

To the Information and Public Policy Section, ACJS, and friends:

From Mike Israel, Washington Representative,

February 5, 2007

This is the first newsletter of 2007 on crime policy making (or not making) in Washington for the ACJS policy group, and it is a service provided with membership, which is \$10 a year (after joining ACJS). If interested, go to the ACJS website [www.acjs.org](http://www.acjs.org), and click the membership link.

Our group will meet in Seattle at the ACJS Annual Meeting on Friday, March 16, 2007, from 9:30 – 10:45 a.m. in Suite # 1. After a business meeting, our speaker will be Mick Hallett, who has won a major award for his new book on private prisons. No food this year—so attendance will be a test of dedication.

**What's not going to happen, (at least for awhile):**

As you know, in the fall election the Democratic Party picked up a net gain of 30 seats in the House and six in the Senate, and now holds slim majorities of 17 in the House (out of 435) and one in the Senate. The Senate lead is especially slim because one Democrat, Tim Johnson from South Dakota is seriously ill and his return is unknown. Furthermore, as a practical matter, 60 votes are needed to pass controversial legislation in that upper body, for the so-called filibuster has become commonplace. In the House, the majority is somewhat watered down by the inclusion of about 50 “Blue Dog Democrats,” who are deficit hawks and generally conservative on social issues. Still, the Democrats have organized both chambers, elected new leadership, and now chair all of the committees and sub-committees.

As the leadership of both houses formulates their policy agenda for the 110<sup>th</sup> Congress, crime policy legislation is not part of it. The House speaker, Nancy Pelosi, presides over what has been called a “motley caucus,” able to pick only low-hanging fruit, like the First 100 Hours (raising the minimum wage—to \$15,000 a year, if full time—for example), and even that has stalled in the Senate. They have reneged on the promise of an open process, and bought into pay-as-you-go budgeting which subverts the social program part of their vision. It's Blue Dogs vs. the Black Caucus, urban liberals vs. Western and Southern moderates, pragmatics vs. ideologues; while those pushing the prisoner reentry Second Chance Act, the anti mandatory minimum sentencing Cracked Justice Campaign, and other initiatives favoring prisoners, defendants, and detainees will have to wait.

Democratic leaders with a strong interest in reforming sentencing policy, like John Conyers, new chair of the House Judiciary Committee, Bobby Scott, chair of the Crime Subcommittee, and Patrick Leahy, chair of the Senate Judiciary Committee, are bulldogs on a tight leash. They, and their organized constituencies, have made promises that their political environment may not allow them to keep, at least for now. Nevertheless, this time is being used to build an advocacy infrastructure. It is time to plan, and hopefully win allies.

### **Buddy, can you spare a hundred billion?**

President Bush, as he is required to do, sent to Congress this week his proposed 2008 budget. It has a \$2.9 trillion dollar sticker, or 18 % of the country's gross domestic product. Hey, that's real money, and that's just the *federal* government! The big tickets are social security, \$612.5 billion; national defense, \$606.5 billion (about a hundred of that for Iraq); Medicare, \$391.6 billion; unemployment and welfare, \$280.8 billion; Medicaid and other health, \$280.6 billion; interest on debt, \$261.3 billion; and so on. Am I boring you? When we get to the small change, the administration of justice is 10<sup>th</sup> in line with \$47 billion. The Department of Justice gets about half of that, the rest spread among Education, Health, Defense, Transportation, and the White House office itself.

But wait, why are we talking about the 2008 budget? The 2007 budget hasn't even been passed yet! (The deadline was last October 1). There are 11 separate budget bills, and Defense and Homeland Security were indeed passed on time, but the nine others—what happened to them? Nothing! So how is most of the government run? On a *continuing resolution* (CR) that funds every program at 2006 levels. The next deadline is February 15, when Congress will pass another CR to expire October 1, when the 2008 budget is due. *Read: there won't be a 2007 budget.* It's like a relay race when the runner behind passes the one in front of him, and they're on the same team.

### **Reform for thee but not for me:**

There is a temptation to say, no 2007 budget? Good! It was probably a lousy budget anyway, with lots of cuts in drug treatment, prisoner reentry programs and the like. They can't cut too much from what was barely there in the first place, but one irony is that although Congress *appropriated* funds through the CR, in most areas there were no authorization bills. That means, for one, on those expenditures there is no opportunity to add amendments, in the form of earmarks, aka: pork. Those special interest spending items are slipped in either on the floor or in conference, but since there was no floor action or conference, hence, no pork.

