

Clinton and Crime

Steven Duke†

Since at least the reign of Richard Nixon, the Republican party has been the "law and order" party. Every Republican president from Nixon onward has had a recipe for solving the crime problem and most have succeeded in getting at least one major criminal "reform" bill through Congress. The basic ingredients of all the Republican recipes have been the same: "reform" the courts to facilitate criminal investigations and convictions and change both the courts and the criminal law to impose swifter, more severe, and more final sentences on those convicted of crime.

The courts have been changed by the Republican practice of appointing "conservative" judges. Eight of the Supreme Court Justices now sitting were appointed by Republican presidents as were more than 75% of all active judges of the lower federal courts. Legislation has also frequently been proposed, and sometimes enacted, to reverse or restrict Supreme Court decisions reflecting liberal interpretations of the rights of the accused.¹

Congress has enacted a panoply of legislation, the primary purpose of which is to put people convicted of crimes in prison for longer terms or, more recently, to execute them.² A saturation point has been reached. As a result of the sustained "law and order" effort of Republican administrations (aided and abetted by Democratic congressmen), most felonies are violations not only of state but also of federal law and virtually every adult American is guilty of several crimes, collectively calling for life terms.³ A single transaction or

†Law of Science and Technology Professor, Yale Law School. B.S. Arizona State Univ., 1956; J.D. Univ. of Arizona, 1959; L.L.M. Yale Univ. 1961.

1. See, e.g., 18 U.S.C. § 3501 (1988) (admissibility of confessions in criminal prosecutions); *id.* § 3502 (admissibility of eye witness testimony against the accused); *id.* § 3504 (litigation concerning sources of evidence). Sec. 301 of Senate Bill No. 8, 103d Cong., 1st Sess., seeks to prohibit the exclusion of evidence obtained in violation of the Fourth Amendment if there was "an objectively reasonable belief that it was in conformity with the fourth amendment."

2. See 21 U.S.C. § 848(e)(1) (1988), the so-called "drug king-pin" death penalty provision. The Bush Administration's crime bill, which barely fell short of enactment, added 53 new death penalties to the code. Under the present death penalty provision, enacted in 1988, 86% of the prosecutions have been against racial minorities.

3. Two reporters for the Wall Street Journal recently wrote a story on the commonness of criminality. They admitted between them to having committed 16 of 25 criminal offenses they listed, some of which called for jail sentences of up to 15 years. They interviewed dozens of people and found that a majority of them admitted to violating eight or more of the criminal laws. See Stephen J. Adler & Wade Lambert, *Common Criminals: Just About Everyone Violates Some Laws, Even Model Citizens*, WALL ST. J., Mar. 12, 1993, at A1. Two federal laws that they did not list, mail and wire fraud, 18 U.S.C. §§ 1341, 1343, are probably violated by almost everyone. It is not clear that these provisions require anything other than deception or attempted deception by mail or wire, i.e., they do not require literally false statements, nor do they require an intent to obtain money or property by means of same. Bank fraud, 18 U.S.C. § 1344 (1988), and tax fraud, 26 U.S.C. § 7201 (1988), are also commonly committed by people who do not think of themselves as criminals. It should be noted that the overbreadth of many of the penal provisions is a result of capacious court interpretations, not of clear expressions of congressional will, but many newer statutes are clearly intended to cover morally

course of criminal conduct will often constitute half a dozen different federal and state felonies. Moreover, almost any felonious violation of federal or state criminal law can be characterized as a RICO violation and the perpetrator can be punished not only for the underlying "predicate" crimes but for the RICO violation as well.⁴ Usually, a charge of "conspiracy" to commit each crime can also be added to the list.

Not satisfied with creating a code that makes most Americans eligible for life sentences, recent Republican administrations have deprived the judges they appointed of their traditional discretion to give lenient sentences by enacting the "guideline system" and even minimum mandatory sentences. Similar "reforms" have occurred in state legislatures. Young, nonviolent first-time offenders are being sentenced to life terms without parole in both federal and state courts.⁵

The results of the Republican Administrations' "law and order" programs, in place twenty of the past twenty-four years, have been disastrous. The total expenditures for federal criminal justice have grown from about \$445 million during Nixon's first year in office⁶ to about \$15 billion today, an increase of more than 3,000%. Federal investigators, prosecutors, and jailers have proportionately multiplied. Since 1980, the number of Americans behind bars has tripled. America now has well over a million persons in jail or prison, the highest rate of incarceration in the world.⁷ Our nearest competitor, South Africa, incarcerates its subjects at a rate only two-thirds that of the United States.⁸ From 1980 to 1990, the number of prison years imposed upon defendants annually by federal judges has increased *tenfold*.⁹ Escalation in incarceration rates and prison terms has been almost as extreme at the state level. At present rates of growth, we will *all* be in prison in twenty-five years.

