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Date: 5/5/99

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	John Robert to Fred Fielding re: Crime Package [page 2 partial, pages 3 & 4 in whole, 3p	3/3/83	~~P5~~ CC3 10/5/00
2. memo	Fielding to Richard Darman re: Crime Package, 1p	3/3/83	~~P5~~
3. memo	Powell Moore to David Stockman re: Crime Package, 3p	nd	~~P5~~
4. memo	James Watt to David Stockman re: Crime Package, 2p	nd	~~P5~~
5. memo	Raymond Donovan to Edwin Meese re: Crime Package, 3p	3/10/82	~~P5~~

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]
- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

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

Freedom of Information Act - [5 U.S.C. 552(b)]
- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statue [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Gregory Jones to Howard Smolkin re: Review of Justice Department's draft of "Comprehensive Crime Control Act of 1983, 9p	~~4/4/83~~ 3/4/83	P5/ 10/5/00

RESTRICTION CODES

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

DEPARTMENT OF STATE

Washington, D.C. 20520

Dear Mr. Stockman:

Mr. Murr's Legislative Referral Memorandum of March 2 requested the views of the Department of State on a number of sections of the Department of Justice's draft bill on reform of the criminal laws, the Domestic Defense Act of 1983.

Section 702 of the draft bill would permit imposition of greater penalties on persons who have been previously convicted of similar narcotics offenses in U.S. or foreign courts. We do not think that it would be desirable to include foreign convictions within the scope of this provision. Section 492 of the Restatement of the Foreign Relations Law of the United States (Revised) (Council Draft No. 4, 1982) provides that a foreign judgment will be granted recognition in the United States only if the foreign court's proceedings comport with certain minimal standards of due process. To include a provision in the bill authorizing enhanced penalties based on foreign convictions would inevitably lead to judicial inquiry by U.S. courts into the procedures followed in the foreign courts. Such inquiries could raise a host of legal and foreign policy problems. In this regard, it should also be noted only prisoners who agree to waive their rights under the United States Constitution with regard to their foreign convictions may serve out their sentences in the United States under a prisoner transfer treaty, because the United States has no authority to imprison someone except pursuant to a conviction which meets U.S. constitutional standards.

Section 1301 of the draft bill is substantially identical to S.1775 of the 97th Congress, which received the strong support of this Department. We continue to believe in the importance of legislation making suit against the Government the exclusive remedy for persons suing Federal employees on a Constitutional tort theory. We suggest, however, that section 1307(e) should be revised. First, it refers to section 1091 of the Foreign Service Act of 1946, which has been repealed and replaced by section 30 of the State Department Basic Authorities Act of 1945 (22 U.S.C. 2702) and subsections (a) through

The Honorable
David A. Stockman,
Director,
Office of Management and Budget,
Washington, D.C.

(e) of the latter Act should be repealed. Second, the proposed amendment of subsection (f) incorrectly inserts the parenthetical expression "(including the Agency for International Development)" since AID is an agency separate from this Department and, in any event, State Department employees provide medical services to AID. As amended and continued, subsections (f) and (g) will continue to permit this Department to indemnify its medical personnel or provide medical malpractice insurance, for example, where such personnel are successfully sued in foreign courts.

Section 1414 is similar to S.1630. Paragraph (b) of section 19, contained in section 1414, would provide statutory authority to arrest or confine a person pending the completion of his trial or final disposition of the action against him. It is not clear from the language of the bill as drafted that this authority is limited to active duty members of the military. Under most status of forces agreements, however, only the military authorities of the U.S. may make arrests. We are concerned that dependents or members of the civilian component or other personnel might invoke this provision as authority to arrest or detain individuals. If they were to arrest or detain an individual, however, they could find themselves exposed to civil and possibly criminal suits in foreign courts brought by the arrested or detained person because our status of forces agreements would frequently not provide any immunity from such suits. The proposed legislation might be interpreted as conferring rights overseas which may conflict with the sovereign rights of the host nation in matters dealing with citizens' arrest. We consequently recommend that it be revised in such a manner that it is clear that only authorized active duty military personnel be empowered to make arrests or detain individuals.

