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BWN [Bernard W. Nussbaum] - Crime Bill, 1993 [4]

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Congress of the United States
House of Representatives

JIM BACCHUS
15TH DISTRICT, FLORIDA

MEMBER:
BANKING, FINANCE AND
URBAN AFFAIRS COMMITTEE

SCIENCE, SPACE, AND
TECHNOLOGY COMMITTEE

EXECUTIVE COMMITTEE
TOURISM

FAX SHEET

TO: Hon. Lloyd CUTLER
FAX NUMBER: 456-~~1234~~ 6279
FROM: MARK SCHNAPP

CONGRESSMAN JIM BACCHUS
432 CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
202-225-9039 - Fax Line

If you have any trouble receiving this fax, please contact us at:
202-225-3671

Number of pages, including cover sheet: 3

Comments: I sent this letter to the
Miami Herald. I also spoke to
several reporters at the Herald,
Ft. Lauderdale Sun Sentinel and
the Palm Beach Post. I hope that this
helps.

August 16, 1994

To the Editor:

Everyone agrees that it's time to get tough on crime. It's a proposition that does not require any debate. But a procedural quirk in our legislative system lets our Representatives go on record as voting for a tough crime bill without the bill ever passing or offending major contributors such as the National Rifle Association.

Witness the crime bill. There may be legitimate grounds for debate on the authorization for the death penalty in over 65 federal crimes. However, it is incomprehensible that there is any opposition to the ban against certain assault weapons or the authorization of funds for 100,000 new police officers.

I will never forget the violence that I have witnessed in South Florida, particularly on April 11, 1986, the day that FBI agents Ben Grogan and Jerry Dove were mortally wounded on a suburban street in Kendall after over 140 bullets were fired.

When I first arrived on the scene, I was shocked to see the guns that were used by the assailants--assault rifles that could be legally purchased in Florida's gun shops. Nor will I ever forget the sight of the wounds that these agents suffered when they were gunned down. Now, eight years later, it still is easy to purchase a weapon that has no real use other than as an instrument of human death.

The new, tough, crime bill has not become law but several South Florida politicians can report to their constituents that they voted for tough anti-crime measures, without political risk. How can they be all things to all people you may ask? Congressional rules provide that an initial vote be taken on the rule, that is, whether to consider the issue at a given time. A second vote is taken on the actual bill.

On April 21, when the House of Representatives voted on the crime bill (without the assault weapons ban), Representatives Lincoln Diaz-Balart, Ileana Ros-Lehtinen, and E. Clay Shaw voted for the crime bill. In a second vote, on May 5, which dealt with assault weapons, Representatives Ros-Lehtinen and Shaw voted for the ban. But when it came time to consider the bill after the House-Senate conference committee finished their work, all three voted along party lines to vote against consideration of the final bill.

If you call Representatives Ros-Lehtinen and Shaw they can truthfully tell you they voted for the House bill, including the assault weapons ban and in the next conversation tell the NRA

that they never allowed the ban to become law. All three can claim that they voted for tough anti-crime measures, while reporting to their party leaders that they blocked President Clinton's effort to pass the bill this term.

What is never told to the people of Florida is the loss of \$859 million that would have been made available to Florida. Under the now dormant bill, Florida could have received approximately \$410 million to hire and train police officers; \$230 million for prison grants; and \$20 million in Byrne Enforcement grants which fund a variety of state and local programs specifically designed to control violent crime and drug abuse, and to improve the criminal justice system. Also lost is the Local Partnership Act, which would have provided \$80 million in direct grants to cities and towns in Florida; the Violence Against Women Act, which would have provided \$47 million in grants for police, prosecutors, and victims services, \$17 million in grants for shelters for battered women and children, and \$40 million for programs for "at risk" children. These are just a portion of the direct benefits that would have been available to Florida.

It is essential that the criminal justice system demand accountability for everyone's action. Truth in sentencing imposes real mandatory minimum sentences for violent criminals; truth in politics should demand the same accountability for our elected officials to publicly acknowledge their failure to address the crime problem this session.

I salute Representatives Peter Deutsch, Alcee Hastings, Carrie Meek, and Harry Johnston for responding to the urgent need for Congress to vote on a tough new crime bill. Should a new vote be called, I urge Representatives Ros-Lehtinen, Shaw, and Diaz-Balart to put politics aside and vote to ensure the safety of this community.

Sincerely,



Mark P. Schnapp*

*Mr. Schnapp served as an Assistant United States Attorney in the Southern District of Florida between January 1982 and August 1989. He is in private practice in Miami, Florida.

2202 Hogan Drive
Indianapolis, Indiana 46229
(317) 894-0168

Crime Bill

August 4, 1994

14 AUG 10 19: 50

Dear Congressman Jacobs, Senators Lugar and Coats,

This is on the Crime Bill. It responds to President Clinton's request last night to contact Congress.

It's clear Mr. Clinton didn't learn the Roger Altman lesson; its not right to mislead Americans. About Whitewater Mr. Clinton could have told the truth; said the hearings are because George Stepsonallofus and other appointed officials went too far trying to report on and stop legal problems that arose in Arkansas while he was Governor and Hillary was at Rose Law Firm. He could have told Americans he was closing down their legal defense fund.

Mr. Clinton could do better if his people stop trying to hide problems related to the defective Crime Bill. They could solve problems, "lance the boil" as noted in the Whitewater hearings, instead of trying to hide their sleaze.

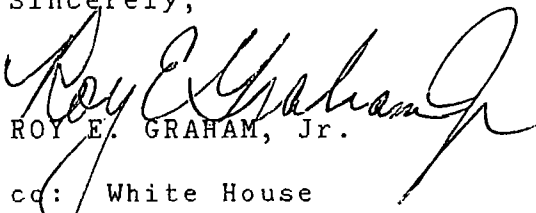
Mr. Clinton's is trying to mislead us about USA's "Crime Bill". It's clear Americans want safer life. Sadly, that can only be obtained by quickly jailing violent criminals long term, and disarming felons; not all the crap in the crime bill.

Police and sheriffs never prevent crime; they respond only to completed or in progress crimes. Ensure nothing in the crime bill reduces Americans' choice of weapons to protect themselves, to stop crimes against them before they occur. To do otherwise would be an unquestionable violation of the Constitution; within a short time the law would be no longer in effect.

Limit bans on any weapons to only people who are convicted of violent crimes or have violent crime charges pending in court. The most widely media covered violent crime in America, the "O.J. Simpson" case didn't involve a rifle or pistol of any type.

Since police and sheriffs only track down and collect criminals, no more are needed. Ensure more are cut out of any crime bill. Have the money to be wrongly spent for more police and sheriffs instead be available for computer systems and related equipments to speed tracking of criminals as they move among us and among the courts.

Sincerely,


ROY E. GRAHAM, Jr.

cc: White House

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U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

August 1, 1994

To: The Attorney General
The Deputy Attorney General

From: Walter Dellinger

Re: Initial -- and Tentative -- Review of The Crime Bill Amendments Enhancing the Authority of the Director of National Drug Control Policy

The Director's Authority Under Current Law: The statute currently in force assigns the Director of National Drug Control Policy ("Director") the role of coordinating federal drug control efforts. The Director is authorized to develop an overall national strategy for drug control, but is given no authority to implement the plan. The statute does not give the Director authority to implement or otherwise conduct any drug control program; instead, this authority remains with the various executive agencies, such as the Departments of Justice, State, Treasury, and Health and Human Services. In his coordination role, the Director may collect information from agencies with programmatic responsibilities, may review the proposed budgets of those agencies, and may notify the agencies that the Director regards their proposals as inadequate or inconsistent with the National Drug Control Strategy. The Director, however, has no actual authority or control over the budget, policies, or operations of any other agency or department. The Director's role, then, is essentially advisory.

The Director's Authority Under the Crime Bill Amendments: The National Narcotics Leadership Act Amendments ("Crime Bill Amendments" or "amendments") give the Director vast new authority over all departments that administer drug control programs, including the Department of Justice. The Director is given significant control over three areas -- budgets, expenditures, and program administration and policy.