Since the objective of Republican anti-crime programs was not to save money or to preserve civil liberties, but to reduce crime, crime rates should

innocent as well as culpable conduct.

4. 18 U.S.C. §§ 1961, 1962, 1963 (1988).

5. 21 U.S.C. § 848 requires a minimum of 20 years and a maximum of life, without parole, for a first-time offender of its provisions. The so-called "drug king-pin law" applies to virtually anyone in the drug business who employs other people. For a discussion on sentencing at the state level, see CNN Transcripts, No. 93-4, June 17, 1992; Francis X. Clines, *For No. 83-A-6607, Added Years for .35 Ounces; 20 Years After Law Mandating Prison Terms, Few of Targeted Kingpins Fill Cells*, N.Y. TIMES, Mar. 23, 1993, at B1. The Michigan Supreme Court recently held that its law was invalid to the extent it denied parole to one who merely *possessed* the requisite quantity of drugs and it therefore eliminated the no-parole feature of a life sentence in such a case. *People v. Bullock*, 485 N.W.2d 866 (Mich. 1992).

6. BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES, COLONIAL TIMES TO 1970, pt. 1, H 1012-27 (1975).

7. MARK MAUER, AMERICANS BEHIND BARS: A COMPARISON OF INTERNATIONAL RATES OF INCARCERATION 3 (The Sentencing Project, Jan. 1991).

8. *Id.*

9. Peter Reuter, *Hawks Ascendant: The Punitive Trend of American Drug Policy*, DAEDALUS, 15, 25 (Summer 1992).

arguably be the major measure of their success or failure. Since Richard Nixon and John Mitchell took office, however, murder rates have increased more than 30%; rapes, 140%; robberies, 86%; aggravated assaults, 230%; and burglaries, 40%. The number of violent crimes per capita increased 250% during the period.¹⁰

Given the abysmal failure of Republican anti-crime programs (George Bush's record was arguably worst of all), one might have expected Bill Clinton's presidential campaign to have emphasized the Republicans' failures to reduce or even to contain the growth of crime. Clinton, however, said little about crime during the campaign. He has said even less about the subject since he took office. Unlike some of his Republican predecessors, he has no comprehensive anti-crime plan. Presumably, this is because he knows that no new punitive plan can make a significant dent in crime rates. And unlike Republicans, Democrats probably cannot promise to cut crime without being held accountable.

It could be said in mitigation of the Republican failures that crime is essentially a problem for the states, beyond the control of the federal government. After all, for every crime prosecuted by the federal government, the states prosecute twenty. But Republicans running for president rarely, if ever, mention this. Instead, the standard Republican maxim has been "Elect me. I will reduce crime." Although it is a common Republican refrain that the federal government should leave the states alone, that position seems never to be taken where harsh anti-crime efforts are proposed (in contrast, it inevitably surfaces when someone urges federal expansion or even protection of civil rights or civil liberties). Ironically, it was a democrat, Bill Clinton, who all but suggested this during the campaign. Clinton said that his administration would aid the states in dealing with the crime problem, but that it was primarily a problem for the states.

One Quick Fix

Although there is little that the federal government can do to curb crime if it continues to follow the course of the past generation, it is not powerless. The federal government is affirmatively causing much of the crime in this country by its war on drugs. By repealing federal prohibitions of recreational drugs, or even drastically de-escalating the drug war, crime rates in most categories could immediately be cut by a third to a half.

If one were to line-graph the increases in crime rates since Richard Nixon was inaugurated and George Bush stepped down, and compare it with a line-

10. Roberto Suro, *Driven By Fear; Crime and its Amplified Echoes are Rearranging People's Lives*, N.Y. TIMES, Feb. 9, 1992, sec. 4, at 1; U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1991, table 3.127 (1992).

graph of the escalation in resources spent in the war on drugs, the direction of both lines would point sharply upward. The major difference would be that the line representing the drug war budget would be much steeper. From a total of less than \$3 billion spent during the first half of the 1970s, the budget has inexorably grown to more than \$12 billion per year in 1992.¹¹ The similarities are not coincidental.

