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THE WHITE HOUSE

WASHINGTON

April 4, 1983

MEMORANDUM FOR

✓ BILL BARR

KEN CRIBB

DAVID GERSON

ROGER PORTER

MIKE UHLMANN (for self and clearance
with Department of Justice)

FROM:

KEVIN R. HOPKINS *KRH*

SUBJECT:

ISSUE UPDATE ON CRIME CONTROL

Attached is a draft OPI Issue Update on the President's
Crime Package. Could we please have your comments by COB
Wednesday, April 6.

Thanks.

CRIME CONTROL

On March 16, 1983, President Reagan sent to Congress the Comprehensive Crime Control Act of 1983, legislation that offers a series of long-needed changes in the U.S. Criminal Code.

Fighting crime has consistently been one of the Administration's major objectives and President Reagan has repeatedly brought to public attention the seriousness of the threat of crime to American society. In his 1982 State of the Union Address the President emphasized that the problem of crime is "one as real and as deadly serious as any in America today. It demands that we seek transformation of our legal system, which overly protects the rights of criminals while it leaves society and the innocent victims of crime without justice."

The public has ratified the President's call for a new assault on crime. As the President has noted, the American people are now "reasserting certain enduring truths -- the belief that right and wrong do matter, that individuals are responsible for their actions, that evil is frequently a conscious choice, and that retribution must be swift and sure for those who make a career of preying on the innocent."

Crime is out of control

The American people's response is understandable. The crime rate has grown dramatically in recent years, leading to widespread fears among all citizens. People no longer feel secure in their own homes, on their own streets, or in their communities.

The dramatic jump in violent crime over the last decade is especially alarming. Reported violent crimes in 1980 were 60% greater than in 1971 and 33% higher than in 1976. According to 1981 statistics, there were 71 rapes for every 100,000 American women, as well as 250 robberies and 280 assaults for every 100,000 persons. Put another way, there is a murder every 23 minutes, a rape every six minutes, a robbery every 58 seconds, and a burglary every 8 seconds. Even though crime rates experienced a welcome drop last year, the frightening truth remains; 25 million households, or about 30% of the nation's total, are touched by crimes of violence or theft every year.

The criminal justice system itself is in grave disrepair. When it does work, it works slowly; months, even years, can pass before a case is brought to trial, and then there are more months and years on appeal. And when criminals are actually found guilty, they often receive light sentences that are not commensurate with the severity of their crimes.

At other times, the system does not work at all. For example, only 40% of murder cases end in imprisonment, and in New York City, less than 17% of all reported felonies end in a prison term for the offender.

Public fears

Given this startling increase in criminal activity, it is not surprising that the public feels threatened and unprotected. Surveys show that 85% of the people are more concerned about crime now than they were five years ago and 50% feel more uneasy on the streets than just a year ago.

The surveys tell the story over and over -- 68% of the people feel that crime is increasing in their area, 45% are afraid to walk alone at night, and 16% feel unsafe even in their own homes. Fears are highest among the most common targets of criminals -- minorities, the poor and the young.

The crime wave has eroded public confidence in the criminal justice system as well. More than 42% say they don't think the police can protect them from violent crime and 79% say the system does not work to discourage crime. Because of this, more private citizens than ever are trying to protect themselves by buying guns, putting extra locks on their doors, carrying mace, or installing burglar alarms. And in a sad commentary on how little confidence some in Congress have in the nation's law enforcement system, legislation has been introduced to give homeowners tax breaks for the installation of security devices.

But the public is also fighting back in more traditional ways. States are enacting tougher crime laws;

for example, California voters last year approved the victims Bill of Rights, which, among other things, limited the exclusionary rule and the insanity defense, and imposed tough determinate sentences on repeat offenders and criminals who use guns in the commission of a crime. In addition, citizens are taking a more active role in fighting crime. It is estimated that 5 million Americans in 20,000 communities are involved in one crime watch program or another. Coupled with President Reagan's efforts to change public attitudes, these state and local initiatives have led to a small decline in the violent crime rate during 1982, the first drop in half a decade. While encouraging, however, the data do not mark the end of the crime problem; much of the drop in the crime rate occurred because of a slight aging of the population, which reduced the proportion in the population of the higher crime tendency age group of 15-24.

