

# FOIA MARKER

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Crime Bill - Decision Memos [2]

**Stack:**

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**98**

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October 23, 1993

MEMORANDUM FOR DAVID GERGEN

FROM: BRUCE REED

SUBJECT: OPTIONS MEMO ON CRIME FUNDING

Here is a preliminary draft of the options memo on diverting more of the NPR savings toward crime.

This version (Saturday 8pm) reflects OMB's changes. We also told OMB we would attach a copy of Panetta's original memo on crime funding, which Chris Edley distributed at the meeting Friday.

I'm still waiting to hear back from Justice. Sheila Anthony and Jeff Robinson gave me a preliminary indication that it looked fine, and Sheila read at least part of it to the Attorney General. But they want to show it to their budget guru and get back to us tomorrow or first thing Monday morning. I will get you an updated copy as soon as I have their comments.

If you haven't already done so, you should talk with the Vice President about this approach before we go in to see the President on Monday. I spoke to Elaine Kamarck, who thought the Vice President would welcome the idea. (She may have mentioned it to him this afternoon.) She is already working to make sure that Tuesday's event to announce the procurement bill and spending cut package is also used to plug crime.

I will be in the office on Sunday. If you need to reach me at home, my number is 362-9595.

DRAFT  
SAT. 8 PM

October 25, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED  
JOSE CERDA III

SUBJECT: CRIME BILL FUNDING

I. ACTION-FORCING EVENT

The crime bill will be taken up on the Senate floor and in the House Judiciary Committee next week. As the crime issue takes on increasing urgency in Congress and the countryside, we face the prospect of a bidding war in both houses, in which Republicans and even liberal Democrats compete to prove that they care more about crime than the Administration. Senator Biden and others are urging us to pre-empt this debate by pledging more resources for cops, drug treatment, and prisons.

II. BACKGROUND

A. House Update

The outlook for passing some kind of crime bill by Thanksgiving may have improved significantly. In the House, Chairman Brooks has given up trying to find habeas reform and death penalty provisions that can attract a majority of House Democrats, and has decided to postpone consideration of those issues until next year. The Black Caucus opposed his habeas proposal, even though it was more liberal than ours and much more liberal than current law, and he does not believe he could get a majority to vote the crime bill out of committee without substantial prodding from the Administration or unacceptable revisions in habeas.

Brooks plans instead to break out the key components -- cops, boot camps, drug courts, Safe Schools, and the Brady Bill -- and pass them all separately. If the Republicans go along, the crime measures can then be passed quickly under suspension in the House, and easily reconciled with Senate versions. This strategy avoids the specter of an irreconcilable conference, and should assure that the Brady Bill and most key elements of the crime bill will be on your desk by Thanksgiving.

Biden is considering a similar strategy in the Senate, but he has less control over the outcome. Hatch may agree to drop habeas, but Gramm and other Republicans will force

death penalty votes at every turn -- and most will probably pass. The leadership in both houses may have to commit to considering a death penalty/habeas reform bill at some point.

### B. What to Do About the Bidding War

Momentum is building within the Congress and around the country to do more on crime -- and the chance that the death penalty may not be part of this year's final package will only increase pressure on Democrats to come out for more cops and more money for state and local prisons.

Before introducing the House and Senate crime bills in September, Brooks and Biden scaled back the authorization levels from \$8.9 billion in last year's conference report to around \$5.9 billion this year. At the time, they were concerned about deflecting criticism over how to pay for these programs. With crime emerging as the number one issue in the country, that concern is out the window.

Now Biden and other Senate Democrats are concerned that the Republicans (and some of their own Democratic colleagues) will do to us on crime what they did to us this past week on drugs: beat up on this Administration for being unwilling to spend more than the last one. Biden recognizes that these criticisms are unfair, but he expects his colleagues to make them anyway. He fears that our \$6 billion crime bill will quickly become somebody else's \$12 billion crime war.

There is no way to stop this train in the Senate, where every imaginable get-tough amendment is likely to pass with large bipartisan majorities. (Biden told us that Senators Feinstein and Moseley-Braun plan to offer an amendment to let states try 12-year-olds as adults, even in capital cases, and other Democrats want to offer truth-in-sentencing amendments to make states that want prison funds guarantee that their inmates will serve at least 85% of their sentence.) The Republicans will add \$2-3 billion for prisons, the Democrats will add more money for drugs, and both sides will get behind more money for cops. Even deficit hawks from low-crime states, like Conrad and Dorgan, are leading the charge to throw more money at the crime problem.

Biden strongly believes that the Administration needs to seize control of the issue by upping the ante. On Friday, Mack McLarty convened a meeting with the Attorney General and White House senior staff to address this matter. There was no disagreement on the merits or the politics of putting more money into the Administration's key anti-crime programs; the only issue was money.

That meeting produced one recommendation for how you can take the initiative in a responsible but aggressive manner, by claiming a little more credit for a decision you've already made but few know about: earmarking part of the October spending cuts package for the crime bill.

Last week, you and the Vice President agreed to commit \$3+ billion of the \$10+ billion in spending cuts and procurement savings to fully fund the crime bill. The \$3+ billion figure represents the difference between the \$3.4 billion already in the Justice Department's FY94-99 baseline for community policing, and OMB's estimate of what all the programs in the Biden-Brooks bills would actually cost. (It adds up to more than \$5.9 billion because some of the authorization levels in the crime bill are set at "such sums.")

Last week, Leon Panetta sent you the attached memorandum advising you not to promise to "fully fund" the entire crime bill (except for community policing), because we will also have to find room in next year's budget for other Justice priorities, such as immigration and health care fraud, as well as contemplate some difficult cuts in federal law enforcement. Moreover, at least \$1 billion of the \$6 billion in the current bill goes for programs and authorization levels that Biden and Brooks inserted at the request of other members, which Justice has no intention of funding and which duplicate other initiatives under way at other agencies (e.g., Safe Schools).

Rather than committing \$3+ billion from the spending cuts package to "fully fund" a hodgepodge of crime programs, we recommend earmarking \$5 billion in savings from the October package and procurement reform to the Administration's three crime priorities: more cops, drug courts, and boot camps/prisons.

We still wouldn't be fully funding the crime bill, but the combination of \$3.4 billion from the Justice planning baseline and \$5 billion from the October package and procurement reform would enable us to increase the community policing authorization from \$3.4 billion to \$4.9 billion (which will fund between 60,000 and 70,000 cops); increase the drug court authorization from \$1.2 billion to \$1.5 billion (which will fund drug treatment and certainty of punishment for an estimated 250,000 minor drug offenders); and increase the boot camp/regional prison authorization from \$200 million to \$2 billion (which will fund an estimated 75,000 boot camp slots, 15,000 three-year prisoner slots, and drug treatment for 200,000 criminal addicts). The rationale would be that the Administration wants to stress a few big-ticket law enforcement priorities in the bill, but cannot assure funding for the rest.

There are several advantages to this strategy:

1. We could get 60-70,000 cops (instead of 50,000), and address several members' concern that some cities may need a slightly higher federal match than currently contemplated;
2. We could blunt our drug critics by committing some real money to drug courts, an approach which has the strong support of the Attorney General and the Drug Director;
3. We could head off the pounding we'll take from Republicans over money for prisons, which will pass whether we like it or not; and

4. We could give the spending cuts package and procurement reform a boost by tying them to a popular and immediate issue.

Moreover, there is a natural link between reinventing government and fighting crime: the whole point of the Vice President's effort has been to steer government away from things it doesn't know how to do, into things government can do best. You made this connection many times in the campaign, when you said you wanted to reduce the bureaucracy by 100,000 and use the money to help put 100,000 new police on the street.

This strategy is not without some cost. First, if we commit \$5 billion of savings from the October package to crime, we will fall short of some members' \$10 billion target for deficit reduction. Second, if the October package doesn't pass, we may be criticized for passing a crime bill that has not yet been paid for. But that's true whether we commit \$3 billion or \$5 billion -- and if Congress votes down our spending cuts, it won't be our fault if we can't fund everything in the crime bill. Moreover, we can come back next year with any spending cuts that fail this time around and use them to offset crime-related Justice spending in FY95.

You should also be aware that like every other department, Justice faces a serious funding crunch in FY95, even though its planning baseline shows the largest percentage increase from 1994 to 1995. Justice has been handed several new initiatives, including immigration and health care fraud. These initiatives, together with other new programs at other departments, will present a series of tough choices in nailing down the FY95 budget. For example, while funding for state and local law enforcement assistance goes up dramatically, funding for federal law enforcement may decline.

The Attorney General summed up her concerns in one word: "money". She is willing to commit to more drug courts, cops, and boot camps -- so long as the White House is willing to commit the money. She does not want to be forced down the road to cut FBI and DEA agents to make room in the budget for expansions in other law enforcement assistance.

OMB lays out its concerns in the attached memorandum. In summary, OMB wants you to understand that every program is in competition with something else. We will not be able to fully fund all the authorizations in the crime bill and all the potential new initiatives at Justice.

We agree that those concerns will have to be addressed early next year in the broader context of the FY95 budget. Unless and until Congress keeps its end of the bargain by agreeing to your spending cuts, you cannot be expected to spend money you don't have.

If you are willing to commit a substantial portion (\$5 billion) of the spending cut package to crime, we recommend that you consider the following course of action:

\_\_\_\_\_ Use Tuesday's procurement/October package event to announce that as a sign of the Administration's seriousness about the epidemic of violence, you want about half the spending cuts and procurement savings to go to fighting crime, with the balance to go for deficit reduction.

\_\_\_\_\_ Ask Biden and Brooks to raise the authorization levels for more cops, more drug courts, and more boot camps/prisons, as suggested above.

\_\_\_\_\_ If your schedule permits, join Drug Director Brown and Attorney General Reno at Wednesday's opening of the D.C. drug court, which is being funded through an HHS grant from the Clinton Administration.

\_\_\_\_\_ Use every appropriate opportunity during the House/Senate debates on the crime bill and the spending cut package to stress the importance of bold, immediate action.

October 21, 1993

MEMORANDUM FOR DAVID GERGEN

FROM: Bruce Reed  
SUBJECT: Meetings with Biden and Kerry

**I. MORE COPS**

Kerry and Biden have raised a legitimate concern: With Congress likely to inflate the authorization levels in the crime bill anyway, we should try to get in front of the curve. They both suggest putting more money into cops, which is a great idea -- so long as 1) we can find the money and 2) the new money goes for more new cops, not just a higher federal match for the same 50,000 new cops.

The ideal scenario would be for us to reach internal agreement within the White House, OMB, and Justice to double the community policing title from \$3.45 billion to \$6.9 billion, then hold a press conference with Democratic leaders (and if possible, Republicans) to announce a bipartisan response to the crisis of violence by pledging support for the full 100,000 cops, to be paid for through spending cuts in the October rescission package. I think the President, Vice President, and First Lady would welcome this strategy.

To make that happen, we will have to overcome a few hurdles:

- 1) The Attorney General doesn't want the cops we have. We'll have to persuade her that the rescission money is real, and that her other programs won't suffer.
- 2) OMB will have to crunch the numbers, and figure out whether the October spending cuts can be used for this purpose. Panetta has been helpful thus far in finding more money for cops, but his staff may be difficult.
- 3) To get Republican support, we will have to agree to spend more for prisons. Republican amendments to increase prison authorizations will pass anyway, but we can't officially condone them unless we find more money (\$1-2 billion).

