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Various Clips on 1994 Crime Bill - '93 Spring to '94 Summer [Editorials/Op-Eds] [2]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. article	re: On Reverse Side of Newspaper Article "A Murderous Double Standard" [Personally Identifiable Information] [Partial] (1 page)	09/23/1993	b(6)

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2009-1305-F

jp3651

RESTRICTION CODES

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

Freedom of Information Act - [5 U.S.C. 552(b)]

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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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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A Murderous Double Standard ✓

Affluent whites' lives are valuable; poor blacks' lives are not. That's one dismal conclusion when a country accepts wholesale slaughter in ghetto streets, then gets outraged over the murders of three foreign tourists in Florida.

Americans need to understand that the lives they value and those they don't are intimately connected. The murderous ghetto children we now grow can no longer be held to preying on their own. It's time the country changed its attitude about what are now regarded as garden-variety murders.

The furor over the killings of the tourists sparked an illuminating moment last week during a vigorous search for black suspects in Jefferson County, Florida.

Jefferson County blacks saw the search itself as evidence of a double standard. A black resident who was murdered three weeks ago received less investigative attention, and no suspect had yet been charged. Blacks were also right to be angry when the sheriff told reporters that the murdered tourist was the first person slain in the county this year.

A slip of the tongue, perhaps, but revealing nonetheless.

The tourist crimes are lamentable. But they must be seen against the backdrop of a violent nation that mourns death unequally. Of 1,191 murders in Florida last year, 22 victims were from outside the state. Each death was horrible in its own right. But the continuing horror, documented by the F.B.I., is that there were 24,700 murders nationwide in 1991, most of them involving guns.

A Health and Human Services Department

report last week showed that young black men aged 15 to 24 were 10 times more likely to die from homicide than their white counterparts were. Gun-shot deaths for black males between those ages more than doubled between 1985 and 1990.

That much death from disease would prompt a public health emergency. But murder among young black men has seemed less a problem because it was confined to the inner reaches of the largest cities. Now the most dramatic increase in murder — up 21 percent from 1990 to 1991 — is happening in medium-sized cities, those with populations between 50,000 and 100,000.

In the 1980's it became fashionable to despair of solving social problems by anything other than Darwinian means. The young killers have gotten the message. Society has deemed them disposable and now they're responding in kind.

Americans are shocked when the young killers break out of their preserves by invading commuter trains, attacking tourists, hijacking cars, bringing with them the lessons that lawlessness teaches.

To stem the rising tide of murder, we'll need to stem the tide of guns. Beyond that we'll have to shake off the casual attitude we've come to have about murder among our poorest citizens. At the barest minimum that means enforcing the law just as vigorously whether the victim is a tourist from abroad, an American citizen in small-town Florida or a single mother in a New York housing project.

If equal enforcement of the law is too much to ask, then zones of lawlessness will grow and grow, eventually overwhelming us all.

CLINTON LIBRARY PHOTOCOPY

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[001]

(b)(6)

Bart
Sherce
Gordon

OPINIONLINE

What people are saying about emerging information highways

Megadeals redefine 'big'

THE DETROIT NEWS in an editorial: "Early on in the Clinton administration, Vice President Al Gore was talking about 'the information superhighway.' ... Naturally Mr. Gore saw it as a government project. But while Al Gore and Washington were talking about it, Bell Atlantic and TCI went ahead and did it. ... The information revolution is emerging before our eyes, and the best thing Washington can do is stay out of the way. ... Expecting Washington to produce helpful policy in this area is like saddling up an elephant to run in the Kentucky Derby."

PETER BART, *Variety*: "Will every prospective merger in the future set off the sort of Pac-Man feeding frenzy we've witnessed in recent weeks? ... Bigness is one thing. We're talking about elephantiasis here. In examining the remarkable innovations in the computer industry, much of the energy emanated from small companies or start-ups. What impact will 'hugeness' have on industries that depend, most importantly, not just on capital but on imagination?"

THE CHRISTIAN SCIENCE MONITOR in an editorial: "We hope the deal prods Congress and the FCC to give more thought to the superhighway's rules of the road. We say that with some trepidation: An unintended outcome of Congress' effort to rewrite cable TV regulations has been an increase in rates for many people who were told that rates would fall. ... Yet the vision driving technological advances and corporate acquisitions seems to be clearer than the regulatory vision needed to anticipate and adapt to these changes."

JEFF COHEN and NORMAN SOLOMON, syndicated columnists: "The advent of cable

in the 1970s was heralded as the high-tech breakthrough that would transfer media power from a handful of broadcast companies to the public. It didn't. Today we're told that new technology will bring us a 'superhighway' of information and entertainment through our phone line — and nearly limitless democratic choices. It won't. The myth is that you can solve a political problem — media power concentrated in too few hands — by technological means. The reality is that political problems must be addressed through political means."

KURT ANDERSEN, *Time*: "Since show-business executives are uncommonly sensitive to go-for-it twitches, it would have been weird if a competing bidder had not stepped in to turn the friendly merger of Paramount Communications and Viacom into the high-strung, insanely complicated struggle it became. ... The great industrial consolidations of the Rockefellers and Harrimans a century ago were simple-minded checkers games by comparison to this 3-D chess match. Tracking the corporate cross-purposes and potential conflicts of interest makes the brain hurt."

PETER COY, *Business Week*: "The seven Baby Bells that were spawned in the court-ordered 1984 breakup of American Telephone & Telegraph have skirmished from the start. Until now, though, it has been mainly low-intensity, resembling the maneuvering of preening entrants in a beauty contest. ... On Oct. 13 ... the preening turned to war. In this conflict, the winners are assured major roles in the explosion of information and entertainment services; the losers are left to defend the slow-growth business of plain old telephone service."

A tired crime-fighting idea rises again — more cops

Sharon Pratt Kelly, mayor of the nation's capital, thinks she has a new idea for getting tough on crime: Bring in the National Guard. In truth, she's just repackaged the oldest political placebo for crime — putting more cops on the beat.

It's an approach that always sells because it's simple, and with violent crime up 41% in 10 years, it's likely to sell again this year. Polls show Americans' No. 1 concern is now violent crime, and mayoral candidates from Atlanta to Buffalo this fall are offering their quick fixes.

In the capital, not only is President Clinton considering helping Kelly, but he and Congress also have proposed spending about \$600 million a year to help cities and states put as many as 50,000 more cops on beats around the nation — increasing police forces 9%.

But will adding more police do any better than the last great crime answer from politicians — putting more drug users and dealers in prison?

The drug war increased the prison population from 329,000 in 1980 to 925,000 last year. And crime got worse.

Indeed, that crime solution may actually have contributed to today's violent

crime problems. Its imposition of stiff mandatory sentences for even minor drug offenses led to a doubling in the number of instances in which accused small-time dealers sought trials — overloading both prosecutors' time and court dockets. And by overcrowding prisons, too, the drug war led to quicker release of violent offenders.

Simply adding police may do no better. A *Washington Post* study of 1,286 slayings in the capital from 1988 through 1990 found only one in four resulted in convictions, though more than half resulted in arrests.

Some cases were dropped because overtaxed prosecutors couldn't gain indictments in time, others because overworked detectives couldn't find the needed witnesses.

Adding police or tossing in the National Guard are no more than Band-Aids pasted on a hemorrhaging criminal justice system.

The cure begins with better diagnosis — not just of the system itself, but of the social breakdown that overwhelms it.

► Send in the Guard?, 1A

CONGRESSIONAL leaders and the administration had just about settled on a crime bill that was expected to sail through both houses by the end of this month. Starting with a bill that passed both houses and was reported from conference last year but not passed, legislators made a couple of changes and announced last month that the bill was ready for recycling and that passage was practically ensured. Opponents of the death penalty and provisions curtailing habeas corpus rights were led to believe that their protests would be futile and their objections overridden.

None of this is necessarily true. Last week, the Black and Hispanic caucuses in the House joined forces to request a slow-down in the process, demand some hearings and voice objections to the general punitive nature of the bill. In addition, four freshmen on the House Judiciary Committee have gone on record opposing fast-track treatment and emphasizing the need for a full, public review of all proposals before a floor vote is scheduled. And on Tuesday, Rep. Craig Washington introduced an alternative bill on behalf of these groups and others who have reservations about the leadership proposals. It provides a counterweight to those at the other

end of the political spectrum who believe that long mandatory sentences and curbs on defendants' rights are the only sensible response to crime.

Mr. Washington's bill contains no new death-penalty offenses, abolishes mandatory minimum sentences and, unlike the leadership bills, imposes no deadline for filing habeas corpus appeals. It emphasizes alternatives to prison, addresses racial disparity in sentencing and suggests reforms in the civil asset forfeiture program, which even conservatives such as Rep. Henry Hyde say are needed. The bill has more than two-dozen sponsors, including many representatives who are neither caucus members nor freshmen.

Will the Washington alternative in its entirety be passed? Probably not, for unfortunately there are plenty of votes on the Hill for some of the original bill's worst features. But it is important that the opposition has drafted a bill of its own, which clearly delineates the areas of disagreement with the leadership. It deserves to be debated. The arguments made may change some minds. And the discussion will force legislators to consider the full impact of the harsh provisions that richly deserve to be defeated in the leadership bill.

Taking Stock of Options

WHILE IT MIGHT look at first like a minor point in accounting, legions of people are ready to tell you that the fate of Western civilization hangs on it. A large delegation of those legions appeared before Sen. Christopher Dodd's banking subcommittee yesterday. The issue is the way the rules of accounting handle the stock options that some companies give their employees, usually the top management. The legions warn heavily that any change will damage, no doubt fatally, the growth of new ventures—especially in the high technologies. And there goes the country's future.

Under the present rules, companies usually do not have to show any charge against earnings for the options they bestow on their officers. To increase the chairman's salary by \$1 in cash will decrease profits by \$1. But to give an option worth \$1, under most circumstances, has no effect on profits as they are reported in the statements to shareholders. The defenders of this practice point out that new companies have little cash and can best attract talented managers by supplementing salaries with promises to cut them in on future profits. Since the promises don't affect the companies' cash flow, this argument goes, they shouldn't affect the reported

profits or—the real point—these companies' stock prices.

The accounting industry's rule maker, the Financial Accounting Standards Board, sees the issue differently and proposes a change. Future promises have present value, it holds, and that present value ought to be reported as a cost where shareholders can see it.

The requirements for intelligible reporting of executives' compensation have been greatly improved over the past year or so. These companies ask plaintively why it's necessary to go farther and report more details when that might hurt the price of their stock. The question answers itself. Sophisticated investors immediately discount the impact of any stock options they can see. The FASB's proposed rule would affect stock prices only in cases in which the cost of the options was not fully apparent under the present procedures.

There's no national interest in promoting the growth of companies, high tech or otherwise, through obscure or misleading accounting. The real interest is in the integrity of markets and efficient allocation of capital. The FASB's proposed rule deserves support. The goal in financial reporting is not only truth but the whole truth.

THE WASHINGTON POST
Friday, October 22, 1993

The Veterans' Health Care System

THE VETERANS' health care system is both overbuilt and underfunded. The hospital network is larger than the eligible population can support. The alternatives are to close some hospitals or to add to the supply of patients, which would likely involve admitting some nonveterans. The veterans' groups have resisted both, but the resistance has weakened over time, and now the Clinton administration may have found a way out of the policy box.

As an aspect of health care reform, it would allow (and require) the veterans' facilities to compete for business—and sink or swim—on much the same basis as other providers. Some facilities would eventually close, but no one in authority would have closed them—and the wider they opened their doors, the greater would be their likely revenues and chance of survival.

That's the bargain that has been offered the veterans' groups. The lines haven't all been drawn yet—who would be admitted, who would not, in what order of priority and how subsidized would the veterans' hospitals remain. But the outline is clear enough. There would still be a separate veterans' health care system, but it would be reduced in size and partly open to a broader public as a condition for survival. So far, although with the blanks still to be filled in, the veterans' organizations seem to be buying it. The veterans' problem may be on its way toward solution even if the broader health care problem is not.

Congress is partly responsible for the present excess. Over the years it has treated veterans' hospitals partly as public works and built them to meet political as well as medical needs. Now, howev-

er, the veterans' population, the large World War II cohort particularly, is aging and has begun to decline. In some parts of the country, Sun Belt communities particularly, there are still shortages of beds, but elsewhere there is increasingly a shortage of bodies.

The administration would let the Department of Veterans Affairs offer a health insurance plan in the same way as other insurers and providers. The department would still provide free care to veterans with service-connected disabilities and those below certain income cutoffs. It would bid for the business of other veterans, and to the extent they came, the veterans system would be reimbursed by their insurers, whether private, Medicare or some other. "We believe that the [veterans' system] is in a position to be the clear choice of many veterans," Secretary of Veterans Affairs Jesse Brown testified the other day.

If veterans alone don't provide enough patients, you hear it said that the system could be opened to their dependents or the dependents of active-duty military personnel. And if that didn't work? Might the hospitals then be opened up in limited ways to the public more generally? That's left to the future—George Bush's good Veterans Affairs Secretary Edward Derwinski was fired in part for having suggested such a step—as is the question of how large an appropriation the veterans' system still would need. It's now \$15 billion a year, and veterans' spokesmen are already gearing up lest a future budget director try to reduce that once the hospitals are receiving funds from other sources.

But the outline of a solution to the veterans' health care problem has been put gingerly in place. And that's important progress.

A Crime Bill With No Hope

The stiffer sentences and mandatory minimum prison terms of recent years were supposed to reduce crime and make us feel safer. What they have done is to fill our prisons to the point where we are letting unreformed inmates out the back door in order to make room for the newly convicted. Our jails and prisons are full, our budgets strained to the breaking point—and our streets as unsafe as they've ever been.

So here comes the Clinton administration with a crime bill that would—what else?—provide stiffer sentences—including longer terms, limitations on appeal rights, easier transfer of juvenile suspects to adult courts and greatly expanded recourse to the death penalty.

The proposal calls to mind the homespun wisdom I've heard repeated several times this year: If you find yourself in a hole and you're wondering what to do about it, the first thing to do is stop digging.

The administration bill and a Republican alternative both fail to grasp what should by now be obvious: that we can't punish our way out of our crime problem and that efforts to do so amount to trying to dig our way out of a hole.

The people who propose these things are not stupid. They just keep learning the wrong thing. What they learn is that for many offenses—and many offenders—increased punishment does work. Put a few overcharging cabdrivers in jail and overcharging will be greatly diminished. Hike the charge for overtime parking from \$3 to \$25 and we'll keep a closer eye on our watch.

But for some offenses—notably crimes of passion and crimes of despair—severity of sentence is of little consequence. America's middle class understands the first. Thus we are not surprised to learn that doubling the minimum sentence for manslaughter is likely to leave the manslaughter rate unchanged.

We don't understand the second. We don't begin to understand that the threat of jail, or of an increased prison term, doesn't mean much to a youngster who is convinced that (a) he won't get caught, (b) he could get lucky and beat the system and (c) his life was headed nowhere to begin with. Yet because we ourselves respond to such threats, we keep imagining that the solution is to make the threats stronger: jail time instead of probation for the fledgling crook; mandatory terms for drug dealers (including those who deal primarily to supply their own addictions), longer and more certain terms for violent offenders and, as the administration bill proposes, a broader schedule of crimes for which the penalty can be death.

Surely, we reason, the threat of death must deter.

Really? To what extent would it deter the gangbangers, who take it for granted that long life is not in the cards for them? Would a federally enacted death sentence deter the drug dealers for whom the threat of death—quickly meted out by a rival dealer, with no clemency or appeal—is a fact of daily life?

The American Civil Liberties Union has attacked the crime bill, a huge chunk of which is a carry-over from legislation that failed last year, on the expected grounds: its broadening of the death penalty without protection against its racially biased application, its limitations on legal appeals (especially of capital cases) and its lengthening of sentences with no showing that longer sentences reduce crime.

My objections are closer to those voiced by Malcolm C. Young, executive director of the Washington-based Sentencing Project—principally that the legislation has nothing to do with crime prevention.

The crime that may lead a frightened America to take a chance on this flawed bill has its roots not in inadequate punishment but in unformed consciences. The rest of us may violate societal rules whose validity we nonetheless accept. The youngsters we so fear are not backsliders from an accepted fath; they are social infidels. Our values are not their values, our expectations are not their expectations, our fears are not their fears.

None of this means that we shouldn't punish—even severely—those who violate the law. It means only that the problem—and any hope for solution—begins much, much earlier.

We need to undertake the painstaking work of promoting our values, our unquestioned hope for the future, our taken-for-granted belief in mutuality. We need to give our young people both hope and a conscience.

That takes attention and resources at the front end. The crime bill would make the principal investment at the back end—in the criminal justice system—where it's already too late.

And who can doubt that if this misguided approach becomes law and fails (as it must) the response will be a demand for still tougher punishment? As some wise person put it, one definition of insanity is to keep doing the same thing the same way and expect different results.

Maybe it's too much to expect a nation petrified by crime to do different things a different way—by undertaking serious prevention and, yes, redemption.

But can't we at least stop digging?

A Proposal for the Chief

POLICE CHIEF Fred Thomas is right on the money when he says, "We need a larger presence on the streets." In this emergency, the city's trained police officers should be deployed in patrol work. But in the 7th District, the most violent section of the city where 29 percent of all homicides can be traced, too many cops who ought to be out working beats apparently are instead inside performing jobs that civilians should be doing. City leaders are lobbying the federal government for use of the D.C. National Guard and more money to pay police officers overtime to work in crime-ridden neighborhoods. But as city officials are busy seeking crime-fighting help from the Clinton administration, consider the action that's taking place behind the lines at 7th District headquarters:

- One sergeant is doing the budget;
- Two uniformed officers do payroll records;
- Two sergeants and two uniformed officers file records and order supplies;
- One uniformed police officer repairs motorcycles;
- Two uniformed officers put pins in maps and track crime trends and totals—that's called Crime Analysis;

■ Three desk sergeants and nine uniformed officers are assigned to the station clerk's office to assist people at the counter.

That comes to 22 experienced police officers off the beat and engaged in clerical work in an area crushed by a disproportionate share of the District's violence. If the remaining six patrol districts, the Special Operations Division and other headquarters units have other uniformed officers dedicated to similar activities, it's easy to see why the public, which is supporting a department with more police per capita than any other urban force in the country, complains bitterly that there's no cop there when you need one.

The answer to this problem isn't hard to find. Chief Thomas need look no farther than the three-year-old Rivlin Commission report, which identified the department's wasteful practice of assigning uniformed managers and officers to administrative and staff functions. The safety and well-being of citizens can't be protected by police officers sitting behind closed doors. The commission recommended reassigning those duties from uniformed officers to civilians. It made sense then. It surely does now.

In America

BOB HERBERT

Violence in The State Of Denial

Altaf Quershi was a 27-year-old immigrant from Pakistan who was chasing the American dream in a yellow taxicab. He drove the cab to hustle money for his education, carrying passengers over the pocked and rutted roads of the outer boroughs, hoping eventually to go to law school, or maybe the journalism school at Columbia.

He lived in Brooklyn and died in Queens, the victim of the flip side of the American dream, which is the American way of violence.

Mr. Quershi's body was found last Saturday, lying face down on the floor in the front of his cab. He had been shot in the head, apparently by a robber. The body remained in the car, unreported, for nearly two days and then a tow truck was summoned and it carted both the taxi and Mr. Quershi away.

We can crane our necks and peer across the oceans for as long as we please in search of a threat to America, but the gravest threat, without a doubt, is the epidemic of murderous violence here at home. Altaf Quershi was the third New York City cabdriver murdered in just one week. He was the 32d driver murdered this year. Last year 45 were murdered. The cabbies are frightened and fed up, and yesterday a couple of thousand of them drove around Manhattan in protest, tying up traffic for hours.

But the problem is hardly confined to New York. Much of the United States has become saturated with vi-

olent crime. During the 1980's more than 7,600 people were murdered while at work, according to the National Institute for Occupational Safety and Health.

Citing just one week in August 1989, the institute reported that the "owner of a pawn shop, a convenience store clerk, a psychologist, two sanitation managers, a tavern owner, a fisherman, a cook, two cabdrivers, a co-owner of a furniture store, a restaurant manager, a maintenance supervisor, a video store owner, and a postal carrier were all victims of workplace homicide."

It's becoming more and more difficult to remain in a state of denial about the extent of the violence. It is overwhelming local authorities. The carnage on the streets of Washington D.C. prompted Mayor Sharon Pratt Kelly to ask President Clinton for authority to call out the National Guard to serve as support troops for the police. Her appeal was turned down.

In Florida the murder of tourists was big news, but there have also been several less-publicized encounters there between armed criminals and elected officials. A State Representative and her husband, a Dade County commissioner, were held up at gunpoint over the weekend. The thief drove off with \$500 and the commissioner's county car. Three years ago the Mayor of Miami had to reach for his own gun to chase burglars from his home. Last year the Dade County Manager was robbed at gunpoint, and earlier this year a former Miami police chief shot at burglars who were trying to rob his home.

Carjackings, killings at school, kidnappings, rapes and muggings at the mall — the flip side of the American dream.

The Clinton Administration's biggest response so far has been to attack the television networks. Attorney General Janet Reno has warned TV executives to curb some of the small-screen violence, or else — whatever that means. Ms. Reno's stern warning may send a chill through some network offices but it will have zero effect on violence in the United States. Heavily armed, drug-dealing gang members don't much care whether "N.Y.P.D. Blue" is toned down, cleaned up or even taken off the air.

Lee Brown, the President's principal drug policy adviser, went up to Capitol Hill last week to present the Administration's plan for combating illegal drugs. That would be a critical component in any fight against violent crime. But Mr. Brown's office has already been seriously handicapped by the President, who cut the staff from 146 employees to 25, and who agreed to reductions in drug treatment and education funding that totaled nearly a quarter-billion dollars.

Public anxiety about crime is rising. The toll that crime is taking on the American way of life is growing. But the Clinton Administration, committed to other struggles, like health care reform and the North American Free Trade Agreement, is not yet paying close enough attention. □

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Crime

A Murderous Double Standard ✓

Affluent whites' lives are valuable; poor blacks' lives are not. That's one dismal conclusion when a country accepts wholesale slaughter in ghetto streets, then gets outraged over the murders of three foreign tourists in Florida.

Americans need to understand that the lives they value and those they don't are intimately connected. The murderous ghetto children we now grow can no longer be held to preying on their own. It's time the country changed its attitude about what are now regarded as garden-variety murders.

The furor over the killings of the tourists sparked an illuminating moment last week during a vigorous search for black suspects in Jefferson County, Florida.

Jefferson County blacks saw the search itself as evidence of a double standard. A black resident who was murdered three weeks ago received less investigative attention, and no suspect had yet been charged. Blacks were also right to be angry when the sheriff told reporters that the murdered tourist was the first person slain in the county this year.

A slip of the tongue, perhaps, but revealing nonetheless.

