

# The PROSECUTOR

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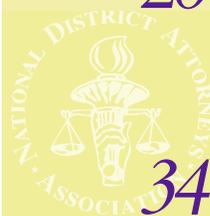
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*The Prosecutor* encourages its readers to submit articles of interest to prosecutors for possible publication in the magazine. Send articles to [jean.hemphill@ndaa.org](mailto:jean.hemphill@ndaa.org).

## THE COVER

Joseph I. Cassilly became president of NDAA in July 2008. See his profile on page nine. *Photograph by Accent Photos.*



## President Bush Signs Bill Authorizing Federal Student Loan Repayment Assistance For Local Prosecutors

IT ALL REALLY STARTED with a couple of questions from assistant prosecutors about the possibility of relief from their federal Perkins and Stafford loans. Their inquiries in 1998 to the National District Attorneys Association prompted then-President John R. Justice (solicitor, 6th Judicial Circuit, Chester, South Carolina) to send a missive to the U.S. Secretary of Education. The letter, in part, stated:

Inquiries from a number of assistant prosecutors indicate that there is confusion both within the lending community and among prosecutors as to any loan forgiveness provisions in federally backed programs. If these programs are currently applicable then we need to publicize their availability; **if they are not then we need to work towards legislative solutions.** (emphasis added)

The result of Solicitor Justice's letter and subsequent letters from Senator Joseph Biden (D-DE) to the Departments of Education and Justice was the clarification that prosecutors are considered "law enforcement" for purposes of the loan forgiveness provisions of the federal Perkins loan program. This unfortunately was not much consolation for the majority of prosecutors with student loans issued through the Stafford loan program. Nor was it much assistance to the prosecutors around the country trying to recruit and retain competent and trained assistants in their offices. Without an incentive such as repayment assistance on educational loans there was little preventing young prosecutors from joining the private sector.

So work towards a legislative solution is exactly what NDAA did. For approximately the last ten years the National District Attorneys Association's presidents, board of directors, association members, and the staff have focused on the creation of a viable federal student loan repayment assistance program for prosecutors.

The association enlisted the support of the American Bar Association and defense organizations after inquiries by and meetings with the organizations' representatives in 1999. The first letter from Solicitor Justice to the U.S. Secretary of Education suggested that cancellation provisions should apply to public defenders as well as prosecutors in order to ensure a

well-run criminal justice system.

As president of NDAA from July 1999 until July 2000, Stuart VanMeveren, retired district attorney, 8th Judicial District, Fort Collins, Colorado, continued the work that Solicitor Justice began. Mr. VanMeveren's letter to the editor in response to a story on the federal government's difficulties in recruiting and retaining the best lawyers was published in the *Washington Post* in May 2000. Due to the fortuitous timing of publication of the letter the piece was instrumental in preventing "technical" amendments to the Higher Education Act from prevailing during the 106th Congress, which would have eliminated the single avenue of forgiveness for prosecutors under the Perkins loan program. The letter emphasized that the "situation is as bad if not worse in local prosecutors' offices around the nation" than in federal agency offices.

During their terms as president from 2000 until 2002 Robert Johnson, county attorney, Anoka County, Minnesota, and Kevin Meenan, former district attorney, 7th Judicial District, Casper, Wyoming, continued the work of the association by reaching out to the state prosecutor associations and educating Congress on the need for this relief for young prosecutors burdened with overwhelming debt. In 2001 in response to the ABA's request that a prosecutor be appointed to the newly chartered commission on student loan debt, Mr. Meenan appointed then NDAA board member J. Tom Morgan, former district attorney, DeKalb County, Georgia, to the commission. Mr. Morgan had previously been successful in his home state of Georgia in getting state student loan forgiveness legislation passed.



JOHN R. JUSTICE

In 2002, under the leadership of Dan Alsobrooks, district attorney general, 23rd Judicial District, Tennessee, significant monies were approved for expenditure on legislative activities concerning student loan forgiveness and the issue became a top priority for the association. As a result, the association adopted a resolution urging Congress to enact legislation that would provide for student loan forgiveness for prosecutors and public defenders and began making the topic a high priority agenda item for the annual Metro/Legislative/Capital Conference.

Unfortunately, efforts to include the student loan forgiveness language in the Department of Justice Reauthorization bill were unsuccessful in the 107th Congress. In both the 106th and 108th Congresses NDAA board members Stuart VanMevern and Paul Logli testified respectively on the Innocence Protection Act. Incorporated into their testimony was an emphasis on the need for incentives such as student loan forgiveness to recruit and retain competent counsel. However, the association was unable to support the final version of the bill for reasons unrelated to the student loan forgiveness program language.

