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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Presidential Statement for Transmittal of Omnibus Department of Justice Criminal Reform Legislative Proposal

Richard Darman has requested comments by noon today on a Presidential statement for transmittal of the Comprehensive Crime Control Act of 1983. The draft was prepared at OMB. The Department of Justice has been asked to review the draft, and I suspect DOJ will suggest substantial changes. I have the following comments on the OMB draft:

Page 1, second paragraph, line 5: The direction of the President actually had a special emphasis on violent crime as well as drug-related crime. This direction led, for example, to the creation of the Attorney General's Task Force on Violent Crime. I would change "with special emphasis on drug-related crime" to "with special emphasis on violent and drug-related crime."

Page 2, last paragraph, lines 5-12: I would delete this negative reference to the crime bill vetoed by the President earlier this year. There is no need to raise old wounds in the course of transmitting a new package. I suggest: "It is unfortunate that S. 2572 was not enacted during the last Congress, but I look forward to working with the 98th Congress to secure, at long last, passage of critically needed substantive criminal law reform."

Page 3, bullet on exclusionary rule: The last few words should be changed from "acted in good faith" to "acted in reasonable good faith." The proposal has been most often criticized as rewarding police ignorance, when in fact it contains an objective reasonableness test as well as a good faith test. Leaving out the reasonableness element in descriptions of the proposal plays into its opponents' hands.

I have prepared a memorandum to Darman incorporating these suggestions.

Attachment

THE WHITE HOUSE

WASHINGTON

March 3, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Presidential Statement for Trans-
mittal of Omnibus Department of Justice
Criminal Reform Legislative Proposal

Counsel's Office has reviewed the OMB draft Presidential statement for transmittal of the Comprehensive Crime Control Act of 1983, and we offer the following suggested revisions:

1. Page 1, second paragraph, line 5: The President's direction was focused on violent crime at least as much as on drug-related crime. Many of the Administration's initiatives, for example, derived from the work of the Attorney General's Task Force on Violent Crime. We suggest changing "with special emphasis on drug-related crime" to "with special emphasis on violent and drug-related crime."

2. Page 2, last paragraph: We suggest deleting the negative reference to H.R. 3963 as unnecessarily confrontational. Suggested substitute for the last three sentences of this paragraph: "It is unfortunate that S. 2572 was not enacted during the last Congress, but I look forward to working with the 98th Congress to secure, at long last, passage of critically needed substantive criminal law reform."

3. Page 3, bullet on exclusionary rule: Our proposal is incorrectly stated. The concluding words "acted in good faith" should be changed to "acted in reasonable good faith." The proposal is often criticized as rewarding police ignorance, which it would not in fact do because of the reasonableness requirement. It is therefore important to include that requirement in even short-hand descriptions of the proposal.

FFF:JGR:aw 3/3/83

cc: FFFielding
✓JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

March 3, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Presidential Statement for Transmittal of Omnibus Department of Justice Criminal Reform Legislative Proposal

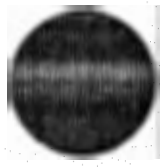
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2. Page 2, last paragraph: We suggest deleting the negative reference to H.R. 3963 as unnecessarily confrontational. Suggested substitute for the last three sentences of this paragraph: "It is unfortunate that S. 2572 was not enacted during the last Congress, but I look forward to working with the 98th Congress to secure, at long last, passage of critically needed substantive criminal law reform."
3. Page 3, bullet on exclusionary rule: Our proposal is incorrectly stated. The concluding words "acted in good faith" should be changed to "acted in reasonable good faith." The proposal is often criticized as rewarding police ignorance, which it would not in fact do because of the reasonableness requirement. It is therefore important to include that requirement in even short-hand descriptions of the proposal.

FFF:JGR:aw 3/3/83

cc: FFFielding
JGRoberts
Subj.
Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET



- O - OUTGOING
- H - INTERNAL
- I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 / 1 /

Name of Correspondent: Richard G. Darman

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Draft Presidential Statement for Transmittal of Omnibus Department of Justice Criminal Reform Legislative Proposal

ROUTE TO:	ACTION	DISPOSITION	
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code Completion Date YY/MM/DD
<u>CW Holland</u>	ORIGINATOR	<u>83103101</u>	<u> 1 / 1 / </u>
<u>CW AT 18</u>	Referral Note: <u>D</u>	<u>83103101</u>	<u>S 83103103</u>
_____	Referral Note: _____	<u> 1 / 1 / </u>	<u> 1 / 1 / </u>
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_____	Referral Note: _____	<u> 1 / 1 / </u>	<u> 1 / 1 / </u>