The tourist crimes are lamentable. But they must be seen against the backdrop of a violent nation that mourns death unequally. Of 1,191 murders in Florida last year, 22 victims were from outside the state. Each death was horrible in its own right. But the continuing horror, documented by the F.B.I., is that there were 24,700 murders nationwide in 1991, most of them involving guns.

A Health and Human Services Department

report last week showed that young black men aged 15 to 24 were 10 times more likely to die from homicide than their white counterparts were. Gun-shot deaths for black males between those ages more than doubled between 1985 and 1990.

That much death from disease would prompt a public health emergency. But murder among young black men has seemed less a problem because it was confined to the inner reaches of the largest cities. Now the most dramatic increase in murder — up 21 percent from 1990 to 1991 — is happening in medium-sized cities, those with populations between 50,000 and 100,000.

In the 1980's it became fashionable to despair of solving social problems by anything other than Darwinian means. The young killers have gotten the message. Society has deemed them disposable and now they're responding in kind.

Americans are shocked when the young killers break out of their preserves by invading commuter trains, attacking tourists, hijacking cars, bringing with them the lessons that lawlessness teaches.

To stem the rising tide of murder, we'll need to stem the tide of guns. Beyond that we'll have to shake off the casual attitude we've come to have about murder among our poorest citizens. At the barest minimum that means enforcing the law just as vigorously whether the victim is a tourist from abroad, an American citizen in small-town Florida or a single mother in a New York housing project.

If equal enforcement of the law is too much to ask, then zones of lawlessness will grow and grow, eventually overwhelming us all.

The Senate GOP and the Brady Bill ✓

Were Senate Republicans crazy with their ill-fated attempt to stop the Brady Bill? Could they have simply misread the public mood on gun-control, only at the last minute learning that they weren't receiving kudos for their obstructionism? Did they really care whether the waiting period was phased out after four years or five? Is Bob Dole just a hired gun for the NRA? The answers are 1) no; 2) no; and 3) no. The last-second filibuster on the final version of the Brady Bill wasn't about handguns or waiting periods. It was about upcoming legislation, particularly the crime bill. It was about whether Republicans will have a say in the shape of the legislation that gets sent to the President, or whether Sen. Joseph Biden will have a free ride to ignore the minority.

The Brady battle started when Sen. Biden stated publicly that he planned to dis Republicans. Sen. Dole's troops had mounted a filibuster on Brady, seeking some minor revisions and pushing for a computerized background-check system to make waiting periods unnecessary. Sen. Biden stated that there was no need to override the filibuster, that the Republicans should be accommodated, their amendments added to the bill. Not that the Delaware Democrat had any intention of seeing those amendments become law. Sen. Biden said that Democrats could go along with the Republicans for the moment without any worries, because he would see to it that the Republican provisions were stripped from the bill when Senate and House negotiators got together to work out the differences between each chamber's version of the legislation in conference.

This is a common and venerable practice among congressional Democrats. They learned long ago that they could fool their constituents by going on the record to vote for measures they had been assured would never see the light of day. When Sen. Jesse Helms offered an amendment to the 1992 Interior Appropriation to defund obscene displays at the National Endowment for the Arts, both the Senate and House voted in favor of the measure. According to congressional rules, that should have meant the Helms restrictions would have been in the final bill. But the conferees stripped it out. In fact they had told members of both houses that it would be safe to vote for the Helms provision (and thus look good for the folks back home) because the conferees would lose it later.

So too, when Sen. Charles Grassley offered an amendment to the Americans with Disabilities Act that would have applied the law to the Senate, Sen.

Tom Harkin urged his colleagues not to oppose Mr. Grassley — promising that when the conference committee came around he would purge the amendment of any enforcement mechanisms.

This practice allows members to lie to their constituents by casting phony votes. Legislators go on record voting for measures that are popular, knowing that the provisions will be quietly removed before the final bill is brought back for an up or down vote. So brazen has it become that the promises are no longer made in secret. Sen. Biden has started to glibly state that Democrats can humor Republicans all they want because floor votes will have no effect on what he does in conference committees that fall under his control. The Brady bill was one, but far more important is the upcoming conference on the crime bill.

Senate Republicans thoroughly overhauled the crime bill with a slew of amendments — most notably, provisions to attack juvenile crime, the interminable appeals process and a three-time-loser law to lock up repeat offenders for good. Once again, Sen. Biden announced that these Republican victories bothered him not in the least, because he planned to simply toss the measures out as soon as he got his hands on the bill in conference. This page has argued that some of the Republican crime provisions — most notably the three-time-loser law — need to be thought through more carefully, adjusted so that they will not be counterproductive. But that is not what Sen. Biden is trying to do. By saying that Republican initiatives will be aborted, he takes away any reason for the Senate to look at the provisions carefully. And he disenfranchises Republicans.

This was why Sen. Dole made such a fuss over what appeared to be trivial differences between the Democratic and Republican versions of the Brady bill. The argument was not over the Brady bill, but was a warning shot across the bow of the good ship Biden. Sen. Dole served notice that if Sen. Biden tried to pull the old conference bait-and-switch scam when the crime bill comes due, Senate Republicans would not be intimidated into going along. If Senate Republicans were willing to take as much heat as they withstood with their last minute Brady Bill filibuster, they will not hesitate to make a loud and visible melee over Republican crime bill provisions that have widespread public support.

Republicans may have taken a hit on the Brady bill — though public support for gun-control per se is overestimated in the polls. But it was worth it for them just to make Sen. Biden think twice before he tries to denude the crime bill in conference.

Mr. Payton, unconcerned citizen ✓

Nearly five months after the defenestration of Lani Guinier, the position of assistant attorney general for civil rights remains vacant. President Clinton pulled Ms. Guinier's nomination late in the process after his belated examination of her writings on voting schemes he said he could not support. Her ghost still remains over the post as another name enters the mix.

Lately, D.C. Corporation Counsel John E. Payton has been discussed as a frontrunner. But by the time Congress broke for the Thanksgiving recess, the White House had presented no nominee for consideration. Likely, it will be at least February before the Senate even schedules hearings on a nomination.

It's just as well. The interlude might allow White House officials, lawmakers and others a moment to examine their hypocrisies.

One of the most obvious areas of concern for an assistant attorney general for civil rights is the enforcement of the Voting Rights Act. Remarkably, in 15 years, Mr. Payton has voted only once. The irony is instantly recognizable, yet there are those who attempt to wave away its importance as a trifle.

Mr. Payton's supporters have rushed to his defense,

citing his 14-year record as a tenacious defender of civil rights and activism that goes back to his college days. He is a "wonderfully gifted lawyer with a strong and deep commitment to the enforcement of the civil rights laws," said Elaine Jones of the NAACP Legal Defense and Educational Fund loftily describing his qualifications.

Mr. Payton well may be all of that. But it gets no one around the sticky point that his avoidance of the polls suggests that he does not have a particularly high regard for voting.

The Congressional Black Caucus has taken no official position on Mr. Payton's candidacy, though the group did interview him. But some members, particularly freshmen from southern states, were incensed. For them, there was nothing to discuss after learning of Mr. Payton's voting record.

They are right. In the case of voting, there are people who have died for the right — from the founding of this country to the civil rights movement. Indifference is unacceptable in a public official. It may be difficult and even unreasonable to expect totally pristine nominees, but there are benchmarks one should look for as a minimum.

The crime bill's easy ways out

By H. Scott Wallace

A majority of Congress feels very badly about imposing so many "unfunded mandates" on the states. But sometimes Congress just can't help itself. The Senate has just passed a crime bill with an amendment ordering the states to vastly increase their prison populations. As the amendment whisked through 94-4, the net cost the states — tens of billions of dollars for new prisons — was not mentioned, and not a minute of hearings had been held to give state and local officials any say in how their taxpayers' dollars should be spent.

State and local government officials hate unfunded mandates: federal regulations and legislation which set federal standards that states and municipalities must spend millions to comply with. Their complaints have provoked an outpouring of sympathy in Congress. Dozens of bills have been introduced, some preventing unfunded mandates outright, and others requiring at least a cost impact study before new mandates are voted on. The leading bills have attracted the co-sponsorship of a majority of both Houses.

But such mundane concerns can be quickly eclipsed by political pressures to do something flashier and more expensive than ever about crime.

Expensive the Senate bill certainly is. It will cost the unprecedented amount of \$22 billion over five years, mostly for more prisons and police.

In fact, the bill will actually cost far more, in both federal and state taxpayer dollars. One of the bill's biggest hidden costs will fall exclusively on state and local governments. The bill would spend \$3 billion on 10 "regional prisons," where three-quarters of the 25,000 spaces would be reserved for state inmates. But to use these spaces, states are mandated to make their sentencing laws look more like federal laws in a variety of controversial ways: people accused of violent crime would be imprisoned before trial, mandatory sentencing guidelines must be enacted, and sentences for certain crimes, from violent firearms offenses to sexual

harassment, must be at least as long as under federal law — with an ongoing obligation for states to change their laws every time Congress increases sentences or the U.S. Sentencing Commission issues the hundreds of amendments it writes every year.

But most important, states must eliminate parole or make other changes requiring that all violent offenders serve at least 85 percent of the sentence ordered, which is more than double the amount of time currently served. With half of the nation's 1.2 million prisoners currently serving time for violent offenses, this is the equivalent of adding at least 12,000 additional prisoners per year to the average state's correctional population.

And what does a state get in return? The privilege of putting, on average, 375 prisoners into a federal regional

One of the bill's biggest hidden costs, for making use of new regional prisons, will fall exclusively on state and local governments.

prison — about 3 percent of the extra space required. It is a broad federal mandate, in other words, that is 97 percent unfunded.

There are other hidden costs in the bill too. The 100,000 cops on which the Senate wants to spend \$9 billion will not be simply fired at the end of five years; someone will have to continue paying them. Meanwhile, they will be making millions of arrests, requiring thousands of additional prosecutors, public defenders and judges to handle the extra cases — a reality the Senate acknowledged while putting off another day the question of how to pay for it. The \$6 billion to build new prisons is a modest down payment: the cost of building a prison is just 5 percent of the total cost of operating it over its life cycle.

The Senate bill misleadingly suggests that these ongoing costs will be taken care of by putting the \$22 billion into an anti-crime "trust fund." While this sounds like something that will grow over the years, the fact is that it is

just a separate account set aside mostly for prisons and cops. In five years, there won't be a penny left.

Other provisions in the bill are just plain flashy. The bill includes more federal death penalties than ever, including some that the Justice Department reportedly finds unconstitutional. It endorses the execution of juveniles, trying 13-year-olds as adults, and vastly expanded mandatory prison sentences, even as their efficacy and fairness are being universally questioned.

What the Senate bill accurately reflects is the powerful desire of the American people for longer sentences for violent criminals. What it does not adequately reflect is the reality of finite resources and the need for Congress and the states to make tough, smart choices about how to allocate them both to fight and prevent crime.

America already has the highest incarceration rate in the world and imprisons its black citizens at a rate five times that of South Africa. Our exploding prison populations — and still increasing crime rate — stand as a monument to the retreat of government from the most basic social support services and equal opportunity.

At some point, either national embarrassment or the simple realization that these policies are not working will force Congress to play a more constructive role. In improving the criminal justice system, Congress must be concerned with the effectiveness of punishment — not just its severity or popularity — in controlling crime and reducing recidivism.

The unwelcome fiscal reality is that we can no longer afford to lock up everybody the public wants to. Worthwhile increases in prison terms for violent, repeat offenders may necessitate less prison time — and more innovative non-prison alternatives — for the 50 percent of prisoners who are non-violent. States must prioritize and choose. States who thought they could do it all, as with Florida's tough mandatory sentences for non-violent drug offenders, boxed themselves into releasing their worst violent criminals to make room.

The Senate is now telling the states that they don't have to choose; just double prison sentences and Uncle Sam will help pick up the tab. For the states, it's a gigantic, unfunded mandate. For the Senate, it's facile hypocrisy. And for the public, it's a cruel and expensive hoax.

H. Scott Wallace is special counsel for the National Legal Aid and Defender Association. He is a former counsel to the U.S. Senate Judiciary Committee.

Europe's rading posture

In the heat of final tough negotiations between the United States and Europe in the talks on the General Agreement on Tariffs and Trade (GATT) — and perhaps in light of the Clinton administration's apparent heightened interest in Asia as exemplified by the recent meeting of Pacific Rim leaders in Seattle — some Americans seem to have concluded that Europe is not pulling its weight in the effort to create a new democratic, market-oriented world order. This is not true.

Just last week, for example, the highly visible former U.S. ambassador to the United Nations, Jeane Kirkpatrick, suggested that because the European Community had not sufficiently opened its markets to exports from the former communist bloc, it was undermining the economic development that must underpin democracy there. She proposed that the United States offer an "Initiative for New Democracies" — in effect a free-trade zone with Central and Eastern Europe — similar to what George Bush had proposed for the Americas when he was president.

In the current environment of new strains between Europe and America over trade talks, it is important not to let this misperception pass.

The European Union is by far the largest market for exports from Central and Eastern Europe. In 1992,

we took \$28 billion, or 80 percent of their total exports of \$35 billion to the West and Japan. Their exports to the European Union grew by 83 percent from 1989 to 1992, while exports to the United States, Japan and Canada actually declined over the same period.

The European Union (EU) is just as important a market for the states of the former Soviet Union, now the Commonwealth of Independent States (CIS). In 1992, we took \$20 billion worth, or about 80 percent, of their total exports of \$26 billion to the West and Japan. Their exports to the EU rose by 16 percent between 1989 and 1992.

Between 1990 and 1992, the EU provided more than 60 percent of Western bilateral aid to the countries of Central and Eastern Europe. It plays the leading role in all aspects of assistance to these countries, notably technical assistance. The EU has also provided 65 percent of the total aid to the CIS.

Finally, we have concluded what we call "Europe Agreements" with most of the countries of Central and Eastern Europe, which are designed not only to enhance trade and aid but also to lead one day to membership in the EU. And, on Dec. 9, Europe's leaders signed a declaration with Russian President Boris Yeltsin in Brussels to further open access to the markets of Europe — even though 83 percent of imports to Europe from Russia already enter duty-free and the average tariff on industrial goods imported from Russia is a mere 1.1 percent.

We would like to do more, and we would also like others, specifically the United States and Japan, to do more. But it is clear that so far the biggest share of the burden has been borne by the Europeans.

It is essential in these times of protectionist suspicions and trade tensions to keep the facts straight. If the facts are not properly known, it will be all too easy to make self-fulfilling prophecies out of misunderstandings. And that is not in the interest of the newly democratic states, the United States, Europe or, indeed, the world order.

Riding shotgun on crime ✓

The Long Island train carnage has got the whole country thinking about crime and ways to frustrate it.

On one point most people are clear, namely that a violent culture cannot beget a peaceful culture without something of a national lobotomy, and these are very hard to program. They tend to happen only after spells like world wars or national prohibition.

But the day after Long Island, I lunched with a New Yorker of aggressive turn of mind and expression, who had a program never before heard in this quarter, and very much worth putting forward as a "thought experiment." That is the dispensation under which the political analyst Charles Murray put out his book, "Losing Ground," in which he wondered whether we mightn't all be better off if state welfare were simply abolished.

My friend said: Look. Is there any reason at all for handguns?

Sure, we reply. Self-defense.

No. Because the best form of self-defense is a sawed-off shotgun —

But they're illegal.

No. Not if there is at least 16 inches of barrel. Now you are in your apartment, and the burglar-assailant barges in. If you pick up a pistol and fire at him, and the bullet is 9mm or bigger, that bullet might go right through the body of the assailant, right through your wall, right into the head of a neighbor. A shotgun has the advantage of a short range and a devastating impact. You don't even have to have a good aim, and lots

William F. Buckley Jr. is president and editor at large of *National Review* and a nationally syndicated columnist.

of people, excited, scared, misfire with a pistol. With a shotgun, the guy has had it. If he sees it before you shoot, he will back off. Immediately.

What would you do about collecting existing handguns?

Set limits during which they'd have to be turned in, and compensate the owners.

But surely you're not going to get the felony types to turn in their guns.

I've just started. We set up an entirely new court system. The Gun Court. Ten thousand prosecutors, 10,000 judges, whatever you want. And if you get caught with a handgun after a certain date, you go to jail.

For how long?

Thirty years.

Well, as the mayor of a Southern town said on "The MacNeil-Lehrer Newshour," discussing what to do about crime: The country is ready for real action. "And they don't want their congressman to go back to Washington and give us a bill that is just plain rhetoric. They want something radical."

My friend's prescription is certainly that. Yet the gun lobby would have a hard time disputing the radical appeal of such a measure.

Among other things, it takes us back to a critical court ruling in 1939 (U.S. vs. Miller) that remains on the books. It determined that the Second Amendment to the Constitution, while it guarantees the right to bear arms, does not specify what kind of arms. The court ruled that a statute banning sawed-off shotguns, which were popular during the Dillinger age, was not unconstitutional.

The legal battle scene has not been revisited, though the National Rifle Association is prepared to fight it out for the reason that sawed-

off shotguns were put to effective use during World War II. But since they are already permitted with a barrel length of 16 inches, leaving the home or office owner, or the car driver or guard, equipped at short range, it is hard to take the position that the law is disarming Americans.

An absence of handguns from the scene would indeed impinge on pleasant habits, primarily of the young. Many of us have shot rabbits, snakes and woodchucks in idle hours in sunny periods when we were young and gay. But after a while, about the time we go to work, the pistol becomes simply a household accessory, kept around in the event it is needed to protect the hearth. To exchange that pistol for a 20-gauge shotgun 2 feet long with its devastating power is not really to disarm someone who seeks self-protection. And the rifle would continue, unmolested.

My friend's new court system would be expensive, and you would need to bring about a revolutionary change in the attitude of the civil liberties fanatics. There are lots of laws in lots of places that send you to jail if you have a handgun on you, but 30 years in jail flirts with cruel and unusual punishment if there is no establishable mens rea — i.e., evil intent.

Was the man, caught with the handgun on his way to rob a bank? Or was he simply finessing the law, to provide for his own protection with something less bulky than a shotgun?

Well, we would fight over that one. But in the current mood, we might just make it: Upon which I'll reveal the name of my lunch companion, and stick his militant face up on Mount Rushmore.

Richard Harwood

300 Years of Crime

A national poll, taken about a month ago by The Washington Post and ABC News, tells us that 21 percent of the inhabitants of the United States believe that crime is the "biggest issue facing the country."

That's news because polls of this kind ordinarily find that people are most concerned about the economy or—in the old days—the threat of war. That crime should now outrank unemployment or economic insecurity as a national concern is not the result of any new wave of criminality sweeping the country. Overall crime rate, according to the Justice Department, has been declining for nearly two decades; the rate of homicide—the crime that resonates most strongly among our people—has been stable for a number of years.

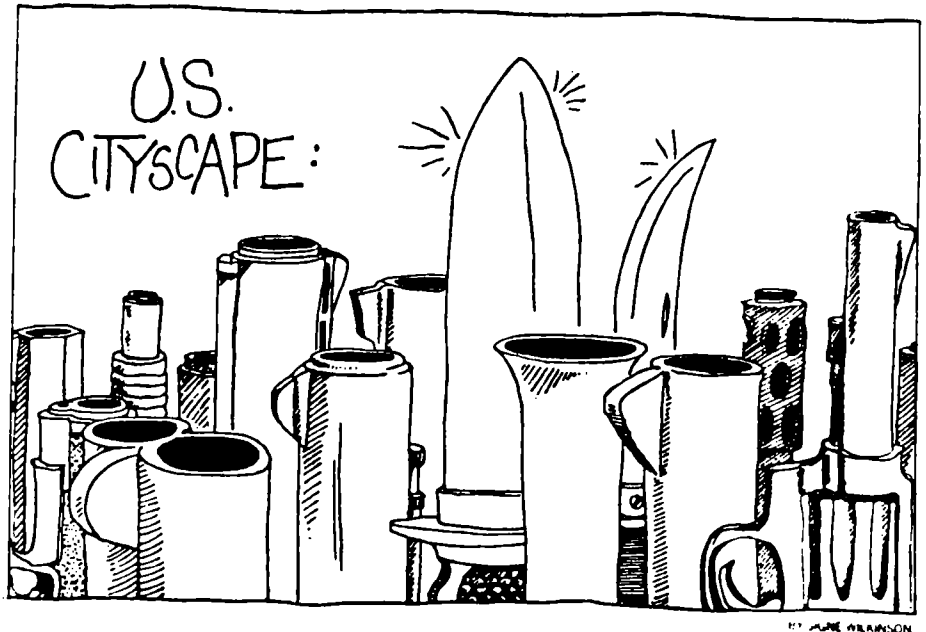
Three-fourths of our households are untouched by crime of any kind in the course of a given year, and 99.999 percent are unaffected directly by homicides. But there is no doubt that public concern is rising.

One of the principal reasons is that our national media are located in large cities, where murder and other types of violence are real problems, cities where hundreds of kids and young men are shot down in the streets in gang wars and executions that have no explanation. As the hometown papers, magazines and broadcasters for these cities, we are personally affected by these things and by the anguish and fear they inspire.

Our concerns radiate throughout the country. If the hometown happens to be a financial or governmental center—Washington, for example—the impact is heightened. There is the White House in the background, the president exhibiting great concern, the mayor seeking National Guard protection, Congress debating and legislating new billions to fix the problem. Meanwhile, television studios are grinding out new and "true" crime shows to fill up the prime-time hours.

A great nerve has been touched in the country. Crime has become politicized. There are demands for more jails, more police on the streets, longer sentences, fewer paroles and gun control. We faithfully report these developments along with the latest casualties on the streets and in the alleys.

But the media do not explain very well the nature and incidence of the plague. Why are criminal behavior and its effects concentrated in such a small segment of the population? Why are there vast discrepancies between the urban and rural crime rates compiled by the FBI? Why is a citizen in Louisiana seven times more likely to be murdered than a citizen in New Hampshire or Vermont? Why is the South so afflicted with violence and mayhem when New England and the Plains states are relatively unscathed? Why are Miami and Atlanta the crime capitals of America with meaner and more dangerous streets than New York, Philadelphia or Washington, D.C., the so-called "murder cap-



ital" of America? Why are black men seven times more likely than white men and black women four times more likely than white women to be murdered in any given year? Is it because of economic conditions, as some have suggested, or is it because most blacks are children of a culture of violence peculiar to the South, a culture that affects the behavior of whites and blacks alike?

The cultural historian David Hackett Fischer of Brandeis University has written that the regional or geographical patterns of violence and mayhem we see today have not changed significantly in more than three centuries. They "correlate more closely with cultural regions of origin than with urbanization, poverty or any material factor." From the beginning of colonization until today, homicide rates have been extremely low along the northern border from New England to the Pacific Northwest. In the South, the reverse is true. It has always been a killing field.

The laws of New England," Fischer writes, "have [never] given . . . latitude to violence. [These] laws are actively supported by other institutions. For more than three centuries, town schools have taught children not to use violence to solve their social problems. Town meetings strongly condemn internal violence. Town elites teach others by example that violence is not an acceptable form of social behavior. . . .