Keeping crime level as a percent of the youth population is not enough, of course. But real and permanent reductions in the crime rate will not come about until policies are put in place that recognize and act upon the root causes of crime.

Why crime persists

Despite myths about the "Wild West," America was not such a lawless society until very recently. Social theorists

have analyzed the high crime rates of the modern age in an attempt to explain why American society should suffer from this disease at this time. Often, they have blamed society itself -- unemployment, poverty, or any number of social ills -- neglecting almost completely the responsibility of the actual criminal.

This kind of analysis fails to take into account the fact that the vast majority of the poor and unemployed obey the law just as much as the rest of the population does. Indigence itself is not a cause of crime.

Rather, an individual's decision to commit a crime results from a constellation of factors. Most prominent among these reasons is a pure cost-benefit analysis. Potential criminals credibly believe the chances are very good they can commit a crime and escape unpunished. Backed up by the increasing social, legal, and political toleration of crime over the two decades -- as manifested in the "environmental" theories of crime -- those with no natural respect for society, its institutions, and other people's rights and possessions found crime an increasingly attractive option for bettering themselves.

These two perceptions need to be changed -- that crime is society's fault and that it will go unpunished -- before lawlessness can be controlled. The President has taken important steps to change perceptions on both counts, and

his proposed Comprehensive Crime Control Act of 1983 will
solidify these gains in fact.

What has been done

President Reagan has made crime control a national priority. He has made it plain that the federal government has a very important role to play in prosecuting and punishing federal criminals, in helping to train law enforcement officials, in coordinating national law enforcement efforts, and in setting standards in crime fighting that will guide state and local crime control programs.

Also, the President has shifted the emphasis in federal crime control efforts to make sure they are effective. Whereas many previous administrations devoted their greatest attention to dubious penal theories such as rehabilitation and to important but basically superficial changes such as increasing the number of federal judges, the Reagan Administration has targeted the legal impediments themselves for reform.

A prime example of the President's efforts is his program to reduce trafficking in dangerous drugs. Soon after taking office, the President directed the Attorney General and other federal law enforcement agencies to work together, to share information, and to use federal resources more efficiently. Now, through the work of the Cabinet Council on Legal Policy and the White House Office on Drug Abuse Policy, federal drug enforcement efforts are better

coordinated than ever before. For instance, the FBI has for the first time been brought in to complement the work of the Drug Enforcement Agency. Before 1982, the FBI had no drug investigations underway; this year it has 1,115. Also for the first time, the military has been directed to aid drug enforcement efforts, particularly in Florida.

In addition, the President has created twelve interagency taskforces to work with state and local officials to stamp out drug-related crime. Unlike prior federal drug efforts that focused solely on the street level, these task forces will concentrate on destroying the top levels of organized drug trafficking. And the President has backed up his commitment with adequate manpower: the government will hire 1,600 new law enforcement personnel by the end of the summer.

This approach is working. During 1982, the federal government seized nearly 12,500 pounds of cocaine -- almost three times the amount captured in 1981. Seizures of heroin nearly doubled and marijuana confiscation increased by 50%. In South Florida alone, the government seized more than \$3 billion worth of drugs.

The President's main efforts now are directed toward securing tough crime-fighting legislation. During the previous Congress, he proposed a comprehensive crime control package designed to improve federal enforcement abilities.

The bill passed the Senate, but received no action in the Democratically-controlled House. The President's latest anti-crime bill expands upon last year's proposal. Its passage is vital if America is ever to reverse the ever-increasing threat of lawlessness.

What the President has proposed

The Comprehensive Crime Control Act of 1983, as sent to Congress by President Reagan, is a 44-point omnibus bill. It is designed to be a reference point for reforms in all the criminal justice areas that need improvement. Taken together, its various proposed changes would strengthen the ability of federal law enforcement officials to roll back the rising tide of crime in the United States, especially drug trafficking and organized crime. Among the major aspects of the bill are provisions dealing with bail reform, sentencing reform, the exclusionary rule, the insanity defense, forfeiture reform, reform of federal intervention in state proceedings, narcotics enforcement amendments and the Justice Assistance Act.

