(Dolan/Bakshian)
August 25, 1982
1:00 p.m.

RADIO ADDRESS: CRIME

My fellow Americans. Today I want to talk with you about a subject that has been very much on my mind even as I've been busy with budgets, interest rates, and legislation. It's a subject I know you have been thinking about too: crime in our society. In fact, 53 percent -- or more than half of you -- were telling pollsters last year that you were afraid to walk the streets alone at night. And 85 percent said you were more concerned now than you were 5 years ago about the problem of crime and what we can do to stop it.

As Attorney General Smith pointed out recently, Americans are loosing faith in our courts and our entire legal system. Nine out of ten Americans believe that the courts in their home areas aren't tough enough on criminals. Another eight out of ten Americans believe that our criminal justice system doesn't deter crime -- and these figures have gone up drastically in the last 10 or 15 years.

Americans have every right to be concerned. We live in the midst of a crime epidemic that takes the lives of 15,000 Americans a year and touches nearly one-third of American households, costing nearly $8.8 billion per year in financial losses. During the past decade alone, violent crime rose 83 percent.

Study after study shows that much of the crime problem is the work of a relatively small group of hardened career criminals. Let me give you an example: subway crime in New York

City. Transit police there estimate that only 500 habitual criminal offenders are responsible for nearly half of the crime wave in New York's subways. It's time we got these hardened criminals off the street and into jail.

Now while the primary responsibility for dealing with these career criminals must rest with local and state authorities, I want you to know that this Administration -- even as it has been battling our economic problems -- has taken important steps on the Federal level to fight crime.

Many of these professional criminals are particularly active in the illegal drug trafficking that causes so much violent crime and is responsible for an estimated 50 to 60 percent of all property crimes.

Well, here we've been able to do something. First, through our South Florida Task Force under Vice President Bush we've launched a frontal assault on the Ho Chi Minh trail of illegal drugs into this country. With the help of the military and the Coast Guard, the flood of drugs into South Florida is now down to a trickle. There is more work to be done, but we've made a great start. We've got the criminals on the run and we're putting more of them in jail.

Second, we're starting to make a dent in illegal drug traffic by bringing to bear the full resources of the FBI for the first time. In the last year, the FBI launched more than 800 investigations into illegal narcotics.

Much of our success in combatting the drug trade is due to Congress's positive response to our request for legislation which

allows us to use military resources in fighting illegal drugs. I only wish I could say Congress has acted as quickly on some of the other important legal reforms we have proposed -- reforms that would make things very tough for hardened criminals.

These include revising the bail system so that dangerous offenders and especially big time drug pushers could be kept off our streets. We also want to stop the abuse of the parole system by making jail sentences more certain and we've been pushing for stronger criminal forfeiture laws -- a powerful weapon that would take much of the profit out of drug pushing and other forms of organized crime. We've also asked Congress for tougher Federal penalties for drug-trafficking.

Other important legislation would require judges to take into account the suffering of the victims when sentencing criminals; would make it a Federal crime to kill, kidnap or assault senior Federal officials; and would permit the Federal Government to transfer property to the States, free of charge, for use as prison facilities.

These are important and imaginative steps. They can strike a real blow against organized crime and professional criminals. Please help us get these weapons in the war on crime by writing your Congressman and Senators and telling them you support the Administration's crime-fighting legislation.

I am also pleased to announce that very soon I will be sending to Congress suggested revisions of the exclusionary rule. As it now stands, this rule forces judges to throw out of court -- on the basis of small technicalities -- entire cases, no

matter how guilty the defendents or how heinous the crimes. This is a grievous miscarriage of justice. The rule needs to be reviewed on the basis of the "good faith" determination that some Federal districts have already accepted.

I will also be sending to Congress important revisions of Federal procedure that will cut down on interference by Federal courts in state jurisdictions and will also reduce the great number of cases now overburdening our court system and slowing the wheels of justice. And finally, we will be pressing for common-sense revisions of the insanity defense, a defense that has been much misinterpreted and much abused.

I wish there was more time to talk with you about these steps and many others we are taking -- such as our strategy for fighting drug abuse. I'll have to save that for some of our future get-togethers. But, in the meantime, I hope we can count on your support in our battle against crime and our efforts to protect the innocent and put the professional criminals in jail where they belong.

'Til next week, thanks for listening and God bless you.

Steve - check Speech

DOCUMENT NO. 090690 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 8/30/82 ACTION/CONCURRENCE/COMMENT DUE BY: 9/5/82

SUBJECT: Timing of the Crime Message

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
✓ PORTER	☐	☒	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BOGGS	☐	☐	OFFICE OF POLICY INFORMATION		
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	COBB	☐	☐
DENEND	☐	☐	PROPERTY REVIEW BOARD	☐	☐
FAIRBANKS	☐	☐	OTHER		
FERRARA	☐	☐	_____	☐	☐
GALEBACH	☐	☐	_____	☐	☐
GARFINKEL	☐	☐	_____	☐	☐
GUNN	☐	☐	_____	☐	☐
B. LEONARD	☐	☐	_____	☐	☐
LI	☐	☐	_____	☐	☐
MONTOYA	☐	☐	_____	☐	☐
SMITH	☐	☐	_____	☐	☐
✓ UHLMANN	☒	☐	_____	☐	☐
ADMINISTRATION	☐	☐	_____	☐	☐

REMARKS:

Please return this tracking sheet with your response

Edwin L. Harper
Assistant to the President
for Policy Development
(x6515)

THE WHITE HOUSE

WASHINGTON

August 27, 1982

MEMORANDUM FOR MICHAEL UHLMANN

FROM: EDWIN L. HARPER

SUBJECT: Timing of the Crime Message

On August 26, Ed Meese indicated that the President would give a radio address on crime and that the legislation would be sent up on the first day that the Congress returned. I understand from you that the Justice Department and Senator Thurmond's staff have reviewed our draft legislation and it's ready to go. I also understand that a copy of the radio speech has been drafted and sent to California for the President's review.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release September 13, 1982

REMARKS OF THE PRESIDENT
ON THE OMNIBUS CRIME BILL

The Briefing Room

10:30 A.M. EDT

THE PRESIDENT: I have a statement here and let me say in advance --

Q You won't take questions. (Laughter.)