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|---|---|
| <p>ACTION CODES:</p> <ul style="list-style-type: none"> A - Appropriate Action C - Comment/Recommendation D - Draft Response F - Furnish Fact Sheet to be used as Enclosure I - Info Copy Only/No Action Necessary R - Direct Reply w/Copy S - For Signature X - Interim Reply | <p>DISPOSITION CODES:</p> <ul style="list-style-type: none"> A - Answered B - Non-Special Referral C - Completed S - Suspended |
|---|---|
- FOR OUTGOING CORRESPONDENCE:**
 Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

NOON THURSDAY

March 3, 1983

DATE: March 1, 1983

ACTION/CONCURRENCE/COMMENT DUE BY: _____

SUBJECT: Draft Presidential Statement for Transmittal of Omnibus Department of Justice Criminal Reform Legislative Proposal

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	GERGEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	WILLIAMSON	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>BAKSHIAN</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Remarks:

Please forward comments/edits on this transmittal to my office by Noon Thursday, March 3.

Thank you.

Richard G. Darman
Assistant to the President
(x2702)

Response:



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 1 1983

MEMORANDUM FOR: RICHARD DARMAN
FROM: JOE WRIGHT
SUBJECT: Draft Presidential Statement for Transmittal of
Omnibus Department of Justice Criminal Reform
Legislative Proposal

In response to your request, OMB has prepared a draft statement for the President to use in transmitting the Justice Department's omnibus criminal reform bill to the Congress. Our draft message reflects comments by Mike Uhlmann, who has also asked the Justice Department to prepare a draft Presidential message. Our draft message, which is attached, has been sent to the Justice Department for review at Mike's request. We have asked for Justice's comments by 11:00 A.M. on March 1, 1983.

For your information, OMB has circulated pertinent portions of Justice's draft legislation to interested agencies, with views requested no later than the close of business on March 3, 1983.

TO THE CONGRESS OF THE UNITED STATES:

I am forwarding for referral to the appropriate Committees of the Senate and the House of Representatives a legislative proposal entitled, the "Comprehensive Crime Control Act of 1983."

As you know, my Administration has made major efforts to fight crime in America. Shortly after taking office, I directed the Attorney General and other Federal law enforcement officials to improve the efficiency and coordination of Federal law enforcement, with special emphasis on drug-related crime. To a substantial extent, this has been accomplished through the work of the Cabinet Council on Legal Policy, chaired by the Attorney General, as well as through the leadership provided by the White House Office on Drug Abuse Policy. As a result of these efforts, the Federal Government has for the first time a truly comprehensive, fully coordinated law enforcement policy.

Of even greater importance, this Administration is attacking crime at its source by providing increased resources to Federal law enforcement agencies for the apprehension, conviction, and incarceration of those who choose to violate Federal criminal laws. Last October, for example, I announced a national strategy designed to cripple organized crime and to put drug traffickers out of business. We established twelve additional interagency task forces in key areas of the country -- modeled on the Task Force that has been operating very successfully for some time in South Florida -- to work with State and local law enforcement officials to shut down organized criminal enterprises. We established a National Center for State and Local Law Enforcement Training to assist and train State and local officials in combatting syndicated crime. We also took many other actions,

all of which were intended to bring the full resources of the United States Government to bear on the critical problem of crime in this country.

Our efforts are beginning to bear fruit. During fiscal year 1982, for example, the Customs Service seized over 11,000 pounds of cocaine, an increase of nearly 300 percent over the previous year. Seizures of other illicit drugs were up, as well. The South Florida Task Force continues to perform splendidly in closing off what had been the principal point of entry of illegal drugs into the United States. I have every reason to believe that these and other administrative actions that we have taken will continue to result in increased apprehensions and convictions of persons who violate Federal law.

Administrative action, however successful, is by itself not sufficient. If we are to restore the balance between the forces of law and the forces of crime and ensure that criminals are convicted and, once convicted, are put and kept behind bars, fundamental legislative changes are essential.

During the 97th Congress, the Senate passed S. 2572, the Violent Crime and Drug Enforcement Improvements Act. Among its principal provisions, this legislation would have made major and urgently needed changes in our laws concerning bail, criminal forfeiture, and sentencing. Unfortunately, S. 2572 was not enacted. Instead, at the close of the last Congress, a seriously flawed, and possibly unconstitutional bill, H.R. 3963, was presented to me. In withholding my approval of that bill earlier this year, I reaffirmed my strong personal commitment to the fight against crime and stated that I looked forward to working with the 98th Congress to secure passage of substantive criminal law reform.

