file Crime

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 11, 1982

FOR: MICHAEL UHLMANN

FROM: GARY L. BAUER

SUBJECT: Moral Majority and the Criminal Code

After three meetings on the Criminal Code were scheduled with Moral Majority and then cancelled by them, I called today to ascertain the seriousness of their offer to help us "clean up" the Code to make it a more likely vehicle for their support. They are serious in their offer, but they are not thinking in the context of the Code coming up in the Senate again this year. Thus, while they still want to work with us down the road, they are much more interested in helping us push some of the items on our anti-crime agenda separate from the Code fight. This particularly includes death penalty, bail reform and the exclusionary rule.

Recommendation: We should continue a long-term effort with Moral Majority to reach a compromise on the Code. Short term, we need a meeting of the Legal Affairs Cabinet Council to develop an anti-crime strategy for the remainder of the year. At the very least we need to come up with a way to obtain some key votes in the Senate before 1982 runs its course.

cc: Edwin L. Harper
Roger Porter

file Crime Bill"

DOCUMENT NO. 072593 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 6/23/82 ACTION/CONCURRENCE/COMMENT DUE BY: FYI

SUBJECT: Insanity Floor Amendment

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	X	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	OTHER		
FAIRBANKS	☐	☐	_____	☐	☐
FERRARA	☐	☐	_____	☐	☐
GUNN	☐	☐	_____	☐	☐
B. LEONARD	☐	☐	_____	☐	☐
MALOLEY	☐	☐	_____	☐	☐
SMITH	☐	☐	_____	☐	☐
UHLMANN	☐	X	_____	☐	☐
ADMINISTRATION	☐	☐	_____	☐	☐

Remarks:

ncd 6/23/82

Please return this tracking sheet with your response.

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

THE WHITE HOUSE

WASHINGTON

June 22, 1982

MEMORANDUM FOR MICHAEL UHLMANN

FROM: For EDWIN L. HARPER by P. Rich

SUBJECT: Insanity Floor Amendment

Senator Thurmond announced at the GOP leadership meeting with the president this morning that he was going to introduce a floor amendment making insanity an "affirmative defense," i.e. the burden of proof is on the defense and not the prosecution.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 23, 1982

FOR: MICHAEL M. UHLMANN

FROM: WILLIAM P. BARR

SUBJECT: Senator Thurmond's Comments On Insanity Defense Floor Amendment (Reference #072559 and #072593)

I talked to Paul Summitt on Thurmond's staff about the Senator's statement yesterday at a GOP leadership group meeting that he was going to introduce a floor amendment on the insanity defense. Summitt told me that Senator Thurmond was referring to a possible amendment to the Administration's alternative crime package (S.2572). He said, however, that the Senator had made the statement before having been fully briefed and, after discussions late last night with his staff, the Senator has tentatively decided not to introduce such an amendment.

According to D. Lied, Counsel for Senate Judiciary, Senator Thurmond is "inclined to stick with the insanity defense provision in S.2572". However, Lied said that Senator Thurmond was "not strongly committed to that approach" and, if a better insanity defense proposal comes along, may be willing to support it.

Senator Thurmond has authorized prompt hearings on the insanity defense. The first hearing is scheduled for tomorrow. Bob McConnell at Justice has told me that no Administration witnesses would be appearing.

The criminal division at Justice is in contact with Senator Thurmond's office on this issue and is continuing to monitor it. I have asked that he keep us apprised of any developments.

U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

June 28, 1982

MEMORANDUM FOR THE COUNSELLOR TO THE PRESIDENT

FROM: Jeffrey Harris
Deputy Associate Attorney General

SUBJECT: The Insanity Defense Under Federal Law

Pursuant to your request transmitted to us by Florence Randolph, the following is a brief statement as to the current state of the insanity defense under federal law.

Congress has never enacted legislation prescribing a statutory insanity defense. Instead, the existing federal insanity defense is the product of case law. From the foundation established in the so-called "right-wrong" test articulated in M'Naughten's Case, the Courts of Appeals have over the years gradually broadened the defense to its present form.1/

1/ While the Supreme Court has considered cases involving the insanity defense, it has never squarely addressed the issue of the appropriate test for insanity as a defense, but rather left development of such a test to the Courts of Appeals.

