for a fight.

"In the last several sessions of Congress, we have prevailed on the floor on a whole array of death penalty provisions," said George W. Gekas, R-Pa., after his death penalty amendments were shot down in committee. "The Judiciary Committee has followed the pattern of the majority, pretending it's for the death penalty, then doing everything it can through its language, provisions and procedures to destroy it."

Republicans and some Democrats are also likely to try to delete provisions that would ban the sale of 13 types of assault-style semiautomatic weapons. The National Rifle Association, lead opponent of the ban, has sent letters to its members trying to stir up opposition to what it calls "a massive attack on your gun rights."

There was no move in the House committee to delete the assault weapons prohibition. The proposal, similar to a bill that the committee approved in 1990, has never been put to a House floor vote.

The Senate's crime bill would ban nine types of semiautomatic weapons and impose a five-day waiting period for the purchase of a handgun. The House in May passed a separate bill requiring a seven-day waiting period for handguns (HR7). The House is expected to endorse the Senate's plan in conference.

The handgun measure is known as the "Brady bill," after its chief advocate, former White House press secretary James S. Brady, who was critically injured in the 1981 assassination attempt on President Ronald Reagan.

Death Penalty

In making an estimated 50 crimes punishable by death, the House bill is similar to the Senate measure. About half of the offenses already are included in federal statutes allowing capital punishment. Those sections were invalidated in 1972 when the Supreme Court struck down all existing capital punishment laws.

The court later set out guidelines for fairly imposing the penalty, and since then states and Congress have rewritten their

death penalty laws. In 1974, Congress approved capital punishment for airline hijackings that result in death, and in 1988, as part of an omnibus anti-drug law, it voted in capital punishment for certain drug-trafficking murders.

Under the House bill, as in the Senate measure, only a few of the crimes warranting capital punishment would not involve murder. Examples are treason, espionage and attempts on the president's life. Of the remaining homicides, all except terrorist deaths and drive-by drug shootings would require an "intent to kill."

Also like the Senate bill, HR3371 would allow imposing the death penalty on leaders of enterprises trafficking in large amounts of drugs and reaping large profits. During House committee consideration, William J. Hughes, D-N.J., maintained that the provision was "patently unconstitutional" because it would allow the ultimate penalty for a crime that did not involve an intent to commit murder.

Hughes tried to cut the so-called drug kingpin provision from the bill Sept. 26 but was voted down by voice vote. Harley O. Staggers Jr., D-W.Va., sought to amend the bill so that all the capital punishment crimes in the bill would instead be punishable by life in prison without parole. His amendment, too, was defeated by voice vote.

Also on the final day of committee action, Gekas proposed that prosecutors be able to seek capital punishment for cases in which a death results from rape or child abuse and in certain situations that involve "a reckless disregard for life," even if prosecutors cannot prove an intent to kill. His amendment was defeated 12-22.

Related amendments by Bill McCollum, R-Fla., to allow the death penalty for drug killings stemming from "a reckless disregard for life" and to permit capital punishment for drug kingpins who attempt to kill to obstruct justice also were rejected by separate votes of 13-21.

On Sept. 23, the committee defeated, 12-21, a McCollum move to strip out the racial justice section. The provision would permit a defendant to challenge his sentence based on statistics showing that the death penalty was meted out to a disproportionately high number of people of his race or as punishment for crimes against people of one race more than others.

The government would then bear the burden of demonstrating that the defendant's sentence was not racially based. McCollum argued that it would be impossible for prosecutors to come up with evidence to counter such statistical evidence based on groups of defendants and that capital cases would have to be

relitigated.

Don Edwards, D-Calif., a lead proponent of the racial justice section, said, "We're not going to let anyone out of prison." He maintained that the section affects only the sentencing phase of a trial and that inmates who can prove bias would have their punishments reduced to life in prison.

Appeals, Defendants' Rights

Another issue likely to be revisited on the floor is habeas corpus petitions, used by prisoners to challenge the constitutionality of their convictions and sentences after they have exhausted their direct appeals. The petitions are controversial because death row prisoners often use repetitive filings to delay their executions.

The Bush administration has proposed allowing a federal judge to dismiss a habeas corpus petition without a hearing if he determines that the inmate received a "full and fair" hearing at the state level.

The Senate approved such a provision, along with six-month deadlines for filing an allowed petition and tighter limits on any successive filings.

House Committee members on Sept. 23 rejected, 11-23, a related proposal by Henry J. Hyde, R-Ill. "To go any further (than the House proposal) would mean the end of habeas corpus," said Judiciary Committee Chairman Jack Brooks, D-Texas.