The legislative proposal that I am transmitting to the Congress today provides a thorough and comprehensive reform of those aspects of Federal criminal law that have proven to be the most substantial obstacles in the fight against crime. Many of our proposals were considered by the 97th Congress. Others are new. Each is important in ensuring that crime in America is eradicated.

Our proposal is summarized in some detail in the materials accompanying this message. I do, however, want to highlight six especially critical reforms:

- o Bail. Our bill would make it much more difficult than it is now for a defendant who is likely to be a threat to his community to be released on bail pending trial.
- o Sentencing. The bill would change the sentencing system to ensure that sentences would be determinate and consistent throughout the Federal system, with no parole possible.
- o Exclusionary rule. Under our proposal, evidence in a criminal case that may have been improperly seized, which is now excluded from evidence, would be admissible upon a showing that the officer making the seizure acted in good faith.
- o Criminal forfeitures. Our bill would make it easier for Federal prosecutors to seize and dispose of assets used in criminal enterprises.
- o Insanity defense. The bill would replace the current Federal insanity defense with a narrower defense applicable only to a person who is unable to appreciate the nature or wrongfulness of his acts.
- o Narcotics enforcement. Our proposal would substantially increase the penalties for trafficking in drugs and would strengthen the regulatory authority of the Drug Enforcement

Administration with respect to the diversion of legitimate drugs into illegal channels.

The bill contains many other important provisions, as well, concerning labor racketeering, capital punishment, consumer product tampering, and extradition, to name only a few. These proposals, taken together, will provide Federal law enforcement officials with important new tools with which to combat crime and will help once again to make our streets safe for all our citizens.

We cannot tolerate further delay in an area of such crucial concern to so many Americans. We must act now. Accordingly, I urge prompt and favorable consideration of our legislative proposal.

The White House

THE WHITE HOUSE

WASHINGTON

March 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Crime Package

Richard Darman has requested comments by close of business March 3 on the proposed Comprehensive Crime Control Act of 1983. This bill is composed primarily of legislative initiatives previously supported by the Administration, with some new elements. It includes:

- o Bail Reform (previously supported by the Administration and passed by the Senate)
- o Sentencing Reform (previously supported by the Administration and passed by the Senate)
- o Exclusionary Rule Reform (the "good faith" exception previously supported by the Administration)
- o Forfeiture Reform (previously supported by the Administration and passed by the Senate)
- o Insanity Defense Reform (departure from previous Administration proposal)
- o Habeas Corpus Reform (previously supported by the Administration)
- o Narcotics Enforcement Amendments (increased penalties previously supported by the Administration and passed by the Senate; new expansion of DEA regulatory powers)
- o Justice Assistance Act (new reorganization of DOJ research offices)
- o Surplus Property Amendments (previously supported by the Administration and passed by the Senate)
- o Capital Punishment (endorsed by DOJ in last Congress)

- o Labor Racketeering and Extortion (various provisions endorsed by DOJ in last Congress)
- o Foreign Currency Amendments (previously supported by the Administration and passed by the Senate)
- o Federal Tort Claims Act (previously supported by the Administration)
- o Miscellaneous Violent Crime Amendments (some new)
- o Miscellaneous Non-Violent Crime Amendments (some new)
- o Procedural Amendments (some new)

Discussed below are all new elements in the package and those previously-approved elements likely to involve fresh controversy:

1. The exclusionary rule proposal is the "good faith" exception supported before the Supreme Court in arguments in the Gates case just yesterday. While the Court decision could well moot the legislative proposal, one way or the other, the Court ruling may not be determinative and the legislative proposal should continue to go forward. I suspect, however, that many legislators will be persuaded by the argument that it is best to wait and see what the Court does with the issue.

2. The insanity defense proposal is different than the one previously supported by the Administration. The Administration originally supported a proposal to recognize an insanity defense only when the defendant, because of mental disease or defect, lacked the state of mind that was an element of the offense charged (e.g., "the defendant thought he was shooting at a tree"). The new proposal, which has the support of Chairman Thurmond, would limit the insanity defense to those cases in which the defendant could not appreciate the nature or wrongfulness of his acts. In such cases, the jury could return a verdict of not guilty only by reason of insanity. The defendant could then be presumed dangerous, and committed to a mental hospital until he is determined no longer to constitute a threat to society because of his mental condition. I do not consider this proposal a significant reform, since it does not effectively limit psychiatric testimony as would have the original Administration proposal, and the inability of jurors to digest conflicting psychiatric testimony lies at the heart of problems with the insanity defense. Senator Thurmond has apparently latched on to this approach, however, and it is better than nothing.