Bail reform

Under current law, judges may hold a defendant or release him at a high bail only if they believe he will fail to show up for the trial. The judge may not consider the danger the defendant will pose to the citizens of the community or the likelihood he will commit another crime while out on bail.

Thus, it is relatively easy for defendants to be released pending trial -- 85% return to the streets before their trials, 61% of them without having to post any bail money at all. One out of six defendants will then proceed to commit one or more additional crimes before his trial. This often has tragic results. For example, last November a bank robber was released on \$25,000 bail despite evidence that he had pistol whipped a guard, threatened to murder a teller and stolen a car. Four days after posting bail, the defendant robbed another bank, assaulted a teller, and very nearly killed a police officer.

The President's bill would give judges more leeway to protect the public against criminals such as that bank robber. It would amend the Bail Reform Act of 1966 so that courts could consider danger to the community while making bail determinations. It would also make it more difficult for criminals to be released after they have been convicted of a crime but before they have been sentenced.

The same tighter criteria would apply for release pending appeal. Furthermore, criminals who committed crimes while on bail would be subject to increased penalties and their releases could be revoked. There would also be increased penalties for bail jumping.

Another provision of the bill would act against drug tycoons who post bail with cash from their drug profits and then skip the country, never to be seen again. It is not unusual for drug smugglers to post bail as high as \$1 million and then drop out of sight. For the ringleaders of drug organizations, million dollar losses amount to little more than an annoying "tax" on their profits. The President's bill would authorize pretrial detention where bail alone would not ensure future court appearances and it would permit courts to inquire into the source of the money used to put up bail.

Sentencing reform

There is little nationwide consistency in sentencing convicted criminals or granting parole and other early releases. Two criminals, with the same record, convicted of the same offense, could easily receive greatly varying sentences depending upon the judge who tried each case.

In addition, prisoners have been able to use the overly

lenient parole system to win early release, only to return to the streets and begin plying their trade again, often with devastating effect. For example, ABC News recently reported about one robber, who had served only 23 months of an eight year sentence for committing a violent crime. While on parole, he terrorized a Houston family, breaking into their home and threatening to "blow the heads off" their little children. The man ransacked and robbed the home, and the family was very fortunate to escape with their lives. Hundreds of other Americans have not been so lucky.

The President's bill would overhaul the current system and establish a "determinate" sentencing procedure with no parole (limited "good time" credits would be available instead). The bill would establish a commission to set a narrow range of sentences for each federal criminal offense. Criminals would then have a very clear idea of what penalties they would face for their crimes.

Under some circumstances, judges could deviate from the commission's guidelines but only after explaining why in writing. Defendants would be able to appeal sentences harsher than the guidelines and the government would be able to appeal sentences that were more lenient.

The bill also outlines and updates the courts' sentencing options for probation and fines. Probation would become a penalty in itself instead of a deferred penalty, and as a condition of probation, a judge would be required to compel the defendant pay a fine, make restitution to the victim, or perform community service. In addition, the maximum limits on fines would be increased for felonies to a quarter million dollars for an individual defendant and up to half a million dollars for an organizational defendant. The court could attach liens to ensure that fines are collected.

The exclusionary rule

The exclusionary rule is a judicially-created regulation designed to enforce the Fourth Amendment, which was intended to guarantee public freedom from unwarranted search and seizure by the police. But instead of protecting innocent citizens from police misconduct, the rule has become a common defense tool to exclude evidence even if a police officer had no reason to believe his actions were improper. Thus, defendants facing otherwise airtight prosecution often go free because of a trivial error in police procedure or an honest mistake by the officer.

Police now have little confidence that their searches for evidence will not be declared unconstitutional. The vagaries of the U.S. Supreme Court leave officers unsure of what procedures to follow. In one California case, for example, 14 judges ruled at various times on the propriety of a policeman's search. Seven approved it; seven disapproved. If 14 legal experts, sitting in quiet deliberation, cannot negotiate the law's intricacies, then a police officer acting in a possibly life-or-death situation should not be expected to do so either.

