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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001. background paper	re: Crime Bills Sponsored by Phil Gramm (3 pages)	01/26/1994	Personal Misfile
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COLLECTION:

Clinton Presidential Records
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Subject Files
OA/Box Number: 19977

FOLDER TITLE:

Crime Bill Debate [3]

2009-1305-F
jp3654

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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HATCH

Hatch

On praise for the bill, bipartisanship:

(1993)

"I think all of us agree that (the Byrd amendment allowing \$9 billion for 100,000 cops) would be a very good idea. It is a bipartisan issue...If we are going to end criminal activity in this country, or at least diminish it greatly, we need these policemen on the beat... [1]

"There is \$3 billion for boot camps and other State grants, operation grants. I think almost everybody admits that we ought to move toward boot camps, especially with young offenders. It may have some rehabilitative effect...I think both sides can agree that this is a very bipartisan, interesting, good approach..."[1]

"And we have the violence against women bill...It is about time that we passed that legislation...we think it is written well, we believe it will help to solve alot of problems. We believe it recognizes the power and the obligation and the duties of the States, and the rights of the States as well..." [2]

"(The trust fund) goes a long way toward getting a bill that both sides can agree to, that both sides can be proud of...and that the President will support." [2]

On the previous conference report:

(1992)

"There are some notable deficiencies in the conference report that nobody who is really against crime is going to sanction...if the report goes through, it says to every criminal: Do not worry; you will never go to the chair; you will never have to suffer the penalty that society imposes on you; you will have a right of appeal forever...You wonder why we do not like the conference report." [5]

"I personally have a very tough time with death penalties. I would only allow their use in the most heinous of crimes...but the death penalty would never, never be carried out again if the conference report passes." [5]

"The conference bill is a cynical attempt ostensibly to fight crime even as it ties the hands of law enforcement authorities and opens the prison cell doors. Indeed, the conference report would let vicious, violent criminals out on the street that the Republican Crime Control Act would keep behind bars." [5b]

"The (Republican bill) uses the Federal power to start stamping out crime. It will result in cleaner streets, safer homes, and more safety for people throughout our society. At the same time, it lets those know who are going to commit these crimes that they are in trouble. It is about time we did that." [8]

"All of the beating on the breast on how tough (the conference report) is does not amount to one hill of beans..." [9]

On gangs:

(1992)

The Republican Crime Control Act increases the penalties for drug distribution to minors; for using minors in drug trafficking; and for drug distribution to minors by recidivists. The conference bill contains no such provisions." [7]

On sexual violence:

(1992)

"The Republican Crime Control Act doubles the maximum authorized penalty for repeat sex offenders, and authorizes restitution for victims of sex offenses...whether or not physical injury results. the liberal conference bill contains no such provisions." [8]

On prisons:

(1993)

"On of the first things the Clinton Administration has done is cut back on prison construction moneys by \$130 million or at least called for the cutback on prison construction funds." [13]

Despite overcrowding, the Clinton Administration has failed to spend over \$1 billion in construction money it currently has." [14]

On prisoner education:

(1991)

"I commend the Senator from New Mexico (Bingaman) for his desire to bring literacy training to all prisoners in State and local prisons, jails and detention centers. The problem is, where do you get the funds to do it? ...It is a very worthy goal but I think sometimes we have to make priority choices." [3]

"This is an issue of common sense. If we reach the point where we can afford to help the states fund literacy programs for prisoners, let us do it." [4]

On gun control, Brady Bill:

(1991)

"This is the single, sole amendment that everybody knows means that you are either for or against the second amendment right to keep and bear arms." [10]

"The vast majority of felonies committed with guns are committed with illegal guns...studies over the years have shown that gun control measures do not reduce crime. I have to tell you this gun control measure called the Brady Bill is not going to reduce crime, It is a symbol, I have to admit and it is a total sham." [12]

to use for discretionary purposes, which could mean defense or domestic discretionary.

Mr. HATCH. Madam President, I will not take long. I know there are others who want to speak.

Madam President, I really believe that we are quite close to having this basic part of the core package done. I am hopeful that we can before we leave this evening, which would mean we would vote on this, plus Senator DOLE has another amendment, an arson amendment, that we would vote on.

But this particular major amendment, which has been put together by a wide variety of people on the floor-but in particular Senator BYRD-helping us to get this done has \$8.9 billion for 100,000 policemen on the beat. I think all of us agree that would be a very good idea. It is a bipartisan issue. Both Republicans and Democrats support it. It is something that is long overdue. If we are going to end criminal activity in this country, or at least diminish it greatly, we need these policemen on the beat.

Second, there will be \$3 billion for regional prisons, something we have fought for for years that really is long overdue, that will help to house these prisoners in ways that they need to be housed and will help to take them off the streets so that we end an awful lot of violent crime.

There is \$3 billion for boot camps and other State grants, operation grants. I think almost everybody admits that we ought to move toward boot camps, especially with young offenders. It may have some rehabilitation effect. We hope it will. But, most importantly, it will cost about a quarter as much as if we house them in regular prisons at \$30,000 to \$35,000 a year apiece. It will be a lot less than that if we run the boot camps. But I think it is time to let them know that this is a tough world, that if they are going to act like this, they are going to have to pay the price. So this a good step.

I think both sides can agree that this is a very bipartisan, interesting, and good approach.

We have \$500 million in here for hard core juvenile offenders that really ought to be in jail, but we do not have places to put them. These are juvenile detention facilities. It is a step in the right direction. It probably is not enough money right now, but it certainly is a step in the right direction. It is something we have not done before.

And we have the violence against women bill for \$1.8 billion. It is about time that we passed that legislation. A great number of Senators have worked

on it, particularly Senator BIDEN, Senator DOLE, and myself. There are others that deserve to be mentioned, but let me just mention those three for now, because we feel very deeply about this particular bill. We think it is written well. We believe it will help to solve a lot of problems. We believe that it recognizes the power and the obligation and the duties of the States, and the rights of the States, as well.

One other aspect of this bill that is very, very important is the sentencing aspect. We are adopting truth in sentencing. We are encouraging States to adopt truth in sentencing. That means, if these hard core, violent criminals are put away, they serve at least 85 percent of their sentence. We think it is about time that that take place. And that is a major, major, pivotal part of this.

Now, I want to compliment all who participated in this. In particular, I want to pay tribute to my friend who has spent so many long hours in here, and has since I have been here in the Senate and long before I came, the distinguished Senator from West Virginia, the distinguished chairman of the Appropriations Committee. Because, without him and without the funding that his amendment has provided, none of this really would mean a thing. We could

go through and authorize it until Kingdom come, but without that funding, the effort and the ability to be able to really bring down crime in this country would never occur.

He was the one who came up with the funding mechanism. I just want to personally compliment him for it, plus the ability to put this together the way we are putting it together. It is something Senator BIDEN and I have been trying to do for a long time. We know that we have opposition on both sides of the aisle to getting a central core package, but I think this will go a long way toward getting us a bill that both sides can agree to, that both sides will be proud of, that really we can all be proud of, the whole Congress, and that the President will support and literally will help bring down an awful lot of criminal activity in our society that is going on today.

So this is very, very important stuff. I just want to compliment all concerned, especially Senator BIDEN, Senator BYRD, Senator DOLE, Senator MITCHELL, and others who have worked so hard on this particular amendment.

In particular, Senator MACK has worked very hard with me on this regional prisons concept and also the boot camps and the other operations grants.