Section 1415 of the draft bill is identical to S.1940, as passed by the Senate. This Department participated very actively in the development of S.1940 because of the central role the Department of State, and, particularly, the Secretary, plays in extradition. We would suggest one substantive change in the language of section 1415. As currently drafted, section 3194(e)(1)(D), contained in section 1415, would provide that "an offense with respect to which a multilateral treaty obligates the United States to either extradite or prosecute a person accused of the offense" shall not be considered a political offense (emphasis added). The language in the draft bill does not track the United States' treaty obligation in these areas, however, since the relevant treaties, e.g., the Convention on the Physical Protection of Nuclear Material, do not obligate the U.S. to extradite or prosecute, but rather to extradite or submit the case for the purposes of prosecution.

In order to ensure that this exception to the political offense exception is clear, we suggest subparagraph D read, in relevant part, "either extradite or submit for the purposes of prosecution . . . ." In addition, there is a typographical error in the text of section 3195(a), contained in section 1415. The word "court" is missing at the end of the line which presently reads "the findings by the district".

The Department is also concerned about the breadth of section 1344(c), contained in section 1508 of the draft bill, which provides that "There shall be extraterritorial jurisdiction over an offense under this section." We are not aware of any comparable provision in U.S. law, and believe that this clause should be refined to reflect the limitations on "extraterritorial" criminal jurisdiction found in international law and practice. As the provision stands, it appears to require no contact at all with the United States before the U.S. can assume criminal jurisdiction. For example, section 1344 could be read to provide jurisdiction over the defrauding of a foreign branch of a U.S. bank despite the absence of any activities in furtherance of the fraud in the United States and of any intent to directly affect the resources of any financial institution in the United States. We believe the novel and sweeping assertion of "extraterritorial" jurisdiction presently contained in section 1344(c) is likely to engender significant international concern and difficulty.

Because our review of this extensive and important legislative proposal has been conducted under extreme time pressure, our comments are necessarily incomplete and preliminary in character. We would welcome the opportunity to work with the Department of Justice in further refining the proposed legislation in the areas of interest to the Department of State.

With cordial regards.

Sincerely,

Powell A. Moore
Assistant Secretary for
Congressional Relations

Drafted by:
L/LEI:JJBusuttil/L/PM:ERCummings/L/M:KEMalmborg
L/EB:RElliott:rym

Clearance:
L - DWMcGovern
L/LEI - TMPeay
INM - LGlad
L/NEA - JBSchwartz

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

March 3, 1983

SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Justice

SUBJECT: Interior advance letter on Department of Justice draft bill on criminal reform

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than

3:00 P.M. Friday, March 4, 1983

Direct your questions to Gregory Jones (395-3802), of this office.

Greg Jones for

James C. Murr for
Assistant Director for
Legislative Reference

Enclosures
cc: K. Wilson P. Scheinberg M. Uhlmann

ADVANCE

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Honorable David A. Stockman
Director, Office of Management and Budget
Attention: Assistant Director
for Legislative Reference
Washington, D.C. 20503

Dear Mr. Stockman:

This responds to your request for our views on the Department of Justice draft bill on criminal reform.

We strongly object to the proposed new section 1166 of title 18, United States Code.

Section 1166 would subject Indian individuals, Indian organizations, and tribal governments to State laws with regard to the licensing, the regulation, or the prohibition of gambling on Indian reservations.

Such a proposal is inconsistent with the President's Indian Policy Statement of January 24, 1983, which states that tribal governments should have the primary responsibility for meeting the needs and desires of their clients and that it is important that tribes reduce their dependence on Federal funds by providing greater percentage of the cost of their self-government. It is the intent of this Administration to enhance the government-to-government relationship between the Federal government and the Indian tribes.