The Director's Budget Authority: Current law gives the Director authority to review the proposed budgets for drug control programs. The amendments go beyond this, giving the Director authority to compel an agency head to include programs in the proposed budget that the agency submits to the Office of Management and Budget, regardless of whether the agency supports the program.

Crime Bill

Klein
Joel +
Wayne
Cutter

The Director's Authority over Expenditures: The amendments (1) forbid agencies from requesting that appropriated funds be "reprogrammed" unless the agency first obtains approval of the Director; (2) empower the Director to issue Funds Control Notices, which dictate to agencies that administer drug control programs the manner in which appropriated funds may be obligated; and (3) authorize the Director to transfer up to 2% of all funds in an agency's drug control program accounts to any other program account, even within another agency, as long as he obtains approval in advance from the Appropriations Committee of either House of Congress.

The Director's Program Administration and Policy Authority: The amendments give the Director authority to compel the head of an agency to detail its personnel to another agency in order to effectuate the Director's programmatic priorities. Agency heads are given no recourse but to comply. As to policy, agency heads must submit to the Director all proposed changes in policy relating to any drug control program. If the Director deems a proposal inconsistent with his National Drug Control Program, the agency is prohibited from adopting the proposal.

Issues Raised by These Crime Bill Amendments

- The amendments transform the Office of National Drug Control Policy ("ONDCP") from an entity whose mission is simply to coordinate the drug control efforts of the various executive agencies with programmatic responsibilities into one with actual and significant control over all such agencies. The amendments make the ONDCP into a "super-agency" that supervises all agencies with drug control responsibilities and gives the Director authority to order those agencies to comply with his policy determinations.
- In so doing, the amendments in some respects are patently unconstitutional, in other respects raise substantial constitutional questions. Among the constitutional provisions that are or likely may be violated are the separation of powers doctrine, the bicameralism and presentment requirement, the Appointments Clause, the Recommendations Clause, and the Take Care Clause.
- Among the most significant powers that the Constitution vests in the President is the authority to supervise his subordinates in the executive branch. This power stems in large measure from the President's constitutional duty to "take care that the laws be faithfully executed." To the extent that Congress seeks to supplant the President's ability to supervise the executive branch's drug control program, it is unconstitutional.
- In order to avoid this drastic result, we would interpret the amendments as not supplanting the President's supervisory authority. Nevertheless, the amendments represent a significant encroachment on the President's supervisory authority and an attempt by Congress to micromanage the affairs of the executive branch. The Administration has gone to great lengths to devise a process for presidential oversight of budget proposals as well as

administrative operations, particularly through the Office of Management and Budget ("OMB"). In the Crime Bill Amendments, Congress upsets these structures and either attempts to usurp the role the President has assigned to OMB or adds a new and completely redundant layer of bureaucracy. The Constitution vests supervisory authority over the executive branch in the President alone in order to maintain the hallmarks of "executive administration essential to effective action". Myers v. United States, 272 U.S. 52, 134 (1926). This purpose underlies the constitutional doctrine of separation of powers. There is a substantial case that this legislative encroachment unlawfully violates that doctrine.

- The Constitution vests in the President the authority to "recommend to [Congress's] consideration such measures as he shall judge necessary and expedient." The Office of Legal Counsel has recently written, in the context of treaty proposals negotiated by the United States Trade Representative, that the President may delegate this authority, and Congress may not interject itself into the exercise of this power. To the extent that the President has called upon the Attorney General to draft his proposed budget for drug control programs administered by the Department of Justice, Congress may not legislate the content of this proposal or the process by which it is formulated.

- As indicated, the Crime Bill Amendments would transform the Director's position from that of advisor and coordinator to head of a super-agency with control over numerous executive agencies including cabinet departments. This would be a nearly unprecedented office in American history and is inconsistent with our traditional cabinet structure. Where Congress effectively creates a new office, it usurps the President's constitutional appointment power by designating the person who will occupy it. While Congress has authority to adjust the duties of an office, it may not wholly transform the nature of an existing office and retain the incumbent, unless the incumbent is renominated and reconfirmed. **Although further research is necessary into this issue, it is possible that the amendment precludes the present incumbent from remaining in the office unless he were renominated by the President and reconfirmed by the Senate.**

- The provision empowering the Director to transfer funds among drug control programs after receiving the approval of a committee of Congress is flatly unconstitutional. The committee approval mechanism was ruled a violation of the bicameralism and presentment requirement in INS v. Chadha, 462 U.S. 919 (1983). Whether this renders the entire provision invalid or simply vitiates the approval requirement is not immediately clear. If the effect is to vest the Director with unfettered authority to transfer funds to satisfy his own priorities, this would seriously undermine the President's chosen supervisory structure. Whether or not Congress has overstepped the constitutional boundaries of separation of powers, it has seriously infringed the President's executive prerogatives.

- The Office of Legal Counsel is ready to produce an extensive legal memorandum addressing the constitutional dimensions of this Crime Bill Amendment.

Suggested Response

- The Crime Bill Amendments embody significant constitutional violations and questions, serious legislative intrusion on the operation of the executive branch and the President's constitutional powers, and are in several respects contrary to Administration policy. These problems of law, prerogative, and policy grow from a common root -- Congress's encroachment on the President's supervisory authority. As such they can potentially be addressed with a common response -- the assertion of the President's overriding supervisory authority.

- The amendments do not expressly state that they are intended to control the President's ultimate supervisory authority over the Executive Branch. Therefore, in order to avoid the unconstitutional provisions, we could regard the President's supervisory authority as undiminished, unless and until Congress by clear statement sought to limit the authority of the President himself. **Thus, we would argue that even after these provisions become law, the President may order the Director not to exercise the authority to control other agencies unless the affected agency or agencies agree.** The President, we would argue, retains the ultimate Constitutional authority to direct the Director:

- not to request that an agency head include programs in the agency's budget proposal to the Office of Management and Budget unless the agency head agrees;

- to refrain from requesting that the personnel of any agency be detailed to any other agency or within any agency unless the affected agency head(s) agree

- not to order the transfer of funds to or from any drug control program account unless the heads of affected agencies agree;

- not to issue a Funds Control Notice unless the head of the recipient agency agrees to the form and substance of the notice;

- to refrain from blocking agency requests for "reprogramming" of funds; and

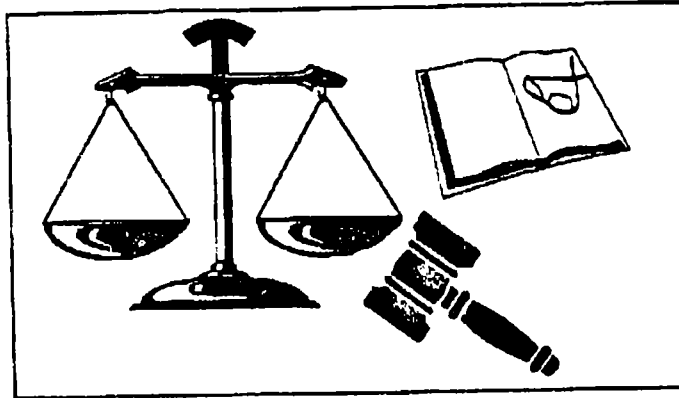
- to refrain from exercising any authority to disapprove any proposed agency change in policy relating a National Drug Control Program.

- These Presidential directives are necessary in order to avoid potentially overwhelming constitutional challenges. Of equal importance, the President will avoid acquiescing in a dangerous precedent of congressional intrusion on presidential authority.

U.S. DEPARTMENT OF JUSTICE

OFFICE OF LEGISLATIVE AFFAIRS

FACSIMILE COVER SHEET

TO: Joel KleinFAX NO.: 456-6611 or 456-6379FROM: Jeff RobinsonPHONE: 514-4047DATE: 6/29/94NO. OF PAGES: 4 (EXCLUDING COVER)COMMENTS: Latest version which has been
shared with Cong. Mfome.

DRAFT June 29, 1994 5:30 pm
[Marked to show changes to June 28 Version.]

TITLE __ - FAIRNESS IN CAPITAL SENTENCING

*Crime
Bill*

SEC. __ AMENDMENT TO TITLE 28.