In May 2003 Senators Richard Durbin (D-IL) and Mike DeWine (R-OH) introduced the first stand-alone legislation during the 108th Congress to provide authorization for a student loan repayment assistance program. Specifically the legislation would have provided borrowers with student loan repayment assistance if they agreed to remain employed, for at least three years, as state or local criminal prosecutors or state, local or federal public defenders in criminal cases. Similarly, in the House of Representatives, David Scott (D-GA-13) introduced a companion bill. Both bills were referred to committee but did not gain traction. These initial versions would have required that the Secretary of Education administer the program. On a parallel track then-President Dan Alsobrooks contacted the Senate Committee on Health, Education, Labor and Pensions to request the inclusion of the student loan repayment assistance program in the reauthorization of the Higher Education Act. However, the 108th Congress adjourned without reauthorization.

Senator Richard Durbin (D-IL) and Representative David Scott (D-GA-13) introduced the “Prosecutors and Defenders Incentive Act” in each of the succeeding Congresses with the legislation finally gaining momentum in the 110th Congress.

During the 108th Congress efforts to include the student loan repayment assistance program language in a gang-related bill were successful, however attempts to pass the gang bill were unsuccessful in the end. Similarly, efforts to use DNA and capital punishment-related legislation as vehicles for the student loan repayment assistance program proved unproductive.

The association’s efforts continued throughout the 108th, 109th and 110th Congresses under the leadership of Presidents Robert McCulloch, prosecuting attorney, St. Louis County, Missouri (2003-2004); Paul Walsh, former district attorney, New Bedford, Massachusetts (2004-2005); Paul Logli, former state’s attorney, Winnebago County, Illinois (2005-2006); Mat

Heck, prosecuting attorney, Montgomery County, Ohio (2006-2007); and Jim Fox, district attorney, San Mateo County, California (2007-2008).

At the start of the 109th Congress and in an effort to increase support, then-President Paul Walsh wrote to almost all new members of Congress highlighting the student loan forgiveness issue and its importance to the association.

From 2003 until the present, NDAA presidents have rallied membership and state prosecution associations to educate their congressional delegations about the importance of the loan forgiveness program for prosecutors and public defenders to the effectiveness of the criminal justice system; have continued to meet with members of Congress both during the NDAA Capital Conferences and throughout their year as president; and have provided testimony before Congressional committees<sup>1</sup> on the issue and its negative impact on the criminal justice system.

NDAA also continued during this time to work in conjunction with the American Bar Association, the National Association of Criminal Defense Lawyers and the National Legal Aid & Defender Association as well as the Los Angeles Public Defender’s Office during these Congresses.

In 2006, with the passing of John R. Justice, it was only fitting that the title of the legislation be amended to the “John R. Justice Prosecutors and Defenders Act.”

In 2007 then-President Mat Heck along with the presidents of the ABA and the NACDL signed onto a joint letter to members of Congress concerning the importance of assisting young prosecutors with their debt and enabling district attorneys in their quest to recruit and retain the brightest and most qualified attorneys to their offices.

And in 2008 the association’s efforts finally came to fruition on August 15 when President Bush signed into law H.R. 4137, the “Higher Education Opportunity Act.”<sup>2</sup> Included in the fairly exhaustive piece of legislation is the “John R. Justice Prosecutors and Defenders Incentive Act.” The act authorizes the creation and implementation of a loan repayment assistance program for the purpose of recruiting and retaining qualified and competent prosecutors and defenders in the criminal justice system.

This result could not have been accomplished without the leadership of Senator Richard Durbin (D-IL) and the tremendous work of his incredible staff members, especially Dan Swanson. Also critical to the efforts were the partner organizations, the American Bar Association, the National Association of Criminal Defense Lawyers, the National Legal Aid & Defender Association and the Los Angeles, California Public Defender’s Office that worked tirelessly on the issue over the years in an effort to get this program authorized.

However. . . additional work must be done before assistant prosecutors across the nation begin signing up for the program and before expecting repayment checks to be sent to their lenders.

Essentially there are two more steps that must be completed before the program will be fully functional:

**1. Appropriations.** The program must be funded either in the FY 2009 or the FY 2010 spending bill for the Departments of Commerce and Justice and the science related programs because the program will be administered by the United States attorney general.

**FY 2009 Appropriations bills:** There is a sense that after the expiration of the Continuing Resolution in March 2009, that Congress will resume work on the outstanding appropriations bills for FY 2009 in an effort to pass them separately before the end of the fiscal year.

