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WITHDRAWAL SHEET

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Iron file 08/16/1982 - 08/17/1982

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Barr to Harper re Law of the Sea strategy 2 p.	8/17/82	<i>PS/CS 10/5/00</i>

RESTRICTION CODES

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

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

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

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 16, 1982

FOR: EDWIN L. HARPER
FROM: WILLIAM P. BARR
SUBJECT: CBS News Item on DOJ Mandatory Sentencing Report
(Reference #090619)

The National Institute of Justice in DOJ regularly issues "Policy Briefs" -- short reports that summarize research findings on key criminal justice issues designed to inform state policy makers of the experiences of other jurisdictions.

On August 8 the DOJ's Office of Justice Assistance, Research and Statistics issued a press release summarizing a recently published Policy Brief entitled "Mandatory Sentencing: The Experience of Two States". This study, produced by private consultants under contract, examined experience under the mandatory sentencing provisions of Massachusetts' Gun Law and New York's Drug Law.

Following the press release, several news sources characterized the Policy Brief as concluding that mandatory sentences are ineffective. These news stories distorted the actual conclusions reached by the study.

Essentially, the study concludes that, while the mandatory sentencing laws have achieved some of their intended objectives, they have also had unintended consequences that have increased burdens in other areas of the criminal justice system. The basic message is that, in enacting mandatory sentencing laws, state legislatures should recognize the interrelationship of other parts of the criminal justice system and craft their laws accordingly.

Summary of Specific Findings

New York

- o Prison and jail sentences were slightly up after 1976
- o Drug deaths were slightly down
- o Cost to state for processing new cases rose \$32 million
- o There was a decrease in indictments, dispositions and convictions
- o There was an increase in demand for trial
- o Delay in case disposition time doubled

Massachusetts

- o No additional cost
- o Assaults with a gun went down
- o Robberies and murder with a gun decreased
- o Assaults with other weapons increased
- o Pre-trial flight in gun-related cases increased
- o Percentage of defendants sentenced under the law decreased in both municipal and superior court
- o 80% of all defendants charged avoided conviction entirely through flight, dismissal, or acquittal.

Attached is a copy of the OJARS Press Release and a two-page fact sheet prepared by DOJ. I also have a copy of the Policy Brief itself if you would like to see it.

ISSUES PAPER ON MANDATORY SENTENCING

POLICY BRIEF

Introduction

On August 8, PIO/OJARS issued a press release summarizing a recently published NIJ Research Report/Policy Brief entitled Mandatory Sentencing: The Experience of Two States. Of the numerous news articles based upon the press release several incorrectly interpreted the Policy Brief as concluding that mandatory sentencing laws are ineffective. In fact the Policy Brief and the PIO/OJARS press release both clearly indicate that two separate studies of early mandatory sentencing laws--New York's Mandatory Sentence of Drug Violators and Massachusetts Mandatory Sentence for Gun-Related Crimes--concluded that the implementation of these statutes had both intended (positive) and unintended (often negative) consequences. The Research Report/Policy Brief summarizes these two case studies so that state and local policymakers are aware of this potential for unintended consequences in the implementation of new sentencing laws and may therefore exercise greater care in the construction and implementation of sentencing changes.

This report is the latest in a series of NIJ Research Summaries Policy Briefs. These reports are short (25 pages or less) summaries of research findings on key criminal justice issues designed to inform policymakers of the experiences of other jurisdictions. The Research Summary/Policy Briefs do not advocate or recommend the adoption of specific reforms but merely summarize recent experiences.

Chronology

NIJ has sponsored a variety of studies on sentencing reforms, most of which are still underway. These include research on mandatory sentencing, determinate sentencing, sentencing guidelines, and restitution. The earliest of these studies were the evaluation of the New York drug law undertaken in 1974 and the Massachusetts gun law undertaken in 1975. Based upon these studies NIJ commissioned a Policy Brief on the two evaluations of mandatory sentencing laws.

It was determined that a summary of these two studies would provide valuable information to State legislatures about the favorable and unfavorable effects they could expect given the New York and Massachusetts experiences. It should be emphasized that these studies were limited to two specific state laws that were the first to be evaluated. Because of the importance of the topic and the nationwide interest in stricter sentencing policies, NIJ felt that the findings of the research should be summarized and disseminated to criminal justice practitioners.

New York

In 1974 NIJ funded an intensive evaluation of the recently adopted Drug Law in New York State. An evaluation team organized under the aegis of the Association of the Bar of the City of New York examined case records, interviewed practitioners, and collected drug use and crime data for 1973, 1974, and 1975. They found that the criminal justice system did not respond in the ways that the State legislature had intended. Specifically, the Police made fewer arrests, prosecutors brought fewer charges, courts proceeded much more slowly, and fewer convictions were obtained. Those individuals convicted did receive longer sentences, but drug use and drug related crimes did not decline as anticipated. As a result of these effects New York eliminated several provisions of this mandatory sentencing law in 1976.