"(a) PROCEDURE.-- Part VI of title 28,, United States Code,

is amended by inserting after chapter 176 the following new
chapter:

CHAPTER 177--FAIRNESS IN CAPITAL SENTENCING

"Sec.

"3501. Prohibition against the execution of a sentence of death imposed on the basis of race.

"3502. Access to data on death eligible cases.

"3503. Enforcement of the chapter.

"3504. Construction of chapter.

"§ 3501. Prohibition against the execution of a sentence of death imposed on the basis of race.

"(a) IN GENERAL.- No person shall be put to death under color of State or Federal law in the execution of a sentence that was imposed based on race.

"(b) INFERENCE OF RACE AS THE BASIS OF DEATH SENTENCE.- An inference that race was the basis of a death sentence is established if valid evidence is presented demonstrating that, at the time the death sentence was imposed, there existed a pattern or practice of seeking or imposing death sentences based on race in the jurisdiction in question. All relevant evidence, both direct and circumstantial, may be considered in determining if a pattern or practice was present.

"(c) RELEVANT EVIDENCE. - Evidence relevant to establish a pattern or practice of seeking or imposing death sentences based on race may include evidence that death

sentences were, at the time pertinent under subsection (b), being imposed significantly more frequently in the jurisdiction in question-

"(1) upon persons of one race than upon persons of another race; or

"(2) as punishment for capital offenses against persons of one race than as punishment for capital offenses against persons of another race.

"(d) VALIDITY OF EVIDENCE PRESENTED TO ESTABLISH AN INFERENCE.

"(1) If statistical evidence is presented to establish a ~~pattern or practice of seeking or imposing death sentences based on race~~ the court shall determine the validity of the evidence and if it provides a basis for ~~finding such a pattern or practice~~. Such evidence must take into account, to the extent it is compiled and publicly made available, evidence of the statutory aggravating factors of the crimes involved, and shall include comparisons of similar cases involving persons of different races.

"(2) The mere existence of a statistical racial disparity between the general population and the population for whom a sentence of death was sought or imposed is not sufficient to establish an inference that race was the basis of a sentence of death.

"(e) REBUTTAL.- If an inference that race was the basis of a death sentence is established under subsection (b), the death sentence may not be carried out unless the government ~~demonstrates a race neutral explanation for seeking or imposing the sentence of death in the particular case. In demonstrating a race neutral explanation for seeking or imposing the death sentence, unless it can show that the death penalty was sought in all cases fitting the statutory criteria for imposition of the death penalty~~ the government cannot rely on mere assertions that it did not intend to discriminate or that the cases in which death was imposed fit the statutory criteria for imposition of the death penalty.

"§ 3502. Access to data on death eligible cases

"Data collected by public officials concerning factors relevant to the imposition of the death sentence shall be made publicly available.

"§ 3503 Enforcement of the chapter

~~"(a) In any proceeding brought under section 2254, the evidence supporting a claim under this chapter may be presented in an evidentiary hearing and need not be set forth in the petition. Notwithstanding section 2254, no determination on the merits of a factual issue made by a State court pertinent to any claim under section 3501 shall be presumed to be correct unless-~~

~~"(1) the State is in compliance with section 3502;~~

~~"(2) the determination was made in a proceeding in a State court in which the person asserting the claim was afforded rights to the appointment of counsel and the furnishing of investigative, expert and other services necessary for the adequate development of the claim; and~~

~~"(3) the determination is one which is otherwise entitled to be presumed to be correct under the criteria specified in section 2254.~~

"A claim under section 3501 may be raised in federal court only once and only in a first application for a writ of habeas corpus under section 2254 or a first motion under section 2255.

"§ 3504. Construction of chapter

"(a) Nothing contained in this chapter shall be construed to affect in one way or the other the lawfulness of any sentence of death that does not violate section 3501.

"(b) Nothing contained in this chapter shall be construed to require or permit a

government to adopt a racial quota for seeking or imposing sentences of death."

"(b) AMENDMENT TO TABLE OF CHAPTERS- The table of chapters of part VI of title 28, United States Code, is amended by adding at the end thereof the following new item:

"177. Racially Discriminatory Capital Sentencing.....3501."

SEC. ____ . NO RETROACTIVE APPLICATION.

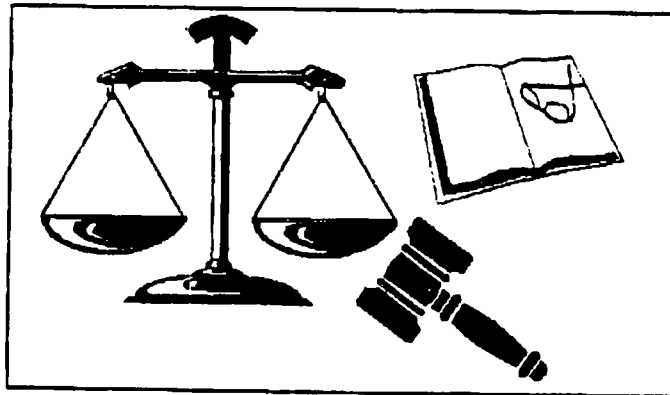
No person may raise a claim under section 3501 of title 28, United States Code, as added by this Act, to challenge the imposition of a death sentence that was imposed before the enactment of this Act.

U.S. DEPARTMENT OF JUSTICE

OFFICE OF LEGISLATIVE AFFAIRS

FACSIMILE COVER SHEET

Crime
Bill



TO: Joel Klein

FAX NO.: 456-6611 456-6279

FROM: Jeff Robinson

PHONE: 514-4047

DATE: 6/27/94

NO. OF PAGES: _____ (EXCLUDING COVER)

COMMENTS: Per conversation with
Ron Klein.

1 (1) **NONSUPPLANTING REQUIREMENT.**—Funds
2 made available under this section shall not be used to
3 supplant State funds, but shall be used to increase the
4 amount of funds that would, in the absence of Federal
5 funds, be made available from State sources.

6 (2) **ADMINISTRATIVE COSTS.**—Not more than 3
7 percent of the funds available under this section may
8 be used for administrative costs.

9 (3) **MATCHING FUNDS.**—The portion of the costs
10 of a program provided by a grant under this section
11 may not exceed 90 percent of the total costs of the
12 program as described in the application.

13 (4) **CARRY OVER OF APPROPRIATIONS.**—Any
14 funds appropriated but not expended as provided by
15 this section during any fiscal year shall be carried
16 over and will be made available until expended.

17 **TITLE IX—RACIALLY DISCRIMI-**
18 **NATORY CAPITAL SENTENC-**
19 **ING**

20 **SEC. 901. AMENDMENT TO TITLE 28.**

21 (a) **PROCEDURE.**—Part VI of title 28, United States
22 Code, is amended by inserting after chapter 176 the follow-
23 ing new chapter:

1 **"CHAPTER 177—RACIALLY DISCRIMINATORY**
 2 **CAPITAL SENTENCING**

"Sec.

"3501. Prohibition against the execution of a sentence of death imposed on the basis of race.

"3502. Access to data on death eligible cases.

"3503. Enforcement of the chapter.

"3504. Construction of chapter.

3 **"§3501. Prohibition against the execution of a sen-**
 4 **tence of death imposed on the basis of**
 5 **race**

6 **"(a) IN GENERAL.—**No person shall be put to death
 7 under color of State or Federal law in the execution of a
 8 sentence that was imposed based on race.

9 **"(b) INFERENCE OF RACE AS THE BASIS OF DEATH**
 10 **SENTENCE.—**An inference that race was the basis of a death
 11 sentence is established if valid evidence is presented dem-
 12 onstrating that, at the time the death sentence was imposed,
 13 race was a statistically significant factor in decisions to
 14 seek or to impose the sentence of death in the jurisdiction
 15 in question.

16 **"(c) RELEVANT EVIDENCE.—**Evidence relevant to es-
 17 tablish an inference that race was the basis of a death sen-
 18 tence may include evidence that death sentences were, at
 19 the time pertinent under subsection (b), being imposed sig-
 20 nificantly more frequently in the jurisdiction in question—

21 **"(1) upon persons of one race than upon persons**
 22 **of another race; or**

1 “(2) as punishment for capital offenses against
2 persons of one race than as punishment for capital of-
3 fenses against persons of another race.