The drug war has as one of its main strategic goals increasing the costs of producing and distributing, and hence of buying illicit drugs. As the price to the consumer is increased, demand can, it is hoped, be curtailed and the number of users or the quantities of illicit drugs used can be reduced. The tactics for increasing producer and distributor costs include impeding production of the raw materials (such as destroying crops and drug laboratories, the techniques we employ in the Andean region), attempting to interdict substantial quantities of the product before they reach the consumer (as by border searches, busts of stash houses, and the like) and by imprisoning smugglers and distributors of the illicit products. Until recently, the strategy had considerable "success" in that prices for marijuana, heroin, cocaine, and other illicit drugs were quite high.¹² A heroin addict would commonly need \$200 or more per day to support a habit, and a cocaine user (before the era of "crack") might need even more than that. Many cocaine users spent a thousand dollars a week on powder cocaine.¹³

There is little evidence that jacking up the free market price of these drugs by a factor of 100 or more greatly reduced demand, but there is strong evidence that the consumers of drug products increased their participation in acquisitive crimes in order to feed their habits. In a recent survey of persons in prison for robbery or burglary, one out of three said that they had committed their crimes in order to get money to buy drugs.¹⁴ Those who do commit crimes for drug money also seem to commit them at a much greater rate than less strongly motivated robbers, burglars, and thieves.

In a study of 356 heroin users in Miami, James Inciardi found that they admitted committing nearly 120,000 crimes (an average of 332 per person) during a single year.¹⁵ In another study of 573 heroin users, Inciardi found

11. THE WHITE HOUSE, BUDGET SUMMARY, NATIONAL DRUG CONTROL STRATEGY (Jan. 1992).

12. Street prices for cocaine and heroin are now at their lowest level in years. A rock of crack can be purchased for less than a dollar and a "nickel bag" of heroin for about two dollars.

13. In a 1983 telephone survey of callers to Cocaine Hotline, the average caller reported spending \$637 per week on cocaine the week before calling the hotline, with a range from \$200 to \$3,200. Arnold M. Washton & Mark S. Gold, *Recent Trends in Cocaine Abuse as Seen From the '800-Cocaine' Hotline*, in COCAINE: A CLINICIAN'S HANDBOOK 10 (Arnold H. Washton & Mark S. Gold eds., The Guilford Press, 1987).

14. U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE, SPECIAL REPORT, DRUGS AND JAIL INMATES, 1989 (Aug. 1991).

15. James A. Inciardi, *Heroin Use and Street Crime*, CRIME AND DELINQUENCY 25 (July 1979), 335-46.

them responsible for about 215,000 offenses during the previous year.¹⁶ Included were 25,000 shopliftings, 45,000 thefts and frauds, 6,000 robberies and assaults, and 6,700 burglaries. In another study of 459 non-narcotic drug users (chiefly cocaine), Inciardi found that they admitted to an average of 320 crimes apiece during the previous year.¹⁷ In a survey of callers to a cocaine hotline, 45% of the callers said they had stolen to buy cocaine.¹⁸ In another survey of adolescents, those who admitted using cocaine, 1.3%, accounted for 40% of the admitted crimes.¹⁹ In several studies of drug use by persons imprisoned, 65% to 80% have admitted regular or lifetime illicit drug use.²⁰ It seems likely that about 75% of our robberies, thefts, burglaries, and related assaults are committed by drug abusers. Numerous studies show that drug users commit far fewer crimes when undergoing outpatient treatment or when the price of drugs goes down.²¹ It is a fair estimate that half of America's thefts, robberies, and burglaries are the result of the drug war and that these would immediately be eliminated if a halt were called to the war.

Creating an incentive to steal in order to buy drugs is not the only criminogenic effect of drug prohibition. Murder is employed to protect or acquire drug-selling turf, to settle disputes among drug merchants and their customers, and to rob drugs and drug money from dealers. In some cities, such as New Haven, half or more of the killings are related to the illicit drug trade.

Drug prohibition also accounts for much of the recent proliferation of handguns. Guns are essential to carrying on the drug trade, since drug dealers must enforce their own contracts and provide their own protection from predators. Even "mules" who deliver drugs or money need weapons. Packing a gun, like wearing fancy clothing or gold jewelry, has become a status symbol among many adolescents. In such an atmosphere, other youngsters carry guns in the hope they will provide some protection. As a result, disputes that used to be settled with fists or even knives are now settled with guns. A decade ago, only 15% of teenagers who got into serious trouble in New York City were carrying guns. Now the rate is 60% to 65%.²²

Drug prohibition also fosters crime by producing police corruption. The

16. JAMES A. INCIARDI, *THE WAR ON DRUGS: HEROIN, COCAINE, AND PUBLIC POLICY* 126-27 (Mayfield Pub. Co., 1986).

17. *Id.* at 129.