"All of these tendencies run in reverse throughout the old southwest and southern highlands. The principle of *lex talionis* is still part of Texas law, [allowing] a husband to kill his wife's lover in *flagrante delicto* . . . Texas schools and school books glorify violence . . . Texas elites still live by the rule of retaliation and murder one another often enough to set an example. Texas is entertained by displays of violence . . . and always has been."

That is the way of the South. An eye for an eye, a tooth for a tooth. If you offend a man's sense of honor—"dissing" is the street term—he responds with fists, guns or knives. A pickup truck with a rear-window gun rack is a mobile symbol of the male passage from adolescence. Lynching, whose victims were white as well as black, was a regional sport for more than 50 years.

There is caricature as well as truth in this portrait and in the Hatfield and McCoy legends that survive in the Appalachian highlands. But the culture of violence is real and has made its way north with the vast migrations of both whites and blacks out of the South during and after World War II.

The patterns, as Fischer notes, are "highly complex," but how else than differences in regional cultures are the stunning differences in regional homicide rates explained? These are questions the media need to deal with as crime enters the political arena and inspires legislative remedies that may prove to be as useless as much of the legislation of the past quarter-century.

There is, for example, a chorus of demands for "more cops on the beat." What is the correlation between "more cops" and homicide rates? Washington, with the highest homicide rate among American cities, also has more police per square foot than any city in the Western world. Is this an aberration? Do more prisons deter crime? The number of state and federal prisoners has more than tripled since 1970 with no comparable reduction in the victimization rates for crimes against people.

Crime, historically, was a subject left to newspaper hacks of the Hildy Johnson school and to apprentices sent down to police stations to see the way of the world. It needs our best efforts now.

Who Says Crime Doesn't Pay?

The crime news from New York last week turned on the rampage of a mad gunman on the Long Island Railroad. There was another New York crime story, however, that deserved wider attention. Sometimes the law departs from reality in a manner so profound that merely recounting the facts of the case in question tells the entire story.

In the early summer of 1984, Jerome Sandusky, a 71-year-old retiree, was waiting for his train in a Manhattan subway station. It was just after sundown. Mr. Sandusky was set upon by several youths, two of whom knocked him to the ground and rifled his pockets, all the

Rule of Law

By Eric Breindel

while keeping a choke hold around his neck. One of the muggers, 23-year-old Bernard McCummings, continued to beat Mr. Sandusky throughout the episode, resulting in the victim's eventual hospitalization.

Suddenly, while the assault was in progress, two Transit Police officers arrived at the scene: Christine Mead and Manuel Rodriquez heard Mr. Sandusky's screams and rushed to his assistance. McCummings and Jacob Wise were still beating Mr. Sandusky with abandon—his coat was torn, his glasses had been broken, his pockets were open—when Officer Rodriquez, a 14-year veteran of the force, shouted: "Police, don't move."

Wise and McCummings, however, received another warning—virtually simultaneously—from their "lookout," Nathan Woods, who yelled "yo."

What happened next remains in dis-

pute. Officer Rodriquez, who was cleared of wrongdoing in an internal probe, claims McCummings and Wise lunged at him before turning to flee. The transit cop fired five shots, one of which severed McCummings's spinal cord and left him confined to a wheelchair. The mugger denies that he did anything other than attempt to run away.

Eventually, McCummings sued the New York Transit Authority for permitting the use of "excessive force." Some three years ago, a Manhattan State Supreme Court jury accepted his testimony and awarded him \$4.3 million.

In the interim, McCummings—a career criminal—copped an attempted robbery plea and served 32 months in prison. The multi-million dollar damage award—McCummings filed suit after his release—was upheld by the New York State Supreme Court's appellate division and, earlier this year, by the State Court of Appeals. Last month, just a few days before a gunman murdered six commuters on the Long Island Railroad, the U.S. Supreme Court declined to hear the case: McCummings, in short, has his money.

While his attorney says the ex-mugger would much prefer the use of his legs, this notion affords the rest of us small comfort. So far as one can tell, McCummings tended to use his legs mostly for the purpose of attacking folks like Jerome Sandusky.

Speaking of Mr. Sandusky, he gets no compensation at all—not even for his torn coat and broken glasses. What's more, he can't sue McCummings: The statute of limitations has expired.

Mr. Sandusky, it should be noted, has trouble even viewing the case as an "attempted robbery." By his lights, "This was more than assault and robbery. It was attempted murder." As he sees it, "I was

saved from being choked to death" by Officer Rodriquez. Sandusky notes specifically that McCummings threatened to "choke me to death if I didn't shut up." Happily, for his own sake, Mr. Sandusky didn't desist from screaming.

The last written ruling in the case, issued by the New York State Court of Appeals earlier this year, affects a tone of pious finality, asserting simply that Officer Rodriquez, "in employing deadly physical force in an effort to [arrest McCummings]

The transit cop fired five shots, one of which severed McCummings' spinal cord and left him confined to a wheelchair... Eventually McCummings sued the New York Transit Authority for permitting the use of "excessive force." A State Supreme Court jury awarded him \$4.3 million.

did not exercise that degree of care which would reasonably be required of a police officer acting under similar circumstances."

Unfortunately, the ruling fails to note that the entire episode took place in a matter of seconds. It also omits Mr. Sandusky's claim that McCummings threatened to kill him. And it ignores the fact that the mugging victim—this wasn't the first time Mr. Sandusky had been set upon and beaten—has since fled New York City.

Finally, the Court of Appeals decision fails to deal with the original jury's sense that it had virtually no latitude. Justice Leonard Cohen had issued a dual charge.

He asked the jury to determine whether or not Officer Rodriquez's conduct met the standards defined by the Supreme Court for police officers firing their weapons to subdue fleeing suspects. The judge went on to tell the jurors that if Officer Rodriquez's conduct failed to meet the high court's test, their task was to decide how much money McCummings would "need" to live out the rest of his life in a wheelchair.

Justice Cohen neglected to explain that the jury's job also includes an obligation to dispense justice. He didn't remind the jurors that most people who are confined to wheelchairs don't receive multi-million dollar damage awards to help them meet their "need," even though quadraplegics aren't generally responsible for their own unhappy circumstances. (It seems well to remember that McCummings didn't, say, step on a landmine in Vietnam.) Let's hope, moreover, the jury realized that the taxpayers are footing the bill here, not some "deep pockets" insurance company.

Beyond McCummings himself, the only parties to derive actual financial benefit from this case are his lawyer—who took the matter on a contingency-fee basis—and a woman who maintains McCummings fathered her out-of-wedlock child sometime in the 1970s. (McCummings, it appears, never paid a penny in child support.)

Mr. Sandusky, to be sure, did try the "crime victims compensation" route. But when he filed his grievance, McCummings was still—officially—indigent.

This, in short, is a funny case when examined from a distance. On close inspection, however, it loses much of its charm.

Mr Breindel is editorial page editor of the New York Post and a syndicated columnist.

New Careers for Criminals ✓

By Arlen Specter

WASHINGTON
hen Congress reconvenes on Jan. 25, it has a chance to do something meaningful about violent crime.

The crime bill the Senate passed before the holiday recess is a start; it would provide \$22.3 billion over five years for a broad range of anticrime activities, including building new prisons and hiring more police officers.

Something else needs to be part of any serious approach to crime, but hardly anyone is willing to advocate it because it is unpopular to appear concerned about convicts. I don't believe in coddling criminals — as my record as a district attorney and then Senator shows — but we need to focus on rehabilitating first- and second-time offenders before they become career criminals.

About 70 percent of violent crimes are committed by habitual offenders,

Arlen Specter, Republican of Pennsylvania, is a member of the Senate Judiciary Committee.

many of them drug addicts. Yet while 27 states have laws authorizing life sentences for such criminals, they are rarely used.

When I was District Attorney of Philadelphia in the late 1960's and early 70's, my office made major efforts to use Pennsylvania's habitual-offender law without success. Even tough judges were reluctant to impose harsh sentences because of an unspoken feeling that the defendant had not really had enough of a chance to justify isolating him for life — and, besides, the prisons were so overcrowded there was no place to put him.

Not much has changed, except that the prisons are more overcrowded and decrepit. There is little counseling for inmates who are dependent on drugs and even less literacy education. And there is no meaningful vocational training to enable an ex-con to get a job, so he returns to a life of crime.

Washington State recently enacted a "three strikes and you're out" law that mandates life sentences for those convicted of three serious crimes. But even in states that follow Washington's lead, judges are likely to resist such Draconian mandates unless there are better rehabilitation programs for first and second offenders. If rehabilitation were available,

judges would be far more willing to give life sentences to three-time offenders who failed to take advantage of it.

Rehabilitation doesn't merely serve the interests of the justice system, it means fewer potential victims. Is it any surprise that an illiterate without a trade or skill leaves jail

There are other ways to encourage states to use habitual-offender laws. For more than a decade, legislation pending in Congress would provide Federal prison space for career criminals convicted in state courts. This recognizes that such criminals, customarily drug offenders who move interstate, are really a Federal problem.

Further reform of the criminal justice system requires diversion of lesser cases involving nonviolent first offenders out of the criminal courts altogether so they can focus on serious crimes. It requires elimination of plea bargaining so that meaningful sentences are imposed. And we need to reform the Federal courts' review of state death penalty cases to reduce the interminable delays.

Admittedly, such reforms do not deal with the root causes of crime — in particular, poverty, the rise in illegitimate births and the disintegration of the family. The future of crime control is bleak unless we move on many fronts. But Congress can make an immediate impact on violent crime by focusing on realistic rehabilitation and then on life sentences for criminals who cannot be rehabilitated. □

Life sentences, sure. But try rehabilitation first.

only to rob or rape again? Add drug dependency to the picture, and the parolee goes through the revolving door, out of prison and back in.

The anticrime legislation passed by the Senate would help in the rehabilitation effort. Over \$1 billion would be made available for drug treatment and other rehabilitative programs; the Senate also adopted my amendment to create a Federal office to coordinate and improve job placement programs for ex-inmates.

Wastelands Transformed ✓

By Richard M. Daley

SINCE 1960, America has lost 10 million manufacturing jobs, leaving a wasteland of abandoned, contaminated industrial sites too expensive and numerous for local governments or private businesses to restore. Our communities are scarred with dangerous, useless properties and abandoned factories, and jobs have been driven away — to the suburbs, rural areas or abroad.

Last summer, I testified before Congress on proposed legislation to clean up abandoned industrial sites. The legislation, which was sponsored by Representative Mel Reynolds of Chicago and is awaiting action in the House Ways and Means Committee, combines a package of Federal tax credits, private financing and local government incentives to get businesses to take a fresh look at the problem.

Richard M. Daley is the Mayor of Chicago.

The bill calls for a Federal commitment of \$75 million a year in tax credits for a five-year pilot program. Companies that restore industrial sites would receive credits worth one-fourth their cleanup costs; and local governments would offer grants, loans, tax abatements or donations of property, and could issue tax-exempt bonds to cover land acquisition and cleanup.

In Chicago, one of the cities that would be covered under the pilot program, there are hundreds of abandoned industrial sites with environmental problems: asbestos-laden rubble, contaminated underground storage tanks, illegal dumps and hazardous waste. A 50-acre site on the South Side with access to road, rail and shipping terminals sits idle because no one will invest the millions of dollars needed to clean it up.

And Chicago recently lost a 40-employee metal-stamping firm that had been on the West Side since 1954 because the owners, who wanted to expand the business, could not find a big enough site free of pollution problems. After an extensive search in the city, the company moved to the suburbs.

There is great demand for old fac-

tories that are clean and functional. In the last six months, two major Chicago manufacturers have committed to relocating to a new industrial park on the site of the former Chicago stockyards. And a number of potential buyers have expressed interest in a 15-acre site on the Northwest Side on which the city is spending more than \$1 million, demolishing

How abandoned factory sites can roar to life.

abandoned buildings and starting an environmental cleanup.

Yet Chicago does not have the resources to clean up more than a handful of these sites. Under the Federal proposal, the city could be eligible for \$6 million in tax credits, which could lead to \$24 million in private financing. That sum would help level the playing field in the jobs competition

between Chicago and outlying areas.

The bill's real virtue is that it uses Federal tax dollars to enlist the private sector for job creation and environmental cleanup. By trading \$375 million in tax credits for \$1.5 billion in private investment over the next five years, government becomes the catalyst for economic development. By creating a partnership among the private sector and local and Federal governments, this bill would distribute the burden of cleanup costs.

Putting environmentalists and industrialists on the same side, it builds on our common interest in keeping good, solid manufacturing jobs in our cities and towns and in broadening their tax base, which is critical to the viability of urban America. It can also slow the runaway development that has led to uncontrollable suburban sprawl.

If the program succeeds, it could be renewed or expanded after five years. If it doesn't, we can try something else. But we must do something to restore these abandoned sites to productive use. We must do more to keep good jobs and to make our cities and towns attractive to new investment. This bill is a good first step. □

The New York Times

August 21, 1993, Saturday, Late Edition - Final

SECTION: Section 1; Page 18; Column 1; Editorial Desk

LENGTH: 379 words

HEADLINE: Too Timid on the Police Corps

BODY:

Tucked into the big anti-crime package recently unveiled by President Clinton is an overdue innovation for law enforcement called the Police Corps. The idea, championed for years by Adam Walinsky, a New York lawyer who was one of Robert Kennedy's Senate aides, and taken up by Mr. Clinton during the 1992 campaign, is to offer college scholarships to students willing to serve four years on a local police force after graduation.

Mr. Clinton wants to establish the corps, but his boldness stops there. The \$100 million he proposes to spend over four years is much less than both the House and Senate approved for the Police Corps as part of an anti-crime bill that died for unrelated reasons. It would provide for fewer than 5,000 recruits, far short of the 80,000 corps recruits envisioned by the bipartisan group of senators who supported last year's plan.

At a time when there is bipartisan agreement on the need to put more cops on the beat, such a promising plan for adding to community policing strength surely deserves a much more ambitious launch. Beyond offering localities a well-educated pool of recruits -- many of them minorities, which are still greatly underrepresented on many urban police forces -- the Police Corps would also save money. Departments would pay Police Corps officers standard entry pay, but would be spared the costly pension and other fringe benefits they pay their regular officers.

But even that is probably not as important as the less tangible value of engaging the energy and ideas of young citizens not traditionally involved in law enforcement. While many law enforcement officials support the idea, some police chiefs would prefer to stick with the kind of recruits they're used to. But by now it's also clear that the old way of doing things isn't working very well, especially in urban areas.

The Senate Republican leader, Bob Dole, says he favors spending \$250 million over the next three years on the Police Corps, with a bigger buildup in the future. That's far more than President Clinton requests, though still less than what's desirable. But money is tight, and it's hard to say where the additional funds might come from. Mr. Dole to his credit seems willing to help Mr. Clinton and Senate Democrats find it.

LANGUAGE: ENGLISH

The New York Times

October 2, 1993, Saturday, Late Edition - Final

SECTION: Section 1; Page 22; Column 1; Editorial Desk

LENGTH: 550 words

HEADLINE: Don't Rush a Bad Crime Bill

BODY:

There is a dangerous section in the new crime bill being promoted by Senator Joseph Biden and the Clinton Administration. Its title calls it a "reform," but it would lock in court rulings that have watered down the laws under which state court prisoners get their cases reviewed by Federal courts. This section of the bill has to do with the body of law built around the concept of habeas corpus -- literally "you (might) have the body."

When a prisoner secures a writ of habeas corpus from a Federal court, the state authorities must show that the prisoner received a fair trial and that they are therefore authorized to "have the body" in prison. This body of law has ancient roots. It was intended to curb the power of monarchs to keep citizens under arrest and in custody. Yet Mr. Biden sees no necessity for debate over the habeas corpus section of the crime bill.

Why? "The prosecutors," he says, "now support this." But it's hardly surprising that prosecutors like a bill that makes it easier to keep the prisoners they convict from appealing to the Federal courts. As chairman of the Senate Judiciary Committee, Mr. Biden has a higher duty than making prosecutors happy. He has to protect the constitutional and civil rights of all citizens, including the poor, the powerless and the jailed.

A society that limits the rights of such citizens will in time erode those of the more fortunate. Mr. Biden is lackadaisically cooperating in institutionalizing the limitations placed on valuable rights by the Supreme Court justices appointed by Presidents Reagan and Bush.

For decades inmates of state prisons have filed appeals under the concept of habeas corpus. Often they have won Federal court review of their claims that their convictions were illegal or unconstitutional, even after the Supreme Court, which can hear only a tiny fraction of the cases that come before it, has refused to hear their cases on direct appeal.

The Supreme Court has been chipping away at this valuable form of Federal justice. In the guise of interpreting habeas corpus it has invented special technical rules blocking court access, especially for death row inmates. The Court has thrown out petitions because of lawyers' technical mistakes and rejected petitions on the often specious grounds that considering them would involve a "new rule" of constitutional law beyond anything decided in the inmate's original state case.

Congress needs to tell the high court justices not to mangle the habeas corpus statute with their own contrivances. Instead, the Biden-Administration bill only tinkers, cutting off review if the case entails a "new standard" of constitutional law. But "new rule" and "new standard" mean the same thing. The Supreme Court would likely construe the change as a Congressional ratification of its rulings and a green light for more rulings like them.

Chairman Biden is not only proud of this provision but asserts that the crime bill is ready for the Senate floor. Opponents must now make their case in the House, if its Judiciary Committee will hold hearings. Shabby lawmaking can only encourage Chief Justice William Rehnquist and the Court's current majority to continue to take liberties with the existing statute. If justice is to be done, the debate has only begun.

The New York Times

March 3, 1994, Thursday, Late Edition - Final

SECTION: Section A; Page 20; Column 1; Editorial Desk

LENGTH: 458 words

HEADLINE: A Less Bad Three-Strike Bill

BODY:

After a year of watching Congress from the bleachers, President Clinton has begun to play the crime-law game, offering his own version of a "three-strikes-you're-out" measure. His bill easily improves on the sloppily drafted sections of the Senate's crime bill. But it is not nearly as clever as the President led the public to hope when he pledged to be "tough and smart" about crime.

The Senate sought to toughen penal laws that already punish repeat offenders more severely than first-timers. For Federal defendants convicted of their third felony, after two previous convictions in state or Federal court, the Senate made life imprisonment mandatory. But it defined serious crimes so loosely that it brought many nonviolent crimes under the mandatory scheme.

Mr. Clinton, hoping to steal the crime issue from the Republicans, also makes a life sentence mandatory for third-timers. But his bill goes a long way toward making sure that all three criminal convictions are for physical violence or crimes that risk severe injury to people, not just property. Since the bill is aimed at offenders who don't learn their lesson after two convictions, he also stipulates that the three crimes must occur in sequence, not as part of a single crime spree.

But Mr. Clinton then proceeds to ignore the argument of his Attorney General, Janet Reno, for limiting sentences to the "crime-producing life" of most violent convicts. By that Ms. Reno meant that even third-timers should be released when their regular sentences have expired and they have reached an age when they are longer able to threaten physical violence -- thus sparing prisons the burdens of geriatric care.

Oddly, however, Acting Deputy Attorney General Jo Ann Harris told a House subcommittee this week that the Administration had rejected Ms. Reno's sensible suggestion. An inflexible life term "sends a clearer and more effective message," Ms. Harris explained. But why not trust Federal judges, whose sentences are very tough now, with an option of, say, 25 years to life?

With more thought, the three-time-loser provision could become an acceptable part of a crime package. The idea will always be overrated, however, especially in a Federal system that already deals harshly with convicts deemed "career criminals" and has too many mandatory minimum sentences in the first place.

Furthermore, the defects of an overly broad Federal repeat-crimes bill could be worsened if Congress, in this same crime legislation, federalizes street crimes long handled by state and local law enforcement. That would greatly increase the number of three-timers crowding the jails.

The House now has a double task: get rid of the Senate's proposal, and improve the President's.

The New York Times

March 22, 1994, Tuesday, Late Edition - Final

SECTION: Section A; Page 18; Column 1; Editorial Desk

LENGTH: 528 words

HEADLINE: Crime Decisions for the House

BODY:

The House Judiciary Committee has improved on the Senate's crime bill. On some issues the committee has fumbled, leaving it up to the full House membership, when the bill reaches the floor this week, or later to a Senate-House conference, to make it better or keep it from getting worse.

Both bills have a valuable core: \$22 billion to put more police into communities, cope with bulging prisons and provide a smidgeon of support for prison drug treatment and other preventive programs. But the Senate, with no guidance from the White House or Justice Department, overdosed on floor amendments, including the popular "three strikes, you're out" life sentencing for third-felony offenders.

The committee's "three strikes" rightly requires that at least two of the three crimes be violent. The committee also adopted an amendment by Representative Jerrold Nadler of New York to allow release of non-dangerous 70-year-old three-time losers who have served 30 years of their life sentences. However modest, that is a practical advance, and the Clinton Administration should be ashamed for opposing it. Even California's Legislature, reacting to anti-crime fervor, has passed a three-strikes law with a sentencing range of 25 years to life.

Another Senate excess was to require states seeking Federal money for their prison systems to mandate that inmates serve 85 percent of their prison terms. That subversion of state sovereignty would force states to overflow their prisons as a condition for building new ones. The House committee has wisely untied the strings attached to the \$3 billion for prison construction and operation.

An even more bizarre inversion of federalism was the Senate's decision to give Federal courts the power to try thousands of local gun crimes. The House committee's version: appropriately, none. Similarly, where a hysterical Senate would require 13-year-olds to be tried as adults for gun crimes, the House committee at least has the sanity to make the adult transfers discretionary.

Unfortunately, like the Senate, the House committee would restore a dozen once-outlawed death penalties to the Federal criminal code and add three dozen more. These unnecessary, demagogic penalties are irrelevant to a balanced crime bill and should be scrapped. At least the committee offers a fairer system for appeals from death row, and calls on states to provide adequate counsel and safeguards against racial prejudice in capital cases.

In two important ways the House committee's work is inferior to the Senate's. The Judiciary Committee chairman, Jack Brooks, carved the Senate-passed ban on assault weapons out of the House bill. He also yanked a smart Police Corps initiative providing higher education for cadets in return for police service. Both

proposals require vigorous Senate-House conference work to restore them.

Last fall the Senate, in several orgiastic days of floor debate, piled dozens of tough-looking amendments onto its crime bill. We can expect the House to attempt the same but hope that intelligent representatives will resist demagoguery and at least hold fast to the Judiciary Committee's improvements.

The New York Times

April 13, 1994, Wednesday, Late Edition - Final

SECTION: Section A; Page 20; Column 1; Editorial Desk

LENGTH: 433 words

HEADLINE: The House Tackles Crime

BODY:

Now it is the House's turn to debate a crime bill that foolishly creates a slew of new Federal crimes and death penalties to display "toughness" but also extends a badly needed Federal hand -- and dollar -- to anxious states and localities for crime control programs. Starting with the Senate-approved \$22 billion for more police and prisons, the House embarks today on several days of debate over how to spend that money and otherwise make Washington's voice heard.