Massachusetts

In 1975 NIJ funded a Boston University study of a Massachusetts statute mandating a one year sentence for carrying an unlicensed firearm. As in New York, researchers found considerable resistance to this law by criminal justice practitioners. Police made fewer arrests for "carrying," more trials were required, and fewer convictions were obtained. However, those convicted did receive the mandatory one year sentence, and gun-related assaults, robberies and homicides did decline. Since similar declines were experienced elsewhere and some reductions occurred before the law went into effect, attribution of crime reductions to the mandatory sentencing legislation was difficult to substantiate.



Department of Justice

ADVANCE FOR RELEASE AT 6:30 P.M., EDT
SUNDAY, AUGUST 8, 1982

NIJ
202-724-7782

An NIJ News Feature

States should proceed with caution in passing and implementing mandatory sentencing laws because hoped for gains may be offset by increased burdens on other areas of the criminal justice system, says a federally-supported study.

"Laws designed to eliminate sentencing discretion may only succeed in displacing that discretion in ways that may be counter to legislative intent," the report said. "Effecting meaningful change depends on the concurrence of actors at every stage, from police through courts and corrections to the final releasing authority. Changing one or two parts of this sequence still leaves room for the exercise of considerable discretion elsewhere."

The comments were in a "Policy Brief" distributed today by the National Institute of Justice, a research center in the U.S. Department of Justice.

(MORE)

"Mandatory Sentencing: The Experience of Two States" examined the effects of the New York Drug Law, which required mandatory prison terms for certain drug offenders, and the Massachusetts Gun Law, which required a mandatory prison term for carrying a gun without a permit.

"Perhaps the clearest lesson," according to the report, "...is that sentencing is only part of the whole picture of crime and punishment and that the results of legislation depend not only on the provisions of the law, but on the environment in which the law operates."

The brief said that following enactment of both laws, drug deaths in New York City fell and armed assault, armed robbery and homicide decreased in Massachusetts. Attributing the reductions to the mandatory sentencing laws was difficult to substantiate, the brief said, since both laws were adopted at times of unusually high crime rates and the reductions could be attributed to other causes.

Although sentences were harsher for those defendants who were ultimately convicted, Massachusetts and New York City, which had the bulk of the drug-related offenses, reported fewer arrests, prosecutions and convictions. In addition, fewer of those prosecuted plead guilty, resulting in a dramatic increase of cases going to trial, said the report.

(MORE)

In New York City, which restricted plea bargaining, the increased number of cases tried rose from 6 percent in 1973 to 17 percent in the first half of 1976, while the median time for disposition of cases increased from 173 days in 1973 to 340 days in 1976.

Appeals of gun cases in Massachusetts rose from 21 percent in 1974 to 94 percent in 1976. "The imposition of mandatory sentences limited the discretionary power of the courts partly by transferring it to the arresting officer, who could simply refrain from reporting a gun if one were found," the brief said.

The brief drew these conclusions involving mandatory sentencing:

--Laws designed to eliminate sentencing discretion may only succeed in displacing discretion in ways that may be counter to legislative intent.

--Attempts to anticipate and remedy those displacement effects may prove difficult.

--To the extent rigid controls can be imposed, the effect may be to penalize some less serious offenders, while the punishment for more serious cases is postponed, reduced, or avoided altogether.

(MORE)

The brief is the sixth in a series developed by NIJ.

Paul Cascarano, assistant director of NIJ, said the series is designed to advise state legislators and government executives of the effect of programs initiated to overcome specific everyday problems facing criminal justice practitioners.

"Policy Briefs emphasize needed legislative action, provide sources of information and assistance and suggest sample legislation," Cascarano said.

Five previous briefs dealt with administrative adjudication of traffic offenses, crime victim compensation, career criminal programs, neighborhood justice centers, and consumer fraud.

Walter R. Burkhardt, acting director of NIJ, said future briefs include: Legal Issues in Financial Restitution; Restitution Through Community Service; Court Delay; Use and Misuse of Hypnosis in the Courts; Reduction of Crime in School; and Statewide Court Administration.

Copies are available from the National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 8/9/82 ACTION/CONCURRENCE/COMMENT DUE BY: 8/11/82SUBJECT: Justice - CBS Network News Summary

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

Remarks:

What is this about?

Please return this tracking
sheet with your response.Edwin L. Harper --
Assistant to the President
for Policy Development
(x6515)

ABC did not air a Sunday news program

BEIRUT—NBC reports there was renewed artillery fire in Beirut on Sunday. NBC's Martin Fletcher reports more Israeli armor headed north towards Beirut. Shultz' letter has been received and the Knesset calls it important. Fletcher says Israel is now ready to compromise on the multinational peacekeeping force in Beirut. PM Begin says he is very optimistic.

NBC's Andrea Mitchell reports Arens says that of all the parties, Israel is the most interested in settling the problem through negotiation. He also says that Israeli shelling is "turning the screw" to help the talks along — not to sabotage them. Shamir on another program was talking compromise. The view at the WH is that while mechanical details remain; an agreement is near.

NBC's Tom Compton says Lebanese officials are hopeful the PLO will evacuate peacefully from West Beirut. Salem shown saying the Israelis have always wanted to kill the Habibi mission. PLO fighters are shown saying they will leave West Beirut if Arafat wants them to leave. Refugees are still fleeing the city.

