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CABINET AFFAIRS STAFFING MEMORANDUM

DATE: 8/1/83 NUMBER: 118835CA DUE BY: _____

SUBJECT: Cabinet Council on Legal Policy - August 2, 1983

2:00 pm in the Cabinet Room - With the President

	ACTION	FYI		ACTION	FYI
ALL CABINET MEMBERS	☐	☐	Baker	☒	☐
Vice President	☒	☐	Deaver	☐	☐
State	☒	☐	Clark	☐	☒
Treasury	☒	☐	Darman (For WH Staffing)	☒	☐
Defense	☒	☒	Harper	☒	☐
Attorney General	☒	☐	Jenkins	☐	☒
Interior	☒	☐	Fielding	☒	☐
Agriculture	☒	☒		☐	☐
Commerce	☒	☐		☐	☐
Labor	☒	☐		☐	☐
HHS	☒	☐		☐	☐
HUD	☒	☐		☐	☐
Transportation	☒	☐		☐	☐
Energy	☐	☒		☐	☐
Education	☐	☒		☐	☐
Counsellor	☒	☐		☐	☐
OMB	☒	☐		☐	☐
CIA	☐	☒		☐	☐
UN	☐	☒		☐	☐
USTR	☐	☒		☐	☐
CEA	☐	☐	CCCT/Gunn	☐	☐
CEQ	☐	☐	CCEA/Porter	☐	☐
OSTP	☐	☐	CCFA/Boggs	☐	☐
	☐	☐	CCHR/Carleson	☐	☐
	☐	☐	CCLP/Uhlmann	☒	☐
	☐	☐	CCMA/Bledsoe	☐	☐
	☐	☐	CCNRE/Boggs	☐	☐

REMARKS: The Cabinet Council on Legal Policy will meet on Tuesday, August 2, 1983 at 2:00 pm for thirty minutes in the Cabinet Room. There are four items on the agenda, and the briefing papers and agenda are attached. Briefings will be presented on the following issues: Victims of Crime (CM#395); Anti-Crime Initiatives (CM#245); Sharing of Grand Jury Information (CM#397); and Legislative Veto (CM#395).

RETURN TO:

☐ Craig L. Fuller
Assistant to the President
for Cabinet Affairs
456-2823

☒ Tom Gibson
Associate Director
Cabinet Affairs
456-2800



Office of the Attorney General
Washington, D. C. 20530

July 29, 1983

MEMORANDUM FOR: Members of the Cabinet Council
on Legal Policy

FROM: William French Smith *WFS*
Attorney General

SUBJECT: Legislation to Assist Victims of Crime

All too often, discussions of our national crime problem focus upon statistics relating to courts, prosecutors, and investigators, to the total exclusion of the impact of crime upon the people who are its victims. Regrettably, our legal system has neglected the financial, emotional, and physical impact which a criminal offense can have upon the victim. Victims of crime frequently are terrorized and sometimes injured. They turn to the legal system for help and justice, but often find neither.

In recognition of the growing concern over the needs of crime victims, President Reagan established a Task Force on Victims of Crime on April 23, 1982. During 1982, the Task Force held hearings in Washington and in five cities across the country. This past December the Task Force made 68 recommendations to the President setting out a plan for a comprehensive and detailed response to the problem of victims assistance by the federal government, state and local governments, and the private sector.

Victim Compensation Programs

One of the Task Force's major recommendations for federal action was enactment of legislation that would provide funds to the states to assist them to compensate and provide other assistance to victims of crime. Already, thirty-five states (and the District of Columbia and the Virgin Islands) have enacted legislation providing for compensation of victims of violent crime under certain circumstances. These payments are made to claimants from funds the states have established for this purpose; however, approximately half of these states have already found these funds insufficient to meet outstanding eligibility claims.

Because of the shortfalls state governments have encountered in administering their victims compensation funds, the Task Force recommended direct federal assistance to states in this area.

Unless adequate funds are available, victims' claims may have to wait months until sufficient fines have been collected or until a new fiscal year begins and the budgetary fund is replenished. However, while waiting for such funding victims may be sued civilly, harrassed continually, or see their credit rating vanish. Moreover, unencumbered emergency assistance is also critical to victims of violence in other ways. Immediate needs for food, shelter, and medical assistance cannot be deferred for the weeks or months it may take to process paper work.

Federal assistance to states also is needed because states shoulder the burden of compensating victims of federal, as well as state, crimes. Currently, states which have compensation programs make no distinction between victims of federal and state crimes. However, if their compensation programs continue to experience budgetary shortfalls, states soon may have no choice but stop compensating victims of federal crimes. Without federal financial assistance to state compensation programs, therefore, federal crime victims may receive no compensation in some states, or receive compensation in others only when the state elects to prosecute a crime over which there is joint federal and state jurisdiction.

Direct federal assistance to states is preferable to other alternative solutions to replenish the states' compensation funds. The chief alternative that would assure compensation to victims of federal crimes would be the creation of a new federal bureaucracy to provide such assistance directly. However, this approach is likely to be unnecessarily duplicative and cost-ineffective. The Task Force rejected this cumbersome approach, favoring instead an approach which would utilize existing state compensation schemes.

Proposed Legislation

The Department of Justice is currently drafting legislation to provide timely assistance for crime victims. The draft legislation would create a Crime Victims Assistance Fund to assist states in compensating victims of violent crime both financially (e.g., for unreimbursed medical expenses and loss of wages) and with specialized services (such as crisis intervention and mental health counselling). A goal of the legislation would be to provide federal assistance to the states without unduly interjecting the federal government into the working relationships now existing between the states, victim service organizations, and victims. However, the legislation will not call for any additional appropriations; instead, the Crime Victims Assistance Fund will be supported by levies on criminals, revenues already deposited in the Treasury, and other non-appropriated sources of money.

In particular, the possible funding sources include:

- penalty assessment fees and fines collected from convicted federal defendants;
- portions of monies paid to working federal inmates parolees and probationers;
- a percentage of assets seized by the government in forfeiture proceedings;
- profits offenders realize from the sale of literary or other rights arising from a criminal act; and
- contributions from the general public (except convicted or incarcerated federal criminals).

In addition, another source of funding would be the revenues the government already receives from the federal excise tax currently imposed on the sale of handguns, which is presently earmarked for a wildlife management fund administered by the Department of the Interior. Although these revenues are already being put to good use, they are another conceivable source of funds for the proposed Victims Assistance Fund.



Office of the Attorney General
Washington, D. C. 20530

July 29, 1983

MEMORANDUM FOR: Members of the Cabinet Council
on Legal Policy

FROM: William French Smith *WFS*
Attorney General

SUBJECT: Briefing on the Administration Crime Bill

In the course of the past two weeks the Senate Judiciary Committee has approved almost all of the proposals in the Administration's comprehensive crime package (S. 829). ^{1/} In addition to re-approving important reforms that have previously enjoyed general support in the Senate, such as revision of the bail and sentencing systems, the Committee has adopted the more controversial features of our program. These include, for example, restoration of capital punishment, recognizing a "good faith" exception to the exclusionary rule, and limiting the insanity defense.

