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Crime Bill

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Row:
106

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MEMORANDUM

TO: Winston Bryant
FROM: Jack Gillean 501 - 682 - 2007
DATE: June 15, 1993
RE: Habeas Corpus Reform Proposal

This Proposal will not accomplish the goal of revamping habeas corpus litigation by making it shorter or more precise, but will in fact make the process even longer. The proposal as it now stands would lengthen and open up the habeas litigation.

(1) Proposal § 202: Statute of Limitations. While this proposal appears to contain a one year limit on the filing of a habeas petition, there are many exceptions included in the section that would prevent the one year from ever being effectively applied. The section provides that the time period would be tolled where the state does not provide counsel in accordance with another provision of the proposal. The section provides that the time period would be tolled during the pendency of any state collateral proceedings. Because many states do not have specific deadlines for the filing of these collateral proceedings, this could open up the field for abuse of the section.

There is no limit to the number of amended petitions that could be filed and no guidelines given for the courts to decide the issue. The section does not provide for

unexhausted claims in a petition which could conceivably be simultaneously pending in state court. The section does not provide for petitions which contain unexhausted claims which could come up after the original petition is filed and would necessarily have to be included in an amended petition.

The section also provides for tolling of the statute of limitations where the petitioner shows "good cause" but does not contain a definition or rule regarding what constitutes good cause.

(2) Proposal § 203: Stays of execution in capital cases. This section provides that a request for a stay can be filed in any court that would have jurisdiction over a habeas case. This section allows for forum shopping of the most serious kind. The section does not prevent the filing of even the most frivolous claims in a last minute request for a stay.

The section also provides that when a new constitutional rule is announced, without showing any impact, a stay is to be granted. This also promotes the filing of last minute requests for stays based on issues that clearly could have been raised earlier in the process.

This section also provides that a stay will be granted where the petitioner must be given an opportunity to show that he used reasonable diligence in finding claims to raise in earlier petitions. This requires a stay of execution to decide whether the claim can even be considered much less a

decision on the merits of the claim itself. The present case law concerning these last minute requests can certainly provide better guidance than this proposal.

(3) Proposal § 204: Limits on new rules. This section provides that new rules can be applied even after a case is final where it would undermine the fundamental fairness of the trial or the accuracy in the truth-determining process. Thus, the petitioner would be allowed to come back time and time again and even years after his conviction to attack his case with a new rule that has changed the law since his first attack.

We currently have extensive case law regarding new rules and their application to cases. These are working quite well to prevent petitioners from using a change in the law that did not exist at the time of their conviction. There are exceptions that have been created by the Supreme Court which would allow some new rules to apply to certain cases. The case of Teague v. Lane, 489 U.S. 288 (1989) and its progeny state that a new rule (one which changes the current case law) cannot be applied retroactively to a case that is final unless it fits within one of two very narrow exceptions. This whole body of case law would be done away with under this new proposal because it would not be necessary to decide whether it was a new rule because of the second criteria under subsection (b)(ii): the fundamental fairness section.

This section would also overrule the recent case of

Lockhart v. Fretwell, 113 S.Ct. 838 (1993), regarding the benefit of new rules for the states. This section does not provide for that at all.

This subsection also provides that a federal court would not have to give any credence to a decision on an issue by a state court as they could always relitigate the claim in the federal habeas case. Federal habeas is intended to be a collateral review, however, under this proposal it would become the primary review. Under this section, federal courts will have a new basis to reconsider state court decisions which under existing case law would be allowed to stand.

Where federal constitutional claims have been decided in state courts, where the witnesses are more readily available and is more in connection with the criminal prosecution, the federal habeas law now in existence provides deference to the state courts and even some state court decisions are binding on the federal court. The crime is a state crime tried in a state court and to be decided under federal constitutional rules. This section takes that away from the state courts.

(4) Proposal § 205: Limits on successive petitions. This section provides that in noncapital cases, the current case law regarding successive and abusive petitions will still govern those petitions. This could present some equal protection problems between the two groups (capital and noncapital). The section then provides that for capital

cases, a whole new set of guidelines is established. A capital petitioner can attack his conviction as well as his death sentence under this new proposal. If this section is enacted it would completely change the existing case law governing subsequent habeas petitions in capital cases.