Mr. HATCH. Mr. President, the distinguished Senator from South Carolina has spoken very well on this issue. As I said yesterday, I commend the distinguished Senator from New Mexico for his desire to bring literacy training to all prisoners in State and local prisons, jails and detention centers. Frankly, it is a great desire of all of us. The problem is—where do you get the funds to do it?

Second, the thing I find most objectionable about his amendment is he is again coming up with a Federal mandate that is imposed upon all the States at a time when the States cannot meet their budgetary requirements. Most Governors, if not all Governors, are having tremendous difficulties meeting the budgetary needs of their State and almost every one of them will say that he or she does not have the money to meet the educational needs of the children of the State.

Yet we are going to mandate on the backs of the States an august, very costly program that they have to comply with for prisoners. It is a worthy goal but I think sometimes we have to make priority choices.

The distinguished Senator from South Carolina has filed an amendment that basically would make this a grant program to the States, and help the States, but not make them, provide this training. Actually, the Thurmond amendment establishes a discretionary grant program under the Department of Justice which makes funds available to the States for the purpose of establishing statewide or demonstration prison literacy programs. Rather than forcing or mandating the States to implement prison literacy programs, as the Bingaman amendment does, the Thurmond amendment makes it very clear that these programs are discretionary in the States, allows States to make their own priority choices, and does not mandate these programs.

The Bingaman amendment goes even further. If the States do not comply with the mandated aspects of his amendment—and there they are all mandated—then his amendment penalizes the States by withholding Federal funds for prisoners if the States fail to implement such a program.

Many States are a little gun shy of taking another mandate from the Federal Government that may or may not be funded in the future. As I look at the legislation he authorizes it at \$10 million the first year; \$15 million, \$20 million, and \$25 million in subsequent years but none of those funds are going to cover the cost of the literacy programs for all prisoners in the States as required by his amendment. So States will have to meet the costs of these programs from their own funds.

Mr. President, there comes a time when all of us facing \$270 billion deficits and a \$3 trillion national debt have to agree that we can no longer

tell the States what they have to do. We can no longer mandate on their backs things that have to be done. If we are going to do it, we ought to at least give them the funds to be able to do it. I believe \$20 million or \$40 million is not enough for them to do what they are required to do. I believe \$100 million will not meet the needs of the States in order to do the things that the distinguished Senator from New Mexico's amendment requires of them.

Why are we mandating anything on the backs of the States? If anything, over the last 10 or 15 years we have been placing onerous burdens on States and taking away Federal funds because we cannot meet our own budgetary needs.

I commend the distinguished Senator from New Mexico for his compassionate instincts in wanting to help those in prison who are not literate. I understand that. I have the same compassionate feelings, but I will tell you one thing—if I have to choose between those who are convicted of willful and heinous crimes receiving literacy training and the young kids in the

individual States who are currently suffering because we do not have enough funds to do the educational work that needs to be done in the State, I am going to choose the kids every time. That is really the question: Are we going to take care of the kids who do not have a properly funded education or are we going to start pouring new moneys into a program, though worthy, altruistic and compassionate, that really will take the money from the kids?

I do not see why this is a Democrat or Republican issue. This is an issue of common sense. If we reach the point where we can afford to help the States fund literacy programs for prisoners, let us do it, but let us do it when we can pay the costs and not mandate it on the backs of the States who cannot. I do not know of one State in this Union who can meet these mandates if the moneys are not there. They just cannot pull more money out of thin air and none of them have enough to fund educational programs as it is.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

[pS9286]

Mr. BINGAMAN. Mr. President, how much time remains on my side and on the other side?

The ACTING PRESIDENT pro tempore. Ten minutes.

Mr. BINGAMAN. Mr. President, I yield myself 5 additional minutes.

Mr. President, I would just say as to the idea that we are making it discretionary for the States to pursue literacy training, it has been discretionary for the States to pursue literacy training. Some States have done it; some have not done it. I am fortunate that my State has pursued literacy training and has a reasonably good program in place. We can certainly do better. I think we would definitely try to do better under the amendment that I have proposed.

But to suggest that we are doing anything significant with the amendment of the Senator from South Carolina I think is a little disingenuous in that they have had the discretion to pursue a literacy program. There is no Federal prohibition against that. In fact, all criminologists that I am aware of recognize the importance of providing people with the basics, particularly with the ability to read and write, as a part of allowing them to give up a life of crime and pursue some kind of law-abiding activity. All we are trying to do here is to move the States in that direction.

Let me just point out for the Senate the obvious provisions that we have in the bill which are intended to work with the States. This is not an onerous, get your act together next week kind of amendment.

First, let me point out this amendment applies only to facilities where there are 100 or more inmates in prison. In my State, there is one at the local level and there are several at the State level. But clearly this is not every jail or detention center in the country by any means.

Second, there are provisions in here that allow the chief correctional officer of the State or the local governmental entity to waive the requirement for a prisoner to take this literacy training where circumstances justify.

Third, there is a 5-year waiting period before the significant parts of

law in the District is the exclusive jurisdiction of the Congress. We are going to use that power this year to adopt the Shelby amendment, hopefully, as part of a true, tough anticrime bill.

I yield the floor.

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The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I have to admit many of the things the distinguished Senator from Delaware says are in the conference report are in the bill filed by the distinguished ranking minority member of the Judiciary Committee yesterday. On the other hand, there are some notable -- and frankly, for those who are aware, who are expert in the law, noticeable -- deficiencies in the conference report that nobody who really is against crime is going to sanction.

What really happened was we passed a pretty tough crime bill -- that I give the Senator from Delaware a lot of credit for -- in the Senate; and certainly, the Senator from South Carolina. It had a tough habeas corpus provision in it that would have stopped an awful lot of the repetitive appeals that are going on in this country, that give these criminals the idea that they can never be really convicted, and billions of dollars lost in funds that have to go for law enforcement because we have not reformed the habeas corpus laws.

We did it in the Senate. They stripped it out in the conference report. They took a provision that is going to open up even more appeals like the one in Utah. William Andrews -- everybody knows he murdered those people. He tortured his victims, rammed pencils through their eardrums, poured Drano down their throats, and then shot them. He was sentenced to death. His partner has already been executed. He is now in his 18th year of appeals and his 28th appeal.

If the conference report language goes through, it says to every criminal: Do not worry; you will never go to the chair; you will never have to suffer the penalty that society imposes on you; you have a right of appeal forever. And that is what it comes down to. We have one person in jail who is in his 54th year of appeals because of the language like they have in the conference report, which we correct in this bill here.

You wonder why we do not like the conference report. On the death penalty, what good is the death penalty if you can never effectuate it? I personally have a very tough time with death penalties. I would only allow their use in the most heinous of crimes. But let me tell you, it is a deterrent. I do not care what anybody else says. But the death penalty would never, never be carried out again if the conference report passes, because we have the most ingenious criminal defense lawyers in this country who come up for a new reason for appeal everyday, and guess who pays for those appeals? You and I do, every taxpayer in this country, and the conference report continues that mess.

You wonder why we do not want the conference report. We want a lot of [*S2826] things that are in the bill that Senator Biden has discussed. They are in this bill. But we correct the habeas corpus problem. As for the exclusionary

rule, we did not do a very good job in the Senate. It is better than the conference report, but the House did a great job on the exclusionary rule. The conference report is worse than current law in this area.

We know what the exclusionary rule is. That is the rule of technicalities. If they can show certain technicalities have been violated, then the criminal goes free. There are not many who go free, but there are some criminals who have gone free. We think it ought to be corrected in any real crime bill. And it is not a real crime bill if we do not solve that problem.