**II. OTHER ISSUES TO TAKE UP WITH BIDEN**

**1. Police Officers Bill of Rights:** Leaders of the police unions are coming to the White House on Tuesday morning to meet with you, Mack, and our staff about this issue. We intend to tell them that we will work closely with them in the coming months, but we can't let it cripple the crime bill. As Biden points out, unified law enforcement support is essential -- but supporting POBR now is a complication we can't afford.

**2. More Money for Everything:** It was Biden's idea to scale back authorization levels in the first place, but he's right that a bidding war is inevitable. We should confine the Administration's support to things we care about -- cops and perhaps prisons -- and let Congress carry the burden of inflating everything else. We never promised to fund the non-cop provisions at their current authorization levels.

Biden's suggestion to increase the federal match for police to a constant 75% federal match is a bad idea. We have spoken with departments in dozens of cities, large and small, who all tell us that 50% is reasonable -- especially when every mayoral candidate in America is pledging to find money for more police whether the federal government can help or not. If we're going to put even more money into policing, we should use it to get closer to the 100,000 cops campaign pledge.

**3. Gun Amendments:** Biden will probably want to talk about guns. We think Brady is in good shape, and the Kohl amendment (no handguns for minors) should pass easily. The tougher question is what to do about an assault weapons ban, which is currently at least 5 votes short in the Senate and 20 in the House.

Handgun Control fears that losing any gun votes during the crime bill debate will jeopardize momentum for the Brady bill, which will come up for a separate vote immediately after the crime bill is dispensed with. They may want our help in persuading Metzenbaum, DeConcini, and Feinstein not to offer an assault ban until after the Brady vote. Biden may also ask us to try to talk Simon out of offering other gun amendments where he does not have the votes. We can try, although we would have a hard time explaining ourselves if we have to let Congress go home without a vote on assault weapons.

**4. Results by Thanksgiving:** We should try to pass the crime bill and the Brady bill into law before recess, but we need to decide what to do if the crime bill gets bogged down. Handgun Control will want us to pull out Brady and pass it separately. If we're up against the wall, we should think about pulling out cops as well. Brady is an important symbolic gesture, but the stakes are higher now, and we'll take a lot of heat if we have to wait until next spring (or longer) to take real action on crime.

Better yet, the President could give an Oval Office address on crime and violence, ordering Congress not to go home for Christmas until it finishes a crime conference and passes the crime bill and Brady into law. That would show America how seriously the President takes this issue, give us a fail-safe victory if we lose NAFTA, and assure us the most productive first year of any President since FDR.

October 25, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED  
JOSE CERDA III

SUBJECT: CRIME BILL FUNDING

I. ACTION-FORCING EVENT

The crime bill will be taken up on the Senate floor and in the House Judiciary Committee next week. As the crime issue takes on increasing urgency in Congress and the countryside, we face the prospect of a bidding war in both houses, in which Republicans and even liberal Democrats compete to prove that they care more about crime than the Administration. Senator Biden and others are urging us to pre-empt this debate by pledging more resources for cops, drug treatment, and prisons.

II. BACKGROUND

A. House Update

The outlook for passing some kind of crime bill by Thanksgiving may have improved significantly. In the House, Chairman Brooks has given up trying to find habeas reform and death penalty provisions that can attract a majority of House Democrats, and has decided to postpone consideration of those issues until next year. The Black Caucus opposed his habeas proposal, even though it was more liberal than ours and much more liberal than current law, and he does not believe he could get a majority to vote the crime bill out of committee without substantial prodding from the Administration or unacceptable revisions in habeas.

Brooks plans instead to break out the key components -- cops, boot camps, drug courts, Safe Schools, and the Brady Bill -- and pass them all separately. If the Republicans go along, the crime measures can then be passed quickly under suspension in the House, and easily reconciled with Senate versions. This strategy avoids the specter of an irreconcilable conference, and should assure that the Brady Bill and most key elements of the crime bill will be on your desk by Thanksgiving.

Biden is considering a similar strategy in the Senate, but he has less control over the outcome. Hatch may agree to drop habeas, but Gramm and other Republicans will force

death penalty votes at every turn -- and most will probably pass. The leadership in both houses may have to commit to considering a death penalty/habeas reform bill at some point.

### B. What to Do About the Bidding War

Momentum is building within the Congress and around the country to do more on crime -- and the chance that the death penalty may not be part of this year's final package will only increase pressure on Democrats to come out for more cops and more prisons.

Before introducing the House and Senate crime bills in September, Brooks and Biden scaled back the authorization levels from \$8.9 billion in last year's conference report to \$5.9 billion this year. At the time, they were concerned about deflecting criticism over how to pay for these programs. With crime emerging as the number one issue in the country, that concern is out the window.

Now Biden and other Senate Democrats are concerned that the Republicans (and some of their own Democratic colleagues) will do to us on crime what they did to us this past week on drugs: beat up on this Administration for being unwilling to spend more than the last one. Biden recognizes that these criticisms are unfair, but he expects his colleagues to make them anyway. He fears that our \$6 billion crime bill will quickly become somebody else's \$12 billion crime war.

There is no way to stop this train in the Senate, where every imaginable get-tough amendment is likely to pass with large bipartisan majorities. (Biden told us that Senators Feinstein and Moseley-Braun plan to offer an amendment to let states try 12-year-olds as adults, even in capital cases, and other Democrats want to offer truth-in-sentencing amendments to make states that want prison funds guarantee that their inmates will serve at least 85% of their sentence.) The Republicans will add \$2-3 billion for prisons, the Democrats will add more money for drugs, and both sides will get behind more money for cops. Even deficit hawks from low-crime states, like Conrad and Dorgan, are leading the charge to throw more money at the crime problem.

Biden strongly believes that the Administration needs to seize control of the issue by upping the ante. On Friday, Mack McLarty convened a meeting with the Attorney General and White House senior staff to address this matter. There was no disagreement on the merits or the politics of putting more money into the Administration's key anti-crime programs; the only issue was money.

That meeting produced one recommendation for how you can take the initiative in a responsible but aggressive manner, by claiming a little more credit for a decision you've already made but few know about: earmarking part of the October spending cuts package for the crime bill.

Last week, you and the Vice President agreed to commit \$3+ billion of the \$10+ billion in spending cuts and procurement savings to fully fund the crime bill. The \$3+ billion figure represents the difference between the \$3.4 billion already in the Justice Department's FY95-99 baseline for community policing, and OMB's estimate of what all the programs in the Biden-Brooks bills would actually cost. (It adds up to more than \$5.9 billion because some of the authorization levels in the crime bill are set at "such sums.")

Last week, Leon Panetta sent you the attached memorandum advising you not to promise to "fully fund" the entire crime bill (except for community policing), because we will also have to find room in next year's budget for other Justice priorities, such as immigration, as well as contemplate some difficult cuts in federal law enforcement. Moreover, at least \$1 billion of the \$6 billion in the current bill goes for programs and authorization levels that Biden and Brooks inserted at the request of other members, which Justice has no intention of funding and which duplicate other initiatives under way at other agencies.

Rather than committing \$3+ billion from the spending cuts package to "fully fund" a hodgepodge of crime programs, we recommend earmarking \$5 billion from the October package and procurement reform to the Administration's three crime priorities: more cops, drug courts, and boot camps/prisons.

There are several advantages to this strategy:

1. We could get at least 60,000 cops (instead of 50,000), and address several members' concern that some cities may need a slightly higher federal match;
2. We could blunt our drug critics by committing some real money to drug courts, an approach which has the strong support of the Attorney General and the Drug Director;
3. We could head off the pounding we'll take from Republicans over money for prisons, which will pass whether we like it or not; and
4. We could give the spending cuts package and procurement reform a boost by tying them to a popular and immediate issue.

We still wouldn't be fully funding the crime bill, but the combination of \$3.4 billion from the Justice baseline and \$5 billion from the October package and procurement reform would allow increased authorization levels of \$4.9 billion in cops (60,000+), \$1.5 billion in drug courts (drug treatment and certainty of punishment for an estimated 250,000 minor drug offenders), and \$2+ billion in boot camps and prisons (an estimated 75,000 boot camp slots, 15,000 three-year prisoner slots, and drug treatment for 200,000 criminal addicts).

Moreover, there is a natural link between reinventing government and fighting crime: the whole point of the Vice President's effort has been to steer government away from things it doesn't know how to do, into things government has to do and no one else can. You made

this connection many times in the campaign, when you said you wanted to reduce the bureaucracy by 100,000 and use the money to help put 100,000 new police on the street.

This strategy is not without some cost. First, if we commit \$5 billion from the October package to crime, we will fall short of some members' \$10 billion target for deficit reduction. Second, if the October package doesn't pass, we may be criticized for passing a crime bill that has not yet been paid for. But that's true whether we commit \$3 billion or \$5 billion -- and if Congress votes down our spending cuts, it won't be our fault if we can't fund everything in the crime bill. Moreover, we can come back next year with any spending cuts that fail this time around and use them to offset crime-related Justice spending in FY95.

You should also be aware that like every other department, Justice faces a serious funding crunch in FY95, even though it will receive the largest increase. Justice has been handed several new initiatives, including immigration and the health care fraud program. All these initiatives, together with other new programs at other departments, will present a series of tough choices in nailing down the FY95 budget.

The Attorney General summed up her concerns in one word: "money". She is willing to commit to more drug courts, cops, and boot camps -- so long as the White House is willing to commit the money. She does not want to be forced down the road to cut FBI and DEA agents to make room in the budget for expansions in other law enforcement assistance.

OMB lays out its concerns in the attached memorandum. In summary, OMB wants you to understand that we will not be able to fully fund all the authorizations in the crime bill and all the potential new initiatives at Justice.

We agree that those concerns will have to be addressed early next year in the broader context of the FY95 budget. We do not believe that committing a greater portion of the spending cut package to crime and drugs now will tie your hands later. Unless and until Congress keeps its end of the bargain by agreeing to your spending cuts, you cannot be expected to spend money you don't have.

If you are willing to commit a greater portion of the spending cut package to crime, we recommend that you consider the following course of action:

\_\_\_\_ Use Tuesday's procurement/October package event to announce that as a sign of the Administration's seriousness about the epidemic of violence, you want the first \$5 billion in cuts and procurement savings to go to fighting crime, with the balance to go for deficit reduction.

\_\_\_\_ Ask Biden and Brooks to raise the authorization levels for more cops, more drug courts, and more boot camps/prisons.

\_\_\_\_\_ If your schedule permits, join Drug Director Brown and Attorney General Reno at Wednesday's opening of the D.C. drug court, which was funded through an HHS grant from the Clinton Administration.

\_\_\_\_\_ Use every appropriate opportunity during the House/Senate debates on the crime bill and the spending cut package to stress the importance of bold, immediate action.

THE WHITE HOUSE

WASHINGTON

October 25, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED  
JOSE CERDA III

SUBJECT: CRIME BILL FUNDING

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already made but few know about: to earmark part of the October spending cuts package for the crime bill.

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Moreover, there is a natural link between reinventing government and fighting crime: the whole point of the Vice President's effort has been to steer government away from things it doesn't know how to do, into things government can do best. You made this connection many times in the campaign, when you said you wanted to reduce the bureaucracy by 100,000 and use the money to help put 100,000 new police on the street.

This strategy is not without some cost. First, if we commit \$5 billion of savings from the October package to crime, we will fall short of some members' \$10 billion target for deficit reduction. Second, if the October package doesn't pass, we may be criticized for passing a crime bill that has not yet been paid for. But that's true whether we commit \$3 billion or \$5 billion -- and if Congress votes down our spending cuts, it won't be our fault if we can't fund everything in the crime bill. Moreover, we can come back next year with any spending cuts that fail this time around and use them to offset crime-related Justice spending in FY95.