This allows attacks on convictions even when the guilt of the petitioner is clearly shown. This overtly overrules Sawyer v. Whitley, 112 S.Ct. 2514 (1992). The Supreme Court provided that if the petitioner can show actual innocence of the crime or that there is no aggravating circumstance or that he is not eligible for the death penalty, then he can raise claims not raised in state court or in a prior habeas petition. This section would change that case law and allow a federal court to second guess a jury's determination regarding guilt and the giving of death sentence. The Supreme Court currently prevents any inquiry into the jury's deliberations to protect juries from interference.

This section would also allow mental and psychological issues to come up later and be considered in a federal habeas to undermine the verdict and sentence given. This would allow a petitioner who does not currently have a defined mental condition to come back years later when it becomes defined to attack his conviction and sentence.

(5) Proposal § 208: Appointment of Counsel standards. This section imposes strict and particular standards for the appointment of counsel by state courts in capital cases.

This would increase the litigation because then issues concerning the standards for counsel would become another claim to be addressed but without any showing of prejudice required under this proposal. This would effectively overrule Lockhart v. Fretwell, 113 S.Ct. 838 (1993). Thus, a petitioner could overturn his conviction even if he cannot show any adverse impact on the jury's determination. There are harsh and severe penalties on the states for noncompliance with this section even if the violations are technical and which in no way affected the outcome of the trial. The states would lose the presumption of correctness now applied to state court decisions and the petitioner would be allowed to bring new claims not raised in state court (exhaustion and procedural default doctrines). Even if there is fair support in the state court record for a decision, it would not apply if there is a technical violation of this section.

These guidelines mandate federal standards on state court proceedings which greatly burden the state courts and resources which are already strained to cover the costs of implementing this section and the rest of the proposal.

Jack Gillean,

Deputy Attorney General

With assistance from Olan W. Reeves and Darnisa Johnson.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 11-5 ACTION/CONCURRENCE/COMMENT DUE BY: _____SUBJECT: CRIME BILL MEMO

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☒	PASTER	☐	☒
McLARTY	☐	☒	RASCO	☐	☒
NEEL	☐	☒	RUBIN	☐	☒
PANETTA	☐	☒	SEGAL	☐	☐
BAGGETT	☐	☒	SEIDMAN	☐	☐
EMANUEL	☐	☐	STEPHANOPOULOS	☐	☒
GEARAN	☐	☒	TYSON	☐	☒
GERGEN	☐	☒	VARNEY	☐	☐
GIBBONS	☐	☐	WATKINS	☐	☐
HALE	☐	☐	WILLIAMS	☐	☒
HERMAN	☐	☐	_____	☐	☐
LAKE	☐	☐	_____	☐	☐
LINDSEY	☐	☒	_____	☐	☐
McGINTY	☐	☐	_____	☐	☐
MONTOYA	☐	☐	_____	☐	☐
NUSSBAUM	☐	☒	_____	☐	☐

REMARKS:

NO response necessary.

RESPONSE:

JOHN D. PODESTA
 Assistant to the President
 and Staff Secretary
 Ext. 2702

November 5, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: SENATE ACTION ON CRIME BILL

The Senate voted 94-4 last night to double the crime bill and create a \$22 billion Crime Reduction Trust Fund to pay for it by dedicating the 252,000 FTE reduction called for by the National Performance Review.

The Crime Trust Fund includes:

- * \$8.995 billion to fully fund your 100,000 cops pledge over the next 5 years, at a declining match of 75-50-40-25-10;
- * \$3 billion for 10 regional prisons, with an 85% truth-in-sentencing requirement;
- * \$2 billion for boot camps and state prisons for violent offenders;
- * \$1.8 billion for the Violence Against Women Act;
- * \$1.2 billion for drug courts for criminal addicts;
- * \$500 million for grants to states to house violent juveniles;
- * \$300 million for Safe Schools
- * \$200 million for Police Corps
- * \$150 million for law enforcement scholarships; etc.