Yet the police every day are forced to divine the Court's intent, frequently without any real guide to how the Court would rule. When they err, dangerous criminals can go free. A recent Supreme Court decision is a case in point. Police had questioned a man in the Miami airport who matched the "drug courier profile," a summary of characteristics

often shared by drug traffickers (including similar clothes, luggage, and nervousness). When they saw that the name on his plane ticket was different from the one on his driver's license, they asked him to open his suitcase. They found that he was carrying 65 pounds of marijuana, and arrested him. But the Court decided that the police did not have the right to use the marijuana as evidence; they deemed the search "improper" because the police had not given back the man's driver's license.

In another drug case, police carrying a valid search warrant, entered the home of two suspected drug dealers. The police were unable to find any contraband until they looked in the crib of the couple's baby, where they discovered heroin stashed in the baby's diapers. Yet the case was thrown out when the court ruled the search unconstitutional because the infant had not been read his rights against self-incrimination.

In these cases, the exclusionary rule does nothing to protect the public from the police because the officers honestly thought they were acting within the boundaries of the Court's guidelines. Instead, the rule endangers the public by freeing vicious criminals and undermining confidence in the judicial system. Almost one out of twenty felony cases are dropped because of the exclusionary rule, including one-third of all drug cases. In fact, according to statistics prepared by the National Institute for Justice, two-thirds of those whose cases were dropped because of the exclusionary rule had prior or subsequent arrests and half were rearrested within two years.

The President's bill would change the exclusionary rule so that evidence obtained during a search conducted in "reasonable good faith" would be allowed into court. This "reasonable good faith" could be shown if the officer relied upon a statute later found to be unconstitutional or if he were carrying out the search with a duly-authorized search

warrant. The new rule would not apply if the search warrant had been obtained through misrepresentation. Nor would it reward ignorance on the part of the police. It would simply restrain the rule to its proper function -- protecting the public from police misconduct. In this way, criminal trials would focus on the guilt or innocence of the defendant rather than the second-guessing of a police officer's split-second interpretation of the search and seizure law.

Forfeiture reform

The current law recognizes that criminals should not be able to profit from their crimes, and it gives the government the power to seize the illegally obtained assets of a convicted felon. However, because of the limitations and ambiguities in existing forfeiture laws, the government has been unable to use this approach as an effective law enforcement technique. For example, the government often has to file a separate civil case to seize property even though a criminal proceeding has already proven that it was illegally obtained.

The President's bill would strengthen the criminal and civil forfeiture laws, clearing up ambiguities and making

plain that property derived from racketeering and drug activities were subject to confiscation by the government.

The bill is also designed to address the problem of defendants removing, concealing, or transferring forfeitable assets before a conviction. Courts would be able to issue restraining orders freezing assets when an indictment was expected (but before it was actually handed down), in order to prevent criminals from hiding their profits when they learned a criminal investigation was underway. Moreover, the bill contains a provision permitting the courts to order a defendant to forfeit substitute assets when criminally acquired property can no longer be identified.

The bill also would expand the use of administrative forfeiture in non-contested cases. And it would establish a Drug Assets Forfeiture Fund into which forfeited property would be deposited to help defray enforcement costs, replacing the current practice of turning forfeited property directly over to the U.S. Treasury.

The insanity defense

The insanity defense was originally devised to protect mentally ill persons who did not understand what they were doing when they committed a crime. But that original purpose has been so badly twisted out of context that it has become a common and commonly abused defense strategy. Many

defendants who were merely irrational or excessively emotional at the time of their crime have been found innocent and gone free.

Tragically, many hardened criminals have been released following a few years of psychiatric treatment only to commit more murders and rapes. An Alaskan man kicked to death a retarded Indian in 1973 because of the Indian's "aggravating voice," but avoided prison with an insanity defense. When the psychiatrists decided he was no longer mentally ill, the man was allowed to participate in a work-furlough program. He is now charged with killing four teenagers at an Anchorage state park. In another case, an Idaho man raped two women but was found innocent on grounds of mental illness. After a year of treatment he was released. He was later arrested and convicted of shooting a nurse.