The conference report is worse than current law with regard to the exclusionary rule. Reliable evidence of guilt would be thrown out in various circumstances, even if the officers conducting a search reasonably relied on a warrant issued by a magistrate. If they acted in good faith, the conference report that the distinguished Senator from Delaware is arguing for just throws out that evidence.

What does that mean? It means criminals go free.

Mr. BIDEN. Point of inquiry.

Mr. HATCH. Let me just finish.

Mr. BIDEN. Did the Senator say with a warrant or without a warrant?

Mr. HATCH. I did not talk about a warrant. I did -- I said a search where they reasonably relied on a warrant issued by a magistrate.

Mr. BIDEN. I think if the Senator checks the stats, that is in the bill, Mr. President. I just stand to make that point, that it would be admissible if it is relied on a warrant. It is only when there is no warrant.

Mr. HATCH. We will get into that as we go further.

So today, I rise in support as a cosponsor of the Crime Control Act of 1992, which was introduced yesterday by the distinguished ranking minority member and former chairman of the Judiciary Committee, Senator Strom Thurmond. The Crime Control Act of 1992 stands in marked contrast to the 1991 conference committee crime bill. That was a bill rammed through conference by the other side at the end of the last session.

What they did is they took the most liberal members of the House Judiciary Committee and Senate Judiciary Committee. Nobody else had any say, and they put together the worst provisions of both bills. I have to say they are soft-on-crime provisions. Yes, they put a lot of good things in it, but what good is the death penalty if you are going to never execute it? It is nice to talk about 53 death penalties, but if you take away the effectuation of them, what good is it? It is nice to say you are tough on crime with death penalties, but they cannot be carried out. What is cynical about it is they know it. They stand here and try to pass it off as though it is tough on crime.

That bill was rammed through conference by the liberals in both the House and Senate Judiciary Committees and, as we all know, if you look at it carefully, it is hardly the good crime bill that everybody on the liberal side of the table seems to

think. A close comparison of the two bills demonstrates that the conference bill is a cynical attempt ostensibly to fight crime even as it ties the hands of law enforcement authorities and opens the prison cell doors. Indeed, the conference report would let vicious, violent criminals out on the street that the Republican Crime Control Act would keep behind bars, the bill introduced yesterday by Senator Thurmond and others, including myself.

Let me just briefly compare for you some of the more salient provisions of the Crime Control Act and the conference bill. Look at the death penalty. Under this Republican Crime Control Act, the jury is directed to impose the death penalty for enumerated offenses if aggravating factors outweigh mitigating factors. In contrast, under the conference bill, the jury has standardless -- meaning without standards -- discretion to refrain from imposing the death penalty regardless of the aggravating factors. Moreover, the Republican Crime Control Act contains several safeguards to prevent litigation abuse and delay in the implementation of the death penalty. The conference bill contains no such safeguards.

Additionally, the bill enacts a unanimity requirement for the firsttime for the jury recommendation on the death penalty. Thus, when only one juror declines to impose the death sentence, regardless of the facts of the case, the sentence is prohibited. Underscoring this problem is the fact that the Supreme Court already prohibits the prosecutor from objecting to seating jurors who are opposed to the death penalty in the first place.

Finally, although the conference bill adopts new death penalties, its procedures are so convoluted that the penalty -- the death penalty, that is -- will seldom be returned and virtually never will be carried out.

On habeas corpus, the Crime Control Act introduced by Senator Thurmond basically does not change existing retroactivity standards previously established by the Supreme Court. That is good. In contrast, the conference bill makes almost all criminal law decisions of the Supreme Court retroactively applicable to overturn earlier convictions and sentences that had been imposed in conformity with then-existing law. No criminal conviction would ever be final under the conference report.

It has some nice provisions, but what good are they if they cannot be enforced? That is why we are so upset about it. Anybody who understands the law, unless they are more concerned about criminal rights than they are about victim's rights -- and I want to be concerned about both -- would have to conclude that the conference report does not solve these problems.

No criminal conviction would ever be really final under the conference bill. Convicted criminals, even those with life sentences, could invoke any subsequent change in the law that was favorable to them to have their convictions overturned if you adopt the conference report language.

Let me just give you some cases that illustrate how retroactivity would operate under the conference bill. Take the William Heirens case. A 17-year-old college student murdered three women in cold blood in Chicago, IL, in 1946. Two of his victims were adults, but the third was 6-year-old Suzanne Degnan.

William Heirens did not simply kill his victims. He also mutilated, decapitated, and abused their lifeless bodies in the most unspeakable manner. For example,

different parts of Suzanne Degnan's body were found in five different sewers on the north side of Chicago.

Why am I bringing up today, in 1992, a murder case from 1946? A case that is 45 years old?

First, I note that the case is still being litigated in the Illinois State courts after all that time. Everybody knows he is guilty, but it is still being litigated. It is also still being reheard through parole proceedings -- and it will, I am sure, be relitigated till the end of this century and beyond if the conference report's retroactivity provision becomes law.

William Heirens pleaded guilty to murder in 1946 and received a sentence of life imprisonment. There is no question of his guilt or innocence.

However, Heirens has continually sought release on a wide variety of legal theories. His last parole request was denied as recently as April 26, 1991. This was his 29th formal request for parole in 45 years. Guess who pays for that. Why, you and I do.

Heirens has also filed numerous post-conviction suits seeking release. He has a current case pending today in the Illinois Court of Appeals. He has sought release on various theories, but no law now applying to his case has so far been found to justify his release.

Suzanne Degnan's older sister -- now in her fifties -- has followed each of these repeated attempts by Heirens to obtain release. Can any of us imagine the trauma of a family victim put through 46 years of appeals?

But that is not enough apparently for some Democrats -- they want William Heirens appeal process to start all over again. That is what their retroactivity provision in the conference report would allow.

Since William Heirens was sentenced to life in 1946, hundreds, if not thousands of new criminal decisions have been handed down by the Supreme Court. He was imprisoned before the [*S2827] Supreme Court decided Brown versus Allen in 1953, extending the Federal habeas remedy beyond jurisdictional challenges. He was imprisoned before the Warren court decided that most of the Bill of Rights even applies to State prisoners. He was imprisoned before the 1966 decision in Miranda versus Arizona created unprecedented new rights, and he was imprisoned before Swain versus Alabama (1976) and Batson versus Kentucky (1982) fundamentally altered the way in which peremptory juror challenges can now be exercised in criminal trials.

Heirens could logically argue, as he has under other circumstances, that he might not have pleaded guilty to murder in 1946 if he had possessed all of these rights.

Does any of this justify an attempt to retry him now, 46 years after his murders? Of course not.

But should the conference report's retroactivity provision become law, William Heirens will, along with every other prisoner in America, have a wealth of new legal theories to pursue in court, this man who confessed to murder. What kind of a bill is this? And they are passing it off as a tough-on-crime measure? Let me tell you something. It does not take any brains to realize it is not tough on crime. It can say all these things in it, but if it takes away enforcement rights and this

right to abuse of the process is granted, how can you decide otherwise?

Despite the length of his incarceration, William Heirens is still only 62 years old. With the new rights of appeal that the conference report's provision would give to him, it is entirely foreseeable that he could be in federal court well into the next century. and this is a man who is guilty.

(Mr. CONRAD assumed the chair.)

Mr. HATCH. Mr. President, the scenario I have just outlined is extreme. I admit that. Frankly, it is the most extreme case I can think of in terms of years but it is not unforeseeable or unlikely if the conference report becomes law. You wonder why we want a different bill. You wonder why we are fighting against the conference report. Think of William Heirens and the thousands of prisoners like him all over the country.

