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BOARD OF DIRECTORS**WILLIAM KRISTOL, CHAIRMAN****VIRGINIA GILDER****MICHAEL S. JOYCE****THOMAS L. RHODES**

**THE
REPUBLICAN
AGENDA:**

**A
Series
of
Discussions
on
Politics
and
Policy**

**Why the GOP is
Right to Oppose the
Crime Bill -- And
Where to Go From Here**

JOHN J. DI IULIO, JR. *Princeton University and
The Brookings Institution*

PAUL McNULTY *First Freedom Coalition*

JOHN P. WALTERS *New Citizenship Project*

WILLIAM KRISTOL (*moderator*)

Monday, August 8, 1994

9:15 a.m. Coffee and Registration

9:30 - 11:00 a.m. Discussion

National Press Club

14th & F Streets, N.W.

Washington, D.C.

*Audience seating may be limited. For
reservations or more information, please call
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REPUBLICAN FUTURE

BOARD OF DIRECTORS

WILLIAM KRISTOL, CHAIRMAN

VIRGINIA GILDER

MICHAEL S. JOYCE

THOMAS L. RHODES

August 5, 1994

MEMORANDUM TO: REPUBLICAN LEADERS

FROM: WILLIAM KRISTOL

SUBJECT: How to Oppose the Crime Bill

By next week, the Congress will have begun the process of voting on a crime bill that no one has read in its entirety. As studies of the several-inches thick legislation have amply demonstrated, this bill is a grab bag of untested social spending and symbolic federal crime gestures. We urge anyone seeking more detailed evidence of the empty social welfare bill that this legislation has become to read the persuasive analyses produced by the House Republican Conference, the Heritage Foundation, the First Freedom Coalition, and the Cato Institute.

Thanks to these studies, among others, most Republican members of Congress know this bill is a sham. But they are understandably anxious about being forced, in an election year, to vote against anything labeled "anti-crime legislation." We believe they should cast their "No" vote with confidence: there is a clear and principled rationale for opposing this bill.

Indeed, this debate on the crime bill is an opportunity for Republicans to define our view of how the nation should respond to domestic problems, and at the same time contrast it with the impulse driving the Democratic Party and the Clinton Administration. That impulse has the following characteristics: it addresses every social problem in the broadest possible terms; it embraces every vogue theory about remedies to those problems; it seeks to placate every interest group through new federal funding commitments; and, in its New Democrat incarnation, it uses conservative rhetoric to conceal old-fashioned liberal spending programs.

Republicans, by contrast, understand that sound legislation would clearly identify those problems that government can and should address; decide what level of government is best suited to address those problems; and advance specific solutions designed to yield measurable results -- not programs offered with no concern for their predictable effect. Our larger opportunity in opposing the crime bill, then, is to frame the debate between these two contrasting views of government action. So as we enter this final phase of the crime debate, we should add to our criticism of the legislation's obvious flaws a broader critique of its fundamentally misguided scope and ambitions. We suggest focusing on two points in particular:

This Bill Will Not Reduce Crime. For all their new-found Nixonian fervor for "law and order," Democrats in both houses have produced a bill that will do virtually nothing to reduce the number of serious crimes committed each year. Their bill provides short-term funding for police, but scatters the grants across the country so that urban areas where crime is exploding can expect only a handful of new officers. It offers funding for new prisons, but permits states to use the money for other programs. It calls for longer prison terms by making "truth-in-sentencing" a condition of federal funding, but then creates easy-to-find loopholes for states to avoid that requirement. It increases state and local justice grants, but fails to expand state court systems, the bottleneck of our national crime problem. Inner city crime and repeat violent offenders are the core features of American crime today. This legislation deals with them as merely two subordinate facets of a complex social welfare problem.

This Bill Exemplifies Unaccountable Government in Action. What President Clinton calls the "largest" crime bill in history is, in fact, the largest expansion of ineffective federal programs in recent history. The increase in police funding is a short-term federal commitment. Prison construction funding does not include any of the money necessary to staff and operate new prisons over the long-term. The bill invests over nine billion dollars in questionable prevention programs, but does little to monitor whether they actually work. With nearly every provision, this bill launches a federal program that states will ultimately be responsible for administering. By deceptively inflating the national crime budget, it allows the federal government to pretend it will protect citizens from crime, creating a disincentive for states to deal with their own crime problems. We confidently predict that this crime bill will rapidly become the largest unfunded mandate imposed on state governments in this decade. In name it may be a "crime" bill, but it is bad legislation of the sort Republicans are sent to Washington to defeat.

Republicans, in sum, should make the case that there /s a serious crime agenda -- primarily pursued at the state and local level -- that might make citizens more secure in their homes and communities. But the Democratic bill actually obstructs the pursuit of effective crime control measures by misrepresenting what the character of such legislation would be. Republicans and honest Democrats should not let this fraud go unchallenged. We should defeat this "anti-crime package" in order to advance the case for a genuine response to the real violent crime problem that threatens the security of American citizens.

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PUBLIC BALKS ON "CRIME" BILL

First nationwide poll on crime bill reveals scant support.

Arlington, VA -- Only 1 in 5 Americans (20%) feel that the Congress should pass the crime bill now, while almost twice as many (36%) would strongly prefer that Congress put the brakes on passing hasty legislation, according to the first scientific nationwide poll of registered voters on the current crime bill.

"Voters don't want more social programs. By a margin of 57% to 38%, voters favor 'stronger punishment' over 'social programs' to prevent crime," said Frank Luntz, President, Luntz Research Companies.

The Luntz Research Companies poll surveyed 1,000 registered voters nationwide from August 4th through 9th, 1994. Voters were asked the open-ended question, "If you were a Member of Congress and you could do one thing to reduce crime, what would you do?" The top three answers were: 27% said more prisons/longer sentences; 13% said death penalty; and, 9% said education. More jobs, gun laws, police, and fighting drug/alcohol abuse were mentioned least, according to the poll.

"Voter responses nationwide dispel the myth that the public believes the key to reducing crime in this country is through additional gun control legislation. By a ratio of nearly 4-to-1 voters overwhelmingly favor more prisons/longer sentences to stricter gun laws," said Luntz.