Pork generally doesn't get a good press, and lots of rhetoric says that is what drives federal spending toward three trillion; but although there are thousands of earmarks (the 2005 highway construction bill holds the record with 6,371), the 2006 budget had about \$7 billion in earmarks, which calculates out to about one-quarter of one percent of the budget. (Of discretionary funds it's about one percent.) So, seven billion was saved in 2007. (A little here, a little there . . . Bush's budget projects a deficit of about \$250 billion. The non-partisan Congressional Budget Office says it will be about a hundred billion more. Cutting the earmarks, therefore, shaved the deficit about one-and-a-half percent, at best.)

If the earmark reformers aren't saving the bank, are they doing any harm? Depends upon whose seven billion gets cut out. Using the Citizens against Government Waste website, I found thousands of criminal justice earmarks, mostly for police departments and special projects. In fact, the controversial Byrne law enforcement grants, most recently at \$189 million, are almost exclusively earmarks. This entire controversial policy of anti drug task forces lives on the pork barrel.

I found 19 earmarks for prisoner reentry programs that totaled about \$10 million. Ten million is pretty small crumbs in this pile of dough, but those programs were funded for a year, and are now cut off. Since earmarks are appropriations without authorization,

they are for one year only, in the form of amendments, often to non-germane bills. But they routinely get renewed, and since there's no bill, there's no oversight. They slip in under the radar. We probably don't want to think about how many ex-prisoners were in treatment programs this year, and then had them terminated.

Is there a back door? In this town there always is, and it's often in the executive branch. Programs and their advocates can go to administrators and ask that funds be *allocated* to their on-going program, to keep it going. In theory, Congress is the political branch and the administration is staffed by professionals. They should be in a position to see what's needed, when, and where, and thus make rational choices. Today's administrative branch, however, is arguably more politicized than Congressional committees. Nobody wants to ask them for anything.

### **Want to get interest groups mad? Cut their funding:**

Even permanently authorized programs lost funds because of Congress' inability to pass a budget. Inflation based annual increases were discontinued, and if the program was cut in an earlier draft version of the budget, the cut version was in the CR. So the cuts counted, the increases did not.

One example: a drug court program was funded last year at \$10 million. The House, after oversight, passed a relevant 2007 appropriations bill and gave it \$40 million, which was the anticipated sum because the Senate showed little interest in these details; but since ultimately there was no Senate bill, the CR was for \$10 million. That was the deal: low ball wins. Such is the deficit hawk climate.

But enough about service programs, let's talk about law enforcement, which is popular with Congress. Surely they did better from the ax. Various federal assistance grants for state and local anti-crime programs—the Byrne grants, Community Oriented Policing, Juvenile Accountability grants--were cut by more than half in Bush's budget. Last year's budget gave COPS programs zero, but Congress restored some of it and COPS is still hanging on. This year the President wants to consolidate several separate grant programs—which totaled more than \$2 billion in fiscal 2006—into four grant programs worth \$1 billion.

One would think that the Justice Department would be supportive of law enforcement, but not for those federal programs. “They are ineffective and too expensive,” says Bush. Where does he get that idea? From a series of papers by the conservative American Heritage Society which allows him to say that his budget policies are research based. They are research based. Research he likes.

The FBI is the one agency that benefits with a proposed 10 percent boost to \$6.4 billion, mostly for counterterrorism, intelligence, and national security, including a weapon of mass destruction directorate that makes it the lead responding agency to any such attack. It looks like the FBI won its turf war with the CIA. Both DEA and ATF would get boosts too, of 6 and 8 percent.

But the administration has a long way to go to get what it wants. The ink wasn't dry on the budget when not only Democrats leveled criticism, but 14 police related national organizations have mobilized to lobby for funding to “fight crime.” The International Association of Chiefs of Police seems to be taking the lead, citing the recent up-tick in crime as their rationale. This is a sign of new aggressiveness from a police lobby coalition. The IACP says the proposed cuts are 75% from past levels.

### **Begging for pennies in a \$2.9 trillion budget:**

Obviously police, courts and corrections need money, as well as community corrections, treatment, prisoners' health and reentry programs. Sentencing reform arguably saves money, but the wall there is ideological and will be discussed at another time. Hearings will soon begin for the 2008 budget, but this is not a good time to ask for one dime of discretionary spending, and 85% of justice spending is discretionary. Furthermore, there is no DOJ authorization—it's on the House Judiciary agenda every week but never comes close to even a hearing—so every year Justice spending is at the tender mercies of its appropriations subcommittee. Please note: that is not the Judiciary Committee subcommittee, but the Appropriations Committee subcommittee, a different lobbying environment.