CBS' Bob Faw says PM Begin's government sent signals they are softening on the settlement in Beirut. Begin says he is now accepting the U.S. approach to the negotiations. Defense Minister Sharon insists there is no way to get the PLO out of Beirut and Lebanon because no one will take them.

CBS' Bob Simon reports a number of refugees left East Beirut for West Beirut today; some to visit, some to help and some to see what is left of the city. (NBC, CBS-Lead)

GOVERNORS—NBC's Dan Molina reports the National Conference of Governors meeting in Oklahoma might draft their own version of New Federalism. Dominating the gathering is a determination to challenge Reagan on New Federalism and the proposed balanced budget amendment. Richard Williamson says there is still hope an agreement can be reached.

CBS' Susan Spencer reports the Conference is being held at the Shangri La resort. On the top of the governors list is money. Gov. Nigh is shown saying New Federalism is in its dying days. Gov. Snelling wants the governors to forget the WH for now and says they are going to design their own proposal, but that won't preclude consultation with the WH. James Watt will speak to the group on Monday. (NBC, CBS-2)

USS OHIO—NBC reports the U.S.S. Ohio has protesters waiting to greet it when it arrives in Washington's Puget Sound. (NBC-7)

JUSTICE—CBS says a Justice Department report concluded that it is difficult and perhaps fundamentally impossible to support the claim that mandatory sentencing is an effective tool for reducing crime. (CBS-5)

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 16, 1982

FOR: EDWIN MEESE III
EDWIN L. HARPER

FROM: WILLIAM P. BARR *WPB*

SUBJECT: Update on New Crime Package

Responsibility for preparing a new crime package was assigned to the legislative office of the Justice Department (Bob McConnell). I have been monitoring their progress and urging expedition.

This past Friday, they finished drafting the bill (32 pages) and a section-by-section analysis (18 pages). They were red-tagged over to me this morning.

Attached is a copy of the draft; I will be reviewing it today.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 16, 1982

FOR: EDWIN L. HARPER
FROM: WILLIAM P. BARR
SUBJECT: Permitting Federal Contractors to Adopt Flexitime --
An Issue of Potential Interest to Women That Is Also
Economically Sound

Background

Under current law, federal agencies and private sector employers who are not engaged in government contracts are free to adopt flexible workweek schedules for their employees. Such flexible scheduling is consistent with the Fair Labor Standards Act (FLSA) -- the statute that governs minimum wages and overtime for federal and private sector employees and that requires overtime pay for only those hours in excess of forty hours per week.

In addition to FLSA requirements, however, government contractors are subject to the Walsh-Healey Act and the Service Contracts Act which, among other things, provide that federal contractors must also pay time-and-one-half overtime for all hours in excess of eight hours per day. The former act applies to contracts in excess of \$10,000 while the latter addresses construction contracts involving more than \$2,000, service contracts in excess of \$2,500, and supply contracts between \$2,500 and \$10,000.

By requiring premium rates to be paid for all hours worked in excess of eight hours per day, these statutes make it prohibitively expensive for government contractors to use compressed, flexible and other alternative workweek schedules.

Issue

Should the Walsh-Healey and Service Contracts Acts be amended to permit federal contractors to adopt flexitime schedules, thus bringing these firms into line with the public sector and the rest of the private sector?

Benefits

The Bureau of the Census reports that, in 1980, 12% of all

full-time, non-farm wage and salary workers were on flexitime or other schedules that permitted them to vary the time their workdays began and ended. It has been estimated that, by the end of the decade, over one-third of the non-farm workforce will be involved in compressed, flexible and other alternative work schedules.

The increasing use of flexitime may provide a number of benefits to employees generally:

- o Increased time at home with family; especially helpful to working mothers.
- o Reduced commuting time and expenses, as well as reduced child-care expenses.
- o In many cases, employee satisfaction has manifested itself in lower absenteeism, reduced turnover, and increased productivity.
- o More effective utilization of capital equipment; reduced start-up/shut-down time; reduced energy requirements.

If federal contractors are permitted to use flexitime schedules, cost savings could result in reductions in the costs of federal procurements.

Legislative Status

During consideration of S.2240, the Federal Flexitime Bill, Senator Armstrong offered a floor amendment that would have amended the Walsh-Healey and Service Contracts Act to permit government contractors to adopt flexible workweek schedules. The floor amendment was tabled 49-46 in what was essentially a procedural vote.

Senator Armstrong's measure (S.398) is now pending in the Labor Subcommittee of the Senate Committee on Labor and Human Resources. Senator Nickles, the subcommittee chairman, supports the bill. It is ready to be reported to the full committee where it is expected that Senator Weicker will try to keep it bottled up.

The chief supporters of this legislation are:

- Business Roundtable
- National Association of Manufacturers
- U.S. Chamber of Commerce
- American Electronics Association
- numerous other groups; see attached list.

Women's groups appear not to have focused on the issue yet.

Opposition comes from national labor organizations, although numerous local labor groups support the bill. While it is a "test" vote for labor, it is not a high priority item.

Administration Position

On June 16, 1982, Secretary Donovan wrote the Labor Subcommittee supporting Senator Armstrong's bill. (See attached letter.)