The possibility of William Heirens filing more Federal habeas appeals, 45 or 50, even 60 years after his conviction will be more likely than not to occur if the conference report's retroactivity provision becomes law.

It simply is outrageous if the surviving family members of these terrible crimes should have to relive this ordeal, to have half a century of appeals. This inevitably is what will happen should the conference report retroactivity provision become law.

I just cite one other. I have all kinds of others. I could go into dozens if you want. Let me take the Charles Manson, Sirhan Sirhan cases.

They were among the hundreds of death row inmates who were relieved from their death sentences in 1972 by the Supreme Court in Furman versus Georgia.

This group includes some of the most notorious murderers in American history. In the State of California alone this group includes Charles Manson, Sirhan Sirhan, Gregory Powell, the "Onion Field" murderer. I do not believe I need to describe the crimes committed by those individuals.

Each of these individuals has been in prison for more than 20 years with no hope of release, no hope that is, until the idea of reversing the Supreme Court's holdings on retroactivity was first proposed and provisions such as the one contained in the House bill.

Let us not fulfill the hopes of Charles Manson or Sirhan Sirhan. Let us not give these justly convicted criminals one more "bite of the apple," as the chairman of our Judiciary Committee would say. They deserved to be executed 20 years ago as the jury in each of those cases concluded. Let us at least leave them in prison where they belong. We owe that much at least to the victims and to the families of these victims.

Well, under the conference bill, convicted criminals, even those with life sentences, can invoke any subsequent change in the law that was favorable to them to have their convictions overturned. That is the ACLU criminal agenda.

While the Republican Crime Control Act, the one the Senator from South Carolina filed yesterday, provides for a 1-year time limit on habeas filings by State and Federal prisoners, the conference bill provides no time limits on habeas filings except for those State prisoners in capital cases. Further, the conference bill rejects the Republican Crime Control Act provision that habeas cases could only be

brought for claims that have not been "fully and fairly litigated" already by the States; overturns at least 14 Supreme Court cases that limit frivolous appeals and endless litigation in death penalty cases; and allows death row inmates who do not even dispute their guilt to file endless challenges to their sentence.

There are other things. Harmless error and appellate review view. In contrast to the Republican Crime Control Act, which maintains the harmless error standards established by the Supreme Court in these cases, the conference bill provides for automatic reversal of conviction on appeal where a trial court erroneously admits a confession elicited in violation of the 5th or 14th amendment even if independent evidence of guilt is overwhelming and it appears beyond a reasonable doubt that the erroneous admission would not have affected the outcome of the trial, overturning the Supreme Court's decisions in *Milton versus Wainwright*, and *Arizona versus Fulminante*, in 1972 and 1991, respectively.

On the exclusionary rule. In contrast to the Republican Crime Control Act, the conference bill which has been argued yesterday and today narrows the good faith exception to the exclusionary rule. It expands the criminals' rights to challenge the admissibility of incriminating evidence used against them; it reverses the *Leon* presumption that police officers are entitled to rely on a magistrate's authorization to search; and reverses the fifth circuit good faith exception that applies in warrantless searches that is broader than the *Leon* exception. The conference bill would let out on the street vicious, violent criminals who would be convicted under this Republican Crime Control Act.

On gang warfare, this is an issue that is particularly of concern to me because of the rise of gang warfare in Salt Lake City and throughout the country. This Republican Crime Control Act increases the mandatory penalties for drug distribution to minors; for using minors in drug trafficking, and for drug distribution to minors by recidivists. The conference bill contains no such provisions.

The Republican Crime Control Act establishes a new offense of inducing minors to commit crimes, creates a presumption in favor of adult prosecution for leaders of juvenile gangs and other criminal activities involved in drug trafficking or firearms, treats certain highly serious drug crimes by juveniles as predicate offenses for armed career criminal purposes, creates a new offense covering the commission of serious violent crimes and drug crimes on the part of the activities of a street gang, adds certain serious drug crimes to the list of offenses requiring fingerprinting and the retention of records for recidivist juvenile offenders, extends the range of sanctions authorized for juvenile offenders to include post-incarceration supervised release, directs the executive branch to develop a national strategy to coordinate Federal investigation of gangs, and requires inclusion of information on gang violence in uniform crime reports.

Most of these provisions of the Republican crime control bill have no counterparts in the conference bill. The few provisions in the conference bill that are similar, are weakened or watered down.

I have no doubt in my mind that the distinguished Senator from Delaware would be for every one of those provisions if he could get them in this bill. I have no doubt he is tough on crime. He wants to be tough. I respect him. We are

friends. But he is stuck with this conference report, the weakest of all the things that have been brought here on the issue of crime.

What about sexual violence? This Republican Crime Control Act doubles the maximum authorized penalty for [*S2828] repeat sex offenders, and authorizes restitution for victims of sex offenses -- sexual assault, child molestation, and child sexual exploitation -- whether or not physical injury results. The liberal conference bill contains no such provisions.

It is not time to do something in this area?

Victims rights. This Republican Crime Control Act makes the award of restitution for crime victims mandatory, and adopts other reforms enhancing the scope of restitution and enforcement of restitution orders.

In addition, the Crime Control Act filed by Senator Thurmond protects the victim's right to an impartial jury by equalizing the number of peremptory challenges accorded to the defense and the prosecution in felony cases. The conference bill contains none of these victims' rights provisions.

Let us start thinking about victims. It is one thing to protect the rights of criminals. I want to do that too. I want their constitutional rights protected. But what about the rights of victims? The conference report does not do it.

In sum, the Republican Crime Control Act is a step in the direction of fighting crime and recognizing victims' rights. The conference crime bill is a step in the direction of criminal rights and thwarting law enforcement.

Mr. President, I have no quarrel with my friend from Delaware. I know that if he had a way of putting all these provisions in his bill he would. But he is dealing off-the-wall people on his side of the aisle who basically do not want to do anything that is tough on crime, and who justify their position by standing up and saying they are for the constitutional protection of criminals' rights.

Frankly, we are all for that. I do want any defendant to be abused by a violation of the Constitution. I will fight for their rights. But I think that the conference report -- and I think anybody who fairly looks at it has to come to the conclusion -- does not fight for their rights like it should; for victims' rights. It does a pretty good job for criminal rights, but not victim rights.

Frankly, it is time we start thinking about the crime on the streets throughout our communities, communities that never before had these kind of problems. All of us are overrun with drugs, with gangs, street gangs, sexual violence, all kinds of violent offenses to our lives, and it is time to get tough about it.

To be honest with you, I do not care if there are 53 capital punishment provisions or 1. If they cannot be enforced, they are not really capital punishment provisions. Under the conference report, they are virtually unenforceable. If you look at it carefully, I do not think you can refute that statement. Some will try.

Again, I think it is time for us to get tough on criminals. The bill filed by the distinguished Senator from South Carolina gets tough on criminals. It uses the Federal power to start stamping out crime. It will result in cleaner streets, safer homes, and more safety for people throughout our society. At the same time, it lets those know who are going to commit these crimes that they are in trouble. It is about time we did that.

HATCH

I cannot tell you how disappointed I have been in the last two conferences in the last two Congresses, where we go to conference and the liberals control the conference, and they wind up getting the softest on crime things they possibly can that moot or negate the tough-on-crime provisions, such as they are, that remain in the bill, while knocking out a bunch of others that really should be there.

Mr. President, I have a lot more to say about this, but I presume this will go a little longer today and tomorrow, and perhaps days afterward. But I have to say that these things are true. I do not care how you try and gloss them over.