A number of tribes have begun to engage in bingo and similar gambling operations on their reservations for the very purposes enunciated in the President's Message. Given the often limited resources which tribes have for revenue-producing activities, we believe that revenue-producing possibilities should be protected and enhanced.

As a result of these new revenue raising activities of various Indian tribes, the Bureau of Indian Affairs is establishing an Ad Hoc Task Force on bingo and related gambling activities undertaken by the tribes. It may be possible to provide further information on this subject after the Ad Hoc Committee has had a chance to meet and issue a report of its findings as to the nature and extent of Indian gambling activity, provisions of laws of the various States in which such gambling is carried on, the degree of importance of the activity to the tribes in their attempts to meet the needs of their people and reduce their dependence upon the Federal Government, and any need for Federal legislation or regulation under existing law. Premature actions would hinder our efforts to strengthen tribal government.

We believe that it would be inappropriate for this Administration to propose any derogation of the government-to-government policy formulated by the President. We therefore strongly recommend that the new section 1166 of title 18, U.S. Code, not be included in the draft bill.

ADVANCE

Further, we recommend that section 1114 of title 18, U.S. Code be amended to delete the archaic reference "the Indian field service of the United States," and insert the modern reference "the Bureau of Indian Affairs or Indian Health Service,".

Sincerely,

SECRETARY

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

MEMORANDUM FOR: EDWIN MEESE III
Counselor to the President

FROM: RAYMOND J. DONOVAN Ray Donovan by TR

SUBJECT: Department of Justice Draft Omnibus Criminal Code Legislation

We have been asked by the Office of Management and Budget to review portions of the Department of Justice's draft Omnibus Criminal Code legislation. Title XI of the bill is entitled "Labor Racketeering, Bribery, and Extortion Amendments" and brings together in one title a version of the Labor Management Racketeering Act which passed the Senate last year, amendments to the Hobbs Act, and amendments to the labor bribery provisions of the Taft-Hartley Act. We have a number of comments to make on the individual components; however, we have one overriding concern which needs to be addressed.

This title has minimal, if any, chance of being passed by this Congress. While that, in and of itself, does not preclude its transmittal, this would be the first time the Administration has taken these specific provisions and packaged them together. Viewed as a whole, these labor oriented provisions could change the focus of the bill from an effort by the Administration to improve criminal laws to one that may be viewed as anti-labor. As a result, the cumulative effect of this proposal could be counterproductive to passage of any of the components.

With that overall concern in mind, I will now address the specific provisions individually.

(1) Labor Racketeering

Section 1101, as it was submitted to us, represents the Justice Department's views on an improved version of the Labor Management Racketeering Act which passed the Senate in the 97th Congress with the support of Lane Kirkland of the AFL-CIO. The legislation would, first, amend the labor bribery provisions of the Taft-Hartley Act, raising willful violations from misdemeanors to

felonies. Secondly, it would strengthen the provisions of ERISA and the Labor Management Reporting and Disclosure Act which disqualify individuals convicted of certain crimes from positions in employee benefit plans and labor organizations. As you are aware, both the Departments of Labor and Justice testified on the bill, expressing support for its objectives and suggesting modifications, including augmenting the list of disqualifying crimes. While the Senate accepted some of our suggestions, this one and others were not adopted. However, I testified in December before the House Subcommittee on Labor-Management Relations that the bill accomplished our major objectives and urged its passage.

Section 1101 as it was submitted to us includes a number of the suggestions the Administration proposed last year, and we agree in principle with most of them. However, taken by itself, this could be viewed as the Administration reneging on its past expressed support and could jeopardize any chances of passage which are slim at best now. This would be especially true if it is transmitted in combination with the other portions of Title XI.

We would further note that the proposed legislation does not include the provision of the Senate bill which would provide the Secretary of Labor with the authority to detect and investigate criminal violations of ERISA and other related Title 18 crimes. As you are aware, the Administration opposed this language after resolving a difference of opinion between the Labor and Justice Departments. We do not view the omission by Justice of this provision in their bill as a major problem for us or for the Congress.