Senators posturing for the anti-crime vote have passed a bill with dozens of new death penalties, new Federal jurisdiction for crimes long deemed local, and orders to restructure their sentencing laws to suit Washington's preference. The task before the House is to improve upon, or at least not worsen, the Senate's 900-page version.

Because nearly all crime is local, Washington's best contribution to lawenforcement would be financial aid to help localities fight it. Half the new Federal money is to help put as many as 100,000 police officers on patrol, a boon to crime-pressed cities. But will Congress stay committed in future years, after cities put up their own matching money and are hooked on Federal aid? Washington has not begun to think about the future.

It was the Senate's decision to commit real money, and its insistence on banning assault weapons, that made the crime bill begin to look like a serious public safety measure. But the House Judiciary Committee failed to include assault weapons in the bill that goes to the floor today. Members must insist on that provision, if not in the omnibus crime bill itself then in a timely bill of its own.

The Senate chose to stress its overly broad "three strikes, you're out" life term for third-felony offenders, its heedless expansion of capital punishment and stiffer automatic sentences and other punitive measures. Yet the Senate also approved useful drug court procedures and prison drug treatment programs. The House bill has some worthy crime-prevention proposals: money to keep local schools open for programs that reach youngsters and bind communities, and grants that target 11 selected neighborhoods for intensive crime-prevention services.

President Clinton and some Congressional leaders are prematurely patting themselves on the back for the crime bill. There will be time enough for praise if the House, and then the House-Senate conference after it, not only provide needed aid to law enforcement but deal more humanely with sentencing procedures and less hysterically with demands to turn local offenses into Federal crimes.

The New York Times

April 22, 1994, Friday, Late Edition - Final

SECTION: Section A; Page 26; Column 1; Editorial Desk

LENGTH: 419 words

HEADLINE: For Racial Justice in Executions

BODY:

The House of Representatives took a modest step yesterday toward curing one of capital punishment's most offensive features: racial bias in determining who dies. Even as the House voted to add dozens of new death penalties to the lawbooks, it included the Racial Justice Act in the House version of the omnibus crime bill.

A slim majority of the House, even those moved to authorize executions, are clearly uncomfortable with the racially discriminatory way in which death penalties are often decreed and carried out. For example, of more than 230 executions for murder since 1976, only one was of a white for killing a black. The House conferees should now firmly demand the Senate's agreement to this provision in negotiations to reconcile their differing crime bills.

The racial justice provision would permit condemned defendants to challenge their state or Federal death sentences by showing a pattern of racial bias in past capital sentences meted out in their jurisdictions. Prosecutors could overcome an inference of discrimination by showing non-racial reasons for the penalties imposed in their courts.

For example, a black defendant might show that, in the courts in his state, a disproportionate number of those sentenced to death who had criminal records were African-Americans. Or the defense might show that a state condemned few or no whites who killed blacks but an overwhelming number of blacks who killed whites. The state might successfully rebut such evidence, say in a case involving a slain policeman, by showing a consistent pattern of seeking the death penalty for cop-killers regardless of race.

Rabid fans of the death penalty, led by Representative Bill McCollum of Florida, argued angrily that this provision "would abolish the death penalty in America." That is hardly the case. But if it were, Mr. McCollum has raised a question: What more damning statement could be made about capital punishment than that it could not survive if applied with racial justice?

Chairman Jack Brooks of the Judiciary Committee pledged to the House that in conference with the Senate he would obtain specific assurances that the provision would not apply retroactively to existing death sentences. That may be realistic politics, but it guarantees that past unjust death sentences will still be carried out. Meanwhile, the House vote for racial justice in the future is an achievement in which Representative John Conyers of Michigan and other sponsors may take considerable pride.

The New York Times

May 3, 1994, Tuesday, Late Edition - Final

SECTION: Section A; Page 22; Column 1; Editorial Desk

LENGTH: 620 words

HEADLINE: Demand Action on Assault Weapons

BODY:

AK-47's, Uzis and Street Sweepers are made with one purpose: to kill human beings quickly and efficiently. They are not sporting weapons; they have no legitimate civilian purpose. The Senate has already voted to ban these guns, along with a list of other semiautomatic weapons and detachable magazines that can hold more than 10 rounds of ammunition. The ban would not apply to guns now legally owned, although it would require the filing of a Federal form for such guns to be transferred.

The Senate's assault weapons ban was passed as part of the crime bill. It was chopped off the House version. Now it is before the House as a freestanding bill, sponsored by Representative Charles Schumer of New York.

The kinds of weapons described in this legislation are the most deadly guns legally available in most places in America. They are the weapons of choice of mass murderers and urban gangs. Their ability to deliver several rounds per second makes them ideal for drive-by shootings and the horrific massacres that have taken place in restaurants, workplaces and playgrounds around the country.

Opponents of this legislation point out that when these guns are used to commit crimes, they are often illegal guns; therefore to ban them would make no difference. But some horrible mass murders have been committed with legal assault weapons. And most of the illegal guns on American city streets were legally manufactured. If this bill passes, the deadliest ones will be manufactured no more.

Passage of the bill is far from certain. The House leadership seems determined to bring it to a vote this week, and its supporters believe it is still 15 to 20 votes shy of passage.

There have been two heartening switches in recent days. The most important was that of Henry Hyde, who voted against such a ban in 1991 but who supported this version in the Judiciary Committee. Locally, Representative Susan Molinari of New York, who until a few days ago opposed the measure, has now changed her mind.

But there are still representatives from the New York area who plan to vote against the bill. Among them are Hamilton Fish, James Walsh, Bill Paxon and Gerald Solomon, all of New York, and Dean Gallo of New Jersey.

Mr. Fish voted against the bill in the Judiciary Committee. His opposition is hard to understand. He represents much of Westchester County; many of his constituents work in New York City. Does he not want to see the Tech-9's and Street Sweepers off New York streets?

Other representatives who are either undecided or have not publicly committed

to support the bill are Benjamin Gilman, Sherwood Boehlert, Maurice Hinchey, Jack Quinn, John McHugh and Amo Houghton from New York, and James Saxton and Dick Zimmer from New Jersey. These members of Congress need a call today from their constituents urging a vote for the bill.

Of the Connecticut delegation, only Gary Franks is planning to vote against the measure. Mr. Franks, who represents Waterbury, one of the state's small, violence-torn cities, should know better.

It is a relief to see President Clinton taking the initiative to support this measure; his lobbying on its behalf in recent days has not been matched since the days of Nafta. New York's Mayor, Rudolph Giuliani, also added his support yesterday.

Many of the members of Congress listed here have already had the guts to stand up to the gun lobby by voting for the Brady law. They now need to assess whether they want to stand against the President, enlightened hunters, almost every police organization in the country, the Mayor of the nation's biggest city and most of his fellow mayors -- out of fear of the well-organized fanaticism of the National Rifle Association.

The New York Times

June 18, 1994, Saturday, Late Edition - Final

SECTION: Section 1; Page 20; Column 1; Editorial Desk

LENGTH: 395 words

HEADLINE: Keep Prevention in the Crime Bill

BODY:

As the crime bill begins its journey through a Senate-House conference committee, some of its more enlightened provisions will come under attack as wasteful, as pandering to criminals, as attempts to revive discredited Great Society-style social programs.

The bill as it now stands would set up a \$22 billion trust fund to be spent over five years. In contrast to previous such bills, it not only authorizes the money but appropriates it, insuring that the programs that survive will be financed. It sets aside \$10 billion for prevention and rehabilitation programs.

Out of a familiar menu of such programs, one -- the Model Intensive Grant Programs -- seems original and potentially useful. Under the proposed legislation, elected officials in high-crime areas could apply for grants for crime-prevention programs for local youth. Several features make this program an unusually promising departure from the approaches used in the past.

The program would give the Attorney General \$1.5 billion to distribute over five years to no more than 15 chronic high-crime areas. In contrast to programs that spread money thinly throughout every Congressional district, and to revenue-sharing, the program would finance intensive programs to educate local youths, find them jobs, keep them busy after school, guarantee places in drug treatment and build new police stations.

The money would be channeled through existing community groups rather than creating more government bureaucracy. Most important, concrete measurements -- such as Federal statistics of the area's crime rate before the programs went into effect and after -- would be demanded to measure the programs' efficacy as precisely as possible.

The idea is to create small laboratories in different parts of the country to get an idea what does and does not work to bring down crime rates in areas where large numbers of young people get into trouble.

Senator Orrin Hatch of Utah has already opened fire on all the prevention programs, saying they take valuable resources that could be used to build more prisons. Building prisons is also part of the crime bill. But the nation has been doing this for many years now, and it has not brought crime rates down.

Representative Charles Schumer, who has sponsored the program, deserves credit for finding a way to combine 60's idealism with 90's realism.

The New York Times

June 11, 1994, Saturday, Late Edition - Final

SECTION: Section 1; Page 20; Column 1; Editorial Desk

LENGTH: 381 words

HEADLINE: Justice Powell's New Wisdom

BODY:

Too late for Warren McCleskey and numerous other executed prisoners, retired Justice Lewis Powell now concedes that he was wrong to cast the deciding fifth Supreme Court vote to uphold Mr. McCleskey's death sentence in a major case. But it is not too late for Congress to correct the Court's mistake and try to remove the stain of racial prejudice from the death penalty in America.

Justice Powell's acknowledgment appears in a new biography by John Jeffries, a law professor at the University of Virginia. Asked whether he would change his vote in any of the cases that had come before him, the Justice replied: "Yes, *McCleskey v. Kemp*." Indeed, he added that he now found capital punishment itself unworkable and would vote against it in any case.

Lewis Powell's confession of error is characteristically gracious and highly appropriate. He wrote a particularly unfortunate opinion for the Court in that 1986 case. The NAACP Legal Defense Fund had marshaled impressive, sophisticated evidence that Georgia's courts were 4 to 11 times more likely to condemn a convicted murderer to death if the victim was white rather than black.

The state had no answer to that evidence, but Justice Powell, writing for the Court, held that the statistics had no relevance. To save Mr. McCleskey, the Justice said, his lawyers would have to prove that racial bias had operated in his particular case -- an intolerably heavy burden of proof.

The Racial Justice Act, part of the pending crime bill, offers a chance to vindicate Justice Powell's belated wisdom. Even as both the House and Senate have voted to add dozens of death penalties to the Federal criminal code, the House has added the racial justice safeguard. It would permit a condemned killer to show a racial pattern in local capital sentences while allowing prosecutors to explain the pattern and disprove the inference of racial bias, in which case the execution would go forward.

Some opponents of the measure argue that it would effectively abolish capital punishment. That is another way of saying that racial injustice inheres in the death penalty. Regrettably, Justice Powell does not go that far, but perhaps his public recantation will help persuade wavering senators to adopt the House's humane provision.

The New York Times

May 13, 1994, Friday, Late Edition - Final

SECTION: Section A; Page 30; Column 1; Editorial Desk

LENGTH: 383 words

HEADLINE: Racial Injustice in the Senate

BODY:

Congress seems bent on adding dozens of death sentences to the Federal criminal code. At least the House, trying to retain some balance in the pending crime bill, has included a measure to reduce racial bias in administering capital punishment. Not so the Senate, which ignobly has voted to keep the House's proposed Racial Justice Act out of the final crime bill when a Senate-House conference committee meets to reconcile their different versions.

The Senate has instructed its conferees to resist the House measure. Conferees often ignore such instructions and should do so again, especially when they have a chance to curb the death penalty's notorious racial disparities.

The measure would allow defendants to show a pattern of biased sentencing in their jurisdictions that taints their death sentences. They might show, for example, that only African-American defendants were executed for certain crimes, or that for certain crimes death was decreed only when the victim was white. The prosecution could still prevail by justifying the sentencing patterns and particular sentences on non-racial grounds.

Senator Alfonse D'Amato of New York, author of the Senate's resolution, denounced the racial justice measure as a "quota bill," contending that it required equal numbers of all races on America's death rows. That is the same phony sloganeering Mr. D'Amato used in opposing the 1991 Civil Rights Act. But this time the Senate, by a vote of 58 to 41, bought the argument. Perhaps the conference committee, with Justice Department help, can find clarifying language that would save this worthy provision from Mr. D'Amato's caricature.

Opponents falsely charge that this safeguard would shut down the execution chambers. Some supporters would like to abolish capital punishment -- but decidedly not all of them. Racial justice has adherents who favor or are reconciled to the death penalty but yearn for assurances that it can be inflicted fairly.

Surely inquiry is justified when only one execution since 1976 involved a white who killed a black, and when all of Attorney General Janet Reno's recommendations for death sentences so far involved black defendants. It is the House that needs to stand firm, redeeming the Senate's unseemly flirtation with racial injustice.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: May 13, 1994

The New York Times

August 14, 1993, Saturday, Late Edition - Final

SECTION: Section 1; Page 18; Column 1; Editorial Desk

LENGTH: 624 words

HEADLINE: Not So Fast on Habeas Corpus

BODY:

What's habeas corpus?

An ancient writ that courts issue telling jailkeepers: "We have reason to believe you have the body of a prisoner, so produce it and we'll see whether the detention is lawful."

Senator Joseph Biden, speaking at a White House lawn party for a crime bill that does not yet exist, offered a new description: "Something the American public does not have that much interest in but has divided us. And we settled it."

Habeas corpus is the principal way Federal courts review the constitutionality of state criminal convictions. It has indeed divided Congress and the legal community. The issue was a main reason Congress could not pass a crime bill in the closing days of the Bush Administration. Now Senator Biden is so certain that the issue is "settled" that when he introduces his new crime bill after Labor Day he wants to take it right to the Senate floor, bypassing his own Judiciary Committee.

Not so fast. For six months Mr. Biden and Attorney General Janet Reno have negotiated often with district attorneys while giving defense lawyers only selective peeks at proposed legislative language. Their habeas corpus proposals, part of a huge crime bill that is still being drafted, have now been unveiled. They are wordy, complicated, novel and still controversial.

The core problem is that the Supreme Court has chiseled away prisoners' and accused felons' constitutional rights under habeas corpus. Mr. Biden said he would mend this problem, but in fact parts of this legislation would institutionalize a diminution of basic rights. Rather than being rushed to the floor, this problematic legislation must be aired the old-fashioned way: in hearings.

Several Supreme Court decisions have mangled the law that allows Federal courts to issue habeas corpus writs for state prisoners whose direct appeals to the high court have failed. Justices appointed by Presidents Reagan and Bush, supposedly because they would "interpret law, not make it," have grossly misinterpreted this law, inventing new rules depriving inmates of its benefits.

Perhaps the worst invention came in decisions forbidding lower courts to hear prisoner petitions if their rulings would result in a "new rule" of constitutional law. That loophole is broad enough to let the Federal courts shirk significant petitions.

Another decision sent a condemned man to the electric chair because his lawyer filed one motion a day late. Yet another made it all but impossible for courts to hear a belated offer of evidence suggesting a prisoner was innocent of a capital

crime.

The Biden-Reno bill provides some relief from these rulings, but not enough to displease the National Association of District Attorneys and other law enforcement groups. In playing to prosecutors, Senator Biden and Ms. Reno have not gone far enough to curb the damage of the court rulings.

For example, instead of forthrightly repudiating the Supreme Court's "new rule" contrivance, the bill would deny a hearing to a death row inmate if a decision in his favor would create a "new standard" of constitutional law. That sounds like a new name for an old loophole.

The bill is ripe for a lively debate and detailed Judiciary Committee inquiry that would hear from civil liberties groups as well as prosecutors. Habeas corpus is often the ordinary citizen's only insurance against unconstitutional imprisonment. It is too important a principle to be left to private deals between legislators and prosecutors.

Other features of the bill -- still unseen -- also need committee hearings; gun control, more cops on the street and a proposed increase of four dozen crimes punishable by death are just a few. President Clinton staged his lawn party much too soon.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: August 14, 1993

The New York Times

October 24, 1991, Thursday, Late Edition - Final

SECTION: Section A; Page 24; Column 1; Editorial Desk

LENGTH: 763 words

HEADLINE: Fight Crime, Not Liberty

BODY:

Members of Congress call it, as they did its annual predecessors, a "crime bill." In fact it's a politics bill, meant to make Congress look tough on crime. This lumpy grab-bag of provisions, some for liberals and some for conservatives, constitutes a brutally bad bargain -- unless the House and Senate can now remedy the recklessness as they reconcile their differences.

There are some welcome, constructive proposals in this legislation, notably one to establish a Police Corps that could help cities across the country. But the negative side of the scale plunges down under the weight of three drastic assaults on individual liberty.

Habeas corpus. The Senate thoughtlessly adopted a Bush Administration proposal that would virtually abolish Federal court review of state criminal convictions. The Senate bill would deny Federal courts the power to set aside erroneous constitutional rulings in state criminal cases as long as the issue had been "fully and fairly" heard in the state court.

To lawyers, "fully and fairly" means anything short of gross abuse. The more acceptable House provision would preserve Federal court power but streamline the process.

Exclusionary rule. Since 1914, the Supreme Court has instructed Federal courts to throw out evidence obtained in violation of the Bill of Rights. At present, a search with a technically flawed warrant will be allowed if police acted in a "good faith" belief that they were proceeding lawfully. The Administration wants that exception broadened to searches conducted with no warrant at all.

In this instance, it was the Senate that wisely refused to go along.

Capital punishment. Both houses would extend the death penalty to dozens of Federal crimes. That's a cynical exercise. Few murders come under Federal jurisdiction, and other crimes designated for death -- treason, attempted assassination of the President and the like -- are rare. Yet many Democrats went along with the pretense simply to protect against attacks from the right.

Now they may wish they hadn't. Senator Alfonse D'Amato of New York carried the bluster and bombast to a new low with an amendment that would create Federal jurisdiction over, and a Federal death penalty for, all gun murders. That would be such a broad intrusion of the Federal nose into matters historically dealt with by states that it's hard to see how anyone who regards himself as conservative could support it.

Yet the Senate approved the amendment with scant debate. And if that doesn't seem cynical enough, it should be noted that Mr. D'Amato neglected to provide any new funds for Federal courts, now to be saddled with thousands of new cases.

The House rejected the D'Amato language but accepted a careless last-minute

death penalty amendment of its own. It would allow capital punishment for any killing under Federal jurisdiction that results from reckless disregard for human life, not just those that are intentional. That standard would allow execution of a person who runs a red light and fatally injures a mailman.

Beyond these caprices, both houses rejected a proposal to protect against the infamous racial pattern of state executions. Murderers are executed with dismaying regularity when the victims are white. But only once since 1944 has a state executed a white murderer of a black victim.

On the positive side, the bill contains a clear breakthrough on gun control. The Senate passed a version of the Brady bill, creating a national waiting period before handgun purchases are permitted, and a ban on 14 assault weapons. Though the House cravenly rejected a ban on assault weapons, it has passed its own Brady bill. So a version of that worth while legislation could readily emerge from the conference committee that will reconcile the bills.

Both houses offered substantial money -- about \$1 billion in the House, nearly \$2 billion in the Senate -- for grants to overwhelmed, underfunded local criminal justice agencies. The money would finance programs like community policing, drug enforcement and drug treatment in prisons.

Both houses also approved creation of the Police Corps, involving scholarships for thousands of college students willing to work as police officers for four years after graduation.

Worthy as these measures are, however, they don't justify the attacks on habeas corpus and the exclusionary rule, and the unprincipled posturing over the death penalty. Only if the conference rejects those measures -- an unlikely possibility -- does this so-called crime bill merit further support.

LANGUAGE: ENGLISH

The New York Times

November 26, 1991, Tuesday, Late Edition - Final

SECTION: Section A; Page 20; Column 1; Editorial Desk

LENGTH: 358 words

HEADLINE: Republicans, Soft on Crime?

BODY:

"If our forces could win the ground war in 100 hours, then surely the Congress can pass this legislation in 100 days." That's how President Bush challenged Congress to pass a crime bill in March, on the heels of the Persian Gulf victory. It took lawmakers more than 200 days to comply, but the result is a constructive compromise on a highly divisive issue.

Yet law-and-order Republicans in the Senate threaten to filibuster the bill, and Mr. Bush promises a veto. Their behavior makes little sense.

The bill that emerged from a House-Senate conference committee is hardly a triumph for bleeding hearts. In fact, the American Civil Liberties Union and the National Legal Aid and Defender Association vigorously oppose it. The bill authorizes the death penalty for 52 Federal offenses and limits the number of Federal habeas corpus appeals prisoners may bring in search of release.

However, the bill also includes useful measures that might reduce crime and fear. Federal grants would provide \$3.2 billion for local law enforcement unavailable from any other source. The Brady gun control provisions, imposing a waiting period between purchase and delivery of a handgun, would inhibit gun trafficking that arms urban gangs. And a new Police Corps would offer scholarships to students who agree to serve as police officers after graduation, a creative way to upgrade city police departments while helping middle class families handle college costs.

Nevertheless, Senate Republicans and the White House say they are determined to block enactment because the conference refused to accept even stronger limits on habeas corpus appeals and looser restraints on exclusion of illegally seized evidence. Neither provision has much to do with the level of crime on the streets; they affect criminals already caught.

The Republicans' obstructionism feeds speculation that they petulantly resist allowing Democrats to share credit for measures against crime. The performance adds new weight to the impression of a White House fumbling on domestic policy. But as Republicans squander the chance to address an urgent issue, the whole nation loses.

LANGUAGE: ENGLISH

The New York Times

October 17, 1991, Thursday, Late Edition - Final

SECTION: Section A; Page 26; Column 1; Editorial Desk

LENGTH: 379 words

HEADLINE: A Bargain for the Nation's Police

BODY:

Earlier this year, the Senate approved the first serious Federal law enforcement innovation in years: a Police Corps offering college scholarship money in exchange for a student's pledge of four years' service with a local police department. The plan promises both fiscal relief and a welcome infusion of talent for the nation's overburdened urban police departments. An amendment now before the House would push this good idea closer to reality.

The plan, costing \$100 million in the first year, would eventually provide some 80,000 students with scholarship stipends and two summers of training at local academies or new Federal centers. After graduation from college, the students would be assigned to local police departments under plans coordinated at the state level.

The departments would pay Police Corps recruits standard wages. But they would save on costs of training and fringe benefits, including pensions that would not be paid to recruits who stay only four years.

The plan offers other advantages. Urban police are chronically afflicted with alienation and burnout that nurture corruption and even brutality. Well-educated officers serving for a limited time are less likely to be seduced by traditional squad-room mores. And they might make a sizable contribution to community-based police strategies, in which officers seek to build deeper trust and productive working relationships with the communities they patrol.

Those who remain to build police careers would become a valued pool of management ability. Even those who choose to leave after four years would carry away a deeper understanding of what police can and cannot do to deal with crime, thereby broadening public awareness.

Critics of the plan, offered on the floor of the House as an amendment to an omnibus crime bill, worry about possible conflict between Police Corps recruits and regular officers and question the cost. Yet any challenge to a destructive police subculture is to be welcomed, not avoided.

As for the cost, Police Corps dollars will go a long way, addressing street crime and rising college expenses at the same time. Since both issues continue to stir broad public anxiety, Congressmen ought to consider spending on the Police Corps money well spent.