Further Action Required

Senator Stevens has promised bill supporters that, if they can get the bill out of full committee, they will get a vote this session. Supporters feel they will win the vote.

Supporters would like the President to write a letter or make a statement in favor of the Armstrong bill, urging quick action on it.

The following companies and organizations are representative of those supporting Senator Armstrong's amendment to the Walsh-Healey Act and Service Contracts Act:

American Apparel Manufacturing Association
American Electronics Association
American Textile Manufacturers Institute, Inc.
Associated Builders and Contractors
Associated General Contractors of America
Burlington Industries
Business Roundtable
C.A. Norgren and Company
Dow Chemical USA
E.I. du Pont de Nemours & Company
Electronics Industries Association
Motorola, Inc.
National Association of Manufacturers
National Meat Association
National Utilities Contractors Association
Printing Industries of America
Springs Industries
TRW, Inc.
U.S. Chamber of Commerce
United Technologies Corporation
Upjohn Company

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

JUN 16 1982

Honorable Don Nickles
Chairman
Subcommittee on Labor
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to your request for the Administration's views on (a) Senator Armstrong's bill, S. 398, to amend the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act to provide federal contractors with increased flexibility in alternative workweek scheduling and (b) a subsequent modification of S. 398, which Senator Armstrong is considering attaching to S. 2240, the flexitime legislation.

As I indicated in my July, 1981 letter to you on the first question, the Administration supports legislative reform to provide federal contractors with increased flexibility in alternative workweek scheduling. With regard to the second question, let me say that the Administration would support the amendment proposed by Senator Armstrong to make the language of the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act comparable to that of the Fair Labor Standards Act, namely to permit work in any combination of hours per day without paying overtime until hours worked exceed forty per week.

This legislative language would be consistent with the Administration's view that the Act should be amended to permit labor and management to implement flexible worktime arrangements that could enhance the quality of worklife, promote energy efficiency, and increase productivity.

The Office of Management and Budget advises that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,


Raymond J. Donovan

cc: Senator William Armstrong
Senator Ted Stevens

THE WHITE HOUSE

WASHINGTON

August 16, 1982

MEMORANDUM FOR MICHAEL J. HOROWITZ

FROM: ROGER B. PORTER
Director
Office of Policy Development

SUBJECT: Proposed Executive Order entitled "Amendments
to the Manual for Courts-Martial, United
States, 1969 (Revised edition)"

OPD has no objection to the referenced proposed Executive Order which relates to Court-Martial procedures and punishments for drug offenses.

By way of comment, the provision in Section 2 of the proposed Order (increasing penalties by five years for offenses committed in wartime) seems lenient. One would think that in wartime there are certain drug offenses that would warrant the highest possible penalty.

THE WHITE HOUSE

WASHINGTON

August 4, 1982

MEMORANDUM FOR WILLIAM P. BARR

FROM: ROGER B. PORTER *RBP*

SUBJECT: Proposed Executive Order entitled
"Amendments to the Manual for
Courts-Martial, United States,
1969 (Revised edition)"

Please review the attached and provide any
comments or objections in a memorandum from me
to Michael Horowitz no later than Monday, August
16, 1982.

Thank you very much.

Attachment

*August 16
due*

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 16, 1982

FOR: EDWIN MEESE III
EDWIN L. HARPER

FROM: WILLIAM P. BARR

SUBJECT: Tuition Tax Credit Update

Tomorrow the Senate Finance Committee will have what is hoped will be its "final" markup on the tuition tax credit bill.

Senators Moynihan and Bradley, and to a lesser extent Packwood, have expressed concern over the anti-discrimination provision. I spent about 20 hours toward the end of last week and over the weekend explaining the provision to various Senate staffers and preparing Administration witnesses who will be required to defend the provision.

Tomorrow Brad Reynolds, Dan Oliver, and Buck Chapoton will appear before the committee to explain and defend the anti-discrimination provision.

The Senate committee appears to be considering three amendments to the anti-discrimination provision:

1. Senator Moynihan has suggested that his concerns would be allayed if a new provision was added authorizing the GAO (or some other entity) to conduct a study of the effectiveness of the anti-discrimination provision after it has been in place for a period of time (e.g. 4 years). Even without this provision, Congress could order a study at any time; so it is really cosmetic.

2. As now written, the bill provides that, if the Attorney General finds "good cause", he is "authorized" to bring suit against the school. Senators Bradley and Packwood would like to change the word "authorized" to "shall" or "authorized and directed". This would be in line with other civil rights statutes, and Justice says that it will still preserve the inherent discretion of the Attorney General, which is embodied in the threshold requirement that he "find good cause".

3. A number of Senate staffers would like to make it clear that the annual statements under oath that are filed with the Secretary of the Treasury can be made available to the Attorney General either on the Secretary's own motion or upon request by the Attorney General. This was our intent all along,

and we have no objection to making it explicit.

All of these changes have been discussed with representatives of the pro-credit coalition and with Bill Ball, one of their leading lawyers. No objections have been raised. In addition, the suggested amendments have been reviewed by Brad Reynolds, Dan Oliver, and Buck Chapoton, and they have no problem with them. So far, we have not agreed to any of these changes. It is my judgment, however, that we should do so if they will satisfy Senators Moynihan and Bradley. None of them are substantive.