THE PRESIDENT: I won't -- I can't.

Q You never take questions.

THE PRESIDENT: It's Monday and I have a very heavy schedule and a meeting waiting for me. But Ed Meese and these gentlemen from the Justice Department are here for a complete briefing of anything -- any questions that you may have on this subject.

Since the early days of this administration, we've been working to make America a safer place for all our citizens. Last year, we launched the Attorney General's Task Force on Crime. Based on their proposals, we worked with the Senate Judiciary Committee to develop an omnibus anti-crime package which revises the bail and parole systems and requires tougher federal penalties for drug trafficking.

The measure also requires a judge to take into account the suffering of the victims when it comes time to sentence a criminal. The administration has been pushing for enactment of that package and I hope that the Senate will bring it to a vote in the next several days.

On other fronts, we've appointed a task force on victims of crime. And that group will begin hearings this week here in Washington. In the near future, you'll also be hearing more from us about what we can do to stem narcotics crime. Today we're sending to the Congress another important installment in our fight against crime. It's a legislative package that I believe offers great hope for improvements in the way that our courts handle criminal cases.

These measures will simplify the justice system and make it more likely that those who commit crimes pay a price. The American people want a system of justice they can understand and they can have confidence in. And this is our goal as well.

Working with the Congress, I believe we can deliver a serious blow to the criminal elements in our society. And ladies and gentlemen of the press, I now turn you over to Ed Meese and these gentlemen from the Justice Department.

Q Did the Hinckley verdict have anything to do with this crime package?

THE PRESIDENT: I said that I wouldn't take any questions. (Laughter.)

THE PRESS: Thank you.

END 10:32 A.M. EDT

THE WHITE HOUSE

Office of the Press Secretary

For Release at the Conclusion of the Briefing

September 13, 1982

TO THE CONGRESS OF THE UNITED STATES:

I am herewith transmitting proposed legislation entitled the Criminal Justice Reform Act of 1982. This Act -- plus other proposals now pending in Congress -- would strengthen society's defenses against the continuing and pervasive menace of crime.

Crime is clearly one of the most serious problems we face today. Crime -- and the fear of crime -- affect the lives of most Americans. Government's inability to deal effectively with crime diminishes the public's confidence in our system of government as a whole. Last year alone, one out of every three households in the country fell victim to some form of serious crime. By 1981, according to one survey, nearly eight of ten Americans did not believe that our system of law enforcement discouraged people from committing crimes -- a fifty percent increase in just the last fifteen years.

As the threat of crime has become clearer to all Americans, so too has the need for improving our defenses against crime. As my Attorney General said only a few weeks ago:

> "In recent years, through actions by the courts and inaction by Congress, an imbalance has arisen in the scales of justice. The criminal justice system has tilted too decidedly in favor of the rights of the criminal and against the rights of society."

It is time to restore the balance -- and to make the law work to protect decent, law-abiding citizens.

To protect the rights of law-abiding citizens, the Administration has previously announced its strong support for a comprehensive law enforcement measure, the Violent Crime and Drug Enforcement Improvements Act of 1982, introduced in the Congress as S. 2572 and H.R. 6497. That important legislative initiative addresses many of our most pressing needs: bail reform, victim-witness protection, strengthened drug penalties, protection of federal officials, sentencing reform, expanded criminal forfeiture, donation of surplus federal property to State and local governments for needed correctional facilities, and a series of miscellaneous improvements in federal criminal laws.

The attached legislative proposal that I am now submitting would reform three additional areas of federal law affecting the criminal justice system. First, it would limit the insanity defense so that only those who did not have the mental state which is an element of their crime would escape responsibility for their acts. Second, the proposal would reform the exclusionary rule to prevent the suppression of evidence seized

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(OVER)

by an officer acting in the reasonable, good faith belief that his actions complied with law. Although the argument for retaining the exclusionary rule in any form is, at best, tenuous, this proposal eliminates application of the rule in those cases in which it most clearly has no deterrent effect. Finally, the bill would reform federal habeas corpus review of State adjudications to ensure greater deference to full and fair State judicial proceedings and to limit the time within which habeas corpus proceedings may be initiated. Habeas corpus reform would conserve scarce federal and State judicial and prosecutorial resources.

This new proposal and the Violent Crime and Drug Enforcement Improvements Act of 1982 represent a legislative program to protect all our citizens. These are not partisan initiatives. They are far too important to the Nation's well-being. In my view, they provide the basis for a renewed effort against the menace of crime. They will help restore the balance between the forces of law and the forces of lawlessness. I join with all Americans in urging the Congress to give both these legislative proposals its immediate attention and to begin the process of reclaiming our communities from criminals.

RONALD REAGAN

THE WHITE HOUSE,
September 13, 1982.

# # # # # #

we would assume that those results are not unexpected, that they will be what we expected all along, that they will further --

Q Do you know what it is?

MR. MEESE: -- further vindicate him. We have not believed there was anything there all along, so we would naturally expect that this will totally vindicate him.

Q Do you have any reason -- evidence that -- I mean, you've seen the report?

MR. MEESE: Haven't seen the report, no.

Q But you didn't answer her question which was: Does the President still have full confidence in --

MR. MEESE: Oh, yes, certainly, certainly. I'm sorry. There's been no change in our feelings in that regard.

THE PRESS: Thank you.

