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DEPARTMENT: NACDL NEWS: CONTRACT WITH AMERICA: THE REPUBLICAN NIGHTMARE

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TEXT:

[*58] We are under siege as never before. While pushing for legislative reform may seem hopeless considering the conservative Republican-dominated Congress, we must increase our efforts to educate our legislators to the folly of enacting yet another crime bill with more offenses, greater penalties and increased mandatory minimum sentences. We must try to convince them not to restrict *habeas* relief in capital cases, and not to further eviscerate the Fourth Amendment by allowing "good faith" of the police to validate an illegal search.

Over 300 Republicans have signed the Contract with America which calls for ten bills, including a new crime bill, to be considered within the first 100 days of the 104th Congress.

The Republican Crime Bill is called the "Taking Back Our Streets Act." The stated purposes of this bill are: Making punishments sufficiently severe to deter the commission of crimes; ensuring that the criminal justice system is "fair and impartial for all," and redirecting the authority to distribute federal law enforcement funds from "Washington bureaucrats" to local law enforcement officials.

The Republican crime agenda is the Trojan horse of 1995. Presented as the answer to the "crime crisis" for "minorities and the poor," in its specifics, the plan's solutions are simply to incarcerate and execute in greater numbers.

To accomplish these goals, the Republican crime bill would:

(Death Penalty Provisions: Title I)

1. Severely restrict the writ of *habeas corpus* by placing a one-year limitation on filing general *habeas* petitions after all state remedies have been exhausted. State capital petitions must be filed in a federal court within six months, and state capital prisoners must receive a "certificate of probable cause" stating that their case has merit to file a second or successive federal *habeas* appeal. Non-capital federal prisoners must file within two years. The bill would further limit prisoners to one petition absent a showing "by clear and convincing evidence, that but for constitutional error, no reasonable fact finder would have found [him] guilty of the underlying offense or eligible for the death penalty."

2. Authorize funds for states to defend against *habeas corpus* petitions by death row inmates. (Bill sponsors argue that prosecutors should receive funds equal to those now provided to Death Penalty Resource Centers.)

3. Mandate that juries be instructed to (a) recommend a death sentence if aggravating factors outweigh mitigating factors, and (b) avoid any "influence of sympathy, sentiment, passion, prejudice or other arbitrary factors" in their decisions.

(Mandatory Minimum Sentencing for Drug Crimes: Title II)

1. Establish a mandatory minimum sentence of ten years for state or federal drug or violent crimes that involve possession of a gun. Penalties increase to 20 years for a second conviction and life in prison for a third. If a firearm is discharged with intent to injure another person, the mandatory minimum sentence for a first offense is 20 years; Second offenses receive 30 years, and third violations result in life.

2. Require a mandatory minimum 30-year sentence for a first offense of possession of a machine gun or other destructive device during the commission of a crime, and life for a second offense.

(Mandatory Victim Restitution: Title III)

1. Mandate that defendants pay full restitution to their victims for damages caused by the crime, and allow judges to order restitution for *any person* who was harmed physically, emotionally or financially by the defendant's unlawful conduct.

2. Require restitution to reimburse the victim for child care, transportation and other expenses incurred while participating in the investigation of the offense or court proceedings. The amount is based on the victim's need, not the offender's ability to pay. The court is to set the schedule and method of payment.

3. Provide that court-ordered restitution may not affect the victim's eligibility for insurance awards or other compensation until the restitution has been fully paid.

4. Require that a defendant's compliance with the restitution payment schedule and other terms of the order be a condition for probation, parole or other form of release. Violations can result in revocation of probation or release, and the forced sale of a defendant's property.

(Law Enforcement Block Grants: Title IV)

1. Authorize \$ 10 million over five years for local governments to fund law enforcement programs. Under this provision, the money may be used to hire, train and pay overtime to police; purchase law enforcement equipment; enhance school security measures like police patrols around school grounds, metal detectors, closed circuit cameras, gun hotlines, etc.; establish citizen neighborhood watch programs; and/or fund programs that "advance moral standards and the values of citizenship" and involve local law enforcement officials. The money would be paid directly to local law enforcers and allow them to decide how to spend it.

2. Repeal sections of the recently enacted Crime Control Act that provide specific funds for drug courts, recreational programs, community justice programs and other social prevention spending.

(Grants for Prison Construction Based on Truth-in-Sentencing: Title V)

1. Authorize \$ 10.5 *billion* over six years for grants from the United States Attorney General to states for the building of prisons for serious violent felons. The bill would repeal the provisions of the 1994 Crime Control Act allowing for grants for boot camps and other facilities [*59] for youthful and non-violent offenders. Under the new plan, non-violent offenders and "criminal aliens" would be moved to old military bases.

2. Enhance the truth-in-sentencing feature of the grants by providing that 50 percent of the funds will be awarded only to those states that require "serious violent felons" to serve at least 85 percent of their sentence, *and* require the sentencing or releasing authorities to allow the defendant's victim or victim's family to testify on the issue of sentencing and "any" post-conviction release. The other 50 percent is "general grant" money, which will be awarded to states upon a showing that since 1993, there has been an increased percentage of convicted violent felons sentenced to prison, and that the state has increased both the average prison time actually served in prison and the percentage of sentences to be actually served.

