Major Crime Bill Proposals

Death Penalty

-- Workable federal death penalty for murders implicating federal interests or responsibilities, including substantially all drug-related murders.

-- Workable federal death penalty for certain non-homicidal offenses: "drug kingpin," treason, espionage.

Habeas Corpus

-- General reforms for both capital and non-capital cases: Rule of deference to reasonable state court adjudications of petitioner's claims, arrived at through constitutionally adequate procedures (deference to "full and fair" state court adjudications). Time limit for federal habeas filing by state prisoners. Time limit for filing of § 2255 motions by federal prisoners.

-- Additional safeguards against delay and abuse ("Powell Committee" procedures) in capital cases for states extending right to appointed counsel to collateral proceedings: Time limits for concluding adjudication of capital habeas petitions. Prohibition of second and successive petitions except where new claim is raised that casts doubt on factual guilt and cause is shown for failure to raise the claim earlier.

-- Equalization of capital habeas funding. Requires provision of funds to state attorneys general or prosecutors for habeas corpus litigation in capital cases in amount equal to federal funding provided to capital defense resource centers.

Exclusionary Rule

-- General objective reasonableness ("good faith") exception to exclusionary rule, for both warrant and non-warrant cases.

-- Prohibition of creation of caselaw exclusionary rules by courts based on (non-constitutional) violations of statutes, rules of procedures, or administrative rules or regulations.

[The President's violent crime bill also included elimination of the exclusionary rule for firearms seizures in the presence of alternative safeguards, but this was D.O.A. in Congress.]

Firearms

-- Mandatory ten year term for use of semiautomatic firearm in federal crime of violence or drug trafficking crime.
--- Extend armed career criminal concept by providing mandatory five year and ten year terms for firearms possession by person with one or two prior convictions for violent felonies or serious drug offenses.

--- Overriding state negation of convictions for armed career criminal purposes where conviction offense was violent felony involving threatened or actual use of firearm or serious drug offense.

--- Broadening definition of serious drug offense for armed career criminal purposes to include state offense where conduct would have carried maximum term of ten years or more if federally prosecuted.

--- New offenses of stealing firearms or trafficking in stolen firearms (nearly unlimited federal jurisdiction over such crimes).

--- Increased penalties for false statements in firearms purchases.

*--- Increasing aggregation period for reporting multiple handgun sales to same purchaser from 5 days to 30, and reporting of such sales to local police as well as ATF.

*--- General ban on clips and magazines that enable firearm to fire more than 15 rounds without reloading.

--- National waiting period for handgun purchases. (Acceptable to us if packaged with other strong law enforcement measures.)

** Juveniles and Gangs 

*--- Broadened retention and availability of records of federally prosecuted juvenile offenders. (We have a complementary rules change which will enable the FBI to receive juvenile records from the states for inclusion in the national criminal records system; it is pending final clearance for promulgation at OMB).

*--- Broadened federal jurisdiction and adult prosecution for juvenile offenders. (Only weak and fragmentary version of this in Senate bill.)

*--- Serious drug offenses by juveniles as armed career criminal predicates. (Included only in Senate bill in very weak form.)
Terrorism and International Matters

-- Implementing legislation for international conventions against terrorism at airports, maritime terrorism, and maritime platform terrorism, and for the convention against torture.

-- New antiterrorism offenses, including offense of providing material support to terrorists, and offense of using weapons of mass destruction against U.S. nationals or property anywhere in the world.

-- Sentencing guidelines increase for terrorist crimes, increased penalties for travel document crimes likely to be committed by terrorists, and extension of statute of limitations for terrorist crimes.

-- Better coverage of crimes in extended territorial sea, and crimes against U.S. nationals on foreign ships.

*-- Other antiterrorism provisions in the President's violent crime bill included addition of terrorist offenses as RICO predicates, forfeiture for terrorist and other violent acts, admission to U.S. of aliens cooperating in terrorism or other investigations, strengthening of alien enemy act, increased access to communications and credit records in terrorism investigations, and strengthening of wiretap laws for use in terrorism investigations. These largely fell by the way during Congress's consideration of the crime bills, but some were included in weakened form in the Senate or House bill.