END 10:59 A.M. EDT

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release September 13, 1982

PRESS BRIEFING
BY
EDWIN MEESE, III, COUNSELOR TO THE PRESIDENT,
D. LOWELL JENSEN, ASSISTANT ATTORNEY GENERAL,
AND
RUDOLPH GIULIANO, ASSOCIATE ATTORNEY GENERAL,
ON THE
OMNIBUS CRIME BILL

The Briefing Room

10:32 A.M. EDT

MR. MEESE: With me today here are Rudy Giuliano, the Associate Attorney General, who's in charge of Law Enforcement Matters, Justice Department; Lowell Jensen, the Assistant Attorney General in charge of the Criminal Division; and Jeff Harris, who served as the Executive Director, the Attorney General's Task Force on Violent Crime. So, they are here to discuss with you these matters.

I'd -- let me just say, by way of preface, that this is an on-going part of a criminal justice program that actually began early in 1981. As the President mentioned in his statement, the first major act that this administration took was the appointment of the Attorney General's Task Force on Violent Crime, which rendered 64 recommendations as to how the Federal government, within its limited role in the crime area, could support and assist state and local law enforcement in matters pertaining to violent crime.

I think we're happy to say that virtually all of those recommendations, in one form or another, are being implemented at the present time. Beyond that, we have then gone into other matters. And the Omnibus Crime Control Bill, which was developed jointly by this administration and the Senate Judiciary Committee, is now coming to a vote probably within the next week to ten days, possibly two weeks, before this session ends.

As a follow-on to that, the bill that is being introduced today was worked out with the Senate leadership, as far as the timing goes, so that that would be introduced prior to the end of this session and could be voted on this session or at least hearings can be held in preparation for further action in the next session.

And then there are two other events that just happen to be occurring at the present time. One is that tomorrow the Task Force on Victims, which was appointed by the President during the summer, will be holding their first hearings -- first of several hearings that will be held around the United States, but the first hearings will be held here in the District of Columbia. And, also, within the next two to three weeks, there will be a major announcement about the narcotics and drug abuse strategy of the administration which also has been a major focus of attention, as you know, both in terms of enforcement and the health and education aspects.

So, that's the reason for having this briefing today which will cover any of those subjects but particularly these two bills.

Q Does the timing --

MR. MEESE: Lesley.

Q -- have anything at all to do with the coming elections?

MR. MEESE: No, no. This is just -- it honestly happened to be the time that was worked out on the schedule with the Senate and, particularly, the fact that we have this vote coming up on the Omnibus Bill in the next two weeks.

The other package had been in the process of preparation and there was some thought that we might introduce it next session. This was actually accelerated because it was felt that the Senate, particularly, is very anxious to take a look at these three measures relating to the exclusionary rule, the insanity defense, and the Federal intervention in state criminal proceedings.

In answer, just as the President said, that would have nothing to do with Hinckley. This was started long before the Hinckley situation.

Q Isn't this, Mr. Meese, however, one of the most burning questions now in the minds of people -- what you're going to do about crime, and isn't this --

MR. MEESE: Yes.

Q -- rather expeditious to introduce it right now politically?

MR. MEESE: As I say, I think it is very much on peoples' minds. There're polls now that when you get away from the economy and you get into asking people, "What is the most important problem in your community?", crime is number 1 in their minds.

But the reason I gave you a little bit of the background is this is not something that's just being addressed now. This really goes back to -- oh, was it April or so of 1981 when the Task Force was first formed.

Q But you did say it was accelerated because the Senate wanted to discuss it now.

MR. MEESE: The Senate felt that they could discuss it now; that they could take it up.

Q They're all -- alot of them are running for reelection.

MR. MEESE: I don't know. You have to ask them.

No, really we were worried whether we could get it in on the agenda, and they felt it deserved attention this session. Yes, Dave.

Q What's the difference between what you're proposing on the insanity defense and the proposal of some people for just a guilty but insane kind of verdict. There seems to be a difference there, but I'm not sure what the difference --

MR. MEESE: There are a variety of solutions to the insanity problem that have been put forward. It was the feeling of the people working on this in both the Senate and the Justice Department that this was the more -- the solution that was most applicable to Federal crimes. And I'd like Lowell or Rudy to discuss the technical details about that a little further.

MR. GIULIANO: The approach that we opted for is one that would change the definition of insanity and reduce it to

the government having to prove that the person had the knowledge and intent to commit the crime. That is the burden on the government, to prove that. Above and beyond that, there is no additional insanity defense. So it would apply in a situation where a person did not know what they were doing -- you know, someone who had the mental age of a two-year-old, or believed that they were shooting at a tree when, in fact, they were shooting at a human being. But it would not apply in all of those situations where a person claimed that they could not control their behavior or they heard voices or they had some religious impulse to commit a crime.

Q Could you expand on that? Give me an example in which this insanity defense that you are proposing would apply.

MR. GIULIANO: The insanity defense would apply if a person committed a crime like murder. And a psychiatrist was able to testify, and eventually a jury was persuaded, that the person completely did not know what they were doing -- or a person, as I said, with a mental age of a two- or three-year-old who had actually grown to be an adult. It would not apply in the vast majority of cases where it is now used, which are cases in which people claim that they cannot control their behavior, they had an irresistable impulse to commit the crime, or they heard voices that told them to commit the crime.

Q If I can follow that -- you said that a psychiatrist would have to testify. The fact sheet that you gave us suggests that your revisions will eliminate this whole scene of many psychiatrists coming in to testify. But it seems that it would have to continue under your --

MR. GIULIANO: It would not eliminate it. It would limit it severely. In most of the situations in which the insanity defense is now offered in federal court -- involves situations in which a person is trying to demonstrate that they could not control their behavior, not situations in which they entirely did not know what they were doing. So it would limit it, but not eliminate it.

Q Why did you not go for the other, more stringent rule?

MR. GIULIANO: This is probably the most stringent rule that you could arrive at, because the government has the burden of proving that a person intended to do what they did, and knew what they were doing. So the government would have that burden no matter what approach you adopted. So this, in our view, takes it back to what would be the constitutionally permissible limit.