The term "social programs" is baggage that likely weighs down any bill that costs money and is not simplistically seen as protecting national security. Even anti crime lacks the magic it used to have. If legislation, like, say, the Second Chance Act, that has *social programs* hung on it is to have any chance, there are only four ways:

1.) Cut the military—saving \$100 billion from Iraq would help a bit—but as we all know, US policy is going the other way.

2.) Stay in debt, but Bush has "promised" a balanced budget in five years, and the Democrats have gone along.

3.) Rescind the Bush tax cuts. That would be called raising taxes, and has a similar stigma to shortening prison sentences.

4.) Democrats think, rightly or wrongly, that the only way to have a social agenda is "pay-go," or pay-as-you-go. That means that no party, caucus, or committee can advocate spending a discretionary dime unless they cut that same dime somewhere else. Where could that be, education, health care, community development? [Actually there is a tax gap of \$345 billion, which means that deadbeats don't pay that much in income taxes. Some are saying, go get it. Nobody expects that to happen, and the cost of even trying is prohibitive.)

I have sat in on some discussions among economic policy think tanks and advocacy groups, but in truth, nobody knows what to do. I have read a few scattered reports of some states that have raised taxes—adding police seems to work as a rationale—and the anti crime argument seems to have some traction. Those officials were not struck by thunderbolts. In Washington, however, pay-go is accepted as reality and defines the boundaries of all policy making, except anti terrorism.

### **What is to come?**

There will be a criminal justice agenda for the 110<sup>th</sup> Congress, which will include another try at the Second Chance Act, the Cracked Justice Campaign to reverse the 100-1 crack-cocaine sentence disparity, plus bills for health care in prisons, including HIV prevention and treatment, prisoner access to education, a racial profiling bill, a federal parole act, and a Law Enforcement Trust and Integrity Act to set national standards for police conduct, to name just a few.

I will be alerting readers of opportunities to participate, and I want to repeat my urging of last December's newsletter to sign on to a statement supporting the Criminal Justice Policy Foundation's cracked justice campaign. Please go to their webpage,

[www.cipf.org](http://www.cipf.org), and on their home page click *Sentencing Policy* at the top. You can read more about this issue, and there is a prominent link to a petition from criminologists and other academics. Once in that link, to the right there are other links, and the last one allows you to sign the petition, identifying yourself with your institution. Dozens of academics have already signed. There is no drafted bill yet, but this petition will be presented to the House and Senate Judiciary Committees to be placed into the Congressional Record when the cracked justice bill is introduced.

The Policy Section has already signed onto a letter opposing the draft of a new gang bill introduced this year by Senator Diane Feinstein of California. The bill is mainly punitive, and makes gang membership a crime. The Children's Defense Organization coordinated this effort, and wanted the letter sent to the Senate Judiciary Committee before the bill was introduced—which is why I only cleared it with our Executive Board—and hopefully we can influence a re-drafting. I am told that Feinstein has already removed a section of the bill allowing for juvenile gang members to be waived to adult courts.

### **The “S” word--(Subpoena);**

One more item to keep an eye on: The Democratic Congress, although limited in its legislative scope for reasons outlined above, does have one weapon that committee chairs can wield, the power of oversight. Still, holding investigative hearings is easy. Getting information from the administration is hard. Congressional committees have the *subpoena* power, but using it is not part of the culture. Witnesses will show up, but say nothing, so what use is it?

The Senate Judiciary Committee might be the first to use it, which would be a psychological breakthrough. Seven U.S. Attorneys in the south and west have been fired recently and replaced in moves that appear to be politically motivated. Further, the replacements were not submitted to the Senate for confirmation. A little noticed provision slipped into the U.S.A. Patriot Act shortly after 9-11 gave the Attorney General to power to replace federal prosecutors indefinitely. AG Alberto Gonzales has said repeatedly that the replacements were based on merit.

Chuck Schumer, a Democrat on the Judiciary Committee, at an oversight hearing, said the firings “reek of politics,” and asked for the job evaluations of the fired seven. Deputy A.G. Paul McNulty said those papers are confidential, whereupon Schumer threatened the “S” word. At this writing they are negotiating. A bill overturning that piece of the Patriot Act is in the works, but actually using a subpoena on an executive department would be a major change in the Washington culture. Stay tuned.