I know that the distinguished Senator from Delaware has to argue for his side. I feel sorry that he has to argue for that side, because it is not a good side. That is why we do not want the conference report.

We also know the conference report, if it passes, will be vetoed, and we will sustain that veto. It is an exercise in futility, because it has so many provisions that are soft on crime. It has provisions that are tough on crime, too.

I am not saying it is all bad. I support a lot of things in that bill. If you add it up in totality and look at these few provisions -- and I will talk about others later -- you have to say that all of the beating of the breast on how tough it is does not amount to one hill of beans, as long as they do not correct some of these basic errors and basic problems with Federal criminal law.

I yield the floor.

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Mr. THURMOND. Mr. President, I want to respond to a few statements made by my good friend, Senator Biden, chairman of the Judiciary Committee. He listed a number of provisions which the administration had expressed budget concerns about. We included these provisions in our new bill, and I do not understand why it is so troubling to him or anybody who said we did that.

The administration supports our good faith efforts to get a bill, and it seems that some of us are being ridiculed for trying to get a tough bill. We have gone as far as we can to get a consensus, but the situation is such that it appears it is going to be impossible. The President wants a tough bill and that is exactly what we are trying to get.

Also, he said that the Republicans were converted. I do not know what he means by that unless because we have advanced some toward their statements that we are being converted. We are not being converted, we are trying to get a consensus, if possible. We will lean over backwards, but we cannot go with this conference report because it weakens provisions of the Senate and the House. And we will not get a crime bill if we pass this bill.

Now, also the distinguished chairman of the Judiciary Committee stated that this bill does not overturn the Teague decision. If that is so, the Attorney General of the United States, and the State attorneys general, and the prosecutors are all wrong. In my opinion, the conference report does overturn the Teague decision, and I wish my good friend Senator Biden would look at this matter again.

The conference bill provisions on habeas limit the definition of nonretroactive new rules to rules that involve a clear break from precedent. This would make

that same time, more than 1,200 Americans were murdered in New York, more than 1,000 in Los Angeles, over 300 right here in Washington, DC-our Nation's Capital. We all know we have to deal with this problem in a variety of ways: more police, tougher laws, more certain punishment. But for goodness sake, one way to deal with it is also to impose a modest waiting period on the purchase of guns. We are not taking guns away from anyone. We are just saying that you have to wait for 7 days-1 week-before you get the gun. That does not seem like a very large sacrifice to make for a little safety.

I thank the Chair.

Mr. BIDEN. Mr. President, I yield myself 2 minutes.

Mr. President, we hear about tough penalties. My friend from Alaska speaks to that, and my friend from Texas speaks to that. Let me point out that a pretty simple debate, as far as I am concerned is already in the Biden bill. The Biden bill has the death penalty for gun murders, 30 years for the use of a dangerous weapon-where a gun is used in an offense-and on down the line.

In addition, we have tough penalties for people who kill cops, and why not have something that the police want, to help prevent cops from being killed?

Second, we are not talking about cooling off periods no matter how much others may speak to that. What we are talking about is giving police 7 days to find out if a person buying a gun is a criminal. It seems to me that is the least we owe the police in addition to our talking tough, acting tough, and providing for tough penalties. The police would rather have the prospect of being more likely to be alive than have a tough penalty enforced as a consequence of not having the opportunity to determine whether or not the person buying a gun is a felon who has no right to buy a gun. It is staff at the Natidebate, as far as I am concerned. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Utah is recognized for 5 minutes.

Mr. HATCH. Mr. President, let nobody make any mistake about it. If you believe in the second amendment and the right to keep and bear arms, which has been time honored in this country, this is your chance to vote for it. That is what this amendment is all about. This is the single, sole amendment that everybody knows means that you are either for or against the second amendment right to keep and bear arms. That is the amendment that is going to

distinguish those who want the right to be able to buy arms and to be able to be a sports person, a firearms collector, to protect oneself, and to avoid harassment by the Federal Government, and those who do not.

There are sincere people who feel otherwise, but that is what this vote is all about.

Second, I want to compliment Jim Baker and his state a friend. Decent, law-abiding, honest people wethat they have done. If they had t stood in here for weeks and months on end, those four provisions that have now been knocked out of the bill, this magazine ban and gun registration amendment, would be in this bill. Multiple State registration would be in this bill. The pretrial detention for gun crimes would be in this bill. And misdemeanor forfeiture of gun ownership rights would be in this bill.

If it had not been for them, we would not have knocked those things out of the bill, and everybody knows those were onerous and burdensome provisions.

I happen to be the Senator who worked with Jim McClure and Congressman VOLKMER writing the McClure-Volkmer bill. The reason we came up with that bill was because we were tired of the way decent, law-abiding sports people were treated. We changed the definition of "engaged in business" from the prior law because people were being prosecuted for selling one firearm to a .rst, criminals aw-abiding, honest people were being prosecuted. We eliminated the onerous records that they had to keep just for their ammunition. Ridiculous. We eliminated the word "inadvertent" as the standard for preapring errors in forms because people were being prosecuted because they misspelled a word.

That is how ridiculous it was. That was gun control. And that is what the Brady bill is.

Frankly, here is a chance to vote for instant check with all of the other features that have been described by my colleagues and to do something about this problem. I do not want to go back to the pre-McClure-Volkmer years. We fought hard to get that changed because we were tired of decent, law-abiding sports people getting hurt in court by people in the Government, bureaucrats and others, who just wanted to embarrass them and hurt them, and they did. A lot of good people got hurt.

Let me summarize some of the reasons I oppose the Mitchell-Brady provision. Firicantly reduced the rate of criminal violence. able to purchase handguns with or without the Brady bill. I have to tell you they

will get them illegally. They will steal them. They will do what it takes to get guns already in circulation in order to do what they want to do, in order to avoid the waiting period.

The vast majority of felonies committed with guns are committed with illegal guns. Indeed, most people who buy a handgun already own one and a waiting period is not even of theoretical value here. The high percentage of convicted felons who possessed handguns did not obtain them from licensed dealers.

Studies over the years have shown gun control measures do not reduce crime. I have to tell you this gun control measure called the Brady bill is not going to reduce crime. It is a symbol, I have to admit and it is a total sham.

We now have 20,000 firearms regulations on the books. I have to tell you, none of these laws so far enacted have significant. First, all side of criminal violence.

You can go on and on. Mr. President, I just have to say this particular vote is a critical vote and everybody here better understand this is the second amendment vote. I hope most of us will stand up and vote for our right to keep and bear arms and for not having these onerous provisions, and no longer having the burdens of the overbureaucratic system that we have in Government, that we had before McClure-Volkmer. We should not retrench and go back to the past when decent, law-abiding, honest people were getting harassed.

I know my time is up and so I yield the floor.

[pS8940]

Mr. BIDEN. Mr. President, I yield 2 minutes to the distinguished Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 2 minutes.

Mrs. KASSEBAUM. Mr. President, I would like to make a couple of points. Fd.

Mr. WELLSTONE. I do not want to talkely is a nationwide check. I do not think there is any disagreement in that.

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06/27/94

CQ's WASHINGTON ALERT

BYRD AMENDMENT NO. 1101
(TO AMENDMENT NO. 1099),
IN THE NATURE OF A SUBSTITUTE.
Senate amendments introduced
(CRTEXT 11/04/93 p.S14992; 2771 lines.)
Item Key: 28111

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BYRD AMENDMENT NO. 1101
(TO AMENDMENT NO. 1099),
IN THE NATURE OF A SUBSTITUTE.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah, [Mr. HATCH].

