Congress stalls crime bill but not police state justice

by Leo F. Scanlon

The Omnibus Anti-Crime Bill of 1991 is stalled in the Senate and faces a veto from President Bush as the Congress adjourns for the holidays. At this point, the bill has met the fate of previous Bush administration attempts to legislate an end-run around the Constitution, and is a hodge-podge of contradictory elements which satisfy neither the Republicans nor the Democrats of either house. The bill is additionally being vigorously opposed by the civil liberties community led by the American Civil Liberties Union, and by the anti-gun control lobbyists led by the National Rifle Association.

Given that Bush had defined the crime bill as one of his two major legislative priorities for the year, its fate signals the President's declining political fortunes. While the Republicans are sure to try to rev up the "tough on crime" rhetoric as part of next year's election campaigns, the recent Pennsylvania election shows it may not be the success Bush hopes for. Former Attorney General Richard Thornburgh campaigned heavily "against crime" in the Senate race there, and was trounced by a citizenry that obviously did not believe that you can stop a depression with the electric chair.

The Bush package involved radical legislative action in four main areas: the exclusionary rules governing search and seizure were to be replaced by an "inclusionary rule" modeled on British practices; the procedures governing the filing of *habeas corpus* petitions in federal courts were to be trimmed so as to deny that remedy to defendants wronged in state courts; the federal death penalty was to be expanded to cover a myriad of crimes including some which do not involve murder; and an unprecedented expansion of unconstitutional and unpopular gun control measures would be enacted with support of a Republican White House. Each of these initiatives was countered by Democratic proposals designed to blunt the political, but not the legal, impact of the package.

As the session drew to its close, countervailing bills were brought to a conference committee weighted with delegates from the majority Democratic Party who "steamrolled" the weekend session, according to Rep. Henry Hyde (R-Ill.) The bill reported out of conference on Nov. 24: retained the existing form of the exclusionary rule; severely restricted but did not eliminate the use of federal *habeas corpus* challenges to state court rulings; struck a proposed ban on "assault-type" weapons; reduced the waiting period for purchasing a gun from seven days to five; and eliminated the amendment by Sen. Alfonse D'Amato (R-N.Y.) for a federal death penalty for murders involving a handgun. Republicans protested the modifications, but found themselves trapped when the Democrats voted in favor of the most far-reaching extension of the death penalty ever enacted by a Democratic Congress—extending capital punishment for around 50 federal offenses, some of which are new, such as murder of federal officials, murder resulting from terrorism, and for certain drug offenses which do not involve murder.

The unexpected maneuver, of supporting the death penalty provisions, stole the wind from the administration's anti-crime rhetoric. Sen. Strom Thurmond (R-S.C.), Judiciary Committee standard-bearer for the Bush reforms, declared: "This is no crime bill, it's a pro-criminal bill." He shouted at the Democrats, "This is a travesty! You'll regret that you voted for this. You'll regret it. All of you!"

Sen. Joseph R. Biden (D-Del.), chairman of the Judiciary Committee, gloated at the administration's predicament, commenting, "I just can't believe the Republicans would kill a death penalty bill. For the Republicans to vote against capital punishment—I don't believe they'll vote that way."

They did, and on Nov. 25 President Bush took his anti-crime rhetoric on the road, telling an audience of Ohio

schoolchildren that he would veto the legislation if it passed the Senate. On Nov. 27, the bill narrowly passed the House and was presented to the Senate. With all the "perception games" turned upside down, Senate Republicans filibustered the measure. Lacking the votes necessary to force a vote, the Democrats agreed to adjourn, and left the issue hanging around the neck of George Bush.

Constructing a 'legal' police state

The bottom line of the administration reforms is that they are designed to expand the powers of prosecutors to use death penalty convictions as political spectacles. They have nothing to do with the closely tied twins of drug addiction and satanism which are fueling street crime and filling the jails. The failure of Bush's legislative package does not mean that the Constitution is any less threatened. On the contrary, the package is ultimately a form of political grand-standing, designed to provide congressmen the opportunity to talk about freedom from crime while they vote for laws which subordinate the citizen's freedom to the whim and discretion of federal prosecutors. In most cases, the Supreme Court has already established case law which effectively accomplishes what Bush is trying to legislate and, as retired Justice Thurgood Marshall warned, the Chief Justice William Rehnquist-led majority has a very aggressive agenda and intends to overturn any precedents it deems necessary to accomplish its goals.

