GETTING TOUGH ON CRIME: THE HISTORY AND POLITICAL CONTEXT OF SENTENCING REFORM DEVELOPMENTS LEADING TO THE PASSAGE OF THE 1994 CRIME ACT

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INTRODUCTION

The concept of "truth in sentencing" is embedded in the Violent Crime Control and Law Enforcement Act of 1994 through provisions for Violent Offender Incarceration and Truth-in-Sentencing incentive grants (under Title II, Subtitle A) that provide funds for expansion of state prison bed capacity. The roots of this concept may be traced back in time to two fairly distinct streams of American criminal justice reform which were born more than two decades ago.

As a key concept in the effort to improve U.S. sentencing policies by providing clarity, consistency, and certainty in the duration of prison terms set by judges and served by offenders, the notion of "truth in sentencing" can be said to have sprung from the determinate sentencing reforms begun in the early 1970s. As a punitive crime-control strategy, the foundation of "truth in sentencing" was primarily built within the victims' rights movement which began to emerge across the nation during the same time period.

Sentencing and correctional patterns have greatly shifted since the 1960s. Legislative sentencing reforms enacted in many states in the 1970s brought new restrictions on parole release (abolishing parole outright in a few states) and set the stage for various mechanisms which were introduced over the next two decades to guide, limit, or prevent the free exercise of judicial discretion. Before these reforms, if a judge chose to reject the probation option in a particular case, he or she set a prison term (or minimum and maximum terms with a broad indeterminate range) within the durational maxima set in penal law. But the actual release of a prisoner was governed by an executive-branch parole board.

There were a few exceptions to the rules of the indeterminate sentencing system. A few states, particularly in the South, had "habitual criminal" laws providing for fixed prison terms -- very long ones -- for recidivists. And some states required mandatory prison sentences for some types of offenses (usually involving violence), but by 1970 mandatory sentencing had largely fallen from favor.

A liberalization of laws and of attitudes toward punishment of offenders during the 1960s had led to a decline in the numbers of those imprisoned -- reaching a low of 188,000 in 1969 -- and this trend continued until 1973 (Gettinger 1976). But by the mid-1960s crime rates began to rise. UCR data on violent crimes reported to the police per 100,000 U.S. inhabitants rose from 200.2 in 1965 to 363.5; by 1975 the violent crime rate had reached 487.8 per 100,000 (BJA 1996). While crime policy experts debated about

the causes[1] of the rising crime rate, as well as about what needed to be done to address it, the general climate of social ferment in the 1960s led many Americans to a high level of anxiety about these trends.

The victims' rights movement was seeded in the fertile ground of a growing conviction among many conservative Americans that a long series of U.S. Supreme Court decisions in the 1950s and 60s which had safeguarded and expanded the rights of the accused was proof that the criminal justice system had become dominated by the defense bar, and by a handful of liberal interest groups. This suspicion was greatly exacerbated by the death penalty debates of the 1960s and 1970s, and would eventually lead to defeat -- in 1986 -- of three anti-death penalty Justices of the California Supreme Court.

At the same time, a new degree of "rights consciousness" had risen in the wake of the civil rights movement and spawned a new effort to win social and economic equality for women. This mindset, when merged with concerns about crime, became a potent force. The women's movement moved briskly to challenge the treatment of rape victims by police and in the courts, as well as to combat the sex role stereotypes which too often resulted in "blaming the victim" for the crime. In the beginning, victims' movement voices were "frequently feminine and their tones were more of anger than of fear," according the Shirley Abrahamson, the Chief Justice of the Wisconsin Supreme Court, who had chronicled the rise of this reform effort (Abrahamson 1985, p. 524). This base of incensed feminists was augmented by advocates for the elderly, whose heightened sense of vulnerability and fear of street crime led many to near immobility. And, as Abrahamson pointed out, these constituencies formed a base for a "rights" movement that could more fully engage middle-class Americans -- as contrasted with poor minorities and their sympathizers.

THE 1970S: FROM REHABILITATION TO CRIME CONTROL

At the start of the 1970s prison population levels were low, penal philosophy was still dominated by the rehabilitationist regime, and sentencing policy was, accordingly, wed to indeterminacy. By 1971 most mandatory sentencing provisions then contained in federal law were repealed. The common criticisms which had been cast against these measures by social science researchers and practitioners alike focused on the lack evidence of deterrent effect or of cost-effectiveness, and concerns about injustices too often resulting as they were applied in individual cases (Tonry 1996). The Attica prison

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riot in 1971 had thrown a harsh spotlight on the American prison system, and this led many to question basic assumptions about the fundamental purposes of incarceration, and the role of the prison in society.

In 1974 things began to shift rapidly within the crime control establishment. The FBI announced a spike in reported crime during the first quarter of that year, and then-Attorney General William Saxbe began to speak out sharply against lenient judges, against the growing prison reform movement, and against the concept of rehabilitation (Serrill 1975). Robert Martinson, a sociologist at New York's City College, had completed his survey of data from hundreds of prisoner rehabilitation programs operated over two decades and had written an article which appeared in the Spring 1974 edition of the *Public Interest*, reporting that with few exceptions he found no post-program effect on the recidivism of participants.

Martinson's pronouncements clearly fell on eager ears. His report was embraced by groups as disparate as the International Association of Chiefs of Police and the American Friends Service Committee (Serrill 1975, p. 3). Various constituencies then calling for sentencing reforms all tended to rely on his findings (quickly enshrined in the catch-phrase "Nothing Works") and a confluence of their disparate interests set the concept of determinate sentencing in motion across the nation.

From the liberal side, many veterans of the civil rights movement (some of whom had become engaged in the push for prisoners' rights from both sides of the bars) were primarily concerned with racial and class disparity, and had already denounced the system of indeterminate sentencing and parole release as biased and oppressive (AFSC 1971). Many critics were dismayed by evidence of indefensible and severe disparity -- and outright abuse of discretion. Concern for procedural fairness had already led a prominent federal judge to call for development of sentencing standards and appellate review of sentencing decisions (Frankel 1972). Others were primarily motivated by the belief that most criminals were in fact simply "societal victims" of an inequitable distribution of wealth and opportunity, and did not deserve the severity of punishment meted out under the existing vague and arbitrary regime.

Harvard's conservative crime-control advocate, James Q. Wilson, counseled liberals to turn from their concerns about the "root causes of crime" -- since rehabilitation did not "work" in any case. He urged that deterrence be tried instead. In *Thinking About Crime*, Wilson advocated definite terms of incarceration for *most* offenders, even if this meant short periods in jail (even just during weekends or evenings for some) to make them suffer the pain of punishment. For those not deterred by the certain prospect of jail,

Wilson argued that under his plan -- at the least -- they would be incapacitated for some period (Wilson 1975).

David Fogel, a former corrections commissioner in Minnesota who was then heading up the Illinois Law Enforcement Commission, proposed simply eliminating parole boards -- along with parole supervision -- and making sentences "short, flat, and uniform." Fogel's book, *We Are the Living Proof: The Justice Model for Corrections*, described a "crazy-quilt sentencing system" of judicial disparity and parole board decisions set by "whim, caprice, and arbitrariness" (Fogel 1975, pp. 193-197). Like Wilson, Fogel called for a system of flat-time sentences, but insisted these be imposed only after a finding by a judge that a defendant presented a threat of "clear and present danger." Even then, a prison sentence would be mitigated by liberal good-time allowances.