By agreement of the Committee, the bill has largely been preserved intact, but four of the controversial proposals -- capital punishment, exclusionary rule reform, habeas corpus reform, and Federal Tort Claims Act (FTCA) amendments -- have been deleted from the comprehensive bill and are being considered as four pieces of separate legislation. The separate capital punishment, exclusionary rule, and habeas corpus bills have been voted out by the Committee; the FTCA amendments will be considered shortly. As part of the Committee's agreement these bills will receive floor consideration by the Senate at around the same time as the comprehensive bill but will be voted on as separate measures. Unfortunately, the agreement contemplates that a bill introduced by Senator Biden incorporating the "drug czar" proposal that was vetoed last year will also be brought to the floor at that time.

^{1/} The Committee has not yet considered the amendments to the Federal Tort Claims Act proposed in Title XIII of the bill. All other titles have been acted on favorably either as part of the comprehensive bill voted out by the Committee or as separate legislation.

The general effect of the Committee's agreement is twofold; first, the controversial proposals which are being treated separately will not impede full Senate approval of the general package, and secondly, the procedure will provide for Senate floor consideration of each of the controversial proposals. Of course this also means that these separate measures will not be "carried" as part of a larger bill and will have to pass the Senate on their own appeal. 2/

The specific measures which are included in our crime package and have been approved by the Committee include the following:

1. Bail Reform

Under current law, a judge in setting pre-trial release conditions is authorized to consider the risk that the defendant will not appear for trial, but is not authorized to consider the danger to the community that may result from a favorable release decision. Hence, when confronted with a demonstrably dangerous defendant, a judge faces the dilemma of releasing him prior to trial despite the danger he poses to public safety, or attempting to find some justification -- such as risk of flight -- to justify a high money bail the defendant cannot meet. Judges thus often find it necessary to choose between protecting public safety or endangering the community by applying the law as presently written.

Title I of S. 829 would correct this situation by authorizing consideration of a defendant's dangerousness in making pre-trial release decisions and authorizing pre-trial detention where no combination of release conditions can reasonably assure the safety of the public and prevention of flight.

Title I would also change the rules governing release of convicted defendants while an appeal is pending. Current law creates a presumption in favor of release on bail after conviction and pending appeal, as if a person were presumed to be innocent even after he has been found to be guilty. The Administration's proposals would reverse this presumption, limiting post-trial release to cases where the defendant can show that he will not flee or endanger the community and that his conviction is likely to be overturned on appeal.

2/ References hereafter to "the bill" or "S. 829" are to the original version of S. 829, incorporating our full legislative crime program. As the accompanying text explains, a few of the titles of the original bill are now proceeding as separate legislation.

2. Sentencing Reform

The second title of the crime bill would carry out a comprehensive revision of the sentencing system. Under current law, individual judges are provided with enormous discretion in the imposition of sentences. A statute may provide, for example, that a person convicted of a given offense may be sentenced to life imprisonment, to imprisonment for any number of years, or to no imprisonment at all, with the choice between these options being entirely left to the discretion of the sentencing judge. Empirical study of current sentencing practices shows that this system has resulted in great disparities in the treatment of similarly situated defendants based on differences in the personal philosophies of individual judges.

Title II of the bill would replace the current system with a system of guided discretion. A sentencing commission would issue guidelines establishing narrow penalty ranges for each combination of offense and offender characteristics, and the sentences actually imposed would normally be within these ranges. If a judge imposed a sentence outside of the guideline range he would have to state specific reasons for doing so and the resulting sentence could be appealed by the adversely affected party.

A second major reform of Title II is the abolition of parole. Currently, prisoners are normally released after serving some part of the sentence imposed at trial through the action of parole boards. This system is based on the now-discredited notion that imprisonment is a therapeutic measure and that it can be determined by observing a prisoner's behavior that at some point he has been "rehabilitated" and can safely be released. Under the Administration's proposals a prisoner would serve the actual sentence imposed on him at trial less a small reduction for good behavior in prison.

3. Limiting Impediments To Successful Law Enforcement

The Administration's proposals include reforms that would limit certain rules that may now perversely protect the guilty or increase the difficulty of successfully prosecuting offenders. The specific proposals in this category are limitation of the exclusionary rule, the insanity defense, and habeas corpus. 3/

3/ As noted earlier, two of these proposals -- exclusionary rule reform and habeas corpus reform -- have been deleted from the comprehensive bill by the Committee but have been approved by the Committee as separate bills.

Under current law, evidence that was obtained by an unlawful search and seizure is excluded from use at trial. Title III of the bill would substitute a more moderate rule under which evidence would not be excluded if it was obtained by a search or seizure which the officer reasonably believed to be lawful. The same change has already been made at the federal level in some parts of the country by judicial decision and has been adopted in a number of states by statute.

Title V of the bill would limit the insanity defense to cases in which a defendant was unable to appreciate the nature or wrongfulness of his actions and would require the defendant to establish insanity in this sense by clear and convincing evidence. This would change current rules under which the alleged inability of a defendant to control his actions may establish the defense and under which the government must establish a defendant's sanity beyond a reasonable doubt to obtain a conviction.

Title VI would limit the availability of federal collateral remedies for state and federal prisoners, including habeas corpus. This would provide a partial corrective to the current inundation of the federal courts with frivolous and harassing prisoner petitions and would limit the drain on state and federal criminal justice resources that results from this litigation.

4. Strengthening Remedies and Sanctions

The Administration's proposals include several measures that would strengthen the basic tools of law enforcement. Title IV of the bill would strengthen criminal and civil forfeiture laws, enhancing our ability to seize the proceeds of crime and to reach the operating capital of criminal enterprises. Title X would reinstate the death penalty in certain homicide, treason and espionage cases. 4/ Various other titles of the bill would increase the penalties applicable to a wide range of offenses, including narcotics offenses, labor racketeering, and currency violations. Titles XIV and XV would create new federal offenses or strengthen or extend existing criminal prohibitions in such areas as murder-for-hire, crimes in aid of racketeering, use of firearms in the course of federal crimes, crimes against federal officials, product tampering, 5/ child pornography, fraud and

4/ As noted earlier, capital punishment has been removed from the comprehensive bill by the Committee but has been voted out as a separate bill.

5/ Product tampering has been deleted from the comprehensive bill by the Committee because it is near enactment at this point as separate legislation.

bribery related to federal programs and counterfeiting of securities.

5. State And Local Justice Assistance

Two titles of the bill would lend federal support to state and local criminal justice efforts. Title VIII would authorize a modest program of financial assistance to state and local law enforcement to help finance anticrime programs of proven effectiveness. Title IX would facilitate donation of surplus federal property to state and local governments for urgently needed prison space.

* * *

The most basic obligation of government is the protection of the personal security of its citizens. The priority we have assigned to this function in the international context in our national security program finds its parallel domestically in our program of law enforcement and criminal justice reform. The Senate Judiciary Committee's approval of nearly all of the provisions of the Administration's legislative crime program is a major victory in our effort to provide for the domestic defense of the nation against the lawless elements of society. There remains ahead floor consideration by the full Senate and the difficult task of securing action on our proposals in the House of Representatives. I wish to thank all of you for the support and assistance you have provided and to solicit your continued cooperation in the work that lies ahead.



