

Criminal Justice Washington Letter, 108th Congress, 2nd Session, # 1.

By Mike Israel, israelmike@crimeletter.net January 30, 2004.

The First:

For a year and a half I have been writing this newsletter on the crime policy making process in Washington for ACJS members, but now, with a new name, it will be for subscribers. It will also be found on my website: www.crimeletter.net but for \$20 a year you can get it at your email door. The first two this year will be free.

The State of the Union:

“In the past, we’ve worked together to bring mentors to children of prisoners, and provide treatment for the addicted, and help for the homeless. Tonight I ask you to consider another group of Americans in need of help. This year, some 600,000 inmates will be released from prison back to society. We know from long experience that if they can’t find work, or a home, or help, they are much more likely to commit crime and return to prison. So tonight I propose a four-year, \$300 million prisoner re-entry initiative to expand job training and placement services, to provide transitional housing, and to help newly released prisoners get mentoring, *including* (italics mine) from faith-based groups. (Applause) America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life. (Applause)”

President George Bush

State of the Union Address, 1-20-04

There was intense interest group lobbying of the White House to get that statement, his last one, into the speech; for the State of the Union is, among other things, an agenda setter. Two weeks after the speech the President has sent his budget message for fiscal 2005 to Congress with the money in it.

I have been advised that Chuck Colson’s Prison Fellowship and a re-entry initiative from within the Justice Department were responsible. A little math tells us, however, that it amounts to \$75 million a year, and \$125 per prisoner. Also, federal re-entry money is now \$100 million a year—to states, not faith based groups—or a 25% cut.

The State of the Union also called for an aggressive, community based strategy to reduce drug use in schools. Bush will ask Congress for \$23 million for school drug testing. The comedian John Stewart mused: “Apparently the government will only supply the cups.”

Still, notice should be made of what was not said. There was not a word about getting tough on crime (except for steroids for ballplayers), and the role of law enforcement is to track terrorists, and be first responders in crises.

There was also no mention of a second USA Patriot Act, and when he mentioned that Patriot I will expire next year there was applause. [Patriot I, passed right after 9-11, has become controversial and Congressional Oversight Hearings have signaled that some Senators are not happy about the civil liberties compromises.] A second Patriot Act, with warrant less wiretaps as a centerpiece, which was circulated last year but never introduced, now seems dead.

The Money:

The fiscal year 2004 budget has just been passed—a mere four months late—and the White House forecast a \$521 billion deficit. That's a record in the history of the United States, by far. Last year's \$374 billion deficit is second. There is no close third place. This is major league red ink.

The President wants his three tax cuts extended by Congress, and they will expire between 2005 and 2014. If the cuts do in fact expire the nonpartisan Congressional Budget Office (CBO) predicts black ink by around 2011; but if they don't, a deficit in 10 years of around \$2 trillion. The White House says \$1 trillion. Spending is unlikely to change significantly, for many reasons; only revenues can change, so discretionary spending will only be tweaked, relatively speaking. But discretionary programs are in trouble.

Our Money--\$6 million:

There are hits all over the criminal justice system. All law enforcement grants are down 19%, Juvenile Accountability Block Grants were almost cut in half, state prison drug treatment programs went from \$70 million to zero, and after-school programs in the education budget were cut \$400 million, putting half a million at risk kids on the street after school, to name just a few examples.

The National Institute of Justice had its agency's budget cut from \$60 million to \$48 million (20%). A cheap \$8 million NIJ Arrestee Drug Abuse Monitoring program (ADAM) for jails in 35 cities was eliminated, after 16 years, and four administrations.

The 2004 budget gives NIJ \$6 million a year in discretionary money for social science research, down from \$20 million. Originally, we may recall, the Senate version of the budget had cut it out entirely, the House had it all in, but the Conference Committee favored the Senate in its compromise. Sarah Hart, NIJ director, reportedly cut out the ADAM program to save the \$6 million for research, for which she took considerable heat. It has been argued, with irony, that an in-jail drug testing program of arrestees is more reliable than another \$50 million a year household survey that asks people to report substance abuse voluntarily, without the urine tests that the jail program has. But that program was from a different budget in the mental health area, and survived.

[We should note the paradox of cutting out an \$8 million program with reliable results, while the President is asking for \$23 million to test students who consume relatively small quantities of hard drugs and no studies have shown that school-based testing deterred drug use.]

But there's Still Pork:

Not everybody took hits. The FBI budget went up 60%, to \$5.1 billion, but that is for counter-terrorism, which is of course sacrosanct. [Many police departments, we all know, are using counter-terrorism money for other things.] This is not a lean budget, reflecting the war and the tax cut. It is a shifting of priorities. [I cannot say what the criminal justice piece of it is because it is spread into several appropriations bills.]

The total federal spending bill just passed is \$328 billion in discretionary spending, which, along with nearly \$1/2 trillion for defense which passed in December, is less than 20 % of the \$2.3 trillion that the federal government spends. It has risen 20% since Bush took office. There were still plenty of goodies—local projects called “earmarks”—that went on Congress’ credit card. I can’t resist a few CJ examples: \$100,000 for the South Dakota Association of County Commissioners for law enforcement communications equipment; \$200,000 for the Las Vegas SWAT team; \$250,000 for Gospel Rescue Ministries; \$200,000 for the after school program of the Merit School of Music in Chicago; et al. There are 7,900 similar earmarks totaling \$10.7 billion. Why do some “special interest groups” get their pork and others do not? [They may or may not be justified, but that is not the reason.] They lobby for it.