18. Washton & Gold, *supra* note 13.

19. B. Johnson et al., *The Concentration of Delinquent Offending: The Contribution of Serious Drug Involvement to High Rate Delinquency*, REPORT PREPARED FOR NATIONAL INSTITUTE OF JUSTICE AND THE NEW YORK STATE DIVISION OF SUBSTANCE ABUSE SERVICES (Boulder, CO: Behavioral Research Institute, 1983).

20. See studies cited in David N. Nurco et al., *Recent Research on the Relationship Between Illegal Drug Use and Crime*, 9 BEHAVIORAL SCIENCES AND THE LAW 223 (Summer 1991).

21. JOHN KAPLAN, *THE HARDEST DRUG: HEROIN AND PUBLIC POLICY* 56-57 (Univ. of Chicago Press, 1983).

22. Joseph B. Treaster, *Teen-Age Murderers, Plentiful Guns, Easy Power*, N.Y. TIMES, May 24, 1992, sec. 1, at 1.

news media are full of accounts of cops caught stealing money or drugs from drug dealers and reselling the drugs, or simply taking money from drug dealers to look the other way or to provide tips about police raids or other plans. Such widespread corruption denigrates and demoralizes all police.

The distractive effects of the drug war on the police are also indirectly but profoundly criminogenic. In many cities, half or more of the arrests are for drugs or other crimes related to drug trafficking. The energy of the police expended on drug criminals necessarily diverts attention from domestic violence, rape, and other non-drug offenses. As a consequence, criminals who are not directly involved in drug trafficking have a much better chance of escaping detection and punishment than they otherwise would have.²³

The drug war has also deeply undercut the role of imprisonment in dealing with non-drug-related crimes, such as child molesting, rape, and homicide. There is simply no room in our prisons. Forty states are under court orders to reduce prison overcrowding. And our rates of incarceration are increasing faster than ever before. Funds are not available to build prisons fast enough. Child molesters and rapists are being paroled early or are having their sentences chopped to make prison space for drug users and drug dealers. Many dangerous criminals are not even sent to prison because there is no room for them. Drug dealers—most of them nonviolent—with their mandatory sentences, have priority for prison space.

The punitive aspects of the drug war (excluding treatment and preventive education) cost about \$9 billion at the federal level and about twice that on the state and local levels. These estimates do not include the law enforcement costs chargeable to crimes that are prohibition-caused but not technically drug-related. That would probably account for another \$20 billion at all levels of government. Thus, law enforcement costs attributable to the drug war are about \$50 billion per year. The losses to crime victims in property alone (not counting lives lost or bodies maimed) are probably another \$10 billion.²⁴ In addition, the consumers of drugs pay a premium attributable to the drug war of at least \$50 billion for their drugs.²⁵ The total annual costs of the drug war, therefore, are at least \$100 billion.

Another cost of the drug war is so gigantic that, if calculable, it would make the others appear minuscule in comparison. The drug trade and the crime and

23. Bruce Benson & David Rasmussen, *Relationship Between Illicit Drug Enforcement Policy and Property Crimes*, 9 CONTEMP. POL'Y ISSUES 106 (Oct. 1991).

24. See U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE, *CRIMINAL VICTIMIZATION IN THE UNITED STATES*, 1991 148 (1991) (estimating total economic cost of all crime in 1991 at more than \$19 billion).

25. Some estimates are as high as \$110 billion. See HOUSE SELECT COMM. ON NARCOTICS ABUSE AND CONTROL, *ANNUAL REPORT FOR THE YEAR 1984*, H.R. REP. NO. 1199, 98th Cong., 2d Sess. 9 (1985). Such estimates are surely excessive. In any event, the price of drugs has dropped considerably in recent years, hence, the estimate in the text.

violence attached to it takes place primarily in our cities and has made large sections of many cities war zones, glutted with guns and gangsters, unfit for human habitation. The property values of the inner cities have evaporated as most residents who can afford to do so flee. A war having as one of its justifications the preservation of the cities has had the opposite effect, virtually destroying parts of them. The cities cannot be rebuilt, rehabilitated, or even preserved as long as the drug war continues. And in a cruel irony, education, the only other ticket out of the poverty that pervades the inner city, has been virtually destroyed; in short, money spent on education is largely wasted.