Office of the Attorney General
Washington, D. C. 20530

July 29, 1983

MEMORANDUM FOR: Members of the Cabinet Council
on Legal Policy

FROM: William French Smith
Attorney General *WFS*

SUBJECT: Sharing of Grand Jury Information

On June 30, 1983, the Supreme Court decided two cases that significantly limit the extent to which federal prosecutors may share grand jury materials with civil attorneys within the Department of Justice and with attorneys in other government agencies. These decisions, United States v. Sells Engineering, Inc., No. 81-1032, and United States v. Baggot, No. 81-1938, raise serious law enforcement problems for the Department of Justice and all other federal agencies.

A. Sells Engineering

The central issue in Sells was whether attorneys in the Civil Division of the Department of Justice could obtain automatic disclosure of grand jury materials for use in a civil suit or whether they were required to obtain a court order. The Supreme Court held that Department of Justice civil attorneys must obtain a court order authorizing the disclosure of such materials. Under the federal courts' criminal rules, such an order may be granted only upon a showing of particularized need -- that is, that the materials are needed to avoid a possible injustice in another proceeding, that the need for disclosure is greater than the need for continued secrecy, and that the request only covers the materials needed. This standard is ordinarily difficult to meet.

B. United States v. Baggot

In Baggot, the Supreme Court held that the disclosure of grand jury materials to an administrative agency pursuant to a court order is permissible only "[i]f the primary purpose of the disclosure is . . . to assist in preparation or conduct of a judicial proceeding." Therefore, if the purpose of the disclosure is simply to determine liability, as in a tax audit, or to conduct a mere investigation as to whether a violation of law has occurred, disclosure would not be authorized.

C. The Effect of Sells and Baggot

The Sells and Baggot decisions raise, but do not address, many profound problems for the government as a whole, and for the Department of Justice in particular. On their face, Sells and Baggot may be read to preclude not only the sharing of grand jury information between the Department of Justice and other agencies for investigative and civil purposes, but also the sharing of such information between attorneys in the same office unless there is a court order authorizing such information. In fact, it is possible to argue that Sells and Baggot may prevent an attorney who participates in a grand jury investigation from using even his own knowledge of the grand jury proceedings in a subsequent civil case to which he may be assigned -- even if the civil case is premised on the identical set of facts.

If, in subsequent litigation, these issues are resolved against the government, the government's civil law enforcement efforts could be seriously impaired. Moreover, it may cost the government many millions of dollars in additional costs for attorneys and investigators and in foregone damage claims. For example, the Antitrust Division in the Department of Justice estimates that efforts to obtain information already derived from grand jury proceedings through civil discovery would cost an additional \$8.7 million for cases brought or contemplated since January 1, 1981, involving government damage claims of over \$25 million. Similarly, the Commercial Litigation Branch of the Civil Division estimates that the lack of access to grand jury materials would result in additional litigation costs of \$1 million per year. Furthermore, civil fraud recoveries, which now total \$30 million per year, would be substantially reduced.

The Supreme Court decisions may also jeopardize law enforcement operations in other ways. Department of Justice attorneys often rely on the assistance of personnel and the resources of other agencies. For example, the IRS contributes significant resources to assist Department attorneys in grand jury proceedings and complex criminal investigations requiring a careful analysis of thousands of evidentiary items. Because Baggot precludes agencies such as the IRS from using materials uncovered in grand jury proceedings to investigate other possible violations of law, agency officials may be reluctant to continue to assist the Department.

D. Recommendation

The Department of Justice is carefully analyzing the practical effect of Sells and Baggot on the government. However, until the Department has completed this study, it is important that other departments and agencies -- some of whom have independent litigating authority -- do not take litigating positions that may preclude the Department's ability to obtain favorable readings of Sells and Baggot in the courts. Accordingly, every department and agency should clear in advance

with the Department the positions they intend to take in litigation.



Office of the Attorney General
Washington, D. C. 20530

July 29, 1983

MEMORANDUM FOR: Members of the Cabinet Council
on Legal Policy

FROM: William French Smith
Attorney General *WFS*

SUBJECT: Regulatory Reform and Legislative Veto

On June 23, 1983, the Supreme Court issued its decision in INS v. Chadha, striking down as unconstitutional the legislative veto provision found in the Immigration and Nationality Act. Notwithstanding the narrow issue presented, Chief Justice Burger's opinion for the Court was written broadly, striking down the legislative veto concept across the board as an infringement of the President's power to control the actions of the Executive Branch and to participate (by approving or vetoing) actions of Congress that affect the legal rights or duties of Executive Branch officials or private persons.

Since the Supreme Court's decision in Chadha, the Department of Justice has been working closely with other Executive agencies (particularly the Counsel to the President, the Office of Management and Budget, and the State and Defense Departments) to ensure an appropriate and measured response to that decision. (See the attached memorandum for a fuller discussion.) The executive branch has been careful to avoid providing any excuse for ill-considered congressional reaction to the Chadha decision. In addition, the government has stressed the importance of defending, both before Congress and in court, the validity of the remaining provisions of statutes that contained legislative veto provisions.

We have been fortunate that the reaction in Congress to Chadha has been a responsible one. While some members of Congress have indicated their desire to institute radical new forms of congressional review of executive action, most members appear inclined to defer major action until Congress and the executive branch have had more experience with congressional review in the absence of the legislative veto mechanism. Thus, while Congress may well ultimately enact some new form of oversight mechanism, it appears in the short term that Congress will do nothing, unless it appears that the executive branch is attempting a broad reading of Chadha. A group under the leadership of the Cabinet

Council on Legal Policy will be established to examine these long range considerations.

Because Chadha invalidated one of the most common mechanisms for congressional review of administrative action, the future of regulatory reform proposals in the aftermath of Chadha is somewhat uncertain. Nonetheless, it may be appropriate now that Chadha has resolved the question of the constitutionality of the legislative veto to give greater attention to substantially different forms of regulatory reform legislation than the comprehensive regulatory reform package (which contained a sweeping legislative veto provision) that was before Congress last year. In particular, the Administration might wish to give consideration to various "fast track" regulatory reform proposals that would reform the House and Senate rules to insure expedited consideration of legislative initiatives that the President designates as important to achieve policies of deregulation.

The President's Task Force on Regulatory Relief has been considering one such proposal. The draft legislation would authorize the President to submit to Congress "such reports as he deems appropriate" dealing with matters of regulatory reform, including regulatory programs he believes should be modified or repealed. Congressional action on such reports and any proposed legislation contained therein would be expedited in a number of ways under the proposal. For instance, each committee considering a report submitted by the President would have a limited amount of time in which to act upon the report, or be discharged from further consideration of it. Also, once a bill implementing any report had been placed on the calendar of the House of Representatives or the Senate, it would be in order to move to proceed to consider such a bill, and such motion "shall be highly privileged and shall not be debatable." In a number of other ways, the rules of the House and Senate would be amended to require expedited consideration of a bill implementing a Presidential report on regulatory reform. The ultimate aim would be to prevent such a bill from simply dying in Congress as a result of inertia or inaction.