"Americans are far more concerned that convicted criminals remain behind bars than teenagers in inner cities learn to ball room dance and slam dunk from the foul line by the pale moonlight," said Luntz. 50% of voters said \$100 million for dancing lessons and art programs was "a complete waste of money." 48% of voters said \$40 million for Midnight Basketball was "a complete waste of money."

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{GOP CRIME BILL/HOUSE GOP/WILLIAM BARR}

Date: October 29, 1993

Location: 2237 Rayburn House Office Building

Sponsored By: Leadership Task Force on Crime (Bill McCollum)

 GOP Research Committee Task Force on Crime (Steve Schiff)

Your Name/Phone: Matt Smith

Summary: These House Republicans held hearings to outline the differences between the GOP and the Democratic Crime Bills. Among those called to testify were former Bush Attorney General William Barr, and Major Johnny Hughes of the Maryland State Police.

◆ Barr was highly critical from the start saying that in all his Washington days he has never seen a more "cynical charade," calling the Democratic Crime Bill "long on talk and short on substance."

◆ Barr didn't hesitate to "toot" his own horn saying that "Because of the reform efforts largely during the Reagan/Bush administrations we have a superb federal criminal justice system. Tough laws, it has...reasonably active resources to do the job. The problem has been mainly at the state level..."

◆ He predicted that under the Democratic plan there would be a 20% reduction in federal law enforcement, with "thousands of fewer law enforcement agents, hundreds of fewer federal prosecutors."

◆ Barr summed up the Democratic approach as an instance where "you rob Peter to possibly pay Paul." He added "They're taking down the federal resources and they're promising some money to the states."

◆ He also charged that our bill will "overturn a number pro-law enforcement Supreme Court decisions," especially in the area of limits on habeas-corpus. He added "They're also overturning Supreme Court precedents in the death penalty area."

◆ Said Barr "Let's get something straight. No matter how you feel about the Brady Bill. Unless you have the stomach to punish firearm offenders, people who violate existing firearm laws, existing gun control laws,...all these other gun control proposals hold loosely. What are the Democrats going to do to keep from violating the Brady Bill? They have be willing to do more than they're willing to do to gun criminals today."

◆ Barr was asked to pick out one specific provision that illustrated the critical difference in terms of the thrust the two plans. He responded "The key difference is that the Republican bill provides more resources to the states in a way that really would make your legal assistance effective, and would materially reduce crime by

taking violent offenders off the streets. That is it not only provides more money for the most of the new things that law enforcement needs, but it also provides prison capacity. And then using that as the carrot induces the states to reform their systems, and stop the revolving door."

Response Needed? Eventually

Media Coverage: The hearing room was crowded, but it was unclear as to who was press, and who was staff. There were, however, about 4 cameras present. C-Span was there.

Attachments:

Tape: Audio tape on file in DNC Info Center.

Materials: The House Republican Conference Issue Brief, testimony from the National Troopers Coalition, and press releases from Congressmen Steve Schiff(R-NM) and Hamilton Fish Jr. (R-NJ) are all on file in the DNC Info Center.

**House
REPUBLICAN
Conference**

Issue Brief

Dick Arney
Chairman
26th District, Texas

October 28, 1993

Getting Tough on Crime? Part II

Comparing the Democrat and Republican Crime Bills

When House Republicans unveiled their comprehensive crime bill on August 4, 1993, they set a standard by which to measure other crime bills. President Clinton responded a week later with a crime press conference endorsing certain concepts, such as putting more police on the street, gun control, new death penalty-eligible federal crimes and a limited habeas corpus reform. House Democrats responded two months later with their own bill, H.R. 3131, which its sponsor, Judiciary Committee Chairman Jack Brooks, described as putting into legislative language the President's anti-crime outline, claiming that it is the "toughest anti-crime legislation in decades."

Unfortunately, the Clinton/Brooks Bill is all talk and no action. It talks tough about imposing the death penalty for new crimes, but creates legal procedures that ensure death sentences are never carried out. It talks tough about habeas corpus reform, but creates legal procedures that allow limitless appeals. It talks tough about the need to incarcerate violent criminals, but it funds prisoner drug rehabilitation instead of new prisons. Although it claims to be a tough anti-crime bill, its most notable provisions constitute a criminals' rights manifesto. In sum, it's clear the Clinton/Brooks Bill is worse than current law.

The Republican Crime Bill, H.R. 2872, the Crime Control Act of 1993, talks tough because it is tough. For example, it proposes a revolutionary new regional prison system to help states deal with their most violent criminals, while providing an incentive for states to enact truth-in-sentencing laws, mandatory minimum sentences, and pre-trial detention. It proposes new federal mandatory minimum sentences, and provides procedures for the imposition of the death penalty to make sure that the most violent repeat offenders and drug kingpins receive the ultimate sanction.

This *Issue Brief* compares the Republicans' anti-crime plan, H.R. 2872, to the Clinton/Brooks alternative, H.R. 3131.

Keeping Violent Criminals In Prison

- ♦ America is experiencing a crime epidemic. From 1960 to 1990, the number of violent crimes committed in the United States increased by more than 300 percent. Every year, nearly five million Americans are victims of violent crime and another 19 million are victims of property crimes. America now has more crimes per capita than any other developed country.
- ♦ Prison capacity has not kept pace with the increase in violent crime. As a result, violent criminals are being released after serving a little more than one-third of their sentences. According to a Bureau of Justice Statistics analysis, violent offenders received an average sentence of seven years and eleven months, but served less than three years in prison.
- ♦ Building prisons is an expensive proposition -- the average cost per inmate in state prisons is \$25,000 per year. But letting career criminals loose is even more expensive. A recent Rand Corporation study found that the average career criminal commits between 187 and 287 crimes per year, with each crime costing society an average of \$2,300. That means a conservative estimate of not putting a career criminal behind bars is, on average, \$430,000, or \$405,000 more than the annual costs of imprisonment.
- ♦ The Clinton/Brooks Bill provides no funding for the construction of new prisons. It does provide \$100 million each year from 1994 to 1996 to fund drug abuse treatment "set apart from the general prison population" in state prisons. While drug treatment may be a worthy goal, maintaining separate facilities for those inmates in the treatment program could be more expensive, and could attract those prisoners more interested in serving time in the more comfortable drug treatment facilities than in kicking the habit.