4 “(d) *VALIDITY OF EVIDENCE PRESENTED TO ESTAB-*
5 *LISH AN INFERENCE.*—If statistical evidence is presented
6 to establish an inference that race was the basis of a sen-
7 tence of death, the court shall determine the validity of the
8 evidence and if it provides a basis for the inference. Such
9 evidence must take into account, to the extent it is compiled
10 and publicly made available, evidence of the statutory ag-
11 gravating factors of the crimes involved, and shall include
12 comparisons of similar cases involving persons of different
13 races.

14 “(e) *REBUTTAL.*—If an inference that race was the
15 basis of a death sentence is established under subsection (b),
16 the death sentence may not be carried out unless the govern-
17 ment rebuts the inference by a preponderance of the evi-
18 dence. Unless it can show that the death penalty was sought
19 in all cases fitting the statutory criteria for imposition of
20 the death penalty, the government cannot rely on mere as-
21 sertions that it did not intend to discriminate or that the
22 cases in which death was imposed fit the statutory criteria
23 for imposition of the death penalty.

1 *“§3502. Access to data on death eligible cases*

2 *“Data collected by public officials concerning factors*
3 *relevant to the imposition of the death sentence shall be*
4 *made publicly available.*

5 *“§3503. Enforcement of the chapter*

6 *“In any proceeding brought under section 2254, the*
7 *evidence supporting a claim under this chapter may be pre-*
8 *sented in an evidentiary hearing and need not be set forth*
9 *in the petition. Notwithstanding section 2254, no deter-*
10 *mination on the merits of a factual issue made by a State*
11 *court pertinent to any claim under section 3501 shall be*
12 *presumed to be correct unless—*

13 *“(1) the State is in compliance with section*
14 *3502;*

15 *“(2) the determination was made in a proceed-*
16 *ing in a State court in which the person asserting the*
17 *claim was afforded rights to the appointment of coun-*
18 *sel and to the furnishing of investigative, expert and*
19 *other services necessary for the adequate development*
20 *of the claim; and*

21 *“(3) the determination is one which is otherwise*
22 *entitled to be presumed to be correct under the cri-*
23 *teria specified in section 2254.*

1 **"§3504. Construction of chapter**

2 *"Nothing contained in this chapter shall be construed*
 3 *to affect in one way or the other the lawfulness of any sen-*
 4 *tence of death that does not violate section 3501."*

5 (b) **AMENDMENT TO TABLE OF CHAPTERS.**—*The table*
 6 *of chapters of part VI of title 28, United States Code, is*
 7 *amended by adding at the end thereof the following new*
 8 *item:*

"177. Racially Discriminatory Capital Sentencing 3501."

9 **SEC. 302. ACTIONS BEFORE ENACTMENT.**

10 *No person shall be barred from raising any claim*
 11 *under section 3501 of title 28, United States Code, as added*
 12 *by this Act, on the ground of having failed to raise or to*
 13 *prosecute the same or a similar claim before the enactment*
 14 *of the Act, nor by reason of any adjudication rendered be-*
 15 *fore that enactment.*

16 **TITLE X—CRIME PREVENTION**
 17 **AND COMMUNITY JUSTICE**
 18 **Subtitle A—Model Intensive Grant**
 19 **Programs**

20 **SEC. 1001. GRANT AUTHORIZATION.**

21 (a) **ESTABLISHMENT.**—*The Attorney General, who*
 22 *may consult with the Secretary of Health and Human Serv-*
 23 *ices and the Secretary of Housing and Urban Development,*
 24 *is authorized to award grants to not more than 15 chronic*

6/24/94
Edwards
et al

AMENDMENT OFFERED BY MR. _____

At the appropriate place, add the following:

SEC. ____ NEW CHAPTER. Title 28, United States Code, is amended to add the following new chapter:

"CHAPTER 177 -- RACIALLY DISCRIMINATORY CAPITAL SENTENCING

"Sec.

"2921. Prohibition against the execution of a sentence of death imposed on the basis of race.

"2922. Prohibition against quotas.

"2923. Insufficiency of racial disparities between general population and death row inmates or capital defendants to establish pattern or practice.

"2924. Definitions.

"2925. Time for raising claim.

"2926. Access to data on potentially capital cases.

"2927. Enforcement of chapter.

"2928. Construction of chapter.

"SEC. 2921. PROHIBITION AGAINST THE EXECUTION OF A SENTENCE OF DEATH IMPOSED ON THE BASIS OF RACE.

"(a) IN GENERAL. -- No person shall be put to death under color of State or Federal law in the execution of a sentence that was imposed based on race.

"(b) CASE-SPECIFIC EVIDENCE OF RACE AS THE BASIS OF DEATH SENTENCE. -- An inference that race was the basis of a particular death sentence is established if valid evidence, direct or circumstantial, is presented demonstrating that race was a significant factor in seeking or imposing that sentence of death.

"(c) PATTERN OR PRACTICE. --

"(1) An inference that race was the basis of a particular death sentence is established if valid evidence is presented demonstrating that, in the relevant jurisdiction and at the time the death sentence was imposed, there existed a pattern or

practice of seeking or imposing death sentences based on race. All relevant evidence, both direct and circumstantial, may be considered in determining if a pattern or practice was present.

"(2) A pattern or practice of seeking or imposing death sentences based on race is established if valid evidence meeting the requirements of subsection (d) is presented demonstrating that, at the time the death sentence being challenged was imposed, race was a significant factor in decisions to seek or impose the sentence of death in the relevant jurisdiction in cases similar, in levels of aggravation as determined by the presence of aggravating and mitigating factors, to the case in which the claim under this Act is being raised.

"(d) VALIDITY OF EVIDENCE PRESENTED TO ESTABLISH A PATTERN OR PRACTICE. -- To be admissible under this section, evidence offered to establish a pattern or practice of imposing death sentences based on race must include, to the extent it is available --

"(1) identification of all potentially capital cases from the relevant jurisdiction, whether or not the death penalty was sought;

"(2) in cases identified in paragraph (1), including the claimant's case --

"(A) evidence of the statutory aggravating and mitigating factors of the crimes involved; and

"(B) comparisons of similar cases, in level of aggravation, involving persons of different races.

If pattern or practice evidence is presented to establish an inference that race was the basis of a particular sentence of death, the court shall determine the validity of the evidence and whether it is sufficient to establish the inference. The government may challenge the evidence by showing, inter alia, that the case under challenge is not similar in level of aggravation to those cases in which a racial disparity has been shown.

"(e) REBUTTAL. -- If an inference that race was the basis of a particular death sentence is established, the government shall have the burden of demonstrating a race neutral explanation for the decisions in the relevant jurisdiction to seek or impose the sentence of death. The government may present any relevant evidence that would tend to rebut the inference. However, the government cannot meet its burden by mere assertions that it did not intend to discriminate or by merely showing that the case under challenge fits the statutory criteria for imposition of the death penalty.

"(f) FINDING.-- A sentence of death may not be carried out if the person making a claim under this Act persuades the court by a preponderance of the evidence that the sentence was imposed based on race.

"SEC. 2922. PROHIBITION AGAINST QUOTAS. -- No State or Federal jurisdiction may adopt or apply a racial quota for seeking or imposing the death sentence. Decisions to seek or impose the death penalty must be made on the basis of nonracial

factors. A government may not seek or impose the death penalty in a particular case in order to ensure racial balance, or in order to correct a racial imbalance, in its imposition of the death penalty.

"SEC. 2923 INSUFFICIENCY OF RACIAL DISPARITIES BETWEEN GENERAL POPULATION AND DEATH ROW INMATES OR CAPITAL DEFENDANTS TO ESTABLISH PATTERN OR PRACTICE. The mere fact that, in a jurisdiction, a particular racial minority is disproportionately represented among the persons in that jurisdiction who have been sentenced to death, or that a particular racial minority is disproportionately represented among the persons in that jurisdiction against whom a sentence of death has been sought, does not in any way establish a pattern or practice of seeking or imposing death sentences based on race.