The New York Times

June 25, 1991, Tuesday, Late Edition - Final

SECTION: Section A; Page 24; Column 1; Editorial Desk

LENGTH: 368 words

HEADLINE: Fight Crime, Not Liberty;

The Exclusionary Rule Needs Protection

BODY:

Senators are competing with each other and with the Bush Administration to see who can pose as toughest on crime. In coming days the Senate faces a series of separate votes on everything from the Federal death penalty to gun control. Today's scheduled vote is on the so-called exclusionary rule, a bulwark for liberty that is under attack by those waving the tough-on-crime banner most fiercely.

The exclusionary rule was devised by the Supreme Court back in 1914 as the best way to enforce the Fourth Amendment's ban on unreasonable searches and seizures. Crude but never improved upon, the rule requires the courts to throw out illegally seized evidence as a deterrent to misconduct by law officers enforcing the law.

With increasing success, and with increasing danger to the Bill of Rights, the Reagan and Bush Administrations have argued in court and in Congress to water down the rule.

This year's Administration crime bill would allow the use of illegally seized evidence when Federal agents have conducted searches without a warrant in the "good faith" though mistaken belief in the legality of their conduct. Not content with the Supreme Court's recent exception for honest reliance on a warrant that later proves technically defective, the Administration now wants the exception broadened to searches where Federal agents didn't even bother to seek a warrant.

That's encroachment enough on Fourth Amendment safeguards, but the Administration hasn't finally ruled out asking for even more: a "firearms" exception that would admit weapons in evidence even when seized without a trace of honest belief that probable cause existed for the search.

The best hope for liberty is the plan by Joseph Biden, chairman of the Judiciary Committee, to codify recent Court alterations to the rule.

Encouraging random searches might solve a few more crimes but at an unacceptable price for personal liberty. The exclusionary rule has forced police to raise their standards, for the safety and privacy of everyone. Faith in the police is fine, but liberty and law are best preserved by reliance on the Constitution and the vigilance of courts to see that police closely adhere to its precepts.

The New York Times

September 26, 1990, Wednesday, Late Edition - Final

SECTION: Section A; Page 24, Column 1; Editorial Desk

LENGTH: 333 words

HEADLINE: Pro-Justice, Not 'Pro-Criminal'

BODY:

Contrary to the Bush Administration, it is not "pro-criminal" to seek fair trials and racial justice for capital crimes. A provision of the House Judiciary Committee's crime legislation would help to secure these rights; it deserves support.

The proposal, part of a 239-page bill, seeks adequate counsel for capital defendants, procedural fairness in Federal court review of death sentences and some assurance that race is not a hidden factor in determining which murderers are executed.

"Pro-criminal" is the false label concocted by Deputy Attorney General William Barr, who charges that the measure "would effectively abolish the death penalty." Not so. It would only require states to administer capital punishment fairly.

Even supporters of the death penalty ought to agree that people accused of capital offenses should not suffer from the ignorance or negligence of inadequate lawyers. And those supporters have no reason to welcome the inefficiencies and delays poor lawyers may cause.

The committee's bill, offered by House Democrats, would require credible systems of appointing and compensating lawyers in state court proceedings. It would restore access to Federal courts that the Supreme Court has denied many inmates in recent decisions. And it would force some states to overcome strong claims that racial bias infects their administration of the death penalty.

The Bush Administration argues that at times inmates should be allowed to challenge only their guilty verdicts, and then only on the basis of claimed innocence. That restriction shuts the courthouse door to prisoners who have a valid basis for attacking death sentences, decided in separate trials from those that determined guilt.

The Senate's crime bill does nothing to combat ongoing injustices of current restrictions on Federal courts' powers to review state convictions. The House bill offers a humane alternative. There is nothing "pro-criminal" about sound legislation that promotes justice.

The New York Times

May 31, 1994, Tuesday, Late Edition - Final

SECTION: Section A; Page 16; Column 1; Editorial Desk

LENGTH: 489 words

HEADLINE: Cocaine Injustice

Snorting powder cocaine and smoking crack cocaine: two efficient ways to get addicted, two parts of a drug culture that spreads human misery and foments violent crime. Powder and crack are identical chemically, yet the law treats crack as though it were up to 100 times as dangerous. Is the law right?

Congress is just beginning to ask why, under Federal laws initially designed to reduce sentencing disparities, such an extreme gap in penalties exists. Congress is also starting to address the ugly consequence of the disparity, including the fact that African-Americans, the majority of crack smokers, are getting the long sentences and whites, mostly powder snorters, the shorter.

Panicky legislators created the disparity in 1986 and 1988 after crack, the smokable, cheaper form of cocaine, appeared on the national scene. A first-time trafficker with five grams of crack gets the same five-year mandatory minimum sentence as a first-timer dealing 500 grams of powder cocaine. The same 100 to 1 ratio gives a mandatory 10-year term to a person dealing 50 grams of crack cocaine or five kilograms of powder.

For simple possession, a first offender caught with more than five grams of crack is treated like a crack dealer and gets the five-year mandatory minimum -- five times the mandatory minimum if the substance is powder.

Retiring Representative William Hughes of New Jersey tried to get the House to equalize the penalties as part of the 1994 crime bill. His amendment would have been a fitting part of any tough but fair legislation. Mr. Hughes was forced to settle for a study by the U.S. Sentencing Commission. The commission, which will be asked to report to Congress by the year's end, has already documented racial disparities.

Predictably, since crack is the drug of choice in so many cities, African-American defendants are getting the jumbo sentences. As Representative Charlie Rose of North Carolina said on the House floor last month, "Our prisons are full of black males who have used crack cocaine, and the more affluent white boys in the community who have used the powder cocaine are on probation." For Representative Bill McCollum of Florida, the disparity is real. But instead of lowering the penalties for crack, he thinks that "we ought to be raising the penalties for the powder cocaine."

Obviously, the matter needs study -- not least because crack and powder have different consequences. Medical experts have told the commission that crack gives a quicker though briefer high. Some law enforcement officials say crack's low price makes it more accessible to a larger number of people and generates a more violent culture surrounding its retail sales.

Crack's availability might argue for some difference in penalties, but hardly 100 to 1. By calling for a commission report by year's end, the House has made plain Congress's duty to face up to this unfairness, and to act on it.

Washington Post
June 25, 1994, Saturday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A20
LENGTH: 282 words
HEADLINE: Guns and Family Abusers
SERIES: Occasional
BODY:

ONE IMPORTANT measure being considered by Congress as it tries to shape an anti-crime bill for final passage is a gun safety proposal that deserves solid support. Introduced last year by Sen. Wellstone and Rep. Torricelli, the proposal would prohibit ownership of firearms by individuals deemed to be domestic abusers. Both the House and the Senate have approved the measure, but the Senate version calls for greater, more effective action. It would ban ownership of guns by those convicted of abusing spouses or children, or those who have restraining orders issued against them for committing domestic violence. The House version would only prohibit possession of a gun by people who are being restrained by a court order from abusing an intimate partner. That is too narrow a measure, given the dimensions of these violence problems across the country. Domestic violence is the leading cause of injury to women in the United States between the ages of 15 and 44.

As Rep. Torricelli noted last fall, this means these incidents are "more common than automobile accidents, muggings and cancer combined." Firearms are used by abusers in 7 percent of these incidents; that may not seem significant, but it comes to nearly 150,000 cases a year. Sarah Brady of Handgun Control, leading campaigner for the Brady Bill named after her and husband, Jim, cites the obvious logic of enacting the Senate-passed proposal to expand the category of people who should be banned from buying guns: "Clearly, individuals with a history of domestic abuse should not have easy access to firearms." The congressional conferees who understand this should not hesitate to vote for the Senate version.

Washington Post
May 27, 1994, Friday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A24
LENGTH: 417 words
HEADLINE: Stubborn (and Wrong) on Sentences
SERIES: Occasional
BODY:

A CONFERENCE committee will sit down after the Memorial Day recess to work out differences between the House and Senate versions of the crime bill. It is an expensive and repressive measure generally. It will cost tens of billions of dollars and greatly expand the list of federal crimes, dozens of which will carry the death penalty. But there is at least one reasonable provision that will actually save money. It would provide some leeway for judges sentencing first offenders on relatively minor drug charges, and it would make that relief retroactive. But the word is out that the Justice Department will oppose extending this possibility to people already under sentence. Democratic conferees are expected to fall into line.

The current mandatory minimum sentencing laws are extremely harsh and costly. The Justice Department itself conceded last winter that federal prisons now house about 16,000 inmates convicted of minor, nonviolent drug offenses because of mandates that apply even to first offenders. Both the House and Senate versions of the crime bill would allow a judge to use the sentencing guidelines -- which already carry high penalties -- instead of the extreme mandatory minimums when certain conditions are met. The defendant must not have used a gun or been a leader in the crime. He must have cooperated with the police. And he must have a clean record -- no prior convictions in the Senate bill, nothing more than a single 60-day misdemeanor in the House bill. This is not, by any definition, a hard-core group.

The House bill would also allow this discretion in the case of prisoners who meet the standards and who have completed what would have been their sentences but for the mandates. The U.S. Sentencing Commission estimates that about 1,600 prisoners would be eligible. They have already served considerable time. They would not be released automatically but only after individual assessment. Keeping them in prison for many years costs a great deal of money, serves no real additional purpose and creates two classes of prisoners for people with identical records sentenced before and after the day the crime bill is signed.

Reps. Henry Hyde and William McCollum, two of the most conservative Republicans on the House Judiciary Committee, support retroactivity. But the Justice Department is bent on eliminating it in conference. If Mr. Hyde and Mr. McCollum can take a stand for good sense in this case, why is the department reluctant to do as much?

LANGUAGE: ENGLISH

Washington Post
May 23, 1994, Monday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A18
LENGTH: 420 words
HEADLINE: Smoke, Mirrors and Trust Funds
SERIES: Occasional

BODY:

AT EVERY STAGE of congressional consideration of the crime bill now headed to conference, the price tag has gone up. As introduced in the Senate, the measure would have cost \$ 5.9 billion over a five-year period. But before that proposal came to the floor, the bill's chief sponsor, Sen. Joseph Biden (D-Del.), upped the ante to \$ 10 billion. During debate, senators gleefully responded to a suggestion offered by Sen. Robert Byrd (D-W. Va.) that the money expected to be saved from reductions in the federal work force be set aside in a trust fund and earmarked for the crime bill. The figure suggested was \$ 22 billion, and the senators telling their constituents that this magic mechanism would painlessly provide the needed money, authorized the expenditure of that amount. Not to be outdone, the House went to \$ 28 billion.

Any legislator familiar with addition and subtraction must have known six months ago that the \$ 22 billion fund was fiction. The money had been earmarked months before for deficit reduction, which is required by law. If it is reallocated for police, prisons and the like, the budget targets must be met by cutting other domestic programs. In addition, while the projected savings were to be achieved by work-force reductions, Congress is already carving out loopholes that will reduce the available savings. Last month, for example, the House voted to exempt from general job cutbacks, the Veterans' Health Administration, which accounts for 90 percent of the employees in the Department of Veterans' Affairs. That department, in turn, is the largest government employer of civilians. The irony is that while Congress and the White House are promising to deliver a crime bill that will put more police on the streets, the president's own budget request for Byrne grants, an existing program with exactly that goal, was only half the amount sought last year.

Sen. Pete Domenici (R-N.M.), ranking member of the Senate Budget Committee, highlighted these problems in a speech to his colleagues on Thursday. He is late, but right. Sen. Biden, who is responsible for the bill, piously laments that Congress often "overpromises" the public, thus contributing to cynicism about government. But he does not contest Sen. Domenici's argument that there is no magic \$ 22 or \$ 28 billion fund available to pay for these promises. The money will have to come from some other government programs, and at this point, on the brink of a conference and final passage, no one is willing to say where.

LANGUAGE: ENGLISH

Washington Post
May 4, 1994, Wednesday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A24
LENGTH: 475 words
HEADLINE: Does Drug Treatment Work?

THE CRIME BILL that is expected to become law by summer allocates more than a billion dollars for drug courts. These are intended to provide intensive treatment and supervision instead of incarceration for first-time drug offenders. The bill also authorizes expenditures for treatment of inmates in state and federal prisons and for prevention programs aimed at high-risk individuals in low-income neighborhoods. Treating drug addicts has never been proposed as a panacea for the nation's crime problems. But effective programs would have a substantial impact not only on crime rates but also on the spread of AIDS and other public health problems related to addiction.

But does treatment work? Will all this money be well spent, or is it a delusion to expect to "cure" individuals with such a severe problem? The personal characteristics of drug abusers and the nature of the drugs involved vary widely, as do the modes of treatment now available. The latter range from the relatively cost-free 12-step programs such as Narcotics Anonymous to expensive long-term residential programs. In fact, no single medication or program will work for all patients. But anyone who seeks help -- and admittedly some do not -- should be able to find the right treatment mode.

Does methadone work? Yes, for heroin addicts whose participation is sustained. And studies show that people who are forced into treatment by courts are as successful as those who participate voluntarily. It is the duration of treatment that determines outcome.

How about long-term residential treatment? These programs suffer a high initial dropout rate, but of those patients who complete a program, about 80 percent do not relapse. Not everyone needs this kind of expensive program, however. People who have otherwise stable lives, are employed and have a family support system may be helped by less intensive counseling and medical care. And since residential treatment often involves confrontation therapy, it might be the wrong choice for women who have been abused.

Researchers now know a great deal about chemical changes in the brain brought on by long-term addiction and are working to develop outpatient medical programs for cocaine addicts and others for whom methadone is not appropriate. Because of the nature of 12-step programs, there is only anecdotal evidence of their success. But they do work for many people and should be encouraged.

Treatment will help individuals and even save lives. Addiction is a chronic and unfortunately often relapsing disorder that may never be entirely eliminated in this country. But success will be measured by every patient who is even temporarily in remission, by every individual coping through methadone or other medications instead of filling a jail cell and by every person whose focus moves from crime to stability.

Washington Post
April 30, 1994, Saturday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A22
LENGTH: 437 words
HEADLINE: When Prisoners Are Parents
SERIES: Occasional
BODY:

THE CRIME legislation heading to conference is so crammed with punitive provisions and top-of-the-head "solutions" to problems of disorder and violence in this society that it is almost surprising to find a few gems in it. One of these is a provision in the Senate bill, but not in the House version, that ought to be adopted by the conferees. It focuses on women in prison and their very young children.

Mandatory minimum sentences for nonviolent drug crimes have greatly increased the number of women in this country's prisons. There are now more than 50,000, which represents a 50 percent increase in the past 10 years. Eighty percent of these women are mothers; 70 percent are single and have sole responsibility for their children. Some of the children are cared for by relatives while their mothers are serving time, but many wind up in the foster care system. When the mothers are released, it is difficult, if not impossible, to reunite and stabilize the family.

The Senate bill would authorize a small program of demonstration grants -- it would cost only \$ 8 million a year -- to allow correctional systems of five states and the federal government to experiment with an alternative. Prisoners who are the sole custodians of their children -- fathers would be eligible, but it is expected that most of the beneficiaries would be mothers -- could apply for early release to live in a community-based facility with their children under the age of 6. The facilities would be staffed by child development and other specialists who would provide parenting classes, pediatric medical care, counseling and group support, and education and training programs for the parents. No prisoner who is serving a term of more than 10 years, or who has been convicted of a violent crime or a crime involving children, would be eligible to participate.

This is an idea with no down side. It has already been successfully tried in a few cities, and six additional demonstration projects should prove its worth. The money spent will be easily covered by cost savings in the areas of incarceration and foster care. The children will be well-cared for in a family-like setting. And the instruction, support and supervision provided by staff will enable mothers to learn the parenting skills that so many prisoners, themselves from dysfunctional or abusive families, never learned at home. Strengthening family bonds, providing instruction and role models and encouraging responsibility for children are primary steps in breaking the cycle of crime and violence that confounds society today. This small step is worth taking.

Washington Post
April 18, 1994, Monday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A18
LENGTH: 453 words
HEADLINE: Dozens of Death Penalties
SERIES: Occasional
BODY:

THERE IS little doubt after last week that House members are strongly in favor of the death penalty. The crime bill that came over from the Senate last fall made dozens of offenses capital crimes, and now the House has added more. Almost 70 crimes will carry a death penalty if this House provision survives conference, and that's likely to happen. On three separate votes, the House resisted efforts to soften these provisions. The capital punishment crowd prevailed three to one, even rejecting an amendment that would have limited the penalty to crimes in which a victim was actually killed. Polls indicate that the death penalty is widely supported in this country, so the House vote comes as no surprise. It is nevertheless a regrettable step, motivated more by vengeance than reason and implicating society in barbaric punishment.

Thursday's votes will not be reversed, but the House on Tuesday will have an opportunity to take steps that will at least diminish the possibility that innocent people will be executed. At issue is reform of federal habeas corpus law. Habeas corpus proceedings give prisoners a chance to challenge their state court convictions in federal court. It is a form of appeal that is available after all ordinary direct appeals have been exhausted. Death penalty supporters have complained that repeated habeas corpus petitions, some of which attempt to more or less retry the case instead of contesting the constitutionality of the proceedings below, have unreasonably delayed the imposition of sentences and have been very expensive. On the other side, there is dissatisfaction because some defendants -- even those facing execution -- do not have qualified lawyers handling their cases. Some have no lawyers at all for habeas proceedings.

The bill before the House remedies the situation by limiting both the number of habeas petitions that can be filed and the time period in which the step must be taken. Successive petitions will, except in special circumstances, be eliminated. The bill also would modify some recent Supreme Court rulings that limit the grounds for habeas corpus relief. In addition, and of great importance, the bill would provide for the appointment of competent and adequately financed lawyers for indigent defendants in capital cases.

These reforms will be challenged on at least two votes, but the committee language should be preserved. The importance of habeas corpus proceedings is illustrated by the fact that 40 percent of the capital cases heard at this stage are overturned on constitutional grounds. At a time when the number of capital crimes is being increased dramatically, this avenue of review must be preserved and strengthened.

Washington Post
April 12, 1994, Tuesday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A18
LENGTH: 450 words
HEADLINE: Save the House Crime Bill
SERIES: Occasional
BODY:

THE HOUSE Rules Committee will sit down this morning to work out procedures for floor consideration of the crime bill. Debate begins tomorrow. Dozens of amendments have been offered, most of which seek to weaken some of the good work done by the House Judiciary Committee. Only a few will make it to the floor. The House bill is considerably better than the Draconian measure passed by the Senate last fall, but any final version will be written in conference and will involve some compromise. With this in mind, House leaders should do all they can to preserve the Judiciary Committee bill at this point.

Because both houses support the adoption of dozens of new death penalties, neither qualifies on those grounds. But the House Judiciary bill contains safeguards that are absolutely necessary for dealing with capital cases. Habeas corpus reform would limit the number of post-conviction reviews in federal court, but would require the appointment of competent counsel to handle the appeals and would provide the resources necessary for the litigation. It is disgraceful that not every state now provides this kind of assistance, particularly in death penalty cases.

Both bills would authorize federal funding for prison construction, but the Senate imposes a condition: States may not use the facilities that would be built unless they adopt harsh sentencing policies dictated by Washington. The states understandably and uniformly oppose this restriction, which is not in the Judiciary Committee bill.

A Mandatory minimum sentences are a perennial favorite of legislators -- judges deplore them -- and their enthusiasm is reflected in the Senate bill. The Judiciary Committee at least takes into account the injustice of holding minor offenders for long periods of time and the expense and constitutional problems of overcrowded prisons. While both bills contain a "three strikes" provision mandating life in prison without parole for third offenders, the Judiciary Committee language is much tighter and does not sweep in offenders whose crimes are not serious and violent. The bill that is going to the House floor also contains a "safety valve" section allowing exceptions to mandatory minimum laws for certain nonviolent offenders with good records. This sensible provision would be retroactive.

Finally, the Judiciary Committee bill contains a section that does not appear in the Senate version. It focuses on crime prevention and would authorize federal grants to communities with high rates of poverty and crime for programs aimed at high-risk youngsters. This is a welcome addition to a bill whose main emphasis is on more federal funding for police officers and prisons.

LANGUAGE: ENGLISH

Washington Post

March 26, 1994, Saturday, Final Edition

SECTION: OPINION EDITORIAL; PAGE A22

LENGTH: 498 words

HEADLINE: Two Penny-Weights of Crack

SERIES: Occasional

BODY:

THE U.S. Sentencing Commission held public hearings this week as part of its continuing responsibility to review sentencing policy in federal courts, make adjustments to existing guidelines and recommend changes to Congress when statutory authority is needed. One of the subjects discussed on Thursday is of great concern not only to lawyers and judges but to civil rights and civil liberties groups as well. It involves the disparate treatment and consequent racial impact of a law that penalizes the simple possession of small amounts of crack cocaine with severe mandatory minimum sentences. Possession of five grams (the weight of two pennies) gets a first offender a minimum of five and a maximum of 20 years. On a second conviction, the offender need have only three grams. On a third conviction, the offender need have only a single gram. Over 90 percent of the defendants convicted of this crime are black. The possession of a similar amount of powdered cocaine, a crime involving many more whites, is a misdemeanor carrying no mandatory minimum sentence and a maximum penalty of one year for a first offense.

There is no evidence to suggest that Congress intended to create this horrendous disparity. Until 1988, possession of a small amount of drugs was treated uniformly with no distinctions made because of the type of drug at issue. But by the late '80s, a series of crack deaths and stories about the drug's impact on poor families had spurred legislators to enact these harsh changes. In fact, crack and cocaine are essentially the same substance in different forms. There is no rational basis for sentencing distinctions of this magnitude. Federal judges have seen the injustice of this policy, and a few have refused to go along, either departing from the guidelines or declaring the law unconstitutional on equal protection or cruel and unusual punishment grounds. The faster and simpler way to fix the situation, though, is for Congress to act quickly, using the pending crime bill as a vehicle.

Q The Senate version of that bill, which is long on penalties and short on sensible reform of the criminal laws, ignores this problem. The bill reported by the House Judiciary Committee this week is also silent, but Rep. William Hughes (D-N.J.) hopes to offer a correcting amendment on the floor. It is particularly important that this change be made now because some versions of the "three strikes" proposal included in the various crime bills cover felony drug offenses, and crack is the only substance for which mere possession of small amounts is a felony. There is, therefore, a looming potential for greatly compounding the injustice that is already obvious. The Senate approved the measure 26 to 19. The House of Delegates has given Also today, the House voted 92 to 37 to authorize a test program for year-round schools. Five counties have volunteered to participate in the program in limited ways involving either one school area or feasibility studies.

Washington Post
March 23, 1994, Wednesday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A20
LENGTH: 438 words
HEADLINE: A Better Crime Bill in the House
SERIES: Occasional
BODY:

AS THE HOUSE takes up crime legislation today, the package of bills to be considered is in many ways an improvement over the measure passed by the Senate last fall. The latter is a punitive hodgepodge filled with ill-considered amendments added on the floor. The House Judiciary Committee has at least cleaned up some of the more objectionable features of the Senate bill and put in a welcome new prevention provision that should have broad support.

