

CAPITAL *Perspective*

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GREETINGS FROM WASHINGTON. As Election Day 2010 nears, the United States Congress—despite historically-low job approval ratings—has once again delayed much of its work in order to hit the campaign trail hard during the month of October before what could be a historic mid-term election. This article will update you on the current state of play with NDAA's National Advocacy Center (NAC), the John R. Justice Loan Repayment Program (JRJ), other legislation of interest to America's prosecutors and what the 2010 election could mean for NDAA.

FY'11 Appropriations

As has been the trend over the past several election cycles, Congress has once again delayed passing its yearly mandatory spending bills until after the mid-term elections; however, in a departure from past trends, all 12 spending bills—including the FY'11 Defense and Homeland Security Appropriation bills—have yet to pass Congress. Defense and Homeland Security spending is always at the forefront of Congressional business and usually pass prior to the start of each fiscal year, highlighting the extreme spirit of partisanship in Washington during 2010.

What does this mean to NDAA? It could mean a number of things for the NAC, JRJ and other criminal justice-related bills, depending on the outcome of the election. Before Congress adjourned, it passed a Continuing Resolution (CR) to keep the government funded at current levels until early December. If Democrats are able to maintain control of both houses of Congress, the House and the Senate will reconvene in mid-November in a "Lame Duck" session, complete work on all 12 mandatory spending bills, combine all 12 separate bills into a massive "Omnibus" spending measure and pass the bill around December 1.

Now, if the Republicans are able to win enough seats in either the House or the Senate to take the majority away from the Democrats, the forecast becomes much more cloudy and difficult to predict. If Republicans were to win

the majority in the House or Senate (or both), they would not assume their control until the 112th Congress is sworn in during January 2011, leaving Democrats in charge for the remainder of 2010. Democrats, who many believe would then see the Lame Duck session as their last opportunity to pass items on their agenda before the 2012 Presidential Election, could force a slew of votes on literally hundreds of bills. Republicans, in retaliation, would use procedural stall tactics (like the filibuster) to delay all contentious legislation until adjournment—including most or all of the FY'11 spending bills, which contain yearly funding for the NAC and JRJ.

In a different scenario, upon a Republican takeover of either the House or Senate, Republicans could force the passage of a long-term CR, and re-write each of the 12 spending bills for FY'11 when they assume the majority and work on FY'11 spending until February or March 2011.

A final, more daunting and very real scenario: Given the growing Republican opposition to Congressionally-directed spending—or "earmarked" program funding—Republicans could choose to pass a year-long CR maintaining FY'10 funding levels while removing all funding for earmarks, which would directly affect FY'11 funding for the NAC. This scenario has happened in past years so NDAA needs to be prepared to strongly oppose this course of action if it is being considered.

Simply put—the FY'11 Appropriations cycle has been a mess, and it doesn't look like we will have many answers until after the mid-term elections. Stay tuned.

National Advocacy Center (NAC)

Over the past several months, NDAA has met with many of the NAC's House and Senate FY'11 earmark champions, as well as key House and Senate Appropriations staff, in order to deliver NDAA's grassroots letters to increase funding for the NAC to its authorized level of funding. As stated in past articles, NDAA did an outstanding job with its letter-writ-

ing campaign in 2010 with letters endorsed by over 2400 state and local prosecutors from all 50 states. A **big thank you** to all who helped make this happen.

As I've stated above, NDAA will need to take a "wait and see" approach with FY'11 Appropriations. However, once the elections determine who will be in charge, NDAA will need to act quickly during the 112th Congress with phone calls and additional outreach to Congressional members and staff.

FY'11 CJS Appropriations—NAC funding levels through project request (earmark):

- House CJS: \$500,000 (champions: Reps. Spratt, Holt, Rothman, Bishop, Kratovil, Ruppertsberger)
- Senate CJS: \$250,000 (champions: Sens. L. Graham, Landrieu, Alexander, Kerry, Pryor, Lincoln, Hagan)

John R. Justice Loan Repayment Program (JRJ)

On September 17, 2010, the Department of Justice's Office of Justice Programs (OJP) published a press release announcing that all 50 states (including the District of Columbia) submitted qualifying applications for JRJ funding for FY'10 and that funding for the program would be distributed to states over several weeks (see official press release here: <http://www.ojp.gov/newsroom/pressreleases/2010/BJA10125.htm>). NDAA appreciates all of the prosecutors in the field who helped their governors' offices designate a state administering agency for JRJ funding and, after years of advocacy for this program, we look forward to our qualified prosecutors **finally** receiving the funding they deserve for student loan repayment.

Reiterating a Web site entry from a few months ago regarding FY'11 funding for JRJ, Senator Richard Durbin (D-IL) has stepped up to the plate again and worked tirelessly on behalf of America's state and local prosecutors to have \$10 million included as a line item for JRJ in the FY'11 CJS Appropriations bill. Also, since JRJ is a line item and not a Congressionally-directed earmark, JRJ would have a better chance at receiving funding in any scenario caused by post-election fallout. However, like last year, the House did not include JRJ funding in its version of the bill, so we have our work cut out for us this fall.

Once awarded, it is NDAA's goal to work with the FY'10 JRJ prosecutor award recipients on a letter-writing advocacy campaign to build support for JRJ within the House to lay the groundwork for increased funding in FY'12 and beyond. We are also working with the

Department of Justice and the White House's Office of Management and Budget (OMB) to have JRJ included in President Obama's FY'12 Budget Request to Congress.

Congratulations are in order for all of your years of hard work and advocacy to make the John R. Justice Loan Repayment Program a reality.