The President's reform bill would change the insanity defense so that a defendant could be found not guilty only if a jury determines that "as a result of a mental disease or defect, (he) was unable to appreciate the nature and quality or the wrongfulness of his act." For example, a defendant could be acquitted by reason of insanity if he were so deluded he he did not know he was holding a gun or could not tell if he were pointing it at a human being or a tree. But if he knew what he was doing, even if he were acting irrationally, he could be convicted. His mental state

would be relevant solely in dermining the nature of
punishment and treatment.

The President's bill would also place the burden on
the defendant to prove insanity with clear and convincing
evidence. No longer would the prosecution have to

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demonstrate sanity, an exceedingly difficult proposition to prove. Furthermore, the bill would prevent expert testimony on the ultimate issue of whether the defendant had a particular mental state or condition, leaving that to a jury to decide.

Reform of federal intervention in state proceedings

The federal government has the authority to intervene in state proceedings through the writ of habeas corpus. Although this doctrine was intended to be used rarely and only in those cases where the state courts had clearly overstepped constitutional boundaries, delaying justice through continual federal review of state convictions has become another familiar and frequently abused defense technique. By playing one court system off against another, defendants and their lawyers can clog court dockets and almost endlessly postpone final resolution of many criminal cases.

The President's reform bill would restore federal intervention to its original purpose and limit its use to cases in which legitimate appellate questions were raised. By requiring deference to "full and fair" state court proceedings, the bill would no longer allow federal courts to reverse state convictions years after they had occurred unless the federal court found a significant error or deficiency in the proceedings.

The bill would make other improvements in the federal habeas corpus laws, including a one-year time limit on applications following the end of state proceedings.

Narcotics enforcement amendments

Because drug trafficking is one of the most serious crime problems in the country, the President has proposed to update and standardize penalties and enforcement procedures. He has offered a number of amendments to the U.S. Criminal Code that strengthen federal drug enforcement operations.

A major reform would bring common sense to penalties for drug trafficking. Under the current system, the penalty for selling ten grams of heroin is the same as that for selling 500 grams. Also, sentencing is not compatible for trafficking in narcotic and non-narcotic drugs; the penalties are significantly less for non-narcotic drugs such as PCB, LSD, methamphetamines, and methaqualone even though they are as dangerous as actual narcotics.

The President's proposed reforms would increase the penalties for selling large amounts of drugs to a maximum of 20 years in prison and a fine of \$250,000. This would be a particularly large increase in fines; despite the high profitability of drug sales, the maximum fine for all drugs

except marijuana is now \$25,000.

The bill would also change the Controlled Substances Act to clarify the definitions of various drugs. The Drug Enforcement Agency would be given the ability to deal with

newly developed drugs by putting them under temporary controls. In this way, the DEA would be able to simplify regulations for law abiding drug manufacturers and the doctors who distribute legitimate drugs. At the same time, the DEA would be given a bigger role to play in helping state and local officials prevent the diversion of legitimate drugs to illegal uses.

The Justice Assistance Act

The President's proposed Justice Assistance Act recognizes that the Federal government can assist state and local law enforcement agencies, which investigate and prosecute 95% of all crime. The Act would establish an Office of Justice Assistance that would provide financial and technical assistance as well as training to state and local officials. Bureaus within the Office would be established to conduct research in criminal justice and to collect statistical information on crime, making it available to state and local agencies.

The Act also provides for payments of \$50,000 to survivors of public safety officers who are killed in the line of duty.

Other provisions

Among the other reforms proposed by President Reagan:

o Surplus property amendments that would make it easier for the federal government to donate property to state and local governments to use for much-needed prison space.

o The restitution of capital punishment that would impose a death penalty for certain federal crimes, including murder, treason, and espionage, while meeting the Constitutional requirements promulgated by the Supreme Court.

o Violent crime amendments that would strengthen federal laws concerning violent crime, and provide mandatory sentences for using firearms in the course of a federal crime.

o Serious non-violent offense amendments that would impose stiffer penalties on such crimes as product tampering, child pornography, and fraud and bribery related to federal programs.

o Procedural amendments that would make improvements in federal criminal justice laws, such as permitting the prosecution of certain juveniles as adults and the increased protection of participants in the witness security program.