Q On the exclusionary rule, since, as I understand it, that only applies to federal proceedings, do you know, off hand, whether, in the view of law enforcement officials, most of the alleged abuses of that rule occurred in federal or in state and local courts?

MR. GIULIANO: I am going to ask Mr. Jensen to answer that.

MR. JENSEN: The proposed legislation, of course, would only apply in federal court. However, it could lead to

adoption in state courts. There are, for example, two states that have adopted the legislation that we have proposed for federal courts. But the short answer, in terms of whether or not the exclusionary rule is more of a presence in state court than federal court, it is true, because most of the state court proceedings deal with the kinds of crimes, either drug crimes or violent crimes, where the exclusionary rule has a relevance. So that most of the cases that involve the exclusionary rule are in state courts, as are most criminal proceedings in the first place.

Q Mr. Jensen, how does this affect the gathering of evidence, pre-trial evidence by law enforcement officials, for example?

MR. JENSEN: What it does is that it states the exclusionary rule in such a fashion that, when that evidence that is gathered pre-trial has been gathered by a policeman who believes, in good faith, that the search that he is undertaking is lawful, and that is an objectively valid belief on his part, then that evidence can be used and would not be suppressed.

Q Don't both of these areas fall into prosecutional areas that are going to have to be worked out in the courts?

MR. JENSEN: There is no question that there is a constitutional kind of dimension to this that has to be tested at the ultimate kind of conclusion. Any legislation that gets into this, ultimately, has to be tested in terms of its constitutionality. We do not think that there is any problem with constitutionality in the sense that the current cases that exist already state the rule we propose. For example, the Fifth Circuit has already adopted it. And they feel that it is constitutional, obviously, or they would not have adopted it.

Q But other areas of the country might have to realize that?

MR. JENSEN: Ultimately, the U.S. Supreme Court, that has not yet ruled upon the good-faith statement of the exclusionary rule, would have to rule.

Q Are there types of cases in the federal court that predominate in terms of the use of the exclusionary rule, like drug cases?

MR. JENSEN: No question that the exclusionary rule is present in virtually every drug prosecution in federal court. And, if there is one kind of crime that is prosecuted in federal court where this is a serious presence, there is no question that drug cases predominate.

Q In case of wire tapping, you certainly would know it was unlawful when they proceeded to do it. Would that kind of evidence be legal?

MR. JENSEN: The wire tap situation is one where there is already a court application where a judge has already reviewed and authorized the wire tap. So that you have a situation where it really does not involve the same kind of issues that we are talking about.

Q What are you talking about?

some litigation where other judges disagree with the first judge about where the search warrant should have been issued. Now, under the present interpretation of the exclusionary rule, that evidence is suppressed. And what we're saying -- that's a distortion of what the exclusionary rule is out to get to. It ough to get to police misconduct, not to judicial disagreements. And that's what we're stating in --

Q Sir, do you have enough FBI agents, enough people really to deal with crime -- in an investigative way?

MR. JENSEN: I think that the strength of the FBI is adequate -- that's right.

Q Do you have any plans to step up your border patrol efforts through the Justice Department to stop crime?

MR. JENSEN: Perhaps you could address that.

MR. GIULIANO: Yes.

Q I refer to the Americans who are being robbed as they come back from the Mexican border with their purchases. Are you familiar with that?

MR. GIULIANO: Yes, over the last two years, we have increased the size and the efficiency of the border patrol over the situation that we inherited. And we have plans to continue to do so. That's part of the overall administration approach to emphasize enforcement within the Immigration and Naturalization Service.

In the last several months, I think you've seen operations like Operation Jobs where we arrested a large number of illegal aliens. For a long time, there had been no real serious enforcement within INS. Same thing was true with the anti-smuggling cases that were brought in Houston very recently. There's been a real effort to try to revitalize the border patrol -- both to increase it and, most importantly, to make it more efficient. And the commissioner of the Immigration and Naturalization Service, Alan Nelson, has spent a great deal of time doing that and we believe it is one of the real success stories in the last year or so in the Justice Department. There's a lot more work that has to be done and we're very aware of that.

Q This sounds completely different --

Q Rudy, why did they decide on one-year limitation on --

Q -- than the reports that are coming -- This sounds completely different. Aren't you still taking men off the Mexican border and putting them in the Southeast where they can deal mainly with the Puerto Ricans and the Jamaicans?

MR. GIULIANO: No, that isn't so. For a period of time, we devoted some additional resources to South Florida. But that was back in January and February. That isn't so any longer.

Q Can we get back to the bill?

Q -- one year limitation on habeas corpus? I believe it was three years on a previous -- I may be wrong on that.

MR. GIULIANO: It's one year from the time that all state remedies are concluded which sometimes can be an awfully long time, in and of itself, after the person either committed the crime or even was convicted of the crime. And one year is a sufficent period for a person to decide whether

MR. JENSEN: We are talking about cases where, for example, a police officer goes to a magistrate and gets a search warrant. And then, thereafter, there is

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there was an error in his proceeding after having had all those reviews of constitutional dimension. So --

Q Is there an exception for new evidence coming to light?

MR. GIULIANO: There's always an exception for new evidence coming to light that couldn't possibly have been learned before. But that's kind of unrealistic. That rarely is the case. I was a law clerk to a federal judge and I reviewed literally hundreds of these applications over a two-year period and it's very rare that you get one that has new evidence that comes to light ten years later.

Q One more question, how much difference do you think this is going to make? There's a lot of dispute about this. Some people say it's less than two percent of the cases in which this is even an issue.

MR. GIULIANO: You see that's -- if you look at each one of these all by itself, you can say, "Well, it only affects a certain percentage of cases." But these are a broad range of changes -- readjustments in the criminal justice system -- exclusionary rule, insanity defense, forfeiture, sentencing. Taken together, it will make a major change in the way we conduct the federal criminal justice system and, hopefully, it will operate as a model for the states. And some states have already passed packages like this.