Instead, the House bill would set a one-year deadline and bar successive petitions unless new facts in the case emerged or the defendant could not have reasonably included a claim in his first petition.

The bill would also require states that have the death penalty to provide lawyers for trial, appellate and habeas corpus proceedings, overseen by a committee or other authority that would set standards and monitor the performance of court-appointed attorneys. The bill also sets competence standards, such as the stipulation that lawyers handling post-conviction cases have at least five years' experience in such cases.

Further departing from the Senate and Bush proposals, the House measure also would partially reverse a 1989 Supreme Court decision in *Teague v. Lane* that made it harder for inmates to use favorable court decisions, issued after their own convictions, in their habeas corpus petitions. The Senate bill would leave the ruling intact.

The House bill would overturn another Supreme Court ruling, one that makes it easier for prosecutors to use coerced confessions against defendants. In a 5-4 ruling on March 26, the

court held in *Arizona v. Fulminante* that the use of a coerced confession at trial did not automatically invalidate a conviction, provided other evidence of guilt was overwhelming.

The Judiciary Committee voted to insist that the use of a coerced confession never be tolerated and, if used as evidence, require a new trial. The Senate bill has no such provision.

Separately, the House panel, like the full Senate, rejected a Bush proposal to allow use at trial of evidence seized without a search warrant, provided the police were acting in "good faith" that their conduct was legal.

McCollum pressed the amendment, but it was superseded by one by George E. Sangmeister, D-Ill., to allow a good-faith exception only for evidence sought with a warrant that was later found to be invalid. This basically restates current case law.

The vote for the Sangmeister alternative was 19-15 on Sept. 24.

Police Officers

A number of differences have emerged between the chambers in benefits for police officers.

The House committee rejected a Senate-backed provision that would require states to adopt a police officers' "bill of rights" setting standards for departments' internal, non-criminal investigations. The amendment, offered in the House committee by Tom Campbell, R-Calif., was aimed at protecting officers who are under internal investigation. The officer would have to be notified of an inquiry, ensured a full hearing on all complaints and given an avenue for appeal.

"These provisions are a minimum to guarantee fair treatment," Campbell said.

Other members asserted that the federal government should not interfere with states' ability to regulate local police, and the committee adopted a substitute amendment by Mike Synar, D-Okla., for an attorney general study of procedures in police internal investigations to determine if such probes are conducted fairly and effectively. The vote for the one-year study rather than the new federal police law was 24-10 on Sept. 25.

House members also defeated a proposal that would have authorized \$100 million for scholarships for aspiring police officers. Similar to a Senate bill provision, the amendment put forth by Peter Hoagland, D-Neb., would have provided scholarship funds to college students who agreed to serve for four years in a state or local police department after graduation. House members voted it down 14-20, citing the price tag.

"This is just talking about money they're not going to get," Brooks said.

The House Judiciary Committee by voice vote struck from an omnibus crime bill proposed criminal penalties, including prison terms, for police brutality.

The House bill would allow private parties to go to court to seek an injunction to stop challenged police activities.

If a brutality victim died, the officer could get up to life in prison. If bodily injury other than death occurred, the officer could be sentenced to up to 10 years. The panel's interest in the issue was spurred earlier this year by the Los Angeles police beating of suspect Rodney King, videotaped by a bystander and televised nationwide.

Other Provisions

In other action, the committee approved, 17-16, a Hughes amendment that would exempt New Jersey from a proposed ban on sports gambling. The bill already had exempted Nevada and Oregon from the ban. New Jersey state officials are considering a referendum to permit sports gambling, and Hughes said he wanted to help his home state preserve the option.

The bill would bar all other states from holding sports-based lotteries. It was adapted from HR74, a separate bill approved by the Judiciary Subcommittee on Economic and Commercial Law Sept. 17. (1991 Weekly Report, p. 2687)

Among the \$1.2 billion funding authorizations in the bill is \$300 million for "drug emergency" areas, where the president has determined that trafficking and abuse levels require federal aid to protect lives. The bill would also authorize \$200 million for intermediate-level prisons and boot-camp type facilities; \$150 million for grants to local police; \$100 million for anti-drug programs in prisons; and \$100 million for anti-drug and crime education in schools.

BOXSCORE

Bills: HR3371, S1241 - Omnibus anti-crime.

Latest action: House Judiciary Committee approved, voice vote, Sept. 26.

Next likely action: House floor.

Background: Republicans and Democrats, vying to be tough on crime and drugs, have passed five major bills in the past decade.