The bill is far from perfect, however, and in two respects is even worse than the Senate version. There are more death penalty provisions, for example -- 66 instead of the Senate bill's 47. Drug kingpins could be executed even if their actions did not include murder. But these new penalties are softened by procedural changes. A revision of habeas corpus rules, for example, would limit appeals but would provide for the appointment of competent attorneys to represent defendants through the process. Another change would allow the introduction of statistical evidence in death penalty cases to show possible racial bias in sentencing. The bill is deficient in another critically important area because it contains no gun control provisions, as the Senate bill does. This subject will be addressed in conference, however, and committee Chairman Jack Brooks has agreed to consider separate legislation on assault weapons if necessary.

On the plus side, the House bill takes a first step toward rethinking mandatory minimum sentences by allowing judges more discretion in dealing with minor drug offenders who have no prior convictions. This change would be retroactive, which would be a boon not only to small-time offenders but to overcrowded prison systems, which desperately need space for violent criminals. The "three strikes" provision has been tightened up so that, except for drug cases, it would not apply to nonviolent convictions. A Senate provision requiring that 13-year-olds be tried as adults for certain crimes has been made discretionary. The House committee also rejected three revolutionary provisions of the Senate bill that would have made gun- and gang-related crimes federal offenses, and it has conditioned federal prison assistance on stiffer state sentencing laws. The House bill also authorizes \$ 6.9 billion for direct aid to community programs designed to prevent crime.

Holding the line on the floor won't be easy, nor will a conference necessarily preserve these improvements. But at least the House will have before it a more moderate proposal than it received from the Senate. Efforts to undermine this progress need to be fought back.

Washington Post
March 4, 1994, Friday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A22
LENGTH: 412 words
HEADLINE: Narrowing the 'Three Strikes' Zone
SERIES: Occasional
BODY:

THE PRESIDENT is moving in the right direction on the "three strikes" provision in the crime bill. His alternative proposal, now being studied by the House Judiciary Committee, still needs some tinkering, but it is a much better proposal than either of the two provisions passed by the Senate.

Public support for "three strikes" arises out of an understandable dissatisfaction -- escalating to fury in some cases -- with multiple, serious offenders who serve one prison term after another and return to violence each time they are released. The solution, life in prison without possibility of parole after a third such offense, is harsh, but not out of line for those very violent offenders who pose the greatest threat to public safety. The problem with the Senate bill is that it is far too broad, imposing the penalty for a whole range of felonies, some of which -- destruction of mailboxes, for example -- are relatively minor property crimes.

The president proposes a far more careful definition of violent crime. With one exception, it encompasses only those offenses that involve physical harm to individuals. These include murder, kidnapping, rape, aggravated assault and gun crimes, among others. Inexplicably, the list also includes arson and defines it so broadly that it would cover the destruction of a bicycle or a tool shed far from any occupied building. These are property crimes that do not warrant life sentences. A more limited definition is needed.

Another major change in the Senate language has been suggested, but the president declined to endorse it. Criminal justice experts have pointed out that very few people over 50 commit violent crimes. They have suggested releasing chronic offenders who have completed their sentences, once they pass this threshold. We believe the idea at least deserves some debate, but the president apparently has decided that a clearer message is sent by staying with the simple "no parole" position. Any president has an option to grant clemency to an aged prisoner, of course, and perhaps that should be emphasized in the bill if an age-based amendment is not adopted.

The bill could require an annual review of this segment of the prison population for purposes of recommending clemency. This makes sense not only in terms of public safety but also as a reasonable remedy if prison overcrowding and the high cost of maintaining an aged population turn out, as has been predicted, to be a problem.

Washington Post
March 3, 1994, Thursday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A28
LENGTH: 397 words
HEADLINE: Guns, Gangs and the Crime Bill
SERIES: Occasional
BODY:

A CARELESS Senate has passed a crime bill providing a federal remedy for problems as close to home as domestic violence, arrangements for transferring children for visits from one divorced parent to another and -- no kidding -- parents who have failed to teach their delinquent children that "criminal activity is not acceptable." Somewhere in all this, the responsibility of state and local government has been overlooked. In two areas in particular, the Senate bill would cause a major restructuring of criminal law enforcement that is unnecessary and for which the federal system is not at all prepared.

A Nearly every crime involving use of a handgun would become a federal offense. And responsibility for street crime conducted by gangs would move to federal courts as well. Gangs are broadly described in the Senate debate as groups of five or more individuals who exhibit "formal membership with the required initiation or rules for members; a recognized leader; common clothing, languages [or] tattoos; turf where the group is known, and a group name."

This rush to federalize offenses would be understandable if states and cities were ignoring gun crimes and gangs. The federal government, for example, has had to step in to protect the exercise of civil rights because some states had failed completely to do so. Federal jurisdiction also makes sense when a crime involves interstate activities, such as racketeering, or complicated frauds extending into a number of jurisdictions. But that's not the case with street stickups or gang assaults. These crimes are prosecuted vigorously at the local level, and states are experienced in handling them.

Officials responsible for operating the criminal justice system -- from the National Sheriffs' Association to the chief justice of the United States -- oppose these provisions. The federal courts were not created to deal with street thugs and turf wars. They don't have the resources to cope with more than a million new cases each year. Nor do the federal prisons, especially since these offenses would carry tough mandatory minimum sentences. FBI Director Louis Freeh warns that he doesn't have the manpower to take up all the responsibilities that would be shifted from local police to the bureau. Legislators now writing amendments to the Senate bill should have these provisions at the top of their list.

Washington Post
February 26, 1994, Saturday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A24
LENGTH: 476 words
HEADLINE: Ask the Experts on the Crime Bill
SERIES: Occasional
BODY:

WITH THE HOUSE under pressure to accelerate action on the Senate-passed crime bill, it is reassuring to learn that two subcommittee chairmen with responsibility for the measure, Reps. William Hughes and Don Edwards, have sought out expert advice on the impact of the bill. They asked the U.S. Sentencing Commission to say how the bill would affect current law and the operation of the sentencing guidelines now in force for federal crimes. That was a tall order, since the bill is huge and full of overlapping provisions -- two different and conflicting "three strikes" proposals, for example, and three that make different provisions for offenses involving use of a firearm. But the commission, having divided the job into two parts, this week released a first report. It should be enormously helpful to House members who want sensible legislation as distinct from a politically popular mishmash.

The "three strikes" proposal would put multiple felony offenders in prison for life without parole. The commission report points out that while such a law might arguably address a need in states that do not have sentencing guidelines and that grant early parole, the federal system already has real-time, nonparolable sentences, mandatory guidelines and greatly increased penalties for three-time losers. In addition, the federal courts handle relatively few cases of the kind that most concern the public -- murder, robbery and aggravated assault. In fiscal year 1992, for example, there were only 235 such cases in the federal system, and 136 of these involved Native Americans, simply because ordinary felonies committed on Indian reservations are handled in the federal courts. A federal "three strikes" law would thus have a disproportionate impact on this group.

The bill also sweeps in far too many offenders, punishing a third offense of property destruction, for example, as severely as a third offense of murder. Because the Senate-passed bill also counts earlier state convictions against repeat offenders, there will also be significant disparity in sentencing, depending on the state laws involved. Involuntary manslaughter, to cite one example, is a four-year felony in California, a five-year felony in Illinois and a 10-year felony in Georgia. Such a conviction in California would not count toward a mandatory life sentence under either provision of the Senate bill. An Illinois conviction would count under one but not the other provision. A Georgia conviction would count under either.

These confusing and perhaps unanticipated results of the Senate's action are ample evidence of the bill's flaws. They must be carefully analyzed and remedied before passage. House members who are taking steps to understand this 960-page behemoth before it is set in concrete are doing exactly what responsible legislators are supposed to do.

Washington Post

February 21, 1994, Monday, Final Edition

SECTION: OPINION EDITORIAL; PAGE A28

LENGTH: 512 words

HEADLINE: The Klass Case and the Crime Bill

SERIES: Occasional

BODY:

IN RESPONSE to criticism last week of the "three strikes" proposal in the crime bill, which would send repeat offenders to prison for life without parole, Mark Gearan, White House communications director, shot back, "You'll have to [explain] that to the parents of Polly Klass... ." The reference was to the 12-year-old Petaluma, Calif., girl who was kidnapped from her home while her mother slept in a nearby room and, after a protracted police search and much community anguish, found murdered last October. The man arrested for that crime turned out to have a long record of criminal violence including two earlier convictions for kidnapping, both involving adult victims. He was on parole when Polly Klass was killed.

Cases such as this one provoke justified anger and raise legitimate questions about why a very dangerous man would be out of prison, free to kidnap and murder. But Mr. Gearan makes a mistake in implying that those who criticize the proposed "three-strikes" law are indifferent to the victims of violent crime. And Richard Davis, the man accused in the case, was at-large because the California criminal justice system failed to provide realistic penalties for criminals of this type. The state would not have needed a "three strikes" penalty in his case if it had had more sensible sentencing policies. California has no sentencing guidelines that would have mandated a penalty within a narrow range and increased it because of the circumstances of his offenses, which involved deadly weapons, severe beatings and sexual assaults and because of his history of convictions for violent crimes. Instead, a 1976 kidnapping led to an indeterminate sentence of one to 25 years, and he was out in five. For his second kidnapping in 1985, he drew a 16-year sentence. But because of prison overcrowding, California had changed its parole law, so that instead of a one-third reduction in sentence for good behavior, his release after serving only half the sentence became mandatory. It is the classic example of what happens when prisons are overloaded with nonviolent offenders and space is made by accelerating parole dates for everyone. California, however, has in recent years moved to make its sentencing policy much stiffer and more realistic.

No one who has questions about the "three strikes" proposal would argue that it is too severe for the likes of Richard Davis. The real issue is defining the kind of behavior that merits a life sentence without parole, so that it does not include minor drug crimes, burglaries and other nonviolent offenses. The Senate-passed bill is far too broad. The second question raised is whether it makes sense to continue to incarcerate aged prisoners beyond the time they would have served under ordinary sentence. This is unnecessary from the standpoint of public safety, and it is expensive. The matter should at least be debated. To suggest that those who want to reconsider these provisions of the bill are insensitive to the horror of a child's murder or the feelings of her family is grossly unfair.

districts -- will have to be cut.

The president surely knows this just as he knows there are some terrible clunkers in the crime bill. Some of his handlers are now gloating that to be attacked by a Harvard professor -- their term of dismissal for Mr. Heymann -- for being too tough on crime is in fact their dream. This is not just two-faced and cynical. It's wrong on the facts. There is nothing "tough" on crime about a bill full of bravado "solutions" that won't work. The president should be demanding revisions instead of speed.

Washington Post
February 18, 1994, Friday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A24
LENGTH: 578 words
HEADLINE: Mr. Heymann Speaks Out
SERIES: Occasional
BODY:

THE GOOD NEWS, it was learned from former deputy attorney general Philip Heymann this week, is that the Justice Department was not entirely asleep while the Senate debated and passed the crime bill last fall. The bad news is that the voices of sanity that pointed out some of the many flaws and hypocrisies in the bill were ignored by those at the White House and on the Hill who wanted to push through a whopper of a measure without bothering to read it carefully or oppose its worst provisions. The points Mr. Heymann made quietly were valid in October, and there is still time for thoughtful legislators to respond to them.

The problem with the bill, according to Mr. Heymann, is that it contains "a set of remedies that look good for about the first 15 seconds and look worse as you get to the half minute." Everyone is concerned about violence in this society, and the responses provided by the bill are politically popular because they look tough. But are they effective? Mr. Heymann, a Harvard criminal law professor and a former assistant attorney general in the Justice Department's Criminal Division, has the knowledge to evaluate the proposals, and his views are instructive.

Mandatory minimum sentences, which have been a feature of most recent crime bills, do not deter crime, he says. But they do fill prisons to capacity with low-level drug offenders who are not violent. Expensive regional prisons are not a wise allocation of funds. The tremendous program of federal grants to put 100,000 new police on the streets is likely to fold in five years, when the funding expires and the cities have to pick up the tab. The "three strikes" proposal, which would put repeat offenders in prison for life without parole, is overbroad and unnecessarily expensive.

On the same day Mr. Heymann was making these points, President Clinton was on the hustings urging that passage of the bill be speeded up, which is exactly wrong. This bill needs more scrutiny and far more careful and honest analysis than it has received so far. The president prefers to discuss this subject in terms of bad guys and good guys, when what is needed is the interest and attention of a leader strong enough to say it's a bad idea to federalize every gun crime or execute offenders whose crimes did not involve a killing.

The president also needs to examine the proposed funding of this multibillion-dollar bill. He said in Ohio on Tuesday that the entire cost of the crime bill would be met without raising taxes simply by reducing the federal bureaucracy. "It's a good swap," he told an appreciative audience. In fact, that very same reduction in federal jobs was already planned so that the government would be able to meet mandatory budget targets in the next few years. If that saving is now going to be spent for police and prisons, some other discretionary domestic program -- perhaps health research or aid to impoverished school

Washington Post

February 1, 1994, Tuesday, Final Edition

SECTION: OPINION EDITORIAL; PAGE A20

LENGTH: 494 words

HEADLINE: When to Call 'Three Strikes'

SERIES: Occasional

BODY:

NOTHING IS more infuriating to the average law-abiding citizen than to learn that the person just arrested for some horrendous rape, kidnapping or brutal assault has a long record of committing similar acts and had just been released from prison after serving three years of a 10-year sentence. The natural demand is that such a person, a multiple offender of the most dangerous kind, be locked away immediately and forever. That is not an unreasonable reaction, and the movement to enact such a penalty into law is gathering steam. The push for "Three strikes, you're out" legislation (or, as Sen. Robert Dole more aptly puts it, "Three strikes, you're in ... forever") has public backing, broad support in Congress, the endorsement of the White House and the approval of governors as different as New York's Mario Cuomo and California's Pete Wilson. Two versions are already in the Senate-passed crime bill, and one state, Washington, has already adopted the plan.

Before the House rushes headlong toward approval, however, some time should be taken to examine the proposal with more care than the Senate gave it. Even President Clinton, speaking to the nation's governors yesterday, urged legislators to use judgment and restraint and to refrain from making this provision overbroad.

Proponents probably won't be moved by arguments about possible constitutional challenge, and they are unlikely to abandon the idea because it will cost money to keep prisoners for life. But even "three strikes" supporters should give careful consideration to defining the kind of behavior that merits a life sentence. The category could use more definition. Generally three strikes proposals are billed as being directed against repeat violent felons. But both the Senate bill and the leading House proposal define this kind of record extremely broadly, including dozens of offenses to which the law would apply, many of them not violent by most definitions. One of the provisions in the Senate bill would count all felony drug offenses, so that possession of 5.1 grams of crack, for example, would qualify. All the bills define a crime of violence as a felony that involves "the use, attempted use or threatened use of force" and even the "substantial risk" that force will be used, against persons or property. Thus, it would be possible to wind up with a law that, at least in theory, punishes with a life sentence without parole a person who has sent a threatening letter to the speaker of the House, possessed a few grams of crack and attempted to destroy an empty mailbox.

The three strikes proposal should be simplified and narrowed. People are concerned about crimes of violence that involve substantial injury or threat of injury to individuals: homicide, rape, armed robbery, kidnapping and the like. If this stiff penalty is to be adopted, it should be restricted to those dangerous multiple offenders who have committed very serious violent crimes.

Washington Post
December 27, 1993, Monday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A16
LENGTH: 499 words
HEADLINE: A Federal Case
SERIES: Occasional
BODY:

WHEN CONGRESS reconvenes and attention returns to the matter of producing a crime bill, legislators have an obligation to consider not only the many specifics in the House and Senate bills but the overriding question of jurisdiction: When should an offense traditionally handled by state and local authorities be made a federal crime? There are plenty of options in the Senate-passed bill ranging from domestic violence to every street crime involving a gun or gang activity. Dealing with violence is at the top of every officeholder's agenda. But there are consequences to federalizing crime, from expanding federal power to overwhelming federal courts and prisons, that ought to be considered before this kind of wholesale transfer of responsibility is enacted. Federal judges have been in the forefront of those urging caution here. At this time last year, for example, Chief Justice Rehnquist specifically warned against just those proposals that have become part of the Senate-passed crime bill. Moving most gun crimes to U.S. courts, he said, would "seriously [skew] our traditional federalist structure -- at great cost and with little probability of impact on the problem." Similarly, he cautioned against putting domestic matters, civil or criminal, in the federal bailiwick. Unfortunately, his words had little impact on legislators rushing to make a record on these highly politicized issues.

U.S. District Court Judge William Schwarzer, who is also director of the Federal Judicial Center here, speaks for his colleagues on the bench in suggesting guidelines for Congress in this area. He believes that criminal law enforcement is primarily a responsibility of the states and shouldn't be assumed by Washington unless there is a demonstrated need involving, for example, some national interest like complicated, interstate fraud. He reminds legislators that federal jurisdiction should not be expanded if resources are not provided to make it effective. Sometimes changes are justified. When states are unable or unwilling to protect federal interests -- as was long the case in the area of civil rights -- Judge Schwarzer believes a sunset provision is often wise and regular oversight always needed. If these guidelines had been considered during Senate debate on street-level gun crime, there is little chance that sweeping provision would have been passed.

Legislators have left a lot of discretion in the hands of crime bill conferees who will return to work next month. The Senate bill is all-encompassing and the separate House-passed measures much less ambitious. The conferees owe it to their colleagues to consult with judges, corrections experts and constitutional authorities on the wisdom of greatly expanding federal jurisdiction. These experts can identify pitfalls and predict price tags, as no harried legislator seems willing to do. Any crime bill crafted of haphazard amendments and lacking a framework for federalizing offenses should not go forward.

Washington Post

December 23, 1993, Thursday, Final Edition

SECTION: OPINION EDITORIAL; PAGE A22

LENGTH: 494 words

HEADLINE: Do Boot Camps Work?

SERIES: Occasional

BODY:

CONGRESS IS enthusiastic about the concept of boot camps for first offenders. The idea is to spare these young convicts the penalty of prison terms in exchange for a kind of shock incarceration in a military-style camp. Sentences are usually for a period of three to six months, during which the offender is subjected to the kind of treatment a new Marine recruit might endure at Parris Island. At the end of that time, he is supposed to emerge disciplined, chastened, determined to avoid prison in the future and equipped with the work ethic and self-assurance of a military man. Because it's less expensive to construct and operate a boot camp than a prison, the idea is even more attractive to legislators. Thus, the differing crime bills passed by each house at the end of the session would provide generous funding -- the final figure could be as high as \$ 3 billion over five years -- for this kind of correctional institution.

There is one problem, however, and it was detailed in a recent New York Times special report on the subject: Correctional experts who have studied boot camps in the federal system and the 30 states and 10 localities where they have been used during the past 10 years provide little support for this enthusiasm. On average, about half the participants flunk out of the programs and wind up in prison. A disappointing number become recidivists, so many that there is little difference between the percentage of boot campers who commit new offenses after release and the percentage of prison inmates who do the same. Even that difference diminishes with time. In addition, it often costs more per day to put an inmate through the boot camp experience, followed by intensive probation, than it would to send him to prison. The General Accounting Office, which completed a study on camps last April, concluded that cost saving and prison overcrowding are reduced when this alternative is used simply because inmates are incarcerated for a shorter period of time. The same goals could be achieved by reducing prison sentences overall.

It's reasonable to ask whether anyone in a position of responsibility for crime legislation on Capitol Hill considered these facts before authorizing billions for new camps. The GAO report was sent to Rep. William Hughes (D-N.J.), who had requested the study, and to the Justice Department, the Bureau of Prisons and the Office of Management and Budget. But it seems to have had no impact. Surely, before the crime bill goes to conference, it and other recent studies on this subject should have an airing. We strongly support alternative sentences, especially for nonviolent first offenders, and like others we hope that innovative concepts like boot camps will prove worthwhile. But if experience indicates that, in practice, this idea is not all it's cracked up to be, it would be far better to have the facts and make an informed judgment before spending billions in a risky venture.

Washington Post
November 20, 1993, Saturday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A22
LENGTH: 340 words
HEADLINE: Sanity and Semiautomatics
SERIES: Occasional
BODY:

ONE OF THE most welcome provisions of the crime bill passed by the Senate on Friday is the one designed to ban the manufacture, sale and possession of semiautomatic assault weapons of the kind no gun collector, reputable hunter or sportsman could possibly want. This measure was almost sidetracked a week ago, when a motion to table it failed by a single vote. But the arguments made in its behalf were compelling, and it was finally adopted 56 to 43.

Semiautomatics -- which can fire many rounds of ammunition without reloading -- are favorites of terrorists, drug warriors, drive-by shooters and the deranged. In the last category are what Sen. Dianne Feinstein calls "grievance killers." Their crimes often involve mindless mayhem and consistently put in jeopardy innocent people at work, on the street and even in their own homes. They have been used in recent post office massacres, schoolyards, office buildings, fast-food restaurants and swimming pools -- any place where a cold-blooded killer is prepared to murder a lot of people he doesn't even know just to avenge some grudge or other. Because the guns are often fired rapidly and without careful aim, they are often involved in the sort of incident where a child is killed by a stray bullet or a woman is hit while standing in her own kitchen.

It is astonishing that these guns are on the street at all, but they are legal and easy to buy in every state except California, Connecticut, Hawaii and New Jersey. Sen. Feinstein's proposal doesn't even attempt to remove those semiautomatics already out there. But it does take a giant step toward sanity by banning their manufacture, sale or possession in the future. It would also bar production of copycat versions of the guns and devices like magazines, belts or drums capable of holding more than 10 rounds of ammunition.

Polls cited by Sen. Feinstein indicate that 66 percent of Americans favor this kind of regulation. That strong level of support should be reflected in any crime bill coming out of conference.

LANGUAGE: ENGLISH

Washington Post
November 16, 1993, Tuesday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A20
LENGTH: 407 words
HEADLINE: Crime Bill: Quality, Not Speed
SERIES: Occasional
BODY:

THE RUSH IS on to get a crime bill to the president's desk before Thanksgiving. The Senate is expected to finish consideration of a major bill today, and though there is a unanimous consent agreement that will cut down on the issues to be decided, a couple of dozen votes are possible. Meanwhile, the House, which has so far passed only a handful of separate bills covering only a fraction of the material in the Senate colossus, is rushing to get other bills to the floor with perfunctory hearings and greatly accelerated committee consideration. Violent crime is surely on the minds of the voters and is a legitimate subject for federal attention. But if this rush to stiffer penalties, enormous expenditures and remedies of dubious constitutionality continues, the president may have more than one turkey on his hands next Thursday.

A There are good things in the Senate bill. Federal help for local law enforcement and corrections needs is welcome. But the process by which \$ 22 billion was "found" for this purpose, which we write about elsewhere in this space today, is flimflam. There are some provisions in the bill, most of them added on the floor, that ought to be reconsidered in the context of federal vs. state responsibilities. Should the federal government, for example, be in the business of funding "family visitation centers" so that divorced parents can hand their children back and forth in a neutral and presumably safe place? Should street gang crime be a federal offense? Should all state crimes involving a firearm that has crossed state lines be made federal crimes? How will the federal law enforcement system, prosecutors and courts handle these new responsibilities?