3. A new element of the narcotics control amendments expands the authority of the Attorney General to prevent diversion of legitimate controlled substances into illegitimate channels. This strikes me as unobjectionable. Such diversion is an increasing problem as the price of the standard illegal drugs rises, and low-income users resort to substitutes.

4. Title VIII of the bill reorganizes the DOJ research offices under a new Assistant Attorney General, and creates a new Bureau of Justice Programs to administer the "mini-LEAA" program. Section 101 of Title VIII, on page 214, states that the new Assistant Attorney General is appointed by the President "by and with the consent of the Senate." This should, consistent with the Appointments Clause, be changed to "by and with the advice and consent of the Senate." Section 103(a), on page 216, creates a new Presidential advisory board, to replace the current separate advisory boards for the different research offices. The bill provides that "[a]ppointments from current boards under this title as on the date of enactment shall constitute no less than one-half of the initial appointees." I find this a highly objectionable restriction on the President's appointment powers, particularly inappropriate in an Administration proposal. The provision may have been inserted to placate current board members, but if that is necessary it can be accomplished with less violence to the President's powers by providing that the President "shall consider" current board members in making appointments to the new board.

5. Title XI of the bill contains the always-controversial proposal to nullify United States v. Enmons, 410 U.S. 396 (1973), and make the Hobbs Act applicable in the context of labor disputes. I understand that Mike Uhlmann thinks this provision should be deleted as unnecessarily provocative. It is, however, unobjectionable on the merits: labor violence and extortion should not have been considered a sanctioned exception to the Hobbs Act any more than violence or extortion in any other area.

6. Title XIII of the bill is the Administration's proposed amendments to the Federal Tort Claims Act. An immediate question is why these are included in the crime package at all, since they concern civil suits. The theory is presumably that the threat of civil liability "chills" the exercise of law enforcement responsibilities. This logic is not, however, developed in the analysis accompanying the bill, and should be. It can also be argued that focusing on the law enforcement context plays into the hands of

opponents of our proposals, since alleged torts in that area can be particularly egregious and politically sensitive. The debate may be more favorably framed in the context of suits by dismissed employees and the like, far removed from the law enforcement context.

7. Title XIV, Part L, is a new provision which fills a gap in the law by making it an offense to escape from judicially ordered civil commitment -- for example, the commitment which would follow acquittal by reason of insanity under proposed Title V.

8. Title XV, Part C, creates a new federal offense for "tipping off" the subject of a search. The wording of this provision is flawed, in that the title indicates it is limited to searches conducted by a warrant, when it should include (as the language of the provision includes) valid warrantless searches (e.g., those conducted under the exigent circumstances exception to the warrant requirement).

9. Title V, Part J, applies state anti-gambling laws to Indian reservations, to prevent them from becoming gambling havens.

10. Title XVI, Part E, authorizes Government appeal of orders granting a new trial; Part G resolves an inter-circuit conflict on change of venue in tax cases.

I have drafted a memorandum to Darman with the above-noted comments on the DOJ reorganization, the Tort Claims Act, and the search "tip off" provisions.

Attachment

THE WHITE HOUSE

WASHINGTON

March 3, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Crime Package

Counsel's Office has reviewed the proposed Comprehensive Crime Control Act of 1983. We offer the following suggestions:

1. Title VIII, section 101 (page 214) currently provides for the appointment of an Assistant Attorney General by the President "by and with the consent of the Senate." Consistent with the language of the Appointments Clause, Art. 2, § 2, cl. 2, and typical usage, this should read "by and with the advice and consent of the Senate."

2. Title VIII, section 103(a) (page 216), establishes a Justice Assistance Board of not more than thirty-one members appointed by the President, and provides that "[a]ppointments from current boards under this title as on the date of enactment shall constitute no less than one-half of the initial appointees." This is an objectionable restriction on the President's appointment powers. If not deleted altogether it should be changed to provide that the President "shall consider" members of the current boards in making appointments to the new board.

3. It is not immediately apparent why Title XIII, the Federal Tort Claims Act Amendments, is included as part of the crime package. Presumably this is because many of the civil suits against federal employees derive from law enforcement activities, but this is not explicated in the analysis section, and should be.

