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Various Clips on 1994 Crime Bill - '93 Spring to '94 Summer [Death Penalty]

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47 New Death Penalties. Big Deal.

By Robert M. Morgenthau

In the 1993 crime bill working its way through Congress, the proposals to put more police officers on the beat nationwide and to construct new high-security prisons are sound. Little else deserves support. The bill lacks a coherent national anticrime strategy. It is a potpourri of programs that offers something to everyone — except perhaps those who live in fear of violent crime.

Most disturbing are provisions extending the death penalty to an additional 47 Federal crimes and creating more than 60 new Federal crimes for conduct already harshly punished under state law. Legislators who think these measures will reduce violent crime fool themselves and the public.

The bill would provide no new Federal judges, prosecutors or courtrooms. That isn't surprising: the new crimes and death sentences are window dressing. I doubt the proponents expect they would lead to a significant rise in prosecutions. Consider a sec-

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tion that authorizes the death penalty for 15 Federal crimes now punishable by life in prison. They include wrecking trains, placing injurious articles in the mail, destruction of aircraft facilities, murder by a Federal prisoner serving a life sentence and "fatal violence against maritime platforms." Our streets will not be safer if they become law.

Another section would create a new Federal crime, punishable by 25 years' imprisonment, for drive-by

The new crime bill is good for politicians, period.

shootings. Why is a new Federal crime needed when this conduct is severely punished in every state?

A Senate provision would make evidence of a "commission of another sexual assault" automatically admissible in any Federal case in which a defendant is accused of such an as-

sault. This would eviscerate the longstanding principle that a defendant should not be tried for past deeds. The rule, however, would apply only to sex crimes on Federal property; only a few such cases were tried in New York City last year.

Such provisions may be good politics, but they are not good law enforcement. They divert our attention from pressing needs. I know of no law-enforcement professional who believes that all the death penalty provisions and new Federal crimes would affect public safety in the slightest. The criminal laws we need are already on the books; what's missing is the commitment to use them.

A serious program to stem violent crime must have components that are conspicuously absent from this measure.

First, we must enact strong Federal gun control legislation. By itself, no state or city can control the spread of illegal guns. Federal leadership and laws are required. Current law bans the importation of assault weapons, but not their manufacture or distribution within our borders. It is small solace to police officers that the weapons overpowering them are

made in America. Enacting a law that purports to deal with violent crimes while ignoring guns is hypocritical.

Second, an effective Federal-state anti-drug strategy is needed. While the community policing concept that the bill embraces is welcome, the beat cop is no match for organized-crime gangs that terrorize urban neighborhoods; their members must be imprisoned. Funds are needed for sophisticated investigations of these gangs. The Senate's passage of an amendment yesterday that would expand Federal officials' authority to probe and prosecute gang crimes seems encouraging. Congress should also provide funds for enforcing the Federal money-laundering statute, woefully underenforced since its enactment in 1986.

In addition, we must expand drug treatment programs so that addicts who want help can find it. New York City has 500,000 hard-core addicts and only 55,000 treatment slots, of which 34,000 are in methadone maintenance programs that serve heroin addicts only.

Third, the Government must assume responsibility for those who cross our borders illegally and commit violent crimes. There are 2,621

illegal aliens in New York State prisons at an annual cost of \$63 million. They would not be ours if the Government had kept them out of this country. Washington should pay for the incarceration of these individuals or transfer them to Federal custody. This would go far toward relieving the crushing burden on state prisons — a burden that forces the early release of violent offenders nationwide after they have served less than 50 percent of their sentences.

Fourth, we must make a national commitment to our youth. Raising children in broken homes, educating them in overcrowded schools and feeding them a steady diet of television violence is a recipe for more crime. We should earmark Federal money for youth programs in neighborhoods blighted by drugs.

The bill would establish a 22-member commission to study crime and violence and a 13-member commission to study the causes of the demand for drugs. Do we really need more studies of these problems? Instead of fancy blue-ribbon commissions, let us have an iron-willed commitment to address, on all fronts, a crime problem that may engulf us if we do not act decisively. □

J.O.P. to Challenge Judicial Nominees

Who Oppose Death Penalty

✓ By NEIL A. LEWIS

Special to The New York Times

WASHINGTON, Oct. 14 — Senate Republicans have given notice that they will challenge any of President Clinton's judicial nominees they consider insufficiently committed to the death penalty.

The effort to impose a new kind of litmus test comes as the White House is preparing to fill dozens of vacancies in the Federal courts, hoping to counter 12 years of Republican rule in which hundreds of conservative lawyers were appointed to the bench.