So, in a way, we're building on things that they've accomplished.

Q Could you answer his question on that? Has anybody developed any sort of estimate on how much in the case load of appeals this supposedly will cut down -- your change on the habeas corpus. Does anybody --

MR. GIULIANO: They're not really appeals. They're habeas corpus petitions that are filed with federal judges. In certain districts that have large prison population, it will mean freeing up as much as half the time of the federal judge. But that isn't true across-the-board. It depends on the district that you're in.

Q Aren't you really wiping out the insanity plea? And why do you want to do that? Do you really think that insane people do know the difference -- except that they have a mental age of two?

MR. GIULIANO: The end result of this will be that instead of having psychiatrists testifying in front of juries in these kind of circus atmospheres that occur, that kind of testimony will largely, except for those few cases that I mentioned, will be taking place in front of a judge after a person has been convicted.

A person will still have the opportunity to demonstrate to a judge that they are mentally ill. And the judge will be --

Q But what you're saying is that all insane people should be found guilty?

MR. GIULIANO: No, I'm not saying that. I'm saying that except for a very limited few people, instead of having a jury decide whether a person is mentally ill or not, that kind of decision should be made by a judge and it should be taken into consideration in determining how a person is incarcerated.

Q Why?

MR. GIULIANO: Because under the present system, with all sorts of extended definitions in insanity, we lose control over someone. Someone can be released at the whim of a psychiatrist or two who decides that the person is now sane.

You can decide that a week later, six months later, a year later, two years later, and a person can be released who has committed murder. That's the main reason why. So,

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that we have a hold on people who are dangerous. It doesn't much matter after you have been shot or killed whether the person was mentally ill or not -- you have been just as killed or shot, and the emphasis should be on protecting society. And still there are Constitutional limits and we have to operate within those limits and we think this bill balances the two very well.

Q To follow that up, if this had been in effect with the Hinckley case, he would not have been able to use the defense that he used? Is that a correct assumption?

MR. GIULIANO: The defense in the Hinckley case was not that he did not know what he was doing. The defense was that he knew what he was doing. He certainly knew that he was shooting at the President and others, and intended to do it, but that for some compulsion beyond that he was being moved to do it.

Q But he would not have been able to use this defense under the way you are constructing the --

MR. GIULIANO: I should emphasize that this approach to the insanity defense was urged by the Justice Department well before the Hinckley case was a case.

Q Posing a hypothetical to you -- hypothetically if this had been in effect, Hinckley would not have been able to use the defense he used. Correct?

MR. GIULIANO: That is right. That is absolutely correct. The Senate had passed actually a version of this, and had that version been passed by the House of Representatives long before the Hinckley case, he would not have had that defense available to him.

Q On the Presidential commission, you just had, as the President noted, another Presidential commission. Why is it necessary before two years passed to have a commission take up the same thing again?

MR. GIULIANO: Well, they are taking up two separate things.

MR. MEESE: This is a separate thing. This was one of the recommendations of the Attorney General's task force on violent crime -- was that the problems of victims get greater attention and the task force on victims -- on crime victims -- which is now working, is to bring together a lot of accumulated information in various parts of the country. Where Mr. Jensen was before in Alameda County they had a very good victim-witness program. There are a lot of other similar innovations throughout the country. The idea is to bring this information together to define what additional things need to be done and then make that information available universally throughout the country. So that is the purpose of the task force.

Q What you are really trying to do is get more convictions. Do you have any percentage, if this passes the constitutionality test, how many more convictions you will get? What are you going to do with all those people? The prisons are already overcrowded.

MR. MEESE: That is two different questions. One is, as far as getting more convictions, I think you will get some more convictions but more particularly, you will get more finality of convictions. Right now most of the cases that go up on appeal are in fact affirmed -- what is it -- it is well over 90 percent. So you ultimately get the convictions. The problem is, you have, because of the exclusionary rule when it was introduced initially, and particularly since 1961 when it was made mandatory, you have had a great deal of uncertainty because nobody knows whether a police officer's action one week, operating under legal statements of the court, is going to be found illegal the next week by some other court. So what we want to do -- this goes far beyond convictions. It has to do with what cases can be prosecuted, rulings in the trial courts, which often now are delaying, because of all the search and seizure stuff that comes up, often delay those trials and drag them out to three and four times what they used to be. It has to do with police

training. So there are a whole lot of ramifications with this as far as what ought to be going on in the criminal justice system.

As to your other question about where are you going to put all the criminals, one of the things that this administration has been trying to do in response to the Attorney General's task force is to make more prison facilities available. Prisons generally have not increased even with population growth, and we are trying to make more federal facilities available to state and local governments to provide a place for those prisoners that need incarceration.

Q So it would be like deserted army bases, that sort of thing throughout the country?

MR. MEESE? Surplus army bases, other surplus lands on which buildings -- prison buildings can be built -- that sort of thing.

Q Have you been given any assurance by the Senate leadership about whether or not this has a specific date set on the calendar yet?

MR. GIULIANO: The omnibus bill or the other one? The omnibus bill will definitely be taken up before the end of this session, yes. Senator Baker has agreed to that.

Q What about the House? It is still bottled up in the subcommittee in the House.

MR. MEESE: In the Conyers subcomittee. I think however the momentum from the Senate will be very helpful in putting the pressure on the House, and we are prepared to do that.

Q I have a three-part question about the exclusionary rule. I am wondering about the good-faith concept, if that is a subjective concept, would it actually protect the innocent in case of legal abuse -- or illegal abuse by law enforcement officers.

MR. GIULIANO: It is a concept that is both objective and subjective. In other words, it is good faith stated in terms of a subjective valid belief by the police officer that his conduct is lawful,

MORE

but you test that subjective feeling in an objective setting. The court looks at it.

Q But to do that --

MR. JENSEN: No, no.