4. Title XV, Part C (page 343), creates a new offense of warning the subject of a search. The title of this section is "Warning the Subject of a Search Warrant." The word "warrant" should be deleted, since valid searches may be conducted without a warrant -- for example, if the exigent circumstances exception applies. The language of the provision is not limited to searches conducted by warrant, and it makes no sense to punish those who warn subjects of searches by warrant and not those who warn subjects of valid warrantless searches.

FFF:JGR:aw 3/3/83

cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

March 3, 1983

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ASSISTANT TO THE PRESIDENT

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COUNSEL TO THE PRESIDENT

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FFF:JGR:aw 3/3/83 ✓

cc: FFFielding/JGRoberts/Subj./Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
 - H - INTERNAL
 - I - INCOMING
- Date Correspondence Received (YY/MM/DD) 1 / 1 /



Name of Correspondent: Richard G. Darman

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Comprehensive Crime Control Act
of 1983

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code Tracking Date YY/MM/DD	Type of Response Code Completion Date YY/MM/DD
<u>W Holland</u>	ORIGINATOR	<u>83102125</u> <u> 1 / 1 / </u>
<u>CUAT 18</u>	Referral Note: <u>D</u>	<u>83102125</u> <u>583103103</u>
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| <p>ACTION CODES:</p> <ul style="list-style-type: none"> A - Appropriate Action C - Comment/Recommendation D - Draft Response F - Furnish Fact Sheet to be used as Enclosure | <ul style="list-style-type: none"> I - Info Copy Only/No Action Necessary R - Direct Reply w/Copy S - For Signature X - Interim Reply | <p>DISPOSITION CODES:</p> <ul style="list-style-type: none"> A - Answered B - Non-Special Referral C - Completed S - Suspended |
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FOR OUTGOING CORRESPONDENCE:
 Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

6:15 pm

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: February 25 ACTION/CONCURRENCE/COMMENT DUE BY: TUESDAY, MARCH 1st

SUBJECT: COMPREHENSIVE CRIME CONTROL ACT OF 1983

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	GERGEN	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	WILLIAMSON	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

Please provide any comments/edits by Tuesday, March 1st.

OPD/OMB: Please prepare a draft transmittal message to accompany this bill. If you could send it to my office by c.o.b. Monday, February 28th, we will then staff it out for comment.

Thank you.

Richard G. Darman
Assistant to the President
(x2702)

Response:

February 23, 1983

MEMORANDUM

TO: Edwin Meese, III
Counselor to the President

James A. Baker, III
Chief of Staff and Assistant
to the President

FROM: Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

SUBJECT: The Domestic Defense Act of 1983 *Review: Comprehensive Crime Control Act of 1983*

This is to provide a brief description of the components of the omnibus crime bill. In summary most of the bill's major provisions are taken from two measures strongly supported by the Administration during the 97th Congress: (1) The Violent Crime and Drug Enforcement Improvements Act of 1982, S. 2572 and (2) The Criminal Justice Reform Act of 1982, S. 2903.

Title I - Comprehensive bail reform amendments of S. 2572 as approved by the Senate last year by a vote of 95-1.

Title II - Sentencing reform amendments approved by the Senate last year in S. 2572. (This is the form of sentencing amendments worked out with Senators Helms and Denton and thus has strong conservative support as a "tough" sentencing reform package.)

Title III - Exclusionary rule reform proposal submitted to the Congress by the White House last year in S. 2903.

Title IV - Forfeiture reform package approved by the Senate last year as part of S. 2572 (much stronger than the package included in the "mini-crime bill," H.R. 3963, which was disapproved by the President in January).

Title V - New version of insanity defense reform proposal which is very similar to Chairman Thurmond's "consensus" insanity defense reform proposal, S. 2902 of the 97th Congress. Modification of the old "M'Naghten" test.

Title VI - ^{Proposal for Reform of} ~~Habeas corpus reform~~ Federal Intervention in State Criminal Proceedings proposal submitted by the White House last year and introduced as S. 2903.

Title VII - Increased penalties for narcotics trafficking that were incorporated in S. 2572. Also contains new amendments needed to strengthen the ability of the Drug Enforcement Administration to prevent diversion of legitimate controlled substances into illegal channels.

Title VIII - Justice Assistance Act developed by the Department of Justice and Counselor to the President Meese. Reflects many improvements over the comparable provision of the "mini-crime bill," H.R. 3963, which was disapproved in January.