Senator Orrin G. Hatch of Utah, the ranking Republican on the Judiciary Committee, said that while he did not consider the death penalty a litmus test issue, he would scrutinize any judicial nominees to insure that they "are not starry-eyed about it."

"Where the death penalty is warranted, we don't need judges who look for excuses not to carry it out," he added.

Democratic Support Needed

The Republicans are in the minority in the Senate and could not defeat any nominee without some Democratic support. Nonetheless, senior Republican staff members said the death penalty is a politically potent issue and worth raising, even if they have limited success in opposing judicial nominees.

It was not clear how many other Republicans in the Senate would join in the effort to emphasize the death penalty issue in judicial confirmations, but the staff members said it was expected that many would do so.

So far, the Republicans have focused their attention on two female state court judges who have been nominated to the Federal appellate bench. As state court judges, both have ruled on several capital cases.

Conservative Report Contested

One of the judges is Martha Craig Daughtrey, the only woman on the Tennessee Supreme Court, who has been nominated for a seat on the United States Court of Appeals for the Sixth Circuit, in Cincinnati. The other is Rosemary Barkett, the first female Chief Justice of the Florida Supreme Court, who has been nominated for a seat on the United States Court of Appeals for the 11th Circuit, in Atlanta.

The Free Congress Foundation, a conservative lobbying group based in

'We don't need judges who look for excuses not to carry it out.'

Washington, has issued a report saying Justice Daughtrey has never voted to affirm the death sentence as a member of the Tennessee Supreme Court.

Hal D. Hardin, a Nashville lawyer who supports Justice Daughtrey, said the report was flawed. He issued his own report showing that Justice Daughtrey voted to affirm death penalties several times when she was on the Tennessee Court of Appeals, and in one instance as a member of the State Supreme Court.

Mr. Hardin said his study of Justice Daughtrey's record proves that she is not opposed to the death penalty in all circumstances, as her opponents have charged.

The Senate Judiciary Committee is expected to take up Justice Daughtrey's nomination next Wednesday.

Florida Victory Cited

Chief Justice Barkett, whose hearing has not yet been scheduled, is a former nun and schoolteacher. Under a Florida system in which sitting state judges have to win a majority every six years in an election to decide whether they are to be retained, she won 61 percent of the vote last year.

In winning retention, Chief Justice Barkett had to overcome a strong campaign by abortion opponents and leaders of groups like the National Rifle Association who accused her of being soft on crime.

During the campaign she distributed statistics showing that she had supported the death penalty in more than 200 cases.

One of her decisions that angered conservatives was a 1989 ruling that drugs seized by the Broward County police in random searches of interstate bus passengers could not be used as evidence because the passengers could

not reasonably be expected to assert their rights to object. But the United States Supreme Court reversed that ruling in 1991 by a vote of 6 to 3.

Clinton and Death Penalty

Senator Hatch said he had several questions for both Justice Daughtrey and Chief Justice Barkett to see if they are "serious enough about the death penalty."

A senior official in the Clinton Administration said the White House would not nominate someone to the Federal bench who was opposed to the death penalty in all circumstances. The President has long supported the death penalty in some circumstances and, as Governor of Arkansas, allowed several executions to take place.

Since 1976, the Supreme Court has allowed states to resume the use of the death penalty provided they follow certain procedures intended to make its application more fair.

Administration officials said Mr. Clinton was still considering his plan to nominate some judges who have expressed opposition to a woman's right to choose abortion. The officials said there are a handful of candidates whose records are being scrutinized for their statements on abortion rights.

Those candidates would be closely questioned, the officials said, to insure that despite their personal views, they would be able to conform to the Supreme Court's stance that abortion is a constitutional right.

Abortion rights groups have expressed dismay about the President's plans to name such judges.

F.B.I. Asked to Review Charge of Harassment

✓ WASHINGTON, Oct. 14 (AP) — Senator John Glenn, Democrat of Ohio, said Wednesday that he wanted the Federal Bureau of Investigation to investigate whether bureau officials retaliated against Suzane J. Doucette for accusing a superior of assault and sexual harassment.

Ms. Doucette, 39, asserted on Monday that the bureau placed her on unpaid leave as retribution for her accusation in testimony before the Senate Governmental Affairs Committee in May.

"It is imperative that the Congressional committees obtain testimony from their witnesses without any fear of reprisal," Senator Glenn, the chairman of the committee, wrote in a letter to the F.B.I.'s Director, Louis J. Freeh.