"SEC. 2924. DEFINITIONS. -- As used in this chapter --

"(1) "potentially capital case" means a case in which criminal charges were brought against a defendant where the evidence available to the government could have supported a finding that the defendant was guilty of a capital offense and could have supported imposition of the death sentence;

"(2) "jurisdiction in question" means the highest level of government at which the decision was made to seek the death penalty in the case in which the claim under this Act is being raised; and

"(3) "based on race" means based on the race of the defendant or the race of the victim.

"SEC. 2925. LIMITATION ON RAISING CLAIM IN FEDERAL HABEAS. -- A claim under this section may be raised in federal habeas only once and only in a first application for a writ of habeas corpus.

"SEC. 2926. ACCESS TO DATA ON POTENTIALLY CAPITAL CASES. -- Data collected by public officials concerning factors relevant to the imposition of the death sentence shall be made publicly available.

"SEC. 2927. ENFORCEMENT OF CHAPTER. -- In any proceeding brought under section 2254, the evidence supporting a claim under this chapter may be presented in an evidentiary hearing and need not be set forth in the petition. Notwithstanding section 2254, no determination on the merits of a factual issue made by a State court pertinent to any claim under section 2921 shall be presumed to be correct unless --

"(1) the State is in compliance with section 2926;

"(2) the determination was made in a proceeding in a State court in which the person asserting the claim was afforded rights to the appointment of counsel and to the furnishing of investigative, expert and other services necessary for the adequate development of the claim; and

"(3) the determination is one which is otherwise entitled to be presumed to be correct under the criteria specified in section 2254.

"SEC. 2928. CONSTRUCTION OF CHAPTER. -- Nothing contained in this chapter shall be construed to affect the lawfulness of

any sentence of death that does not violate section 2921."

SEC. ____ . NO RETROACTIVE APPLICATION.

No person may raise a claim under section 2921 of title 28, United States Code, as added by this Act, to challenge a death sentence that was imposed before the date of enactment of this Act.

06/17/84 11:51 00000 HSC 6/17

SEC. 2921. PROHIBITION AGAINST THE EXECUTION OF A SENTENCE OF DEATH IMPOSED ON THE BASIS OF RACE.

(a) IN GENERAL. -- No person shall be put to death under color of State or Federal law in the execution of a sentence that was imposed based on race.

(b) INFERENCE OF RACE AS THE BASIS OF DEATH SENTENCE. -- An inference that race was the basis of a sentence of death in a particular case is established if valid evidence is presented demonstrating that a pattern or practice of seeking or imposing a sentence of death based on race was present in the relevant jurisdiction and at the time the death sentence was imposed, in cases similar in levels of aggravation as determined by the presence of aggravating and mitigating factors.

(c) EVIDENCE TO ESTABLISH AN INFERENCE. -- The court may consider all relevant evidence, both direct and circumstantial, in determining whether the inference described in subsection (b) is established. The mere existence of a disparity between the general population and the population for whom a sentence of death was sought or imposed is not sufficient to establish the inference described in subsection (b).

(d) REBUTTAL. -- The government may present any relevant evidence that would tend to rebut the inference, including evidence which demonstrates that the case under challenge does not fit within such pattern or practice. The government cannot rebut the inference by mere assertions that it did not intend to discriminate or by merely showing that the case under challenge fit the statutory criteria for imposition of the death penalty.

(e) **DEFINITIONS.** -- As used in this section --

(1) "relevant jurisdiction" means the highest level of government at which the decision was made to seek the death penalty in the case in which the claim under this Act is being raised; and

(2) "based on race" means based on the race of the defendant or the race of the victim.

SEC. 2922. PROHIBITION AGAINST QUOTAS. -- Nothing in this chapter requires or permits a government to adopt a racial quota for seeking or imposing the death sentence.

SEC. 2923. TIME FOR RAISING CLAIM. -- A claim under this section may be raised in Federal court only once and only in a first application for a writ of habeas corpus.

SEC. 2924. NO RETROACTIVE APPLICATION. -- No person may raise a claim under this Act to challenge a death sentence that was imposed before the enactment of this Act.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 1-27 ACTION/CONCURRENCE/COMMENT DUE BY: 1-28 603SUBJECT: Dang Strategy - Executive Summary

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	NUSSBAUM	☒	☐
McLARTY	☒	☐	QUINN	☐	☐
LADER	☒	☐	RASCO	☒	☐
ICKES	☐	☐	RUBIN	☒	☐
PANETTA	☐	☐	SEGAL	☐	☐
BAGGETT VELASQUEZ	☒	☐	SEIDMAN	☐	☐
EMANUEL	☒	☐	STEPHANOPOULOS	☒	☐
GEARAN	☒	☐	TYSON	☐	☐
GERGEN	☒	☐	VARNEY	☐	☐
GIBBONS	☐	☐	WATKINS	☐	☐
GRIFFIN	☒	☐	WILLIAMS	☒	☐
HALE	☐	☐	<u>BOOASTIN</u>	☒	☐
HERMAN	☐	☐	<u>DREYER</u>	☒	☐
LAKE	☒	☐	<u>GALTON</u>	☒	☐
LINDSEY	☒	☐	<u>KLAIN</u>	☒	☐
McGINTY	☐	☐	<u>LIZ BARNSTEIN</u>	☒	☐
MYERS	☐	☐	_____	☐	☐

REMARKS:

RESPONSE:

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

JOHN PODESTA
GFL/WW

January 27, 1994

NOTE TO (see distribution)

FROM: JOSE CERDA, DOMESTIC POLICY COUNCIL

SUBJECT: ADMINISTRATION'S DRUG STRATEGY

Enclosed please find a draft executive summary and introduction by the President to be included in the Drug Strategy's opening. These two components -- and the approximately 180-page budget summary -- will be the printed materials most scrutinized by the press, constituency groups and others. As I understand it, the Strategy is scheduled to be released in Houston, TX, with the President in attendance on Monday, February 7th. Thus, these items will need to be finalized as soon as possible -- and, preferably, by the close of business on Friday.

The remainder of the Strategy has been re-worked to conform to the executive summary. I will be working with the Drug Policy Office and key agency personnel to finalize this document by COB Friday, too. Please call me at 6-2564 if you have any questions, suggestions, etc., or if you would like to see the entire text of the strategy.

TO THE CONGRESS OF THE UNITED STATES:

I am pleased to transmit today for the consideration of the Congress and the American people the 1994 National Drug Control Strategy, in accordance with section 1005 of the Anti-Drug Abuse Act of 1988 (Public Law 100-690). This strategy builds on the foundation set in the 1993 Interim National Drug Control Strategy, which the Administration released in September 1993.

The Interim National Drug Control Strategy challenged this Nation to fundamentally change the way we look at our substance abuse problem. First, that Strategy changed the focus of drug policy by targeting hard-core drug users, those heaviest users who fuel the demand for drugs and put the greatest strains on our society in the forms of increased crime, health costs, homelessness and more. Second, the Interim Strategy challenged us to view the drug issue in the overall context of economic and domestic policy. Drug use is more than a criminal justice problem; it's also a public health problem. And reducing drug use is more complex than simply funding drug supply and demand reduction programs. A comprehensive Drug Strategy must address the lack of educational opportunities, good jobs, quality health care, affordable housing and safe neighborhoods.

Our new Strategy focuses on the most tenacious and damaging aspect of America's drug abuse problem -- hard-core drug use and the violence it spawns. I realize that this will not be an easy task. Past national drug control policies have failed to come to grips with the harsh realities of chronic, addictive drug use, the underlying causes of addiction, and the human and societal harms hard-core drug use causes. To reverse this trend, the 1994 National Drug Control Strategy proposes the largest ever increase in Federal support for the treatment of chronic or hard-core drug users. The Strategy proposes expanding treatment opportunities in communities around the country and -- once Congress passes the crime bill -- providing drug treatment and intervention services in the criminal justice system.