Office of the
Assistant Attorney General

Washington, D.C. 20530

JJ 28 1983

MEMORANDUM FOR THE CABINET COUNCIL ON LEGAL POLICY

RE: ANALYSIS OF SUPREME COURT LEGISLATIVE VETO DECISIONS

This memorandum presents a summary analysis of the recent Supreme Court decisions regarding legislative vetoes and their potential impact on existing statutes and other sources of presidential authority.

1. Legislative Vetoes

Legislative vetoes are provisions pursuant to which Congress, or a unit of Congress, is purportedly authorized to adopt a resolution that will impose on the Executive Branch (or the "independent" agencies) a specific requirement to take or refrain from taking an action. The key characteristic of all legislative veto provisions is that a resolution pursuant to such a provision is not presented to the President for his approval or veto.

Legislative vetoes first surfaced approximately fifty years ago, but in the past ten to fifteen years the trickle became a torrent. Every President since Hoover has opposed legislative vetoes on either policy or constitutional grounds or both, with the intensity of their opposition tending to increase in direct proportion to the length of their experience with them as Chief Executive.

2. The Supreme Court Decisions

Chadha involved a veto by the House of Representatives in 1975 of the Attorney General's statutory decision to suspend, on humanitarian grounds, the deportation of an alien who was otherwise deportable. The Supreme Court decided Chadha on June 23, 1983. The Chief Justice wrote the Court's opinion. Justice White dissented on the merits. Justice Rehnquist dissented on the grounds of severability (discussed *infra*).

3. Public and Legislative Branch Reaction

Most journalists and commentators initially portrayed these decisions as major and unmitigated "victories" for the presidency. Commentators from the Congress did not disagree regarding the Court's death knell for legislative vetoes, but some commented that power heretofore so generously delegated to the Executive and independent agencies would be sharply narrowed and authority previously enjoyed by the President would be withdrawn.

Some proposals were introduced in the House of Representatives to reduce the power of the Consumer Product Safety Commission (CPSC) in the aftermath of Chadha by requiring affirmative congressional approval of all rules issued by the CPSC by a law before such rules could take effect. However, unless the Executive Branch provokes a confrontation with the Legislature through ill-considered and highly controversial actions or statements, congressional reaction on a broad gauge, i.e., to withdraw legislatively all delegated authority to which a legislative veto is attached, is not likely to develop widespread support. A sweeping and somewhat radical proposal was actually advanced by Mr. Stanley Brand, General Counsel to the Clerk of the House of Representatives, in his testimony before the House Committee on Foreign Affairs on June 19, 1983. His proposal met with a very icy reception by Chairman Zablocki and did not appear to receive any support from other members of that Committee. In addition, Deputy Attorney General Schmults testified before the Subcommittee on Administrative Law and Governmental Relations of the House Committee on the Judiciary on July 18 and the House Committee on Foreign Affairs on June 20 (accompanied by Deputy Secretary of State Dam), and the overall reaction of those committees appeared to be a go-slow, cooperative one. Mr. Dam will testify before the Senate Committee on Foreign Relations on July 29 once again on the import of Chadha in the foreign relations area.

4. Legislation and Presidential Authority Affected

The Office of Legal Counsel has determined that 126 public laws containing 207 separate legislative veto devices will be affected by Chadha.

Some of the most significant and/or controversial provisions are:

1. War Powers Resolution, 50 U.S.C. § 1544 (removal of armed forces engaged in foreign hostilities may be required by concurrent resolution);
2. International Security Assistance and Arms Control Act, 22 U.S.C. § 2776(b) (concurrent resolution may halt certain proposed arms sales);
3. National Emergencies Act, 50 U.S.C. § 1622 (concurrent resolution may terminate declaration of national emergency under International Emergency Economic Powers Act [IEEPA - used in Iran situation]);
4. International Security Assistance Act of 1977, 22 U.S.C. § 2753(d)(2) (Supp III 1979) (concurrent resolution disapproving defense equipment transfers);
5. Nuclear Non-Proliferation Act of 1978, 42 U.S.C. §§ 2160(f), 2155(b), 2157(b), 2153(d) (Supp III 1979) (disapproval by concurrent resolution of exports of nuclear material and technology);
6. Congressional Budget and Impoundment Control Act of 1974, 31 U.S.C. § 1403 (one House veto of spending deferrals);
7. Trade Act provisions. Various provisions regarding duties, quotas, waivers (concurrent disapproval provisions);
8. Energy provisions. Various provisions granting presidential emergency powers (one- or two-House disapproval provisions);
9. Federal Election Campaign Act Amendments of 1979, 2 U.S.C. § 438(d)(2) (Supp III 1979) (one House veto of Federal Election Commission rules);
10. Various Reorganization Acts;
11. Federal Pay Comparability Act;

12. District of Columbia legislation;

13. Interior Department actions such as off-shore leasing and wilderness designations.

5. Severability

In Chadha, the Chief Justice's opinion appears to have adopted a very strong presumption that legislative veto devices will be stricken by the courts while leaving intact the remainder of the statutory schemes in which these devices were inserted by Congress. That strong presumption was reinforced by the Court's summary affirmance on July 6 of the D.C. Circuit's decision in the natural gas phase II pricing rule case, CECA v. FERC, 673 F.2d 425 (D.C. Cir. 1982). The statute involved in FERC, in contrast to the statute involved in Chadha, did not contain a "severability clause," and its legislative history permitted the House and Senate and a number of intervenors to argue that the legislative veto device was inseverable. As Deputy Attorney General Schmults stated in his testimony on July 18 regarding the significance of the Court's summary affirmance in FERC, "if the Court had wanted to reverse the apparent trend toward 'severability' in the recent cases decided by the D.C. Circuit, it presumably would have used that case as a vehicle to do so."

In Congress, the attitude on the severability issue, at least so far, seems to be one of acceptance of the high likelihood that very few, if any, grants of power to the Executive will be held to fall with the legislative veto devices attached to them. Mr. Brand, in his testimony before House Foreign Affairs, stated his view that "absent an overwhelming record to support [inseverability], I believe the courts will find severability in many cases." The conclusion that Mr. Brand drew from this reality -- "that Congress is better served by wholesale repeal of the delegations effected by these statutes" -- was not well received by the House Foreign Affairs Committee.

In court, the Department of Justice is presently preparing to argue the severability of legislative veto devices in litigation ranging from an attempt by the Exxon Corp. to have set aside a \$1.6 billion judgment entered against it in June, 1983, to a suit brought by federal employee unions arguing that the President's power to place in effect an "alternative"

pay plan is inseverable from the one-House veto device attached to that presidential power and seeking substantial back pay based on that argument. All this litigation is being coordinated and supervised by the Civil Division of the Department of Justice.

6. Retroactivity

Some litigation may arise over the validity of past agency actions pursuant to authorities or power which are arguably void because inseverably connected with legislative vetoes. For example, Merrill Lynch is currently arguing that the EEOC's enforcement action against them cannot be maintained because the EEOC acquired its enforcement power pursuant to a reorganization plan that was issued under a statute containing an inseverable one-House veto device. These issues will have to be evaluated as they arise, but it is not likely that the courts will overturn whole regulatory schemes or administrative actions which have created vested rights.