A Some sections of the bill that have not been the subject of hearings present constitutional problems. The admission into evidence during sex crime trials of allegations about a defendant's earlier conduct of a similar nature is a serious diminution of the rights of the accused. Secret procedures to deport aliens suspected of terrorist activity will surely be challenged in court. Other provisions such as 47 new death penalty provisions and new mandatory minimum sentences may not be unconstitutional, but they certainly represent bad policy. Rushing to conference and pushing for enactment before Thanksgiving will result in a poorly crafted law. It is no triumph to slap together a flawed statute just to meet a self-imposed deadline.

LANGUAGE: ENGLISH

existing deficit reduction targets while financing the president's investment program of selective spending increases will be hard enough; it will require much more substantial cuts than the administration has yet identified in "non-investment" spending. The Senate's proposed financing of the crime bill would only compound this problem that it pretends to avoid.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: November 16, 1993

Washington Post
November 16, 1993, Tuesday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A20
LENGTH: 540 words
HEADLINE: Number Abuse
SERIES: Occasional
BODY:

A TO FINANCE its crime bill, the Senate voted 94 to 4 earlier this month to use some \$ 22 billion that the administration expects to save over the next five years from cutting the federal work force.

A That would be fine, except that eight months ago the Senate voted to use most of the same \$ 22 billion for something else. The March budget resolution assumed that most of the savings would be go to a combination of deficit reduction and the president's investment initiatives.

Nor is that all. Some senators now want to use the well-traveled sum a third time -- to reduce the deficit even further than agreed to earlier in the year. The personnel cuts have yet to be made, and already they have paid for two deficit reductions and one expenditure increase. House Budget Committee Chairman Martin Olav Sabo said last week he feared "that this is a number that is going to get substantially abused in the legislative process." Maybe they should add yet another capital offense to the crime bill: Number abuse.

In the budget debate last summer, the administration and Democrats generally were much criticized for not cutting spending enough. In fact, Congress voted for tighter caps on appropriated funds than either side in the debate found it convenient to acknowledge. Now there's pressure on the Hill to vote for even greater future restraint, but still without pointing out how all of it would be achieved. The \$ 22 billion is only the latest example of the current fiscal sleight of hand to which the administration itself has heavily contributed.

The president proposed cutting the federal work force by more than 100,000 in his budget early in the year, for a five-year savings in excess of \$ 20 billion. The administration then in its "reinventing government" report in September proposed cutting employment 252,000 through 1999. The five-year savings from that was said to be \$ 27 billion. The impression given was that this would be in addition to the budget savings, even though administration officials knew that a lot of it had already been anticipated in the budget and "used."

Republicans and some conservative Democrats determined to play the administration's own game. If it was pretending for political purposes that this was new money, so would they. They propose that it be used for further deficit reduction, to be enforced by a further tightening of the appropriations caps. Now in the Senate they propose to spend it to fight crime as well. A bill to extend the unemployment benefits of workers who have exhausted their basic 26 weeks has likewise become caught up and delayed in the posturing.

Meanwhile, the administration will tell you that it is not even close to meeting the appropriations caps as already set -- and that's counting the savings from all the federal work force cuts in sight and not counting the crime bill. To meet the

Washington Post
November 13, 1993, Saturday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A24
LENGTH: 445 words
HEADLINE: Another Bad Idea in the Crime Bill
SERIES: Occasional
BODY:

SEN. ROBERT Dole, who is an attorney and should know better, is the author of a provision added to the increasingly repressive crime bill, which ignores hundreds of years of jurisprudence and shows a surprising unfamiliarity with rules of evidence and the reasons for their adoption. He claims he is motivated by a desire to protect victims of sexual and child abuse, but his amendment is devoid of any inkling that the person accused in such a case has rights, too, and might even be innocent. The Dole amendment would allow testimony in an abuse case about any earlier incidents of a similar nature that allegedly involve the accused. He condemns "technical evidentiary rulings" that now keep such material out of a trial and proudly asserts that his amendment "would make it easier to prosecute sex offenders." So, of course, would an amendment barring any defense at all, but the rules of evidence were designed not to make the prosecutor's job easier but to provide a fair trial.

Here's how the Dole amendment would work: John Smith, a man with no criminal record of any kind, is accused of date rape and brought to trial. After presenting the case against him on this charge, the prosecutor calls three women to the stand. One after the other, they testify that five years ago, or 10 or 20, they had a similar experience with the defendant, though they never reported it or discussed it with anyone until now. He was never charged, therefore, or convicted of these crimes. These accusations may or may not be true, but in either case they have nothing to do with whether he raped the woman who is the accuser in this particular trial. Moreover, they surely influence the jury, which begins, on no proof at all, to think of him as some kind of serial rapist. Because this sort of testimony is so unfair, even evidence of prior convictions is not admitted at trial, except in limited circumstances such as to impeach the character of the defendant if he takes the stand. A defendant's prior record is useful at the sentencing stage, but highly prejudicial at trial.

Sexual and child abuse is of great concern to the public, but because both offenses are emotionally charged and often dependent solely on the word of the accuser, rules of procedure that safeguard the rights of an accused must be scrupulously observed. Accusers already have extraordinary protections because their names are not published, as are the names of an accused who has not been convicted. Nor is evidence on their reputations or prior activities relating to sexual matters allowed into evidence. Loading the scale against those accused in such cases would be terribly unjust.

Washington Post

November 10, 1993, Wednesday, Final Edition

SECTION: OPINION EDITORIAL; PAGE A26

LENGTH: 495 words

HEADLINE: The Crime Bill: Worse Every Day

BODY:

AS THE SENATE rampages its way toward passage of a crime bill, one is tempted to ask: Where are the people who know better? Where are the men and women, elected to lead, to stand up and speak out when the crowd is shouting for blood? Where are the lawmakers ordinarily counted upon to be strong, wise and decent when the less responsible are swinging wildly and breaking up the furniture? Sen. Joseph Biden, who is not one of the more articulate members of the "greatest deliberative body" on Earth, is at least trying to manage this massacre. Even he, though, occasionally joins the mob in voting for reckless measures thought to be politically appealing. Are all the thoughtful lawyers, committed civil libertarians and long-range thinkers hiding under the chairs? Is everyone in the Justice Department and the White House looking for a crawl space, too?

Consider an amendment adopted on Monday, ostensibly aimed at dealing with alien terrorists in our midst. It would allow the attorney general to use secret proceedings and secret evidence to deport aliens she believes pose a danger to national security. She would have to get permission from a special court to invoke these procedures, and the alien would be entitled to a hearing and an appointed attorney if he couldn't afford one. But he would have no right to know who his accusers are, what the specific charge against him is or what evidence has been produced against him if the court found it necessary to withhold this information for reasons of national security. There have been no hearings on this amendment, but it was thought to be such a dandy response to public fear that it was accepted without a recorded vote.

Concerns about alien terrorists have been understandably fueled by the World Trade Center bombings and the inflammatory rhetoric of some aliens who have entered the country illegally. Rhetoric is no crime, but those who have violated the immigration laws can and should be deported through normal procedures for that offense. Those accused of crimes can be tried -- as those charged in the New York bombing are being tried now -- and can be imprisoned and deported under existing law. What is being considered is a police-state type of procedure, in which a person is severely penalized without being told what he has done.

Crime is a serious problem in this country, but the remedy is not to tear up the Constitution and ignore 200 years of experience in protecting the rights of the accused. Sen. Biden said on Tuesday that in this atmosphere, if an amendment were offered to make jaywalking a federal crime punishable by wrapping legs in barbed-wire, it would pass. This end-of-the-session excess has become all too familiar. At this point, the best thing that could happen to the crime bill is gridlock. But we repeat our question: Where are the people in the Senate and the Justice Department and the White House who know better? How do they justify their silence?.

reduction in the next four years will go instead into a trust fund for crime programs. The budget agreement requires that funds be found elsewhere -- the Head Start program, maybe, or AIDS research -- but there was no agreement as part of this package about what other programs would suffer. Can the White House accept this fakery? Can government officials struggling with the budget deficit find the money elsewhere? Perhaps Congress really believes that these billions should be reallocated to prison construction and cops on the beat, but a shift of this magnitude deserves to be debated and made with advice from people responsible for the numbers. If the country really needs to fund a national study on campus date rape, or pay for yet another national conference on violence in exchange, for example, for more FBI agents or more aid to education, that's fine. But nothing comes free, and these are the choices that have to be made.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: November 9, 1993

Washington Post
November 8, 1993, Monday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A20
LENGTH: 628 words
HEADLINE: The Feel-Good Crime Bill
SERIES: Occasional
BODY:

WITHOUT even reaching the hotly contested parts of the crime bill like gun control, the death penalty and reform of habeas corpus, the Senate has already adopted a series of proposals that ought to be reconsidered. Undoubtedly jolted by last Tuesday's election returns, which underscored the public's concern about crime, legislators reacted reflexively, rather than thoughtfully, on at least three issues. They voted to raise penalties for hate crimes and for arson on public lands, Indian reservations and property used in interstate commerce (this is supposed to be a response to the California fires) and almost unanimously more than doubled the president's request for grants to the states for prisons, police and other crime-fighting programs. This increase, from less than \$ 10 billion to more than \$ 22 billion over five years, is supposed to be financed without pain, but it's a phony.

The arson provision exemplifies the congressional inclination to respond to crime-related problems by increasing penalties. Arson is essentially a state and local problem, except for the special cases mentioned above, which represent only a fraction of the California losses. If arson turns out to have been the cause of last week's fires, California law will provide ample penalties for the criminals involved. Since three deaths have been attributed to the fires, prosecutions for murder can be expected. It may make senators feel tough to double the penalty for setting a fire on U.S. Forest Service land, for example, but it is unnecessary when the state penalties are already higher.

The hate crime sentence strengthening, which, like the arson provision, was sponsored by Sen. Dianne Feinstein, would increase by a third sentences for federal crimes where the perpetrator was motivated by bias. Yes, the Supreme Court has approved these laws at the state level, but that does not make them  good policy. We still believe that increasing penalties because of the thoughts or speech of the offender will lead to terrible abuse. It doesn't even make sense. Sen. Feinstein herself first came to national attention on that terrible night in 1978 when San Francisco Supervisor Dan White murdered Mayor George Moscone and Supervisor Harvey Milk, who was homosexual. Does Sen. Feinstein really believe that because the killer hated homosexual men, the murder of Mr. Milk deserved a greater sentence than the murder of the mayor? And here again, most hate crimes, except for a few enumerated in civil rights statutes, involve assault, murder and other offenses that are state and not federal crimes.

Finally, consider the blockbuster \$ 22 billion amendment. Ninety-four senators were happy to go along with the fiction that this increase has been "financed" because funds the administration had already identified for deficit

Washington Post
October 22, 1993, Friday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A22
LENGTH: 405 words
HEADLINE: A Better Crime Bill
SERIES: Occasional
BODY:

CONGRESSIONAL leaders and the administration had just about settled on a crime bill that was expected to sail through both houses by the end of this month. Starting with a bill that passed both houses and was reported from conference last year but not passed, legislators made a couple of changes and announced last month that the bill was ready for recycling and that passage was practically ensured. Opponents of the death penalty and provisions curtailing habeas corpus rights were led to believe that their protests would be futile and their objections overridden.

None of this is necessarily true. Last week, the Black and Hispanic caucuses in the House joined forces to request a slow-down in the process, demand some hearings and voice objections to the general punitive nature of the bill. In addition, four freshmen on the House Judiciary Committee have gone on record opposing fast-track treatment and emphasizing the need for a full, public review of all proposals before a floor vote is scheduled. And on Tuesday, Rep. Craig Washington introduced an alternative bill on behalf of these groups and others who have reservations about the leadership proposals. It provides a counterweight to those at the other end of the political spectrum who believe that long, mandatory sentences and curbs on defendants' rights are the only sensible response to crime.

Mr. Washington's bill contains no new death-penalty offenses, abolishes mandatory minimum sentences and, unlike the leadership bills, imposes no deadline for filing habeas corpus appeals. It emphasizes alternatives to prison, addresses racial disparity in sentencing and suggests reforms in the civil asset forfeiture program, which even conservatives such as Rep. Henry Hyde say are needed. The bill has more than two-dozen sponsors, including many representatives who are neither caucus members nor freshmen.

Will the Washington alternative in its entirety be passed? Probably not, for unfortunately there are plenty of votes on the Hill for some of the original bill's worst features. But it is important that the opposition has drafted a bill of its own, which clearly delineates the areas of disagreement with the leadership. It deserves to be debated. The arguments made may change some minds. And the discussion will force legislators to consider the full impact of the harsh provisions that richly deserve to be defeated in the leadership bill.

LANGUAGE: ENGLISH

the right one, for all the death penalties, extra police, new study commissions and tinkering with habeas corpus that are in the bill are of marginal importance in the war on crime, compared with curbing the availability of weapons. Passage of gun control legislation is imperative.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: October 14, 1993

Washington Post
September 27, 1993, Monday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A18
LENGTH: 517 words
HEADLINE: The New Crime Bill
SERIES: Occasional

BODY:

IN THE closing days of the last congressional session a comprehensive crime bill, which had been passed by both houses and reported from a conference committee, faltered and died, primarily because of a dispute over changes in habeas corpus law. Last week, an updated version of the bill was introduced in both houses. The current proposal still contains some of the horrors of earlier bills, primarily an expansion of the federal death penalty to 47 new offenses and restrictions on habeas corpus rights. But there are also some omissions that merit attention. Two improve the bill and a third represents a change of strategy that may accelerate the passage of the single most important item on the criminal justice agenda: gun control.

A One of the clinkers in last year's bill that has been withdrawn was a provision authorizing a federal death penalty for major drug dealers, even when their crimes did not result in a killing. We oppose the death penalty under all circumstances but believe it is particularly egregious when imposed for a crime that is not murder. The Supreme Court in 1977 struck down a Georgia statute that provided a death penalty for rape. Though the justices did not then go so far as to say that the penalty was unconstitutional for any crime other than murder, subsequent opinions reinforce a broader interpretation of that ruling. It would be reasonable, therefore, to assume that a challenge to the drug crimes provision would be successful. The bill is better without it.

A Also missing from the new version of the bill is a set of provisions that would have imposed new mandatory minimum sentences. These rigid penalties are a simplistic reaction to crime, and they are strongly opposed by the nation's judges. It's fine to have sentence guidelines that allow some flexibility and give judges an opportunity to weigh factors like an offender's prior record. But mandatory minimums are a sledge hammer in the arsenal of criminal justice. They are uniformly harsh, often unfair, and they automate the sentencing process, which ought to involve human intelligence and personal judgment. We applaud Rep. Don Edwards (D-Calif.), who believes all mandatory minimum sentences should be repealed. In the absence of that reform, it is at least a small victory that the new bill does not add new ones.

In addition to removing these objectionable sections, the sponsors of the current crime bill have also left out gun control. In this case, it is the proponents of the Brady bill, which calls for a five-day waiting period before the purchase of a handgun, who asked to be left out. So did those supporting controls on the purchase of assault weapons. They believe their bills have a better chance of passage if they are considered independently. We hope this strategic decision is

It is unfortunate that any restrictions on the Great Writ are looming. But if concessions are to be made on the frequency and the timing of petitions -- both of which we oppose -- the bargain should at least include the full roster of amendments already won last year.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: October 14, 1993

Washington Post
August 31, 1993, Tuesday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A18
LENGTH: 528 words
HEADLINE: First Step Toward a Crime Bill
SERIES: Occasional
BODY:

PRESIDENT Clinton reportedly has high hopes that when Congress returns next month an omnibus crime bill, on which all factions in both houses agree, will be ready for introduction and quick passage. Sen. Joseph Biden, chairman of the Senate Judiciary Committee, has voiced the same optimism, but he should know better. The senator has been through these wars before, and he knows that there are tough issues in this area and views are strongly held. Late on the last evening before this recess began, he conceded that universal approval of an omnibus bill had not been achieved. But he did introduce a bill dealing with only one of the controversial issues -- habeas corpus reform -- describing it as a compromise and predicting passage.

During the last Congress, habeas corpus reform was one of the hotly contested issues that prevented passage of a larger bill. In general terms, one side wanted to severely limit the rights of death-row inmates to challenge their state court convictions in federal court, while the other opposed the effort and wanted to strengthen defense resources in these cases. A conference committee came up with language that was a compromise the liberals could accept. But the strong opposition of state and local prosecutors created gridlock, and no bill was passed. Now Sen. Biden and his staff have sat down with the prosecutors over a five-month period and drafted a bill on which they can agree. This new proposal may win some conservative votes, but the liberals' position has been severely eroded, and they are not likely to go along.

Habeas supporters have already conceded a great deal to the opposition. They will accept a provision limiting prisoners to a single petition. And they will agree to a six-month deadline for filing. But in exchange, they insist on two guarantees: broadly available access to federal court, which the Supreme Court has begun to close off, and competent, well-funded and independently appointed defense counsel in capital cases. On both counts, the Biden bill falls short. In the landmark case of *Teague v. Lane*, the Supreme Court ruled that federal courts may not consider habeas corpus claims based on "new rules of law" not in effect at the time of conviction. Defense attorneys, of course, object to the limitation but would be satisfied if the term "new rules of law" was narrowly defined, as it was in last year's conference report. The Biden bill is a step back in this area, and it should be amended. Last year's conference report also called for the creation of independent boards in the states, which would set standards for the appointment of attorneys in capital cases and actually assign those attorneys to individual defendants. The Biden bill gives the assignment power to judges who, the opponents of the provision contend, have often been part of the problem in the past. This too should be changed.

Washington Post
August 13, 1993, Friday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A24
LENGTH: 405 words
HEADLINE: How to Fight Crime
SERIES: Occasional
BODY:

Q PRESIDENT CLINTON'S crime bill is larded with provisions providing the death penalty for nearly 50 new offenses. That is the truly bad side of a bill that is largely constructive in other respects. Crime is one of the most difficult issues in American national life. Federal government officials are held accountable for the street crime that most frightens citizens, but most of the action against it is at the local level. This makes much of the national talk about crime empty.

Mr. Clinton's proposal is built on last year's crime bill and addresses practical things the feds can do to assist law enforcement. This includes the badly needed Brady bill requiring a five-day waiting period before purchase of a handgun; this measure should be separated from the rest of the bill and passed swiftly. The president took a helpful step in signing an executive order expanding the ban on the import of assault-style weapons. Even better would be a push to ban the domestic manufacture of these weapons.

Drawing on a signature proposal from his campaign, Mr. Clinton calls for \$ 3.4 billion in federal spending over five years to put 50,000 new police officers on the streets. If national politicians want to do something real to help local governments fight crime, this surely qualifies. Mr. Clinton would also increase federal support for community policing initiatives, which put police in closer contact with the neighborhoods they serve. The bill would expand community boot camps for youthful offenders, establish a Police Corps to draw college graduates into law enforcement and give more federal help to schools disrupted by violence.

Unfortunately, too many politicians believe that unless a federal crime bill contains a lot of death-penalty provisions, it won't look "tough" and therefore won't be worth passing. This bill not only provides a slew of new death penalties but would also limit habeas corpus appeals in death-penalty cases. A better way to clear the courts of death-penalty cases is to abolish the death penalty. Yes, capital punishment is popular, and Mr. Clinton's support for it was seen as a political asset in last year's campaign. What is sad is not that some citizens are so outraged by crime that they support capital punishment -- this is at least an honest emotion -- but that politicians pretend that putting more people to death will actually make a large dent in the crime problem.

LANGUAGE: ENGLISH

Washington Post
March 8, 1992, Sunday, Final Edition
SECTION: OPINION EDITORIAL; PAGE C6
LENGTH: 461 words
HEADLINE: The Crime Bill in the Senate ...
SERIES: Occasional
BODY:

THE CAMPAIGN season is in full swing, so it is no surprise that the crime bill that was stalled last year has been resurrected. The measure passed both houses, but the final version of the bill drawn up by a conference committee never won Senate approval because Republicans complained that some of the more Draconian provisions had been compromised away.

A Now Senate Republicans want to try again. They have put forward a new bill with all the worst features of last year's, plus a provision imposing a death penalty statute on the District of Columbia. They threaten to bring it up weekly. Democrats have countered with the conference version of last year's bill, but their opponents are talking to prevent a vote.

It's a sorry debate. Both proposals would expand the death penalty to more than 50 federal crimes, including crimes that do not involve a killing. Both add a flood of new mandatory minimum sentences, and both fiddle with the right to habeas corpus and the exclusionary rule. There is also money in both bills to aid local law enforcement agencies, but that idea has broad support and could be passed without all the rest of the baggage.

There is a better way to deal with crime than raising penalties, and that's to prevent it. Last year, both houses agreed to a crime bill provision mandating a waiting period before the purchase of a handgun, a change that if effectively enforced could begin to make a dent in the violent crime statistics. This so-called Brady bill provision is being held hostage by those who demand that all the repressive measures be part of a final package. Senate Democrats should call their bluff. The Brady bill was also passed as a separate measure by the House last May, and it has been on the Senate calendar, ready for action any time, ever since. The majority leader should call it up immediately.

Would it be passed alone? Why not give it a try. Few thought it would get through the House, but constituent pressure is building on handgun control, and it went through with 52 votes to spare. Every one of the Democratic contenders for the presidential nomination has endorsed the Brady bill, so why shouldn't members of the Senate take a stand? Last year, President Bush threatened to veto any gun control measure that came to him outside a package deal, but he should be put to the test and forced, if he does veto such a bill, to explain and defend his decision on the campaign trail. It will be hard to convince voters that a president who is supposedly concerned about crime would block attempts to keep guns out of the hands of felons, fugitives, drug addicts and the deranged. The Senate should
A put off the death penalties, the mandatory minimums and the exclusionary rule.
Pass the Brady bill.

Washington Post
January 5, 1992, Sunday, Final Edition
SECTION: OPINION EDITORIAL; PAGE C6
LENGTH: 455 words
HEADLINE: Federal Courts, Local Cases
SERIES: Occasional
BODY:

CONGRESS has been piling new responsibilities and burdens on the federal courts, and Chief Justice William Rehnquist, in his annual end-of-the-year review, has now delivered a bracing and useful protest.

The federal courts were created for a specific purpose. Framers of the Constitution assumed that state courts would continue to handle the bulk of criminal cases and most of the civil litigation involving contracts and other matters that affect ordinary citizens. Federal courts were given a different jurisdiction determined by the more complicated relationships among the states and with the national government. They interpret the Constitution and federal statutes. They handle disputes between states and between citizens of different states. And they are the forum in which an individual can assert his federal constitutional rights against the power of any state. But they cannot fulfill these functions if Congress loads on them new responsibilities that have traditionally been handled by state courts.