Expanding treatment and demanding that criminal addicts be treated is more than compassionate, it makes sense. The ability of drug treatment to reduce criminality has been well documented, and treating heavy users saves us money over the long run. A recent study conducted by the Nation Institute on Drug Abuse found that every dollar we spend on drug treatment saves us seven dollars -- four dollars in reduced costs to the public and three dollars in increased productivity. Clearly, treatment works.

Although our Strategy focuses on reducing hard-core drug use, violence, and on rebuilding communities ravaged by drug use and drug-related crime, we will continue to strengthen our efforts to prevent all drug use, including experimentation by our youth and others at risk. My Administration stands ready to bolster its drug prevention efforts for in-school youth by committing new resources to ensure that we have Safe and Drug-

Free Schools, and by sending the strong no-use required to help keep kids from being tempted by drugs in the first place. The declines thus far in the casual use of illegal drugs are in part because they are illegal, and this Administration will never consider -- not even by way of a study -- the legalization of illegal drugs.

But the Strategy's new emphasis on prevention and treatment in no way signals a diminution of an aggressive role for law enforcement. We will continue with aggressive efforts by Federal law enforcement agencies -- in concert with their state and local counterparts -- to disrupt, dismantle, and destroy drug trafficking organizations. And, we will increase our commitment to state and local law enforcement by helping them put more police on the street and expand community policing. Police officers working in partnership with neighborhood residents to solve drug-related crime problems can have a tremendous impact, putting an end to the open-air drug market in America.

The 1994 National Drug Control Strategy also challenges us to change the way we look at International drug control programs. International drug trafficking is a criminal activity that threatens democratic institutions, fuels terrorism and human rights abuses, and undermines economic development. In major source and transit countries, therefore, counternarcotics programs must be an integral part of our foreign policy and must be pursued with the same worldwide commitment that the United States devotes to the promotion of democracy, human rights, and economic advancement.

In response to changes in how the major drug trafficking cartels operate -- changes that were responses to our successful efforts to interdict and seize illegal drugs -- our new international strategy calls for a "controlled shift" in emphasis from the transit zones to the source countries. We use the term "controlled shift" because we anticipate that the shift could precipitate a change in tactics by the drug cartels, which requires that we be prepared to respond to those changes as they occur.

The cocaine cartels and other drug trafficking organizations are vulnerable to sustained enforcement efforts by committed governments. Not only do they fear the loss of profit, but they fear arrest when they know it will lead to conviction, followed by significant punishment and seizure of their assets. The ability of the United States to collect intelligence and build cases against major traffickers has improved considerably, and a major thrust of our international program will be to exploit this growing capability. Cooperation with other nations and international organizations that share our political will to defeat the international drug syndicates is at the heart of our international strategy.

How we combat the drug problem says much about us as a people. Drug abuse and its devastation extend beyond the user to endanger whole families and communities, and it puts our entire nation at risk. Our response must be as encompassing as is the problem. We must prevent drug abuse by eliminating the availability of illicit drugs; treating those who fall prey to addiction; and preventing all our citizens, especially our children, from experimenting in the first place. This is the plan we offer to all Americans.

In the end, this is not a challenge for the federal government alone. We can change our laws and increase the amount of resources we spend to reduce drug use, but still we will have to do more. Individuals must take personal responsibility for their own actions. Families must take responsibility for their children. Communities must challenge their citizens to stand up for common decency and refuse to accept the unacceptable. Families and communities must nurture the values that are essential to our survival as a people: honesty, generosity, humility, and civic responsibility.

Bill Clinton

EXECUTIVE SUMMARY

The 1994 National Drug Control Strategy is a bold plan to redirect and reinvigorate this nation's fight against drug use and drug trafficking. It builds on the foundation laid down in the 1993 *Interim National Drug Control Strategy*, which challenged this Nation to change the way it viewed the substance abuse problem and highlighted three focal points for a new national antidrug plan:

- First, it recognized the problem of hard-core drug use and its attendant violence are at the heart of the nation's current drug crisis.
- Second, it emphasized the need to empower local communities with an integrated plan of education, prevention, treatment, and law enforcement support.
- Third, it stressed the Administration's intent to refocus interdiction efforts away from the transit zones to working with the source and transit countries.

I. RESPONDING TO DRUG USE IN AMERICA TODAY

Five years has passed since the federal government took on the responsibility of producing a comprehensive National Drug

Control Strategy and detailing the resources committed to implement such a comprehensive plan against drug use and trafficking. Within that time period, the federal government has spent more than \$___ billion in drug-related spending, and -- while it has achieved some successes -- illegal drugs continue to pose a significant threat to the country: hard-core drug use continues unabated; drug-related crime and violence has not dropped significantly; and our children are beginning to show signs of being more tolerant towards use of some illegal drugs.

But five years of developing drug strategies has allowed us to learn from our initial efforts, and -- for the first time in years -- we are in a position to move the national drug policy debate forward. With 2.7 million hard-core users on the streets, and with Americans spending about as much money on illegal drugs as they do on visual and audio products, we cannot afford not to act. Accordingly, the 1994 National Drug Control Strategy establishes the following specific goal for hard-core drug use:

- Reduce the number of hard-core users through drug treatment by xx percent per year, beginning in FY 1995.

Recognizing the problems of casual or intermittent drug use, the 1994 Strategy augments prevention efforts to prevent drug use from starting and persuading existing users to stop. The 1994 Strategy establishes the following goal for casual drug use:

- Reduce any illicit drug use by five percent per year.
- Within the overall level of drug use, casual drug use is on rise among our youth. The Administration will work to reverse this increased use by 1996.

II. TREATING AMERICA'S DRUG PROBLEM

Treating America's drug problem must start with an aggressive effort to finally break the cycle of hard-core drug use. Drug dependence is characteristically a chronic, relapsing disorder, which is characterized by a strong desire or craving for drugs that is difficult to lose completely or to extinguish, once it has been established. But even the chronic or hard-core user can successfully travel the path to recovery, if that path is properly illuminated.

The 1994 National Drug Control Strategy proposes an increase of \$355 million to expand treatment opportunities for these hard-core users -- the largest such effort to date. Providing treatment is both a compassionate and pragmatic course of action. According to the National Institute on Drug Abuse (NIDA), for every dollar spent on treatment, \$7 is returned to society in the form of tax savings from reduced public spending (\$4) and enhanced productivity (\$3).¹ Additionally, since drug-using

¹See How Drug Abuse Takes the Profit Out of Business, National Institute on Drug Abuse, Department of Health and Human

offenders are responsible for a disproportionate amount of crime, and the frequency and severity of their criminal activity rises dramatically during periods of heavy or addicted use, treating hard-core addicts will help us reduce drug-related crime.

Accordingly, the 1994 Strategy proposes the following specific goals:

- Increase the number of hard-core drug users in treatment by 120,000 per year beginning in FY 1995. This will include both hard-core drug users in and outside of the criminal justice system.
- Enact the first-ever guarantee of basic drug abuse treatment services as part of the President's Health Security Act. At a minimum, this will provide a basic substance abuse benefit to the more than 38 million Americans who are not currently covered by a health plan.

III. PROTECTING OUR CHILDREN THROUGH EDUCATION AND PREVENTION

Educating our youth is one of society's most important responsibilities, and nowhere is the need for education greater than in teaching our children about the dangers of illegal drugs and alcohol. And while the field of prevention is still in its infancy, there is national consensus on the need for more and

better prevention programs targeted to our youth. Studies have shown that comprehensive, community-based drug education programs are effective in reducing the likelihood that young people will start using drugs; or, if children do start, these programs will lessen the chance that they will use them more frequently or more progress to more dangerous substances.

Recent surveys of young people's attitudes and behavior about illegal drugs show that the long-term decline in drug use among youth may have ended. So, too, are the incidences of crime and violence rising dramatically. To help redouble our drug and violence prevention efforts in schools, the 1994 Strategy proposes an increase of \$___ million for the Safe and Drug-Free Communities Act and needed improvements, which are included in the Administration's proposed reauthorization of the Drug-Free Schools and Communities Act.