The furor over the exclusionary rule is a case in point. The attack on the Fourth Amendment's restrictions on tyrannical actions by the federal government began in earnest under Chief Justice Warren Burger, and continued until the Court created, in 1984, a "good faith" exception to the exclusionary rule, allowing evidence gathered under color of defective search warrants to be admitted at trial. The Congress proposed to codify that ruling as a device to halt this erosion. Bush opposed that, and advocated replacing the Fourth Amendment with the British practice called "the inclusionary rule," which allows evidence to be admitted no matter how it was discovered—or fabricated. In a January 1990 ruling, the Court sustained the exclusionary rule by a one-vote majority, with Justice William Brennan arguing that the rule is the bottom-line deterrent against prosecutorial misconduct. Since then, Bush has replaced Brennan and Marshall (two of the votes in the 1990 majority) with Justices David Souter and Clarence Thomas. While Justice Thomas did tell the Senate that he is not sympathetic to the Rehnquist line on these questions, it is an open possibility that the Court will eviscerate the exclusionary rule no matter what Congress does.

A similar situation exists on the issue of *habeas corpus*. In the debate, both sides agreed that there should be restrictions on the use of this federal remedy. The Bush administration demands that the Supreme Court must only determine that a defendant received a "full and fair" hearing in a state court, in order to turn down *habeas corpus* relief. This approach overturns a line of rulings, beginning with a 1963 decision, which held that federal courts were bound to consider such positions from state inmates as long as they had not deliberately by-passed remedies available at the state level. The ultimate problem here is that 40% of the death penalty convictions so appealed were eventually overturned. Bush would shut that door, even though the legal representation for the poor defendants who need the remedy is notorious—with court-appointed lawyers receiving more money, in many states, for filing an uncontested divorce than they are allowed for representing a defendant in a capital trial. A series of rulings in the Court's last term has established that even if a defendant succeeds in bringing a petition to the Supreme Court, the Rehnquist majority will not spare his life no matter what type of jury prejudice, prosecutorial misconduct, or malfeasance on the part of the defense occurred during trial.

The death penalty provisions are the most grotesque example of Congress not defending the Constitution. The only reason for federalizing a death penalty is to allow federal prosecutors to push for capital sentences in states which have outlawed the barbaric practice. The list of 50-plus offenses, and the federal officials who are "protected" by this so-called deterrent, includes such notables as federal egg inspectors and the huge apparatus of snitches in the Federal Witness Protection Program. In no case does the list involve criminal actions, not otherwise proscribed by statute, which affect the citizen on the street. Listening to the drum beat for federally financed executions, one would never know that murder has long been a crime in every state of the union.

Drugs and satanism drive crime wave

The common denominator in the Bush crime bill proposals is the fact that they represent the wish list of a school of prosecutors who believe that only a police state can deter criminal behavior, and who are more concerned with building that apparatus than facing the facts about crime and violence. The sophistry, that such measures will reduce the level of violence on the streets, is transparent. People filing *habeas corpus* petitions are already in jail and don't contribute much to the crime statistics under those conditions. The exclusionary rule is similarly overblown, since the number of cases in which a defendant is acquitted on technicalities is minuscule. Eliminating this protection will do little for policemen, but a lot for prosecutors bent on political frameups.

As for the death penalty, the widespread gratuitous violence which terrorizes citizens is largely carried out by gangs of drug pushers not in the least deterred by the threat of death. The most likely hypothesis, now being investigated by *EIR*, is that these gangs are organized by practicing satanists. This fact is being systematically suppressed by the FBI, and that coverup is what needs to be destroyed if crime is to be suppressed in the U.S.