Conclusion

Despite the modest drop in the crime rate last year, crime remains an extremely serious problem. President Reagan was speaking for the vast majority of Americans on February 26, 1982, when he called crime, "a problem whose gravity cannot be underestimated." And he has responded to their sentiments by assuming an effective moral leadership against crime, and by establishing tough anti-crime measures, particularly in the areas of drug trafficking and organized crime.

But legislative remedies are also required. The Comprehensive Crime Control Act of 1983 would strengthen the hands of law enforcement agencies throughout the nation. During the previous decade, criminals have become more brazen, more sophisticated and more dangerous. Yet Congress has done little to reform the Criminal Code. Outmoded laws and enforcement procedures need to be updated to pursue the modern criminal.

Enactment of the President's proposals would have have two immediate results -- it would give the police and courts the tools they need to put criminals in prison and it would send a message to every would-be lawbreaker that public attitudes have changed and that individuals would answer for their crimes.

As President Reagan noted in his call for a crackdown on crime:

"It comes down in the end to a simple question we must ask ourselves: what kind of people are we if we continue to to tolerate in our midst an invisible lawless empire? Can we honestly say that America is a land with justice for all if we do not now exert every effort to eliminate this confederation of professional criminals, this dark, evil enemy within? I ask your support and the support of our people in this effort to fight the drug menace, to eradicate the cancers of organized crime and public corruption, to make our streets and houses safe again, and to return America to the days of respect for the law and the rights of the innocent."

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- o insanity defense
- o bail reform
- o sentencing reform
- o increased penalties for drug trafficking
- o criminal forfeiture reform

In short, we have much to sell and should not be shy about selling it.

Plan

1. As soon as feasible, the elements of a comprehensive crime package should be assembled, to be accompanied by a presidential message. If we put all our baubles in one package, according to DOJ, it would be a 42-section bill bearing a striking resemblance to a phone book. There are multiple advantages to putting it together in one place, even in the sure knowledge that it will be broken into parts once on the Hill.

ACTION: Attorney General
coordinating through Uhlmann/Fielding

DEADLINE: February 1

2. Background press briefings/kits to be prepared, outlining both our accomplishments to date, as well as our legislative package. Schedule for briefings to be established (a) for press (b) for law enforcement interest groups. To coincide with transmittal to Hill.

ACTION: Attorney General
substantive coordination through
Uhlmann/Fielding
scheduling through OPL and press office

DEADLINE: February 1

3. Throughout the late Winter and Spring, Administration spokesmen should undertake a coordinated foray into the heartland, calling attention to accomplishments and proposals for change. Local press should be briefed. We want to fix firmly in the public mind that this Administration is way out front on crime.

ACTION: Attorney General
coordinating through OPL and press office

DEADLINE: Rough schedule to be submitted by February 15

4. The steps in 3 could perhaps be coordinated with the

establishment of the regional task forces dealing with drugs/organized crime. The establishment of each regional group should be bally-hoed in the relevant media centers within that region.

ACTION: Attorney General
coordinating through press office

DEADLINE: Same as 3, with phasing as required thereafter

5. In addition to the foregoing, there are two related phenomena which can receive more or less separate billing: (a) the establishment of the commission on organized crime and (b) the report of the victims' task force.

(a) Crime Commission

Two options here: (1) submit legislation asking for its creation as part of omnibus crime bill (downside: Congress will dilly-dally, steal the President's thunder with dog-and-pony show hearings; size and function of commission may be substantially altered away from what we want); or (2) create the Commission by Exec. Order (being sure to name Thurmond and Rodino as members), confront Congress with a "done deal", seek needed appropriations and subpoena power by special legislation, thereby maintaining maximum control over membership, size, and function of commission (downside: will offend segments of Congress; subpoena power or appropriations legislation could become Christmas tree).

In either event, a whole series of media events, some involving the President, could be planned around the establishment of the Commission, its first meeting to be held with the President, etc.