3. Create an exception for prisoners over 70 years of age *after* a public hearing in which representatives of the public and of the victim have an opportunity to testify on the issue of release.

(Reform of the Exclusionary Rule: Title VI)

1. Further eviscerate the exclusionary rule to allow the admission of evidence illegally seized *without* a warrant, if the police officer acted in "good faith."

(Prisoner Lawsuits: Title VII)

1. Direct federal courts to dismiss "any frivolous or malicious" action brought by an adult prisoner who has been convicted of a crime.

2. Require an inmate to submit a financial statement listing his assets with his lawsuit so that filing fees can be assessed on an "ability to pay" basis.

(Deportation of Criminal Aliens: Title VIII)

1. Provide for the prompt deportation of any alien without a green card who has been convicted of an "aggravated felony" and who is deportable. Currently an "aggravated felony" includes murder, drug trafficking, trafficking in firearms or explosives, money laundering, terrorism, and any crime of violence carrying a prison sentence of at least five years. The Republican bill expands this definition to include any state or federal offense involving: (1) firearms violations, (2) failure to appear in court for a felony carrying a sentence of two or more years, (3) demanding or receiving ransom money, (4) a RICO violation, (5) owning, controlling, managing or supervising a prostitution business, (6) treason, (7) tax evasion greater than \$ 200,000, (8) certain immigration offenses such as alien smuggling and sale of fraudulent documents.

2. Allow the Attorney General to issue a final order of deportation against an alien convicted of an aggravated felony *without* requiring a deportation hearing. The alien can seek judicial review of this deportation order, but review *is limited* to challenging the defendant's identification and the issue of whether he committed the aggravated felony.

3. Strip aliens convicted of aggravated felonies of the ability to raise a defense based on "withholding of deportation." Currently, if an alien can show that he will suffer physical harm if returned to his native country, he must be retained in the U.S. unless he poses a serious danger to the public. Under this bill, it is stipulated that aggravated felons pose a serious danger to the public and are not allowed to request or be granted this protection.

4. Increase the maximum sentence for deported aggravated felons who re-enter the country to twenty years, and increase to ten years the maximum sentence for a deported alien who has a non-aggravated felony or three or more misdemeanor convictions and re-enters the country.

5. Make it much more difficult for a deported alien who re-enters the country to challenge his original deportation order.

6. Authorize \$ 14 million over four years for the creation and operation of a "Criminal Alien Tracking Center" to assist law enforcement agencies in identifying and locating aliens who may be subject to deportation because of an aggravated felony.

If we allow the "Taking Back Our Streets Act" to pass without a massive protest, we will share in the responsibility for the veritable police state that results. We must convince Congress that these measures will not further the goal of reducing crime.

An increase in punishable offenses and in the length of sentences over the Draconian measures currently in effect will not deter crime. It will place law enforcement and correction officials at tremendous risk of physical harm. It will create even greater racial disparities. And it will do nothing to help at-risk youth.

The Republicans' professed goal of achieving fairness and impartiality is a sham. The death penalty is currently imposed in a racially discriminatory manner. By limiting *habeas* challenges by death row inmates, and requiring jurors to impose the death penalty upon a simple finding of more aggravating than mitigating factors, without regard to mercy and compassion, we will escalate, not reduce this disparity. The provisions pertaining to aliens amount to ill-disguised racism.

Stripping the 1994 Crime Control Act of all prevention funding will further target the poor and minorities. It is not an informed mind which believes that providing funds to build more prisons, to hire more police, and to monitor school grounds, while prohibiting expenditures on social programs and alternative correctional facilities, will result in a reduction of violent crime.

In 1986, we did not mobilize and mandatory minimum sentences were enacted. In 1987, we did not mobilize and the Federal Sentencing Guidelines were enacted. In 1994, we were partially mobilized, and therefore were partially successful, in our efforts to prevent the passage of the worst provisions of the Clinton crime bill. In 1995, with the threat of the Republican Contract With America, we must intensify and expand our efforts.

We must find a way to reach all of our members, co-workers, family, friends and acquaintances, and convince them of the need for them to write their congresspersons and ask them to abandon this crime bill. We must also, as members of an organization dedicated to the preservation of constitutional rights, put our heads together and develop a cohesive and organized plan to successfully educate and convince a Republican-dominated Congress of the folly of this legislation. We must redouble our efforts to convince our legislators that the way to reduce violent crime is to help at-risk youth.

As your Legislative Committee Co-chairs, we are asking for your input. Perhaps NACDL should issue a formal statement of opposition to the contract, and have each of the 50 state legislative coordinators provide the statement to as

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many media organizations in their states as possible. Perhaps our members should speak at meetings of civic groups and other non-lawyer organizations. Maybe members should submit detailed articles to their local newspapers. We urge you not to stay silent. Help us formulate a plan to fight this devastating legislation.