Mr. HATCH. Madam President, the Hatch-Mack amendment, as we all know, attempts to alleviate some of the problems by providing \$6 billion over 5 years for prisons. Half of that money will be dedicated to the construction of 10 regional prisons to house up to 50,000 State and Federal violent offenders. The other \$3 billion will be used as grants to States for operation, maintenance, jails, boot camps, and prisons.

So we provide for boot camps in here. We want to save the money. The boot camps will do that. We do agree with that, whereas the Democrat bill provides for boot camps but they do not get much for prisons. Yes, prisons have been expanded, but because of the Bush administration.

One of the first things this administration has done, the Clinton administration, is cut back on prison construction moneys by \$130 million or at least called for the cut back on prison construction funds. We do not think that is the right direction to go. We know this is the right direction based upon the facts, statistics, the actual worries of people out there, mothers worrying about their children, this constantly revolving door policy

that we have in our prisons today running these violent criminals in and out, and in just very limited, short periods of time without making them serve as they should which is causing us problems all over this country.

I have to say that we condition these grants to the States on States enacting proof-in-sentencing provisions. That is the condition of participation in the \$3 billion regional prison program, on a State's adoption of sentencing guidelines which ensures offenders will serve 85 percent of their sentences.

We require them to reform bail laws, and we provide adequate recognition of victims. They will have to require adequate recognition of victim's rights, law-abiding citizens of this Nation. We demand a 10-year prison term which means 10 years, not 2 years.

I am getting sick and tired of convicted murderers on the average being sent to jail for only 15 years of which they serve less than 6. We wonder why we have the problems we have in our society today. It is not hard to figure out, to be honest with you.

It has been suggested that the Federal prison system is not overcrowded. While it is true that we engaged in an unprecedented prison expansion effort during the Bush administration, the fact is that the Federal Bureau of Prisons is at 38 percent overcapacity. Those are the facts. We have 89,483 inmates for a rated capacity of 58,108. Do not tell me that we have extra prison space in the Federal prisons. And despite this overcrowding, the Clinton administration has failed to spend over \$1 billion in prison construction money it currently has.

Furthermore, as I have mentioned before, it rescinded \$130 million this past summer, money that was supposed to go to build a new District of Columbia jail. As well, the Department shut down a prison in Florida in

September. The truth is we still need more prison space at the State and Federal level.

My colleague from Delaware has questioned the wisdom of providing the States with prison construction money. True, the States need to build more prisons.

Mr. BIDEN. If the Senator will yield, I do not question the wisdom of providing money. My bill does provide the money. I question the wisdom of doing it the way you are suggesting it as opposed to the way I am suggesting it.

Mr. HATCH. I stand corrected then. I question the wisdom of the way you want to do with only \$2 billion when we clearly need we estimate \$6 billion to provide the prison space for these hardened criminals.

The States need to build more prisons, and perhaps they have been also recognizing this. The Hatch-Mack amendment steps up to the plate and helps the States out. Some have asserted that State correctional facilities have some concerns with the Hatch-Mack amendment. That

THURMOND

Thurmond

On delaying the bill:

(1991)

"The people of this country are demanding a stronger crime bill...It is my hope that we will not delay action on this matter, hour after hour." [1]

On prisoner education:

(1991)

"I agree that education is a valuable tool in crime prevention...however...Congress should not be imposing these literacy programs upon the States...rather they should encourage the States to adopt realistic programs which insure that funds are spent where most needed." [7]

On support for the bill:

(1991)

"When the President of the United States, the Attorney General of the United States, all the prosecuting attorneys of the United States, all the victims assistance associations, and all the law enforcement people come forward and say that this is a good bill, it ought to be passed, are we going to deny them?" [3]

(1992)

"My good friend, the chairman of the committee, has gone through a list of provisions which are contained in the conference report, such as money for boot camps; new Federal prisons; antigang initiatives; safe school programs; drug emergency grant programs; money for law enforcement. Mr President, I support all of these proposals. In fact they are all in the bill I proposed yesterday." [5]

"We do want a bill. We do not want an issue. The people do not want an issue." [5]

On criticism of the bill:

(1992)

"While I truly want a crime bill, I will not accept a bill which expands -- and I repeat "expands" the rights of criminals. This bill is not an anti-crime bill. It is a pro-criminal bill." [4]

Question 10. And, finally, do you believe that if the Congress reforms the federal habeas corpus statute in a fundamental and meaningful way, will the new statute reduce the commission of crime in the United States?

Answer. This question, suggested by others, misplaces the policy focus in the reform debate. To the extent that federal habeas corpus reform may limit the number of prisoners whose convictions are reversed, or allow the states to focus resources on new charges which might otherwise be diverted to defending judgments in federal court, there may be some impact on the crime rate. Moreover, we cannot overlook the fact that the deterrent effect of criminal punishment will be restored as greater finality to state court judgments is attained. Those who suggest otherwise would have to show that punishment has no effect as a deterrent to crime.

The more significant public policy reason for reform, however, is to increase the confidence of crime victims and the general public in the ability of the criminal justice to protect them and punish the guilty in a fair and certain manner. The multi-year odyssey of California's Harris case through the Ninth Circuit has cast doubt on the ability of the criminal justice system to handle such cases. A single, timely federal habeas proceeding, as provided in S635, will provide adequate federal court review, while protecting the interests of law-abiding citizens. Thus, it is clear that the reforms need not be justified solely on the basis of the crime rate.

[pS8727]

Mr. THURMOND. Mr. President, I hope we go ahead with this crime bill. The people of this country are demanding a stronger crime bill.

There is an amendment that has been offered here by the distinguished Senator from North Carolina. We should just vote on it and move on, and get on with the crime bill. If the amendment does not suit some people, just vote against it. If they are for it, they will vote for it.

But we ought to get on and pass this crime bill. There is no sense in holding up this matter. Here it is, 9:37 tonight, and we have a lot of work to do.

It is my hope we will not delay action on this matter, hour after hour. Today we have done very little except pass one good piece of legislation, to follow the President's recommendation on the crime bill. But I suggest we not delay further the vote on the Helms amendment and move on; move on. The amendment is before the Senate. He is entitled to have a vote on it. But let us get through with it so we can pass this crime bill.

I hope the Senate will not delay longer, but we take action and get something done.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. AKAKA). Without objection, it is so ordered.

The majority leader is recognized.

Mr. THURMOND addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, shortly, the Senate will vote on the Thurmond second-degree amendment to the Bingaman amendment. The issue before the Senate is not whether the Senate supports prison literacy programs. Both the Bingaman and Thurmond amendments establish prison literacy programs. Rather, the issue before the Senate is should the Federal Government mandate that the States institute literacy programs for all inmates? The Bingaman amendment imposes a prison literacy requirement upon all State prison systems. It requires that the States establish a mandatory literacy program in virtually every prison, jail, and detention center. My amendment, on the other hand, rather than imposing this burden upon the States and penalizing them for not acting, encourages the States to set up such a program.

I would like to address some of the points raised by my colleague from New Mexico. Yesterday, he asserted that Senator HATCH and I voted in favor of this proposal as part of S2-the literacy bill-when the Labor Committee marked up the measure. In fact, Senator HATCH and I both voted against S2.

Mr. President, Senator BINGAMAN has argued that the Senate has preempted the States in other parts of this crime bill. Specifically, he cited two amendments offered by Senator D'AMATO which enhanced the Federal penalties for firearms related offenses and authorized the death penalty for murders committed with a firearm. He stated that these amendments forced the States to adopt such penalties. However, these amendments did not force the States to change their laws. They simply expanded Federal jurisdiction to permit prosecution in Federal courts in specific cases where the States wish to defer to Federal authorities. In fact, both amendments contain language which makes clear that this expanded authority "shall be used to supplement" and "not supplant the efforts of State and local prosecutors." Simply stated, these amendments do not force the States to adopt minimum mandatory sentences or the death penalty, as my colleague has argued.