7. Report and Wait Provisions

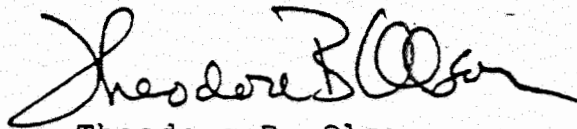
The Chadha decision stands for the proposition generally that statutes which require actions to be reported to Congress and remain in suspension for a certain period to allow a legislative response will be upheld. We have assured Congress in testimony discussed above that the Executive will scrupulously observe such requirements. However, unless Congress acts through substantive legislation, most actions will become effective at the end of the waiting period.

8. Other Developments

The Office of Management and Budget has circulated in draft form and expects to issue in the very near future a bulletin designed to ensure close coordination of all Executive Branch actions to be taken pursuant to statutes containing legislative veto devices. The information gathered in that process, as well as that maintained by the Civil Division regarding litigation, should keep us fully abreast of important developments.

A working group of White House, OMB, Justice, State and Defense officials has monitored developments within and without the Administration since the Chadha decision and has made recommendations where appropriate.

A long range planning group will be organized under the Cabinet Council on Legal Policy to consider long term responses to Chadha including reexamination of the role of "independent" agencies, the delegation doctrine pursuant to which rule-making authority is transferred to agencies, and proposals for "fast-track" legislative review of administrative actions and authorities.

A handwritten signature in dark ink, appearing to read 'Theodore B. Olson', with a stylized, cursive script.

Theodore B. Olson
Assistant Attorney General
Office of Legal Counsel

THE WHITE HOUSE
WASHINGTON

October 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Cabinet Council on Legal Policy Planning
Session - Friday, October 14 - 3:00 p.m.
in the Roosevelt Room

In the attached memorandum to Craig Fuller, the Deputy Attorney General concludes that it is almost inevitable that "drug tsar" legislation will clear both Houses of Congress by overwhelming margins. Schmults asks for authorization to approach Senators Thurmond and Biden to negotiate a version of such legislation the Administration would support. Schmults describes his desired approach as "a Drug Policy and Operations Board chaired by the Attorney General and made up of members of the Cabinet Council on Legal Policy."

I am in no position to assess Schmults' views on the inevitability of passage of drug tsar proposals, but I would insist on a conclusive determination that we have no choice in the matter before switching positions. Last year, largely at the Justice Department's urging, the President vetoed an otherwise desirable bill because it contained a "drug tsar" provision, and sustained considerable political damage in doing so. At the Cabinet Council meeting you should insist on greater specificity from Schmults as to exactly what type of bill he has in mind. At present he is simply asking for a blank check to support a bill that would increase the powers of his department vis-a-vis the others involved in the drug war (Treasury, Transportation, Carlton Turner's office, etc.)

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1/1Name of Correspondent: Richard G. Darman☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Cabinet Council on Legal Policy
Planning Session
Friday, October 14 - 3:00 pm in the
Roosevelt Room

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>WHolland</u>	ORIGINATOR	<u>8310113</u>			<u>1/1</u>
<u>WATO4</u>	Referral Note: <u>I</u>	<u>8310113</u>			<u>1/1</u>
<u>WAT18 ←</u>	Referral Note: <u>A</u>	<u>8310113</u>		<u>S</u>	<u>8310114</u> <u>10:00 AM</u>
	Referral Note:	<u>1/1</u>			<u>1/1</u>
	Referral Note:	<u>1/1</u>			<u>1/1</u>
	Referral Note:				

ACTION CODES:

A - Appropriate Action
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FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
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Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOb).
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CLOSE HOLD**WHITE HOUSE STAFFING MEMORANDUM**DATE: 10/13/83 ACTION/CONCURRENCE/COMMENT DUE BY: _____SUBJECT: CABINET COUNCIL ON LEGAL POLICY PLANNING SESSION
FRIDAY, OCTOBER 14 - 3:00 P.M. IN THE ROOSEVELT ROOM

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	☐	☐	HERRINGTON	☐	☐
MEESE	☐	☐	HICKEY	☐	☐
BAKER	☐	☐	JENKINS	☐	☐
DEAVER	☐	☐	McMANUS	☐	☐
STOCKMAN	☐	☐	MURPHY	☐	☐
CLARK	☐	☐	ROGERS	☐	☐
DARMAN	☐	☒	ROLLINS	☐	☐
DUBERSTEIN	☒	☐	SPEAKES	☐	☐
FELDSTEIN	☐	☐	SVAHN	☐	☐
FIELDING	☒	☐	VERSTANDIG	☐	☐
FULLER	☐	☐	WHITTLESEY	☐	☐
GERGEN	☐	☐	_____	☐	☐

REMARKS:

AGENDA: Drug Tsar Legislation (paper attached)

CLOSE HOLD

RESPONSE:

Richard G. Darman
Assistant to the President
Ext. 2702



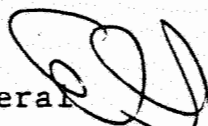
U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

JUL 13 1983

MEMORANDUM TO: Craig Fuller
Assistant to the President for
Cabinet Affairs

FROM: Edward C. Schmults 
Deputy Attorney General

RE: "Drug Tsar" Legislation: A Proposed
Administration Response

Background: For more than a year, there have been calls in the Congress for creation of a "drug tsar" to oversee and coordinate all federal drug enforcement efforts. We have consistently resisted these proposals, first on the Floor of the Senate last year where a Biden "drug tsar" amendment to the Violent Crime and Drug Enforcement Improvements Act was accepted by a 2-1 margin despite Chairman Thurmond's efforts on our behalf. During the "lame-duck" session of the 97th Congress, the "drug tsar" proposal was attached to the "mini-crime bill." As you will recall, the Biden bill would have created a "super Cabinet-level" drug tsar with vague and sweeping powers to "direct" departments and agencies to carry out the policies he establishes including the power to reach down into departments and agencies and reassign enforcement personnel. The President disapproved it primarily because of this "drug tsar" provision.

Despite our continuing opposition to the "drug tsar" concept, Senator Biden has succeeded in having his new "drug tsar" bill (S. 1787) reported by the Senate Judiciary Committee by a vote of 12 to 5 (3 of the 5 votes against were proxies voted by Chairman Thurmond; in at least one case the proxy was from a Senator who favors the tsar concept). The Biden bill is substantially identical to the "tsar" provision of the mini-crime bill pocket vetoed in January.

On the House side, Congressman Hughes has had his version of a "drug tsar" proposal (H.R. 3664) reported by the House Judiciary Committee. The Hughes' bill builds upon an existing structure (the White House Drug Abuse Policy Office) rather than creating an entirely new structure.

Senator Biden will, as part of his agreement with Chairman Thurmond, be able to bring his bill to the Senate Floor as a separate bill upon completion of Senate consideration of the President's crime package, possibly within a few weeks. Congressman Hughes can be expected to try to get his bill approved by the House before the Senate acts on the Biden bill.

