

# CAPITAL *Perspective*

By Jason Baker, Director of Government Affairs



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*SINCE I LAST WROTE several months ago, a lot has been happening of importance to NDAA on Capitol Hill on a number of different fronts, both in the policy and funding arenas. Let me get right into it for you:*

## *National Advocacy Center*

As many of you know, the National Advocacy Center received some positive news at the end of the FY 2010 budget cycle by receiving \$1.175 million in funding for FY'10—an increase of nearly one million dollars from the House (\$150,000) and Senate (\$250,000) FY'10 C-J-S Appropriations Bill levels. According to key Congressional members involved with C-J-S Appropriations, the increase in funding was due in large part to the grassroots efforts (phone calls and letter-writing) performed by NDAA, NAC and many state associations last summer. Our efforts, along with pressure applied by Congressional supporters of the NAC, led to the last-minute increase to the NAC's project request—no small feat in a time of shrinking spending for non-defense related programs.

While it feels like the FY'10 budget process just ended, we're already onto FY'11. Since most deadlines for FY'11 project requests filed with Congress ended on or before March 1, NDAA has submitted more than 70 project requests for NAC funding over the past month with different members of the House and Senate supportive of our cause.

A bit of troubling news came out the week of March 8 when House Republicans issued a moratorium in favor of disallowing its members from submitting earmark requests during the FY'11 appropriations cycle (copy this link in your browser: <http://www.gop.gov/resources/library/documents/misc/earmark-HRC-resolution.pdf> ). While the NAC is a national training program and has broad, bipartisan support, this position does restrict a number of our targeted members who received project requests from

NDAA from submitting their requests to the House C-J-S Subcommittee. After speaking to several House staffers (who work for both House Democrats and Republicans), it is still too early to tell if this policy position will stick with the entire House Republican contingency or, more importantly, if this will cause Senate Republicans or House and Senate Democrats to follow suit. We will continue to watch this closely and will update you as information is made available.

*In order to bolster NDAA's requests in FY'11—with no House Republican requests and a non-defense or homeland security spending freeze proposed by President Obama, we once again need as many letters of support as possible from all of our state associations.* These letters of support are important for both the Member of Congress submitting the request to justify the project to his or her constituents, and to the C-J-S appropriations subcommittee to show that the NAC has strong national support. I have received a handful of letters to date, however, we really need a letter from each of our 50 states, signed by as many prosecutors as possible, in order to maximize our FY'11 funding efforts for the NAC. I have received several additional letters this week, but we still need dozens more for this to be as effective as it can be.

## *John R. Justice Loan Repayment Program*

In addition to the NAC, the John R. Justice Loan Repayment Program received funding for the first time in FY'10, totaling \$10 million in loan repayments available for state and local prosecutors and public defenders. This was a major victory for NDAA, who worked closely with several stakeholder groups, including the American Bar Association (ABA) and the National Association of Criminal Defense Lawyers (NACDL) to make this happen.

NDAA continues to work closely with each of these stakeholder groups—in addition to the Department of Justice and the office of Senator Richard Durbin (D-IL),

who was a key advocate and supporter for JRJ during the appropriations process in 2010—in order to develop an implementation strategy for DOJ to use to get the funding obligated as quickly as possible. All of the stakeholder groups, including NDAA, met with OJP last week about JRJ; because of the short timetable and the lack of administrative funding attached to the FY'10 funding, an online application process has been ruled out for this year, as it would be too expensive and time consuming to build in 2010. OJP and BJA seem to be leaning towards a competitive bid program by office, taking into account different classifications (region, office size, etc.) for 2010. It is DOJ's hope—and it seems to be genuine at this point—to have an implementation process in place by summer 2010. We'll be sure to keep you posted of any further developments.

### *Current Sentencing Disparity*

There has been some movement on legislation regarding the current sentencing disparity between crack cocaine and powder cocaine. NDAA has given public support, through Congressional testimony and a NDAA Board Resolution, to support the U.S. Sentencing Commission's recommendations that changes are needed to the current 100:1 disparity between amounts of crack cocaine (five grams) and powder cocaine (500 grams) needed to trigger a five-year mandatory minimum sentence. In early February, NDAA went on the record and supported a substitute amendment to S. 1789, the Fair Sentencing Act of 2009 (by Senator Richard Durbin), offered by Senator Lindsey Graham (R-SC) which would reduce the disparity to 10:1 (from five grams to 50 grams) while instituting mandatory sentencing enhancements for those individuals arrested for possession of crack cocaine. Additionally, a different amendment was offered by Ranking Member Jeff Sessions (R-AL) and Senator Orrin Hatch (R-UT) recommending less of a reduction to the disparity, favoring a 20:1 adjustment (from five grams to 25 grams).

*After lengthy negotiations between several key members of the Senate Judiciary Committee, a deal was struck and the bill was passed out of committee by a unanimous 19-0 vote; the agreed upon adjustment to the disparity ended up being 18:1, raising the threshold for an automatic five-year sentence from five grams to 28 grams, in addition to raising the ten-year mandatory sentence from 50 grams to 280 grams. Additionally,*

*the mandatory sentencing enhancements remained intact in the Committee-passed version, which was a specific request of NDAA and other law enforcement groups.*

NDAA has pledged its full support of this Committee-passed version of the bill. We will keep you all posted on any further developments as this bill moves forward.

### *Webb bill update*

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 11-member commission would be charged to make recommendations on how to reduce incarceration rates in the U.S.; how to help incarcerated individuals reacclimate 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 because of several components of the bill, including disagreements with the limited timeframe given for the commission to complete such a study.

The bill passed out of the Senate Judiciary Committee last month. However, with a crowded floor schedule on the horizon and no House companion bill, movement for this bill seems unlikely at this point. Stay tuned.

While Congress has sprinted out of the gate in 2010, expect this to slow to a snail's pace as spring arrives. As is the case with most election years, the policy agenda during campaign season tends to be severely limited in scope. On top of that, add two of President Obama's major priorities outlined in his State of the Union Address—health care reform and a jobs bill—and action on most other legislation will grind to a halt until after the 2010 mid-term elections. As always, we will keep an ear to the ground on all issues important to NDAA and America's state and local prosecutors. If you have any questions, please feel free to reach out to me by phone (703.447.1306) or e-mail (jbaker@ndaa.org). Thanks again for all that you do for America.