[The President's bill also included effective provisions for removing terrorist aliens from the United States, but the proposal was D.O.A. in Congress.]

Sexual violence, child abuse, and victims' rights

[The reforms in this part are generally limited in direct effect to federal cases, but most of them would have broader import as models for state reforms. A more detailed discussion of these provisions will be circulated separately.]

*-- General rule of admissibility in sexual assault and child molestation cases for evidence that defendant has committed offense or offenses of the same type on other occasions.

-- Increased penalties for recidivist sex offenders, for many sex crimes against victims below the age of 16, and for drug distribution to pregnant women.

-- HIV testing of defendants in sex offense cases, with disclosure of test results to victim; enhanced penalties for HIV
infected sex offenders who risk infection of their victims; government payment of cost of HIV tests for victims.

-- Provisions strengthening restitution and enforcement of restitution orders.

-- Giving victims of violent crimes and sex crimes a right to address the court concerning the sentence to be imposed, parallel to the offender's existing right of allocution.

-- Equalizing at 6 the number of peremptory challenges accorded to each side in felony cases. (The defense now gets ten. This has been included among victims' rights provisions as a measure protecting the victim's right to an impartial jury.)

-- Removing cap on crime victims fund.

**Equal Justice Act**

-- Strengthened safeguards against racial discrimination in the criminal justice process. Mandates administration of death penalty and other penalties without regard to race. Prohibits racial quotas and statistical tests for imposing the death penalty or other penalties. Extends to crime victims protections against racial bias which may now be available only to the defense, including right of prosecutor to make inquiry on voir dire concerning racial bias favoring the defendant, and change of venue on motion of prosecutor where necessary to guard against racial bias against the victim. These provisions would apply to state cases as well as federal cases.

-- In federal capital cases, there would additionally be special jury instructions and certifications guarding against racial bias. Death penalty authorizations would be added for murders committed in violation of the principal criminal provisions of the federal civil rights laws. The fact that a murder was racially motivated would be a statutory aggravating factor permitting consideration of the death penalty under all federal statutes containing death penalty authorizations.

**Drugs**

-- Drug testing of federal offenders on post-conviction release.

-- Drug testing in state criminal justice systems as a condition of federal justice assistance funding.

-- Precursor chemicals provisions.

-- Interdiction provisions, including new offenses and other
provisions strengthening legal authority to stop aircraft and vessels.

-- Miscellaneous provisions increasing penalties or otherwise strengthening drug laws, e.g., increased penalties for drug trafficking in prisons.

-- There are some additional provisions in the pending bills which did not originate as DOJ proposals, and which we have been more-or-less neutral or indifferent about in the past, but which may merit further consideration in light of the discussion at the planning meeting. These include broadening drug-free zones to include additional areas (public housing, truck stops), and crackhouse eviction.

Public Corruption

-- The Senate bill contains a version of our proposal, albeit with lesser penalties than we want for the main offenses (10 years maximum rather than 20).

Other Provisions

[We have proposed various "miscellaneous" provisions which relate to issues that do not have a high degree of visibility, but which may have considerable practical importance from an operational standpoint. Some examples:]

-- Filling gaps in existing laws by adding attempt liability for robbery, kidnapping, smuggling, and property damage offenses; creating offenses of receiving proceeds of extortion, kidnapping, and postal robberies; and extending coverage of mail fraud statute to frauds perpetrated through mail carried by private interstate carriers.

-- Undercover operations against trafficking in stolen or counterfeit items are currently hampered by statutes which limit liability to cases where the item involved in a transaction is actually stolen or counterfeit. One of our provisions would eliminate this problem by providing that it is sufficient if the defendant believed on the basis of a representation by a law enforcement operative that the item was stolen or counterfeit.