This bill provides "such sums as necessary" for drug treatment in federal prisons. For federal prisons, this bill requires that every prisoner with a drug abuse problem be given the opportunity for drug treatment by 1997. While this sounds like a laudable goal, if Congress doesn't provide additional funding, resources will have to be diverted from other priorities, such as prison construction.

- ♦ The Republican Crime Bill provides \$3 billion over three years to be matched by the participating states to build a national system of regional prisons // they agree to crack down on criminals by enacting truth-in-sentencing and pre-trial detention laws, mandatory minimum sentences for violent and repeat criminals, and challenging court-ordered consent

decreases capping prison populations and conditions.

Recognizing the limits imposed by federalism concerns, the Republican Bill provides states with an incentive to make one of the most important law enforcement reforms: truth-in-sentencing. Letting violent criminals loose after serving only a third of their sentence is misleading for victims of crime and dangerous for all citizens. Just because prisons are crowded is no excuse to release violent criminals early.

- To help states meet their share of the costs, the Republican Bill adds correctional facilities to the list of tax-exempt projects for which private activity municipal bonds may be used. Also, due to the urgency of the crime problem in the U.S., this bill removes the obstacle of burdensome federal wage regulations by waiving the Davis-Bacon Act on contracts for the construction or alteration of prison facilities.

More Police on the Street

- Both bills contain grant programs to help cities and counties put more police on the street. The Clinton/Brooks Bill contains \$3.45 billion over six years to be used for grants to hire new police officers and for various community policing programs. Grants could only be renewed for five years, and are subject to a highly structured formula: no more than 5 percent of the funds may be used for technical assistance or evaluation, no more than 5 percent may be used by states for administrative expenses, 85 percent of funds are to go to hiring or re-hiring police officers, and 15 percent may go for other purposes, among other restrictions.
- The Republican Crime Bill provides \$2 billion over five years in grants to cities and counties. However, unlike the Clinton/Brooks Bill, the Republican approach allows local authorities the flexibility to allocate these funds to best meet local law enforcement needs.
- Putting more police on the street is a necessary, but not sufficient, component in fighting violent crime. The only way to get the 7 percent of the criminals that commit nearly 80 percent of violent crimes off the street for good is to beef up police and build prisons to hold them. Without a place to put those arrested, the Clinton/Brooks approach will only make the state prison revolving door spin faster.

Stopping Endless Appeals

- Worse Than Current Law. The abuse of habeas corpus appeals has resulted with increasing frequency in the clogging of the federal court

system and has been a serious obstacle toward securing the finality of state sentences. The Brooks Bill (President Clinton has endorsed the habeas reform proposal introduced by Senator Biden, which has many, but not all, of the problems discussed here) purports to deal with these problems by creating filing deadlines and prohibiting successive petitions. But when you get beyond the press release and focus on the legislation, it fails to achieve real filing limits.

- ◆ **Onerous Defense Counsel Provisions.** Perhaps the worst part of the Brooks Bill is its strong-arming of the states to adopt the onerous defense counsel measures. Under the Brooks counsel provisions, the states must set up a highly regulated public defender bureaucracy or lose 75 percent of federal law enforcement grant money. For states that are already desperate for law enforcement funds, such a loss would be devastating. If a state does participate, it is deemed to have waived its sovereign immunity, so it may be sued for injunctive relief concerning failure to properly implement the complicated counsel provisions. These provisions are so coercive that they may violate the Tenth Amendment to the Constitution, which protects the sovereignty of the states.

In addition, this bill requires states to establish an independent "counsel authority" composed of members of the defense bar to appoint counsel in capital cases, to set "reasonable" hourly rates for defense counsel, and to recruit, train, certify, and support lawyers for all stages of capital cases. In addition, two lawyers are required for every stage of the proceedings. (California Attorney General Dan Lungren calls these provisions the "Capital Defense Attorney Employment Act of 1993"). Whether the rates are "reasonable" will likely generate new litigation, possibly (the language is ambiguous) causing the conviction to be overturned. The federal court reviewing "reasonableness" may then set what it considers to be "reasonable" rates for the state.

- ◆ **Opens Door for Successive Petitions.** Despite news release claims that the Clinton/Brooks Bill will reduce successive petitions, the highly intrusive defense counsel provisions will provide a new universe of endless appeals for defendants. Endless appeals will also be encouraged by the bill's emasculation of the so-called "new rules" rule on habeas appeals announced by the Supreme Court in Teague v. Lane, 489 U.S. 288 (1989), which prohibits most appeals based on developments in the law subsequent to the defendant's conviction. In death penalty cases, the bill opens the door to even more appeals and stays than occur under the present system.
- ◆ **The Republican Approach.** Habeas corpus reform under H.R. 2872 has real protections against successive petitions, a real choice for states to opt in or out of the proposed defense counsel provisions, and real

filing deadlines that will stick.

For example, in death penalty cases, instead of opening myriad loopholes as does the Clinton/Brooks Bill, this provision allows a second petition only where a prisoner can show that he had good cause for not raising the claim earlier, or that he is not eligible for the death penalty because he was "actually innocent" of the offense. This approach says that fairness allows one bite at the apple, but you can't abuse the system with limitless appeals to argue technicalities. This provision also contains strict deadlines for federal courts to process habeas petitions -- which leads to greater fairness for all litigants and greater finality for state sentences.