Mr. President, it is no secret that State correctional systems are financially strapped. Many have an insufficient number of prison cells and are forced to release prisoners prematurely in order to comply with Federal court orders. As Senator BIDEN noted yesterday, approximately two-thirds of the States are under Federal court order to limit the number of prisoners in their facilities. At a time when so many States are being pushed to the limit in their efforts to fight crime by building needed additional prison space, should Congress mandate that they spend their limited dollars on prison literacy programs? The answer is no. The States will still be required to establish these programs even if only half the money authorized under this amendment is appropriated. Every Senator here knows that the odds of this program being fully funded are slim. Yet, failure to implement these literacy programs will result in a loss of Department of Justice grants.

The Bingaman measure would require the States to make use of advanced technologies such as interactive video and computer-based literacy learning. The Bingaman amendment forces the States to spend their limited dollars on teaching rapists and murderers rather than children. The amendment also urges the States to pay these convicted criminals to learn. This is inappropriate. Such a program may be inconsistent with State priorities as well as proven literacy programs already in place.

Mr. President, my amendment will authorize the same funding levels contained in the Bingaman legislation. However, my amendment makes clear that this program is discretionary and gives the States greater flexibility.

keep guilty criminals off the streets due to technicalities.

For these reasons, I strongly urge my colleagues to support this vital amendment.

Mr. President, the distinguished Senator from New Hampshire [Mr. RUDMAN] argues that the current exception to the exclusionary rule are sufficient. Yet, I would like to cite an example where the current exception to the warrant requirement are not always adequate.

In Utah, a police officer pulled over a car for speeding. Before the officer returned the driver's license, he asked the driver if he could search his car. The driver consented, and the police officer found over 80 kilos of cocaine. A court later determined that the officer did not have consent, since he failed to return the drug trafficker's license before he sought consent.

This is an example of where an officer acted in objectively reasonable conformance with the fourth amendment. However, the evidence in this case was suppressed by the court. Under my amendment, which is the President's amendment, if the court determines that the officer acted objectively and in reasonable conformance with the fourth amendment, the evidence would have been admissible.

Mr. President, I want to mention this. There is a lot of talk about constitutionality of this amendment, and so forth. I would like to say that two Federal circuits, the fifth circuit and the eleventh circuit, have recognized this good-faith exception. Have you heard of police officers breaking down doors in those circuits? Of course not.

In other words, the two circuits have already held this constitutional, and those circuits have determined that it is proper under the circumstances.

Mr. President, how much time do I have?

THE PRESIDING OFFICER. The Senator has 10 minutes and 20 seconds remaining.

Mr. THURMOND. Mr. President, I want to say this: Is this a good amendment? Should it be adopted? It is in the President's crime bill. The President has come forth with a crime bill to help solve the crime situation in this country. This is one of the key provisions in that bill.

The President of the United States feels that we must do more to take criminals off the street. This amendment has been approved by four different categories of people here that I think are important.

First, the Attorney General of the United States. The Attorney General of the United States will not come here and ask this Senate to pass a bill that is unconstitutional. He would not come forth and ask this Senate to pass a bill unless it is going to help the people. The Attorney General of the United States and the Justice Department approve of this amendment. They favor this amendment. They passed it.

Another category: The district attorneys of the Nation favor this bill, The National District Attorneys Association, nationwide. This is an association of all the district attorneys in the Nation, prosecuting attorneys, the people that prosecute criminals. Do they favor this bill? Yes, they favor it. They want it passed. They need it. They said it will help them to convict these criminals and not let them go free on technicalities. The Conference of District Attorneys is part of that. The National District Attorneys Association favor this bill.

A third category of people who favor this bill are the victims groups, those who have suffered from criminals and families who have suffered from criminals. The victims groups of this country favor this bill.

The Citizens Against Violent Crime, these are victims associations, Memories of Victims Everywhere, Survival, Inc., Justice for Murder Victims, the Victim Assistance Network, Justice for Homicide Victims, the League of Victims and Empathizers, Citizens for Law and Order. All of these are victims assistance groups.

Are we going to listen to the victims here or are we going to listen to the criminals? Here is what the victims who have suffered from crimes say: they want this bill passed. The associations favor it, the families favor it. They want this bill passed. The President of the United States says he needs it. The Attorney General of the United States says he needs it. The Justice Department says we need this bill, we need this provision. The League of Victims and Empathizers, Citizens for Law and Order, they all favor this bill.

Mr. President, what about the law enforcement people nationwide? We spoke about the President, the Justice Department, and we spoke about the district attorneys over the Nation, and we spoke about the victims. How do the police officers of the Nation stand? Here is how they stand. The National Law Enforcement Council favors this bill; the Federal Criminal Investigators Association favors this bill; the International Narcotic Enforcement Officers Association favors this bill; the Association of Italian-American Police Officers favor this bill; the Crime Prevention Officers Association favors this bill; the Correctional Peace Officers Association favors this bill; the Airborne Law Enforcement Officers Association favors this bill; the Federal Investigators Association favors this bill.

Mr. President, who is the Order of Fraternal Police? That is the police association of the United States. That is not one State, that is not here in Washington. That is the whole Nation, Fraternal Order of Police. How do they stand? They want this bill passed; they have endorsed this bill. They have not endorsed the position of the Senator from Delaware. They have endorsed this provision. They

want it passed. 1. The Society of Former Special Agents of FBI. This is the agents of the FBI who are now retired, they are not connected presently with law enforcement officers. They have come forward and studied this bill and they say they favor this bill, they favor this provision which the President has asked for. They have no interest otherwise now. The National Troopers Coalition, and that is the people who wear uniforms on the highways and enforce the laws along the highways of the Nation, every State in the Nation; what is their position? They favor this bill. They do not favor the amendment by the Senator from Delaware. They favor the President's position here on this bill.

The National Sheriffs Association. Every county in the United States has a sheriff. How do they feel? The sheriffs have come forward and studied this bill, and they say it is a good bill, they want it passed, they think it will help law enforcement, they think it will help catch criminals and not let them loose on technicalities.

Are we going to tie the hands of the police? Are we going to turn down the Fraternal Order of Police? Are we going to turn down the sheriffs? Are we going to turn down the troops and say there is no merit in what you are saying, what you are saying does not amount to a roll or pins, we do not believe it, we are just not going to do anything, we are not going to pass this bill?

Mr. President, it is hard for me to believe this Senate will take that position. The Commission on Accreditation for Law Enforcement Agencies, the Hotel Security Directors Association, every law enforcement agency in this country favors this bill. I do not know of any of them who do not favor it. Not a one. Are we going to listen to them? They are the people who have to catch the criminals. They are the people who have to decide whether or not it is proper under the circumstances to pass this amendment.

So, Mr. President, I say to you, when the President of the United States, the Attorney General of the United States, all the prosecuting attorneys of the United States, all the victims assistance associations, and all the law enforcement people come forward and say this is a good bill, it ought to be passed, are we going to deny them? Here they want to enforce the law to help the citizens, they want to protect this country, they want to protect the people from violation of the law. I say to you we should pass this bill, and we should give the President what he needs, the Attorney General what he needs to enforce the law and take these criminals off the streets and do not let them get off on technicalities.

Mr. President, how much more time remains?