While his proposal was vulnerable to criticism from those who rejected the notion that dangerousness could be predicted, or that judges should be entrusted to do this, or that the resulting sentencing decisions would be just or uniform -- it appears that at least some aspects of Fogel's proposals were embraced in Maine. In June of 1975 the state became the first to abolish indeterminate sentences and parole release in favor of relatively short flat terms. Judges were given almost unlimited sentencing authority to impose any fixed sentence within broad statutory limits which contained no presumptive sentence terms. A good-time provision was installed which allowed up to six days credit per month. To provide a backstop against total judicial discretion, sentences over one year's duration could be sent back for resentencing by petition of the corrections agency (Shane-DuBow 1985).

By the following year the reform pot was boiling over. Prison abolitionists on the left -- Jessica Mitford, Jerry Miller, and groups like the National Council on Crime and Delinquency and the American Civil Liberties Union -- were demanding a moratorium on new prison construction, and diversion of tens of thousands of offenders into community corrections programs. University of Chicago Law School Dean Norval Morris was calling for narrowing the indeterminate sentence ranges which judges could impose, and retaining parole -- but having reliable release dates set early in a prisoner's term (Morris 1974).

Andrew von Hirsch, published *Doing Justice*, a book-length report written in collaboration with a high-powered study commission of prominent experts and scholars (David Rothman, Willard Gaylin, and others). Arguing the lack of any coherent philosophical or moral justification for the existing system, von Hirsch laid out a

rationale for a more principled system grounded in the theory which came to be known as "Just Deserts." He advocated dispensing with both indeterminate sentences and discretionary parole release, and replacing them with a presumptive sentencing structure that could shape and constrain judicial practice to ensure fair and proportional punishment based on the severity of offenses and the culpability of offenders. Such a system would use fines and community-based sanctions for most offenders, reserving imprisonment only for those convicted of serious crimes, who therefore deserved the most severe punishment (von Hirsch 1976).

While these debates raged on, prison population levels jumped skyward, leading to severe levels of overcrowding in many prisons across the country (Gettinger 1976). A quarter of a million prisoners were held in state and federal institutions at the beginning of 1976, with every state but California reporting increases in 1975. (California's prison population decrease was due to introduction of new parole guidelines that year.) High unemployment, soaring crime rates, and improved law enforcement methods spawned by increased federal funding through the LEAA were probably all contributing to the problem, but the cresting of the "baby boom" into the high-crime age cohort (17-29) was held to be the primary cause by most experts -- who anticipated that the prison population crisis would extend to 1985, when it would receive the predictable demographic relief.

But tougher attitudes toward the treatment of criminals were also being cited by some experts as exacerbating the problem. In Harvard criminologist Lloyd Ohlin's opinion, "What we're seeing is a massive counterattack [against community corrections programs]" (Gettinger 1976, p. 9). Many state parole boards were tightening their discretion, especially in Southern states which were also experiencing the most severe overcrowding. The overcrowding problem sparked a boom in prison construction which has continued to the present day -- though many critics were already predicting that correctional systems were not likely to be able to build their way out of the problem. William Nagle, then serving as director of the American Foundation's Institute of Corrections, predicted that, "If we build more prisons, we don't turn off the tap -- we just build bigger buckets to catch the drippings" (Gettinger 1976, p. 20).

It was this same year that the California legislature enacted a far-reaching determinate sentencing law. Repudiating the state's famed rehabilitationist penal philosophy by declaring that the purpose of prison was to punish offenders, legislators abolished parole release and replaced indeterminate ranges (which had been extremely broad -- e.g., six months to fourteen years; one year to life) with a schedule of presumptive prison terms arrayed in four offense categories: 16 months, two years, or

three years; two, three, or four years; three, four, or five years; five, six, or seven years. Sentence enhancements were included for cases involving weapons or serious injuries, or where the offender had a prior record of violent crime.

Judges would be required to pick the middle term unless mitigating or aggravating circumstances were proved, but they also would remain free in most cases to suspend any prison sentence and impose probation. Those convicted of first degree murder and kidnapping for ransom cases would receive life sentences, and would still be subject to a parole system. For murder involving torture or kidnapping where the victim was harmed there would be no parole. For those sent to prison, a "good-time" provision could cut up to four months off the sentence for each eight month period served. At release, an offender received one year of community supervision, with a cap of six months set on the time to be served if returned on a revocation.

The determinate sentence bill had won very broad support, from the California Peace Officers Association to the San Francisco-based Prisoners Union. Virtually no one defended the old indeterminate system. But at both ends of the political spectrum there were some who were opposed the bill because the they were not satisfied with the length of the scheduled prison terms: Los Angeles Police Chief Ed Davis declared them too short, while NCCD and the AFSC complained they were too long -- especially for women offenders, who were spending less time in prison than men under the old system. Some also warned that the reform would increase the overall number of offenders sentenced to prison (Serrill 1976).

In the wake of California's turn to determinate sentencing many other state legislatures began work on reforms of their own. Maine and Indiana had already enacted new sentencing laws. Bills were introduced but failed in Illinois and Minnesota, and determinate sentencing reform proposals were under debate in seven more states (Gettinger 1977). A primary attraction of determinate sentencing for many legislators was that to the extent that sentence lengths would be closely regulated, future correctional resource needs could be accurately predicted. And where the "rules of the game" (presumptions, enhancements, and good-time discounts) could be understood by both prisoners and the public at large, all would then know "the truth" about the sentences that were imposed and how much time would be served by prisoners.

It was around this time that experiments with voluntary sentencing "guidelines" were first taken up in various jurisdictions (e.g., Denver, Newark, Chicago). These sentencing schemes were "descriptive," designed by judicial initiative for the most part, to reflect their current sentencing practices. Voluntary guidelines were later embraced in

many states -- e.g., Maryland, Florida, Michigan, Utah, Delaware, and Wisconsin -- (Frase 1995) but evaluations have since demonstrated that they had little effect on actual sentencing practices. This is not a surprising finding since -- for example -- the Wisconsin system was expressly designed so that the guidelines would be adjusted when necessary to match judicial shifts in sentencing practices (Greene 1996).

By the beginning of 1977 the U.S. prison population reached 283,000. The growth in 1976 had been the largest one-year increase to date. Lloyd Ohlin attributed this record to "more extensive use of confinement... trying to achieve deterrent effects through longer sentencing." To cope, prison administrators had begun to use converted hospitals, trailers, warehouses, and tents to house the overflow of prisoners while new facilities were under construction. Deteriorating facility conditions fueled by overcrowding were increasingly giving rise to lawsuits (Wilson 1977).

In California the year began with a drum beat sounded by conservatives for changes to the new sentencing law. Amending legislation had been expected before the law was to take effect to clear up some technical snarls -- but the "clean-up" bills soon became vehicles for law enforcement groups to press for tougher sentences, and sure enough, the "base terms" were promptly raised (Gettinger 1979).

This brought one aspect of the policy debate about presumptive sentencing to the fore: the issue of who might best set these presumptions. California's experience showed that legislators might have great difficulty codifying presumptive prison terms which were shorter than the long sentences which were often loudly announced, though completely fictional, under the indeterminate system. Given the increasing degree of heat and light generated by criminal justice matters in the highly political legislative arena, the notion of an appointed (and at least partially insulated) sentencing commission emerged as the preferred option for states contemplating development of new sentencing systems.