Real Death Penalty Reform

- The Clinton/Brooks Bill. The news release accompanying the Clinton/Brooks Bill claims that including 50 death penalty offenses makes it a "tough anti-crime package." Regardless of how many offenses are included, the death penalty will never be a credible deterrent if it is impossible to impose. Several "poison pills" in the Clinton/Brooks Bill would virtually assure that the federal death penalty is never imposed. These are the same "poison pills" that led to defeat of the crime bill in the previous Congress.
- In the Furman decision in 1972, the Supreme Court effectively struck down state death penalties because they failed to sufficiently confine juror discretion in imposing the ultimate sanction. Since then, many states have brought their death penalty statutes into conformance with the Constitution by removing juror discretion. The Clinton/Brooks Bill reintroduces juror discretion by mandating that jurors be informed that they need not impose the death penalty, even if they find aggravating factors in the commission of the crime outweigh mitigating circumstances. This provision is an attempt to overturn recent Supreme Court cases removing obstacles to imposition of the death penalty. It is also inconsistent with current laws which instruct juries to impose the death penalty if the aggravating factors outweigh mitigating circumstances.
- In addition, because the proposed death penalty procedures contain insufficient habeas corpus reforms, federal defendants could file endless appeals and stays of execution just like state defendants do under current law.
- The Clinton/Brooks Bill adopts another "poison pill" requirement that the death penalty may only apply in cases of intentional murders. That standard is more favorable to defendants than the "reckless indifference"

standard adopted by the Supreme Court that would allow imposition of the death penalty when the defendant had a "reckless indifference" for the life of the victim. As Justice O'Connor observed: "some nonintentional murders may be among the most dangerous and inhumane of all -- the person who tortures another not caring whether the victim lives or dies. . . This reckless indifference to human life may be every bit as shocking to the moral sense as an 'intent to kill.'" Tison v. Arizona, 481 U.S. 137, 157 (1987).

- ◆ In an attempt to give the defendant the benefit of the doubt -- despite the fact that the Supreme Court has held that this was not required by the Constitution -- the Clinton/Brooks Bill contains language that could be interpreted to preclude the use of elements of an offense as aggravating factors. The prosecution could, for example, not use hostage-taking, sexual abuse, or production of child pornography as aggravating factors if these actions were elements of the underlying crime.
- ◆ The Clinton/Brooks Bill death penalty provisions are far from "tough" in other ways as well. The bill does not provide for the death penalty for drug kingpins. The bill does not provide for imposition of the death penalty in the District of Columbia. The bill does not provide for consideration of the use of a firearm as an aggravating factor. Finally, the bill allows the fact that other equally culpable defendants have not gotten the death penalty to be considered as a mitigating factor.
- ◆ The Republican Bill. H.R. 2872 would, for the first time since Furman v. Georgia, provide constitutional procedures for the imposition of the death penalty for federal crimes, including civil rights murders, murders committed by federal prisoners, gun murders connected with federal property, as well as all of the federal capital offenses currently on the books but unenforceable due to the constitutional deficiencies.
- ◆ These efficient, yet fair, procedures spell out the aggravating and mitigating circumstances to be considered by the jury, require a special sentencing hearing, require jury instructions against applying the death penalty in a discriminatory manner, and allow for appointment of defense counsel.
- ◆ This bill also provides for the death penalty for drug kingpins -- defined as those who are leaders in continuing criminal enterprises that distribute more than 60,000 grams of heroin, 300,000 grams of cocaine, 3,000 grams of crack cocaine, or have \$20 million in gross receipts. No death of a victim is required under this provision. The death penalty is also authorized for intentional or reckless killings during the course of drug felonies.

- ◆ Press reports indicate that Attorney General Reno believes -- despite the existence of a Justice Department legal opinion to the contrary -- that imposing the death penalty for a crime that does not result in the death of the victim is unconstitutional. However, Attorney General Barr testified before the House Judiciary Committee in the last Congress explaining the Bush Administration's position that the drug kingpin provision was constitutional. The Clinton Administration has failed to present a convincing case that this position is constitutionally deficient. In the absence of any such legal reasoning, it should not masquerade its distaste for the death penalty by dressing it up in constitutional garb.

Tough New Sentences for Violent Criminals

- ◆ Mandatory Minimum Sentences. With one exception, the Clinton/Brooks Bill has dropped all new mandatory minimum sentences and replaced them with ineffective and vague directions to the U.S. Sentencing Commission to undertake appropriate enhancement. (The one exception: a mandatory minimum for drug trafficking near public housing).
- ◆ Specific examples of mandatory minimum sentences that were included in last year's conference report but are missing from the Clinton/Brooks Bill include:
 - Increase in the sentence for use of semi-automatic weapons in violent felonies or drug trafficking crimes,
 - Increase in the sentence for "junior armed career criminals,"
 - Increase in the sentence for drug trafficking near schools, and increases in the sentences for all other drug crimes (with the exception of drug trafficking near public housing).
- ◆ Far from imposing tougher sentences, the Clinton/Brooks Bill allows prisoners to be released one year early if they go through a drug treatment program. What prisoner will not go through the motions of a drug treatment program to draw a "get out of jail early" card?
- ◆ The Republican Bill contains several new mandatory minimum sentences, enhancements of existing mandatory minimums, and, most importantly, the "Lifer" provision that mandates a life sentence upon conviction for a third violent felony.
- ◆ Mandatory minimum sentence enhancements in the Republican Bill include:

- mandatory five year sentence for possession of firearms by previously convicted violent felons and drug offenders and fugitives from justice; ten year minimum sentence upon the second such conviction,
- doubling of the mandatory minimums for violation of federal firearms laws and possession of firearms in connection with a crime of violence or drug trafficking, and
- enhanced penalties for violation of Gun Free Schools Act and Armed Career Criminal Act, among others.