Q Would you do that again? I mean, how would you determine good faith on the part of the --

MR. JENSEN: Well, you do that as an objective kind of legal question in terms of what is the state of the law at the time of the search, and that would be viewed in a judicial context as to whether or not objectively the good faith belief of the police officer was reasonable under the circumstances and the law at the time of the search.

MR. MEESE: Could I add to that?

MR. GIULIANO: Yes.

MR. MEESE: Two things. One is that the test that is made here, I think, is going to make a great difference as far as giving judges some specific ability, for example, to make rulings. The other thing is the exclusionary rule has never helped an innocent person. The only type of people that have been helped by the exclusionary rule are necessarily guilty people because it reverses convictions where they've already been proven guilty.

Q Mr. Meese, one more question. One of the recommendations of the Task Force on Violent Crime is a $2 billion program constructing prisons.

MR. MEESE: Right.

Q Presumably this -- if this legislation is passed, you're going to put more people in prison for longer.

MR. MEESE: I don't think there's going to be that much --

Q Are you going to reconsider that $2 billion program?

MR. MEESE: -- of an impact. I don't think that there's going to be in that order of magnitude that many additional people sent to prison. But, nevertheless, the response to that recommendation was that instead of the $2 billion, because of the fiscal stringency, instead we inaugurated the program that I mentioned as far as turning over surplus lands and surplus facilities. And that's why -- for example, I think it's Fort Dix, isn't it? --

MR. GIULIANO: Yes.

MR. MEESE: -- in New Jersey, a whole prison facility was turned over to the State of New Jersey. And that's been replicated throughout the country. And we felt that was a more effective way to do it in terms of the present fiscal situation than merely appropriating the money.

Q Mr. Meese, weren't elements of this, particularly the exclusionary rule, raised before or last year? Haven't there been hearings and so on on this?

MR. MEESE: I believe that's correct.

Q Could you explain why it was raised then and it's being raised again?

MR. GIULIANO: All of these proposals in one way or another have been the subject of hearings before the Congress since the time of the Task Force report. And it was put together first in

a package that goes back now about two months that contains some of the proposals involving sentencing reform, bail reform, new legislation in order to forfeit the property of drug dealers and increase sentences for drug dealers. That was part one of the package. And then these three proposals that are going up today were sent up as really a second part and an add-on to that. The only reason for it was that the Senate was engaged in other matters and this is the time they can take it up. And now we've been able to put it all together into two packages that hopefully can be voted on before the end of the session.

Q Weren't these dropped specifically because it was more controversial with these in it than the measure is now that the Senate is going to vote on it?

MR. MEESE: I think it was a determination by -- not that they were necessarily more controversial, although I think they are clearly -- but that it would take much more debate time of the Senate's time on these latter three than on some of the earlier ones.

Q If these proposals are enacted, would the Juan Corona case be -- being held right now in California --

MR. MEESE: These proposals would probably not affect the basic elements of the Juan Corona case. I don't know of any -- as I remember back to that, I don't think that these particular measures would have much to do with the Juan Corona case itself. And the basis that the Juan Corona case was overturned on are not reflected in any of these provisions.

Anybody else?

Q Will it stop Hinckley from sending letters?

Q Does the President --

MR. MEESE: What?

Q Will it stop Hinckley from sending letters? (Laughter.)

Q Does the President plan to do any more lobbying of Congress in the next few weeks while they're still in session on this -- for this package, or is he just going to send it and let it fly?

MR. MEESE: No, no. I think you'll find that we will be pushing it assiduously. And exactly how his personal involvement will be manifested depends really on the situation up there.

In answer to Helen's question, this does not affect First Amendment rights, so Hinckley can continue to exercise free speech through his letter-writing.

Q Before you leave, would you care to comment on the future of Raymond Donovan's life in the administration? Do you think that he's going to leaving the administration soon?

MR. MEESE: I have no reason to believe that, no.

Q Does the President and do you still have complete confidence in him?

MR. MEESE: I think what we have -- I think there's some announcement coming out today -- or, at least, I've read -- heard on the radio that that's true. And I think what will be happening today,

U.S. Department of Justice
Office of Legal Policy

October 1, 1982

Bill:

Attached is the editorial you requested together with a letter to the editor prepared by our staff here. Though technically correct, it clearly needs some editing to be effective. I am sorry we did not understand the nature of your request, and I hope that this draft is useful.

Tim

Tim Finn

Attachment

U.S. Department of Justice

Office of Legal Policy

Assistant Attorney General

Washington, D.C. 20530

Fenn
Karp Draft
9-29-83

Editor
Christian Science Monitor
The Christian Science Publishing Society
One Norway Street
Boston, Massachusetts 02115

To The Editor:

I am writing in response to your editorial of September 17 regarding an anticrime package of the administration that was recently introduced in ~~the Senate as S. 2903 and in the House of Representatives as H.R. 7117~~ Congress. I am concerned that you have seriously misled the public concerning the purposes of this legislation and the character of its proposals to reform the insanity defense, the exclusionary rule, and federal habeas corpus. These proposals are the product of extensive study, work and consultation both within and without the Justice Department. Each of the proposals, moreover, has been thoroughly scrutinized in Congressional hearings. They are significant and fully warranted elements in the administration's overall program for combatting crime.

The editorial stated specifically that the cited legislation would "basically abolish the insanity defense." It failed to mention that a defense would remain under our proposal if the defendant lacked the state of mind required for the commission of an offense as a result of mental disorder. It also ~~failed to~~ did not mention that mental disorder would remain relevant in mitigation of punishment, and in determining whether a defendant would be treated punitively or therapeutically after conviction. ~~While the proposal is in no way deficient in fairness to defendants,~~ it would largely eliminate the unseemly spectacles that are currently fostered by the insanity defense, including the degradation of criminal trials into swearing matches between teams of opposing psychiatrists, and the favoritism of the current rules to well-heeled defendants who can afford an impressive array of expert witnesses.