**FY 2010 Appropriations bills:** In addition to attempting to amend the FY 2009 spending bills to include the funding for the authorized program, it will also be important to monitor and participate in the FY 2010 (Oct. 1, 2009 – Sept. 30, 2010) appropriations process. Appropriators have deadlines for the submission of appropriations request forms which fall generally in the early spring. The appropriations process starts far in advance of the actual fiscal year so a dual track approach (FY 2009 and FY 2010 simultaneously) to the funding of this program will probably need to be adopted.

**2. Regulations.** Pursuant to the “John R. Justice Prosecutors and Defenders Incentive Act” the United States Department of Justice will administer the program and the U.S. attorney general is authorized to promulgate regulations for the implementation of the program.

- The U.S. Department of Justice administers a similar loan repayment assistance program for federal prosecutors so it is likely that this federal program will be used as a template for the local prosecutor program.
- Likely issues to be detailed in the regulations that are not addressed by the federal program include:
  - Formulas for the fair division of funds among district attorneys and public defenders as well as geographical parity in the allocation of funds;
  - The extent to which employers will be involved in the application process. The committee report on the legislation envisioned a role for the employer because the person receiving the assistance should be a qualified employee that an employer either wants to recruit or retain.

As it has in the past, the National District Attorneys Association will continue to make full implementation and funding of the “John R. Justice Prosecutors and Defenders Incentive Act” one of its highest priorities.

The “**John R. Justice Prosecutors and Defenders Incentive Act**” is contained in Sections 951 and 952 of the “Higher Education Opportunity Act.” The text reads as follows:

SEC. 951. SHORT TITLE.

This part may be cited as the “John R. Justice Prosecutors and Defenders Incentive Act of 2008.”

SEC. 952. LOAN REPAYMENT FOR PROSECUTORS AND DEFENDERS.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after part II (42 U.S.C. 3797cc et seq.) the following:

*PART JJ—LOAN REPAYMENT FOR PROSECUTORS AND PUBLIC DEFENDERS*

SEC. 3001. GRANT AUTHORIZATION.

(a) Purpose— The purpose of this section is to encourage qualified individuals to enter and continue employment as prosecutors and public defenders.

(b) Definitions— In this section:

(1) PROSECUTOR— The term ‘prosecutor’ means a full-time employee of a State or unit of local government who—

(A) is continually licensed to practice law; and

(B) prosecutes criminal or juvenile delinquency cases at the State or unit of local government level (including supervision, education, or training of other persons prosecuting such cases).

(2) PUBLIC DEFENDER— The term ‘public defender’ means an attorney who—

(A) is continually licensed to practice law; and

(B) is—

(i) a full-time employee of a State or unit of local government who provides legal representation to indigent persons in criminal or juvenile delinquency cases (including supervision, education, or training of other persons providing such representation);

(ii) a full-time employee of a nonprofit organization operating under a contract with a State or unit of local government, who devotes substantially all of the employee’s full-time employment to providing legal representation to indigent persons in criminal or juvenile delinquency cases (including supervision, education, or training of other persons providing such representation); or

(iii) employed as a full-time Federal defender attorney in a defender organization established pursuant to subsection (g) of section 3006A of title 18, United States Code, that provides legal representation to indigent persons in criminal or juvenile delinquency cases.

(3) STUDENT LOAN—

(A) IN GENERAL— Except as provided in subparagraph (B), the term ‘student loan’ means—

(i) a loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(ii) a loan made under part D or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq. and 1087aa et seq.); and

(iii) a loan made under section 428C or 455(g) of the Higher

*(Continued on page 14)*

## President Bush Signs Bill

(Continued from page 12)

Education Act of 1965 (20 U.S.C. 1078-3 and 1087e(g)).

(B) EXCLUSION OF PARENT PLUS LOANS- The term 'student loan' does not include any of the following loans:

(i) A loan made to the parents of a dependent student under section 428B of the Higher Education Act of 1965 (20 U.S.C. 1078-2).

(ii) A Federal Direct PLUS Loan made to the parents of a dependent student.

(iii) A loan made under section 428C or 455(g) of the Higher Education Act of 1965 (20 U.S.C. 1078-3 and 1087e(g)) to the extent that such loan was used to repay a loan described in clause (i) or (ii).

(c) Program Authorized- The Attorney General shall establish a program by which the Department of Justice shall assume the obligation to repay a student loan, by direct payments on behalf of a borrower to the holder of such loan, in accordance with subsection (d), for any borrower who—

(1) is employed as a prosecutor or public defender; and

(2) is not in default on a loan for which the borrower seeks forgiveness.