We Don't Care if it Was Harmless

- In Arizona v. Fulminante, 111 S. Ct. 1246 (1991), the Supreme Court held that a criminal conviction need not be overturned due to the trial court's admission into evidence of a confession obtained in an unconstitutional manner if it appears beyond a reasonable doubt that the error could not have affected the outcome of the trial. The Clinton/Brooks Bill contains language intended to overturn the Fulminante decision, so that improper admission of confession could void a conviction even if it had no effect on the verdict.
- The Clinton/Brooks Bill language is so broad that it could reach cases that have nothing to do with admission of improper confessions. This language is apparently an attempt to reverse recent Supreme Court decisions holding that convictions should not be overturned based on technicalities that had no effect on the verdict.
- Reform of the Exclusionary Rule. The Republican Crime Bill leaves the Fulminante decision alone. Outside of the context of confessions, it proposes to codify the "good faith" exception to the exclusionary rule. Under current law, the exclusionary rule excludes evidence obtained in violation of the search and seizure provisions of the Fourth Amendment from introduction at trial. This is the well-known situation where the criminal goes free because the constable has blundered.
- The Republican approach provides that incriminating evidence will not be excluded on Fourth Amendment grounds if the search was carried out in good faith by the police officers -- such as when the police execute a search under a warrant, but the warrant turns out to be deficient due to a technicality.

Keeping Guns Out of Criminals' Hands

- The Clinton/Brooks Bill includes Brady Bill language. The President has

made it clear that gun control is a centerpiece of his anti-crime plan.

- Regardless of one's position on the Brady Bill, it is clear that gun control is not a panacea for America's crime problem. The Republican Crime Bill seeks to prevent gun sales to criminals, but realizes that there are no easy, quick, or inexpensive answers to the crime problem. It will take sustained and serious efforts -- such as greatly expanding prison capacity, putting more police on the street, and toughening penalties -- before we can begin to gain the upper hand on crime.
- Insti-Check for Handgun Purchasers. The Republican Bill establishes a point of purchase background check system for screening prohibited handgun purchasers. This system requires states -- and provides implementation funds so that this is not another unfunded mandate -- to establish and maintain a system to immediately search the criminal history of prospective handgun purchasers. The bill also contains strict privacy protections for legitimate handgun owners.
- This approach minimizes the burden on legitimate gun purchasers, while weeding out those with criminal histories that are likely to use the guns for criminal purposes. This bill also contains tough sentence enhancements for violation of various federal firearms laws.

Victims' Rights

- Both the Clinton/Brooks Bill and the Republican Bill contain titles concerning victims' rights. While the Clinton/Brooks Bill contains some of the proposals advanced in the Republican Bill, it stops short in several important respects.
- The Republican Bill provides for the right of victims to an impartial jury, to enforcement of restitution orders through suspension of federal benefits, and tough new penalties to protect against retaliatory murders of victims, witnesses and informers. In addition, this bill strengthens rape victims' shield laws, provides for the admissibility of similar crimes in sex offense cases and for additional measures protecting victims from evidence used to show provocation or invitation in sex offenses.

Issues Left Out of the Clinton/Brooks Bill

The Republican Crime Bill, H.R. 2872, addresses many issues not considered in the Clinton/Brooks Bill, including:

- Regional Prisons -- The Republican Bill provides \$3 billion over three years to establish a new system of regional prisons based on a

state/federal partnership. This provision requires 50 percent cost sharing from the states, and requires states to enact truth-in-sentencing and pre-trial detention laws, mandatory minimum sentences for career criminals, and to challenge consent decrees limiting prison populations and conditions.

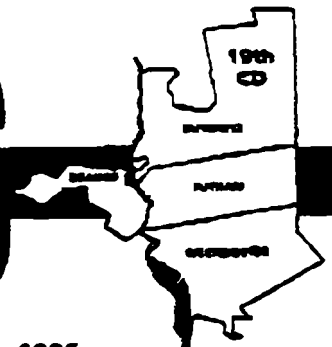
- ◆ **Criminal Aliens and Alien Smuggling** -- The Republican Bill streamlines deportation procedures for aliens convicted of aggravated felonies, and allows for deportation proceedings to begin prior to completion of sentence. In addition, it would authorize the registration of aliens on criminal probation or parole to assist the INS in tracking efforts. It also contains provisions to control alien smuggling by raising certain penalties, and by adding funds for three thousand Border Patrol agents and one thousand INS criminal investigators.
- ◆ **Crimes Against Women** -- The Republican Bill provides for tough new penalties for interstate stalking of women and for full faith and credit for protective orders, so that these orders can be enforced across state lines. Also, it requires pre-trial detention in sex offense cases, increased penalties for recidivist sex offenders, testing for HIV in sex offense cases, and for the death penalty for murders connected to rape or child molestation.
- ◆ **Protection of Children** -- This title provides for doubling penalties for those who use minors in the commission of crimes, as well as making the use of a minor a predicate act under the RICO statute, and increasing penalties for assaults against children. It also increases penalties for those outside the U.S. who transport or use minors in sexually explicit materials. Like the Clinton/Brooks Bill, the Republican Bill would require the compilation of national records on those convicted of child abuse or criminal offenses against a minor.
- ◆ **We Pay For It** -- The Republican Bill pays for its tough anti-crime measures by cutting federal administrative overhead expenses across-the-board by 5 percent, and by capping administrative overhead expenses under university research grants at 90 percent of current levels. These funding sources provide 7.5 billion dollars over five years - providing enough funding to build the regional prisons, put more police on the street, pay for the new Border Patrol officers and INS criminal investigators, and the other new initiatives in the bill. The Clinton/Brooks plan makes a lot of promises, but doesn't pay for them.
- ◆ **Cities and states can't afford unfunded mandates imposed by the Clinton/Brooks Bill and the U.S. economy can't sustain programs that add to the deficit.** The Republican Bill gives the American people a choice between funding bloated bureaucracy and fighting crime.

HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.



NEWS

HAMILTON FISH, JR.



FOR RELEASE
OCTOBER 28, 1993

Phone: (202) 225-6906

FISH OBJECTS TO PROCEDURE ON CRIME BILL

Remarks of the Honorable Hamilton Fish, Jr.
in the Committee on the Judiciary
October 28, 1993

This, indeed, has been a disappointing series of events. Mr. Chairman, on October 1, you wrote a brief memorandum to the Members of this Committee notifying us that a markup of the "Violent Crime Control and Law Enforcement Act of 1993" (H.R. 3131) would occur the week of October 18. That markup was subsequently postponed but that same omnibus bill -- your bill H.R. 3131 -- was rescheduled for consideration by this Committee on Tuesday, October 26. Then, on Monday, October 25, the Members of the Judiciary Committee were notified that markup was also cancelled.