So let us reflect, that social science criminal justice research was cut by \$12 million dollars, and I’ll let you calculate what percent that is of \$2.3 trillion.

Also Attached to the Appropriations Bill:

The pro-gun lobby won a big legislative victory with a provision attached to the appropriations bill. After a Brady background check clears a gun purchase, federal law enforcement must destroy records of that check within 24 hours. Currently those records are kept for 90 days, which the FBI has used to retrieve guns from dangerous individuals 235 times in the last six months, 97% after the first 24 hours.

If you are wondering what substantive legislation like this is doing in an omnibus appropriations bill, I can’t give a good answer; except that this is part of the fabric of surreptitious legislating that is becoming common on Capital Hill. Ashcroft and the gun lobby supported it, and although there is evidence of bi-partisan opposition, since it was attached to appropriations with pressure to get it through, this extraordinary amendment never came to a vote, nor had any debate.

What to Expect This Year:

The saga of the federal judges goes on. The President further irritated the already furious Senate Democrats by making a “recess appointment” of Charles Pickering to the U.S. Circuit Court of Appeals. Such a summary appointment can be made by the President when Congress is in recess, but has only been used a handful of times. Pickering, you may recall, a Mississippi friend of Trent Lott, was one of six Bush nominees blocked by Senate filibusters. He has been sworn in and now sits on the 5th Circuit, but his temporary appointment will expire when the present Congress adjourns, probably in October, assuming he is not confirmed by Congress. He needs of course 60 votes for cloture, and failing that he is expected to retire at 66, unless the election delivers a filibuster proof 60 vote Republican majority.

This incident could have been seen as a courtesy to a respected aging judge, albeit an ally, as a capstone to his career, but it is not. To Democrats it is Republican one-upmanship starting a year that promises to be partisan, polarized, and nasty. Awaiting Court of Appeals confirmation fights in the Senate are two Bush nominees, Brett Kavanaugh (with no judicial experience but he wrote Ken Starr’s prurient report on Clinton) and Claude Allen (an African American administrator who was press secretary for Jesse Helms).

These two are certain to be filibustered by Senate Democrats whose only weapon is that they can prevent cloture (ending debate) which requires 60 votes. Bush shows no sign of compromise, or softening his march of conservative nominees to the federal bench. Republican Majority leader Bill Frist is under pressure from Bush's base to invoke what has been called the "nuclear option," a majority procedural vote to end the 60 vote Senate cloture rule. So far, the finger on the nuclear button hasn't pushed it. If he does, the consequence will be cataclysmic.

Hardball-as-Usual:

Last December, when the House passed the Medicare bill at three in the morning, with lobbyists on the floor twisting arms, a few moderate Republicans in opposition changed their minds during "the long night." One of them, Nick Smith from Michigan, said the next day that financial support was offered for his son, Brad, who was going to run for his father's seat. Smith was taunted that his son was "dead meat" unless he changed his vote, which he did not. Members of the Republican leadership were involved, and \$100,000 was mentioned. The federal bribery statute makes it a crime to offer "anything of value" to a public official "with intent to influence any official act."

Smith has somewhat recanted, now saying the offer was for "substantial and aggressive campaign support and endorsements." Some have described the exchange as no more than "hardball-as-usual" on a close and important vote, while others have characterized it as to "threaten retribution" (against his son). There is arguably a distinction between an implicit understanding of the likely consequences of a vote (legal), and an explicit quid pro quo of campaign cash (bribe).

Speaker of the House Dennis Hastert (R-Ill.) ordered an investigation *by his own staff* (italics mine) and found "nothing of substance there." There have been various demands (but not a formal complaint, yet) for an investigation by the Justice Department, and by the House Ethics Committee. There is precedent for such committee inquiries to lead to sanctions such as loss of leadership positions. This is a simmering pot.

Many Things on the Plate:

Although crime politics seems to be absent from the political dialogues, there are a number of potentially volatile legislative issues on Congress' plate. There is much work being done on possible reentry legislation, innocence protection, a racial profiling bill, a prison industries bill, the assault weapons ban will expire unless renewed, other gun issues such as civil immunity and gun show loopholes, and some Enron related white collar crime legislation is in the pipeline and may come forth in some form.

Also on the majority party's agenda is a bill that would make injuring a fetus a separate crime from the initial attack on the woman carrying the fetus. This seems to be a high priority and is in keeping with other initiatives that include an amendment prohibiting gay marriages and outlawing human cloning research. The Unborn Victims bill has already slipped through a House Subcommittee, without a scheduling announcement.

Speaking of Constitutional amendments, two are on calendars. A victims' rights amendment has been approved by the Senate Judiciary Committee and a flag burning

amendment has pass the House Judiciary Committee. In both cases, the other chamber has them on their plates.

Sentencing may also be a legislative issue during the second session of the 108th Congress. Chief Justice William Rehnquist, in his annual report on the state of the federal judiciary, criticized what has been called the Feeney Amendment, a stealth sentencing policy tacked onto a child abduction notification bill. The Chief is not the only one, for in recent months other Supreme Court justices and federal judges have joined the chorus in what has been called a “judges revolt” against Congress, and legislation may follow to repeal the amendment.

Record deficits, a judicial revolt, bribery allegations, filibusters, stealth amendments, an attack on Roe v. Wade, Democrats kept out of Conferences, and guns, guns, guns policies, in an election year, that’s what’s in store. Sorry I can’t make it more exciting for you, but again, the first two are free (like a drug dealer I’m trying to get you hooked—on the fascination of crime policy battles). You may think the word “battles” is hyperbole, but judge for yourself.

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