THE VICE PRESIDENT. The Senator has 3 minutes remaining.

Wednesday, March 4, 1992;
(Legislative day of Thursday, January 30, 1992)
102nd Cong. 2nd Sess.

The PRESIDING OFFICER. The Senator from South Carolina [Mr. Thurmond] is recognized.

Mr. THURMOND. Mr. President, I rise in strong opposition to this conference report on the crime bill. The Senate has already rejected, by way of a cloture vote, this measure. To state it simply, it does more to promote the interest of convicted criminals than it does to protect victims of violent crime. The Attorney General has recommended that this sham bill be vetoed and President Bush has stated [*S2821] his intention to veto the measure if it ever reaches his desk.

He would not veto this bill if it was a good crime bill. Why would the President want to veto it? He wants a strong crime bill, but he said he will veto this one, and he ought to if it goes to his desk.

Prior to convening the crime conference, I had expressed concerns about the ratio of Democrats to Republicans. The conference was unfairly balanced, and rigidly scripted by the majority, where the views of Republican conferees were ignored. Although this report is being called a "compromise" by some, it is no such thing. With remarkable consistency, the Democrat controlled conference committee rejected the tougher option on these major points and opted instead for provisions that handcuff law enforcement and reduce the safety of law abiding citizens. While I truly want a crime bill, I will not accept a bill which expands -- and I repeat "expands" -- the rights of criminals. This bill is not an anticrime bill. It is a procriminal bill.

HABEAS CORPUS

For example, the most troubling provision in this bill is the habeas corpus language. Although the Senate passed tough habeas corpus reform by a vote of 58 to 40 as part of S. 1241, this conference report adopts the liberal House language on this subject. It systematically reverses -- I repeat "reverses" -- over 14 Supreme Court decisions favorable to law enforcement and, according to the Department of Justice, will throw the prison doors wide open for thousands of dangerous criminals throughout the Nation. Standing alone, this provision is enough to compel the Senate to reject this conference report.

Those who support this report have stated that the habeas provision in the Senate bill is tough. Yet, they claim the conference report still limits appeals. This is not correct. Without question, this provision expands the rights of death row inmates. This death row inmates' wish list is opposed by President Bush, the Attorney General of the United States, the National District Attorneys Association which represents our city and county prosecutors, the State Attorneys General, the National Association of Attorneys General, the Conference of Chief Justices, numerous law enforcement organizations, and crime victims groups.

Thirty-one State attorneys general, 16 Republicans and 15 Democrats, recently wrote President Bush urging him to "protect the American people" and veto any bill which contains this habeas corpus proposal. That is the attorneys general of

as litigation over legal technicalities has taken precedence. The excessive litigation, not required by the Constitution, continues to face the guilty, delay the imposition of justice, and ignore the interest of victims.

Mr. President, my good friend, the Senator from Delaware, chairman of this committee, questions how I can possibly oppose a bill that is 500 pages long, because I disagree with a handful of pages. Well, these few pages are the equivalent of Congress saying that the death penalty is eliminated in every State, and the technical rights of criminals are expanded. As long as these few pages expands the rights of criminals and eliminates the death penalty, I will oppose the bill.

Long after the money for law enforcement is gone, long after all of these worthy programs that my good friend, the chairman, supports, are funded, these new rights for criminals will be on the books.

Mr. President, my good friend, the chairman of the committee, has gone through a list of provisions which are contained in the conference report, such as money for boot camps; new Federal prisons; antigang initiatives; safe school programs; drug emergency grant programs; money for law enforcement.

Mr. President, I support all of these proposals. In fact, they are all in the bill I introduced yesterday. The majority claims that Republicans are holding up these provisions. This is incorrect. We can vote on them if a tough, true conference report is given a vote. But they do not want to vote on it. Mr. President, I just want to say that the bill we introduced yesterday is a tough crime bill.

The conference report enacted here last fall took the weakest provisions of both bills, the Senate and the House. We cannot live with that and we will not live with it. We want a bill that will punish these criminals, put them behind the bars and keep them there to serve their sentences. That is my only purposes.

I have been on this Judiciary Committee for many years and I do not know anything more important to the American people than passing a tough crime bill. The President of the United States says that conference report is not a tough bill. The Attorney General of the United States says it is not a tough bill. The attorneys general of 31 States, 16 Republican and 15 Democratic attorneys general, say it is not a tough bill. The prosecutors, the district attorneys of this Nation, district attorneys in the States and the counties and the cities say it is not a tough bill. They ought to know. They have to prosecute these people.

Now, if that habeas corpus we have is so similar to the one in the conference report why not accept our habeas corpus? Maybe the staffs can get together here. Maybe they can agree to come out here with some changes and we can get a bill.

We do want a bill. We do not want an issue. The people do not want an issue. They are sick and tired of the streets being unsafe.

The Sergeant at Arms of the House of Representatives was shot in the mouth a few days ago near his home and robbed. Such as that should not occur. A staff member of Senator Shelby from Alabama was recently murdered only blocks from the Capitol. There have been other serious crimes around this Capitol. There are other serious violent crimes all over this country.

People are afraid to walk the streets. It is disgraceful.

THURMOND:

In closing, I agree with my colleague from New Mexico that education is a valuable tool in crime prevention. However, the Federal Government should not force upon the States unrealistic and costly requirements which will add to their already burdened criminal justice systems. Congress should not be imposing these literacy programs upon the States while they are struggling to comply with Federal prison cap orders. Rather, Congress should encourage the States to adopt realistic programs which ensure that funds are spent where most needed.

For these reasons, I urge my colleagues to support the Thurmond amendment.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. THURMOND. Mr. President, I yield 5 minutes to the distinguished Senator from Utah.

The ACTING PRESIDENT pro tempore. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, the distinguished Senator from South Carolina has spoken very well on this issue. As I said yesterday, I commend the distinguished Senator from New Mexico for his desire to bring literacy training to all prisoners in State and local prisons, jails and detention centers. Frankly, it is a great desire of all of us. The problem is--where do you get the funds to do it?

Second, the thing I find most objectionable about his amendment is he is again coming up with a Federal mandate that is imposed upon all the States at a time when the States cannot meet their budgetary requirements. Most Governors, if not all Governors, are having tremendous difficulties meeting the budgetary needs of their State and almost every one of them will say that he or she does not have the money to meet the educational needs of the children of the State.

Yet we are going to mandate on the backs of the States an august, very costly program that they have to comply with for prisoners. It is a worthy goal but I think sometimes we have to make priority choices.

The distinguished Senator from South Carolina has filed an amendment that basically would make this a grant program to the States, and help the States, but not make them, provide this training. Actually, the Thurmond amendment establishes a discretionary grant program under the Department of Justice which makes funds available to the States for the purpose of establishing statewide or demonstration prison literacy programs. Rather than forcing or mandating the States to implement prison literacy programs, as the Bingaman amendment does, the Thurmond amendment makes it very clear that these programs are discretionary in the States, allows States to make their own priority choices, and does not mandate these programs.

The Bingaman amendment goes even further. If the States do not comply with the mandated aspects of his amendment--and there they are all mandated--then his amendment penalizes the States by withholding Federal funds for prisoners if the States fail to implement such a program.

Many States are a little gun shy of taking another mandate from the Federal Government that may or may not be funded in the future. As I look at the legislation he authorizes it at \$10 million the first year; \$15 million, \$20 million, and \$25 million in subsequent years but none of those funds are going to cover the cost of the literacy programs for all prisoners in the States as required by his amendment. So States will have to meet the costs of these programs from their own funds.