Minnesota had begun its move toward sentencing reform with a determinate sentencing bill based on Fogel's "justice model" which passed the legislature but was vetoed by the Governor in 1975. In 1977 a sentencing commission was proposed, and a bill establishing one passed in the House. Around the same time, the Minnesota parole board, with the support of Corrections Commissioner Kenneth Schoen, embraced the concept of guidelines and began experimental use of a draft set. The idea of parole guidelines stemmed in part from U. S. Supreme Court decisions in the early 1970s which ruled that some standards for due process in parole must be met -- at the least -- when revocation decisions were made. Abolition of parole in a few states, along with the

debates about it in others, spurred parole board members and staff to begin creating administrative rules for the discharge of their release function.

The new procedures ranged from early determination of release dates firm enough so that -- absent behavioral problems -- prisoners could rely on them; clear criteria for release decisions to encourage consistency; and written determinations so that refusal of parole could be appealed by inmates and reviewed by higher authorities. New federal parole guidelines legislated in 1976 folded a risk-prediction score into a release matrix which also weighed the seriousness of the conviction charge, with institutional behavior playing a lesser role. With the incentive of LEAA funding, this model was taken up in many states.

While determinate sentencing and sentencing guidelines were being hotly debated in some states, many states were simply passing mandatory sentence laws. And in Illinois a sentencing reform bill passed in 1978 contained elements of both. Governor James R. Thompson took hold of a Fogel-inspired bill then under consideration and gave it a very conservative spin by proposing a new "Class X" for some felonies -- e.g., armed violence, rape, and major narcotics offenses. Class X offenders would receive very harsh prison terms, as would those with prior convictions. After a fight between Thompson and legislative leaders, a compromise was hatched with a determinate sentencing system featuring broader statutory ranges for more serious felonies; doubled ranges for certain aggravating factors; and "natural life" for some "habitual criminals." Probation was denied for Class X convicts, for whom the mandatory minimum sentence would be at least six years.

Mandatory sentencing policies had been largely discredited as the 70s began, yet between 1975 and 1985 every state passed at least one mandatory sentencing law (Tonry 1996). Most of these provisions affected those convicted for serious violent crimes, drug and weapons offenses, or offenders with prior felony records. New York state had passed stiff mandatory drug laws in 1973, along with the "second felony offender law," which denied probation to all but first felony offenders -- and if the first offenses was a violent felony, a mandatory sentence was still required. The California legislature began to add mandatory minimums to its presumptive sentencing scheme as soon as they set it in place. Mandatory prison was required in gun cases in Massachusetts starting in 1974, and in Michigan in 1977 (though subsequent research showed that these laws were less than effective due to plea bargaining by prosecutors and judicial efforts to skirt them through various creative loopholes).

The relentless push for mandatory sentences which began in the late 1970s was evidence that the victims' movement was coming into its own. In 1975 a Victims Committee was created within the American Bar Association's Criminal Justice Section. That same year Frank Carrington, then the executive director of Americans for Effective Law Enforcement, published *The Victims*, a book which decried the treatment of crime victims in American jurisprudence. AELE had been founded in 1966 by Northwestern University law professors Fred E. Inbau and James R. Thompson (later the Governor of Illinois, and sponsor of the "Class X" legislation), along with former Illinois Governor Richard B. Ogilvie, and O. W. Wilson -- then Superintendent of Police in Chicago.

According to Carrington, the AELE was formed to support law enforcement, and to provide an effective counter-voice to the American Civil Liberties Union on behalf of the law-abiding citizen. It carried this effort forward by filing *amicus* briefs to defend the legal authority of the police in cases before the U.S. Supreme Court, as well as by serving as a clearinghouse for lawyers and police departments involved in defending police officers in civil suits filed against them. Under Carrington's leadership the AELE was taking up legal representation for victims of crime (Carrington 1975).

In *The Victims*, Carrington outlined his thesis that the "permissive" Warren Court and the prisoners' rights movement had weakened law enforcement and *caused* the increase in crime begun in the 1960s. He called for a new "victim consciousness" which would reorient the criminal justice system toward the rights of crime victims. A victim-oriented approach would eschew leniency and provide for mandatory minimum fixed prison sentences in all but minor offenses. Probation might be granted by the court only after the minimum sentence was served (provided fixed statutory criteria were met) foreclosing any role for a parole board (Carrington 1975).

The leadership ranks in the many grass-roots victims' rights advocacy groups which sprang up during this period were filled by crime victim/survivors, and by the bereaved relatives of deceased crime victims such as Robert and Charlotte Hullinger of Parents of Murdered Children, and Candy Lightner of Mothers Against Drunk Driving, who found a measure of relief from their personal grief through activism. In 1976 the National Organization for Victim Assistance (NOVA) was formed to provide support and coordination of victims' rights advocacy efforts at the national level. In 1977 the California District Attorneys Association spurred declaration of that state's first Victims' Rights Week.

By 1979 prison growth had slowed somewhat, but the litigation efforts spurred by overcrowding had brought 17 states under some form of court order to find relief. Many

prisoners remained backed-up in local jails after conviction, held there waiting for space to open up for them in state facilities. Some parole boards had begun to move prisoners out of confinement more briskly; pre-release arrangements had already moved many of these back to their communities ahead of their actual parole dates.

THE 1980S: POLITICIZATION OF SENTENCING POLICY AND THE MATURING OF THE VICTIMS' RIGHTS MOVEMENT.

While crime control had clearly emerged as a political issue during the 1970s, during the 1980s the national political discourse focused increasingly on a perceived need to "get tough" on crime. Between April 1979 and April 1980, 18 states passed mandatory minimum sentencing laws -- principally for repeat offenders, or for offenses involving guns (Krajick 1981).

Prison populations soared again in the 1980s, causing an even more severe crisis of overcrowding by the end of the decade. Many correctional systems were forced to increase "back-end" overcrowding relief measures. Population caps and emergency release provisions become common, some mandated by federal court action; some enacted by state legislatures. In some states these produced dramatic reductions in the proportion of time actually served of the sentence terms imposed by judges.

By 1981, in order to ease overcrowding in their prisons state legislators in Michigan and Iowa had authorized reductions in previously imposed state prison sentences when overcrowding reached "emergency" proportions. Early releases would be triggered whenever a pre-determined prison population capacity level was exceeded for a pre-determined period of time -- e.g., if the population exceeded 2,650 for 45 consecutive days in Iowa. Michigan's law contained a 90-day roll-back provision which would serve to make hundreds of prisoners parole-eligible sooner. Michigan-style emergency release mechanisms were highly controversial, but they would be replicated in many states and would come to play a major role in spurring calls for "truth in sentencing" because they served to further broaden the gap between the length of the prison terms imposed by judges and the actual time served in prison by offenders.

Apparently it was a similar problem which caused David Jones, then director of North Carolina's Criminal Justice Analysis Center to apply the term "truth in sentencing" in describing the need to narrow this gap. A 1987 report drafted by Jones, and entitled "Truth in Sentencing," discussed problems with the Fair Sentencing Act -- a determinate sentencing reform measure which had gone into effect in 1981.