You should also be aware that like every other department, Justice faces a serious funding crunch in FY95, even though its planning baseline shows the largest percentage increase from 1994 to 1995. Justice has been handed several new initiatives, including immigration and health care fraud. These initiatives, together with other new programs at other departments, will present a series of tough choices in nailing down the FY95 budget. For example, while funding for state and local law enforcement assistance goes up dramatically, funding for federal law enforcement may decline.

The Attorney General summed up her concerns in one word: "money". She is willing to commit to more drug courts, cops, and boot camps -- so long as the White House is willing to commit the money. She does not want to be forced down the road to cut FBI and DEA agents to make room in the budget for expansions in other law enforcement assistance.

Panetta's memorandum spells out OMB's concerns. In summary, OMB wants you to understand that every program is in competition with something else. We will not be able to fully fund all the authorizations in the crime bill and all the potential new initiatives everywhere else.

We agree that those concerns will have to be addressed early next year in the broader context of the FY95 budget. Unless and until Congress keeps its end of the bargain by agreeing to your spending cuts, you cannot be expected to spend money you don't have.

If you are willing to commit a substantial portion (\$5 billion) of the spending cut package to crime, we recommend that you consider the following course of action:

\_\_\_\_ Use Tuesday's procurement/October package event to announce that as a sign of the Administration's seriousness about the epidemic of violence, you want about half the spending cuts and procurement savings to go to fighting crime, with the balance to go for deficit reduction.

\_\_\_\_ Ask Biden and Brooks to raise the authorization levels for more cops, more drug courts, and more boot camps/prisons, as suggested above.

\_\_\_\_ If your schedule permits, join Drug Director Brown and Attorney General Reno at Wednesday's opening of the D.C. drug court, which is being funded through an HHS grant from the Clinton Administration.

\_\_\_\_ Use every appropriate opportunity during the House/Senate debates on the crime bill and the spending cut package to stress the importance of bold, immediate action.

October 22, 1993

MEMORANDUM FOR CAROL RASCO  
DAVID GERGEN

FROM: Bruce Reed  
Jose Cerda III

SUBJECT: Crime Options

We have two problems to discuss at this morning's meeting: 1) The upcoming bidding war in the Senate, where even liberal Democrats will accuse us of doing too little to fight crime if we don't raise the stakes ourselves; and 2) a possible Black Caucus mutiny in the House Judiciary Committee over the death penalty, which needs to be headed off before Tuesday's markup.

We do not expect to resolve these questions at the meeting with the Attorney General. The purpose of the meeting should be to discuss what options we should present to the President.

#### 1. The Senate

Biden and Brooks scaled back the authorization levels to \$5.9 billion to deflect criticism over how to pay for these programs. Given the current frenzy in Congress and the countryside to do something about crime, that concern is out the window. The Republicans are now poised to do to us on crime what they did earlier this week on drugs: accuse the Democrats of spending less on crime now than the last Administration. And not just Republicans: liberal Democrats will chime in with the same criticism, and point fingers at the Clinton Administration. Our \$6 billion crime bill will become somebody else's \$12 billion crime war.

There is no stopping this train. As David said yesterday, the only question is whether we get in front of it or get flattened by it.

We see a way for the Administration to get ahead of this frenzy in a responsible but aggressive manner, by taking a little more credit for a decision the President has already made -- to earmark part of the October spending cuts package for the crime bill.

Last week, the President and Vice President agreed to commit \$3.5 billion of the \$10+ billion package to fully fund the crime bill. (This number, which came from OMB, represents the difference between the \$3.4 billion already in the FY95-99 DOJ baseline for community policing, and OMB's estimate of what all the programs in the crime bill would actually cost. It adds up to more than \$5.9 billion, because some of the authorization

levels in the crime bill are set at "such sums.")

Leon Panetta has prepared a memo for the President arguing that except for community policing, we should not promise to "fully fund" these other programs, because we also have to find room for some other DOJ priorities, such as immigration. We agree. At least \$1 billion of the \$5.9 billion in the current bill is for programs and authorization levels that Biden insisted on and DOJ never intended to fund. Biden and Brooks attached a \$300 million Safe Schools program which the Administration would fund elsewhere, through the Education budget.

Rather than committing \$3.5 billion from the spending cuts package to "fully fund" a hodgepodge of crime programs, we recommend that earmarking \$5 billion from the October package to three crime priorities: more cops, drug courts, and boot camps/prisons. This move would help us on several fronts:

- 1) We could commit to 60,000 cops and lift the \$75,000 cap for big cities, so they get at least a 50% federal match;
- 2) We could blunt our drug critics by committing some real money to drug courts, an approach which the Attorney General and Drug Director are strongly behind.
- 3) We could head off the pounding we'll take from Republicans over money for prisons, which will pass whether we like it or not.
- 4) We might give our spending cuts package a boost by tying it to the hottest political issue in the country.

We still wouldn't be fully funding the crime bill, but the combination of \$3.4 billion from the DOJ baseline and \$5 billion from the October package would allow us to say that we would try to fund \$4.9 billion in cops (60,000), \$1.5 billion in drug courts (drug treatment and certainty of punishment for 200,000 minor drug offenders), and \$2 billion in boot camps and prisons (75,000 boot camp slots, 15,000 prisoner slots, and drug treatment for 200,000 criminal addicts).

Congress will be under increased pressure to pass the spending cuts package -- and if they don't, it won't be our fault if we can't fund the prisons. Or we can come back next year with spending cuts that failed this time around and use them to offset crime-related DOJ spending in FY95.

We suggest the following plan, if the President agrees:

- 1) When we introduce the spending cut package next Tuesday, announce that the first \$5 billion in cuts will go to help us crime, and the rest will go for deficit reduction.
- 2) Give Biden and Brooks the go-ahead to raise authorization levels for more cops, more drug courts, and more boot camps/prisons.

**MEMORANDUM****October 20, 1993**

**TO: DAVID GERGEN**  
**FROM: JOE BIDEN**  
**RE: CRIME BILL ISSUES**

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I want to follow up on the two issues we discussed by telephone today. First, I ask that you call Bob Scully, of the National Association of Police Officers, to discuss the Administration's position on the Police Officer's Bill of Rights. I believe our best shot at resolving the current controversy over whether this provision should be included in our crime bill is for you to tell Scully that:

While the Administration supports the Bill of Rights, we do not have adequate support to win a vote on the issue at present. Moving forward on the crime bill without united law enforcement support imperils passage of that critical legislation – with all the aid to state and local law enforcement it provides. The Administration, like Senator Biden, is committed to moving the Bill of Rights on another vehicle or stand-alone, and will work to secure the necessary support for the bill in that context.

Scully is a first-class guy, and I know you understand how important it is to take his concerns seriously. While I am not certain we can work this out, we must take our best shot. Scully is now out of the country, but his secretary will reach him. His office number is (202) 842-4420.

Second, I continue to believe that the elements of our crime bill are strong, but that additional funds would greatly enhance the real effect it will have on the crime and violence problems facing the nation. The first key element of our program, of course, is putting more cops on the street in community policing programs. I have attached charts that plot how many more cops we get with additional dollars. I recommend keeping the federal share steady at 75% (with states matching 25%) and funding all 100,000 new cops over five years instead of six, to provide a significant incentive to states and localities to add and keep the additional officers.

2

The second key element of our program is our focus on separating violent and nonviolent offenders and targeting each with the appropriate punishment. In our bill, this means more prisons (with drug treatment) for violent prisoners; it means building more cost-effective boot camps for nonviolent offenders, and it means forcing first-time, nonviolent drug offenders (who now are put on unsupervised probation) to enter "drug court" programs with mandatory testing/treatment.

I have attached a chart that sets out what the current funding in our bill buys us in the way of cops, and what it would cost to keep the federal share constant at 75% for each cop. In addition, there are charts laying out various funding options for all the key programs in the bill. In comparison to the Republican's bill, our weak spot is the amount of funding for prisons -- we should at a minimum increase our commitment there, if additional funds are available. I believe funding these programs will put the Administration affirmatively behind a major effort to address a primary concern of the American people -- crime and violence.

## FUNDING NOW IN BILL -- ADMINISTRATION PLAN, \$3.4 BILLION OVER 6 YEARS

ASSUMPTION -- 75% federal match, DECLINES OVER 3 YEARS, Per-Officer Cost of \$50,000

\$50,000 salary + benefits	FIRST YEAR	SECOND YEAR	THIRD YEAR
federal share --	\$37,600	\$25,000	\$12,600
local share --	\$12,500	\$25,000	\$37,500

	1994	1995	1996	1997	1998	1999	TOTALS
CLASS A-FED \$	\$200,000,000	\$133,325,000	\$66,662,600	0	0	0	
State/Local \$	\$66,662,500	\$133,325,000	\$199,987,500	\$266,650,000	\$266,650,000	\$266,650,000	
# of Police	5,333	5,333	5,333	5,333	5,333	5,333	
CLASS B-FED \$		\$516,675,000	\$344,450,000	\$172,225,000	0	0	
State/Local \$		\$172,225,000	\$344,450,000	\$516,675,000	\$688,900,000	\$688,900,000	
# of Police		13,778	13,778	13,778	13,778	13,778	
CLASS C-FED \$			\$238,875,000	\$159,250,000	\$79,625,000	0	
State/Local \$			\$79,625,000	\$159,250,000	\$238,875,000	\$318,500,000	
# of Police			6,370	6,370	6,370	6,370	
CLASS D-FED \$				\$310,525,000	\$212,350,000	\$106,175,000	
State/Local \$				\$106,175,000	\$212,350,000	\$318,525,000	
# of Police				8,494	8,494	8,494	
CLASS E-FED \$					\$358,012,500	\$238,675,000	
State/Local \$					\$119,337,500	\$238,675,000	
# of Police					9,547	9,547	
CLASS F-FED \$						\$305,137,500	
State/Local \$						\$101,712,500	
# of Police						8,137	
							TOTAL POLICE OFFICERS
							51,659
TOTAL COST							
TO LOCALS	\$66,662,500	\$305,550,000	\$624,062,500	\$1,048,750,000	\$1,526,112,500	\$1,932,962,500	\$5,504,100,000
TOTAL COST							
TO FEDERAL	\$200,000,000	\$650,000,000	\$649,987,500	\$650,000,000	\$649,987,500	\$649,987,500	\$3,449,962,500

THE WHITE HOUSE  
WASHINGTON

1-10-94

CONFERENCE RECS

FROM MTG.

W( WEBB HUBBELL

January 10, 1994

I. Budgetary Matters

- The Administration should work with the conferees to ensure that the Violent Crime Reduction Trust Fund is included in the final version of the bill. We believe that such a funding mechanism is essential to ensuring that the promise of the Crime Bill is realized.
- The Administration should also work to amend the Senate omnibus crime bill to authorize using the Trust Fund to fund the Edward Byrne Memorial formula grants and to make it clear that other priority matters which arguably already may be financed through the Trust Fund, eg. the Brady Act and assistance in housing state incarcerated criminal aliens, in fact can be.