THE WHITE HOUSE
WASHINGTON

NOTE TO EDWIN L. HARPER

FROM: BILL BARR

Attached is a copy of the current language of the anti-discrimination provision in the tuition tax credit bill.

The GAO study provision will probably be inserted as a new section at the end.

On page 11, the word "authorized" (line 24) would be changed to "authorized and directed" or, alternatively, "shall".

The provision authorizing the Secretary of Treasury to make annual statements available to the AG would probably be inserted on page 8, line 3.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 16, 1982

FOR: ROBERT McCONNELL
Assistant Attorney General, Legislative Affairs
MARSHALL CAIN
Deputy Assistant Attorney General

FROM: WILLIAM P. BARR

SUBJECT: Changes to the New Crime Package

As I indicated to Mr. Cain at noon today, Mr. Meese has reviewed the new crime package and believes the following changes should be made:

1. Title II should be entitled "Application of the Exclusionary Rule". The word "application" should be substituted for the word "limitation" in all four places indicated in the attached copy of page 26.
2. Title III should be entitled "Federal Intervention in State Criminal Proceedings". Section 301 should be changed as indicated on the attached copy of page 27 to cite the Act as the "Federal Intervention Reform Act of 1982".

Appropriate corresponding changes should also be made in the section-by-section analysis.

1. On page 8, the first sentence of the analysis for Title II should read ". . . United States Code governing application of the Fourth Amendment exclusionary rule".
2. On page 14 of the section-by-section, the analysis for Title III should be entitled "Federal Intervention in State Criminal Proceedings".

cc: Edwin Meese III
Ken Cribb
Edwin L. Harper

~~APPLICATION~~
 TITLE II -- ~~LIMITATION~~ OF THE EXCLUSIONARY RULE

Sec. 201. This title may be cited as the "Exclusionary Rule ~~Limitation~~ ^{Application} Act of 1982."

Sec. 202. (a) Chapter 223 of title 18, United States Code, is amended by adding at the end thereof the following new section:

~~"§3505. Limitation of the Fourth Amendment Exclusionary Rule~~ ^{Application}

"Except as specifically provided by statute, evidence which is obtained as a result of a search or seizure and which is otherwise admissible shall not be excluded in a proceeding in a court of the United States if the search or seizure was undertaken in a reasonable, good faith belief that it was in conformity with the Fourth Amendment to the Constitution of the United States. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a reasonable good faith belief, unless the warrant was obtained through intentional and material misrepresentation.".

(b) The table of sections of such chapter is amended by adding at the end thereof the following item:

"3505. ~~Limitation of the Fourth Amendment Exclusionary Rule.~~ ^{Application}".

FEDERAL INTERVENTION IN STATE
TITLE III -- ~~HABEAS CORPUS~~ CRIMINAL PROCEEDINGS

Sec. 301. This title may be cited as the "~~Habeas Corpus~~
Reform Act of 1982." *Federal Intervention*

Sec. 302. Section 2244 of title 28, United States Code, is amended by adding at the end thereof the following new subsections:

"(d) When a person in custody pursuant to the judgement of a State court fails to raise a claim in State proceedings at the time or in the manner required by State rules of procedure, the claim shall not be entertained in an application for a writ of habeas corpus unless actual prejudice resulted to the applicant from the alleged denial of the Federal right asserted and --

"(1) the failure to raise the claim properly or to have it heard in State proceedings was the result of State action in violation of the Constitution or laws of the United States;

"(2) the Federal right asserted was newly recognized by the Supreme Court subsequent to the procedural default and is retroactively applicable; or

"(3) the factual predicate of the claim could not have been discovered through the exercise of reasonable diligence prior to the procedural default.

determine his mental condition. Subsection (e) pertains to reports by mental facilities, and contains a requirement that a hospitalized person be informed of the availability of rehabilitation programs. Subsection (f) permits the court to order and examine a videotape record of a defendant's testimony or interview which forms a basis of a periodic report of his mental condition. Subsection (g) concerns the admissibility in evidence of statements made by a defendant during the course of a psychiatric or psychological examination. Subsections (h) and (i), respectively, preserve the availability of the writ of habeas corpus, and permit a hospitalized person to move for a hearing to determine whether he should be released. Subsection (j) sets forth the authority and responsibility of the Attorney General under chapter 313. Subsection (k) provides that chapter 313 does not apply to a prosecution under an Act of Congress applicable exclusively to the District of Columbia or the Uniform Code of Military Justice.

Section 103 of the bill amends Rule 12.2 of the Federal Rules of Criminal Procedure to conform with chapter 313 of title 18 as amended by section 102.

Section 104 of the bill amends section 3006A of title 18, United States Code, to conform with chapter 313 of title 18 as amended by section 102.