The FSA had set presumptive sentences and ended discretionary parole, but it also provided for "day-for-day" good time credits, along with a "mandatory parole" release to supervision for the final 90 days of the sentence. Due to prison overcrowding, an "emergency gain time," discount was later instituted -- which (since overcrowding proved to be a chronic problem) was applied to most prisoners. The portion of the sentence actually served had shrunk over time. In response, judges and prosecutors had increasingly chosen sentences above the statutory presumptions. This practice increased from 19 percent of sentences in 1982 to 46 percent in 1986, further fueling the overcrowding problem. The "Truth in Sentencing" report contained a recommendation to eliminate the good time provision, and revise the sentencing presumptions so they would closely reflect the time-served patterns. This would be termed an "active" prison sentence -- to which a much longer period of "mandatory" parole supervision would be imposed *after* release from prison.

By 1982 crime rates were falling but the nation's prison population growth rate was reaching astonishing proportions. The FBI index crime rate had began to decline in the early 1980s. This trend continued until 1984, when it had fallen to 5,031.3 per 100,000 Americans -- from the historic high in 1980 of 5,950 (BJS Sourcebook 1997). But the increase in prisoners in 1982 had set a new record which was, "Fantastic, enormous, terrifying," according to Norval Morris (Gettinger 1983, p. 6). Most experts were scrambling to discover plausible explanations for the prison population boom. Carnegie Mellon Professor Alfred Blumstein had begun to doubt that demographics alone could explain it, and he joined others in the belief that the toughening of attitudes about offenders was a major contributing factor (Gettinger 1983, p. 9).

Several states were showing increases in the number of offenders incarcerated for drunk driving -- much of which was probably spurred by the efforts of MADD and other victims' rights advocacy groups. Parole rates were declining in some states, though in others parole release was seen an important tool for population control. Longer sentences were certainly a factor, and average time served had gone up in many states. The state of Michigan stood in sharp relief against this trend. The "emergency relief law" created by the legislature the previous year had been triggered, and the state's prison population fell by 2.8 percent (Gettinger 1983, p. 8). California passed a new "incentive good time" law which allowed prisoners who took up a work assignment or enrolled in a school program to cut their determinate sentences by half. Illinois discovered "meritorious good time." More states legislated population caps, while newspapers in Iowa began to publish a

"count-down" of the days before that state's emergency law might force a release of prisoners to the streets (Gettinger 1983, p. 11).

The experience throughout the 1980s with sentencing guidelines was mixed. Minnesota's guidelines commission completed its drafting work and the country's first set of sentencing guidelines took effect in May of 1980. Their presumptive sentences were structured within a "grid" system -- with offenses scaled on the basis of severity along one axis, and prior record scored for seriousness along the other.

The Minnesota guidelines were carefully crafted to reflect the level of correctional resources the state already had at its disposal. A prison population impact model was used by the drafters to assure that the overall population level would remain stable. Under the "Just Deserts" philosophy chosen by the commission, serious violent offenders would serve the longest prison terms, while most property offenders who were imprisoned under the indeterminate system would now receive probation, and be retained within the state's community corrections system. By the end of 1980 the state had experienced a seven percent drop in its prison population -- both due to the effect of the new guidelines, and because the parole board had adopted these same standards for its release decisions in pre-guidelines cases.

The sentencing guidelines idea spread during the 1980s through developments in several states, and by its introduction, through federal legislation in 1984, into the federal court system. Pennsylvania adopted guidelines in 1982 which differed in several ways from those in Minnesota. The legislature did not intend them to take tight control of prison population levels. The presumptive sentence ranges in Pennsylvania's guidelines were relatively broad, and parole release was retained with the guidelines governing the setting of a *minimum* sentence. Washington state's guidelines, introduced in 1984, were more tuned to capacity issues than Pennsylvania's, and also introduced upper limits on probation-revocation sanctions.

Oregon's sentencing guidelines system was crafted during the late 1980s (they became effective in 1989) and its drafters had the advantage of the considerable body of experience with guidelines in Minnesota by that time to inform them about the fine points and pitfalls of guideline structures. The restraints of correctional capacity were taken very seriously in Oregon, as was the desire of policymakers to assure adequate prison space to incarcerate serious violent criminals. For these reasons the guidelines were structured so that most non-violent property and drug offenders (with the exception of major drug traffickers) would be sentenced to probation -- under a strict penalty-unit system involving either short terms of jail (or other custodial punishments), or enrollment

in treatment programs for chemical dependency or "anger management." Where probation was allowed, Judges remained free to combine these two sentencing strategies, so long as they did not violate the penalty-unit limits.

Implementation of Oregon's guideline system was relatively smooth and the monitoring system maintained by the Oregon Criminal Justice Council produced data which indicated that judicial compliance was high, and that sentencing disparity had been reduced. Until 1994 -- when long mandatory prison terms for very serious violent crimes were enacted (through a ballot measure) to take the place of the guideline's presumptive sentencing standards for these offenses -- Oregon citizens enjoyed stability in both crime rates and prison population levels.

The federal sentencing guidelines were another matter. Termed by University of Minnesota Law Professor Michael Tonry as "the most controversial and disliked sentencing reform initiative in U.S. history," the sentencing structure introduced in 1987 was far more complex, and technically cumbersome, than any created at the state level (Tonry 1996, p. 72). The federal commission had constructed 43 levels of crime seriousness, compared to ten in Minnesota, fourteen in Washington, and eleven in Oregon. Moreover, the guidelines embodied a harsh sentencing philosophy that sought to substantially extend the use of imprisonment (von Hirsch and Greene 1993). This represented a radical departure from the sentencing patterns of federal judges before the reform. The federal guidelines were met with stiff resistance by many judges, who twisted and turned to find ways to avoid compliance. The result has been documented by the U.S. General Accounting Office, which concluded in a 1992 report that it was not possible to determine whether the system had reduced disparity (GAO 1992).

The widely publicized "Crack Crisis" in the mid-1980s produced another proliferation of mandatory minimum sentencing laws, despite continued skepticism among most social science researchers. Florida enacted seven new mandatory sentencing laws between 1988 and 1990 (Austin 1991). Arrests and prosecutions for drug offenses shot up during this period, and other data demonstrated the overall effects of the "War on Drugs" during the 1980s. From 1986 to 1991 the number of adults sentenced to prison for drug offenses more than tripled (BJS 1992).

In the 1980s the effort to win victims' rights obtained a powerful boost when -- in California -- it was married to a vigorously conservative social movement which had seized upon the initiative process to reform broad portions of the state's constitutional and statutory laws. The passage of Proposition 13 to revamp the state's property-tax structure in 1978 had demonstrated how an explosive political movement could be built around an

emotionally potent issue , and -- given both money and savvy political organizing skills -- could push its interests right past reluctant legislators. In the process of making the deep local budgets cuts which resulted from Proposition 13, many probation and community corrections programs were axed (Gettinger 1983, p. 48).

Throughout the 1970s a broad national political support base of politicians and criminal justice professionals had been built to advocate for victims' rights. This network of organizations and individuals was spear-headed by California's pro-prosecution politicians and activists: Ronald Reagan, George Deukmejian, Pete Wilson, Edwin Meese III, S.I. Hayakawa, Lois Haight Harrington, and H. L. Richardson. By the early 1980s, this group had enlisted Paul Gann, the sponsor (with Howard Jarvis) of the successful "Prop 13" tax-reform campaign. In 1981 Gann warned California legislators that if several pending victims' rights bills were not passed, their objectives would be achieved directly through the ballot box. In August of that year the Citizen's Committee to Stop Crime, chaired by Gann, kicked off its initiative campaign for Proposition 8 (Kelso and Bass 1992, p. 863).