II. Community Policing

- The Administration should continue to strongly support the community policing program which, in basic form, is included in the Senate omnibus legislation and passed the House. We should work to have the program authorized and funded at the levels in the Senate Bill.
- As we work with the conferees to resolve differences between the Senate and House we should be guided by four primary objectives: (1) expanding and enhancing community policing; (2) maximizing the number of additional police on the streets; (3) being responsive to provide resources to address pressing needs, particularly violent crime; and (4) providing the flexibility necessary to create a manageable federal awards and oversight process.
- To accomplish these objectives we should support modifications that: (1) give DOJ direct management of the award process for the maximum manageable number of larger jurisdictions (probably those over 100,000 population) and have state run, closely monitored, competitions for smaller ones; (2) adjust the funding distributions and mandates in a manner which will provide more funding to the areas with the most severe crime problems and greatest need for additional police officers (typically the larger, urban jurisdictions); and (3) provide increased discretion to the Attorney General to use the 15% of the funding not mandated for hiring/rehiring to target funding to jurisdictions and activities where the greatest impact can be achieved.

**DRAFT**

**III. Federalization of Crime**

- To further a policy a rational division of responsibility for investigating and prosecuting crimes between the federal and state governments, the Administration should seek to exclude from the final legislation and leave to the states which have traditionally handled such matters the Senate provisions making a federal crime of (1) all murders committed with a firearm; (2) the use, possession, or carrying of a firearm during the commission of a state crime of violence or drug offense; and (3) crimes by or affecting persons engaged in the business of insurance.
- The Administration should support with modification the Senate provisions concerning Criminal street gang offenses. The modifications should seek to focus the offenses on those gangs that have an actual impact on interstate commerce or commit crimes in more than one state.
- The Administration should support with modification the Senate provisions concerning Interstate enforcement of the Violence Against Women Act of 1993. The modifications should seek to focus the provisions on the interstate nature of the abuse, and supplement rather than to duplicate the efforts of local authorities in this area.
- The Administration should continue to review other provisions creating new federal offenses, eg. parental accountability for juvenile crimes and obstruction of a lawful hunt, and seek, where possible, to remove any where state enforcement is most efficient and modify others to ensure that federal involvement contributes to effective law enforcement.

**IV. Gun Control**

- The Administration should strongly support the Feinstein Amendment banning assault weapons; the President himself should weigh in with the House Leadership to press for its inclusion in the conference bill.

## DRAFT

- The Administration should seek to include in the crime bill a provision, not in the Senate Bill or House passed legislation, which would prevent automatic restoration of firearm rights to persons convicted of felony offenses whose civil rights are restored by operation of state law.
- The Administration should support the Youth Handgun Safety Act with modification to make it more easily enforceable and ensures that the existing five-year penalty for transfer of a firearm to a minor by a licensed dealer is not diluted.
- The Administration should seek to modify section 416 of the Senate Crime Bill calling for a study of incendiary ammunition such as "Dragon's Breath". The modification would convert the study to a total ban on such ammunition, which has no sporting or law enforcement use.

### V. Regional Prisons

- In order to provide needed additional prison capacity in the most cost effective and sensible manner, and in a manner which the states will support, the Administration should work to revise section 1341 of the Senate Crime Bill (the Regional Prison provision) to establish a federal grant program funding state creation and operation of additional prisons, including regional prisons, to house violent offenders. This would replace a program under which the federal government would construct and operate these facilities.
- The Administration should support with modification the "truth in sentencing" requirements for states participating in section 1341 programs. The modifications should focus the provisions to have states target resources on repeat violent offenders and to provide incentives to the states to manage their correctional systems more wisely.

### VI. Sentencing

**DRAFT**

- The Administration should take a strategic view to mandatory minimums, arguing for the superiority of the Guidelines system and that mandatory minimums be converted to "directives" to the Sentencing Commission to raise offense levels in certain categories or for particular offenses, while analyzing each proposed mandatory minimum provision on a statute-by-statute basis and taking appropriate positions.
- The Administration should support and improve "safety-valve" or "carve-out" provisions, such as the one in the Senate Bill, under which certain categories of defendants would be exempted from mandatory minimums and would, instead, be sentenced under the Guidelines.
- The Administration should support with modification sections 2408 and 5111 of the Senate Crime Bill (the so called "three strikes your out provisions"). The modifications should focus the provisions on violent, serious recidivists and true career offenders.

**VII. Child Pornography**

- The Administration should continue to support an amendment to the crime bill to make it clear that the child pornography statutes encompasses all depictions of children designed or intended to appeal to a lascivious interest including depictions not currently covered which are created by computer imaging or the doctoring of photographic negatives.

June 20, 1994

MEETING WITH HOUSE AND SENATE DEMOCRATIC LEADERSHIP

DATE: June 21, 1994  
LOCATION: Cabinet Room  
TIME: 5:30  
FROM: Pat Griffin, Rahm Emanuel, and Ron Klain

I. PURPOSE

You are to meet with the House and Senate Democratic leadership regarding the Crime Bill. The principal purpose of the meeting is to determine a strategy for moving the Bill, in light of the complications raised by the Racial Justice Act.

II. BACKGROUND

As we discussed, the Racial Justice Act has the potential to imperil passage of the Crime Bill. Even a compromise text will not avert overwhelming opposition by most prosecutors, and a Republican filibuster in the Senate.

The House leadership wants racial justice included in the Conference Report. Dropping it now, they say, will produce deep conflict with the Congressional Black Caucus. They also fear that dropping it will imperil the Crime Bill itself, by costing us many CBC-liberal vote defections on the Rule.

The House leadership believes that, as with the Brady Bill, a Senate filibuster can be overcome by accusing the Senate Republicans of partisanship and gridlock. And they suggest that if it cannot, they will be able to muster House support for a second Conference on a second Crime Bill -- at which point, it becomes easier to drop racial justice.

Senate leaders believe that a Senate filibuster over RJA cannot be broken. They note that the Senate filibuster may not be limited to Republicans: Senator Byrd, for example, is an ardent RJA opponent. Given that the RJA lost in the Senate by a 41-59 margin, they note, we would need substantial numbers of RJA supporters to join us to get the 60 votes needed for cloture.

III. PARTICIPANTS

The Vice President, Speaker Foley, Majority Leader Gephardt, Chairman Brooks, Majority Leader Mitchell, Chairman Biden, the Attorney General, Mack McLarty, Leon Panetta, George Stephanopoulos, Pat Griffin, Rahm Emanuel, Ron Klain and Karen Hancox.

#### IV. PRESS PLAN

The meeting is closed to the press.

#### V. SEQUENCE OF EVENTS

You begin the meeting, outlining the issues as suggested in the attached talking points. You should then recognize the Attorney General for any comment wishes to add. Then, you allow the House and Senate leaders to respond. Questions to guide the discussion are also attached.

#### VI. REMARKS

Proposed talking points and questions are attached.

Attachment: Talking points and questions for discussion

### TALKING POINTS

- I am very pleased with the work that Chairmen Biden and Brooks, and the Attorney General, have done to develop a Crime Bill Conference Report. It is set to contain all of the anti-crime initiatives most important to me -- 100,000 cops, more punishment, more prisons, and critical new prevention programs.
- One issue complicates this greatly: the Racial Justice Act.
- After weeks of work to develop an alternative, I am told that we have something that will help make the Act more defensible in the political arena -- but we have no compromise that will avert strong opposition by the prosecutors.
- Getting this Crime Bill passed as soon as possible has got to be the highest priority. And I think it is important that whatever we do on racial justice fits into that.
- So my question for Senators Mitchell and Biden is: If some version of racial justice is in the Conference Report, can we get it through the Senate? And conversely, for the House leaders: If racial justice is dropped, can we get the bill through the House?

### QUESTIONS FOR DISCUSSION

- [For House leaders:] Given that the CBC is getting almost \$9 billion for prevention in this bill, could they accept dropping racial justice to preserve these funds? What if they were offered a DoJ initiative on racial justice, and a study Commission headed by Justice Blackmun in return?
- [For both:] If racial justice is included, and it is filibustered in the Senate:
  - Could we get to a second Conference? When?
  - How many cloture votes before we stop trying?
- [For Senate leaders:] Can't we break the filibuster by accusing the Republicans of gridlock on the crime issue? Won't this be like the Brady Bill again?
- [For House leaders:] Does the CBC understand that a second Crime Bill will be worse for them than merely "Crime Bill minus racial justice?" Once the Senate GOP is emboldened, the price for breaking a filibuster will get higher.
- [For both:] If RJA is dropped, what assurance do we have that House Republicans will vote for the Rule? How do we know that Senate Republicans won't filibuster anyway?

Keep in mind also that if House Republican votes can be mustered for the Crime Bill, it will be harder for the Senate Republicans to sustain their filibuster.

June 17, 1994

MEMORANDUM FOR THE PRESIDENT

FROM: GEORGE STEPHANOPOULOS, PAT GRIFFIN, RAHM EMANUEL,  
BRUCE REED, AND RON KLAIN

SUBJECT: CRIME BILL -- LEGISLATIVE STRATEGY

We have made tremendous progress toward assembling a final Crime Bill Conference Report. But one issue -- the Racial Justice Act -- imperils passage of the bill. The purpose of this memorandum is to update you on our progress, discuss the options on this critical issue, and present the options for its resolution.

Draft Crime Bill Conference Report

We have reached a tentative agreement with the Democratic Conferees on a final version of the Crime Bill Conference Report. As currently contemplated, it would include every one of the seven major initiatives you have proposed to fight crime:

- 100,000 more police, engaged in community policing;
- A ban on semi-automatic assault weapons;
- Stiffer punishments for violent criminals, including a federal death penalty and "three strikes and you're out;"
- An attack on youth crime, including boot camps, drug courts, and anti-gang measures;
- New crime prevention programs, including the "YES" program funded at \$900 million;
- Initiatives to combat violence against women, rural crime, and protect victims' rights; and
- Funding for states to build prisons to lengthen sentences for violent criminals.

These measures would be paid for by a Crime Trust Fund, totalling \$30 billion over a six-year period, funded with the savings from a 252,000 person reduction in federal employment.

Racial Justice Act

This is clearly the most difficult. Brooks says he cannot get the House Democratic Conferees to support a bill that drops it; Biden says he cannot win Senate passage of a bill that includes it. We continue to work around the clock with prosecutors and RJA proponents on potential compromise texts -- but if no compromise can be achieved (a substantial prospect), we will have to take a great gamble by either including or dropping

this provision.

Notwithstanding these difficulties, Chairmen Biden and Brooks have agreed to work towards a June 21 deadline, so as to permit enactment of the Crime Bill before the July 4th recess.

#### Proposal for June 21 Event and Subsequent Strategy

We will continue our talks and negotiations, in anticipation of formal Conference meetings beginning on June 15th. We will need an aggressive communications plan in the week of June 15 to June 22, the period when the debate over the Conference Report will be joined, and the images associated with each side will be shaped in the public mind.

The Conference meeting on June 15 will be devoted to posturing -- and be followed by some outreach efforts to Republicans, who we fear will remain unwilling to join us in breaking gridlock on this issue. Thus, the Chairs currently plan to set a second, and final Conference meeting for June 21st.

On that morning, Brooks and Biden would come to the White House with all of the Democratic Conferees, to announce their agreement with you on a final Conference Report. They would reconvene the Conference that afternoon to ratify that agreement.

We would then anticipate House action on the Conference Report later in that week, and Senate action during the week of June 27th. The timing on the Senate vote is set to back a Republican filibuster up against the recess, and to take advantage of Senator Mitchell's offer to threaten to keep the Senate in to break the filibuster.

We need to begin talks with the House and Senate leadership to attempt to "lock in" this timetable. We need their support and commitment to insure that floor time is available to get this bill done.

#### Additional Republican Strategy

In addition to continuing to work to develop a Conference Report that is consistent with the President's objectives, and capable of winning broad support in Congress, we need to focus on House and Senate Republicans specifically:

- House GOP: We should target those 65 Members who voted for the Crime Bill on final passage initially.
- Senate GOP: Winning some early endorsements -- before Sen. Dole issues the filibuster rallying cry -- is critical to our success.