Title IX - Surplus federal property amendments approved by the Senate last year as part of S. 2572.

Title X - Death penalty bill favorably reported by the Senate Judiciary Committee during the 97th Congress as S. 114. This bill was endorsed by the Department of Justice during the last Congress.

Title XI - Incorporates provisions from three bills endorsed by the Department during the 97th Congress: S. 1785 (re labor racketeering), S. 1630 (re labor bribery) and S. 2189 (re labor extortion). The labor extortion provision is the old issue as to whether the Hobbs Act can be used to prosecute violence related to collective bargaining disputes.

Title XII - Bank Secrecy Act amendments approved by the Senate in S. 2572.

Title XIII - Federal Tort Claims Act amendments introduced as S. 1775 and supported by the Administration.

Title XIV - Fourteen miscellaneous parts to improve federal laws relating to crimes of violence:

The first ten were included in S. 2572 as approved by the Senate:

- Part A - Murder-for-hire and violent crimes in aid of racketeering activity;
- Part B - Solicitation to commit a crime of violence;
- Part C - Felony-murder rule;

Part D - Minimum mandatory sentence for use of a firearm during a federal crime of violence;

Part E - Additional minimum mandatory sentence for use of armor-piercing bullets during a federal crime of violence;

Part F - Kidnapping of federal officials;

Part G - Crimes against family members of federal officials;

Part H - Addition of crimes of maiming and sodomy to Major Crimes Act;

Part I - Destruction of motor vehicles; and

Part J - Destruction of Energy facilities.

Part K - Assaults upon federal officials, was included in the "mini-crime bill;"

Part L - Escape from custody resulting from civil commitment, is new. It would fill a gap in federal law by making it an offense to escape from federal custody where such custody was pursuant to a judicial civil commitment order;

Part M - Extraterritorial jurisdiction over crimes of violence, is taken from S. 1630 which the Department of Justice supported last year from legislation long supported by the Department of Justice;

Part N - Extradition amendments, is taken from S. 1940 as approved by the Senate with Administration support.

Title XV - Ten miscellaneous parts to improve federal laws related to serious non-violent crimes:

Part A - Product tampering, is from the "mini-crime bill," H.R. 3963, but is revised to remove Administration concerns;

Part B - Child pornography, is from S. 2572;

Part C - Warning the subject of a search warrant, is new. It would fill the gap in existing obstruction of justice laws by making it an offense to warn a person that a search warrant is to be executed upon the person's property thereby frustrating law enforcement efforts.

Parts D through I are taken from S. 1630 which the Department of Justice supported:

Part D - Program fraud and bribery;

Part E - Counterfeiting of state and corporate securities and forging of endorsements or signatures on United States securities;

Part F - Receipt of stolen bank property;

Part G - Bank bribery;

Part H - Bank fraud;

Part I - Possession of contraband in prison;

Part J - Gambling on Indian reservation, is new. It would subject Indian reservations to the requirements of state law with respect to gambling, so as to avoid such reservations becoming a haven for gambling activities in contravention of the policy of the state in which the reservation is located.

Title XVI - Seven miscellaneous parts making various procedural improvements in federal criminal laws:

Part A - Prosecution of Certain Juveniles as Adults, is taken from S. 2572 as approved by the Senate last year;

Part B - Wiretap Amendments, is taken from S. 2572;

Part C - Expansion of Venue for Threat Offenses, is taken from S. 1630 which the Department supported;

Part D - Injunctions against fraud, is taken from S. 1630;

Part E - Government Appeal of Post-Conviction New Trial Orders, was recently cleared by OMB and submitted to the Congress as an independent proposal;

Part F - Witness Security Program Improvements, is taken from S. 2572;

Part G - Clarification of Change of Venue for Certain Tax Offenses, is new. It would clarify the circumstances under which the defendants in tax prosecutions for certain offenses and in which the mail was used would have the right to obtain a change of venue.

In summary, virtually all of the provisions of this bill have been through the full OMB clearance process either during the 97th Congress or this year. The only exceptions are the new insanity defense position in Title V, the diversion control amendments in Title VII and those four parts of the miscellaneous title mentioned above.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Fact Sheet Re: Comprehensive
Crime Control Act

Richard Darman has requested comments by 10:00 a.m. tomorrow on a proposed fact sheet on the Comprehensive Crime Control Act prepared by the Department of Justice. The substance of that Act was described in my March 3 memorandum to you (copy attached). The proposed fact sheet notes that the 44-point bill is not necessarily intended to be treated as a single bill but as a reference document, and that it is quite different from the ill-fated and controversial Criminal Code reform effort. The major provisions of the bill are then detailed. The fact sheet concludes by noting that action on most of the proposals is long overdue, and that favorable legislative action will better arm the new regional drug task forces.