If President Clinton were able to re-legalize illicit drugs (returning them to the status they had in 1914), he could, by that act alone, conceivably save state, local, and federal governments \$50 billion next year and much more in future years. More important, most crime rates might be reduced to what they were in the 1950s, when many people saw no need to lock their cars or houses and hardly anyone but the police carried guns. The beneficial effects that re-legalization of drugs would have on crime and the quality of life are enormous.²⁶ Re-legalization is the only short-term remedy for the crime problem that has any prospect for success. President Clinton, however, has declared himself against legalization and, even if he favored it, he could not get it through Congress. There are, however, some things he can, and may, do that are informed by an understanding of the relationship between the war on drugs and crime.

During the campaign, whenever he was asked about the drug problem, Clinton invariably brought up his belief in "treatment on demand", correctly implying that a drug war that denies treatment to addicts is seriously flawed. That is the present situation. According to the government, there are at least 2.77 million people in need of drug treatment (not counting alcoholics and tobacco addicts) and only 600,000 "slots" in the nation's treatment facilities.²⁷ The Bush administration took the position that "paying for drug treatment has been and must largely remain the responsibility of individuals, third party insurers, private organizations, and State and local governments."²⁸ The drug

26. Most illicit drugs have no pharmacological properties that trigger violent propensities in their users, contrary to earlier hysteria on the subject. If anything, marijuana and heroin make their users less inclined to violence than they would be were they nonusers. Whether cocaine, particularly in crack form, and methamphetamines have any such pharmacological effects is unclear. Both drugs occasionally trigger paranoid psychoses, with violent reactions. Apart from that, however, the connection of such drug use and violence has not been established. See UNDERSTANDING AND PREVENTING VIOLENCE 193-94 (Albert J. Reiss, Jr. & Jeffrey A. Roth, eds., National Academy Press, 1993). Thus, if re-legalization of drugs resulted in an increase in the numbers of their users or the quantities used, little aggressive, antisocial activity would be likely to accompany such increases. Increased usage of heroin and cocaine could exacerbate medical and social problems associated with the consumption of those drugs, but the extent of such problems is greatly exaggerated, especially when compared to the use of alcohol, which is more harmful physically and socially than virtually any currently illegal drug.

27. THE WHITE HOUSE, NATIONAL DRUG CONTROL STRATEGY, Jan., 1992, 58.

28. THE WHITE HOUSE, NATIONAL DRUG CONTROL STRATEGY, Feb., 1991, 45.

addict who steals, robs, and burglarizes to get money to buy drugs, however, has neither job nor insurance, and the states are even less able or willing to fund treatment centers than the federal government. Clinton wants to change this by, among other things, making drug treatment part of his national health care program.²⁹ This will significantly reduce the number of addicts and their crimes, but it is not a panacea. Many drug abusers do not want to be "cured" and many of those who do seem almost impervious to treatment. Treatment failures are common. Still, treatment often works, even if only partially. For example, it may reduce many of the costs of drug abuse among those who are not able to quit. Thus, even "failures" are often partial successes.³⁰

Clinton can also quietly de-escalate the punitive aspects of the drug war. He may have signalled an intention to do this when he cut the personnel of the "drug czar" by two-thirds and then failed to appoint a new drug czar until the 99th day of his administration. Rumors abound that he plans to dismantle the worthless "Andean Strategy" by which we seek to disrupt the production of coca by Andean farmers.³¹ To the surprise of many, however, he submitted a drug budget that exceeded \$13 billion, the largest such budget ever submitted.³² Moreover, the allocation between law enforcement and treatment/education remained about the same as in previous budgets: 64% for law enforcement, 36% for treatment and education. Even among those who generally support the drug war, most would probably prefer that the allocations be reversed.³³ If there is a drug expert outside the bureaucracy who supports the present allocations, he or she has kept that support a secret. Clinton's inconsistent actions on the drug problem show that he has not yet reached any conclusions on major issues. Hopefully, when he does turn his attention to the matter, he will drastically de-escalate. If he does, he will be the first president in more than a generation who can truthfully claim to have brought crime rates sharply down.

29. Robert Pear, *Health Planners' Radical Idea: Same Coverage For All*, N.Y. TIMES, Apr. 13, 1993, at A18.

30. MATHEA FALCO, *THE MAKING OF A DRUG-FREE AMERICA: PROGRAMS THAT WORK* 111 (Times Books, 1992).

31. See Douglas Jehl, *U.S. is Cutting Aid to Latin Drug War*, N.Y. TIMES, Mar. 25, 1993, at A8. For a devastating critique of the Andean Strategy, see Perwe Andreas et al., *Dead End Drug Wars*, 85 FOREIGN POL'Y 113 (Winter 1991-92). In his testimony before the Judiciary Committee relating to his confirmation, however, new drug czar Lee P. Brown said that curtailing drug production "must be in integral part of what we do." Joseph B. Treaster, *Drug 'Czar' Nominee Would Review U.S. Strategy*, N.Y. TIMES, May 26, 1993, at D21.