Mr. Glenn noted that Ms. Doucette, who was based in Tucson, Ariz., testified that "shortly before the hearing, she was informed that she was the subject of an investigation, although she was not told the nature of the investigation."

Justice Official Is Confirmed

✓ WASHINGTON, Oct. 14 (Reuters) — The Senate confirmed Walter Dellinger as Assistant Attorney General in charge of the Office of Legal Counsel by a 65-34 vote on Wednesday. The vote on Mr. Dellinger, a constitutional law expert at Duke University, was held up last week by a filibuster by Senator Jesse Helms, Republican of North Carolina. Mr. Helms and the state's other Republican Senator, Lauch Faircloth, said Mr. Dellinger was too liberal. The counsel's office advises the attorney general on the constitutionality of Government actions and Congressional bills.

Crime: The People Want Revenge

By PAUL JOHNSON

Britain and the U.S. between them created the modern concept of democracy. But there are times when I wonder whether democracy actually works in either country. My doubts become most pronounced when the topics of crime and its punishment come up, and I compare how they are actually dealt with by the authorities with what the public wants done.

"Wants" is the key word. For the essence of democracy is not one-person-one-vote. Most Africans have got that and what good does it do them? Nor is the essential question whether you have a presidency or a constitutional monarchy, and a congress or a parliament. These are details. What makes democracy real is a working system that translates the reasonable wishes of the mass of the people into the actual performance of government.

Cynics will say that no such system does or can exist—but that is nonsense. During the 19th century and for most of the 20th, the U.S. Congress and the British Parliament were remarkably effective in reforming and improving institutions in accordance with the wishes of the people. That is why both societies proved so stable and virtually impervious to the revolutionary shocks that made the modern history of so many other advanced countries unhappy.

Life and Liberty

Now doubts have arisen and they are particularly nagging in the area of law and order. Governments have a fundamental obligation to do three things: manage a country's external defenses, uphold internal order and maintain an honest currency. Of course they can do many other things, but these are the three essentials because only government can do them. The more governments attempt to do, the more likely it is that one or another of these basic roles will be badly carried out. Usually it is the third that is forgotten, for activist governments tend to produce inflation, and hyperactive governments, as we see in Latin America, produce hyperinflation.

However, even in steady democracies like the U.S. and Britain, where inflation has never gotten out of hand and is, in fact, well under control at present, the feeling is growing that government now performs its second function very badly indeed. Throughout this century, governments in both countries have systematically taken on responsibilities for welfare, health, education, housing and even culture that were hitherto discharged by citizens themselves. At the same time, a reverse process has been taking place in the protection of life and property.

Government has become so ineffectual in this field that individuals have to act on their own behalf. Inner-city apartments have become miniature fortresses. Private security is one of the fastest-growing industries in both countries. In the U.S., the number of women carrying defensive weapons, chiefly handguns, has risen dramatically. A ubiquitous new institution in Britain (already common in the U.S.) is "neighborhood watch," a scheme whereby neighbors band together to protect each other's property. Vigilantism indeed is now making its appearance in Britain for the first time in centuries, to strong public approval, and in the U.S. citizens who gun down habitual criminals are acquitted by juries and become popular heroes.

Behind this grim reliance on self-protection and contemptuous cynicism for the efforts of government lie two convictions burned into the public consciousness. The first is a universal perception that crime, not least violent crime, has increased to the point where it is effectively out of the control of authority. Academic criminologists, wielding batteries of statistics, sometimes argue that this public perception is false and based on what they sneeringly term "anecdotal evidence." But

what other kind of evidence do we have to go by for our knowledge of most things? People form conclusions by what happens to them, their families, friends and neighbors; and if all, virtually without exception, are victims of crime, then they understandably conclude that the balance of advantage has decisively shifted to the criminal.

The statistics, as it happens, bear out this conclusion. Commenting on them, the chief constable of one of Britain's largest police authorities recently stated flatly that crime now pays in Britain. Surely this is one reason why the number of criminals, professional and amateur, is rising. It is probably true to say that, in both Britain and the U.S., crime is an industry growing even faster than private security.

Recently I have been rereading the remarkable studies that Henry Mayhew carried out in London in the 1840s, and published as "London Labour and the London Poor" (1851). His fourth volume deals comprehensively with the criminals of London, then a city of about 3 million people. He was able not only to identify every category and sub-type of criminal activity in the city but in almost every case to pinpoint their geographical location. What he was describing, in fact, was a specific criminal class, distinct from society as a whole and almost by definition firmly under its control. Crime could not finally be ended. But it could be contained, and eroded.