The insanity defense currently adopted by the Courts of Appeals is, with only minor variations, the American Law Institute's Model Penal Code standard which provides that "[a] person is not responsible for criminal conduct if at the time of such conduct as the result of mental disease or defect he lacks substantial capacity to appreciate the criminality of his conduct or to conform to the requirements of law."2/ If found insane under this standard, the defendant must be found not guilty. Evidence on the issue of sanity under this test may include expert psychiatric testimony. See Rule 12.2(b) of the Federal Rules of Criminal Procedure.

While the burden of raising the issue of insanity rests with the defendant, once a colorable claim of insanity is made, the burden shifts to the government to prove the defendant's sanity beyond a reasonble doubt.

2/ There is one Circuit, the Third, which has adopted the "control" aspect of the ALI standard but rejected the "cognitive" portion of the test reflected in the phrase "substantial capacity to appreciate the criminality of his conduct." See United States v. Currens, 290 F.2d 751 (1961) and Government of the Virgin Islands v. Fredericks, 578 F.2d 927 (1978).

There is presently no special verdict identifying insanity as the basis for an acquittal and no Federal procedure for commitment to mental institutions of persons who are found not guilty after having raised an insanity defense. (The District of Columbia Code does contain such provisions.)

file

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 9, 1982

FOR: EDWIN L. HARPER

FROM: WILLIAM P. BARR WPB

SUBJECT: New Crime Package
(Ref. #085234)

If we want a new crime package next session, Mike and I think it should encompass at least three things:

1. Whatever we don't get in our crime package this year (e.g., exclusionary rule, death penalty).

2. A scheme for carrying on the desirable functions of LEAA.

3. Corrections system reforms.

Mike, Steve Galebach and I will be thinking about this in the weeks ahead. We will suggest to Jonathan Rose that he also get working on it.

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

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

Massachusetts

- No additional cost
- Assaults with a gun went down
- Robberies and murder with a gun decreased
- Assaults with other weapons increased
- Pre-trial flight in gun-related cases increased
- Percentage of defendants sentenced under the law decreased in both municipal and superior court
- 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.

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. Burkhart, 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.

82-66

dmck

DOJ-1982-08

DOCUMENT NO. 090619PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 8/9/82 ACTION/CONCURRENCE/COMMENT DUE BY: 8/11/82

SUBJECT: 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)

To: Bill Ball
What's Jim about?

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 Sam 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 Habib mission. PLO fighters are shown saying they will leave 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 govenors 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)

— end —

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?

DOCUMENT NO. 090744 PD

OFFICE OF POLICY DEVELOPMENT

file Crime

STAFFING MEMORANDUM

DATE: 8/18/82 ACTION/CONCURRENCE/COMMENT DUE BY: FYI

SUBJECT: New Crime Bill (see note)

	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)

Action

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 16, 1982

AUG 16 1982

FOR: EDWIN MEESE III
EDWIN L. HARPER

FROM: WILLIAM P. BARR WPB

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?

Hold till π returns.

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: 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

TITLE II -- ~~LIMITATION~~ APPLICATION 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~~ Application of the Fourth Amendment Exclusionary Rule

"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~~ Application of the Fourth Amendment Exclusionary Rule.".

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

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

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 ~~to limit~~ governing 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

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

DOCUMENT No. 090726 PD

OFFICE OF POLICY DEVELOPMENT

file
Crime

STAFFING MEMORANDUM

DATE: 8/19/82 ACTION/CONCURRENCE/COMMENT DUE BY: FYI

SUBJECT: Crime Bill Meeting

	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)

August 18, 1982

MEMORANDUM FOR BILL BARR

FROM: EDWIN L. HARPER

SUBJECT: Crime Bill Meeting

Attendees: Senator Baker
Senator Thurmond
Senator Laxalt
Attorney General Smith
Ed Meese, III
Ed Harper
Ken Cribb

Senate agenda - Pre-Ag. recess

1. Supplemental (Monday-Wednesday)
2. Tax Conference ASAP pre-Ag 20
3. Immigration (Thurday and Friday)
4. Debt limit (Monday, August 20)
   Abortion - Helms
   Hatch

Agenda: September - October 2

1. Appropriation bills. None have come from the House.

   ° Continuing Resolution may be required

2. Crime bill.

C Bill has many good items that we ought to get:

° Bail reform
° Witness protecion
° Drug penalty
° Sentencing reform
° Protection from Executive Branch offices

The 4 key items would kill the bill

1. Habeas corpus aka federal interference in state courts
2. Insanity
3. Exclusionary rule
4. Death penalty

Create a package with other 4 items in it.