Now, this morning, we find ourselves considering six comparatively narrow proposals involving specific grant programs. Five of these bills -- H.R. 3350; H.R. 3351; H.R. 3353; H.R. 3354; and H.R. 3355 -- were introduced on Tuesday of this week. The other bill, H.R. 3378, was introduced just yesterday and was jointly referred to the Committee on Education and Labor. But these narrow measures do not deal with the major problems facing our criminal justice system -- issues that could have been addressed if we were considering your omnibus bill or the Republican Crime bill (H.R. 2872) introduced by Congressman McCollum, and co-sponsored by myself and numerous other Members of this Committee.

Where, may I ask, is the Brady bill? What about the death penalty and the need to resolve the ongoing debate about death penalty appeals (habeas corpus)? What about the controversy surrounding mandatory minimum penalties? What about antiterrorism? What about the "good faith exemption" to the exclusionary rule? These are all issues which the Members of this Committee deserve to have an opportunity to debate and resolve. More importantly, the American people expect their elected representatives to act in a responsible and responsive manner to solve the serious and tragic problem of crime in our society.

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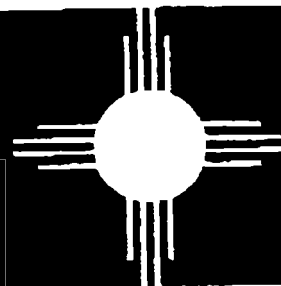
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News Release

U.S. CONGRESSMAN

Steve Schiff

FIRST CONGRESSIONAL DISTRICT
NEW MEXICO

WASHINGTON OFFICE: 1009 Longworth Building • Washington, D.C. 20515 • (202) 225-6316 • FAX (202) 225-4975
DISTRICT OFFICE: Silver Square, Suite 140 • 625 Silver Avenue, S.W. • Albuquerque, NM 87102 • (505) 766-2538

FOR IMMEDIATE RELEASE**Contact: Lou Vega
(202) 225-6316**

October 29, 1993

STATEMENT OF U.S. CONGRESSMAN STEVE SCHIFF**"Approaches to Dealing With Crime and Violent Offenders"**

WASHINGTON, D.C. -- As a U.S. Representative, former District Attorney and concerned parent of two, I am extremely concerned about violent crime.

The problem of crime cannot be properly addressed until Congress makes it possible to keep violent offenders off the street. Without strong laws to keep those criminals in prison, our war on crime will be lost.

A very needed improvement would be for all states to adopt "truth-in-sentencing", that is, a requirement that convicted criminals, sentenced to prison by a court, actually serve at least 85% of their sentences before release. Unfortunately, many states have been reducing sentences of convicted criminals by over 40%. Regretfully, my own State of New Mexico gives violent criminals up to 50% off of their prison sentences. We cannot continue to allow these convicted criminals back on the streets and that is why 'truth-in-sentencing' is high on my agenda.

Included in the Democratic crime initiatives is gun control. The Brady Bill has been a center of their package by calling for a waiting period of up to 5 days before the purchase of a handgun. The waiting

-OVER-

period is to require local enforcement to conduct a "background check" of handgun purchasers. I do not support this measure.

If the Brady Bill will be so effective, as its proponents profess, then I propose the federal government should offer assistance -- not just another unfunded federal mandate. The federal government should be willing to actually conduct the background check through the F.B.I., or, reimburse the states for doing it -- neither of which are included in the bill.

Should States believe that conducting personal background checks on firearms purchasers is a good use of their own law enforcement agencies, then they could pass such laws at this time. In fact some states have adopted such procedures, however, in my own State, the legislature rejected such a measure due to the arguments made above.

This year, Congress must take strong, positive steps to reduce crime by keeping our convicted violent criminals in jail -- not releasing them early.

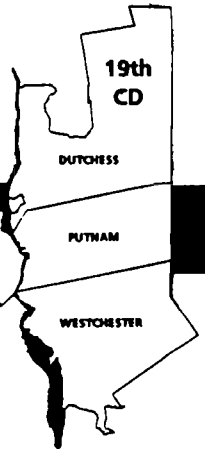
We cannot solve the problem of crime if we cannot keep violent criminals off of the street.



NEWS

HAMILTON FISH, JR.

NEWS



FOR RELEASE
OCTOBER 28, 1993

Phone: (202) 225-6906

FISH OBJECTS TO PROCEDURE ON CRIME BILL

Remarks of the Honorable Hamilton Fish, Jr.
in the Committee on the Judiciary
October 28, 1993

This, indeed, has been a disappointing series of events. Mr. Chairman, on October 1, you wrote a brief memorandum to the Members of this Committee notifying us that a markup of the "Violent Crime Control and Law Enforcement Act of 1993" (H.R. 3131) would occur the week of October 18. That markup was subsequently postponed but that same omnibus bill -- your bill H.R. 3131 -- was rescheduled for consideration by this Committee on Tuesday, October 26. Then, on Monday, October 25, the Members of the Judiciary Committee were notified that markup was also cancelled.

Now, this morning, we find ourselves considering six comparatively narrow proposals involving specific grant programs. Five of these bills -- H.R. 3350; H.R. 3351; H.R. 3353; H.R. 3354; and H.R. 3355 -- were introduced on Tuesday of this week. The other bill, H.R. 3375, was introduced just yesterday and was jointly referred to the Committee on Education and Labor. But these narrow measures do not deal with the major problems facing our criminal justice system -- issues that could have been addressed if we were considering your omnibus bill or the Republican Crime bill (H.R. 2872) introduced by Congressman McCollum, and co-sponsored by myself and numerous other Members of this Committee.