But increased funding is not enough. With two year's of data suggesting that our prevention message may be getting stale, we need to do more. Soon, the Department of Health and Human Services will release the National Structured Evaluation, the most exhaustive study to date of what's effective in substance abuse prevention programming completed to date. To build on this report and make necessary revisions in response to changing circumstances, the Office of National Drug Control Policy (ONDCP) will convene a panel of national scholars and experts in substance abuse prevention by mid-1994. This meeting will assure

that prevention will have an increasingly important and visible role in the Nation's demand-reduction efforts. The specific 1994 Strategy's goal is as follows:

- Target 100 percent of local educational agencies receive funding to promote comprehensive drug and violence prevention programs to all students in grades K-12.
- Reduce the amount of alcohol, drug, and tobacco use by student in college and universities by xx percent.

IV. MAKING AMERICA'S STREETS SAFE

Recognizing that demand reduction programs — drug treatment, prevention and education — cannot succeed if drugs are readily available, and that drug law enforcement programs cannot ultimately succeed if we do not curb the nation's appetite for illegal drugs, the 1994 Strategy rejects the false choice between these programs. In fact, while the Strategy provides large increases for drug treatment and prevention programs, it also provides substantial increases to state and local law enforcement, primarily to put more police on America's streets.

To make our street safer, the Administration's first priority is to pass a tough and smart crime bill. As outlined by the President in his State of the Union Address, such a crime bill must authorize funds to put more police on the street and

expand community policing; it must boost the number of boot camps for non-violent offenders and the availability of treatment for drug offenders; and it must include reasonable gun controls, such as a ban on assault weapons -- the weapon of choice for drug traffickers.

Beyond new initiatives anticipated in the crime bill -- and included in the President's budget -- the 1994 Strategy commits the full force of Federal investigative and prosecutive tools to target major drug trafficking organizations so that they may be disrupted, dismantled, and destroyed. The goal is to reduce illicit drug trafficking both in and directed at the United States. The Administration will work toward making drugs harder to obtain and more costly (in terms of apprehensions, prosecutions, convictions, and forfeitures) for the traffickers and toward reducing the violence attendant to drug activity. Specific Law Enforcement Goals include:

- Put 100,000 more police on the street in community policing roles over the next five years -- a nationwide increase of 16 percent.
- Ban the sale and manufacture of assault weapons, the drug trafficker's weapon of choice.

V. EMPOWERING CITIZENS THROUGH COMMUNITY ACTION

This is a time of challenge to the Nation's resolve toward the drug problem. With the drug issue having fallen out of the limelight, the feeling exists that the Nation should focus its attention on other pressing social needs. However, many American neighborhoods remain captive to drug-related violence. The Nation must maintain its commitment to help these neighborhoods contain and reduce drug use.

The most effective strategies for preventing drug use and keeping drugs out of neighborhoods and schools are those that mobilize all elements of a community through coalitions or partnerships. Community coalitions, such as those sponsored by HHS, establish and sustain a strong partnership among businesses, schools, religious groups, social services organizations, law enforcement, the media, and community residents to help rid the neighborhood of drug-associated violence. These coalitions also provide an excellent vehicle for continuing communication between police departments and local communities and supporting efforts to establish community policing programs. The 1994 Strategy will expand the number of community coalitions, targeting neighborhoods hardest hit by drug use and related crime and violence.

Equally important, The Vice-President Community Enterprise Board -- along with the Departments of Housing and Urban Development and Agriculture -- will oversee implementation of the President's Empowerment Zones and Enterprise Communities Program.

This program reflects a long-term commitment to community-led programming and provides a tremendous opportunity to help communities help themselves.

The Strategy's community empowerment goals are:

- Work to ensure that all 9 Empowerment Zones and 95 Enterprise Communities address drug use and trafficking in their community-based empowerment plans over the next two years.
- Double the number of community anti-drug coalitions by 1996.

VI. FOCUSING ON SOURCE COUNTRIES

The 1994 National Drug Control Strategy also challenges us to change the way we look at International drug control programs. International drug trafficking is a criminal activity that threatens democratic institutions, fuels terrorism and human rights abuses, and undermines economic development. In major source and transit countries, therefore, counternarcotics programs must be an integral part of our foreign policy and must be pursued with the same worldwide commitment that the United States devotes to the promotion of democracy, human rights, and economic advancement.

In response to changes in how the major drug trafficking cartels operate -- changes that were responses to our successful efforts to interdict and seize illegal drugs -- our new international strategy calls for a "controlled shift" in emphasis from the transit zones to the source countries. We use the term "controlled shift" because we anticipate that the shift could precipitate a change in tactics by the drug cartels, which requires that we be prepared to respond to those changes as they occur.

The cocaine cartels and other drug trafficking organizations are vulnerable to sustained enforcement efforts by committed governments. Not only do they fear the loss of profit, but they fear arrest when they know it will lead to conviction, followed by significant punishment and seizure of their assets. The ability of the United States to collect intelligence and build cases against major traffickers has improved considerably, and a major thrust of our international program will be to exploit this growing capability. Cooperation with other nations and international organizations that share our political will to defeat the international drug syndicates is at the heart of our international strategy.

BUDGET HIGHLIGHTS

Memorandum



To : **The Deputy Attorney General**

Date **November 16, 1993**

From : **Director, FBI**

Subject : **SIGNIFICANT PUBLIC SAFETY ISSUES**

As you are aware, recent polls and media reports plainly reflect the American public's alarm about crime in this Nation. The President, during his speech in Memphis this past weekend, clearly expressed his resolve to address these concerns.

At yesterday's bi-weekly meeting, we discussed several significant public safety issues that require the Administration's immediate attention in order for Federal law enforcement agents to perform their mission more effectively. Significantly, it includes resource and budgetary allocations. Pursuant to your request, our Finance Unit has reviewed the proposed authorization and what effect it will have on the FBI. The results are set forth below.

Resource and Budgetary Allocations

In the face of rapidly rising violent crime in the United States and surveys which list crime as clearly the most important problem facing our country, the FBI is confronted with losing 1,162 positions by 1995, as a result of the President's order to reduce the size of the Federal Government by 100,000 positions, as well as another 1,332 positions by 1999, as part of the National Performance Review proposed workforce reductions of an additional 152,000 Federal employees. That represents a reduction of 2,494 positions or over 10 percent of the FBI's total workforce. Causing the FBI to decrease substantially its investigative and support staff in a time of rising crime and increased public concern is not consistent with the best interests of the American people as the President discussed in Memphis. Undoubtedly, it is imperative that we support this excellent initiative by the President.

The Deputy Attorney General
Re: Significant Public Safety Issues

As we discussed, the attached Amendment proposed by Senator Byrd, and others, at (c) (1), would authorize an additional \$250,000,000 for the FBI over the next five years. While this potential funding could certainly benefit the FBI by providing more and better tools to do its work, the Amendment does not respond to the greatest current need of the FBI and DEA, which is to maintain--and even increase--the number of investigative agents and support personnel. A provision in the Amendment (handwritten on the attachment) to exempt the FBI and DEA from the Presidentially mandated personnel reductions, in addition to adding \$250,000,000 to the FBI's appropriation over the next five years, would do much in helping the FBI address the serious crime problems of the 1990s facing our country.

Attachment

- 1 - The Attorney General (Attachment)
- 1 - The Associate Attorney General (Attachment)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FAX TRANSMISSION COVER SHEET

Date: November 12, 1993

To: David Margolis, Associate Deputy Attorney General

From: Jon O. Newman
Chief Judge, U.S. Court of Appeals
450 Main Street
Hartford, Connecticut 06103
FAX No. (203) 240-3321

Number of Pages: 4 (including transmittal page)

PER OUR PHONE CONVERSATION.

If you have any questions or problems with this
transmission, please call (203) 240-3260.

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SENATE AFFAIRS

0002/004

P.1/3

NOV-29 '93 12:42PM SEN. APPROP. COMM.

600 - DOJ - SEC.
150 - USA
250 - TO

AMENDMENT NO.

Ex. Calendar No.

Purpose:

IN THE SENATE OF THE UNITED STATES

Cong., Sess.

S. (or Treaty_____)

M.R.