The specific impetus for Proposition 8 was the series of California Supreme Court decisions spanning a fifteen year period that expanded the rights of criminal defendants under the California state constitution, through the legal doctrine of "adequate and independent state grounds" (Kelso and Bass 1992, p. 848). Termed a "Victim's Bill of Rights," Proposition 8 was passed by California voters in June 1982 with a vote of 54 percent to 46 percent (Corrections Magazine 1982). This measure created a web of new legal rights for crime victims; it provided curbs on plea bargaining, it set tougher bail procedures; and it increased sentencing enhancements for prior felony convictions.

Recruited by Edwin L. Meese to chair a campaign issues committee on victims, Frank Carrington had become a prominent advisor to the Reagan campaign on criminal justice issues. After Ronald Reagan was elected he was appointed to serve on both the Attorney General's Task Force on Violent Crime, and the President's Task Force on Victims of Crime.

The Reagan administration's violent crime task force was chaired by Attorney General William French Smith, who instructed the members not to concern themselves about the "so-called root causes of crime" (Carrington 1983, p. 48). This task force proposed development of a comprehensive program of narcotics control which would increase source control and interdiction efforts, as well as increase prosecution of drug related cases. It recommended replacing parole with mandatory sentences. To accommodate the resulting increased prison population, the task force proposed making

abandoned military bases and other unused federal property available to the states for conversion to correctional facilities.

A second Reagan administration task force on victims of crime was chaired by Lois Haight Harrington, a former Alameda County Prosecutor. The victims task force held public hearings around the nation. Its final report, released in April 1982, recommended 60 specific reforms which included denial of bail to "dangerous offenders"; abolition of the exclusionary rule; abolition of parole; and victim "input" at every stage of criminal proceedings. Recommendations from both of these advisory groups were packaged by administration officials when the White House submitted its anti-crime program to Congress in 1983, and Harrington was appointed to the post of Assistant Attorney General to oversee OJARS in order to implement these reforms.

In 1983 the Heritage Foundation published a book-length "Critical Issues" policy paper, *Crime and Justice: A Conservative Strategy*. The author was Frank Carrington, who was then serving as executive director of the Virginia-based Victims' Assistance Legal Organization (VALOR), and as chair of the Victims' Committee of the American Bar Association.

The Heritage Foundation had been founded in 1973 by Paul Weyrich of the Free Congress Foundation with seed money from brewery owner Joseph Coors (PFAW 1996). In 1981 Heritage published *Mandate for Leadership*, a policy guidebook intended to serve as a blueprint for the new Reagan administration. Since that time it has maintained a position as the leading conservative think tank in America. The current list of resident scholars at Heritage includes many former Reagan/Bush officials, including two with impeccably conservative credentials on criminal justice issues: former Attorney General Edwin Meese, and former Education Secretary and "Drug Tsar" William Bennett. Heritage "Issues Briefs" and "State Backgrounder" papers on criminal justice matters have continued to be highly influential in shaping federal crime-control legislation.

In his introduction to the 1983 Heritage publication, *Crime and Justice,* Carrington complained that "conservatives seem to cede the issue of crime to the left -- to the American Civil Liberties Union, the National Lawyers Guild, and various other organizations whose stated purposes are to neutralize law enforcement and legitimate intelligence gathering" (Carrington 1983, p. xii). Pointing to indications in opinion polls that the fear of crime had risen to the top of the public's list of domestic concerns, he argued that liberal philosophy about crime and justice lacked any real base of popular support.

The conservative agenda for criminal justice reform proposed by Carrington for the Heritage Foundation covered a broad list of substantive issues including bail reform; the exclusionary rule; *habeas corpus*; capital punishment; the insanity defense; and prisoners' rights. Regarding sentencing and the role of imprisonment, Carrington endorsed determinate sentencing and abolition of parole, but complained that liberal proponents of these measures wanted sentences to be "as short as possible." He urged conservatives to strive to ensure that "the safety of society is predominant, and the convenience of the criminal, subordinate." (Carrington 1983, p. 32). His Heritage issues paper called for increasing sentences for drug trafficking, for lowering the age limit for charging juveniles as adults, and for increasing penalties for juveniles convicted of violent crimes.

In 1984, Morgan O. Reynolds -- currently teaching economics at Texas A & M University and serving as director of the criminal justice department at the National Center for Policy Analysis, a public policy think tank located in Texas which pushes for privatization of the criminal justice system, from prosecution to prisons -- authored an article on criminal justice policy which would later reappear in a book circulated to members of Congress during the 1994 crime bill debates. "How to Reduce Crime," was first published in *The Freeman*, a magazine published by the Foundation for Economic Education in Irvington-on-Hudson, New York. The FEE had been founded in 1946 by Leonard Read to publish books and tracts on libertarian philosophy and economics then associated with the Austrian economic theorists Friedrich A. von Hayek and Ludwig von Mises (Diamond 1995, p. 27).

In his *Freeman* article Reynolds argued that the problem of crime was rooted in "socialistic" welfare-state policies, and that its solution would elude policymakers until they turned away from collectivism and "centralized coercion," and moved toward economic and social policies determined by the dynamics of the free market. Reynolds recommended dispensing with community corrections programs in favor of prison terms, "...determinate, prompt, shorter, more severe (though not cruel), and served in full." He also called for revision of all U. S. Supreme Court rulings pertaining to "the exclusionary rules, suppression of evidence, inordinate delays, technical reversals, instability in criminal procedures, bias in favor of criminal defendants, and disregard for the rule of law." But Reynolds -- with deep roots in libertarian philosophy -- argued as well for repeal of all drug and gun control laws, and he pressed for privatization of police, prosecution, and correctional services. (Reynolds 1996, p. 202).

By the 1988 presidential campaign sentencing and correctional policies had become hair-trigger political issues. The Republican candidate George Bush campaigned hard on an anti-crime, pro-victim platform. Early in the campaign orchestrated by Lee Atwater and Roger Ailes, an article which was published in the *Readers Digest* helped to spark a fire-storm which would grow to consume the Democratic candidate, Michael Dukakis. (Anderson 1995). The article, "Getting Away With Murder," was written by a free-lance writer, Robert James Bidinotto (1988) (now a staff writer at the *Readers Digest*) who had been publishing articles in *The Freeman* since 1968. Bidinotto's article detailed the now-famous "Willie Horton" story of violent crimes committed while Horton was AWOL from a Massachusetts prison furlough leave. The publicity surrounding the Willie Horton anecdote and its inclusion in a controversial TV ad campaign proved to be critical in moving the Bush campaign to victory in November (Carrington 1989, FN 24).

Bidinotto explained his personal theories on criminal justice topics in three articles he published in 1989 in *The Freeman.* These writings argued that a national "crime explosion" had been caused by a break-down of the criminal justice system. He declared that the criminal justice system had become a sham due to the work of what he termed the "Excuse-Making Industry," a group comprised of "intellectuals in the social science establishment" acting in concert with an "activist wing of fellow-travelers: social workers, counselors, therapists, legal-aid and civil liberties lawyers, 'inmate rights' advocates, 'progressive' politicians and activists, and so on." (Bidinotto 1996, pp. 9-10). Rejecting various sociological theories offered by these intellectuals (Ramsey Clark, Karl Menninger, and Norval Morris, among others) to explain the problem of crime, Bidinotto went on to insist that the *Miranda* and *Mapp* decisions of the U. S. Supreme Court and the exclusionary rule had "subverted justice" in America.