The deal was worked out with unprecedented bipartisan support not only from Mitchell, Byrd, Sasser, and Biden, but from Dole, Hatch, and Gramm. Gramm called it "the most important crime bill in years." The agreement extends only to the program funding; the Senate will now begin debate over habeas, death and other penalties, and a host of get-tough amendments to the bill.

Certainly, you can welcome the Senate's bipartisan enthusiasm to help fulfill your campaign pledges. After all, this was your idea in the first place: You said in your speech to the 1992 Democratic Convention that as President, you would

". . . streamline the federal government, and change the way it works; cut 100,000 bureaucrats, and put 100,000 new police officers on the streets of American cities."

Putting People First, p. 224

Beyond broad support for the Senate action, the question is whether you want to embrace the agreement by bringing the sponsors (and key House members) down to the White House. That would ensure that you get the credit for your idea, and more important, let the country know that we are taking unprecedented steps to fight crime and violence. It might also increase the chance that Congress will have the bill on your desk by Thanksgiving. Not surprisingly, the sponsors would like to come down here for an event with you as soon as possible.

At the same time, the Senate approach will have considerable consequences on the FY95 budget and beyond. Embracing the deal will put you on record for these funding levels. It is possible, though by no means certain, that the authorizations will be reduced in conference. But with the Senate Majority Leader and the Appropriations, Budget, and Judiciary Committee chairmen leading the charge for this bill, we may well be forced to face these budget consequences whether we embrace them now or not. Moreover, any effort by the Administration to downplay the Senate deal would give Bob Dole and Phil Gramm bragging rights to claim that they're willing to do more to fight crime than we are.

The Senate will continue to debate the crime bill over the next few days, and pass it perhaps as soon as next week. On Wednesday, by voice vote, the House approved \$5 billion in crime authorizations for cops, juvenile detention, and drug treatment. It is not yet clear whether the House and Senate will undertake a crime bill conference before Thanksgiving.

On the gun front, the House Judiciary Committee reported out the Brady Bill yesterday without any weakening amendments. The House should vote on it next week. The Senate still plans to vote on Brady after dispensing with the crime bill.

Metzenbaum, DeConcini, and Feinstein have reached agreement on a reasonable assault weapons compromise. We don't know yet whether they have the votes, or whether Biden will decide to let them offer it.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 04/27/93

ACTION/CONCURRENCE/COMMENT DUE BY: - - -

SUBJECT: CRIME BILL CONSIDERATIONS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☒	PASTER	☐	☒
McLARTY	☐	☐	RASCO	☐	☐
GEARAN	☐	☒	RUBIN	☐	☐
PANETTA	☐	☒	SEGAL	☐	☐
EMANUEL	☐	☒	STEPHANOPOULOS	☐	☐
GIBBONS	☐	☐	VARNEY	☐	☐
HALE	☐	☐	WATKINS	☐	☐
HERMAN	☐	☐	WILLIAMS	☐	☒
LAKE	☐	☐		☐	☐
LINDSEY	☐	☒		☐	☐
MONTOYA	☐	☐		☐	☐
NUSSBAUM	☐	☐		☐	☐

REMARKS:

The attached has been forwarded to the President.

RESPONSE:

JOHN D. PODESTA
 Assistant to the President
 and Staff Secretary
 Ext. 2702

THE WHITE HOUSE

WASHINGTON

April 27, 1993

83 APR 27 P3:15

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED, DEPUTY ASSISTANT TO THE PRESIDENT
JOSE CERDA III, SENIOR POLICY ANALYST

SUBJECT: CRIME BILL CONSIDERATIONS

In structuring a proposal that meets your pledge to put 100,000 new police officers on the street, Domestic Policy has combined a series of crime-related initiatives. Inadequate funding caused us to take this piecemeal approach and to include Enterprise Zones, HUD's crime initiative, Safe Schools legislation and National Service participants in the 100,000 calculation. But the crime bill component of this plan has always been the central -- and most credible -- element of our 100,000 new police proposal.