- Could get on for floor vote in late September and by-pass the committee via Rule 14, but expect filibuster on motion to proceed and on the bill itself.

- Get co-sponsors. Keep death penalty as a separate bill.

Conclusions

1. Crime bill will move ahead in September as planned.

2. 2nd Bill - habeas corpus, insanity and exclusionary rule.

3. 3rd Bill - death penalty.

U.S. Department of Justice
Office of Legislative Affairs

Bike Crime

Office of the Assistant Attorney General — *Washington, D.C. 20530*

AUG 2 0 1982

M E M O R A N D U M

TO: William French Smith
Attorney General

Edward C. Schmults
Deputy Attorney General

Rudolph W. Giuliani
Associate Attorney General

D. Lowell Jensen
Assistant Attorney General
Criminal Division

Jonathan C. Rose
Assistant Attorney General
Office of Legal Policy

William H. Webster
Director
Federal Bureau of Investigation

Francis M. Mullen
Acting Administrator
Drug Enforcement Administration

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

SUBJECT: Second Crime Bill

Attached for your information is a copy of the draft "Second Crime Bill" which packages the Administration's proposals relating to insanity defense reform, exclusionary rule reform and habeas corpus reform. This package includes a draft transmittal letter revised by Tex Lezar, the bill, a statement of major purposes, and a section-by-section summary.

This edition of the proposal incorporates the suggested presumption of dangerousness upon entry of a verdict of not guilty only by reason of insanity. It also reflects the correction of a number of typographical errors contained in earlier drafts. Questions regarding this package may be directed to Marshall Cain of this Office.

Current planning is for the President to transmit this proposal to the Congress in connection with a national radio address on crime scheduled for August 28.

cc: √ Bill Barr

Crime

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

25 AUG 1982

August 25, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: New Crime Package
(Ref. 090690)

Attached are:

1. Draft Transmittal Letter
2. Proposed Bill
3. Section-by-Section Analysis
4. Statement of Major Purpose

The package has been signed-off on by DOJ and is ready to go to the Hill, except that the transmittal letter has to be put on proper stationary, etc.

The original plan was to have the President make a statement on crime in his August 28 radio broadcast, and arrangements were made to have the bill transmitted to and received on the Hill on that date. I understand the current plan is to have the President make the radio statement on crime on Saturday, September 4.

It is clear we should not send the bill up to the Hill before September 4; that would take some punch out of the President's statement. There are two options on transmittal: (1) we can try to send the bill up on September 4; or (2) we can send the bill up on the first day Congress is back (September 8). It is unclear whether we can arrange for receipt of the bill on the 4th, since Congress is in recess. Legislative Affairs does not think the timing of transmittal will affect the chances of passage. I will confirm this with Senator Thurmond's man when he returns from vacation next week. In the meantime, we should plan to go ahead with the President's statement on the 4th and send the bill up on the 8th.

You may wish to consider whether further coordination within the White House is necessary. If you decide to circulate for comment, this should be done on an expedited basis.

Speechwriting is sending a draft of the radio talk directly to Mr. Meese today. A copy is also going to Darman for circulation.

DRAFT

Letter to the President of the Senate and the Speaker of the House Transmitting Proposed Legislation.

Dear Mr. President: (Mr. Speaker:)

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

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

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

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

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

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

The attached legislative proposal that I am now submitting would reform three additional areas of federal law affecting the criminal justice system. First, it would limit the insanity defense so that only those who did not have the mental state

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

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

THE WHITE HOUSE
WASHINGTON

August 27, 1982

MEMO

MIKE: Dave Swanson called from Legislative Affairs to see if we want them to take action to arrange for receipt of the New Crime Package on September 4 while Congress is in recess. He said he is not sure that this could be done, since Congress recessed without any unanimous consent agreement to this effect.

Swanson mentioned that we could have the President say in his September 4th radio address that he is "sending the bill up today," and the Senate would simply receive the bill when it returns on the 8th. Alternatively, the President could say he is sending the bill up on the 8th.

What should we do from here?

Steve

Steve: I suggest the President simply say that he will forward the bill "next week". You should so inform Swanson + make sure the speech text conforms. Cenite

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 25, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

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