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THE STRUGGLE FOR EFFECTIVE ANTI-CRIME LEGISLATION—AN ANALYSIS OF THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

*Bill McCollum**

I. INTRODUCTION

Over the past decade, when Americans have been asked to identify the biggest problem facing the nation, crime has usually been the answer. This public opinion is consistent with the facts. The rate of violent crime remains intolerably high, over five hundred times higher than just thirty years ago. In particular, juveniles are committing more and more serious crimes. Frequent news reports of vicious crimes shock and frighten the public and send policy makers searching for new solutions.

At the federal level, lawmakers have been unable to unite behind a legislative proposal addressing the problem. Congress has been divided with regard to the appropriate role of government in the battle to reduce crime in America. This division was no more apparent than in its consideration of the 1994 Crime Bill.

"The Violent Crime Control and Law Enforcement Act" was signed into law on September 13, 1994. Yet, within days of the White House signing ceremony, Republicans announced their intentions to rewrite the bill as part of the GOP's "Contract with America." Conservatives charged that the 1994 Crime Bill failed to address the central reason for soaring crime rates—a broken criminal justice system that too often seems incapable of holding criminals accountable. Without certain and swift punishment, opponents of the bill argued, deterrence will suffer as violent criminals continue to roam the streets.

Supporters of the 1994 Crime Bill responded to critics by asserting that the legislation was both tough *and* smart. It authorized billions of dollars for police, crime prevention and prisons, and it contained a ban on so-called "assault weapons," a federal "three-strikes-and-you're-out" provision, and dozens of death penalty offenses.

It is a curious fact that many liberals were as displeased with the bill as conservatives, despite billions for expanded social welfare and new gun control laws. Death penalty opponents lost their bid to include the "Racial Justice Act"

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in the bill, which would have created substantial procedural obstacles to the actual imposition of capital punishment at both the federal and state levels.

As the new Republican-controlled Congress now revisits the 1994 Crime Bill, it is useful to recall the chronology of events in recent years affecting the development of federal crime legislation. This information will lend insight for those attempting to understand the basic purposes of the policies put forward by the leadership of the 104th Congress.

II. THE PRE-CLINTON BATTLES OVER CRIME LEGISLATION

Congress has responded to the menace of crime and drugs by passing four omnibus federal crime bills from 1984 to 1990.¹ While these bills added dozens of new crimes, penalties, and procedures to the U.S. Code, sharp differences between conservatives and liberals remained unresolved on the most important criminal justice issues. In particular, several intense legislative battles between 1989 and 1994 revealed the true policy split among policymakers at the federal level in relation to crime control.

At the heart of the conservative agenda has been criminal justice reform. Specifically, conservatives have pressed for the following: (1) an end to the abuse of the federal habeas corpus statute which currently allows death row inmates in state prisons to file a seemingly endless series of appeals in federal court; (2) exclusionary rule reform, an effort to return common sense to the criminal justice process by protecting evidence gathered in warrantless searches undertaken in "good faith" by federal law enforcement officers; and (3) "truth-in-sentencing" reforms at the state level, which would require violent criminals to serve at least eighty-five percent of their actual prison sentences, instead of the current national average of thirty-eight percent. This would be accomplished by giving large grants to the states for expanding prison capacity as an incentive for revising their laws. The habeas corpus and exclusionary rule reform proposals have passed both the House and Senate on previous occasions, only to be dropped or unacceptably revised in conference.

In 1991, the House and the Senate passed anti-crime bills after considerable pressure from President Bush. The Senate bill contained the habeas corpus reform proposal supported by the nation's prosecutors and the House approved the conservative-backed exclusionary rule language. However, a small group of senior liberal Members who served on the House-Senate conference committee drafted a new bill that dramatically altered the habeas corpus and exclusionary rule reform provisions, and in the process proposed to overturn many pro-law enforcement supreme court decisions. The habeas corpus section would have reversed the outcomes of nearly twenty supreme court holdings if it became law. President Bush fiercely opposed the conference report and

1. The Comprehensive Crime Control Act of 1984, the Anti-Drug Abuse Act of 1986, the Anti-Drug Abuse Act of 1988; and the Crime Control Act of 1990.

announced he would veto it if it were not significantly amended. As a result, the bill died in the Senate in 1992 after several attempts to overcome a threatened Republican filibuster. For the first time in a decade, Congress failed to produce an omnibus crime bill.

III. THE MAKING OF THE 1994 CRIME BILL

The 1992 conference report served as the starting point for the 1994 Crime Bill. In August 1993, President Clinton held a press conference at which time he outlined five components of crime legislation that Congress should approve. These components included federal grants for more community police officers, gun control (the Brady Bill and a ban on "assault weapons"), boot camps and drug treatment for criminal addicts, habeas corpus reform (the same liberal version opposed by President Bush), and comprehensive death penalty legislation. A month later, the Chairman of the House and Senate Judiciary Committees each introduced crime bills which largely included the President's five priorities.²

Action on crime legislation began in the House in October 1993. Representative Jack Brooks, Chairman of the Judiciary Committee, faced an uphill battle trying to get a crime bill reported out of committee. Republican members of the Committee would oppose any bill that did not contain meaningful criminal justice reforms, and a group of liberal members indicated opposition to any bill which appeared tough on crime but was missing the "racial justice" proposal. As a result, the Committee could only bring a handful of relatively non-controversial spending proposals, each as a separate bill, to the House floor.