(2) Hobbs Act

We have no objections to the amendments proposed to the Hobbs Act as long as it is clear that the bill continues to express this Administration's current policy of not covering minor picket line violence. However, we would note that there are drafting problems with the submitted language. The amendments use a number of terms for the first time. These include "peaceful picketing", "minor bodily injury," and "minor damage to property." There are no definitions or standards of proof and the result could be great confusion and difficulty of enforcement. This could lead to a misimpression that these amendments could or would be used to improperly harrass organized labor.

(3) Labor Bribery

As a general statement, the amendments represent a considerable expansion in the area of prohibited financial transactions involving organized labor officials. For example, more unions would be subject to prosecution and, for the first time, employee/union activity -- some even involving an attempt -- would be covered by Federal criminal statute. These include the railroad, airline, and Federal unions. While the current statute covers only payments made by employers, the proposed bill expands the type of transactions covered to include certain payments made by employees. Also, the required standard of proof for an offense would be considerably eased.

Because of these and other factors, the amendments could appear to be motivated by an anti-labor animus, and could provide a vehicle for Lane Kirkland to back away from his support of the racketeering legislation.

Conclusion

As worthy as many of these amendments to the various statutes may be, the Title XI package, viewed piecemeal and in its totality, could result in the impression that an unwarranted amount of attention is being given by the Administration to the affairs of organized labor. Due consideration should be given to the perceptions which would be created by this legislation.

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

March 7, 1983

MEMORANDUM FOR: MIKE UHLMANN

FROM: HOWARD SMOLKIN

SUBJECT: Comprehensive Crime Control Act of 1983

The attached memorandum highlights the problems OMB staff has raised together with some of the informal agency views raised to date. It seems clear that the bill contains a number of issues that should be resolved before it is cleared.

Are you aware of any mechanism (e.g., meetings, etc.) that has been set up to do this? OMB staff and I would like to meet with you this afternoon to discuss outstanding issues. Please advise.

Attachment

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

March 4, 1983

MEMORANDUM FOR HOWARD M. SMOLKIN

FROM: Legislative Reference Division (Gregory M. Jones)

SUBJECT: Status Report on Review of Justice Department's Draft "Comprehensive Crime Control Act of 1983"

This is to apprise you of the status of our review of the Justice Department's omnibus criminal justice reform legislation and to request your guidance on next steps.

You should be aware that Justice informed LRD late Thursday that the Department is planning on Presidential transmittal of the bill on Monday, March 7, 1983.

BACKGROUND

As you know, Justice attempted to arrange for Presidential transmittal of this legislation without EOP or agency review. We circulated the draft bill for agency and OMB/EOP review on February 25, 1983, for comment by March 3, 1983. The Department of the Treasury and the OMB/EOP reviewers were given complete copies of the bill. Other agencies (i.e., HHS, DOT, OPM, GSA, Labor, Interior, Commerce, DOE, State, and DOD) were given only those parts of the bill that appeared to us to be of direct concern to them. (In addition, two sections of the bill of general applicability to the Federal Government, concerning the Federal Tort Claims Act and assaults on Federal officials, were sent to all major agencies.)

GENERAL OVERVIEW

Justice's bill, entitled the "Comprehensive Crime Control Act of 1983," consists of sixteen titles, which are summarized at Tab "A."

Our review has lead us to conclude generally that the bill contains numerous individual provisions that are objectionable, or at least questionable, but that it also contains many

provisions -- including a substantial majority of the most important -- that were cleared by OMB during the last Congress. The following discussion first outlines our major concerns in some detail and then highlights the agency views that we have received so far. References are to specific titles and page numbers of the draft bill.

OMB COMMENTS

Within OMB, complete copies of the draft bill have been provided to JTP, BRD, and OGC. Pertinent parts of the bill were given to the Interior Branch, the Labor Branch, and the Debt Collection Project. Except as otherwise noted, the comments that follow are those of JTP Division or LRD. (No formal views were received from the Debt Collection Project or OGC.) Concerns of a minor or technical nature -- and we have many -- have been omitted and will be taken up directly with Justice/Legislative Affairs.