TITLE II - EXCLUSIONARY RULE REFORM

Title II of the bill would add a new section 3505 to title 18 of the United States Code ^{governing} ~~to limit~~ the Fourth Amendment exclusionary rule. It would provide that except as specifically provided by statute, evidence obtained as a result of a search or seizure and --

SECTION-BY-SECTION ANALYSIS

FEDERAL INTERVENTION IN STATE
TITLE III - ~~HABEAS CORPUS REFORM~~ CRIMINAL PROCEEDINGS

Title III of the bill would amend various provisions of title 28, United States Code, and a related Rule of Appellate Procedure, concerning the availability of collateral relief in the federal courts for state and federal prisoners. Among the matters addressed by these amendments are the standard of review in habeas corpus proceedings, the effect of procedural defaults on the subsequent availability of collateral relief, the time within which collateral relief may be sought, the requirement of exhaustion of state remedies, and the procedure on appeal in collateral proceedings.

Section 302 of the bill would add two new subsections to section 2244 of title 28, United States Code. Proposed section 2244(d) relates to the effect of a state prisoner's failure to raise a claim properly in state proceedings on the subsequent availability of federal habeas corpus. Proposed subsection (d) (1) of section 2244 sets out a general standard under which such a procedural default would bar access to federal habeas corpus unless it was the result of state action in violation of federal law. The main practical significance of this standard is that attorney error or misjudgment in failing to raise a claim properly would excuse a procedural default if it amounted to constitutionally ineffective assistance of counsel, since in such a case the default would be the result of the state's failure, in

THE WHITE HOUSE
WASHINGTON

August 16, 1982

NOTE FOR EDWIN L. HARPER

FROM: WILLIAM P. BARR *WPB*

FYI, Ken Cribb called me to say that Mr. Meese had approved the three amendments to the tuition tax credit bill that are being proposed by the Senate Finance Committee.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 16, 1982

FOR: EDWIN MEESE III
EDWIN L. HARPER

FROM: WILLIAM P. BARR

SUBJECT: The New Crime Bill

Justice Department has informed me that the new crime bill will be ready for transmittal to the Hill on Wednesday. In the normal course, the Attorney General would sign the transmittal letter.

It occurs to me that we may want to take a higher profile on this initiative by taking one or both of the following actions:

1. Have the President sign the transmittal letter.
2. Issue a press release the day we send the bill up.

How would you like to proceed with transmittal?

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 16, 1982

FOR: EDWIN L. HARPER
FROM: WILLIAM P. BARR
SUBJECT: CEA Study/Wage Differentials
(Reference #090561)

CEA's Economic Reports for 1973 and 1974 both contained sections discussing women's compensation.

Below is a summary of the pertinent points made in those reports:

Summary

A. Women in the Workforce

1. Since WWII, women's participation in the labor force has rapidly accelerated, especially among married women.
2. Contributing factors:
 - o increase in earning opportunities (growth of service sector);
 - o higher educational attainments;
 - o increase in female life expectancy;
 - o birth control, permitting planning and limitation of family.
3. There is a fundamental difference between working patterns of men and women. Men are continuously in the labor force. (Average: unbroken block of 40 years.) Women's participation is substantially more intermittent. (Childrearing is chief cause, but even childless women do not work as continuously as men.)
 - o Among women 30-44, only 7% had worked at least six months out of every year since leaving school.
 - o Average working woman was in her current job 2.4 years, whereas average job tenure for man was 4.8

years. At ages 45 and over, male median tenure was 12.7, whereas female was 6.6.

- o "Since women tend to change jobs less frequently than men, their shorter time spent on any given job is the result of a higher propensity to leave the labor force at least temporarily."

B. Differences in Male/Female Earnings

1. There is an earnings differential between men and women workers. In 1971 the median earnings for full-time year-round women was 60% of the median for men.
2. This difference "cannot be taken as a measure of current market discrimination, however, since the average full-time work week is shorter for women than for men and their life time work experience has been vastly different."
3. The average full-time workweek for men is 10% higher than for women. After making adjustments for this, the female/male earnings ratio was 66% in 1971.
4. This ratio still cannot be taken as a measure of discrimination. Relative experience is a chief factor influencing the differential. "The lack of continuity in women's attachment to the labor force means that they will have not accumulated as much experience as men at a given age."
5. When adjustments are made for women's lower experience levels, the overall female/male earnings ratio becomes higher than 80%. For same sub-group, the gap all but disappears.
 - o Single women with continuous work experience earned more than single men with continuous work experience.
 - o "Labor Department surveys have found that the differential almost disappears when men's and women's earnings are compared within detailed job classifications and within the same establishment. In the very narrow sense of equal pay for the same job in the same plant, there may be little difference between women and men."
6. It is difficult to say how much of the residual differential, after accounting for experience and educational factors, is attributable to discrimination.
 - o Some of the remaining difference may result from faulty measurement of women's experience. (The men in the study were genuinely full-time continuous

workers, whereas the women were treated as "full-time, continuous workers" even if they have worked as little as six months of part-time work in a year.) Present data does not permit more accurate comparisons.

- o Some of the difference may result from the fact that women seem to get less on-the-job training than men. This may be due to discrimination or to concern about turnover. However, many women may forego training because of home responsibilities and uncertain attachments to the labor force.
- o Some of the remaining difference may be due to discrimination. How much is obscure.
- o Some of the difference may be due to other unmeasured non-discriminatory factors.