Today it would be impossible for a modern Mayhew to publish such a survey of New York or London or Los Angeles. It is not just that these cities are bigger (14.6 million, 9.1 million and 10.1 million people, respectively) but that crime is no longer localized: It is everywhere and permeates society. It starts earlier. Last February in Liverpool, two 10-year-olds abducted and cruelly murdered a two-year-old. In Los Angeles, 100,000 children under the age of 14 belong to gangs armed with lethal weapons. Crime also now affects the lives of the aged to a degree hitherto unknown. It is not uncommon, in London, for women over 80 to be raped and murdered by young thieves who break into their apartments to steal. Indeed, in cities on both sides of the Atlantic, the aged and defenseless in the inner cities have now lost their freedom of movement, just as young children can no longer be allowed to play in the streets.

Crime now transcends sex, as more and more women become both victims and perpetrators of it. Thanks principally to drug abuse, it transcends class and occupation and educational barriers. Everyday crime is no longer confined to inner-city ghettos. Figures released last week show that in Britain it is rising fastest in rural areas; old-fashioned, conservative shires like Wiltshire and Hampshire now produce devastating statistics of robbery with violence, rape and malicious wounding. In the U.S., crime has become routine in smaller cities and townships. Everyone, rich and poor, old and young, black and white, educated and illiterate, is now at the receiving end of crime—or perpetrating it.

Yet at a time when crime is having a more direct impact on the lives of us all than ever before, the treatment of it by authority is becoming less and less democratic. In both Britain and the U.S., opinion polls, conducted over many years, show that public opinion, in its attitude toward crime, is overwhelmingly repressive. As crime increases, ordinary people not surprisingly become more and more hostile toward criminals. They do not want to "understand" criminals; they are not even much interested in reforming them. They want them punished, as severely and as cheaply as possible. Habitual and violent criminals they want taken out of society altogether, preferably for good. They favor punishment that is deterrent and retributive.

Hanging for Murder

The attitude of ordinary people indeed is essentially vindictive: They desire revenge. That is why, for instance, large majorities in both Britain and the U.S. support capital punishment for murder. In

Britain, where hanging for murder was abolished in the 1960s, the popular majority for its restoration has never fallen below about 75%.

But what authority actually does about dealing with crime bears no relation at all to popular wishes. In both countries, the liberals captured power over the administration of crime and punishment in the 1950s and have never relinquished it. On the contrary, their grip has tightened. As crime rises and affects the lives of more and more people, so liberal remedies are applied, with ever-increasing obstinacy and at mounting expense. The reasons lie in the nature of modern government, where lobbies, pressure groups and organized minorities exert more influence over specific areas of policy than the mass of the people.

This principle applies particularly in the field of crime. In both Britain and the

Large majorities in both Britain and the United States support capital punishment for murder. But what authority actually does about dealing with crime bears no relation at all to popular wishes.

U.S., a permanent working alliance exists between, on the one hand, liberals in academia and the media, and, on the other, their counterparts in government and its agencies, in private and trade union lobbies, in the courts and in law firms. In practice, these people draft the legislation that governments then sponsor and Congress and Parliament enact.

This legislation is overwhelmingly liberal in character and is designed essentially to protect the rights and interests of the wrongdoer rather than those of the victim, who has no lobby. This explains, for instance, why the British Conservative government, theoretically committed to a repressive line on crime, has in fact put through such ultraliberal measures as the Children's Act of 1989 and the Criminal Justice Act of 1991.

Liberalism as the answer to rising crime has been applied in both the great democracies now for the best part of half a century. It has been tested to destruction. It has failed everywhere, overwhelmingly and manifestly—except in one region: the minds of its advocates. For them liberalism is a religion, an article of faith, born of conviction and not susceptible to proof or disproof. And as they continue to control, in practice, the way in which society officially responds to crime in both countries, so they nourish the monster strolling in our midst by increasing its liberal diet.

Ordinary people, in the meantime, perceive that, in this central field, democracy does not work at all. They shrug their shoulders and set about protecting themselves, as their primitive ancestors did before the state had been invented. It is not a healthy state of affairs. In fact the failure of authority to carry out the public's wishes on crime is even more corrosive of society than rising crime itself.

Mr. Johnson's most recent book is "The Birth of the Modern" (HarperCollins, 1991).