The chief justice cites two cases. The D'Amato amendment to the crime bill -- not yet enacted -- would make nearly every homicide involving a gun a federal crime. Thousands of street murders, family killings and robbery-related deaths now prosecuted in local courts would be sent to federal court. Similarly, the proposed Violence Against Women Act, still pending in Congress, seeks to deal with domestic and sexually related offenses by resolving them in federal courts, primarily on the civil side. Passage of either bill would swamp the federal judiciary and, the chief justice warns, undermine the ability of these special courts to handle the workload they already have.

The impulse to shift problems of national concern to federal courts flows from a desire by legislators to address every crisis and from a tendency to assume that the national government ought to take on any important problem. But in this situation the federal courts emphatically resist handling these cases, and the state courts are equally firm about not wanting to lose them. Could the problem be eliminated simply by adding more judges to the federal system and building more federal courthouses and prisons? No, the whole idea of putting street crimes, spouse abuse and other traditionally local matters into the national system is a distortion and a distraction. It is not surprising that Chief Justice Rehnquist, one of the country's leading conservatives, would oppose such a radical departure from the original understanding of federal-state relations. But it is ironic that Sen. Alfonse D'Amato and others in Congress who presumably share that political philosophy are leading the charge in the opposite direction.

Washington Post

January 1, 1992, Wednesday, Final Edition

SECTION: OPINION EDITORIAL; PAGE A30

LENGTH: 496 words

HEADLINE: Did the Court Send a Signal?

SERIES: Occasional

BODY:

ON MONDAY of the week before Christmas, the Supreme Court agreed to accept an appeal from a Virginia convict now serving time for theft. The case did not seem to be of special importance at the time, but two days later the justices amended their earlier order in a manner that has raised concern among civil libertarians. The court does not provide interpretive advice or explanations of its orders, and it would be foolish to try to predict exactly what the justices have in mind. But it is quite possible that a majority of the court -- it is ominous that Justices Blackmun and Stevens dissented from the second order -- intends to use this case as a vehicle for restricting the right of habeas corpus.

The prisoner, Frank West, was convicted of grand larceny in the state courts of Virginia. He was denied relief both on direct appeal and in state habeas corpus proceedings and is now in the federal courts seeking relief. In April, the U.S. Court of Appeals for the Fourth Circuit ruled in his favor, finding that the state courts had misapplied the law to the particular facts in the case. No reasonable man, the court said, could have found the defendant guilty of larceny simply because he was in possession of some of the stolen goods a month after the theft. It was an unusual ruling for, as the appellate court itself pointed out, its interpretation of the facts in the case was at odds not only with all the state and federal courts that had ruled earlier but with a jury decision on these facts as well.

So it is not surprising that the Supreme Court would want to consider the primary question raised by the state concerning the federal court's power to make this determination. What is unusual is the court's raising a broader question on its own and asking the lawyers for both parties to brief and argue the general subject of the federal court's obligation of deference to a state court's application of the law to the specific facts of any case. Should federal courts, in other words, continue to review state court findings involving the legal interpretation of facts, or should a new standard be adopted creating a presumption that a state court ruling on such matters is correct?

Conservatives in Congress have been trying to chip away at habeas corpus review for some time. This year, the Senate version of the crime bill, for example, would have allowed federal judges to dismiss petitions any time they are convinced that a prisoner received a "full and fair" hearing in state court. That language was not adopted in conference, and the crime bill was vetoed for other reasons. But cutting back on prisoners' avenues of appeals has been given a priority by the administration and its supporters on the Hill. The justices, too, have been complaining of the paperwork and delay involved in these proceedings. It's a good bet that West will turn out to be an important ruling, but there's considerable concern that it won't be a good one.

The Washington Post
December 6, 1991, Friday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A30
LENGTH: 447 words
HEADLINE: Virginia Murder, Federal Review
SERIES: Occasional
BODY:

THE WHITE House announced last month that the crime bill would be vetoed because, in part, it would make it too easy for death-row prisoners to get federal habeas corpus review of their convictions. But a statement issued by three justices of the Supreme Court this week demonstrates just how valuable that review can be and how important it is to preserve the right. The fact that 40 percent of all death-row prisoners filing habeas corpus petitions in federal court receive some kind of relief ought to demonstrate the critical importance of these reviews. But often statistics don't have the impact of individual stories, so the facts of the Virginia case considered by the Supreme Court are instructive.

Joseph O'Dell was convicted of murdering a woman in Virginia Beach in 1985. There is no evidence that they had ever met or spoken to each other, but they were both in the same bar on the night of the murder. Mr. O'Dell was convicted because tire tracks at the murder scene were "similar" to those left by his car, because a fellow inmate (who was later released on probation) testified that he had confessed and because bloodstains on his clothing were "consistent with" the victim's blood. In spite of the fact that Mr. O'Dell had been diagnosed as a paranoid schizophrenic and had engaged in erratic and highly emotional behavior in the courtroom, the presiding judge allowed him to represent himself at trial. He was sentenced to death and lost his appeal in the Virginia courts. In a state habeas corpus proceeding, he was denied the right to contest the blood evidence (a DNA test, available only after his conviction, had shown the sample was not the victim's blood) or the trial judge's decision allowing him to represent himself. The habeas corpus petition was unsuccessful because his lawyers had filed the wrong kind of notice to initiate the appeal.

While the Supreme Court did not take the O'Dell case at this point, Justices Blackmun, Stevens and O'Connor filed a statement "to underscore the importance of affording the petitioner meaningful federal habeas review." This is a signal to the federal courts that will now review this case that it is not at all clear the accused actually committed this crime or was capable of representing himself at trial. The fact is that it is quite possible an innocent man has been sentenced to death and the state courts do not want to hear any further argument.

9 It's hard to imagine a case in which the value of a full and fair habeas corpus review in federal courts could be more clearly demonstrated. Lawmakers and administration officials seeking to emasculate this right are terribly and recklessly wrong.

Washington Post

November 26, 1991, Tuesday, Final Edition

SECTION: OPINION EDITORIAL; PAGE A20

LENGTH: 382 words

HEADLINE: Go Ahead, Veto the Crime Bill

SERIES: Occasional

BODY:

REPUBLICANS are complaining that they got mugged at the conference on the crime bill over the weekend and that they hardly recognize the compromise product. The bill "left the House as Arnold Schwarzenegger and came back as Woody Allen," said House conferee Henry Hyde (R-Ill.). That's the line coming from the White House too. The president, claiming that this version of the bill "would weaken our criminal justice system," vows to veto it. We find it hard to believe that legislation that would create more than 50 new capital offenses will be greeted as a boon by thugs and miscreants, but we won't shed any tears if the bill is buried.

The White House objects specifically to the fact that conferees accepted the House version of a habeas corpus change rather than the Senate one. The former does put a one-year time limit on defendants' moving for this review, and also guarantees each death penalty prisoner the right to competent counsel and to raise constitutional objections that were validated by the Supreme Court after his conviction. The Senate version, preferred by the administration, virtually eliminates habeas corpus review in federal courts. The startling fact to remember when evaluating these competing proposals is that federal judges grant some form of relief in 40 percent of death penalty cases coming before them on habeas corpus review. How can the White House possibly believe that it is necessary to short-circuit and short-change these proceedings when they uncover so much injustice?

It is true that if the Republicans had been successful at conference, the bill would have been far worse than it is now. Warrantless searches, for example, would have been allowed, so long as police were acting "in good faith." A capital punishment law would have been forced on the District of Columbia. And every murder committed with a gun would have become a federal crime punishable by death. There are some who say this bill is the least offensive Congress is likely to approve in this politically charged field. But the price is too high. Accepting this compromise is no victory for those who believe that tough talk and more death penalties are not the way to fight crime. For reasons very different from those the president will cite, we welcome a veto.

LANGUAGE: ENGLISH

Washington Post
November 23, 1991, Saturday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A26
LENGTH: 443 words
HEADLINE: Cancel the Crime Bill
SERIES: Occasional
BODY:

AFTER STALLING for more than a month about going to conference on the crime bill, House and Senate negotiators are scheduled to sit down in the next few days and put a compromise package together. The aim is to get this turkey to the president before Thanksgiving, but it's nothing to be grateful for. Neither version of the bill is substantially better than the other, and the whole mess should be set aside for the holiday season, if not forever.

The bill is the latest in a string of measures designed not so much to combat crime as to convince the public that legislators are tough on criminals. The theme this year is to cut back on those irritating constitutional rights that sometimes slow down the trial and appeal process, and to provide capital punishment for as many offenders as possible. Both the House and the Senate bills create about 50 new death-penalty offenses, including drug crimes that do not involve a killing, attempted but not completed murders and incidents where death was not caused intentionally but "with reckless disregard for human life." The Senate bill also contains a D'Amato provision that would swamp the federal courts by making any gun murder a federal crime -- most are now state crimes -- punishable by death. This rush to execution is startling and simple-minded, and the stampede must be slowed.

To make convictions easier, there are to be new rules governing searches that would allow the admission of evidence seized "in good faith" but without a valid warrant. Recent Supreme Court decisions and the Senate bill limit this change to situations involving invalid warrants; the House wouldn't even require a warrant, just the good intentions of the police. Once convicted, an offender will have his right to federal court review on habeas corpus severely limited in the House version of the bill and virtually eliminated by the Senate provision.

While the House refused to accept Senate language banning the use of certain semiautomatic weapons, there is still a chance that the conferees might agree to some limitation in this area. There is also hope that a waiting period for the purchase of handguns, which was approved in both houses, will survive the conference. These slow steps to control guns, so badly needed and so ferociously fought, are the only signs in this legislation of real progress in the war against crime. Increasing executions tenfold, federalizing the criminal justice system and trampling the rights of the accused may make lawmakers feel good. But until this country gets the obscene flood of automatic weapons and handguns under control, there will be no peace on the streets.

Washington Post
October 23, 1991, Wednesday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A26
LENGTH: 517 words
HEADLINE: An Outrageous Crime Bill . . .

FIVE TIMES in the past seven years Congress has passed a huge crime bill, usually in the final days of the session. This year's version was passed by the House yesterday and, after conference with the Senate, is expected to be sent to the White House before Congress adjourns for the year. Like its predecessors, this bill is a vehicle for allowing members to demonstrate that they are tough on crime and determined to escalate both rhetoric and penalties in the effort. Things can get pretty ugly in the race to set ever higher prison terms while restricting the rights of the accused and limiting the appeals process, and this year was no exception. Both the House and Senate versions of the bill are rotten, and neither one -- nor any compromise we can see -- ought to be enacted.

Basic to both versions is the belief that if the death penalty is widely applied, crime will be reduced. Dozens of new capital offenses are created, and the right to habeas corpus review in death penalty cases is severely restricted. The House would make convictions easier by allowing the admission of illegally seized evidence so long as the police were acting "in good faith." This is a classic loophole that would do great damage to Fourth Amendment rights. But when it came time to have a real impact on violent crime by controlling the use of semiautomatic assault weapons and ammunition, the House balked. A day after the massacre in Killeen, Tex., members capitulated to the National Rifle Association and voted to remove gun control provisions from the bill. What a disgraceful response to a situation where federal action is really needed and would be truly effective.

Q The Senate bill is in many respects even worse. The most egregious error on that side was the adoption of a D'Amato amendment, which would make just about every gun murder a federal capital offense. Aside from overriding the decisions of more than a dozen states that do not have a death penalty, this provision -- adopted on the floor without hearings or study -- would throw the federal judicial system into chaos. Federal courts were not created to handle ordinary street crime, and they are ill-equipped and spectacularly understaffed for the task. This provision is typical of the current approach to hot subjects by Congress: If the public is concerned about crimes -- major offenses like murder or even less serious ones like domestic disputes -- that have always been handled in state and local courts, members of Congress want to respond by moving those cases into federal court. They do this without ever considering whether moving a case from one court to another will affect the outcome, whether the federal courts can handle the new burden or even whether the traditional division of responsibilities between the federal government and the states should be changed. This approach is both mindless and mischievous, but members are convinced that this kind of vote makes them look tough. Unfortunately that seems to be the objective of all these now-annual debates, and they have become a truly disgraceful tradition.

Washington Post
October 16, 1991, Wednesday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A26
LENGTH: 452 words
HEADLINE: A Prisoner's Last Chance
SERIES: Occasional
BODY:

THE HOUSE takes up the truly terrible crime bill today, but the measure reported by the Judiciary Committee in that body is, in many respects, an improvement over the version passed by the Senate in July. This is specifically true of the provisions regarding habeas corpus reform. Nevertheless, an effort will be made to substitute language similar to the Senate's for the more modest revision now in the House bill. That effort should be defeated.

We are of the mind that there is really no pressing need for habeas corpus reform at all. This form of post-conviction review, first through the state courts and then in the federal system, is time-consuming and may be a paperwork burden for judges. But the inconvenience is a small price to pay in order to ensure that convictions have been fairly obtained. That is particularly true in capital cases, which, by their nature, generate the greatest number of habeas corpus petitions and the most lengthy appeals. But most jurists and legislators believe the procedure should be streamlined. In practical terms, the argument is no longer whether to amend habeas corpus rules, but how to do so.

The Senate bill would set a six-month limitation on the filing of petitions, while the House bill would allow a year. After that, the bills diverge sharply. The Senate would allow federal judges to dismiss petitions if they are convinced that the prisoner received a "full and fair" hearing in state court. This provision could result in the wholesale dismissal of habeas corpus petitions in some federal courts, leaving inmates in those districts virtually without review in these forums. That is reason enough to support the current version of the House bill over the proposed amendment. But the House bill is affirmatively better, too, because it requires the appointment of competent defense attorneys (those with relevant experience) in death penalty cases throughout all the proceedings. The current practice, in some states, of appointing inexperienced lawyers for these complicated life and death cases makes a mockery of the process.

Distinctions between the alternative proposals may appear to be arcane, but for prisoners on death row, they are critical. Federal courts grant some measure of relief in 40 percent of capital cases as a result of habeas corpus review. Many of these petitions are frivolous, but as this figure indicates, a substantial number are not. The right to go to federal court for review of state court convictions must be maintained, and that right must be made effective by the provision of competent counsel. The House bill already provides substantial restructuring. Any attempt to cut back further should be rejected.

Washington Post

July 23, 1991, Tuesday, Final Edition

SECTION: OPINION EDITORIAL; PAGE A20

LENGTH: 489 words

HEADLINE: Guidelines and Minimums

SERIES: Occasional

CONGRESS DIRECTED in 1984 that the process for determining sentences for federal crimes be overhauled, and before the new system was even in place, the same lawmakers began to undermine it. The trend continues, most recently in the crime bill just passed by the Senate, as legislators react to offenses involving drugs and firearms by mandating harsh minimum sentences. Popular as they are, these new penalty provisions are in many cases unfair, ineffective and extremely costly. And they are damaging the new sentencing guidelines structure that was carefully crafted to make the whole process more rational and just.

The distinction between the sentencing guideline scheme and the imposition of mandatory minimums is not always clear to the public. Even some judges lump them together and condemn both as restrictions on judicial power. But they represent two different approaches to sentencing. Before guidelines were adopted seven years ago, federal judges in different parts of the country and even in different courtrooms in the same building imposed greatly divergent penalties. One bank robber with an otherwise clean record might be put on probation in Minnesota, for example, and another given 20 years in Alabama. The guidelines eliminate that problem by spelling out in detail the acceptable range of penalties for each offense. But they also allow flexibility, because a sentence is determined only after a set of aggravating and mitigating circumstances are taken into consideration. Some factors, like physical injury of a victim or prior record of an offender, will cause a sentence to be increased. Others, like an otherwise clean record or cooperation with the prosecutor, will reduce the penalty.

Mandatory minimums, on the other hand, allow no leeway for special circumstances and are almost always extremely harsh. No one on the Senate floor during the crime bill debate was calibrating offenses, as the Sentencing Commission does, to account for aggravating or mitigating circumstances. The only decision lawmakers were making was whether it would be more satisfying to send certain offenders away for 10 years or for 20. These hastily adopted sanctions take no account of whether a defendant is a first offender, a kingpin or a courier, or whether he has named and testified against his coconspirators. They destroy the proportionality carefully created by the Sentencing Commission, requiring, for example, a five-year sentence for possession of five grams of cocaine while leaving in place a one-year maximum for possession of 4.9 grams.

Congress has the right to set penalties for federal crimes, but this ought to be done within the framework of the guidelines and not on an improvised basis. The commission could be directed to raise the offense level for certain crimes or to eliminate certain mitigating factors. But issuing mandates simply throws the whole system senselessly out of whack.

Washington Post
June 28, 1991, Friday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A22
LENGTH: 499 words
HEADLINE: Life, Death and Paperwork

THE RIGHT to seek a federal writ of habeas corpus, so vital in the adjudication of death penalty cases, is taking a beating on two fronts. In a series of decisions, the Supreme Court has now dramatically narrowed a prisoner's right to federal court review of state convictions. And on Capitol Hill, the Senate has passed legislation backed by the administration that would emasculate the writ. In both forums there is much discussion of the paperwork burden caused by prisoner petitions, of the need to show respect and deference to the state courts and of the importance of enforcing exact compliance with procedural rules. Much less is said about the judiciary's duty to review death penalty cases with rigor and where possible to give the benefit of the doubt to a petitioner pleading for his life.

Habeas corpus petitions are filed in federal court after a defendant has been convicted and has exhausted all his appeals and his chances for habeas corpus relief in state court. These proceedings often uncover mistakes in the state courts, and 40 percent of death row petitioners have been granted some kind of relief. This demonstrates that the writ offers important protection and ought to be preserved. Nevertheless, the Supreme Court in April set a new standard that makes it all but impossible for a prisoner to file more than once in federal court.

On Monday, in two more decisions, the court accepted additional barriers to federal court review by ruling that procedural slip-ups earlier in the case prevent a prisoner from petitioning for federal review. The result in these cases is that a California man will go to his death without further review because a state court was not clear about the reason for rejecting his appeal, and a Virginia man will be executed without a hearing on his constitutional claim because his lawyer missed a filing deadline by three days.

Meanwhile, the Senate has adopted, as part of a major crime bill, an administration proposal that would strip the federal courts of the power to review claims that had been "fairly and fully" considered in state court. Thus convictions could stand even though a state court had incorrectly ruled on a federal constitutional question. Prisoners could be executed without federal court review even when federal judges believe that the petitioners' convictions or sentences had been constitutionally flawed and their appeals incorrectly decided below.

Isn't it wonderful that this change would save so much time and paperwork? A much better proposal, offered by Sens. Biden and Graham, would have set reasonable time limits for petitioners but would not have kept them out of federal court entirely, as the measure that passed may do. The Biden-Graham alternative would also have guaranteed death row inmates the assistance of competent counsel throughout the habeas review. That's the kind of habeas corpus reform that is just and needed. The wholesale assault accepted by the Senate is disgraceful.

LANGUAGE: ENGLISH

Washington Post
June 19, 1991, Wednesday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A18
LENGTH: 490 words
HEADLINE: Secret Trials

Q THE SENATE is about to consider a terrible proposal that would allow the government to hold secret trials leading to the deportation of certain noncitizens. It will come up as part of an assorted crime package moving to the floor this week. On the agenda are two crime bills, one supported by Sen. Joseph Biden and the Democrats, the other the administration's proposal sponsored by Sen. Strom Thurmond. Because the major features of both bills -- the death penalty, habeas corpus revisions and changes in the exclusionary rule -- have been considered in both houses recently, the Senate Judiciary Committee held only three perfunctory hearings this year -- one on habeas, another on rural crime and a third to hear Attorney General Dick Thornburgh.

Q Incredibly, no hearings were held on the deportation proposal, which is new this year. Moreover, because the committee didn't even vote on these bills but simply sent both to the floor without recommendation, there is not even a committee report that evaluates this section of the president's bill.

Q The proposal is directed against aliens the government believes are engaged in "terrorist activity." It applies to all noncitizens, even those who have entered legally, lived here for decades and have children and other close relatives who are citizens. The bill uses a definition of "terrorist activity" that is broad and includes raising money for or urging others to join "terrorist organizations," though it does not define the latter term. That is a political decision left to the government, and presumably it could include groups such as Kurdish nationalists, Afghan rebels, Sikh separatists and the IRA. Spokesmen for the PLO are singled out in the statute as engaging in terrorist activity.

The administration bill would allow the Justice Department to go to a secret court and get an order for a special proceeding to deport such people. Targeted individuals would have no notice of this hearing and no opportunity to attend or be represented. They could be arrested and detained as soon as this petition was filed. At the special proceeding that followed, the government could present secret evidence -- outside the presence of the alien and his lawyer -- and could even withhold a summary of that evidence from the accused. Theoretically, appeals would be allowed, but again, the evidence used at the trial could be kept under seal and the appeal argued in secret.

Does this sound like a proceeding in an American court? It is a nightmare that could allow the worst kind of injustice. Though not a criminal trial, a deportation hearing involves severe penalties and must afford due process. There is not much that is good in either of the crime bills coming up for consideration -- gun control is the exception -- but this blueprint for a kangaroo court stands out. It's hard to see how anyone with any respect for the American idea of justice could support it.

LANGUAGE: ENGLISH

Washington Post
March 14, 1991, Thursday, Final Edition
SECTION: OPINION EDITORIAL; PAGE A24
LENGTH: 404 words
HEADLINE: The President's Crime Bill
SERIES: Occasional
BODY:

THE MAJOR crime bill that the administration has now sent to Congress as one of its two legislative priorities is first and foremost a retread of some controversial proposals that were offered earlier but did not become law. There are also a couple of new themes, some welcome and others not. The package as a whole is a major disappointment because it omits any proposal for serious national gun control -- a law that could have an immediate impact on violent street crime.

The old part of the bill is its cry for tougher sentencing and cutbacks on constitutional protections. That old favorite, capital punishment, is in the bill, with about 15 crimes suggested for the death penalty. There are also the usual proposals for increased penalties and mandatory minimum sentences, with an emphasis on crimes involving firearms. The president wants Congress to curtail federal habeas corpus review and trim the exclusionary rule so that illegally obtained evidence can be admitted in court if the police have acted in good faith.

The new part includes a welcome proposal to implement international treaties on torture and on aviation and maritime terrorism; assorted amendments of laws on juvenile offenders and child abuse; and a sensible requirement for monitoring drug use by probationers and parolees. There is even one good firearms proposal; it would ban the sale of gun magazines containing more than 15 rounds. Balancing that, however, is a terrible request that illegally seized firearms be admissible as evidence even if the police acted without good faith.

The president is dancing around the gun control issue by dealing harshly with offenders after they have committed a crime with a firearm. He should be taking steps to prevent such crimes by making it more difficult to obtain weapons. Stiff sentences may deter some criminals, but not as effectively as would a comprehensive ban on semiautomatic assault weapons, or the imposition of a seven-day waiting period before the purchase of handguns.

Mr. Bush invokes the Desert Storm veterans, calling on Congress to "give them an America where it is safe to walk on the streets." It's too bad that he didn't use his considerable new political capital to take on the hard work of crime control that needs to be done. Curtailing habeas corpus rights and reducing Fourth Amendment protections won't make the streets safer for veterans or anyone else.