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

05-Mar-1994 11:33am

TO: Jose Cerda, III
TO: Bruce N. Reed
TO: Christopher F. Edley, Jr

FROM: Kenneth L. Schwartz
 Office of Mgmt and Budget, TCJ

CC: Harry G. Meyers

SUBJECT: House Republican Budget Committee Plan -- FYI

On March 3, the House Budget Committee Republicans unveiled a "Republican Budget Initiative" for the 1995 Budget. Interestingly, the crime portion is substantially below the proposals forwarded by the Administration. Major elements are as follows:

-- Byrne Grants. While the Administration proposed to eliminate the formula Byrne grants (-\$358M), it also proposed to increase discretionary Byrne grants (plus \$50M). The Republican plan proposes termination of the whole Byrne program (-\$487M).

-- Crime Initiative. While the Administration proposed a \$23B crime initiative (1995-99) from the pending crime bill, the Republican plan provides for a \$7B crime initiative. Included in the \$7B is \$2B for cops (would provide for about 25,000 cops) and \$3B for "federal-state partnerships for new prisons" (sounds like regional prisons to me). Of the remaining \$2B in the Republican plan, \$1B is associated with an immigration initiative (including 3,000 more Border Patrol agents over five years). The Republican plan does not seem to provide for boot camps, drug courts, the Police Corps, and little, if anything, directly associated with the Brady Bill.

Besides the cutbacks in Byrne Grants, the Republican plan supports two other Administration proposals -- a 15% surcharge on civil judgements and a cut in State Justice Institute funding.

Finally, something you won't like, Chris...the Republican plan calls for the termination of Legal Services.

CRIME BREAKFAST
July 22, 1993
8:30 a.m., S-230

Jose-
FYI

Table One

Senator Dole
Senator Hatch
William Barr, Shaw, Pitman, Potts and Trowbridge
Lynn Curtis, Milton Eisenhower Foundation
Newman Flanagan, National District Attorneys Association
George Lardner, Washington Post
Ilene Nagel, U.S. Sentencing Commission
Fred Thomas, Washington, D.C. Police Chief

Table Two

Senator Gramm
Senator Thurmond
Congressman McCollum
Sheila Burke, Senator Dole
Ernie Preate, Attorney General of Pennsylvania
Robert Stephan, Attorney General of Kansas
Jay Stephens, Former U.S. Attorney
Richard Thornburgh, Former U.S. Attorney General

Table Three

Senator D'Amato
Senator Lott
Senator Pressler
Lee Rawls, Baker Worthington
Dan Rosenblatt, International Association of Police Chiefs
Dennis Shea, Senator Dole
Walter Williams, George Mason University
Jim Wooton, Safe Streets Alliance

Table Four

Senator Grassley
Senator Nickles
Senator Simpson
Senator Warner
Robbie Calloway, Boy's and Girl's Clubs of America
Manus Cooney, Senator Hatch
Edwin Meese, Former U.S. Attorney General
Ed Reilly, U.S. Parole Commission
Kerry Tymchuk, Senator Dole

Table Five

Senator Brown
Senator Cochran
Senator Coverdell
Senator Gregg
Jim Fotis, Law Enforcement Alliance of America
Bud Meeks, National Sheriffs Association
Robin Ross, National Victims Center
Dewey Stokes, Fraternal Order of Police
Jim Whittinghill, Senator Dole

PROJECT FOR THE
REPUBLICAN FUTURE

BOARD OF DIRECTORS

WILLIAM KRISTOL, CHAIRMAN

VIRGINIA GILLUM

MICHAEL S. JOYCE

THOMAS L. RICHMOND

September 13, 1994

MEMORANDUM TO: REPUBLICAN LEADERS

FROM: WILLIAM KRISTOL

SUBJECT: The Crime Bill: A Republican Victory

Today, in a ceremony made possible by the foolish defection of a few "moderate" Republicans, President Clinton will sign the crime bill into law. We will undoubtedly be treated to a new round of rhetoric about how, as the president put it when the legislation first passed, "this crime bill is going to make every neighborhood in America safer." With all else crumbling around them, the White House and Congressional Democrats will seize ever more desperately on the crime bill as their main "achievement" before the November elections. But this effort shouldn't work (and won't) if Republicans build on the extraordinary *success* of our fight against the crime bill. We think Republicans should aggressively reiterate our case against it and commit ourselves to rewrite it next year.

President Clinton hoped the crime bill would prove him a "New Democrat" and boost his popularity; George Mitchell hoped it would make Democrats seem "the party that's tougher on crime." Neither hope has been realized. The president's own poll numbers have continued to decline. A Harris poll from two weeks ago found that a clear majority of Americans agreed that "the crime bill contains too much unnecessary spending on social programs and crime will not be reduced." And last week's CNN/Gallup survey shows Republicans moving *back ahead* of Democrats as the party that would do better on crime (by 43 to 36 percent, a reversal from 34-42 six months ago).

In other words, Republicans lost the vote but won the national debate on the "crime bill," despite the attractiveness of that label. And we did more. By exposing much of the social spending as "pork" that has little to do with reducing crime, we laid the groundwork for a more sweeping assault on such programs. By demonstrating the bankruptcy and irrelevance of Democratic "anti-crime" initiatives, Republicans won a clear field for the advancement of genuine anti-crime efforts focused on prosecution and incarceration. And by focusing attention on the log-rolling, debate-limiting character of "omnibus" Congressional legislation, Republicans succeeded in reminding the American public why they dislike Congressional business as usual.

Republicans should stay on the offensive in all of these areas. And where the now-enacted crime bill is concerned specifically, Republicans should welcome -- not shrink from -- fall election campaign discussion about it. These are the salient points to make:

The crime bill won't reduce crime. Even *The Washington Post* agrees on this point: "What the president calls the toughest, smartest crime bill in federal history is unlikely to have a traceable effect on the national crime rate, and some of the toughest-sounding pro-

visions could, perversely, end up weakening rather than strengthening the ability of local and state officials to fight crime." Republicans should make this point as forcefully as possible now; we will be well-positioned to say "I told you so" later.

The crime bill won't put 100,000 police on the streets.² At most, the bill promises funding that would support approximately 20,000 police positions, the equivalent of roughly one new round-the-clock beat officer in every police department in the nation. And the bill does not require that all this police funding be used to hire police.