June 14, 1994

MEMORANDUM FOR MACK MCLARTY

FROM: RAHM EMANUEL, PAT GRIFFIN, BRUCE REED,  
RON KLAIN AND KAREN HANCOX

SUBJECT: CRIME BILL -- LEGISLATIVE STRATEGY ISSUES

Since the Attorney General met with all the House and Senate Democratic Conferees last Thursday, vast strides have been made toward agreement on a potential Crime Bill Conference Report. The purpose of this memorandum is to update you on this progress, discuss the timing of the next steps towards enactment, and identify five major problems that remain.

Items included in the "Chairmen's Mark"

For the past two weeks, we have been working with Chairmen Biden and Brooks to develop a "Chairmen's Mark," to guide the subsequent development of the Conference Report. Substantively, this has been very successful for us: though we have not gotten every program we wanted, the Chairmen's Mark will ultimately include every one of the seven major initiatives the President proposed to fight crime. These are:

100,000 more police, engaged in community policing;

A ban on semi-automatic assault weapons;

Stiffer punishments for violent criminals, including a federal death penalty and "three strikes and you're out;"

An attack on youth crime, including boot camps, drug courts, and anti-gang measures;

New crime prevention programs, including the "YES" program funded at \$900 million (we asked for \$1 billion);

Initiatives to combat violence against women, rural crime, and protect victims' rights; and

Funding for states to increase certainty of punishment, and build prisons to lengthen sentences for violent criminals.

These measures would be paid for by a Crime Trust Fund, totalling \$30 billion over a six-year period (we had wanted to keep the spending to \$28 billion), funded with the savings from a 252,000 person reduction in federal employment.

### Remaining Potential Pitfalls

There are five potential pitfalls, listed in escalating significance, that could derail a final agreement:

- (1) **Schumer.** Right now, because we have dealt so exclusively with Brooks, Schumer is miffed. He needs to be stroked, particularly if we want his help in selling compromises on RJA and Assaults. Also, he wants us to modify our Community Policing program, to allow funds to be used for purposes other than hiring cops, so long as the expenditures result in more police being on the streets (e.g., hiring secretaries so police officers do not do clerical work).
- (2) **YES.** The House and Senate Labor Committees want us to abandon this as a distinct program, and consolidate it with existing job training efforts. We need to boost Kennedy and Ford's support for our program if we want to see it included as a separate initiative.
- (3) **Prisons.** We have yet to achieve an agreement on a grant program that satisfies all the major House and Senate players. To win passage of the Bill, the result on this issue must satisfy House moderates (led by Rep. Chapman) and Senate moderates (led by Sens. Dorgan and Conrad) -- but the two groups themselves are at odds.
- (4) **Assault Weapons.** Unless we compromise with ban opponents, the inclusion of this in the Crime Bill may cost us 35-45 Democratic votes, and 40-50 Republican votes in the House -- enough to prevent final passage. We believe we can achieve an agreement with Chairman Brooks on a ban that is more sweeping than Sen. DeConcini's original proposal, but more narrow than the House-passed bill. It would ban 18 (of 19) listed guns, "copy cats" of those guns, and magazines holding 15 or more rounds; it would not ban additional guns based on their characteristics. We will be blasted by Sens. Metzenbaum and Feinstein, and perhaps Rep. Schumer (see above) for "caving" to Chairman Brooks.
- (5) **Racial Justice Act.** This is clearly the most difficult. Brooks says he cannot get the House Democratic Conferees to support a bill that drops it; Biden says he cannot win Senate passage of a bill that includes it. We continue to work around the clock with prosecutors and RJA proponents on potential compromise texts -- but if no compromise can be achieved (a substantial prospect), we will have to take a great gamble by either including or dropping this provision.

Notwithstanding these difficulties, Chairmen Biden and Brooks have agreed to work towards a June 21 deadline, so as to permit enactment of the Crime Bill before the July 4th recess.

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We need to begin talks with the House and Senate leadership to attempt to "lock in" this timetable. We need their support and commitment to insure that floor time is available to get this bill done.

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In addition to continuing to work to develop a Conference Report that is consistent with the President's objectives, and capable of winning broad support in Congress, we need to focus on House and Senate Republicans specifically:

- House GOP: We should target those 65 Members who voted for the Crime Bill on final passage initially.
- Senate GOP: Winning some early endorsements -- before Sen. Dole issues the filibuster rallying cry -- is critical to our success.

Keep in mind also that if House Republican votes can be mustered for the Crime Bill, it will be harder for the Senate Republicans to sustain their filibuster.



Office of the Attorney General  
Washington, D. C. 20530

March 1, 1994

Jose:  
Fyi, Rahm

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: RON KLAIN  
SUBJECT: THREE STRIKES PROPOSAL

Attached is the draft of the "three strikes and you're out" proposal, which you have previously reviewed. It is being presented this morning at a House Judiciary Subcommittee hearing today, by Acting Deputy Attorney General Jo Ann Harris.

Major Features of the Draft

The draft embodies the President's pledge to have a federal "three strikes" law: a law that will impose life imprisonment when a defendant is convicted, in federal court, of his third serious violent felony against another person (the first two strikes can be federal or state crimes).

Major issues or controversies addressed by the proposal are as follows:

- Life Sentence: "Life" would be real life -- not merely a term of years.
- Covered Offenses: The law would cover specific violent offenses against another person (such as murder, rape, armed robbery, arson, shooting someone); it excludes property crimes and non-violent offenses, such as drug sales. A catch-all (felonies serious enough to merit a 10-year term, where an element of the crime is the use or threat of force) is also included. [As such, it is somewhat narrower than the two proposals that passed the Senate (Sen. Lott's and Sen. Gramm's) because it does not cover non-violent drug crimes or property crimes.]
- Exception: Robberies or "catch-all" felonies do not count as "strikes" if the defendant can prove that he did not use a gun, or did not cause serious bodily harm to his victim.
- Timing: The statute is a recidivism law -- it only applies when someone is caught, convicted, released, and then commits a crime again, and then again. Thus, someone who commits three felonies on a single crime spree is not covered. On the other hand, there is no time limit for the three convictions: convictions at ages 18, 35, and 50, for example, would count as three strikes.

The best statistics available suggest that the law would cover approximately 200 federal defendants annually, nationwide.


### Likely Questions and Answers

- Q. Who supports your plan? Who opposes it?
- A. We have worked hard in the Department of Justice to craft the best possible three-strikes provision, one that targets the truly dangerous offender, and gets him or her off the streets for good. We hope that, so drafted, it will have broad bipartisan support on Capitol Hill.
- Q. Is your proposal narrower than the Senate's? Is it weaker?
- A. Working with the U.S. Attorneys and the career prosecutors in the Justice Department, we have crafted a provision that goes right at the precise people who need to be taken off the streets for good -- repeat, serious, violent offenders. That targetting is both tough and smart.
- Q. Won't your proposal lock up geriatrics?
- A. For deterrent purposes, life should be life -- we do not want to bet innocent lives on a criminal becoming "safe" at some specific age (i.e., age 55 or age 60). Also, we do not want to reinstitute a parole-type hearing into the federal system.
- Q. Doesn't your law miss the mass-murderer, who kills 3, 5, or 10 people without being caught?
- A. Many other laws -- including the death penalty -- exist to deal with mass murderers and crazed criminals on a crime spree; this is a single statute, to deal with a single problem: revolving door repeat offenses by violent criminals. Moreover, without a timing rule, a 19-year old who holds up three stores on a weekend would go to jail for life.

THE WHITE HOUSE  
WASHINGTON

June 28, 1993

MEMORANDUM FOR CAROL RASCO, BRUCE REED and JOSE CERDA

FROM: RON KLAIN   
SUBJECT: HABEAS CORPUS REFORM

Attached is the President's response to the memorandum you asked me to prepare last week, regarding habeas corpus reform.

As I have not been involved in this issue -- and would prefer to stay out of the difficult dealings with the Justice Department, with which I am working closely on judicial nominations -- I will leave it to you to coordinate further action from this point.

Also, because every time I get involved in this issue, my phone rings off the hook with calls from the Hill, I would prefer that my technical assistance to your office on this matter remains "anonymous." Thanks.

To Ron Klain

I think I agree w/ yr. option 3  
but where is the AG on this?  
AG's office should be involved  
I think - if our goal is quick  
action option 3 is best - 5 or 6  
next but risk alienating Biden -

To Ron Klain

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THE WHITE HOUSE

WASHINGTON

June 25, 1993 3:25 P7:03

MEMORANDUM FOR THE PRESIDENT

FROM: RON KLAIN *RLK*SUBJECT: HABEAS CORPUS REFORM

This memorandum outlines the major issues in the habeas reform debate and our options for resolving them.

## I. BACKGROUND ON HABEAS REFORM

Prosecutors have been urging reform of federal habeas corpus proceedings for three decades. The reforms are of two sorts: substantive reforms, that limit the scope of federal court review of state death sentences; and procedural reforms, aimed at making these cases move more quickly and towards greater finality.

Until 1990, the defense bar resisted any reforms. For example, they rebuffed Justice Powell's reform plan, which would have provided free lawyers for habeas petitioners in exchange for procedural limits on such appeals (e.g., time limits on filing, and a strict "one-bite-at-the-apple" rule). Reform proposals from Senate moderates, like Bob Graham, were also rejected.

In 1989-90, a series of conservative Supreme Court rulings altered the dynamic on habeas reform. By making it harder for death row inmates to win habeas relief, the Court lessened pressure on the right to compromise to win legislative habeas reform -- and created interest on the left in seeing reform debated, as a vehicle for reversing the adverse Court decisions.

The 1991 Crime Bill Conference Report included a sweeping habeas reform provision, drafted by Democrats (Biden and Brooks). It limited the time for filing petitions to one year, and limited death row inmates to a single petition (with few exceptions), in exchange for free lawyers to prepare these petitions. It also gave death row inmates some relief from the adverse Supreme Court decisions. Largely because of this final provision, state and local prosecutors bitterly opposed the Conference Report.

## II. CAMPAIGN STATEMENTS

During the campaign, you said you would have signed the Crime Bill Conference Report, but you did not separately endorse the habeas reform language in it.

On the habeas issue specifically, you called for "reforms on death row appeals," expressing interest in a range of proposals. In one statement on the issue, you spoke positively of several reform plans, "such as the ABA proposal and the Powell Report."

Because these proposals, while alike at a general level, have differences that are significant to practitioners in the field, there has been confusion over your position on habeas reform. This has fueled expectations, on the part of both the left and the right, that you would alter the Conference Report in a manner that either side would find more to its liking.

### III. MAJOR HABEAS REFORM ISSUES

Most of the major reform plans being considered are of a like design at an abstract level: some limits are placed on the filing of habeas petitions in exchange for death row inmates getting free lawyers to file those petitions. Within this broad construct, five major issues are in dispute. They are:

#### A. Procedural Issues

- Time Limit: How much time will a prisoner have to file his petition? Current law has no time limit whatsoever. The ABA proposed a limit of 18 months; Justice Powell put it at 6 months; the Conference Report set the time at 12 months.
- Repeat Petitions: The current habeas statute sets no limit on multiple filings by death row inmates -- though Supreme Court case law makes repeat filings difficult. All reform proposals limit prisoners to a single petition, but all also contain some exceptions. The issue is: How broad are the exceptions? The ABA Report had a broad exception; the Powell Report had a narrow exception. The Conference Report tilted more towards the ABA approach.
- Counsel Standards: The reform plans all required states to provide lawyers to death row inmates for the preparation of habeas petitions; they differed on whether such lawyers must meet minimum competency standards. The Powell plan had no standards; the ABA plan had extensive standards. The Conference Report had modest competency standards, keyed on years of experience.