I have no legal objections, but do have two grammatical ones. On page 3, bullet item 2, parallelism requires the last word be changed from "him" to "them." On the same page, under "Title VI," "limit" should be "limiting" and "make" should be "making." I have included these comments in a proposed "no legal objection" memorandum to Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

March 14, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Fact Sheet Re: Comprehensive
Crime Control Act

Counsel's Office has reviewed the above-referenced draft fact sheet and finds no objection to it from a legal perspective.

We would, however, note several grammatical objections. On page three, second bullet item, "establish procedures for . . . will commit him" should be changed to "establish procedures for . . . will commit them." On the same page, under "Title VI," "limit" should be changed to "limiting" and "make" to "making."

FFF:JGR:aw 3/14/83

cc: FFFielding
✓ JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

March 14, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Fact Sheet Re: Comprehensive
Crime Control Act

Counsel's Office has reviewed the above-referenced draft fact sheet and finds no objection to it from a legal perspective.

We would, however, note several grammatical objections. On page three, second bullet item, "establish procedures for . . . will commit him" should be changed to "establish procedures for . . . will commit them." On the same page, under "Title VI," "limit" should be changed to "limiting" and "make" to "making."

FFF:JGR:aw 3/14/83

cc: FFFielding
JGRoberts
Subj.
Chron

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

- O - OUTGOING
- H - INTERNAL
- I - INCOMING
Date Correspondence Received (YY/MM/DD) 1/1

Name of Correspondent: Richard G. Durman

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Draft Fact Sheet re Comprehensive Crime Control Act

ROUTE TO:		ACTION	DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>CW Holland</u>		ORIGINATOR	<u>830314</u>		<u>1 1</u>
		Referral Note:			
<u>CWAT18</u>		<u>D</u>	<u>8310314</u>		<u>58310315</u>
		Referral Note:			
			<u>1 1</u>		<u>1 1</u>
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		Referral Note:			

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:
 Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/14/83 ACTION/CONCURRENCE/COMMENT DUE BY: 3/15 - 10:00 A.M.

SUBJECT: DRAFT FACT SHEET RE COMPREHENSIVE CRIME CONTROL ACT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	GERGEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WILLIAMSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING →	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>	<u>Baroody</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Remarks:

May we have any comments on the attached fact sheet by 10:00 A.M. TOMORROW. Thank you.

Richard G. Darman
Assistant to the President
(x2702)

Response:



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 3, 1983

MEMORANDUM

TO: Michael M. Uhlmann
Special Assistant to the President
for Policy Development

FROM: Robert A. ~~McConnell~~
Assistant Attorney General

RE: Comprehensive Crime Control Act

Pursuant to discussions, please find attached a draft Fact Sheet for use in the announcement of the President's crime bill. Obviously, if we can provide additional assistance, we are anxious to help.

cc: Craig L. Fuller
Assistant to the President
for Cabinet Affairs

Kenneth M. Duberstein
Assistant to the President
for Legislative Affairs

T. Kenneth Cribb, Jr.
Assistant Counsellor to the President

FOR IMMEDIATE RELEASE
MONDAY, MARCH , 1983

FACT SHEET

PRESIDENT REAGAN'S COMPREHENSIVE CRIME CONTROL
ACT OF 1983

I. Introduction

This fact sheet summarizes the new omnibus crime bill submitted to the Congress by President Reagan. This 44-point bill is not necessarily intended to be processed as a single bill but rather to serve as a reference document to set out, in a comprehensive fashion, all of the various criminal justice legislative reforms needed to restore a proper balance between the forces of law and the forces of lawlessness. Taken together, these various reforms would dramatically strengthen the ability of federal law enforcement officials to roll back the rising tide of crime in the United States, particularly in the areas of narcotics trafficking and organized crime.

By comparison with previous crime proposals, this measure does not attempt a total overhaul of title 18 of the United States Code as did the Criminal Code Reform Act long promoted by the Department of Justice. This bill is more analogous to S. 2572 of the 97th Congress which was approved by the Senate last September by an overwhelming vote of 95 to 1. This proposal, however, is much broader in scope than S. 2572.