(d) Terms of Agreement-

(1) IN GENERAL- To be eligible to receive repayment benefits under subsection (c), a borrower shall enter into a written agreement that specifies that—

(A) the borrower will remain employed as a prosecutor or public defender for a required period of service of not less than three years, unless involuntarily separated from that employment;

(B) if the borrower is involuntarily separated from employment on account of misconduct, or voluntarily separates from employment, before the end of the period specified in the agreement, the borrower will repay the Attorney General the amount of any benefits received by such employee under this section;

(C) if the borrower is required to repay an amount to the Attorney General under subparagraph (B) and fails to repay such amount, a sum equal to that amount shall be recoverable by the Federal Government from the employee (or such employee's estate, if applicable) by such methods as are provided by law for the recovery of amounts owed to the Federal Government;

(D) the Attorney General may waive, in whole or in part, a right of recovery under this subsection if it is shown that recovery would be against equity and good conscience or against the public interest; and

(E) the Attorney General shall make student loan payments under this section for the period of the agreement, subject to the availability of appropriations.

(2) REPAYMENTS-

(A) IN GENERAL- Any amount repaid by, or recovered from, an individual or the estate of an individual under this

subsection shall be credited to the appropriation account from which the amount involved was originally paid.

(B) MERGER- Any amount credited under subparagraph (A) shall be merged with other sums in such account and shall be available for the same purposes and period, and subject to the same limitations, if any, as the sums with which the amount was merged.

(3) LIMITATIONS-

(A) STUDENT LOAN PAYMENT AMOUNT- Student loan repayments made by the Attorney General under this section shall be made subject to such terms, limitations, or conditions as may be mutually agreed upon by the borrower and the Attorney General in an agreement under paragraph (1), except that the amount paid by the Attorney General under this section shall not exceed—

(i) \$10,000 for any borrower in any calendar year; or

(ii) an aggregate total of \$60,000 in the case of any borrower.

(B) BEGINNING OF PAYMENTS- Nothing in this section shall authorize the Attorney General to pay any amount to reimburse a borrower for any repayments made by such borrower prior to the date on which the Attorney General entered into an agreement with the borrower under this subsection.

(e) Additional Agreements-

(1) IN GENERAL- On completion of the required period of service under an agreement under subsection (d), the borrower and the Attorney General may, subject to paragraph (2), enter into an additional agreement in accordance with subsection (d).

(2) TERM- An agreement entered into under paragraph (1) may require the borrower to remain employed as a prosecutor or public defender for less than three years.

(f) Award Basis; Priority-

(1) AWARD BASIS- Subject to paragraph (2), the Attorney General shall provide repayment benefits under this section--

(A) giving priority to borrowers who have the least ability to repay their loans, except that the Attorney General shall determine a fair allocation of repayment benefits among prosecutors and public defenders, and among employing entities nationwide; and

(B) subject to the availability of appropriations.

(2) PRIORITY- The Attorney General shall give priority in providing repayment benefits under this section in any fiscal year to a borrower who—

(A) received repayment benefits under this section during the preceding fiscal year; and

(B) has completed less than three years of the first required period of service specified for the borrower in an agreement entered into under subsection (d).

(g) Regulations- The Attorney General is authorized to issue such regulations as may be necessary to carry out the provisions of this section.

(h) Report by Inspector General- Not later than three years after the date of the enactment of this section, the Inspector General of the Department of Justice shall submit to Congress

National District Attorneys Association's

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Course: December 2-5, 2008

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Course: December 2-5, 2008

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Course: December 8-12, 2008

## **Trial Advocacy II**

*Application Deadline: September 19, 2008*

Course: November 17-21, 2008

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a report on—

(1) the cost of the program authorized under this section; and  
(2) the impact of such program on the hiring and retention of prosecutors and public defenders.

(i) GAO Study- Not later than one year after the date of the enactment of this section, the Comptroller General shall conduct a study of, and report to Congress on, the impact that law school accreditation requirements and other factors have on the costs of law school and student access to law school, including the impact of such requirements on racial and ethnic minorities.

(j) Authorization of Appropriations- There are authorized to

be appropriated to carry out this section \$25,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years.

<sup>1</sup> On February 27, 2007, then-President Paul Logli, former state's attorney, Winnebago County, Illinois, testified before the Senate Committee on the Judiciary on S.442, the "John R. Justice Prosecutors and Public Defenders Act of 2007." On April 24, 2007, NDAAs board member Kamala Harris, district attorney, San Francisco, testified before the House Subcommittee on Crime, Terrorism and Homeland Security concerning H.R. 916, the "John R. Justice Prosecutors and Defenders Incentive Act."

<sup>2</sup> Public Law No. 110-315. The law can be accessed at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_public\\_laws&docid=f:publ315.110](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ315.110).



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