#### B. Substantive Issues

- Retroactivity: Before a 1989 Supreme Court case (Teague v. Lane) held otherwise, a prisoner could challenge his death sentence based on a favorable court ruling that post-dated his trial and appeal. The defense bar wants this right restored; prosecutors oppose a reversal of the this line of cases. The Conference Report sided with the defense bar, to some extent; this was its most controversial provision.

- "Full and Fair:" The cornerstone of the Bush habeas reform plan was a rule that death sentences could not be challenged if the defendant had a "full and fair" hearing in state court. This is the prosecutors' ultimate goal -- it effectively ends federal habeas review of state death sentences -- and passed the Senate in 1991.

#### IV. CURRENT OPTIONS

Though I have not been involved in this issue since the Transition, as I see it, you have six options:

- (1) Crime Bill Without Habeas Reform: You could propose a Comprehensive Crime Bill without any habeas reform provision. It would still have a Brady Bill, a death penalty, and a policing plan.
- (2) Adopt Conference Report Habeas Language: You could adopt the language of last year's Conference Report as "your" proposal. There is a logical reason for adopting this text (it is long-standing and well-known), but it is bitterly opposed by State Attorneys General and local DAs.
- (3) Back a "Biden-Prosecutor" Deal: Lengthy negotiations between Senator Biden and the Attorneys General are about to come to fruition; District Attorneys will be neutral, and at least some defense bar leaders will grudgingly accept the agreement. Our prompt endorsement of any agreement will help make it a consensus view.

The substance of this plan would be a six-month statute of limitations; a tough rule against multiple petitions; counsel standards akin to those in the Conference Report; and some relief (though not much) for the defense bar on the retroactivity issue.

- (4) Convene our Own Negotiations: You could direct the Attorney General to summon the parties to an administration-sponsored negotiation. This, however, is only likely to drag out the process of resolution, and is unlikely to produce results different from those in the Biden-Prosecutor talks.
- (5) Draft a Limited Reform Proposal: We could assemble our own, limited reform proposal -- one that would only address the least controversial habeas reform issues -- but would at least be some reform. For example, we could package a one-year limit on filing, linked with a moderate version of the single-petition rule -- in exchange for free lawyers with very minimal counsel standards. While no one would be excited about such a limited reform plan, no one would strongly oppose it.

(6) Draft a Comprehensive Reform Proposal: Finally, and most ambitiously, we could draft a comprehensive reform proposal that would address all the major issues. If we go this route, I would recommend a proposal positioned slightly to the right of last year's Conference Report text; namely:

- A one-year limit on filing petitions;
- Limit petitioners to a single filing, except where they have new evidence of innocence, or new evidence that their death sentence is unconstitutional;
- Provide counsel for filing habeas petitions, subject to experience-based competency standards;
- Have a very limited relief provision on the "retroactivity" question.

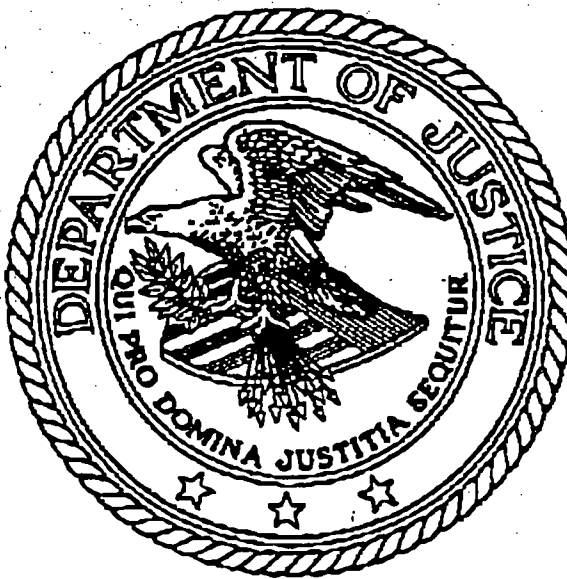
Such a "Clinton proposal" would anger both the left and the right, but could probably win support among neutral observers in this area (i.e., bar groups, editorialists, and the like).

#### V. RECOMMENDATION

I favor the third option above; i.e., getting behind the emerging agreement between Senate Democrats and the prosecutors. I do not think it is worth the effort or the expenditure of political capital to fashion our own reform plan, when we can more easily get behind a compromise plan assembled by others.

Why? Habeas corpus reform will never be the touchstone of a Clinton Crime Bill; our goal should be to get a **fast** and **plausible** resolution of this troublesome issue, and move ahead on a Crime Bill that advances those matters that are at the heart of your anti-crime agenda: passing a Brady Bill, putting 100,000 more police on the streets, restoring an enforceable death penalty, and launching innovative, new programs to prevent crime.

Thus, we should be looking for the resolution that gets us out of this issue as quickly and simply as possible -- and adopting a settlement negotiated by others is the option that best fits this objective.



Office of Policy Development  
 United States Department of Justice  
 10th and Constitution Ave. NW  
 Washington, D. C. 20530

TO: *Bruce Reed*

*456-7028*  
 FAX: ( )

FROM: *Guac. Mastalle*

VOICE: (202)  
 FAX: (202) 514-8639

Total Pages (excluding this cover): \_\_\_\_\_

Additional Message:

July 14, 1994

MEMORANDUM FOR LEON PANETTA

FROM: RON KLAIN

SUBJECT: THE RACIAL JUSTICE ACT

One key issue in the Crime Bill Conference is the "Racial Justice Act." This provision was narrowly passed by the House, but defeated in the Senate, when the two bodies considered their respective versions of the Crime Bill.

The Racial Justice Act was developed in response to the Supreme Court's decision in McCleskey v. Kemp (1987), holding that statistical evidence that the death penalty was being applied in a discriminatory manner could never suffice to establish a claim that the death penalty was being administered in an unconstitutional manner.

In response, the RJA creates a cause of action so that a statistical showing of discrimination on the basis of the race of the defendant or victim can be actionable; specifically, under the RJA, such statistical evidence shifts the burden to the state to show that discrimination was not the reason for the death sentence being imposed.

#### CBC-BACKED VERSION

The key provisions of Racial Justice Act as passed by the House in April are:

- A prohibition on putting to death any person -- in state or federal court -- if the sentence was "imposed based on race";
- An inference that a death sentence was "imposed based on race" if evidence demonstrates that, at the time the sentence was imposed, the race of the victim or of the defendant was a statistically significant factor in decisions to seek or impose a death sentence in the jurisdiction;
- A requirement that the government to rebut this statistical inference, and a limitation on the sort of evidence the prosecution can use to rebut the statistics;
- And more liberal procedural rules in habeas corpus petitions seeking to raise a discrimination claim.

As drafted, the RJA would have applied to all persons on death row, past and future. But to win its narrow victory in the House, the CBC agreed on the House floor to make the bill prospective only.

Thus, as drafted, the bill makes it very difficult (if not impossible) for state prosecutors to rebut a statistical case of racial disparity among defendants -- or among crime victims. This is what gives rise to the argument by prosecutors that the bill will, in effect, abolish the death penalty.

In our discussions with Congressman Mfume, we sought various modifications to the legislation (our views are discussed below). But Rep. Mfume indicated he would accept only the following changes to the House passed language:

1. The non-retroactivity provision, as discussed above, that had been previously pledged on the House floor;
2. A provision making it explicit that the legislation neither requires or permits a quota system for death penalties;
3. A statement that a claim cannot be made by simply showing a racial disparity between the general population and those sentenced to death; and
4. A limitation that defendants could raise these claims only in their first federal habeas petition, and not on multiple occasions.

These changes were helpful -- but while it was a disagreement over process, and not substance, that stalled our talks with Rep. Mfume -- they did not go far enough in our view.

#### ALTERNATIVE VERSION

Independently of the conversations with Congressman Mfume, lawyers at the Department of Justice, working in consultation with Rep. Edwards, had prepared an alternative version of the racial justice legislation. Beyond the changes outlined above, the DOJ version makes the following additional modifications:

1. It provides that the burden of proof never shifts to the government but remains with the defendant: the government's burden is to produce a nondiscriminatory reason for its decision;
2. Rather than focusing on statistical evidence, it provides that an inference is established if the defendant proves a "pattern or practice" of seeking or imposing death sentences based on race -- "pattern or practice" being a term of art in civil rights statutes;

3. It removes the RJA provisions modifying traditional habeas law regarding the presumption of correctness that attaches to state court findings;
4. It limits use of statistical proof to decisions by prosecutors and judges, but not juries, because each individual jury is a one time actor in the process; and
5. It provides more specific guidance as to the order of the proceeding and the type of evidence that a court could consider in a challenge.

It was our view that, with these changes, we would have fulfilled the President's mandate to develop a statute that prevented discrimination in the death penalty -- without preventing the fair and effective imposition of that sanction.

Nonetheless, even our version of this racial justice proposal (when quietly circulated) drew substantial opposition among prosecutors and Senators. We could not get even one Democratic Attorney General from a death penalty state to endorse our compromise (though two or three non-death penalty Democratic AGs indicated they might be helpful); the DAs have pledged to continue to fight any proposal in this area, including ours.

Perhaps more importantly, the draft was quietly shared with several RJA opponents in the Senate (including Senators Byrd and Graham), and both said that the changes were insufficient to alter their stand on this measure.

#### ARGUMENTS ABOUT THE RJA

Proponents of the Racial Justice Act argue that its structure of allowing statistical evidence to create an inference of discrimination which must then be rebutted is common in anti-discrimination law. They dispute the assertion that valid studies showing patterns of racial discrimination will easily materialize around the country putting capital sentencing schemes at risk -- the study at issue in McCleskey was expensive and time consuming and has never been duplicated.

Proponents of the Racial Justice Act also make emotionally powerful arguments based upon both history -- and current practice. The history is obvious and well known; the current practice is that all nine of the defendants for whom the federal death penalty has been sought on the last year have been African-American. Finally, for many proponents of the Racial Justice Act, the bill has symbolic importance beyond its actual effect because it is an explicit recognition that there is racial discrimination in the criminal justice system.

Opponents argue that, while discrimination and prejudice should play no role in the criminal justice system, as drafted the Racial Justice Act would either shut down the imposition of capital punishment in the United States because of extensive litigation costs or lead to the imposition of a quota system. They maintain that it will be easy to demonstrate gross racial disproportions in the administration of capital punishment and thereby create an inference of discrimination, it will be all but impossible to rebut the inference since the government will be unable to point to factors in the particular case that make it an appropriate one for the death penalty.

Opponents use this Title VII analogy: in an employment case, an employer charged with discrimination against a particular individual for denying a promotion and presented with statistical evidence showing that African-Americans as a group are much less likely than others to be promoted can defend by showing that the particular employee was not qualified for the promotion. But under the original RJA, a state faced with statistical evidence about death sentences could not defend by showing that the particular defendant's sentence was proper given the facts of the crime and the defendant's prior record.

### CONCLUSION

In sum, many of the modifications reflected in the "alternative version" of the legislation are explicitly designed to provide responses to the arguments made by opponents. Thus, the alternative is defensible on policy grounds, and in a principled debate.

But as noted above, while these changes do provide firm ground from which to defend against the attacks, the modifications are unlikely to silence many critics who are as committed to opposing any version of the RJA as proponents are committing to supporting the bill.