Complaining of the "absurdly dangerous leniency" of many judges' bail and ROR decisions, Bidinotto argued for preventive detention and an end to plea bargaining. He rejected both probation and parole on grounds that they are not "justifiable, practically or morally," undermining deterrence and demoralizing crime victims (Bidinotto 1996, p. 82). He complained that the regimen in American prisons had become lax due to rehabilitation-oriented programs geared to preparing prisoners for early parole release, and that the punitive aim of imprisonment had been wholly undermined by the pragmatic concessions made to prisoners by authorities who were trying to keep their facilities running smoothly.

Bidinotto denounced prison furlough programs, work release, pre-release centers, half-way houses, and community corrections in general, on grounds of "simple justice

and public safety." "Such programs can't work, because 'reintegration' is a flawed concept. Reintegration programs are designed by normal people, for normal people. They assume that criminals think and feel like normal people. But they don't" (Bidinotto 1996, p. 286). He set forth a multi-pronged reform program, recommending abolition of the exclusionary rule, the insanity defense, plea bargaining, probation, and parole -- and advocated instead a "progressive sentencing" system under which terms of prison would increase in multiples (two, four, eight and so forth) for each repeat conviction.

THE EARLY 1990S: STRUCTURED SENTENCING, BALLOT INITIATIVES, AND THE CRIME BILL.

Despite the problems associated with the federal system of sentencing guidelines, the basic guidelines concept has continued to gain ground at the state level during the 1990s. Michael Tonry has reported that many state-level sentencing commissions have expressly repudiated the federal model and moved ahead with their own reforms (Tonry 1996, p. 73). In North Carolina the sentencing commission at work in the early 1990s rejected the term "guidelines" choosing instead, "structured sentencing" to describe their system. The basic grid structure they chose -- with nine offense categories -- indicates that they were relying for inspiration on the more successful experience with guidelines in states like Minnesota and Oregon.

North Carolina commission staff worked with a statistical impact model (the same software application which had been used in Oregon) to carefully design a system of sentence presumptions which would produce prison population levels to fit within the number of prison beds the state legislature was able to finance. The legislature funded a new state/local partnership grant program to complement the guidelines provision that lower-level non-violent property and drug offenders would be sentenced to community sanctions and treatment, and they provided funding to beef-up probation services for these offenders.

Oklahoma adopted this same approach in 1997 when legislators voted adoption of a sentencing guidelines structure which was carefully modeled to produce the prison population growth rate they believe the state will be able to afford to support over the next ten years. As in North Carolina, the Oklahoma legislature packaged funding for an ambitious new community corrections program along with the sentencing reform bill.

Introduction of the new sentencing structure in North Carolina had replaced most of the state's rigid mandatory minimums with presumptive sentences which would emphasize the crime-control advantages which can be won by placing drug offenders in

treatment programs -- a strategy with benefits now solidly documented by researchers from the RAND Corporation (Caulkins et. al. 1997).

But with few exceptions, the "Drug War" sentencing policies of the 1980s continued unabated into the 1990s. As mandatory minimum drug laws settled into place across the nation their impact on prison populations was great. Imprisonment of drug offenders increased by 510 percent over the decade from 1983-1993. In the 1990s critics of the "War on Drugs" increasingly pointed to apparent racial disparities. African American women had especially felt the brunt of mandatory drug laws. From 1986 to 1991 their numbers imprisoned for drug crimes increased 828 percent -- double the increase among African American men and triple the increase among white females (Mauer and Huling 1995).

Near the end of the Bush administration Attorney General William Barr waged a strong campaign for further toughening America's penal policies. In March of 1992 he convened a large meeting of state-level criminal justice officials in Washington, D.C. He told them that most states had fallen behind federal efforts to fight crime during the 1980s, and he urged them to step up their efforts to reduce violent crime by identifying and incarcerating chronic and violent offenders.

The Department of Justice issued two reports supporting his call to the states that year. "Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice," which -- along with the raft of traditional conservative reform measures -- advocated adopting "truth in sentencing" by curbs on parole, and mandatory minimums for the target offenders he had identified. "The Case For More Incarceration" was issued during the final month of the 1992 presidential campaign. It contained a claim that crime rates had been quelled by increased levels of imprisonment, and argued that building prisons would save the states money because incapacitation of offenders would avoid the costs he claimed would be incurred through the crimes they would have committed if they had remained on the streets.

In his 1992 presidential campaign Bill Clinton proved to have well-learned the lessons of the 1988 Dukakis campaign. He consistently "talked tough" on crime issues, and prominently displayed his role (as Governor of Arkansas) as a vigorous, highly visible enforcer of the death penalty.

At the start of the Clinton administration in 1993 (and in the face of Clinton's strong expressions of support for gun control) the National Rifle Association announced it would launch a national campaign to get tough on criminals (Balz 1993). This was seen by many as a ploy to divert support away from Democratic gun control initiatives.

NRA CrimeStrike -- a division of the National Rifle Association which had been founded in 1991 to "focus on the failures of America's criminal justice system" was then headed by Steve Twist, a close associate of Bob Corbin, the former Arizona Attorney General who had served as President of the NRA.

According to its internet advertisements, NRA CrimeStrike has worked to pass "truth in sentencing" laws in Arizona, Mississippi, and Virginia; and "Three Strikes and You're Out" laws in Washington, California, Delaware, Georgia, North Carolina, Vermont, and Pennsylvania. The group has also worked to pass legislation requiring that violent juvenile offenders "serve adult time" in eight states, and pushed for "Victims' Bill of Rights" proposals in 13 states (NRA 1996). Steve Twist is also a member of the executive board of the National Victim's Constitutional Amendment Network.

An NRA CrimeStrike policy statement, the "Special Report on Elements for an Effective Criminal Justice System" opens with the charge that "America's criminal justice system has collapsed." The report claims that the group is "fighting for key criminal justice reforms in every state in America." These include mandatory prison sentences for serious offenders (including violent or repeat felony offenders) to prevent and deter crime; "truth in sentencing" laws with prison release policies that require every inmate to serve no less than 85 percent of the prison sentence imposed by the court; abolition of prison furloughs; and juvenile justice reforms requiring that violent or repetitive criminal conduct receive adult sentences. NRA CrimeStrike urges that states increase prison capacity adequately to implement these reforms. It has proposed that this building program be made affordable by granting states and localities authority for privatizing prisons and jails, and by stripping institutions of all features that allow prisoners to "live at a comfort level that exceeds the minimum standards required by the Eighth Amendment of the United States Constitution" (NRA [a], p. 11).

Backed by NRA CrimeStrike, the nation's first "Three Strikes and You're Out" law was enacted by ballot initiative in Washington state in 1993, sending a shock-wave reverberating through legislatures in 21 states and the U.S. Congress over the next two years. Simply put, "Three Strikes and You're Out Laws" require mandatory life imprisonment on a third felony conviction. But "Three Strikes" has meant different things in different states. Understanding the political value of show-casing support for the concept (while at the same time restraining its potential for stoking up the prison population) many legislators carved their bill language to minimize eligibility for a Three Strikes sentence to a very small pool of violent offenders -- while preserving their right to say they had voted for it.