Prognosis: House and Senate Floor action on "drug tsar" legislation is imminent and the result will almost certainly be overwhelming approval by both bodies. The simplistic and superficial appeal of the "drug tsar" concept appears irresistible. Even if the President was to veto a "drug tsar" proposal we must recognize that the vote we anticipate on initial passage would be so strong as to suggest concern about a veto override. The Administration would suffer from the public's confusion of vetoing a "crime" bill.

Moreover, the Democrat strategy may be to secure Congressional approval of a bail, sentencing, forfeiture and "drug tsar" package leaving the balance of the President's anti-crime package to gather dust in the House Judiciary Committee.

A Revised Biden Bill. Despite the shortcomings of the Biden "drug tsar" bill, there is reason to believe that Biden may be willing to make a number of changes to accommodate our concerns. In this regard, Biden has held out the intelligence community as a model of a coordinated multidepartmental effort. We believe his bill can be modified, therefore, to make it more consistent with the organization of the intelligence community while at the same time bringing it more into line with our current cabinet system.

Recommendation: We recommend that the Department of Justice be authorized to approach Senators Thurmond and Biden. We believe that a version patterned after the Director of Central Intelligence model can be structured in such a way as to provide a single witness to appear before Congressional committees to testify on anti-drug efforts and accommodate certain other concerns without unnecessarily infringing on the important operational programs of the several departments. In summary, an alternative approach could be to establish a Drug Policy and Operations Board chaired by the Attorney General and made up of members of the Cabinet Council on Legal Policy. Such a board would set drug policy and oversee drug enforcement operations through a participatory process that respects the powers of Cabinet officers to supervise the internal affairs of their departments.

THE WHITE HOUSE

WASHINGTON

January 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Cabinet Council on Legal Policy: Status
of Administration's Anti-Crime Legislation

The status of the Administration's anti-crime legislation has been included on the agenda of today's meeting of the Cabinet Council on Legal Policy. The attached memorandum from the Deputy Attorney General focuses on S. 1762, which includes all of the President's anti-crime proposals except habeas corpus reform, exclusionary rule reform, the death penalty, and the Tort Claims Act amendments. The bill has been reported out of the Senate Judiciary Committee and is co-sponsored by Senators Thurmond, Laxalt, Biden, and Kennedy, pursuant to an agreement that the four would resist all amendments to the bill. Senator Baker was willing to let S. 1762 reach the floor last year, but only if a time agreement could be reached. Senator De Concini would not agree to a time agreement that did not allow floor consideration of the death penalty, and death penalty opponents would not agree to a time agreement allowing debate on that issue.

Schmults argues that the best chance for passage of significant anti-crime legislation is to secure Senate passage of S. 1762 (virtually assured if it can be brought to a vote) and then use S. 1762 as a vehicle for putting pressure on the House. If the House refuses to act, at least the blame for failure to secure anti-crime legislation will be squarely placed on the Democrat-controlled House as the election approaches. Putting the ball in the House's court by fall, however, requires prompt Senate action. Schmults recommends that the question be put on the agenda of the legislative strategy group, so the members of that group can consider what steps to take to urge Senator Baker to bring S. 1762 to the Senate floor, a move that will probably require time for debate on the death penalty issue.

In sum, there is nothing new to report on the fate of the Administration's anti-crime legislation. Justice has included it on the agenda in an effort to secure a greater commitment of White House energy and resources to its passage.

Attachment

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) _____ / _____ / _____Name of Correspondent: Edward C. Schmults☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Cabinet Council on Legal Policy:
Status of Administration's Anti-Crime
Legislation

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CVHOLE</u>	ORIGINATOR	<u>84.01.13</u>			<u>1 1</u>
	Referral Note:				
<u>CVAT18 ←</u>	<u>D</u>	<u>84.01.13</u>		<u>S</u>	<u>84.01.16</u>
	Referral Note:				<u>10:00 am</u>
<u>CVAT04</u>	<u>A</u>	<u>84.01.13</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
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THE WHITE HOUSE
WASHINGTON

CABINET AFFAIRS STAFFING MEMORANDUM

Date: 1/13/84 Number: 168885CA Due By:

Subject: Cabinet Council on Legal Policy - Monday, January 16, 1984

2:00 P.M. - Roosevelt Room

ALL CABINET MEMBERS	Action	FYI		Action	FYI
Vice President	☒	☐	CEA	☐	☒
State	☒	☐	CEQ	☐	☐
Treasury	☒	☐	OSTP	☐	☐
Defense	☐	☒	ACUS	☒	☐
Attorney General	☒	☐		☐	☐
Interior	☒	☐			
Agriculture	☐	☒			
Commerce	☒	☐	Baker	☒	☐
Labor	☒	☐	Deaver	☐	☐
HHS	☒	☐	Darman (For WH Staffing)	☒	☐
HUD	☒	☐	Jenkins	☐	☒
Transportation	☒	☐	McFarlane	☐	☒
Energy	☐	☒	Svahn	☒	☐
Education	☐	☒	Fielding	☒	☐
Counsellor	☒	☐		☐	☐
OMB	☒	☐		☐	☐
CIA	☐	☒		☐	☐
UN	☐	☒		☐	☐
USTR	☐	☒		☐	☐
GSA	☐	☐	CCCT/Gunn	☐	☐
EPA	☐	☐	CCEA/Porter	☐	☐
OPM	☐	☐	CCFA/	☐	☐
VA	☐	☐	CCHR/Simmons	☐	☐
SBA	☐	☐	CCLP/Uhlmann	☒	☐
			CCMA/Bledsoe	☐	☐
			CCNRE/	☐	☐

REMARKS: The Cabinet Council on Legal Policy will meet on Monday, January 16, 1984 at 2:00 p.m. in the Roosevelt Room.

The agenda will include the following items:

- Legal Equity for Women - *Boyd*
- Immigration Policy - *ggR*
- Crime Legislation - *"*
- Bankruptcy Judges - *Sm*

The briefing papers are attached.

RETURN TO:

☐ Craig L. Fuller
Assistant to the President
for Cabinet Affairs
456-2823

☐ Katherine Anderson
☒ Tom Gibson

☐ Don Clarey
☐ Larry Herbolzheimer

Associate Director
Office of Cabinet Affairs

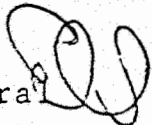


The Deputy Attorney General

Washington, D.C. 20530

January 13, 1984

MEMORANDUM FOR: Members of the Cabinet Council
on Legal Policy

FROM: Edward C. Schmults 
Deputy Attorney General

SUBJECT: Status of the Administration's Anti-Crime Legislation

Enactment of the President's Comprehensive Crime Control Act is most important. Enactment of its provisions will greatly increase the effectiveness of the unprecedented advances we have made through our various law enforcement initiatives over the last three years. Securing Congressional approval of meaningful criminal justice reforms this year is still possible but prompt action is required. We must seize the opportunity. It is particularly important that the Senate pass the legislation early this spring, so that we may concentrate our efforts on the House.

I. Senate

In the Senate, the President's 42-point Comprehensive Crime Control Act of 1983 (submitted to the Congress on March 16, 1983) was favorably reported by the Senate Committee on the Judiciary in July of 1983. Attached is a capsule summary of the President's anti-crime package as it emerged from the Senate Judiciary Committee.