Last year's crime bill conference report does not really include monies for hiring new law enforcement personnel. The bill's Cop on the Beat program does not allow funds to be used for new personnel, and the increase in funding for the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs was enacted as part of separate legislation after the crime bill conference report failed last year. The Police Corps, as included in last year's bill, only offers scholarship assistance and provides no direct funding to put police on the streets. Moreover, given the scarcity of resources for the policing initiative, we do not believe the Police Corps is a cost effective means for increasing police force levels. Thus, without changes to the language and funding levels for these programs, the crime bill will not put more police on our streets.

So that the crime bill properly reflects your commitment to the 100,000 police pledge, we have been structuring a proposal, the Police on Our Streets Act, that would combine the Justice Department's spending for new programs and use that \$2.99 billion in budget authority to fund a single match grant program. We would then have a single direct funding source for the majority of our new police personnel.

We have spoken to Senator Biden's and Congressman Schumer's staff about such an approach, and they believe a "Police on Our Streets Act" could easily be incorporated as Title I of a new crime bill. We have not spoken to Chairman Brooks' staff about this specific proposal, but we believe he would be open to the idea. Chairman Brooks has been a critic of the large scale Police Corps included in the crime bill, and he may support scaling back the program.

A summary of the major provisions in the crime bill is attached.

CRIME BILL CONFERENCE -- SUMMARY OF MAJOR PROVISIONS

DEATH PENALTY

- Provides the largest-ever expansion of the Federal death penalty to cover 53 offenses. Included in the bill: assassination of the President; murder in the course of rape; murder for hire; drive-by-shootings.
- Provides the death penalty for killing a federal law enforcement officer and for killing state officers in the course of cooperative investigations with federal agencies.
- Provides the death penalty for "drug king pins" who are convicted of trafficking in massive amounts of drugs.

THE BRADY BILL

- Imposes a national, five-day waiting period for the purchase of handguns. Requires police background checks for gun buyers to keep weapons out of the hands of convicted criminals.
- Authorizes \$100 million for the development of a national "instant check" system for gun purchasers.

HABEAS CORPUS REFORM

- Limits time for filing a habeas petition to one year after conviction becomes final. No time limit currently exists.
- Limits the number of petitions allowed to one except for certain narrow exceptions such as newly discovered evidence or state interference. Under current law there is no limit on the number of petitions.
- Sets certain performance and qualification standards for trial and appellate counsel representing indigents.
- Before the Supreme Court adopted the Teague v. Lane doctrine in 1989, a prisoner could challenge his sentence in a habeas petition based on a favorable new court ruling that post-dated his trial and appeal. Teague significantly narrowed retroactive applications. The crime bill narrows Teague by never allowing new rules of law to be applied retroactively, but it also restores a narrower, pre-Teague definition of a new rule.

AID TO STATE AND LOCAL LAW ENFORCEMENT

- Raised the authorization level for the Byrne Memorial State and Local Law Enforcement Assistance Programs to \$1 billion. The Byrne program is the primary means of providing states and localities with federal law enforcement assistance.¹
- Other authorized appropriations for states and localities include:
 - \$150 million yearly for community policing grants;
 - \$300 million yearly for Drug Emergency Areas;
 - \$100 million yearly for Safe Schools grants;
 - \$100 million yearly for juvenile gang prevention grants.
 - \$10 million yearly for grants to states for DNA analysis;²
 - \$30 million yearly for law enforcement scholarships;
 - \$5 million yearly to provide family support services to law enforcement personnel;
 - \$15, \$20 and \$30 million over the next three years for substance abuse grants to community coalitions;
 - \$100 million yearly for grants to states and localities to drug test arrestees;
 - \$2 million yearly for grants to states to conduct racial and ethnic bias studies of their criminal justice systems;
 - \$2.5 million yearly for Midnight Basketball League grants;
 - \$100, \$100 and \$200 million thereafter for a National Police Corps;
 - a one-time \$100 million authorization to establish joint state-federal boot camps at closed military installations;
 - \$100 million yearly for drug treatment in state prisons;
 - a one-time \$700 million authorization for the construction and operation of 10 regional prisons for violent drug offenders;
 - \$10, \$15, \$20 and \$25 million for grants to state prisons for literacy programs;
 - \$50 million yearly for Rural Drug Enforcement Task Forces;
 - \$25 million yearly for Rural drug treatment and prevention programs.