(title)

Hollings

- () Referred to the Committee on and ordered to be printed
- () Ordered to lie on the table and to be printed

INTENDED to be proposed by MR. DOMANICI, for himself and Mr. BYRD, Mr. D'Amato

Viz: At the appropriate place in the bill, insert the following:

1 Sec. _____. (a) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS
 2 FOR THE FEDERAL JUDICIARY...

3 (1) There is authorized to be appropriated for the
 4 activities of the Federal Judiciary not to exceed
 5 \$20,000,000 for fiscal year 1994, and not to exceed
 6 \$70,000,000 for each of the fiscal years 1995, 1996,
 7 1997, and 1998 to help meet the increased demands for
 8 judicial activities which will result from enactment into
 9 law of this Act.

10 (b) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR
 11 THE DEPARTMENT OF JUSTICE. ..

12 (1) There is authorized to be appropriated for the
 13 the activities and agencies of the Department of Justice, in
 14 addition to sums authorized elsewhere in this section,

11/10/93 18:42 0102 273 3011
11/10/93 10:02 0102 273 3011
NOV 29 '93 12:42 PM SEN. APPROV. COMM.

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0004/003

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15 not to exceed \$25,000,000 for fiscal year 1994, nor to
16 exceed \$125,000,000 for fiscal year 1995, and not to exceed
17 \$150,000,000 for each of the fiscal years 1996, 1997, and
18 1998 to help meet the increased demands for Department of
19 Justice activities which will result from enactment into law
20 of this Act.

21 (c) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE
22 FEDERAL BUREAU OF INVESTIGATION. --

23 (1) There is authorized to be appropriated for
24 the activities of the Federal Bureau of Investigation not to
25 exceed \$20,000,000 for fiscal year 1994, not to exceed
26 \$30,000,000 for fiscal year 1995, and not to exceed
27 \$50,000,000 for each of the fiscal years 1996, 1997, and
28 1998 to help meet the increased demands for Federal Bureau
29 of Investigation activities which will result from enactment
30 into law of this Act.

31 (2)
(d) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR

32 UNITED STATES ATTORNEYS. --

33 (1) There is authorized to be appropriated for the
34 account Department of Justice, Legal Activities, "salaries
35 and expenses, United States Attorneys" not to exceed
36 \$10,000,000 for fiscal year 1994, and not to exceed
37 \$35,000,000 for each of the fiscal years 1995, 1996, 1997,
38 and 1998 to help meet the increased demands for litigation
39 and related activities which will result from enactment into
40 law of this Act.

41 (2)
(a) Funds appropriated pursuant to this section are

(c)(2) Notwithstanding any other provision of law, the full-time
equivalent workyears authorized and appropriated for the FBI
shall not be reduced as part of a Federal Government-wide
reduction of personnel.

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ADMIN US COURTS

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42 authorized to remain available for obligation until

43 expended.

44 (f) Funds authorized under this section may be

45 appropriated from the Trust Fund established by section

46 1321C of this Act.

(d)(2) Notwithstanding any other provision of law, the full-time equivalent workyears authorized and appropriated for the account, Department of Justice, Legal Activities, "Salaries and expenses, United States Attorneys" shall not be reduced as part of a Federal Government-wide reduction of personnel.

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.

file

THE WHITE HOUSE

WASHINGTON

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 reduces the chance of a gridlocked 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, John Kerry, and other Senate Democrats are concerned that the Republicans (and some of their own Democratic colleagues) will try to do to us on crime what they did to us last 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 will 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: to earmark part of the October spending cuts package for the crime bill.

Two weeks ago, 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 planning 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 a 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.

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. Our bill will enable states to use that prison money for boot camps;

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.

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.

FROM

STEPHEN C. WARNATH

Vince - FYI.

The attached updates the status of the assault weapon importation and gun dealer licensing proposals. ATF has suggested that we add something to address the recent flood of foreign military surplus weapons into this country. I will forward any future drafts to you to comment on as the process proceeds.

I thought that Walter's confirmation hearing went well. I still hope to join him at OLC (or elsewhere at Justice) in the near future. So far, though, I haven't heard anything.

Steve
(x6586)

STATUS OF PROPOSED EXECUTIVE ORDERS
RE: ASSAULT WEAPONS IMPORTATION AND GUN DEALER LICENSING

ASSAULT PISTOLS

- We have a draft Executive Order/Presidential Memorandum which would suspend the importation of assault pistols and direct ATF to reassess the appropriateness of importation of these weapons under the sporting purposes test. We are ready to proceed with finalizing the EO immediately. Basically, the final step requires forwarding a draft to OMB for review and to coordinate an appropriate commenting procedure within the Administration. For example, the draft needs to be reviewed by the Justice Department and White House Counsel's Office.
- There is evidence that there has been a significant increase in the number of assault pistols found by police at crime scenes in recent years. The number of assault pistols imported into this country, however, is relatively small. Taking this action will provide Presidential leadership on this issue, but will not solve the problem by itself because it does not affect domestically-produced assault pistols. That would require legislation.
- Because any action taken in this area will be controversial and the likely subject of litigation, it is advisable to ensure that a full opportunity be extended for careful consideration and comment prior to issuance. OMB can expedite the process, but it has generally requested two weeks for the review and comment period.
- ATF is presently attempting to rework the sporting purposes factoring criteria to exclude assault pistol importation. ATF has indicated that there are definitional challenges and I am sure that they would appreciate as much time as possible to work on a solution prior to the issuance of an EO directing them to address the problem.

GUN DEALER LICENSING

- There are approximately 284,000 gun dealers licensed by ATF. One estimate puts the number of new applications at approximately 60,000 a year. A gun dealer's license essentially waives certain legal restrictions on the buying and selling of guns -- such as federal laws restricting interstate gun transactions -- that would normally apply.

- We have a draft Executive Order/Presidential Memorandum that generally calls for tougher enforcement of compliance requirements under present law. ATF has indicated that they are "largely in agreement with the proposals" contained therein. ATF's concerns are directed mostly at the availability of resources. We need to make some modest changes in the language based upon some of ATF's comments and allow ATF to have one more look at the draft. Otherwise, it is ready to forward to OMB for review and initiation of the comment process.

FOREIGN MILITARY SURPLUS WEAPONS

- ATF is concerned about the influx of surplus military weapons from other countries and appears motivated to address the problem. This can be done either legislatively or through Executive or administrative action.
- During the past six months almost 95,000 surplus military firearms were imported into the United States and pending permit applications would bring hundreds of thousands more into the country classified as curios and relics.
- ATF brought this problem to our attention so we need to add language to the original draft which would suspend the issuance of import permits of these weapons and direct ATF to reassess the "curio and relic" classification under which these weapons enter the country. Treasury/ATF has the power to do this as the statute delegates to the Secretary the power to define what qualifies as a curio or relic. The justification for the review would be the dramatic rise in importation of these weapons which is on its face inconsistent with the intent of the curio and relic classification.
- The present law permits importation as a relic or curio of any gun 1) over 50 years, or 2) if certified by the curator of a municipal, State, or Federal museum, or 3) with "evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less." Satisfying any one of these will suffice.
- One possible regulatory solution would be simply to drop the language that creates the presumption that old guns, based upon age alone, have value as curios and relics and require the importer to file a museum certification or proof of authentic value as a curio or relic with the import application.
- The timeframe for readying this for issuance is consistent with the assault pistol and gun dealer licensing initiatives.

INEXPENSIVE FOREIGN HANDGUNS

- During the past six months almost 25,000 of these semiautomatic handguns have been imported. Pending permits are estimated by the ATF to cover as many as 100,000 additional handguns. Many are essentially replicas of foreign military pistols and are permitted into this country under the sporting purposes test.
- ATF presently has the discretion to deny import permits to keep these weapons out as not qualifying under the sporting purposes test. The challenge is that very few handguns of any type are actually sporting pistols and ATF would have a difficult task trying to draw a reasonable line separating these "inexpensive handguns" from other handguns which are more generally viewed as acceptable for importation. It is a classic slippery slope problem. We need to get more feedback from ATF as to how they are progressing before we can estimate a timeframe for issuance. Issuing an EO prematurely could lead unnecessarily to legal problems and potentially embarrass the President.