# Republican crime bills are dismantling the Constitution

by Carl Osgood

The Republican-controlled U.S. House of Representatives continued its drive during the first two weeks of February to dismantle the Constitution, by taking up the crime plank of the Republican "Contract with America." Several of its provisions, including exclusionary rule reform, limits on death penalty appeals, deportation of criminal aliens, and replacing the community policing program passed last year with block grants to the states, were passed overwhelmingly.

The underlying premise of the GOP "reforms" is that rights guaranteed in the Constitution have become impediments to prosecuting and punishing suspected criminals. The right of *habeas corpus* is described in the Contract document as "originally designed as a remedy for imprisonment without trial, it is now a tool of federal and state defendants who have been convicted and exhausted all direct appeals." Hence, the rationalization for virtually repealing *habeas corpus* is that all convicted defendants are guilty, and therefore their appeals and *habeas* petitions are frivolous.

The GOP Contract treats the Fourth Amendment protection against unreasonable searches and seizures in the same way. The Contract complains that the exclusionary rule, which suppresses evidence discovered as the result of an improper police search, "leads to the acquittal of many who are obviously guilty." Instead of asking why improper searches are conducted in the first place, the Republicans succeeded in passing a bill that legitimizes police searches without warrants, and other misconduct.

Of all the revisions passed by the House, the only one that the Clinton administration has publicly taken issue with is the plan to repeal the community policing program, the sixth and last of the revisions of last year's crime bill passed on Feb. 14. This is supposed to put 100,000 more police officers on the streets through a $10 billion block-grant program. President Clinton threatened during his weekly radio address on Feb. 12, that he would veto it if it got to his desk.

## Repealing the Fourth Amendment

The exclusionary rule reform bill, appropriately numbered HR 666, that was passed, would allow evidence discovered through warrantless or improper searches to be admitted in court if the police can demonstrate that the search was carried out with an "objectively reasonable belief that it was in conformity with the Fourth Amendment."

The Fourth Amendment itself rapidly became the issue during House debate on Feb. 7, when Mel Watt (D-N.C.) offered a substitute amendment which consisted of the very language of the Fourth Amendment itself. Out of apparent deference to any member who might be unfamiliar with it, Watt explained that this was "the exact language of the Fourth Amendment of the U.S. Constitution." He explained why he was doing this, and said: "I love the Constitution of the United States, even when it is not convenient for me to love it. I still think it needs to be defended and protected, contrary to some of my colleagues, apparently, in this body."

As if to prove Watt's point, Bill McCollum (R-Fla.), the chief Republican point man on crime, complained, "Members need to understand that this amendment guts the bill as it is now written," and that "in essence, it is another way of voting against this bill." He asserted that the purpose of the bill was to "reaffirm an exception to the exclusionary rule and expand that exception to allow us to get more evidence in search and seizure cases, and get more convictions and get away from technicalities letting people who have committed crimes off the hook."

Cleo Fields (D-La.) objected to McCollum's argument, saying, "This bill would basically make the Fourth Amend-

ment to the Constitution moot. . . . I think the bill in itself is unconstitutional, not to mention unconscionable." Watt's response was that "it seems to me the only way one could conclude that this guts the bill is to say that the rest of the bill is somehow inconsistent with the Fourth Amendment." Watt's amendment was defeated in a vote of 121-303.

Equally outrageous was the manner in which members of Congress exempted certain agencies which are of concern to their constituents. The Bureau of Alcohol, Tobacco, and Firearms (ATF)—a favorite target of gun-owners and of the "militia" organizations—was exempted, as was the Internal Revenue Service. But a similiar amendment exempting the Immigration and Naturalization Service (INS), submitted by Jose Seranno (D-N.Y.), was rejected. The conclusion? It's okay for the police or the FBI or the INS to come into a ghetto or minority community and break down doors, but if the ATF tries to do it in Montana or Colorado, Congress says they can't get away with it.

