

Senate crime bill assaults Constitution

by Leo F. Scanlon

By a vote of 71-26 on July 11, the U.S. Senate passed an omnibus anti-crime bill which, if made law, will do far more damage to the Constitution than to criminals. The bill is an amalgamation of the worst features of the legal monstrosity proposed by the administration, with slight modifications introduced by Sen. Joseph Biden (D-Del.). It would expand to 50 the number of federal crimes carrying the sentence of death—including some in which no murder is committed; it forces the death penalty practice upon states which have banned it; it encourages juries to ignore alternatives to the death sentence, and it virtually prohibits federal courts from *habeas corpus* review of faulty state prosecutions and erroneously imposed death sentences. The bill has been sent to conference, where some of these provisions may be eliminated.

Sen. Daniel Moynihan (D-N.Y.) indicted the Senate's debate and the bill: "Most of what we are doing today is futile. Part of it partakes of a quality I find difficult in dealing with, and that is vengeance. . . . The vengeance degrades those who take it as much as those who receive it, and we have had too much of that on this floor. . . . Much of the debate I have heard in the last two weeks comes down to a simple proposition 'throw the switch and watch them twitch,' to take pleasure out of pain."

Moynihan's sentiments were echoed from both sides of the aisle, with Sen. Mark Hatfield (R-Ore.) condemning the bill as a "human rights" violation.

The Bush administration initially proposed a bill which increased the number of federal crimes punishable by death to 46, and included capital punishment for "drug kingpins," whether they had committed a murder or not. This innovation in death penalty jurisprudence, denounced as unconstitutional in light of standing Supreme Court decisions, was accompanied by an amendment which stripped away a provision in the law that mandated judges to instruct juries that they are never required to impose the death sentence.

Further amendments increased the number of crimes so punishable to 50, the vast majority of which (such as "murdering a federal chicken and egg inspector") constitute nothing more than a macabre version of the juvenile game "can you top this."

Undermining the federal courts

The most far-reaching provisions of the bill are those introduced by Sen. Alfonse D'Amato (R-N.Y.), who added an amendment making the use of a gun in the commission of a

crime a federal offense. It will allow federal prosecutors to seek the death penalty in cases of murders committed with firearms that have crossed state lines—thereby federalizing most gun-caused murders (as well as most other crimes) and forcing the death penalty even in the 15 states that ban capital punishment.

Undermining the federal courts

D'Amato indicated that this measure is designed to sabotage the constitutional role of the federal judiciary, swamping it with criminal cases of the most mundane variety. Last year, there were 176 homicides tried in federal courts, and D'Amato's reform would bring 11,000 such cases before the federal judiciary.

"I hope the federal system becomes clogged up," D'Amato said. "I hope it becomes so overclogged that we would have to provide the judges and the prisons. . . ." In fact, an increasingly angry judiciary is reporting that the system already is grinding to a halt, as the effect of the Reagan-era "speedy trial" laws, which give precedence to criminal cases over all civil cases in federal court, are felt. The Thornburgh Justice Department has aggressively pushed to take advantage of stiff mandatory sentences by bringing even the pettiest of drug crimes into federal courts, effectively reducing the federal judiciary to a rubber stamp for prosecutors.

In step with U.S. Supreme Court rulings, the bill imposes restrictions on *habeas corpus* appeals in federal courts, virtually prohibiting federal review of state trials, even death penalty cases, no matter how wrong the outcome, as long as the trial was "full and fair."

Life is cheap in the United States, and will be cheaper still if this bill is passed. If you are poor, and accused of a capital crime, a "full and fair" trial includes the appointment of a lawyer who will be paid less for handling a death penalty case, in most states, than he will for filing an uncontested divorce. Biden noted that "one-fourth of all of Kentucky's death row inmates and one-tenth of Alabama's and 13% of Louisiana's death row inmates were represented at their trials by lawyers who have since been disbarred, have been suspended, or put in prison." And no matter how egregious their errors, or incompetent their representations, there will be no federal review of the results. He added, wryly, "What we just codified here is the ability for judges to be stupidly fair." And then execute people.

No more cops on the beat

The bill is added to the list of more than 230 new criminal laws enacted by Congress during the last three years, and even its supporters admit that it will do no more than the rest to stem street crime. Typically, the bill does not address the only area where law enforcement action can have an effect on crime—the cop on the beat. Sen. Pete Domenici (R-N.M.) acknowledged that "probably none of the provisions in this bill authorizing more crime-fighters will be a reality. Clearly, we don't have the money to pay for any of them."