32. Joseph B. Treaster, *Clinton Continues Old Drug Policies*, N.Y. TIMES, Apr. 12, 1993 at A1.

33. See *Mr. Clinton's Invisible Drug Policy*, N.Y. TIMES, Apr. 22, 1993, at A24; Joseph B. Treaster, *The 1992 Campaign; Candidates' Records; Four Years of Bush's Drug War: New Funds but an Old Strategy*, N.Y. TIMES, July 28, 1992, at 1. See generally, *Political Pharmacology: Thinking About Drugs*, DAEDALUS (Summer 1992).

In The Realm Of Political Reality

During the campaign, Clinton said he favored putting 100,000 new police on the street, sending nonviolent first offenders to "boot camp" rather than jail or prison, imposing a five-day waiting period on purchases of handguns, and banning assault rifles.³⁴

Calling for more cops is standard fare for any politician. Clinton, however, also allied himself with the concept of "community policing," which is little more than a new name for the old tradition of the "flatfoot" cop who walks a beat in a particular neighborhood, getting to know the residents and the problems of the neighborhood and developing a relationship of mutual support. The modern version sometimes includes neighborhood substations and police participation in neighborhood watch and other crime prevention programs. The idea that some cops should walk a beat rather than cruise in a car is a hot idea these days and has been adopted in many cities across America. Indeed, when crime rates dropped in many cities in 1992, it was often attributed to "community policing."³⁵ It seems likely that "community policing" can marginally reduce street crime, but it is a very expensive form of policing and shifts the focus from solving crimes to preventing them. It displaces emergency police services and detective and forensic work. Some crimes will be deterred while others may be encouraged. For example, sophisticated and indoor crime may flourish while street crime is suppressed. Still, the need for a visible police presence in high crime areas is clear. If community policing puts more police in such neighborhoods, it is a good idea. Increasing state and local police forces by 15% is another matter. It would involve an annual cost of \$5 billion directly and perhaps even more indirectly. Unless a large increase in police presence has only deterrent effects, substantial increases in arrests are likely to follow. There aren't enough jails, prosecutors, courts, judges, or prisons to handle the people who are arrested now. Another \$5 billion might be needed annually to augment the personnel and facilities for adjudicating and punishing the incremental arrestees produced by the new police. In any event, Clinton is not seeking to fund the proposal. His recent budget request for that purpose was limited to \$50 million for 1994, to be scaled up to \$300 million by 1997.³⁶

Rather than a large increase in police, Clinton should support expansion in the numbers and quality of probation and parole officers, at both the state and federal levels. With our jails and prisons already stuffed, we must increasingly

34. Mark Stencel, *Clinton's Pledges*, WASHINGTON POST, Jan. 20, 1993, at A19.

35. Another factor may be the reduction in the prices of illegal drugs, which correspondingly reduces the need of users to steal.

36. Suzanne Sataline, *Police Skeptical of Clinton Plan for More Officers*, HARTFORD COURANT, Mar. 4, 1993, at A12.

turn to probation, parole, and other alternatives to incarceration. Diversionary programs, including drug treatment, job training, and education, are far more likely to rehabilitate most offenders than sticking them in overcrowded, understaffed prisons. We should try to deal effectively and humanely with the people we are now arresting rather than trying to increase their numbers and dealing even less effectively and humanely with the lot.

Clinton should also urge the Congress to revive parole, which was eliminated under the guideline system. As Judges Jack Weinstein and Whitman Knapp, and other federal judges, have acknowledged, our present system of packing nonviolent drug dealers away for life or even a lengthy period of years, without possibility of parole, borders on insanity.³⁷ Whatever the future of the guidelines, parole, or an elaborate and unprecedented scheme of executive clemency, must be instituted, and soon. When that happens, we should have trained personnel available to provide real and effective assistance in the rehabilitation process.

Even trendier than community policing is federal and state gun control. The tide seems to have finally turned against the N.R.A. and the extreme views of some of those it represents. The people and their legislators are now, it seems, willing to compromise their "right to bear arms" in the interest of trying to get guns out of the hands of hoodlums and others who might commit crimes with them. For example, against the opposition of the N.R.A., Virginia recently decided to limit the purchase of handguns to one per month. Several states are banning assault rifles. The "Brady Bill," imposing a federally required waiting period on handgun purchases, is on the verge of enactment. Anyone who believes that such measures will substantially reduce violent crime, however, will be sorely disappointed.