The House then took up the "Effective Death Penalty Act" to limit death row appeals. The main provision of the bill is to add a one-year limitation on the filing of *habeas corpus* petitions; it requires a defendant in a state proceeding to show that a federal constitutional right was violated before he may appeal a ruling in a *habeas* proceeding. Again, as during the exclusionary rule debate, the Constitution itself became the issue.

Charles Schumer (D-N.Y.) offered the first amendment to the bill, to require states to provide qualified counsel in capital cases. Schumer said that "to put people on trial for their very lives without giving them good counsel is fundamentally unfair and outrageous." McCollum made the same complaint as he had of amendments to the exclusionary rule reform bill. He said that Schumer's amendment, if adopted, "is going to destroy the underpinnings of this bill to speed up the process of carrying out the death sentences in this country." Schumer's amendment was voted down by 149-282.

However, the worst was yet to come. Watt followed Schumer's amendment with one which would have added a provision that "a substantial showing that credible newly discovered evidence which, had it been presented at trial, would probably have resulted in an acquittal for the offense for which the sentence was imposed." Watt said that "if you show that you are probably innocent, you should not have to raise a constitutional issue."

McCollum again elevated procedure above a search for truth. He complained that the Watt amendment made "a weaker and less stringent standard in terms of getting to the appeal process, and thereby undermining what we are trying to do, to carry out sentences more quickly."

Watt rejoined, "What I am trying to do is make sure that somebody who has a credible claim of innocence does not sit in jail for 30, 40, or 50 years without any remedies or rights; that somebody who has been sentenced to death does not go to the gas chamber or be put to death without being able to come into court and at least present their evidence." He said of the House, "We are trying to keep from codifying case law because we do not care whether somebody is innocent or guilty; we just do not want them in our court system."

Maxine Waters (D-Calif.) counterposed the U.S. Constitution to British tyranny. "We would be a lot better off if, instead of reading the Contract on America [sic] in this body every day, that we would simply quote the Constitution." After reading the Preamble, Waters said that "citizens . . . [left] Great Britain . . . because of oppression and tyranny . . . and when they left to establish [themselves] in a new land, they were invaded. They were violated. Their homes were broken into. Not only were they overtaxed, they were simply mistreated. They could not pursue justice, freedom, and equality. These were not blacks. They were not Mexicans. They were basically people who left Great Britain. They kind of all looked alike.

"But . . . it does not matter whether you are black, white . . . or any other color . . . they are going to invade your property, they are going to violate the most precious of that that can be violated. . . . You allow them to do this when you mess around with this Constitution this way.

"You will see a number of African-Americans on the floor today [fighting against this act]. . . . Well, we were not there when those who were fleeing Great Britain were being violated, but we were there as slaves. We were there when our doors were kicked down. We were there when children were grabbed away from their families . . . and so we feel this very deeply. . . . This is not about some political posturing. This is about protection of human and individual rights for the people, and the Constitution defends that, and it guarantees that."

## Truth no longer the issue

*EIR* founder Lyndon LaRouche observed that "these guys recently took an oath to uphold the Constitution. Now what happens? McCollum and supporters are confronted by this statement of the language of the Fourth Amendment, stuck in as a proposed amendment to the bill. He says, 'No, we can't allow that, because that would nullify, or attempt to mitigate, the intent of this legislation.'

"That is, their *intent* was to go against the concept *which is part of the Constitution*. Therefore the bill is *intentionally unconstitutional*. . . .

"What you're seeing, is that U.S. law is becoming fascist, not because a fascist imposition has been made upon the law, but rather, what are called 'professionally acceptable procedures of law,' legal procedure, what is called a 'fair trial,' is itself fascist in character. . . .

"It means fascist . . . in the sense of positivist. To the positivist there is no issue of 'truth.' Truth does not exist. Therefore, the question of guilt or innocence or fault or no fault, truthfully, does not exist in legal procedure under *stare decisis*. It has been eliminated."