**OFFICE OF THE ATTORNEY GENERAL**

**FACSIMILE TRANSMITTAL COVER SHEET**

**DATE:** 4/12

**TO:** PAT, Rahm, Bruce

**FACSIMILE NO.** \_\_\_\_\_

**TELEPHONE NO.** \_\_\_\_\_

**FROM:** Ron

**FACSIMILE NO.** (202) 514-9077

**TELEPHONE NO.** (202) 514-6909

**NUMBER OF PAGES INCLUDING COVER SHEET** 4

**COMMENTS:** I will be at White House at 7:15am tomorrow, to head to North Lawn for AG Reno live shot at 7:35. I will return to White House for 9:00 AG Reno live shot. You can get comments to me at either time. Thanks.

DRAFT

April 12, 1994

MEMORANDUM FOR THE PRESIDENT

FROM: PAT GRIFFIN, RAHM EMANUEL, BRUCE REED AND  
RON KLAIN

SUBJECT: CBC REQUEST FOR SUPPORT ON RACIAL JUSTICE ACT

This memorandum analyzes the Congressional Black Caucus' request for your support for the Racial Justice Act (RJA).

ISSUE

On Tuesday afternoon, the CBC Leadership threatened to lead a fight against the Crime Bill Rule (scheduled for a vote on Wednesday), unless you give a prior commitment to support the Racial Justice Act. (The RJA will be voted upon next week.) The attached memorandum from the Justice Department explains the RJA in depth; in brief, the RJA enjoins state death penalties, and vitiates existing death sentences, if evidence of a statistical imbalance among the races of capital defendants or victims in capital cases is demonstrated.

BACKGROUND

To date, you have not supported the RJA, and press reports have indicated that the Justice Department informally opposes it. Throughout the drafting of the Crime Bill, we urged proponents of the RJA to advance a more limited version (one that applied to federal cases only) that we might be able to embrace. The CBC rejected any compromise on that issue.

Still, notwithstanding this difference on the RJA, we had near unanimous support among the CBC for the Crime Bill Rule (until Tuesday afternoon). To that point, 20 members of the CBC had committed to the Attorney General to support the Rule; 15 were undecided; only two were leaning against. The basis of this support was our help in insuring that the Rule permitted no cuts, whatsoever, in the \$7 billion in prevention programs the CBC has backed; and indeed, the Rule does provide that absolute protection for the prevention grants.

Then, after the Rule was reported from the Rules Committee, Reps. Kweisi Mfume and John Conyers contacted our legislative affairs staff to suggest that the CBC might, as a block, work to defeat the Crime Bill Rule unless it has your prior commitment to support the RJA when the House votes, next week, on an amendment to remove it from the Bill.

ARGUMENTS FOR AND AGAINST SUPPORTING THE RJA

The attached memorandum makes the substantive arguments for and against the RJA. The legislative/political arguments are:

**Arguments in Support**

- Supporting the RJA will get us the CBC votes we need to pass the Rule -- without their support, we may lose the Rule.
- We may be able to use a pledge of support for RJA to extract commitments from the CBC to support the Crime Bill on final passage (currently, we have fewer than 5 such commitments).
- Support for RJA will improve long-run relations with the CBC, civil rights groups, Rev. Jackson, and others who are concerned about our policies on crime and welfare reform.

**Arguments in Opposition**

- Support for RJA could drive away conservative House Dems, who might be more skittish in joining us to defeat GOP attacks on a "weak" bill and a "restrictive" rule.
- Support for the RJA will alienate prosecutors, law enforcement, and DAs, who vigorously oppose it -- and will fervently oppose the Crime Bill if RJA is included in it.
- Support for the RJA will lead to long-run attacks on the crime issue, as the RJA has been called "quota justice" and the "effective abolition of the death penalty."

One other issue is: If the Rule does fail, where do we go next? Back to the CBC (whose demands will then escalate), or to the Republicans, whose support we could gain by granting them more amendments -- but only at the price of doing further, and perhaps lasting, damage to our long-run relationship with the CBC.

SERIOUSNESS OF THE THREAT

Our subsequent recontacting of CBC members suggest that several, perhaps even many, will stand by their prior commitment to support the Rule. Our administration is continuing to work the CBC, and is being helped by supportive black Mayors. Also, the Speaker will meet with the CBC on wednesday at lunchtime, to promise the support of the House leadership on the RJA. This may also help alleviate any need for a statement from you.

Still, a group dynamic will be in play on Wednesday when the CBC meets, and the situation could get away from us quickly. Unknown, and unknowable, is how many other House liberals would join the CBC in bolting on the Rule: we can win on the Rule even if the CBC deserts -- but not if they also take 12 more House Democrats with them.

OPTIONS

We have three options for our response to the Mfume-Conyers request:

- (1) Decline the Request. We could refuse to budge, politely, and hope to hold enough votes to pass the Rule. But where we go if the Rule loses -- discussed above -- is a major issue that must be considered.
- (2) Offer Quiet Help. We could privately pledge that our legislative affairs staff will help bolster whip efforts on RJA, without promising your public support for the provision substantively. If asked about our efforts, we could say we are helping the CBC as an act of good faith, even though we do not necessarily agree with their position on the merits.
- (3) Authorize Foley to Commit Your Support to RJA. Finally, we could authorize Speaker Foley to commit your support for the RJA if he (in conjunction with our analysis) believes that it is the only way to get the votes needed to pass the Rule without Republican help. Certainly if this commitment is offered, we should ask for CBC votes on both the Rule and final passage -- because if the RJA survives, getting moderate Democratic votes on final passage will be difficult.

We would recommend either of the first two options (at least for now) as we believe that -- because of our hard work with them on this bill, and the prevention issue in particular -- we can still hold several CBC Members on the Rule without moving on the RJA.

DECISION

\_\_\_ OPTION 1  
\_\_\_ OTHER:

\_\_\_ OPTION 2

\_\_\_ OPTION 3

Attachment

July 14, 1993

MEMORANDUM FOR CIRCULATION

FROM: BRUCE REED  
JOSE CERDA III

SUBJECT: UPDATE ON CRIME BILL -- INFORMATION

We have all but finalized language with Justice, OMB, Senator Biden and Chairman Brooks on a modified version of last year's crime bill, which will include (1) the Brady Bill, (2) a federal death penalty and habeas reform, (3) additional boot camps, and (4) 50,000 new cops on the beat. (The other 50,000 of the President's 100,000 cops pledge will come from other initiatives, including \$150 million in policing grants already approved by Congress, \$500 million as part of the President's Empowerment Zones legislation, HUD's proposed Community Partnerships Against Crime (COMPAC), the Department of Education's Safe Schools legislation, and the public safety component of the President's National Service proposal.)

Departures from last year's bill include: (1) making Title I of the bill the President's policing initiative; (2) including a new habeas corpus reform compromise; and (3) omitting the new mandatory minimums included in last year's bill (but leaving existing minimums intact).

We are told that both Biden and Brooks want to introduce the bill before the August recess. We can be ready at any time.

Issues that still need final resolution include:

**Habeas Corpus Reform:** We are 90% of the way to a "new and improved" compromise on habeas. Senator Biden and Chairman Brooks have worked with the National Association of Attorneys General and the National District Attorneys Association to forge a new compromise. The AGs had their national meeting last week and supported a general resolution that will allow them to support the new compromise. The DAs will have their national meeting next week and will consider a habeas resolution this Sunday.

We can still expect criticism from more conservative, individual AGs and DAs -- as well as from members of the criminal defense bar and anti-death penalty groups.

**Police Corps:** While DPC has emphasized the President's desire to reduce the size and cost of the Police Corps, but to retain the basic concept, the Attorney General and Deputy Attorney General have expressed their reluctance to support such a measure. They have asked for an opportunity to persuade Police Corps sponsors in Congress to support a fundamentally different approach. Adam Walinsky, the architect of the Police Corps, does not like the Justice approach. DOJ is scheduled to meet with Senator Kennedy tomorrow on this matter.

**Authorization Levels:** OMB, DPC, Justice and the Hill have agreed to authorization levels for the policing title that will require slightly more funding than is in the baseline. However, we need to further examine the budget implications of other authorizations left over from last year's bill.

## **DROP-BY AND PHOTO OP WITH MAYOR RIORDAN**

**DATE:** October 21, 1993  
**LOCATION:** Oval Office  
**TIME:** 1:30 pm  
**FROM:** Bruce Reed

### **I. PURPOSE**

Mayor Richard Riordan of Los Angeles is in Washington today to testify at a Schumer subcommittee hearing in favor of the community policing provisions of the crime bill, and to lobby members of the California delegation to vote for the bill.

Mayor Riordan was elected last year on a promise to put 3,000 more police on the street. He has offered to do anything to help pass the crime bill, and will be a valuable ally in showing bipartisan support.

### **II. BACKGROUND**

Los Angeles may be the most underpoliced city in the country, with about half as many cops per capita as New York or Chicago, less than one patrolling officer per square mile, and more than 9 violent crimes per sworn officer -- 2-3 times the national average. A ballot proposition to earmark new taxes for new police received 62% in the 1992 election, but fell short of the two-thirds vote required for a tax increase. Last week, Riordan announced a plan called Project Safety L.A. to reorganize and expand the police force by 3,000 over the next four years.

Mayor Riordan may bring along Police Chief Willie Williams, who is also here to testify for the crime bill. As you know, Chief Williams was a community policing pioneer in Philadelphia, and has made great strides in Los Angeles. Los Angeles has demonstrated that more cops can reduce crime: The weekend of the King verdicts, LAPD increased police presence by 600 officers -- which not only helped keep the peace, but reduced violent crime by 12% across the city.

Mayor Riordan's only concern about the bill may be a desire to put even more money into policing. The current version of the bill authorizes \$3.4 billion over six years for 50,000 new officers. It requires a local match of 25-50%, and puts a \$75,000 cap on what a city can spend per cop over the life of the grant. (The Attorney General has authority to waive these provisions.) The average cost of salary and benefits for a new cop in Los Angeles is \$50,000. We are open to suggestions about putting more money in the bill, so long as it means more cops.

June 23, 1993

MEMORANDUM FOR DAVID GERGEN

FROM: BRUCE REED  
SUBJECT: GUN VIOLENCE

The Benning Park shooting yesterday underscores the need to pass a comprehensive crime bill that will give us more police on the streets and fewer guns.

The gunman apparently used a semiautomatic handgun which would not be restricted by any of the semiautomatic assault weapons bans contemplated in Congress. The purchase of such a handgun would, however, be affected by the Brady Bill.

If the President visits Benning Park, he should point to the Senate approval last night of \$200 million for community policing -- a downpayment on his 100,000 cops pledge -- which has now passed both houses. He should announce that we will put forward a crime bill in the next few weeks that includes more cops, the Brady bill, and modified provisions from last year's crime conference report.

There is no reason to wade into the assault ban debate today -- and we should not lock ourselves into including an assault ban in the crime bill. But here's a summary for your information. In the campaign, the President pledged to ban semiautomatic assault weapons "that have no legitimate hunting or sporting purpose." Three proposals in Congress address this question:

Senator DeConcini: DeConcini has twice sponsored legislation to ban 9 specific assault weapons. This legislation does not include copies of the firearms to be banned. This is the only assault weapons legislation that has actually passed either house of Congress.

Senator Metzenbaum: Metzenbaum has proposed a lengthier ban on assault weapons that would give the Secretary of the Treasury the authority to ban future copies. Opponents of this proposal argue that, constitutionally, a separate act of Congress is required to ban additional weapons. In any case, this proposal would have trouble passing either house.