The crime bill won't build prisons as advertised. The bill's "prison construction" funding is likewise not required to be used for construction of prisons, though there is overwhelming evidence that a substantial portion of violent crime is caused by a relatively small group of repeat violent offenders. These offenders, on average, serve much less than half their sentences -- and then only if they are sent to prison in the first place. And 30 percent of all violent crime today is committed by those on pretrial release, bail, or parole. The crime bill's "prison funding," on the insistence of Democrats, is actually designed in large part to encourage "alternatives to incarceration" -- which too many violent criminals already enjoy.

The crime bill will allow billions for pet "member items" and social-welfare programs. True, some of the wasteful pork-barrel spending contained in the crime bill conference report was cut. But plenty remains, as every detailed newspaper and think-tank analysis makes clear.

The crime bill's promise of billions in federal funding is false. The bill does not appropriate a single federal dollar; rather, it "authorizes" federal spending in the future, *if the money is available*. That money is to come from a "trust fund" built on theoretical savings from removing 250,000 workers from federal personnel rolls -- primarily through early retirement and attrition. Past experience is clear: such "cuts" and "savings" rarely take effect -- and neither do the programs they are designed to pay for.

The crime bill allows big-city mayors and police chiefs to shift their responsibility for reducing crime to the federal government. That's the most important reason why so many of them were so eager to support the bill. Democrats promised that the bill's funding would only be used: money for police, prisons, and prevention measures. When promised federal crime money doesn't materialize at all, the mayors can blame their crime problems on the federal government. And any future effort to stop the flow of what "seed money" *does* materialize will be denounced.

The Democratic crime bill contains a little of almost everything Americans hate most about Washington today. It is a long string of false promises that insult the intelligence of the electorate. It is a waste of tax money. And most of all, it will make a problem that Americans are properly concerned about worse, not better.

Republicans should be sure the American people remember the crime bill this fall -- and remember, in particular, that it was Democrats who manufactured it. We should also commit ourselves to *fixing* the bill. Two proposals in the forthcoming (September 27) House Republican "Contract with America" deserve special attention in this respect: a law enforcement block grant initiative designed to permit allocation of police and prevention resources by local officials; and truth-in-sentencing and prison funding reforms that would ensure the incarceration and incapacitation of violent offenders.

In sum, Republicans should use the ground we gained in the crime bill fight to broadly discredit the governing ideology of the current Democratic Congress -- and lay out a sharp alternative for a future Republican Congress.

Study Summary

November 14, 1994

Contact: Anna McCollister, director of public affairs, 202-789-5225

Repeal the Crime Act — 1994 legislation promised more than it will deliver

The first step toward an effective policy for reducing crime would be to repeal the Violent Crime Control and Law Enforcement Act of 1994. In a new Cato policy analysis, Cato Chairman William Niskanen says that while legislation aimed at curbing crime is popular, the effect of the 1994 Act could be insignificant at best. Niskanen says the Act's largely symbolic strikes at crime violate basic constitutional principles, have little empirical support and redirect economic resources in ways that are likely to be ineffective.

The Act

In brief, Niskanen says the Act substantially federalized criminal law, increased sentences for a wide range of crimes, banned some semi-automatic rifles, and authorized about \$30 billion in additional spending for police, prisons, and a range of exotic social programs. In so doing, Niskanen says it also tramples on constitutional, historical and common sense principles. Niskanen cites the following as examples of the Act's abuses:

- Broader federal criminal penalties and restrictions on state sentencing are inconsistent with constitutional and historical limits on the powers of the federal government.
- Provisions that allow admission of evidence of past criminal behavior, as well as those that deny a deportation hearing for convicted aliens, are a clear abuse of civil liberties.
- The ban of 19 types of semi-automatic weapons is purely symbolic, likely unconstitutional and will not reduce crime.
- Social programs financed by the Act are likely worth less than they cost.
- The Act attempts to develop a national solution to localized problems.

-- more --

The Economics of Crime

Niskanen's own research on the determinants of crime, based largely on a statistical analysis of crime rates by state in 1991, leads to the following major conclusions:

- Crime in the United States is much higher than that reported to police but has probably not increased over the past 20 years.
- An increase in police appears to have no significant effect on violent crime and a roughly proportionate negative effect on property crime.
- An increase in corrections employees appears to have no significant effect on violent crime and a small positive effect on property crime.
- Crime rates are strongly affected by demographic and cultural conditions. For example, the violent crime rate increases with the share of births to single mothers.
- The number for police and corrections employees is a negative function of the average salary of public employees, a positive function of per capita income and federal aid, and a positive function of the crime rates.

The Solution

Given the lack of knowledge about what causes crime and what works to curb it, Niskanen says the most important policy advice is to decentralize decisions on the public safety system and on crime prevention programs. If you don't know what works, don't do the same thing everywhere. Experiment with a variety of policies and be prepared to learn from the experiments in other jurisdictions.

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Policy Analysis

No. 218

November 14, 1994

Routing

CRIME, POLICE, AND ROOT CAUSES

by William A. Niskanen

Executive Summary

This paper presents a statistical analysis of the relations between crime rates and the level of public safety resources, controlling for the major conditions that affect each variable. Major findings include the following.

- Crime in the United States is much higher than that reported to police but has probably not increased over the past 20 years.
- An increase in police appears to have no significant effect on the actual rate of violent crime and a roughly proportionate negative effect on the actual rate of property crime.
- An increase in corrections employees appears to have no significant effect on the violent crime rate and a small positive effect on the property crime rate.
- Crime rates are strongly affected by economic conditions. For example, an increase in per capita income appears to reduce both violent and property crime rates by a roughly proportionate amount.
- Crime rates are also affected by demographic and cultural conditions. For example, the violent crime rate increases with the share of births to single mothers.
- The demand for police and corrections employees is a negative function of the average salary of public employees, a positive function of per capita income and federal aid, and a positive function of the crime rates.

The major policy implication of this study is that, because we have so little knowledge of how to reduce crime, we should decentralize decisions on crime prevention and control, beginning with repeal of the 1994 federal crime law.

William A. Niskanen is chairman of the Cato Institute and editor of Regulation magazine.

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