The editorial also criticized our proposal to admit evidence taken by an officer who acted in a reasonable, good faith belief that the search or seizure by which it was obtained was lawful. It failed to mention that this rule has already been

adopted by the Fifth Circuit Court of Appeals in the case of United States v. Williams in 1980, and hence that the proposal would only apply uniformly an approach that is already followed in a large part of the country. Clearly "the broader purposes of justice" are not served by freeing known criminals on the basis of innocent errors in applying the complex law of search and seizure. An officer who honestly and reasonably believes that a search is lawful cannot be influenced in his actions by a rule excluding evidence that was obtained unlawfully. There is also nothing in the proposal that would reduce the incentives for law enforcement agencies to employ modern investigative methods.

S. 2903 and H.R. 7117 were further criticized for their proposed reforms in habeas corpus procedures, which were said to "take away the process by which a defendant can seek to have a conviction overturned," a process which "protects those persons who may in fact be truly innocent ... or who may have been given excessively harsh sentences." I feel compelled to note that these statements are wholly false. Federal habeas corpus does not act as a safeguard against unjust incarceration or excessive punishment in any significant proportion of criminal cases. It is an extraordinary remedy provided to state convicts in the lower federal courts, which is in addition to the many layers of review provided by the state courts and direct review of state judgments in the Supreme Court. While federal habeas corpus has little value in protecting the rights of criminal defendants, it imposes large burdens on the state and federal justice systems, and creates acute strains in the relationship of the state and federal judiciaries through duplicative federal review of cases which have already been accorded full and fair treatment by the state courts. Supporters of basic restrictions on the availability of federal habeas corpus include a majority of the Justices of the Supreme Court, many eminent judges of the lower federal courts, the leading legal scholars and commentators concerned with federal court jurisdiction, and virtually all state judges and attorneys general. The reforms proposed in S. 2903 and H.R. 7117 would preserve federal habeas corpus in cases of demonstrated need, but would correct the features of the current system which are generally recognized to be excessive, inefficient, or pointless.

Finally, the editorial takes our proposals to task for "ignoring the issue of handguns." In fact, this Administration has been in no way derelict in recognizing the serious problem of the criminal use of handguns, and has both advanced and supported legislation pressed for providing for enhanced punishment for crimes in which firearms are employed.

Sincerely,

Jonathan C. Rose
Assistant Attorney General

The wrong crime package

17 SEP 1982
Chr. Sci. Mon.

President Reagan is right in wanting to do omething about the US crime problem. Unortunately, the new anticrime package introuced by the administration this week creates iore problems than it would solve. It has all ie earmarks of a political document more ian a serious legislative effort and, as now rafted, should be rejected by Congress.

The administration plan would do three iings:

- Basically abolish the insanity defense.
- Water down the exclusionary rule that eeps tainted evidence out of federal courts.
- Limit the use of habeas corpus petitions by defendants seeking to have appeals shifted from state courts to federal courts.

In each case, the administration measure would do little to reduce crime yet would seriously undermine the legal rights of individuals. Take the insanity defense, which so many persons felt was abused in the Hinckley case. What is needed is not abolishing the defense, but rather reforming it, so that the burden of proof regarding insanity is shifted from the prosecution – which must now prove that a defendant is *not* insane – to the defendent, who would then have the requirement of *proving* insanity. A bill that would do just that has been introduced by Senator Strom Thurmond. Lawmakers should start with the approach in the Thurmond bill, not the administration's version.

So far as the exclusionary rule and habeas corpus provisions are concerned, these have served the broader purposes of justice. The exclusionary rule has not only eliminated use of dubious and illegal evidence, but, equally important, has prodded American police departments into modernizing their investigative methods. In the case of habeas corpus, it would be a retrograde step indeed to take away the process by which a defendant can seek to have a conviction overturned. Such a process may be untidy, but it protects those persons who may in fact be truly innocent (though convicted), or who may have been given excessively harsh sentences.

Also, a serious flaw in the administration plan is that it ignores the issue of handguns. Yet without resolving the handgun problem it is unlikely that any real dent can be made in bringing down the high crime rate in the US.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 5, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: New Crime Package -- Draft Ed Meese Letter to Christian Science Monitor

As you requested, attached is a draft response for Ed Meese's signature to the Christian Science Monitor editorial -- "The Wrong Crime Bill."

The piece could be either a letter to the editor or an op-ed piece. We would recommend an op-ed if possible.

Editor

Christian Science Monitor

The Christian Science Publishing Society

One Norway Street

Boston, Massachusetts 02115

To the Editor:

Last month the President proposed legislation to strengthen the criminal justice system in three critical areas. The bill will (1) define and limit the insanity defense; (2) reform the exclusionary rule so that evidence seized by police acting in good faith will not be suppressed; and (3) set rules for federal review of state criminal proceedings to reduce delay and duplication, and to seek greater finality in the criminal justice process.

Your September 17 editorial attacking the President's bill was seriously misleading.

The editorial stated that the bill would "basically abolish the insanity defense." In fact, the bill would treat the insanity issue as part of the determination of whether the defendant had the requisite state of mind for the offense. Under this approach, insanity would be a defense if, for example, the defendant were so deluded that he did not know he had a gun in his hand or did not know he was shooting at a human being. But if the defendant knew he was shooting at a human being for the purpose of killing or harming, he could still be found guilty, even if he were acting out of an irrational belief. A defen-

dant's mental disorder would remain relevant in mitigation of punishment and in determining whether a defendant would be treated punitively or therapeutically after conviction.

The Administration's bill would largely eliminate the unseemly spectacles fostered by the current insanity defense, including the degradation of criminal trials into swearing matches between teams of opposing psychiatrists, and favoritism toward well-heeled defendants who can afford an impressive array of expert witnesses. Our approach has been endorsed by numerous legal scholars, bar associations and psychiatrists.