Initially, we should note that some provisions of this bill to which we object (e.g., certain of the forfeiture provisions) were contained in bills, such as S. 2572, that the Administration endorsed as a whole as a matter of legislative strategy during the 97th Congress. As a consequence, Justice will argue that this general support carries over to the particulars of its present draft bill. Obviously, we disagree. Because OMB was never afforded an opportunity to review the provisions in question, we ought now to have some latitude in considering them.

o Title IV: Forfeiture.

In general, the provisions of Title IV are not inconsistent with a draft Justice Department forfeiture bill cleared by OMB in 1982. There are two notable differences, however.

Page 150 -- The bill would establish in the Treasury a "Drug Assets Forfeiture Fund." The Fund would be capitalized through the deposit of monies received upon the sale or other disposition of property forfeited in drug cases. Money in the Fund could be used for a number of purposes, including the payment of rewards to informants whose information leads to the forfeiture of assets. Any reward paid would be limited to the lesser of $250,000 or 25% of the amount realized by the United States from disposition of the seized property. The program would be authorized through 1987. OMB refused to clear a similar proposal last year, because we believed that the program should have been financed through the normal authorization and appropriations processes. This is still our general preference with respect to proposals of this kind.

The Justice bill that OMB finally did clear last year, which was later introduced as S. 2320, was a compromise and would have authorized DEA to set aside 25% of the net amounts realized from certain drug forfeitures for the payment of rewards to informants. The remaining 75% of amounts realized was to be paid into miscellaneous receipts. From amounts set aside for payments to informants, the bill would have authorized DEA to pay an informant the lesser of $50,000 or up to 25% of the amount realized from a forfeiture. At the end of each fiscal year, the unobligated balances set aside for informants' fees were to be deposited in miscellaneous receipts.

Although it may certainly be argued persuasively that OMB should oppose any program of this nature altogether, we believe as a practical matter, first, that DEA probably needs some measure of flexibility in paying rewards to informants and, second, that the mechanism for making payments to informants to which Justice agreed last year represents an acceptable, though perhaps not an ideal, middle ground between almost unlimited discretion and lack of accountability (i.e., Justice's present revolving fund proposal) and complete inflexibility (i.e., requiring all monies used for payment of rewards to informants to come from appropriated funds). For this reason, we recommend that the bill be amended to conform to the proposal cleared by OMB last year.

_____Clear as is. _____Revise before clearance to conform to bill cleared last year.

With respect to the cap on rewards, we continue to believe that until Justice has obtained more experience with the reward program, a $250,000 ceiling is too high. If the $50,000 limit proves to be inadequate, as Justice has suggested, we can reopen discussions at a later date. It would be premature, in our view, to quintuple the previously agreed-on ceiling on rewards without adequate substantiating data. A copy of a more detailed memorandum addressing this subject is attached at Tab "B."

Pages 155-159 -- These provisions, which OMB has not previously reviewed, would establish a Customs Forfeiture Fund similar in many respects to the Drug Assets Forfeiture Fund discussed previously. The Customs Forfeiture Fund would be funded from the proceeds of sales or other dispositions of property forfeited or currency seized under any law enforced or administered by the Customs Service. Monies in the Fund could be used for several purposes, including the payment of rewards to informants. The cap on rewards to informants, $25,000 under current law, would be raised to $250,000.

Page 245 -- These provisions would authorize the proposed Office of Justice Assistance (OJA) to appoint advisory committees without regard to the requirements of the Federal Advisory Committee Act (FACA). Last year we asked our counterparts at Justice on at least three occasions to remove this language. They have yet to do so; nor have they provided us with any explanation or rationale for exempting OJA's advisory committees from the requirements of FACA.