The President's 42-item "package" has been reported as four new bills, in order to implement an agreement reached among Chairman Thurmond and Senators Laxalt, Biden, and Kennedy. In summary, the four Senators agreed to co-sponsor a "core" package (S. 1762) which includes all of the provisions of the President's bill except for habeas corpus reform, exclusionary rule reform, the death penalty, and Tort Claims Act amendments. They also agreed to stand together against all efforts to amend the "core" bill. The Committee reported separate bills on habeas, exclusionary rule, and death penalty. The Tort Claims Act amendments were reported subject to unanimous concurrence on its final language between Senators Biden and Grassley and the Department of Justice. To date agreement has not been achieved. The agreement between the four Senators also includes a pact to stand in opposition to any filibuster or other delaying device which

could jeopardize a floor vote on each of the controversial items: habeas corpus reform, exclusionary rule, death penalty, and Federal Tort Claims. In other words, they have agreed to work together to secure floor votes on each of these items.

It must also be noted that at the time the four bills (the core bill, habeas, death penalty, and exclusionary rule) were reported, the committee also reported, as separate bills, Senator Biden's "drug tsar" bill, and bills on sentencing and forfeiture reform. Sentencing and forfeiture are two major titles in the core bill.

Thus, in the Senate the current status of the anti-crime proposals (plus the "drug tsar" proposal) is that the Committee on the Judiciary has reported favorably on the following bills:

1. S. 1762 - sponsored by Thurmond (14 co-sponsors have been added since introduction), containing 37 of the 42 items proposed */ by the President (plus four congressionally initiated proposals to which we do not object);
2. S. 1763 - sponsored by Thurmond (12 co-sponsors have since been added), habeas corpus reform;
3. S. 1764 - sponsored by Thurmond (5 co-sponsors have since been added), reform of the exclusionary rule;
4. S. 1765 - sponsored by Thurmond (12 co-sponsors have since been added), which is now the vehicle for the President's reinstitution of the death penalty;
5. S. 668 - sponsored by Kennedy, identical to the sentencing reform provision of S. 1762;
6. S. 948 - sponsored by Biden, identical to our forfeiture reform proposals in S. 1762; and
7. S. 1787 - Senator Biden's "drug tsar" proposal.

Demands by Senator DeConcini that capital punishment be considered at the same time as the noncontroversial bill (S. 1762) prevented our getting the core measure to the Senate Floor last year. Senator Baker was willing to bring the core bill to the floor, but he insisted that a time agreement be reached. DeConcini would not agree to a time agreement which did not allow floor consideration of the death penalty, and any agreement allowing such a debate was rejected by opponents of that provision. We believe

*/ One part of the President's crime package, product tampering (the "Tylenol" bill), has been approved by the Congress as a separate measure, leaving 41 of the original 42 items still pending before the Congress.

that the core bill, S. 1762, will pass the Senate with an overwhelming majority. We also believe that the other separate bills have enough support to pass, if they can survive procedural obstacles which will be attempted by opponents not party to the Thurmond-Biden-Laxalt-Kennedy agreement.

II. House of Representatives

In the House, the President's crime package was introduced as H.R. 2151 by Representative Fish and now has 28 co-sponsors. No action whatsoever has been taken by the House Judiciary Committee on H.R. 2151. There has, however, been piecemeal action on some of the issues in the President's package, as follows:

1. Justice Assistance Legislation -- the Judiciary Committee has reported and the House has approved H.R. 2175 (Rep. Hughes) which is a defective version of Title VIII of the President's bill.
2. Insanity Defense Reform -- the full Judiciary Committee has reported H.R. 3336 (Rep. Conyers) which is generally consistent with Title V of the President's bill.
3. Child Pornography -- the House has approved H.R. 3635 (Rep. Hughes) which is similar to Title XV, Part B of the President's crime bill.
4. Extradition Reform -- the House Judiciary Committee has reported H.R. 3347 (Rep. Hughes) which is similar to Title XIV, Part M of the President's crime bill.
5. Forfeiture Reform -- the Subcommittee on Crime has reported H.R. 3299 (Rep. Hughes) which would accomplish most of the purposes of Title IV of the President's crime bill, but the Hughes' bill must be considered a weakened version.
6. Drug Tsar -- the House Judiciary Committee has reported H.R. 3664 (Rep. Hughes) to establish a federal drug tsar. Hughes' bill builds upon an existing structure (the White House Drug Abuse Policy Office) rather than creating a new structure as is the case in Biden's bill.

In short, the House has only dealt with five of the items found in the President's bill plus the "drug tsar". Further, the House has not acted on the "big ticket" items of sentencing or bail reform. It should be noted that Chairman Rodino did introduce a sentencing bill the day the House adjourned. Unfortunately, this

otherwise positive step by the Chairman is diminished by the language of his version. For example, the Rodino sentencing bill does not permit Government appeal of excessively lenient sentences, it preserves the Parole Commission (which we want to abolish), and it does not strengthen criminal fine collection mechanisms.

III. Prospects

In the Senate, failure to secure Floor action on the core bill last year was a setback. Nevertheless, Senate passage early this year would place us in a good position from which to bring pressure to bear on the House to move the comprehensive crime legislation. Moreover, Senate leaders (including Biden) have agreed to use all possible parliamentary steps to force a House vote on the package, primarily by repeatedly tacking the core crime bill onto House-passed bills and sending them back to the House.

Despite the reluctance of the House Judiciary Committee to act on the President's crime bill, we believe that the Senate's core bill, S. 1762, would have majority support if it reached the House Floor. Therefore, our objective must be to get the issues to the House Floor. Even if attaching the Senate-passed bill to other House-passed bills falls short of forcing a Floor vote in the House on the entire package, such efforts may force some House action on major crime legislation.

We believe that the critical first step is Senate Floor action. Such action would put the entire focus on House inaction. The pressure of Senate passage should create opportunities in addition to enabling the Senate to add the core bill to various House-passed pieces of legislation. Members of the House will thus be more amenable to taking some action on significant crime legislation. Unlike the Senate, the House (especially the Committee on the Judiciary) is almost incapable of processing omnibus bills. However, with Senate action as a forcing device, House Members should become more willing to process more of the individual elements of the President's bill, even if the bill is not considered as a whole. With enough elements moving in the House we could gain a conference with the Senate from which we might be able to obtain major portions of our criminal justice legislative agenda.

IV. Needed Action

In short, the earliest possible Senate action on S. 1762 is necessary if we are to be successful in securing enactment of urgently needed crime legislation. Majority Leader Baker must be urged to force the crime legislation to the Senate Floor, allowing time to fight out the death penalty issue. We could then get the core package out of the Senate in February. Once that is accomplished, we will -- assuming White House and Administration leadership in an active public education effort -- have a significant

prospect of securing true criminal justice legislative reforms this year. We would therefore urge that this entire matter be placed on the agenda of an early meeting of the legislative strategy group in order that the necessary, specific action-forcing steps may be agreed upon.