Other Policy Issues

Webb Crime Commission bill—S. 714, the National Criminal Justice Commission Act of 2009, was offered by Senator Jim Webb to mandate a commission to conduct an 18-month comprehensive top-to-bottom study of the United States criminal justice system. This 12-member commission would be charged to make recommendations on how to reduce incarceration rates in the U.S.; how to help incarcerated individuals reacclimatize themselves back into free society and keep them from returning to prison; analyze the drug control policy in the U.S. and its effect on the U.S. prison population; provide findings, if any, on possible racial disparities in the U.S. criminal justice system; and other issue areas underneath the criminal justice umbrella in America. While NDAA agrees, and has stated so publicly during Congressional hearings, that a comprehensive analysis of the U.S. criminal justice system is needed, it has not taken a formal position on S. 714 due to several components of the bill, including disagreements with the limited timeframe given for the commission to complete such a study.

The House companion bill, H.R. 5143, was introduced by the retiring Rep. William Delahunt (D-MA) in late April. Because a hearing was not scheduled before Congress adjourned for campaign season, it is very unlikely this bill will pass before the end of the 111th Congress, meaning it will need to start from scratch and be reintroduced in both bodies during the 112th Congress.

Because several concerns have been raised regarding the Webb bill by NDAA Board members during the past several NDAA Board Meetings, staff from both Senator Webb and Rep. Delahunt's staff continue to be willing to participate in a conference call to answer any questions our membership has regarding the bill. If this is something you are interested in participating in, please feel free to contact me at anytime and I will be more than happy to make the necessary arrangements.

NAS/Forensics Reform. NDAA continues to work closely with Senate Judiciary staff and stakeholder groups

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on the formulation of a comprehensive forensics reform bill. A bill is currently being written in the Senate and preliminary discussions have begun in the House. No hearings have been scheduled to date and no bill has been introduced. Many insiders believe that forensics reform could be an amendment to the Department of Justice Reauthorization bill, which could be introduced as early as January 2011. However, components of broad forensics reform, including recent Congressional hearings on problems associated with the Rape Kit backlog in state and local jurisdictions, could be introduced separately during the 112th Congress.

NDAA recently attended the American Society of Crime Lab Directors' (ASCLD) Annual Symposium in Baltimore and discussed current forensics issues on Capitol Hill with the incoming president of ASCLD, Greg Matheson, from the Los Angeles Police Department, and Immediate Past President Beth Greene from the Florida Department of Law Enforcement.

Additionally, during an Executive Director's Roundtable Discussion hosted by the National Criminal Justice Association (NCJA), Kristina Korobov, senior attorney with NDAA's National Center for the Prosecution of Violence Against Women (NCPVAW) served as a panelist to address dozens of national law enforcement groups on how the Rape Kit backlog adversely affects state and local prosecutors' offices around the country.

Congressional Hearings

Over the past several months, NDAA was asked to provide witnesses for two hearings before the House Judiciary Committee. On September 15, Suzanna Tiapula, director of NDAA's National Center for the Prosecution of Child Abuse (NCPCA) served as a panelist during an oversight hearing before the Subcommittee on Crime, Terrorism and Homeland Security on Domestic Minor Sex Trafficking. Her testimony before the subcommittee can be found here: <http://judiciary.house.gov/hearings/pdf/Tiapula100915.pdf>

NDAA was approached to provide a witness for an oversight hearing on the potential reauthorization of the Electronic Communications Privacy Act (ECPA), specifically as it relates to the revolution in "Cloud Computing." NDAA's interests were represented by Kurt Schmid, current executive director of the Chicago High Intensity Drug Trafficking Area (HIDTA) Program with over 40 years of

experience with electronic surveillance and the ever-changing world of technology as it relates to electronic privacy. Per Scott Burns's request, Mr. Schmid testified before the Subcommittee on the Constitution, Civil Rights and Civil Liberties on September 23 in a hearing entitled "ECPA Reform and the Revolution in Cloud Computing." Mr. Schmid asked several staff members from NDAA to provide input for his submitted testimony, which can be found here: <http://judiciary.house.gov/hearings/pdf/Schmid100923.pdf>

NDAA's 2011 Capital Conference

Even though Congress is still trying to figure out what it's going to look like during the 112th Congress, planning has already begun for NDAA's 2011 Capital Conference, to be held February 7-9, 2011, at the Liaison Capitol Hill Hotel in Washington, DC. Even though the DC-area was hit by historic snows during last year's conference, many members of NDAA were able to brave the elements and were still able to "storm" the Hill and get quality face time with their elected officials to discuss issues of importance to NDAA and America's state and local prosecutors.

I strongly encourage you to attend this conference. With Congress about to get a major makeover, I cannot stress how important it is for NDAA to be heard concerning state and local prosecutor training, loan repayment for deserving prosecutors around the country and the dozens of legislative issues relevant to you and your colleagues. Along with newly-elected representatives and senators, there will be new committee chairmen and ranking members on almost all Congressional committees and subcommittees to develop relationships with, in addition to the hundreds of new staff members that will accompany them.

With an uncertain future for earmarks and the potential for severe cuts in discretionary spending for programs of importance to the criminal justice community, we must ensure that we continue to secure state and local prosecutors' share of the pie by continued relationship building with Congressional decision makers. Please make every effort to attend.

As always, we will keep an ear to the ground on all issues important to NDAA and America's state and local prosecutors and will update each of you as needed. If you have any questions about anything you read here, please feel free to reach out to me at any time by phone (703.447.1306) or e-mail (jbaker@ndaa.org). Have a great fall and I'll see you in Scottsdale, Arizona, in November.