_____Clear as is. _____Revise before clearance to make subject to FACA.

Page 253 -- Last year, consistent with the Director's policy on authorization bills, we asked Justice to insert a specific figure for the first year for which appropriations were to be authorized and "such sums" for the out years. The draft bill proposes "such sums" for 1984, instead of $90 million, which is the amount requested in the President's budget. We recommend insertion of the specific sum for 1984, as well as 1985, which we believe is the agreement reached with the Justice Department late last year by the White House and OMB. (The use of specific figures will be important in fighting off what is certain to be an attempt by Congressman Hughes and others to fund the program at a higher level.)

_____Clear as is. _____Revise before clearance to insert specific sums for 1984 and 1985.

Pages 254-257 -- These provisions concern payment of death benefits to the survivors of public safety officers (i.e., primarily State and local police officers) killed in the line of duty. In general, they merely clarify current law.

Under present law, certain survivors of public safety officers killed in the line of duty are eligible to receive death benefits from the Federal government of $50,000. No benefit can be paid in certain circumstances, however, including a case in which voluntary intoxication is determined to have been the proximate cause of an officer's death. The bill OMB cleared in 1982 would have amended current law to prohibit payment of a death benefit if an officer is shown to have been voluntarily intoxicated at the time of his death. In that bill, intoxication was defined as the disturbance of mental or physical faculties caused by the introduction of alcohol into the body, as evidenced by (1) a post-mortem blood alcohol level of .15% or higher or (2) a post-mortem blood alcohol level of between .10% and .15%, unless convincing evidence is presented that the officer was not acting in an intoxicated manner immediately prior to his death.

The present Justice draft bill is identical, except that it increases the .15% figure of the previously-cleared legislation to .20%. According to the National Highway Traffic Safety Administration (NHTSA), an average male who weighs 160 pounds must consume approximately ten 12-ounce bottles or cans of beer or a similar number of one-ounce 100-proof cocktails in a three hour period in order to achieve a blood alcohol level of .20%. Considering NHTSA's data, as well as the Administration's highly publicized drunk driving initiative, we believe that the draft bill's definition of intoxication is unacceptable and should be reconsidered. We believe that the proposal should be amended to conform to the bill cleared by OMB last year.

_____Clear as is. _____Revise before clearance to conform to bill cleared last year.

o Title XI: Labor Racketeering, Bribery, and Extortion.

Pages 284-295 -- According to Mike Uhlmann of OPD, the provisions contained in this title are the bill's most politically sensitive. They were considered during the 97th Congress and concern labor racketeering (e.g., who can and who cannot hold positions of responsibility in labor unions or employee benefit plans) and labor-related violence (e.g., violence committed in pursuance of an otherwise legitimate labor dispute).

In addition, in its memorandum to me (attached at Tab "C"), the Labor Branch has raised several important strategic questions concerning this title that deserve to be addressed before it is formally proposed.

o Title XII: Currency and Foreign Transaction Reporting Act Amendments.

Pages 294-295 -- This title would amend the Bank Secrecy Act in a number of respects. Specifically, it would -

--Make it an offense to attempt to take unreported currency in amounts over a certain threshhold out of the United States;

--Raise the floor on the Bank Secrecy Act's reporting requirement from $5,000 to $10,000;

--Authorize the Customs Service to conduct warrantless searches of persons leaving the United States based on findings of "reasonable cause," instead of the otherwise applicable "probable cause;" and

--Authorize the payment of rewards of up to $250,000 to informers in cases where the information supplied is original and leads directly to the recovery of a criminal fine, civil fine, or monetary forfeiture under the Bank Secrecy Act.

OMB considered similar proposals during the last Congress and consistently refused to clear Treasury and Justice reports supporting them. OMB's opposition at that time was based on the unremitting opposition of Annelise Anderson to warrantless exit searches and excessive rewards to informants and is explained in greater detail in Anderson's memorandum to Ed Harper of April 26, 1982, a copy of which is attached at Tab "D." (To the best of our knowledge, Harper never responded to Anderson's memorandum.)