Attachment

President Reagan's Comprehensive Crime Control Act
of 1983 as Reported by the Senate Judiciary Committee

S. 1762

Title I - Bail Reform would amend the Bail Reform Act of 1966 to:

- permit courts to consider danger to the community in setting bail conditions and to deny bail altogether where a defendant poses an especially grave danger to others;
- tighten the criteria for post-conviction release pending sentencing and appeal;
- provide for revocation of release and increased penalties for crimes committed while on release; and
- increase penalties for bail jumping.

Title II - Sentencing Reform would revise the sentencing system to:

- establish a determinate sentencing system with no parole and limited "good time" credits;
- promote more uniform sentencing by establishing a commission to set a narrow sentencing range for each federal criminal offense;
- require courts to explain in writing any departure from sentencing guidelines; and
- authorize defendants to appeal sentences harsher and the Government to appeal sentences more lenient than the sentencing commission guidelines.

Title III - Forfeiture Reform would strengthen criminal and civil forfeiture laws by providing for:

- forfeiture of profits and proceeds of organized crime (RICO) offenses;
- criminal forfeiture in all narcotics trafficking cases;
- expanded procedures for "freezing" forfeitable property pending judicial proceedings;
- forfeiture of substitute assets where assets originally subject to forfeiture have been removed from the reach of the Government;

-- forfeiture of land used to grow, store and manufacture dangerous drugs; and

-- expanded use of efficient administrative forfeiture procedures in noncontested cases.

Title IV - Insanity Defense Reform would narrow the insanity defense currently available in the federal system to:

-- limit the defense to those who are unable to appreciate the nature or wrongfulness of their acts;

-- place the burden on the defendant to establish the defense by clear and convincing evidence;

-- prevent expert testimony on the ultimate issue of whether the defendant had a particular mental state or condition; and

-- establish procedures for federal civil commitment of persons found not guilty by reason of insanity if no State will commit him.

Title V - Drug Enforcement Amendments would:

-- strengthen federal penalties applicable to narcotics offenses;

-- reduce the regulatory burden on law-abiding manufacturers and distributors of legitimate controlled substances; and

-- strengthen the ability of the Drug Enforcement Administration to prevent diversion of legitimate controlled substances to illegal uses.

Title VI - Justice Assistance Act would:

-- authorize a modest program of financial assistance to State and local law enforcement to help finance anti-crime programs of proven effectiveness; and

-- streamline the components of the Department of Justice responsible for statistical, research and other assistance to State and local law enforcement.

Title VII - Surplus Property Amendments would facilitate donation of surplus federal property to State and local governments for urgently needed prison space.

Title VIII - Labor Racketeering Amendments would strengthen federal laws with respect to labor-related racketeering activity by:

- raising from five to ten years the period of time that a corrupt official can be debarred from union or trust fund positions; and
- making debarment effective upon the date of conviction rather than the date all appeals are exhausted.

Title IX - Foreign Currency Transaction Amendments would improve federal laws designed to prevent international "money laundering" by:

- adding an "attempt" provision to existing laws prohibiting transportation of currency out of the United States in violation of reporting requirements;
- strengthening penalties for currency violations and authorizing payment of rewards for information leading to the conviction of money launderers; and
- clarifying the authority of U. S. Customs agents to conduct border searches related to currency offenses.

Title X - Miscellaneous Violent Crime Amendments.

- A. Establish federal jurisdiction over murder-for-hire and crimes in aid of racketeering.
- B. Establish federal jurisdiction over solicitation to commit a crime of violence.
- C. Expand felony-murder rule (18 U.S.C. 1111) to include "escape, murder, kidnaping, treason, espionage and sabotage."
- D. Establish a minimum mandatory 5-year sentence for use of a firearm in a federal crime of violence.
- E. Establish an additional minimum-mandatory 5-year sentence for use of armor-piercing bullets in a federal crime of violence.
- F. Expand 18 U.S.C. 1201 to include kidnaping of federal officials.
- G. Establish a new federal offense for crimes against family members of federal officials.
- H. Expand the Major Crimes Act, which sets out offenses in Indian country, to include maiming and sodomy.

- I. Expand 18 U.S.C. 31 to cover destruction of trucks.
- J. Establish federal sanctions for causing serious damage to an energy facility.
- K. Expand 18 U.S.C. 1114 to include attempted assaults and assaults upon U. S. intelligence officers, and to allow the AG to designate other persons for coverage.
- L. Create federal penalties for escape from custody resulting from civil commitment.
- M. Amend extradition laws to codify case law and facilitate extradition of foreign fugitives.
- N. Amend 18 U.S.C. 844 to clarify present law to ensure that tougher penalties for arson are applicable where firemen suffer personal injury. (Congressionally initiated proposal.)
- O. Establish federal jurisdiction over robberies and burglaries directed at pharmacies and others registered to dispense, manufacture or distribute controlled substances. (Congressionally initiated proposal.)

Title XI - Serious Non-Violent Offenses

- A. Amend child pornography laws to delete commerciality and obscenity requirements.
- B. Amend 18 U.S.C. 2232 to cover warning the subject of a search.
- C. Establish federal sanctions for theft or bribery involving federal program funds.
- D. Establish federal sanctions for counterfeiting of State and corporate securities and a misdemeanor penalty for forged endorsements on U. S. securities.
- E. Amend 18 U.S.C. 2113 to cover receipt of stolen bank property.
- F. Add a new § 215 to title 18 to cover bank-related bribery.
- G. Add a new § 1344 to title 18 to cover bank fraud including check kiting.
- H. Improve penalties for trafficking in drugs, weapons or other contraband in federal prisons.

- I. Establish federal penalties for fraud of \$10,000 or more involving livestock. (Congressionally initiated proposal.)

Title XII - Procedural Amendments

- A. Lower from 16 to 15 the age at which a juvenile may be prosecuted as an adult for serious crimes of violence and drug trafficking offenses.
- B. Amend wiretap laws to permit emergency wiretaps in life-endangering situations and expand the range of predicate offenses to include child porn, illegal currency transactions and crimes against victims and witnesses.
- C. Revise 18 U.S.C. 3237 to permit prosecution of threat offenses in any district from, to or through which the threat travels.
- D. Authorize civil injunctions against fraud pending criminal prosecution.
- E. Authorize government appeal of new trial orders.
- F. Improve the Witness Security Program through codification of case law and other changes.
- G. Amend tax venue statute to avoid unnecessary splintering of criminal tax prosecutions.
- H. Amend Foreign Agent Registration Act to shift powers now held by Secretary of State to the AG. (Congressionally initiated proposal.)

S. 1763

Reform of Federal Intervention in State Proceedings would reduce federal court interference in State adjudications by:

- requiring federal deference to "full and fair" State court proceedings;
- limiting the time within which State adjudications may be challenged in federal court, and
- making other improvements in federal habeas corpus laws.

S. 1764

Exclusionary Rule Reform would create an exception to the application of the Exclusionary Rule to prevent suppression of evidence where it can be shown that officers were proceeding in a good faith and objectively reasonable belief that they were acting in compliance with the law.

S. 1765

Reinstitution of Capital Punishment would establish constitutionally permissible procedures for imposition of the death penalty in certain homicide, treason and espionage cases.