There are more than 200 million guns in America, more guns than adults. Moreover, guns don't wear out. Even if all purchases of handguns by private citizens were outlawed, and the prohibition were enforced, as of today the glut of guns could remain for a century. Our inability to prohibit drugs should tell us something about our capacity to prohibit guns effectively. Guns can easily be smuggled and as easily manufactured in one's home as bathtub gin. As long as people feel threatened by violence, they will find a way to defend themselves. Those who think that guns provide some protection against other guns will get guns, legally or illegally. Criminals who find guns helpful in carrying out their criminality will find and carry guns. No amount of legislation will make it otherwise.

37. See Joseph B. Treaster, *2 Judges Decline Drug Cases, Protesting Sentencing Rules*, N.Y. TIMES, Apr. 17, 1993, at A1; Alan Abrahamson, *Irving Heard Flurry of Sentence Appeals as He Left Bench*, L.A. TIMES, Jan. 7, 1991 at B1; DOUGLAS N. HUSAK, *DRUGS AND RIGHTS* 58 (Cambridge University Press, 1992).

Many citizens apparently do not understand that, despite the N.R.A., the nation is already awash in unenforced gun control laws.³⁸ Every state, for example, makes it a felony for an unlicensed person to carry a concealed weapon. Many criminals who use a weapon to assault or threaten another have already committed the felony of carrying a concealed weapon before committing the assault. The notion that the use of guns in criminal activities can be significantly reduced by threatening greater punishment for using a gun, rather than some other weapon, seems naive. What the criminal cares about is succeeding at the criminal venture. If a gun will make it easier to rob a 7-11 than a knife will, the robber will use a gun, even if the potential penalty, if he is caught, is ten times what it would be if he used the knife. Guns are very useful to robbers. The average "take" of a robbery with a gun is three times what it is with any other weapon.³⁹ A gun is also useful in avoiding getting caught or killed during the robbery.

Clinton's proposed national ban on assault weapons is also little more than symbolic. "Assault weapon" is a vague term that generally refers to rifles that have plastic rather than wooden stocks, have the appearance of a military weapon, and a magazine capacity of 15 or more cartridges. They are also capable (as are semi-automatic pistols and other semi-automatic rifles) of being illegally altered to become automatics, that is, firing repeatedly when the trigger is depressed. Such weapons are indeed ugly and frightening in appearance, but they are rarely used by criminals to shoot people.⁴⁰ Ordinary handguns are far more useful in carrying out robberies and most murders. An assault weapon is clearly superior to a pistol only if one plans to engage in indiscriminate mass murder, and then only if it is converted to an automatic, which is already illegal. Other weapons, such as bombs or grenades, are usually better for mass murder in any event. Banning assault weapons will have no appreciable effect on crime rates.⁴¹

Clinton's support for "boot camps" for young nonviolent first offenders is certainly an improvement over present policies. Federal law would incarcerate an 18 year old, nonviolent first time drug courier for a mandatory ten year prison term for having 1.7 ounces of crack. Several states would give the same courier life without parole if he transferred 650 grams (a little over a pound) of cocaine. The key idea behind the "boot camps" is that young offenders need "discipline" to help them resist the temptations of crime and to deal effectively with others. No doubt that is true. But the young offender also needs an education, a job, an intact family providing guidance and support, a home

38. See James D. Wright, *Second Thoughts About Gun Control*, 91 PUB. INTEREST 23, 26-27 (Spring, 1988).

39. *Id.* at 30.

40. Gary Kleck, *Assault Weapons Aren't the Problem*, N.Y. TIMES, Sept. 1, 1992, at A17.

41. This is not to say they shouldn't be banned. See Daniel Abrams, *Ending the Other Arms Race: An Argument for a Ban on Assault Weapons*, 10 YALE L. & POL'Y REV. 488 (1992).

where he doesn't have to sleep in the bathtub to avoid being shot. The "boot camp" approach, or virtually any other alternative, is obviously less destructive, less criminogenic than putting the young offender in prison with hardened, vicious killers and rapists, but it is no panacea. If, as in the military, "boot camp" is the first step in training for a long term job or career, it is worth enthusiastic support. If it is a first step toward being returned to an environment of violence and hopelessness, it is not.