It is our understanding that Mike Horowitz may have no objection to the proposed amendments of the Bank Secrecy Act; however, the matter should be considered before the draft legislation is transmitted to the Congress.

_____Clear as is. _____Revise before clearance to delete warrantless exit searches and excessive rewards.

o Title XV: Serious Non-Violent Offenses.

Page 355, Part J -- This provision is new. It would prohibit gambling on Indian reservations in States where gambling is otherwise prohibited. According to Justice, it is intended to reach situations such as a highly publicized case in Florida in which the Seminole Indian tribe is said to be "cleaning up" through the operation of games of chance on its reservation that would be unlawful if conducted elsewhere in the State.

The Interior Branch advises that it concurs in the Interior Department's assessment, noted below, that this proposal is inconsistent with the President's Indian Policy Statement of January 24, 1983, which stated, in part, that Indian tribes should reduce their dependence on Federal funds where possible and contribute more toward covering the costs of their self-government. LRD disagrees and believes that Justice's proposal is sound.

AGENCY VIEWS

In view of the short period available for comment, we have received few formal agency views on Justice's draft bill.

Interior, as noted previously, opposes the provision of the bill that would prohibit gambling on Indian reservations in States where gambling is otherwise unlawful. An advance copy of Interior's views letter is attached at Tab "E." Interior advised informally this morning that Secretary Watt might contact the Attorney General directly to express his concern.

Labor Secretary Donovan has contacted Mike Uhlmann directly to express his concern over title XI of the draft bill (labor racketeering). We are uncertain with respect to Donovan's precise concerns; however, we understand that he will be taking his concerns up directly with senior White House staff.

Energy has no objection to provisions of the bill concerning assaults on Federal officials and destruction of energy facilities (e.g., power generating plants).

FEMA, USDA, SBA, NASA, and HUD have no objection to those few provisions of the bill that they have reviewed.

More generally, Treasury and State have complained strenuously about the failure of Justice to comply with normal clearance procedures. We have been advised informally that each of these agencies is attempting to have senior policy officials contact the White House or the Justice Department to obtain more time for an orderly review of the bill. In this connection, the Legal Advisor at the State Department, who is concerned principally with title XIV, part "N" of the draft bill (extradition), is said to have raised the matter yesterday with Fred Fielding, whose response is unknown. As for Treasury, we are still waiting to receive specific recommendations or objections.

Several agencies (e.g., Commerce, DOT, and GSA) have not responded to date. We will continue to attempt to obtain their views. At this time, however, we have no way of knowing if they will raise substantive objections.

NEXT STEPS

We understand that Justice has advised a number of agencies that transmittal of the draft bill to the Congress is imminent, and that for this reason these agencies are attempting to negotiate changes in the bill directly with Justice. We are following up to ensure that any changes to the draft bill are forwarded to OMB for review.

In addition, we plan to do the following, unless you advise us to the contrary:

- Contact Justice later today to discuss changes of a minor or technical nature;
- Continue to work with the agencies to determine desirable changes to the draft bill;
- Await your guidance with respect to the policy matters raised in this memorandum; and
- Obtain and review a fact sheet that we understand Justice has prepared to accompany transmittal of the draft bill.

Attachments

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 11, 1983

FOR: EDWIN L. HARPER

FROM: WILLIAM P. BARR
STEPHEN H. GALEBACH

SUBJECT: Meeting with Conservative Groups on Crime Bill

Attached is a copy of an earlier memo we sent you, the first three pages of which provide an overview of the bill.

We understand that the overarching concern of the conservative groups is that the Administration not push for a comprehensive criminal code reform bill, but rather pursue a bill like S.2572. In this regard, we are doing exactly what they want us to do, and they should be quite pleased.

They may ask for a promise that the Administration will not push a criminal code reform bill. This seems to be something we can give them.

Beyond this, they may have some minor points concerning some of the titles in our proposed bill. For example, they have told us that they would like to see the sentencing reform part of the bill include the so-called Denton and Helms Amendments that were added in the Senate. We have included these in the bill, and they should be pleased about it.