TOTAL NEW SPENDING -- ALMOST \$1 BILLION YEARLY

(AND 800 MILLION IN ONE-TIME PRISON CONSTRUCTION COSTS)

¹After the crime bill failed to pass last year, this increased Byrne authorization was passed as part of separate legislation. Incorporating such an increase into a new crime bill would be redundant.

²This bill passed the House as separate legislation earlier this year.

PENALTIES FOR DRUG AND VIOLENT CRIMES

- Provides 56 new criminal offenses or penalty increases, including serious violent crime, drug trafficking and firearms offenses.
- Imposes four new mandatory federal prison sentences. They are: using minors to sell drugs in a drug-free zones; closing the loophole for the importation of small quantities of drugs; possessing or distributing drugs in a federal prison; and drug-related violations in newly created drug-free truck stops.

GANG VIOLENCE

- Launches a major new anti-gang initiative, including expanded juvenile courts, new law enforcement efforts, and gang violence prevention programs (e.g., Boys/Girls Clubs in housing projects).
- Creates a new federal offense for serious gang-related drug trafficking and violent crimes.
- Provides the death penalty for drive-by-shootings, one of the most common and serious types of gang crimes.

VICTIMS OF CRIME

- Increased federal aid to the victims of crime by removing the "cap" on the Crime Victims Fund and barred attempts by the previous administration to use the Crime Victims Fund to pay for expenses currently covered by Medicare and other federal programs.³
- Grants crime victims the right to speak at the sentencing phase of federal criminal trials, including death penalty.

RURAL LAW ENFORCEMENT

- Provides \$50 million in aid to rural law enforcement agencies.
- Establishes federal-state-local Rural Law Enforcement Task Forces in every federal judicial district with significant rural areas.

³These provisions were enacted separately when the crime bill failed last year.

- Establishes a specialized rural law enforcement training program at the Federal Law Enforcement Training Center in Glynco, Georgia.

POLICE CORPS

- Establishes an ROTC-style program to provide college scholarships to students willing to serve as police officers upon graduation.
- Provides new educational opportunities for police officers who are already on the beat and have demonstrated a commitment to a law enforcement career.

PRISONS

- Establishes 10 new regional prisons to hold up to 8,000 federal and state drug offenders.
- Creates 10 new military-style boot camps on closed military bases for first-time offenders and other non-violent drug offenders.

TERRORISM

- Provides the death penalty for terrorist murders and creates stiff new federal penalties for providing material support to terrorists.
- Implements United States' obligations under new anti-terrorism treaties by creating new federal offenses for terrorist acts committed against civil aviation and maritime targets.

GUN PENALTIES

- Provides new mandatory minimum penalties for serious gun offenses, including gun possession by convicted felons and for theft of a firearm.

FEDERAL LAW ENFORCEMENT

- Authorizes \$345.5 million for federal law enforcement agencies to add hundreds of additional FBI and DEA agents, federal prosecutors, Border Patrol officers, and other law enforcement officials to combat violent crime and drug trafficking.

Specifically, these allocations are:

- \$45 million to hire and train 350 new DEA agents;
- \$25 million to expand DEA state and local task forces;
- \$5 million for special agents to investigate violations of the Controlled Substances Act relating to anabolic steroids;
- \$9 million for FBI drug trafficking investigations;
- \$500 million to hire and train 500 new border patrol officers;
- \$10 million for the U.S. Marshals Service;
- \$15 million for BATF to hire train 100 special agents to investigate firearms violations committed by drug trafficking organizations;
- \$20 million for U.S. Courts to address case overload;
- \$12 million for federal defender services.

EXCLUSIONARY RULE

- Codifies current law providing "good faith" exception to the exclusionary rule where police have a warrant.

CHILD ABUSE

- Creates a national system for background checks for workers in day care centers.
- Imposes the death penalty for child abuse murders.