C. Differences in Occupational Distribution

1. Occupational distribution of men and women differ sharply.
 - o Women concentrated in certain occupations (e.g. nurses, grade-school teachers, librarians, secretaries, etc.) under-represented in managerial jobs.
2. To some extent the difference between the median earnings for male and female workers may be due to this different occupational distribution.
3. The extent to which this distribution difference is due to discrimination is obscure. Some may be due to prejudice against women holding certain jobs and to an unwillingness to train women workers because of expected high turnover.
4. It is clear, however, that much of the distributional difference results from choice.
 - o In education, men, more than women, opt for fields with strong vocational emphasis.
 - o When women do opt for vocational training, they have a tendency to select fields which permit a flexible attachment to the labor force (e.g. nurses, librarians), whereas men have a greater tendency to select fields in which continuous and intensive commitment is required.
 - o "[S]ome component of the earnings differential and of the occupational differential stems from differences in role orientation which start with differences in education and continue through marriage, where women

generally are expected to assume primary responsibility for the home and subordinate their own outside work to the household responsibilities."

- o "It is not now possible to distinguish in a quantitative way between the discrimination which bars women from jobs solely because of their sex, and the role differentiation whereby women, either through choice or necessity, restrict their careers because of the demands of their homes."
5. Analysis shows that differences in occupational distribution do not account for the larger part of the earnings differential between men and women.
- o "Comparing white women and white men 25 to 64 years old, the preliminary results for 1970 indicate that women would increase their earnings by about 11 percent if they had the occupational mix of men, and this would account for about 21 percent of the gross earnings differential between women and men."
 - o "Since occupation alone does not explain very much of the overall earnings differential between men and women, it would seem that earnings differentials within occupations, as they are now defined, must be more important than earnings differentials between occupations. In other words, if custom or overt barriers to entry have relegated women to different occupations from those of men, this factor has not been the major one in lowering their earnings."

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 8/6/82 ACTION/CONCURRENCE/COMMENT DUE BY: 8/13/82
SUBJECT: Equal Pay for Equal Work / CFA STUDY

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
✓ PORTER	☐	☒	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
✓ CARLESON	☐	☒	PROPERTY REVIEW BOARD	☐	☐
DENEND	☐	☐	OTHER	☐	☐
FAIRBANKS	☐	☐		☐	☐
FERRARA	☐	☐		☐	☐
GUNN	☐	☐		☐	☐
B. LEONARD	☐	☐		☐	☐
MALOLEY	☐	☐		☐	☐
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 4, 1982

MEMORANDUM FOR MICHAEL UHLMANN

FROM: EDWIN L. HARPER 

SUBJECT: Equal Pay for Equal Work/CEA Study

Rita Campbell reminded me that when Herb Stein was CEA Chairman, CEA did a report which contained a study of women's compensation. The conclusion of that study was that all of but 13 percent of the difference in men's and women's compensation could be explained without reference to discrimination.

Would you please check into this study and give me a one page summary of its conclusions.

cc: Roger Porter
Robert Carleson

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 17, 1982

FOR: EDWIN MEESE III
EDWIN L. HARPER

FROM: WILLIAM P. BARR *WPB*
STEPHEN H. GALEBACH *SHG*

SUBJECT: President's Legislative Package on Crime

I. Transmittal to Congress

- o As requested, we have checked with DOJ (Office of Legislative Affairs) and Senator Thurmond (D. Lied).

They agree:

- There is a remote chance that the Senate will be kept in session next week. If this happens, they think we should send the Bill up at the end of this week because we may be able to get it on the floor next week together with the Omnibus bill.
- If, as expected, the Senate does recess at the end of this week, they think it would be a good move for the President to make a statement on August 28 and send the Bill up on that date. Also, if we do wait until August 28, we must make sure Senator Baker gets a unanimous consent agreement that the Senate will accept legislation while in recess; this should not pose a problem.

II. Substance of Package

The language of the proposal is in substance identical to earlier bills sent to Congress by President. Overall the package is excellent.

III. Possible Improvements in the Litigation

Steve Galebach has taken a fresh look at the package and has identified a weakness that can be tightened up.

If we decide to go this week, we should leave the Bill as is. If, however, we wait until August 28, you may wish to consider pursuing discussions with DOJ about a possible change.

The weakness is:

The insanity defense provisions make it too difficult to

commit a dangerous criminal who has been found not guilty only be reason of insanity. They use the same standard for post-trial committal of a violent criminal as would apply in a civil commitment proceeding for a harmless grandmother.

The Bill would require the prosecutor to prove by "clear and convincing evidence" that the person is a danger to society.

It would make sense to amend the Bill to create a presumption that anyone who has committed or attempted a violent crime, and has been found not guilty only because of insanity, poses a substantial risk of injury to others if released.

IV. Recommendations

1. Prepare Presidential transmittal letter. (Already in process).
2. If it appears that the Senate will be in session next week:
 - o Send Bill up by Friday with Presidential transmittal letter.
 - o Still make radio speech on August 28 on Crime and Administration's initiatives.
3. If it appears that the Senate will go into recess:
 - o Make sure Senator Baker gets unanimous consent agreement that Bills can be received during recess.
 - o Send Bill up on August 28 with Presidential transmittal letter.
 - o Make radio speech on August 28 on Crime and Administration's initiatives.
 - o In interim, discuss above-mentioned suggested improvement with Justice.