In California, however, the Three Strikes language was very broad -- with any of 500 felonies counting as a possible third strike to trigger a 25-to-life sentence -- plus it included a doubling of the prison term for a second strike. This has resulted in a very large eligibility pool of offenders subject to its stringency, and thousands sentenced under it scope. The RAND Corporation conducted a study of California's Three Strikes law in 1994 and estimated the long term costs to be huge -- many times over the original state estimates -- doubling the corrections share of the state budget over eight years and stripping resources from other vital state services like education (Greenwood, et.al. 1994). Finally, in 1996, the California Supreme Court hobbled the law by finding it to be an unconstitutional limit on judicial discretion.

A Heritage Foundation "State Backgrounder" paper issued in June 1993 entitled, "How States Can Fight Violent Crime: Two Dozen Steps to a Safer America," reframed the 24 recommendations for state-level criminal justice reforms that had been previously set forth William Barr in "Combating Violent Crime." The Backgrounder was authored by Mary Kate Cary (1993), a former Deputy Director of the Office of Policy and Communications at the U. S. Department of Justice, and speech writer for President George Bush -- who has since served as Deputy Director of Communications for the Republican National Committee and Political Editor of its magazine, *Rising Tide*. Cary charged that the Clinton Administration was "backing away from tougher law enforcement." She urged President Clinton to call on governors and state legislators to embrace Barr's recommendations -- and to frame a federal crime bill designed to facilitate these actions.

Citing data from a 1988 Bureau of Justice Statistics study of prison release practices in 36 states (and the District of Columbia) used earlier by Barr to show that violent offenders were serving only 37 percent of their imposed prison terms, Cary echoed his call for "truth in sentencing" with sharp restrictions limiting parole or "good time" release to the federal guidelines standard requiring 85 percent of the sentence to be served. She advocated mandatory minimum sentences for "gun offenders, armed career criminals, and repeat violent offenders." And repeating Barr's challenge to state officials, "The choice is clear: More prisons or more crime," Cary urged the states to invest in building and operating more prisons or risk collapse of the criminal justice system.

In November 1993 the Heritage Foundation published an issues brief, "What's Wrong with the Brooks and Biden Crime Bills," which again blamed a "dysfunctional criminal justice system" for violent crime. The author, Paul J. McNulty (1993) (then the Executive Director of the First Freedom Coalition who now serves as Chief Counsel for

the House Judiciary Committee) criticized the Clinton Administration's plan to combat violent crime for not targeting "the root cause of the wave of violent crime -- the career criminals who are not kept off the streets." McNulty argued that Clinton's plan to provide money for boot camps and other alternative punishments would make less money available for building prison space for violent offenders. He applauded Republican-sponsored bills which would provide funding to build large regional prisons to house criminal aliens and certain categories of violent offenders from any state which would agree to pass "truth in sentencing" reforms requiring that violent criminals and drug traffickers serve at least 85 percent of their sentences.

In December 1993 another Heritage "State Backgrounder" was published addressing crime-control issues. "Truth in Sentencing: Why States Should Make Violent Criminals Do Their Time," was written by James Wootton, founder and president of the Safe Streets Alliance, and author (according to Robert Bidinotto) of the "truth in sentencing" provision -- the "Chapman amendment" -- contained in the 1994 federal crime bill (Bidinotto 1996, p. xiii). During the Reagan administration Wootton had served as the Deputy Administrator of the Office of Juvenile Justice and Delinquency Prevention. In "Truth in Sentencing," Wootton cited the murders of Polly Klaas and James Jordan (father of basketball star Michael Jordan) and blamed "lenient early-release" practices for causing "a fearful epidemic of violent crime" (Wootton 193, p. 3). He referred again to the BJS 1988 study of prison release practices cited earlier by Barr and Cary to support curbs on release of prisoners before they served 85 percent of their sentences. He referred as well to studies by Edward Zedlewski and others to make the argument that incarceration saves money by preventing crimes, and he credited California's massive prison building program during the 1980s with slashing the state's crime rate.

Wootton argued that "truth in sentencing" would deter crime, citing crime reduction estimates by Morgan O. Reynolds, and quoting Reynold's claim that "When punishments rise, crime falls" (Reynolds 1990). Brushing aside objections that had been raised by critics of "truth in sentencing" Wootton urged state legislators and governors to provide the financial resources that would be required to implement it.

At the beginning of 1994 another national organization (one bearing as its primary objective to influence *state-level* policies) weighed into the crime control debates with the heavy clout of William Barr. Like Heritage, the American Legislative Exchange Council was founded in 1973 by -- among others -- Paul Weyrich. (PFAW 1996) Its mission is to educate state-level office holders about free markets, free enterprise, limited

government, and individual liberty. By 1993 ALEC had come to serve as a clearinghouse of information for 2,500 conservative "pro-free enterprise" state legislators, providing them with a steady stream of policy recommendations and bringing them together with private sector executives of major corporations for conferences and seminars.

ALEC strives to educate its members on the issues while promoting its agenda through model legislation. The organization maintains a standing task force on criminal justice. Its "10 Point Agenda to Fight Crime" includes recommendations for ending pretrial "own-recognizance" release (ROR); for mandatory minimum sentences for serious offenses (including "Three Strikes, You're Out"); imposing the 85 percent "truth in sentencing" rule for all prison sentences imposed by state court judges; treating juveniles as adults for serious criminal conduct; and using "all available strategies, such as prison privatization, electronic home detention, boot camps for juveniles, and video remote arraignment, to maximize resources."

In late January 1994, a group of state-level law enforcement and corrections officials spoke out against "Three Strikes and You're Out" and other mandatory sentencing provisions then contained in the pending federal crime bills which they believed would adversely affect state prison population levels. The group included Joseph D. Lehman (currently the Secretary of Corrections in Washington state) who was then serving as Pennsylvania's Corrections Commissioner (Eaton, *Los Angeles Times*, January 25, 1994). Within days, in a press conference led by William Barr, ALEC released preliminary data on crime in Pennsylvania from a national "Report Card on Crime and Punishment" (then in preparation) and urged that the state adopt "Three Strikes" and other mandatory prison sentencing provisions, along with a "truth in sentencing" requirement that prisoners serve 85 percent of their terms (ALEC, January 28, 1994; Bell, *Patriot News*, February 2, 1994). The "10-Point Agenda" appeared again later that year when ALEC published the full Report Card document with a foreword by William Barr.

In the Spring of 1994 as the House of Representatives prepared to debate the crime bill, NRA CrimeStrike targeted Representative Charles E. Schumer, chair of the House subcommittee on crime, a chief sponsor of the bill as well as of several gun control measures. On April 12 the group ran a full-page ad in *USA Today* which labeled him "The Criminal's Best Friend in Congress." The ad denounced Schumer for seeking to divert money from prison construction to crime prevention programs. A spokesman for the NRA said that money for more prisons would reduce crime, and keep pressure off

gun owners. "If we lock up the criminals, maybe there'll be less pressure on abandoning the Second Amendment" (Seelye, *The New York Times*, April 13, 1994).