Representative Schumer: Schumer has proposed an assault weapons ban that lists 13 types of weapons and that allows the Secretary of the Treasury to suggest additions or deletions to the list. Congress would have to vote on each change. This legislation was defeated on the House floor the day after the Kileen, Texas killings.

We could also ban the importation of assault pistols by executive order, but this represents a very small fraction of the guns most criminals use.

May 24, 1994

MEMORANDUM FOR DISTRIBUTION

FROM: RAHM EMANUEL *RE*  
Subject: Attached Memo

Attached please find a strategy memo on crime through the end of June.

I cannot emphasize enough how critical it is that you do not share this material with anyone. Leaks are not only damaging to the Crime Bill effort, but they are also damaging to the President.

No presidential events on crime are currently scheduled, and possible events should not be discussed with anyone outside of the White House.

DISTRIBUTION:

Liz Bernstein  
Jose Cerda  
Karen Hancox  
Jennifer O'Connor  
Chris Lin  
Jess Sarmiento  
Ken Schwartz  
Lisa Mortman

May 16, 1994

MEMORANDUM FOR MACK MCLARTY

FROM: RAHM EMANUEL  
RON KLAIN  
BRUCE REED

Subject: Crime Strategy for May/June

I. INTRODUCTION

A. PURPOSE & MESSAGE

Over the next 6 weeks, the President will deliver a number of key speeches, as Congress finalizes a national Crime Bill. These simultaneous events should be seen as complementary and as an opportunity to present a single message about crime and violence.

The commencement addresses and other major speeches that the President will give over the next month give him the opportunity to address the nation's moral fabric, i.e. what brings us together as a country. The purpose of these events is to enable the President to address the nation's character.

In these speeches, the President will talk about choices that individuals have to make, and about facing the consequences of those choices. His rhetoric will focus on challenging individuals to take responsibility for their actions, for their lives, and for their communities.

The movement of the Crime Bill through conference gives the President the opportunity to address the #1 concern of the American people -- crime and violence -- and to fashion a response that the administration, and the Democrats, can be proud of. The purpose of events surrounding the Crime Bill are two-fold: to secure passage of the legislation, and to identify the President with the issue of crime.

Pursuing the dual agenda of addressing the moral fabric and addressing the issue of crime and violence has a third purpose: to show that the President is breaking gridlock on behalf of the American people.

B. TIMING

Following is a projected sketch of the next 6 weeks in terms of timing for the Crime Bill:

- May 16 to May 30: A warmup to the Crime Bill conference. Off-radar meetings between the House and Senate staffs will take place in this period. The President and Chairman

Brooks continue to communicate, and the Senate will name conferees.

- June 6 to June 13: After members return from Memorial Day recess, the conference will begin in earnest. The conferees will hammer out the differences between the two versions in this period.
- Week of June 13: Conferees finish this week.
- Week of June 20: The vote in the House will occur.
- Week of June 26: The Senate votes on the Crime Bill with July 4 as key deadline.

## II. COMMUNICATIONS STRATEGY

Although there is general consensus on 90% of the Crime Bill (police, punishment, and prevention), the context in which we will be pushing for its passage is an adversarial one. The press will be looking for and playing up the differences between the House and Senate versions, particularly the more liberal aspects of the House version. The Republicans, fearful that the Democrats have stolen the issue of crime, will be looking to deny the President a victory.

The problematic pieces of the Crime Bill are the following: Racial Justice Act, Assault Weapons Ban, and the characterization of the prevention components as pork. The GOP has a political agenda and will fight us on all three fronts, with the ultimate goal of portraying the President and the Democrats as soft on crime.

It is therefore incumbent upon us to pursue a communications strategy and schedule to push the Crime Bill through Congress while building the President's strong profile on the issue of crime (see *Washington Post/ABC* poll). To this end, we plan to organize events that highlight the tougher side of the Crime Bill.

Following is a requested communications schedule for the conference period. Many of these events could be worked into the President's existing travel schedule, or could take place in the DC Metropolitan area.

- **Midnight Basketball.** The Crime Bill provides substantial funding for prevention programs, including Midnight Basketball, that are designed to keep kids off the streets and away from crime. It is critical that we highlight the prevention side of the bill during conference.
- **NBC Interview.** Tom Brokaw is interested in covering the President's participation in a Midnight Basketball game, after which he would interview the President.

- **New Cops.** As you know, the third round of police grants was announced by the President on Thursday, May 12. The President could speak to a new class of cops at their swearing-in.
- **Robert Taylor Homes.** The President's new sweeps policy for public housing is extremely popular with public housing residents, as well as with mayors and police chiefs. The President could meet with Vince Lane and visit Robert Taylor Homes in Chicago to highlight the sweeps policy and emphasize the importance of people taking back their communities. The President will already be in Chicago on June 17 for the World Cup.
- **Petaluma, California.** The President would go to Petaluma, California -- the home of Polly Klaas -- to speak to citizens about community responsibility in the fight against crime. Here he would talk specifically about 3-strikes, emphasizing how the citizens of Petaluma helped change our laws.
- **Town Hall on Crime.** The President should hold a Town Hall on Crime, which would be broadcast by satellite to the 10 largest media markets. CBS has an offer into the White House to do this.
- **DARE Event.** DARE already has a request into the Scheduling Department for the President to sign a Kids Bill of Rights. DARE is comprised of kids and police officers, and this event would highlight the balance in the crime bill. (preferably week of June 13.)
- **Police Roll Call.** The President could attend a police roll call at a precinct that has community policing. He would speak to the officers, praising the work that they do on the streets every day.
- **Law Enforcement Day at White House.** We should organize a Law Enforcement Day, modeled after the upcoming Armed Services Day at the White House. Police Officers and their families would be invited to the White House for a tour, after which the President could speak to them.
- **Boot Camp.** The President should go to a boot camp to highlight the job training piece of the Crime Bill.
- **Meeting with Conferees & Press Conference.** The President should meet with the Crime Bill conferees at the White House to discuss what they want the Crime Bill to look like. After the meeting, the President, Senator Biden, and Congressman Brooks would hold a joint press conference. (preferably week of June 13.)

- **Innovative Community.** The President should participate in an innovative community program to fight crime, such as an Orange Hat Patrol. This would give the President an opportunity to call on people to take control of their neighborhoods, and get actively involved in the fight against crime.

### III. PUBLIC OUTREACH

Public outreach is a critical component of a crime communications strategy. We are most successful when we increase public attention to our efforts, and thereby increase public pressure on Congress. In other words, we must get into members' districts.

To this end, Public Liaison will host approximately three Leadership Days at the White House, featuring the Vice President and Cabinet members. Invitation lists will be drawn from targeted members of Congress. See below for discussion of targeted members.

In addition to Leadership Days, we will gather and disseminate research on target members' districts. Cabinet members will also do regional media in targeted districts during the final three weeks of June.

Attorney General Reno and Senator Bradley are working on a joint op-ed on the Crime Bill. This will help kill the false notion that Bradley is critical of the Crime Bill.

Finally, we will continue to work with police organizations to get them to push for the Crime Bill through phone calls and public events.

### IV. LEGISLATIVE

#### A. MAJOR SUBSTANTIVE ISSUES OUTSTANDING FOR RESOLUTION

When one looks at the two bills (House and Senate), the extent to which the resolution of virtually every major issue is clear -- and is likely to be in accord with our wishes -- is astounding. With one exception (Assault Weapons), all eight of the major Presidential agenda items have broad support for inclusion in the final Conference Report.

Two issues dominate the Conference: the Assault Weapons Ban and the RJA. There are three possible positions we can take on these issues in Conference.

- Include both in the Conference Report:

-- This option will be most popular with editorial pages, House progressives, and the CBC. It will yield "soft-on-crime" attacks, and will enrage prosecutors and police groups around the country.

- Winning passage of this mix in the House may be hard, as some Members who voted for the Crime Bill but against RJA or Assault Weapons (and particularly the 63 members who voted against both) may vote against the Conference Report.
- And overcoming a filibuster in the Senate is especially difficult, as the RJA has just 41 votes in the Senate and the Assault Weapon Ban is short of 60 votes itself.
- Include only Assault Weapons in the Conference Report:
  - This scenario would anger the CBC and other House liberals; Brooks may resist it, making it difficult to win in Conference; and we will be criticized by editorials and elites. On the other hand, it will be praised by law enforcement and prosecutors.
  - In the House, it unquestionably loses us 15-20 CBC and liberal members; and it is not clear whether it prevents the defection of members who oppose the Assault Weapon Ban.
  - For the Senate, while inclusion of the assault weapon ban makes a filibuster likely, exclusion of the RJA makes breaking that filibuster almost certain.
- Include only RJA in the Conference Report; Move the Assault Weapon Ban Separately:
  - This is only a theoretical possibility: because it is only viable if we could get 51 votes in the Senate against any assault weapon amendment, this is not a genuine prospect.

The content of both provisions are also at issue, because winning support for our compromise RJA from both the left and the right will be hard, and because Chairman Brooks has asked us to negotiate with him on the scope of the assault weapon ban if we want it included in the Conference Report.

Depending on which scenario we decide to pursue, there will be a different set of targeted members. In general, however, we plan to target the following groups of members: in the House, members who voted for the Crime Bill, against Assault Weapon Ban, and for McCullom's RJA substitute; in the Senate, targets are moderate Republicans and Democrats. (see attached lists)

#### B. TIMING AND STRATEGY FOR CONFERENCE RESOLUTION

We continue to review and gather legislative intelligence about the above options. We hope to soon be in a position to offer some recommendations about these choices.

Regardless, we propose the following five steps as the next moves for the Crime Bill legislatively:

- **Reinforce the Relationship with Chairman Brooks.** We should reinforce the relationship with Chairman Brooks whose good will is essential to completing the Crime Bill Conference, and winning its enactment. This should include continued work by the Attorney General and the White House and should involve some outreach from the President directly.
- **Move the Conference Along.** The Senate will appoint conferees this week; we need to continue our efforts to prod both chambers into moving ahead. This involves continued calls by the Attorney General to the Conferees, and probably a call from the President to Senator Biden, to insure that our efforts to deal with Brooks do not produce an overreaction in the other direction.

On a more personal note, you and the Vice President should reach out to other targeted members of Congress by hosting meetings and private dinners.

- **Impact on the Substance of the Conference Report.** While most of the major items we seek in the Crime Bill are fairly well defined and assured, many matters of significance to the Cabinet agencies remain to be resolved. We need to stake out firm positions on a number of policy questions, and try to win our point on as many of these as possible. To this end, we hope to be able to deliver to the Hill this week approximately 60 pages in detailed comments on specific issues in the bill. Next week, we will also begin daily conference calls among the Cabinet departments to insure coordination in our efforts.
- **Increase our Public Communications Efforts.** The Communications plan outlined above is an essential part of our legislative strategy. We have had our greatest successes legislatively on the Crime Bill (i.e. the House's overwhelming passage of the bill; the win on assault weapons) when we increase public attention to our efforts, and thereby increase public pressure on Congress to act.
- **Scripting out the End Game.** We believe that the Conference product will not be produced through the usual process, but only by achieving a Clinton-Brooks-Biden agreement that then will be adopted by the Conferees (on a straight party-line vote). The Republicans are very unlikely to be helpful in Conference.

Consequently, our proposal is to urge that Chairmen Biden and Brooks finish their work with us, and then, at the appropriate time -- after the Conference has met for a day or two and produced only Republican posturing -- announce an "agreement on the Crime Bill." At that point, we would

employ a focused communications and legislative strategy to win public -- and ultimately Congressional -- support for the final product.