By the time the House had acted, things were beginning to change in the country. Within a few months after the President's announcement, a series of major national events changed the face of the federal crime debate as well as President Clinton's priorities. In California, Polly Klaas was kidnapped and murdered by a repeat violent criminal who had recently received early parole from prison. In New York, a gunman on a Long Island commuter train shot and killed several people with a semiautomatic pistol. In November, an outraged public countered in Washington State with a ballot initiative called "three-strikes-and-you're-out," which requires life imprisonment for three-time felons. The initiative passed overwhelmingly. Three-strikes quickly gained popularity across the country and was soon endorsed by Republicans and Democrats alike—including President Clinton. Finally, in a landslide, Virginians elected George Allen governor primarily because of his promises to abolish parole and establish "truth-in-sentencing."

The Senate, interpreting the 1993 November election results as a

2. H.R. 3131 was introduced by Chairman Jack Brooks and S. 1488 (which later became S. 1607) were introduced by Chairman Joseph Biden. The bill eventually became H.R. 3355.

referendum on crime, quickly took up their version of an omnibus crime bill only a few days later. In a frenzy of midnight amendments before the November break, the Senate passed S. 1607 by a vote of 95 to 4. The \$22 billion measure contained most of the President's priorities. It also included \$3 billion for the construction and operation of ten regional prisons, three quarters of which would be reserved for states if they enacted truth-in-sentencing laws and other tough sentencing provisions. Moreover, the bill contained a ban on "assault weapons" and a "three-strikes" provision sponsored by Senate Republicans. Conservative Senators did not insist on the inclusion of habeas corpus reform provisions.

At the January 1994 "State of the Union Address," the President repeated his call for crime legislation and added a new element to his agenda. "Three-strikes-and-you're-out," originally a Republican initiative, was now one of his top crime legislative priorities. The President vowed to renew his fight for a tough new crime bill that would include "cops on the street," an assault weapons ban, "three-strikes," and boot camps.

By March 1994, House leaders wanted to pass a comprehensive crime bill that would improve upon the Senate-passed version and strengthen their negotiating position in conference. A top priority for many conservatives was to provide the states with substantially more prison space while requiring them to incarcerate violent criminals for a greater portion of their sentences. House Republicans believed that the \$3 billion for prisons provided in the Senate-passed bill was not a large enough incentive for states to fundamentally change their sentencing laws. Although enough Republicans and Democrats agreed that a significant amount of money should go to prison construction, they could not agree on the extent to which states should be required to reform their sentencing laws as a condition for receiving funds. Three options were proposed to Members of the House. Under Republican protest, the House chose the least restrictive of the three.

Another contentious issue surrounding the House crime bill was the "Racial Justice Act" which would allow death row inmates—at the state and federal level—to challenge their death sentences if statistics suggested that the race of either defendants or victims had affected past death sentencing decisions in the jurisdiction where the crime was committed. Republicans strongly opposed this provision since it would effectively block the imposition of death sentences altogether. Republicans countered with the "Equal Justice Act" which sought to codify safeguards against racial discrimination at the front end of the process, where the defendant is charged and tried, rather than "after the fact." The provision did not satisfy the Democrats, who insisted on taking the "Racial Justice Act" to the House-Senate conference.

IV. PRODUCING THE FINAL BILL

During the summer of 1994, Democrat leaders appeared to be in no rush to get House and Senate conferees together and begin negotiations on the

differences between the two bills. To be sure, there were some significant problems. The "Racial Justice Act" was politically unpopular for the Administration, and White House officials had to convince members of the Congressional Black Caucus to agree to dropping it. In May, the House had passed an assault weapons ban bill by a two vote margin. Chairman Brooks was opposed to the assault weapons ban, and he was hoping to find a way to keep it out of the final bill.

Conferees were eventually appointed, and by early August a conference report was ready for approval. The conference worked out a \$30 billion proposal that committed almost \$25 billion to prisons, police, and prevention programs. Moreover, the House language and the final bill contained a "reverter clause" that allowed states to divert prison grant funds to alternative programs. States could receive prison funds without fundamentally changing their sentencing policies. Missing from the bill was habeas corpus reform—a provision that had started as one of the President's top priorities but was somehow swept under the rug.

The final conference report came close to being defeated. A coalition of liberal Democrats—refusing to vote for a bill without the Racial Justice Act—and conservative Republicans—refusing to vote for a bill that contained \$7 billion in social welfare spending—blocked the first effort to bring the bill to the House floor. Eventually, after days and nights of intense negotiation, a group of moderate Republicans provided the margin of votes necessary to pass the bill in the House. The Senate followed by passing the bill a week later along partisan lines.

V. THE DIRECTION OF FUTURE CRIME LEGISLATION

With Republicans now in control of the Congress, obstruction of criminal justice reform appears to be ended. It is almost certain that President Clinton will be given an opportunity to sign crime legislation containing habeas corpus reform provisions and stronger "truth-in-sentencing" provisions in 1995. As for exclusionary rule reform, votes in favor of this matter have always been difficult to find in the Senate, and it may have to wait for another day. While the pressure for new legislation may continue indefinitely, a substantial aspect of past disagreements will no longer exist.