II. Major Provisions of the Bill

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

- permit courts to consider danger to the community in making bail determinations;
- tighten the criteria for post-conviction release pending sentencing and appeal;
- provide for revocation of release and increased penalties for crimes committed while on release; and
- increase penalties for bail jumping.

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

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

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

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

- forfeiture of profits and proceeds of organized crime enterprises;
- criminal forfeiture in all narcotics trafficking cases;
- expanded procedures for "freezing" forfeitable property pending judicial proceedings;
- forfeiture of substitute assets where other assets have been removed from the reach of the Government;
- a broader scope of property subject to criminal forfeiture; and
- expanded use of administrative forfeiture in noncontested cases.

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

- limit the defense to those who are unable to appreciate the nature or wrongfulness of their acts;
- place the burden on the defendant to establish the defense by clear and convincing evidence;

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

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

Title VI - Reform of Federal Intervention in State Proceedings would reduce federal court interference in State adjudication by:

-- requiring federal deference to "full and fair" State court proceedings;

-- limit the time within which State adjudications may be challenged in federal court; and

-- make other improvements in federal habeas corpus laws.

Title VII - Narcotics Enforcement Amendments would:

-- strengthen federal penalties applicable to narcotics offenses;

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

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

Title VIII - Justice Assistance Act would:

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

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

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

Title X - Reinstitution of Capital Punishment would establish constitutional procedures for imposition of the death penalty in certain homicide, treason and espionage cases.

Title XI - Labor Racketeering, Bribery and Extortion Amendments would strengthen federal laws with respect to:

- debarment of corrupt officials from union and trust fund positions;
- bribery aimed at manipulation of union hiring policies or trust funds; and
- violent crimes associated with collective bargaining disputes.

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

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

Title XIII - Federal Tort Claims Act Amendments would make the United States, rather than individual federal law enforcement agents, civilly liable for common law and constitutional torts involving injury to property or persons.

Title IV - Violent Crime Amendments is a miscellaneous title consisting of 14 improvements in federal laws related to violent crimes including:

- federal jurisdiction over murder-for-hire and crimes in aid of racketeering activity;
- solicitation to commit a crime of violence;
- strengthening of the federal felony-murder rule;
- minimum mandatory sentences for use of firearms in the course of federal crimes;
- additional minimum mandatory sentences for use of armor-piercing bullets in the course of federal crimes;
- criminal penalties for kidnaping of federal officials;
- criminal penalties for crimes directed at family members of federal officials;

- addition of the crimes of maiming and sodomy to the Major Crimes Act;
- strengthening of penalties for violence directed at interstate truckers;
- improvements in federal laws to protect energy facilities;
- expansion of the list of officials protected by the federal assault statute;
- criminal penalties for escape from civil commitment;
- extraterritorial jurisdiction over certain violent crimes; and
- comprehensive amendments to the procedures governing extradition of foreign criminals found in the United States.

Title XV - Serious Non-Violent Offenses is a compilation of 10 miscellaneous amendments to strengthen federal laws governing serious but non-violent crimes including:

- product tampering;
- child pornography;
- obstruction of justice by giving warning of the impending execution of a search warrant;
- fraud and bribery related to federal programs;
- counterfeiting of State and corporate securities and forged endorsements of federal securities;
- receipt of stolen bank property;
- bribery related to federally regulated banks;
- bank fraud;
- possession of contraband in prison; and
- gambling on Indian reservations.

Title XVI - Procedural Amendments is a series of 7 procedural amendments to federal criminal justice laws as follows:

- prosecution of certain juveniles as adults;
- wiretap amendments;
- expansion of venue for threat offenses;
- injunctions against fraud;
- Government appeal of post-conviction new trial orders;
- witness security program improvements; and
- clarification of venue for certain criminal tax prosecutions.

III. Conclusion

The need for these various criminal justice reforms is clear and urgent. During the almost 10 years that the Congress has struggled unsuccessfully with Criminal Code Reform, little truly significant crime legislation has been enacted. Action on most of the reforms in this draft bill is, therefore, long overdue. Moreover, the increased emphasis which the Reagan Administration has placed on law enforcement -- with the addition of 1,400 to 1,600 federal prosecutors and investigators to staff the regional drug task forces -- makes reform of our substantive criminal laws essential if the national crime control program is to be truly effective. The Department has urged all Members of Congress to give this wide-ranging proposal careful attention and work for enactment of the various proposals in the bill during the 98th Congress.