Reference: House subcommittees' action, Weekly Report, p. 2171; Senate floor action, pp. 1898, 1757; Senate provisions, p. 2102; House Brady bill, p. 1196; 1990 crime bill, 1990 Almanac,

Legislative Schedule -- Old Business
Crime Bill: Election-Eve Compromise Likely
(HR3371; WR 1/18/92 p. 100; 70 lines)
Law/Judiciary/Supreme Court

Legislative Schedule -- Old Business
Crime Bill: Election-Eve Compromise Likely

By Joan Biskupic

A major anti-crime bill HR3that was two years in the works but ultimately stalled by a Senate filibuster in late November is likely to remain dormant through the spring.

Still, in the upcoming weeks President Bush is expected to criticize the Democratic-controlled Congress for delaying the bill (HR3371). And Senate Democrats are considering forcing another cloture vote to demonstrate that GOP senators are the ones holding the legislation back.

A cloture motion to shut off debate failed, 49-38, on Nov. 27, in the waning hours of the session. Sixty votes are needed to limit debate on a bill. Only one Republican voted for cloture, and three Democrats joined the rest of the Republicans against the bill. Earlier that day, the House approved the House-Senate conference agreement, 205-203.

The Republican senators who voted against cloture remain unhappy with the sweeping measure. While the bill would expand the federal death penalty and authorize \$3 billion for law enforcement, it includes many safeguards for defendants' rights, and the administration and GOP senators have labeled it "pro-criminal."

State and federal prosecutors also have objected to the bill because of its scaled-back approach to restrictions on challenges to death row cases and its tighter rules for evidence used at trial.

Compromise on the measure could come during the summer as the elections near and each side tries to demonstrate what it is doing to address America's crime concerns.

Four years ago, during the 1988 presidential election, the

politics of crime escalated when the Bush campaign effectively used the furlough of murderer-rapist Willie Horton against the Democratic presidential nominee, then-Massachusetts Gov. Michael S. Dukakis.

The pending legislation would expand the current limited application of the federal death penalty to more than 50 crimes. Most of the crimes involve murder, although a provision would permit capital punishment for so-called drug kingpins who traffic in large amounts of illegal drugs.

The bill would curtail the ability of death row prisoners to challenge their convictions through habeas corpus petitions, but the restrictions are not as tough as Bush and Republicans had sought. Democrats also added to the bill, over GOP objections, criteria for state-appointed attorneys intended to ensure that a defendant is adequately represented in appeals.

The differences on habeas corpus restrictions are a key sticking point. Also contributing to the partisan wrangling is the fact that the bill would not allow prosecutors greater use of illegally seized evidence, as the GOP had proposed and the House had earlier adopted. The conference agreement also has a new bar on the use of coerced confessions at trial.

Further complicating the legislation's future is a provision for a waiting period of five business days to buy a handgun, commonly known as the Brady bill after President Ronald Reagan's wounded press secretary, James S. Brady.

Although this section of the bill has been approved by majorities in the House and Senate, it remains controversial and a target of congressional gun enthusiasts and the National Rifle Association. (1991 Weekly Report, pp. 3528, 3587)

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LAW/JUDICIARY: Vote Likely Buries

Anti-Crime Bill

(HR3371 S2305; WR 3/21/92 p. 732; 65 lines)

Law/Judiciary/Supreme Court

LAW/JUDICIARY: Vote Likely Buries

Anti-Crime Bill

By Kitty Dumas

Slim chances for enactment of anti-crime legislation this year dwindled to almost nothing March 19 when Senate Democrats failed to stop a Republican filibuster of the Democratic-backed bill.

The Senate voted 54-43 to invoke cloture, six short of the votes needed to shut off debate on a motion to proceed to a House-Senate conference agreement on the bill (HR3371 - H Rept 102-405).

The vote appeared to be a deciding blow in a fight that began March 3 when the Senate Republican leadership vowed to bring its own measure back to the Senate floor each week until it passed.

Before Republicans could attempt to amend an unrelated bill, Majority Leader George J. Mitchell, D-Maine, made a pre-emptive strike by calling up HR3371, which had been idling on the Senate calendar since a similar cloture effort failed last Nov. 27. (1992 Weekly Report, p. 540)

Republicans say they will not abandon their efforts to push their own version of crime legislation (S2305). Phil Gramm, R-Texas, called the conference agreement a "sham crime bill" and reiterated his plan to bring up S2305 regularly for the rest of the year.

"We should do it once a week, until either the president signs a bill or until this Congress ends," he said.

Republicans disagree with Democrats primarily over how much to restrict death row inmates' petitions to federal courts under the process known as habeas corpus.

The Republican legislation, drafted by Strom Thurmond, R-S.C., ranking member of Judiciary Committee and backed by President Bush, would allow a federal judge to deny a habeas petition if he decided the prisoner had received a "full and fair" hearing in state courts. (1992 Weekly Report, p. 410)