The "boot camp" alternative to prison is not new. It has been used in Georgia and Oklahoma for a decade. Its use is now spreading throughout the country. It is now being tried in about twenty-seven states and the federal government.⁴² There is as yet no clear evidence of its effectiveness. Those who complete the programs recidivate at a lower rate than those who don't, but that may merely reflect the fact that those who are able to succeed in the program are better equipped to succeed at life; it may not be attributable to the program itself. In any event, it is better than prison, both as a matter of social policy and economics.

Another alternative to imprisonment, closely monitored out-patient treatment programs for drug addicts, is certain to receive Clinton's support as well. Such a program has been run in Dade County, Florida since 1989, with the strong support of then State's Attorney, now Attorney General, Janet Reno. It is available to nonviolent first or second time offenders who are routed to "drug court" and given a short term-treatment program, involving daily urinalysis. Upon successful completion of this phase, they then usually move on to four months of counseling three times a week, and urinalysis on each visit. The third phase reduces the sessions to twice a week. Participants are at the same time encouraged and helped in getting jobs, education or job training. The program costs about \$500 to \$700 per year, what it costs to jail an offender for nine days. About 40% of the people in the year-long program complete it, and fewer than 10% of those have returned to the criminal justice system since the plan's inception.⁴³

Clinton's Long Term Anti-crime Strategy

We have not had a president that tried to attack crime by eradicating its roots since Lyndon Johnson. In the wake of John Kennedy's assassination, Johnson appointed a National Crime Commission to, among other things, study the causes of crime and to recommend how to reduce it. The Commission's

42. David Lamb, *Last Shot to Salvage Their Lives: First-Time, Nonviolent Offenders Get a Chance at Redemption by Going Through Paramilitary Boot Camps. Clinton has Embraced 'Shock Incarceration,' but its Effectiveness is Unclear*, L.A. TIMES, Jan. 17, 1993, at A1.

43. Ronald Smothers, *Miami Tries Treatment, not Jail, in Drug Cases*, N.Y. TIMES, Feb. 19, 1993, at A10.

report, issued in 1967, could have been written today, nearly thirty years later. It noted that a vastly disproportionate amount of crime is committed by boys and young men and that most crimes are committed in the cities; that our traditional reliance upon parental authority to instill community values and to teach youngsters how to fit themselves "into society in an orderly and peaceful manner" no longer accords with reality. Such parental authority and influence frequently does not exist. Our social institutions, predicated upon their existence, provide opportunities for success but do not instill the fundamental attitudes that would make youngsters appreciate the opportunities and take advantage of them.⁴⁴ Moreover,

Poverty and racial discrimination, bad housing and commercial exploitation, the enormous gap between American ideals and American achievements, and the many distressing consequences and implications of these conditions . . . [have had] effects on young people [that] have been greatly aggravated by the technological revolution . . . which has greatly reduced the market for unskilled labor. A job, earning one's own living, is probably the most important factor in making a person independent and making him responsible. Today education is a prerequisite for all but the most menial jobs; a great deal of education is a prerequisite for really promising ones.

. . . . The conditions of life[in the slums], economic and social, conspire to make crime not only easy to engage in but easy to invent justification for. . . . The slums, with all their squalor and turbulence, have more and more become ghettos, neighborhoods in which racial minorities are sequestered with little chance of escape. People who, though declared by the law to be equal, are prevented by society from improving their circumstances . . . are people with extraordinary strains on their respect for the law and society.⁴⁵

Johnson did not wait for the findings of his Commission. He launched his "War on Poverty" in 1964. At the same time, he began an unprecedented program to strengthen civil rights laws and to eliminate racism in America. His programs were barely set in motion, however, when they were stifled by the unrest provoked by the Vietnam War. Johnson returned to Texas and Richard Nixon replaced the "War on Poverty" with a "War on Crime".

Bill Clinton would clearly like to revive the approaches of Kennedy and Johnson and attack the roots of crime. He rightly believes that there is no

44. U.S. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY: A REPORT* 6 (1967).

45. *Id.* at 7.

prospect of long term success in dealing with crime if joblessness and social injustice persist at their present levels. There can be no peace in our cities when 60 to 70% of the young men in large areas in the cities are neither lawfully employed nor in school, or when young African-American men, who make up only 2 to 3% of the population, comprise nearly half of our prison and jail inmates, or when there are more African-American men in jail than in college.

Clinton's efforts to expand head start programs, to reform and extend health care, to include treatment for both drug abuse and mental illness in guaranteed health care, to implement his welfare and tax reforms, and to improve education, and especially to equalize educational opportunity, can collectively turn the crime problem in America around. Whether, in view of the economic straits the nation is in, the resources will be found to fund these programs is the crucial question. The lives of some and the safety of many of us depend upon the answer.