(b) Victims' Task Force

Originally due to report in November, then December, but in any event soon. Once the report is in good shape, it could be presented to the President, who should take the occasion to express sympathy with victims of crime, etc. Depending on what the report recommends, this gives us a new opportunity to recommend yet further legislation in the Spring, accompanied by another presidential message.

ACTION: Attorney General
coordinating on substance through
Uhlmann/Fielding
scheduling with OPL and press office

6. Maximum effort should be made to get as much as we can through the Senate. The sooner the Senate acts, the sooner can a coordinated legislative/media strategy be set for attacking the

anticipated recalcitrance of the House. We should not let the opportunity slip as we did last year to focus on the inability of the House to get its act together on crime. If sufficient satisfactory action is not taken by the Fall, the President can and should escalate. Contingent, of course, on other events not now foreseeable, major television address on crime should be considered.

ACTION: Attorney General

DEADLINE: Contingent



U.S. Department of Justice

Office of Legal Policy

Washington, D.C. 20530

MEMORANDUM

TO: Gary Bowers
Office of Policy Development
The White House

FROM: Jonathan C. Rose *JCR*
Assistant Attorney General

SUBJECT: Status of Administration-Supported
Legislation Relating to Crime

You recently requested that I provide you a status report on the major anti-crime legislative initiatives that the Administration has undertaken during this Congress. As you know, the Administration recently attempted to consolidate its anti-crime measures into one "Omnibus bill."

The Senate has resisted inclusion of all the Administration-supported bills in favor of a strategy to put through a bi-partisan bill. As a result, the Omnibus bill in the Senate has currently been stripped of its more conservative (controversial) provisions. The Senate bill, S. 2572, is being held at the desk for floor consideration.

In the House, Congressman Rodino is opposed to the Omnibus Act. He has referred most titles of the House bill to Representative Conyers' Subcommittee on Criminal Justice and Representative Kastenmeier's Subcommittee on Courts, Civil Liberties and the Administration of Justice.

1. Criminal Code

At the outset of this Congress, the Administration placed most of its efforts behind passage of the Criminal Code. As you know, the Code has been the subject of legislative debate for the past ten years. It has passed the Senate only once, in the last Congress. During this Congress, the Criminal Code has been stalled in Conyers' Criminal Justice Subcommittee, where he has held interminable hearings and mark-ups on the issues raised by the Code. In the Senate, the Code could not be brought to the

floor for a vote because of the combined stalling tactics of extreme conservatives and the ACLU.

2. Exclusionary Rule

Senators Thurmond, Hatch and DeConcini have sponsored a bill, S. 2231, which would modify the current court-developed rule that evidence of a crime, no matter how clear and persuasive it may be, cannot be used to convict a defendant if the evidence was obtained in violation of law. This proposal, which the Administration has supported in testimony by Lowell Jensen, Assistant Attorney General of the Criminal Division of the Justice Department, would make the evidence at issue admissible if the officer (a) reasonably believed that he was acting properly even though he had obtained no warrant or (b) first obtained a warrant. The bill is pending in the Senate Judiciary Committee. It is also part of the Omnibus Crime package that the Senate may consider shortly. However, you should know that Senator Baker is inclined to drop this issue from the package and allow it to be considered as a floor amendment only if unanimous consent to do so can be obtained. (There are several other Administration initiatives discussed below, which he plans to treat similarly.

In the House, the Administration's bill, H.R. 6049, is pending before a Judiciary Committee Subcommittee. The Subcommittee is expected to take no action.

3. Bail Reform

The Administration's proposal in this area would permit a federal judge to deny release on bail if release of the defendant would pose a danger to the community. As you know, under current law, a judge may only consider whether a defendant is likely to flee. This bill has broad support in the Senate from, among others, Thurmond, Hatch, Biden, Kennedy, Baucus, Bumpers, DeConcini, Denton, Laxalt and Specter. The Senate bill, S. 1554, has been favorably reported by Senate Judiciary. A somewhat weaker bill, H.R. 4362, was favorably reported on May 12 by Kastenmeier's Subcommittee. This proposal is included in the Senate Omnibus bill, S. 2572.