In May 1994 Paul McNulty authored another Heritage Foundation paper, "Rhetoric vs. Reality: A Closer Look at the Congressional Crime Bill," which signaled the position Heritage and other conservative organizations would take on the Clinton administration's crime bill as it moved toward final passage in August. Detailing major differences between the Senate version of the crime bill (S. 1488 and S. 1607) and the then-recently-passed House version (H.R. 4092), McNulty warned that the actual content of the anti-crime measures proposed in Congress at that time had diverged from the members' tough rhetoric (McNulty 1994).

Citing a report released the month before by Morgan O. Reynold's group, the National Center for Policy Analysis, McNulty argued that because 98 percent of all convictions for violent crime were handled at the state court level, the death penalty provisions (which pertained only to federal crimes) would not be utilized. He sharply criticized the "Racial Justice Act," a provision to protect against racial bias in administration of the death penalty which had strong support from the Congressional Black Caucus. This measure had been incorporated in H. R. 4092, but was later dropped by the conference committee. McNulty also denounced the House bill's provision for $8 million in funding for prevention programs. "Removing violent criminals from the streets is crime prevention, as relevant statistics prove." (McNulty 1994)

McNulty called for restraining federal judges from putting "violent criminals back on the streets" by curbing their power to impose prison and jail population caps. He praised "the one truly useful proposal" -- billions of new dollars for new state prisons. He urged making this money available as an incentive for state sentencing reforms to make the bill's "truth in sentencing" provisions real. "States must stop revolving door justice by increasing the amount of time served by violent criminals from the current 38 percent to something closer to 100 percent" (McNulty 1994).

During the debates on the 1994 federal crime bill, NRA CrimeStrike circulated a set of charts, tables, and advocacy points to lawmakers which the staff entitled "The Case for Building More Prisons." According to the cover sheet, the packet of materials had been prepared for a group of gun lobbyists calling themselves the "Criminals Cause Crime Coalition" in consultation with Michael K. Block, a former member the United States Sentencing Commission who teaches economics at the University of Arizona, and who had been active -- with Steve Twist -- in pushing for "truth in sentencing" in the Arizona sentencing reform legislation passed in 1993. The thrust of the arguments

contained in the packet was that the Congress should provide grants to states to finance building of 250,000 new prison beds by the year 2000 for incarceration of serious violent and repeat offenders (NRA [b]).

Although some of the features of NRA CrimeStrike's 1993 "get-tough" criminal justice reform agenda were ultimately included in the 1994 federal crime bill -- and CrimeStrike publications now claim credit for "nearly tripling" the funds allocated for state prison construction in the bill -- ultimately the NRA ended up bitterly opposed because the bill also contained a 10-year ban on 19 assault weapons (Seelye, *The New York Times*, August 4, 1994).

In 1994 another publication was distributed widely on the hill. Robert J. Bidinotto (the staff writer for the *Reader's Digest* whose 1988 article had helped to make Willie Horton the poster boy for the Bush presidential campaign) published the first edition of *Criminal Justice? The Legal System Versus Individual Responsibility.* Bidinotto's book contained reprints of previously published essays of his own from *The Freeman*, and pulled together in a single volume more reprints of articles and essays by John DiIulio, Morgan O. Reynolds, James Wootton, and Mary Kate Cary (among others) which supported the concept of "truth in sentencing" and called for longer terms of imprisonment for violent offenders. The book also contained a reprint of the 1992 Department of Justice Office of Policy Development paper, "The Case for More Incarceration." Though in 1994 Bidinotto's book was available only through mail-order from its publisher (the Foundation for Economic Education), it was bought and circulated by law enforcement and crime victims' groups, and -- according to its author -- was distributed to every member of the U.S. House of Representatives, and to "key senators" (Bidinotto 1996 p. xix).

During the 1994 congressional debates the National Center for Policy Analysis issued a set of policy briefs opposing various aspects of the bills facing consideration by the conference committee. NCPA analysts argued that the measures were a mere pretense of "getting tough" -- that the federal death penalty and "Three Strikes and You're Out" provisions were largely symbolic because the vast bulk of violent offenders were sentenced by state-court judges. Moreover, the NCPA was opposed to "Three Strikes" because "it gives violent offenders an incentive to kill their victims," and would incarcerate offenders beyond their crime-prone years (NCPA, April 1994). NCPA also opposed the Racial Justice Act, arguing that it would -- in effect -- abolish the death penalty (NCPA, June 1994). NCPA analysts charged that the crime bill would create

more federal crimes (e.g., gun violations) without adding capacity to prosecute them; and that it would "fund more social workers than police officers" (NCPA, August 1994).

In June of 1994, with the crime bill still pending in conference committee, the Heritage Foundation released an "Issues Bulletin" authored by William J. Bennett. In this paper, entitled "It's Time to Throw the Switch on the Federal Crime Bill," Bennett applauded the bill's "truth in sentencing" provisions but he went on to complain that the bill was packed with "sixties-style social programs" for crime prevention and too many features which would federalize violent street crime and hamper state and local authorities with intrusive federal rules and regulations. He proposed, instead, a simple income-tax rebate plan to finance more prison capacity (Bennett 1994).

In early August Scott Hodge, a Heritage Fellow expert in federal budget matters, drafted yet another Issues Bulletin, "The Crime Bill: Few Cops, Many Social Workers." (Hodge 1994) Hodge criticized the $8.8 billion community policing grant program because, he said, the figures "simply do not add up." And he catalogued 10 of the many crime prevention programs -- e.g., Local Partnership and Model Intensive grants to high unemployment, high crime areas; Youth Employment Skills programs; Drug Courts; and a raft of funding initiatives for after-school and community-based programs involving mentoring, tutoring, sports activities, and substance abuse treatment -- which he termed "little more than social welfare pork barrel."

By this time the crime bill had become stalled between NRA opposition to its assault weapons ban, Black Caucus members' anger over removal of the Racial Justice Act, and a majority of Republicans opposing it because of its funding for prevention programs (Phillips and Benedetto, *USA Today*, August 8, 1994). Ultimately $3.3 billion was trimmed from the bill before it was finally approved by a vote in late August, yet even after its passage, Republican leaders continued to decry the "wasteful spending" it contained.

For many years a powerful, highly-organized network of right-ward leaning policy groups (Heritage, ALEC, NCPA, and the NRA) had worked to promote a broad program of deeply conservative criminal justice reforms. Yet they pulled back from supporting their own most politically potent ideas -- "truth in sentencing," "Three Strikes," and financial incentives to spur yet another large round of large-scale increases in prison capacity -- once the Clinton administration got on board and had managed to yoke these notions to more traditionally liberal measures like gun control and crime prevention programs. Nonetheless, in the end, many of their key policy positions had come to be soundly embraced by the Democratic leadership in Congress, and much of

their slogan-driven crime-control program had prevailed, once again, over the substantive criticisms and more rational reforms offered by the nation's most knowledgeable sentencing and corrections policy experts.

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The passage of the Illinois juvenile court act in 1899 prompted a flood of optimistic rhetoric from child-saving organizations. Ephraim Banning, attending the National. Conference of Charities and Correction in Cincinnati, described the act as â€œthe chief even of the year.â€Â More recently, sentencing reforms began as a part of the political movement that was at the heart of the Republican Partyâ€™s â€œSouthern strategy.â€17 The get-tough-on-crime platform of Richard Nixonâ€™s campaign and subsequent presidency was a politically charged reaction to urban crime, race riots, and changes in American society that frightened some (e.g., the civil rights movement.