The editorial also criticizes the Administration's proposal to reform the exclusionary rule. The editorial's attack on this aspect of the bill is ill-informed and unfounded.

The exclusionary rule is a judge-made rule that bars the use of evidence against a defendant in a criminal trial if the evidence was obtained by the police in an improper manner. The courts have sought to justify this rule as a deterrent to police misconduct; however, an increasing number of judges and scholars are challenging it. They point out that the rule does nothing to punish the policeman who has acted improperly; that it punishes innocent citizens who are victimized by the criminals who are set free; and that the real beneficiaries of the rule are guilty criminals who are set free no matter how heinous their crime.

If the deterrent argument has any validity at all, it is only in cases in which the police have consciously misbehaved. The rule has no deterrent effect where a police officer honestly and

reasonably believes that his search is proper. Despite this, the rule has, over the years, been expanded beyond its purpose, and has been applied to suppress evidence seized by police who reasonably believed they were acting properly and whose errors were technical in nature. Clearly, the interests of justice are not served by freeing a known criminal because a police officer makes an innocent mistake in interpreting the complex, frequently ill-defined and ever-changing law governing searches and seizures.

The Administration's bill would restore the exclusionary rule to its proper role by restricting its application to those cases where it would in fact act as a deterrent. Under the proposal, the rule would not be invoked where the police have obtained evidence in the reasonable, good faith belief that their acts were lawful. A number of federal courts have already adopted this position, and the Administration bill would make it uniform throughout the federal system.

The editorial also criticizes the Administration's proposed reforms of habeas corpus procedures, claiming that our bill would "take away the process by which a defendant can seek to have a conviction overturned," a process which "protects those persons who may in fact be truly innocent . . . or who may have been given excessively harsh sentences." These claims are totally false.

The writ of habeas corpus is a means whereby the constitutional propriety of state criminal proceedings can be reviewed in federal court, over and above the many layers of review provided in state courts and direct review of state judgments in the Supreme Court. Traditionally, the writ was understood to be an extraordinary remedy. In recent years, however, this once extraordinary remedy has been converted into a routine means for seeking continual review of state convictions, often on frivolous grounds. So used, it distorts the proper relationship between federal and state government, undermines the need for finality of judgment in criminal proceedings, and introduces needless duplication of effort.

The Administration remains firmly committed to protecting rights secured by the Constitution, including those of criminal defendants in state criminal proceedings. It believes, however, that the interests of justice are not served by allowing, as the present system does, endless opportunities to second-guess state court judges and juries.

The Administration bill is designed to limit unjustified federal review of state convictions by (1) barring review of a claim not properly raised in state proceedings, unless the state failed to provide an opportunity to raise the claim consistent with federal law; (2) establishing a one-year limit to apply for the writ following exhaustion of state remedies; and (3) requiring deference to state court determinations of factual and legal issues which have been fully and fairly adjudicated in state

proceedings. Reforms of this kind are supported by a majority of the Justices of the Supreme Court, many other eminent federal judges, leading scholars concerned with federal court jurisdiction, and by virtually all state judges and attorneys general.

The bill discussed above is not this Administration's first anti-crime proposal. Also pending on the Hill is the Violent Crime and Drug Enforcement Act in which we have proposed numerous reforms, including bail reform measures that would make it more difficult for dangerous defendants to be released prior to trial or during appeals, and reforms of the sentencing system that would abolish parole and require judges to operate within guidelines that will assure a greater likelihood of punishment.

The Administration's anti-crime proposals are the products of extensive study and consultation. They are all important and integral parts of our war against crime. They deserve the support of the American people.

OP-ED ON CRIME BILL

Your September 17 editorial attacking the President's new anti-crime bill was seriously misleading.

The editorial stated that the bill would "basically abolish the insanity defense." In fact, the bill would treat the insanity issue as part of the determination of whether the defendant had the requisite state of mind for the offense. Under this approach, insanity would be a defense if, for example, the defendant were so deluded that he did not know he was shooting at a human being. But if the defendant knew he was shooting at a human being, he could still be found guilty, even if he were acting out of an irrational belief. A defendant's mental disorder would remain relevant in mitigation of punishment and in determining whether a defendant would be treated punitively or therapeutically after conviction.

Our bill would largely eliminate the unseemly spectacles fostered by the current insanity defense -- the degradation of trials into swearing matches between opposing psychiatrists, and favoritism toward defendants who can afford an impressive array of expert witnesses. Our approach has been endorsed by numerous legal scholars, bar associations and psychiatrists.

The editorial's criticism of our proposed reform of the exclusionary rule is likewise unfounded.

The exclusionary rule is a judge-made rule that bars the use of evidence against a criminal defendant if the evidence was obtained by the police in an improper manner. The courts have sought to justify this rule as a deterrent to police misconduct; however, an increasing number of judges and scholars are challenging it. They point out that the rule does nothing to punish the policeman who has acted improperly; that it punishes innocent citizens who are victimized by the criminals who are set free; and that the real beneficiaries of the rule are guilty criminals who are set free no matter how heinous their crime.

If the deterrent argument has any validity at all, it is only in cases in which the police have consciously misbehaved. The rule has no deterrent effect where a police officer honestly and reasonably believes that his search is proper. Clearly, the interests of justice are not served by freeing a known criminal because a police officer makes an innocent mistake in interpreting the complex, frequently ill-defined and ever-changing law governing searches and seizures.

The Administration's bill would restore the exclusionary rule to its proper role by restricting its application to those cases where it would in fact act as a deterrent. Under the proposal, the rule would not be invoked where the police have obtained evidence in the reasonable, good faith belief that their acts were lawful. A number of federal courts have already adopted this position, and the Administration bill would make it uniform throughout the federal system.

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The Administration's anti-crime proposals are the products of extensive study and consultation. They are all important and integral parts of our war against crime. They deserve the support of the American people.