OFFICE OF POLICY DEVELOPMENT**STAFFING MEMORANDUM**DATE: 8/17/82 ACTION/CONCURRENCE/COMMENT DUE BY: 8/20/82SUBJECT: Update on New Crime Package

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☐	TURNER	☐	☐
✓ BARR	☒	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	PROPERTY REVIEW BOARD	☐	☐
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MALOLEY	☐	☐		☐	☐
MONTOYA	☐	☐		☐	☐
SMITH	☐	☐		☐	☐
UHLMANN	☐	☐		☐	☐
ADMINISTRATION	☐	☐		☐	☐

Remarks:

I look forward to your comments.

Please return this tracking
sheet with your response.

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

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 16, 1982

FOR: EDWIN MEESE III
EDWIN L. HARPER
FROM: WILLIAM P. BARR WPB
SUBJECT: Update on New Crime Package

Responsibility for preparing a new crime package was assigned to the legislative office of the Justice Department (Bob McConnell). I have been monitoring their progress and urging expedition.

This past Friday, they finished drafting the bill (32 pages) and a section-by-section analysis (18 pages). They were red-tagged over to me this morning.

Attached is a copy of the draft; I will be reviewing it today.

I look forward
to your comments -

W P B

THE WHITE HOUSE

WASHINGTON

August 17, 1982

FOR: EDWIN L. HARPER
FROM: WILLIAM P. BARR
SUBJECT: Law of the Sea Strategy

The State Department is now recommending that we take a low profile/business-as-usual approach in our diplomatic efforts to wean our allies away from the LOS Treaty and into an alternative regime. This recommendation directly conflicts with the views of all other interested agencies; arises from intensive maneuvering by pro-Treaty bureaucrats at State Department; and, if adopted, would result in utter failure.

Aggressive, High-Level Diplomatic Action Is Essential

It was the consensus of the Interagency LOS Group that, though it would be difficult, we stood a fair chance of achieving an alternative regime if we made it a high priority and pursued it forcefully and at high level. Political appointees in the State Department's bureau directly involved in LOS negotiations agreed with this assessment. The IG recommended that (1) the President directly contact allied leaders and (2) send a special Presidential envoy (such as Donald Rumsfeld) to start discussions about an alternative regime with the allies.

This approach is considered essential for three reasons:

1. It will make it unambiguously clear to our allies that this is a high priority and of special importance to the President.

2. It will elevate the issue to the political level and out from the clutches of diplomatic bureaucracies that are hostile to the President's position. The professionals in allied Foreign Ministries (and, to an extent, in our own State Department) either support the Treaty or want to remain in the Treaty process. As long as we continue dealing at the agency-to-agency level, our allies will continue to drift toward the Treaty. The head of the British delegation told his U.S. counterpart that as long as the Foreign Ministry controlled the issue, Britain would accept the Treaty, but that, if President Reagan intervened directly with Thatcher, he expected that Britain would stay out. Businessmen in allied countries likewise tell us that their Foreign Ministries are trying to guide their government's policy inexorably toward the Treaty. We must act decisively and cut through this process.

3. It is the best way to engage the allies in discussions leading to an alternative regime. For weeks, State Department officials have been dealing with their counterparts and are getting nowhere. We must get the allies engaged in a planning process that leads to an alternative regime. We must get the hook in their mouth. A Presidential call and a visit by a special envoy are the best ways to get this started.

The State Department's Recommendation Is Without Merit

The State Department's recommendation to avoid high-level activity is based on three arguments: (1) that "too many other things are on the plate"; (2) that we should wait until we have fully developed an alternative; and (3) that "it won't work and it's not worth the cost". None of these arguments have merit.

1. The foreign policy plate is always full. This does not mean that we can stop forcefully pursuing important strategic interests. If we treat LOS as a low priority, as suggested by State, the President would become isolated from the rest of the world on this issue. This would not be politically good for the President nor strategically good for the nation. It is clear to me from direct observation that the bureaucrats who have been making the "full plate" argument within the State Department would like the U.S. to become isolated so that a future Administration will join the Treaty. We cannot let this happen. Constructing an alternative regime must become a high priority.

2. The argument that we should wait until we have every jot-and-tittle of the alternative worked out is totally off-the-mark. The fact is that we already have a good idea what kind of alternative regime we want. There is no need at this stage to fill all the gaps and set it into concrete. Just the opposite. The whole idea is to approach the allies with a flexible position so that they will become engaged in the development process itself. Once we get our allies in on the planning, we're half way there.

3. The assertion that "it won't work" is nonsense. It will be a challenge, but there is no evidence to support the contention that it would be futile. There is strong opposition to the Treaty in the private sector in allied countries. Our arguments are good, and there is every reason to believe they will be listened to by the responsible political leaders of allied countries.

One of our nation's greatest statesmen, Elihu Root, once said: "Every business is best managed by its friends; every undertaking is best prosecuted by those who have faith in it." The fact that the State Department is ready to concede defeat before the fight has been joined clearly demonstrates why the President and a special envoy must be involved in prosecuting this effort.