4. Sentencing

Reform of the current sentencing system including abolition of parole is the heart of the Omnibus Crime package that the Senate may bring to the floor shortly. The proposal would establish a sentencing commission to determine guidelines for use by judges, who could only depart from them after providing written justification therefor. A sentence outside the guidelines could be reviewed by an appellate court upon appeal by the government or a defendant. The measure would also abolish the current, unpredictable parole system in favor of definite

terms of imprisonment fixed at the time of sentencing. This measure is expected to pass the Senate. It is clear that it could run into great difficulty in the House of Representatives, as Representative Conyers' Subcommittee may have relevant jurisdiction.

5. Insanity Defense

This proposal, which is contained essentially in S. 1558 and the Code, would clarify procedures for determining competence to stand trial. It would also eliminate insanity as a defense and thereby limit the determinations to be made in criminal trials to one of whether the defendant possessed the requisite intent to commit the offense. Insanity would become a factor for the judge to consider in sentencing, but it would no longer be relevant to the question of guilt or innocence of defendants.

In the Senate, the Administration had urged that the insanity provision be included in the Omnibus Crime package to be considered. However, a unanimous consent time agreement to bring the package to the Senate floor was unobtainable if this provision were included.

In the House of Representatives, this proposal would likely be considered as an issue related to the Criminal Code, and therefore, within the jurisdiction of Conyers' Subcommittee. In the past, Conyers has shown no willingness to report favorably on such a provision, however, he did indicate at a recent hearing a willingness to support some change in the law.

6. Capital Punishment

This proposal would establish constitutionally supportable procedures in order to reinstitute the death penalty for federal crimes involving aggravated cases of homicide, treason, espionage and attempted Presidential assassination.

The Senate bill, S. 114, was favorably reported by Senate Judiciary in July of 1981. Again, this is a provision which the Administration strongly supports, but will have to be raised separately from the Omnibus package because of the need for a time agreement.

In the House, comparable bills have been referred to Representative Kastenmeier's Subcommittee, where the chances of favorable consideration are nil.

7. Habeas Corpus Reform

This proposal would help end the practice by which convicted federal and state prisoners burden federal courts by endlessly attempting to relitigate the propriety of their

convictions. It would do so by according greater finality to state court convictions and would introduce a reasonable time period for the filing of habeas petitions.

In the Senate, this measure has run into opposition from the Democrats. Chairman Thurmond has been unable to establish a quorum in any Judiciary Committee markup of this legislation, S. 2216 (the Administration's bill, which was transmitted to Congress on March 15). Again, this is an issue that cannot be raised as an amendment to the Omnibus package under the time agreement reached for its consideration.

In the House, the bill, H.R. 6050, has been referred to Kastenmeier's Subcommittee, where it is not expected to receive any attention.

8. Criminal Forfeiture

This proposal, S. 2320 with perfecting amendments, would extend criminal forfeiture to all drug trafficking, as well as to continuing criminal enterprise and RICO offenses. The Senate bill is not moving due to its complex nature and Senator Biden's objections. Prospects are, surprisingly, better in the House where Judiciary Subcommittee Chairman Hughes has apparently taken an interest in developing a bill (H.R. 6051).

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The foregoing proposals represent the essentials of the Administration's Omnibus Crime package. There are other measures that would:

- (1) strengthen and rationalize the existing array of criminal penalties for narcotics violations;
- (2) amend the Federal Surplus Property Act to facilitate donation to state and local governments of property for uses related to correctional facilities;
- (3) establish federal jurisdiction over contract murders involving interstate travel and murders committed to secure or advance position within an organization affecting interstate commerce;
- (4) amend 18 U.S.C. § 844 to cover destruction caused by fire in addition to explosion;
- (5) raise the cap on administrative forfeitures from \$10,000 to \$100,000 and increase bond required from \$250 to 10% of assessed value of property seized;

- (6) authorize emergency electronic surveillance in life-threatening situations and clarify judicial power to authorize surreptitious entry for the purpose of installing electronic devices; and
- (7) add to list of criminal offenses for which juveniles may be tried as adults.

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Please call if you have any questions or desire any additional information.