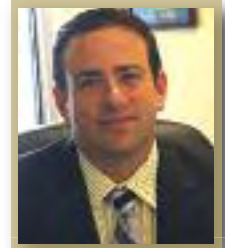


# CAPITAL *Perspective*

By Jason Baker, Director of Government Affairs



JASON BAKER

**AS AUGUST RECESS** is officially upon us, several important developments have occurred in the mad legislative dash before what is to become all-out campaign season for the remainder of the summer:

## *FY'11 Appropriations*

As compared to past cycles, the FY'11 Appropriations process has gotten off to an unusually slow start. During a “normal” appropriations cycle, yearly spending bills are written during the months of April and May and are first introduced in the House in late May or early June, then closely followed by the Senate bill in late June or early July. However, because of the front-loaded first half of 2010 in both chambers on big-ticket items—including health care, tax extenders, hearings on the Gulf oil spill and a Wartime Supplemental spending bill—FY'11 regular order appropriations has taken a back seat for other legislative priorities.

After the Wartime Supplemental was passed out of both the House and Senate Appropriations Committee, they were finally able to get to work on their regular order spending bills for FY'11—including the Commerce, Justice and Science (CJS) bill, which fund many programs of importance to NDAA, including the National Advocacy Center (NAC) and the John R. Justice Loan Repayment Program (JRJ).

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)

While NDAA is still not where it wants to be, FY'11 funding efforts for the NAC have had a better “start” than they had in FY'10. First, NDAA has more champions in both the House and Senate for FY'11 and several well-

positioned champions on the Appropriations Committee, including several CJS Appropriators (Rep. Ruppertsberger, Sens. Alexander and Pryor), while being mindful that no House Republicans put in any earmark requests this year. Also, we have a higher House funding level in FY'11 (\$500K) than in FY'10 (\$150K), so there's less ground NDAA needs to make up in the bills during conference negotiations, which by all indications will not be happening before the November elections.

*Our letter-writing campaign was a major success in FY'11, with over 2400 endorsements from state and local prosecutors on letters from all 50 states—a great job by all and a special thanks to the NDAA Board of Directors and the National Association of Prosecutor Coordinators (NAPC) for helping to make this happen.* 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, unified national support. Follow-up meetings with House and Senate appropriators—with these letters in hand—will be occurring over the next several months leading up to conference negotiations.

## *John R. Justice Loan Repayment —FY'10 Implementation and FY'11 Funding*

Over the past several months, much progress has been made to implement the first federally-funded loan reimbursement program for America's state and local prosecutors. A few weeks ago, The Department of Justice's Bureau of Justice Assistance (BJA) released a solicitation to state governments for the John R. Justice Grant Program. Because FY'10 is the first year in which JRJ has been funded, it was determined by DOJ, Congress and key stakeholder groups, including NDAA, the American Bar Association (ABA) and

the National Association of Criminal Defense Lawyers (NACDL), that JRJ funds would be distributed directly to states and be implemented by states using their own administering agencies with experience in student loan repayment programs. With a deadline of July 27, 2010, for the solicitation, NDAA worked hard to help all 50 states submit timely applications for JRJ funding. For more information on JRJ or to see if your state has designated an agency, please go to <http://www.ojp.usdoj.gov/BJA/grant/johnrjustice.html> or continue to check NDAA's homepage for additional updates.

Regarding FY'11 funding for the John R. Justice Program, once again, Senator Richard Durbin (D-IL) has stepped up 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. Additionally, like last year, the House did not include JRJ funding in its version of the bill. It is NDAA's goal to work with the FY'10 JRJ prosecutor award recipients on a letter-writing campaign to build support for this important program within the House to lay the groundwork for increased funding in FY'12 and beyond.

### *Policy Issues of Importance to NDAA*

**Crack-Powder Sentencing Disparity.** After lengthy negotiations between several key members of the Senate Judiciary Committee, a deal was struck in March and S. 1789, the Fair Sentencing Act of 2009, was passed out of committee by a unanimous, 19-0 vote and passed out of the Senate by Unanimous Consent (UC); the agreed upon adjustment to the disparity ended up at 18:1, raising the threshold for an automatic five-year sentence from five grams to 28 grams, in addition to raising the 10-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 for the Committee-passed version of S. 1789.

Unexpectedly, the bill moved quickly in the House, with the Fair Sentencing Act passing out of the House by Voice Vote right before the August Recess. After close to a decade

of work by Congress on the crack cocaine sentencing disparity, the bill now moves on to President Obama, where he is expected to sign the bill into law.

*NDAA emerged as a leader on this issue and has been recognized as such by many House and Senate decision makers, along with the Department of Justice and the Obama Administration, for all of the hard work NDAA put into adjusting the improper and unfair sentencing disparity between crack and powder cocaine.*

**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 11-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 because of 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 and has 21 bi-partisan co-sponsors to date. According to House Judiciary staff, a hearing on the need for a National Criminal Justice Commission could happen before the November election. While the bill has yet to pass the Senate, it is the hope of both Senator Webb and Rep. Delahunt to pass this bill into law before the end of the 111th Congress. We will keep you posted on any further movement.

*Because several concerns have been raised regarding the Webb bill by NDAA Board members, staff from both Senator*

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## Message from the President

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financial reporting, the new accountant walked out.

It then became clear that not only was the reporting flawed, but the actual state of the finances was dis-integrating. There were many telephone conferences with the accountants and Executive Committee to right the ship and find out how bad things were. Another plan of action was devised to fix the problems, but they were ignored by the administration.

Reluctantly, the Executive Committee decided that an extremely “hands on” approach was necessary in order to resolve the problems. A series of pointed and detailed targets were set for the executive director to implement and accomplish. He chose to resign.

Jim Fox spent most of his presidency fighting to keep the organization afloat as I detailed in Board meetings the information, as depressing as it was, that

we learned about the true state of the finances and the reporting systems. We dealt with another depressing audit and began to right the ship. We still have a way to go but “the future is so bright that I have to wear shades.”

(A huge lesson should be learned by all Board members that they need to stay engaged, ask questions and get involved in solutions because you/we cannot wait for others to do so. Get engaged, stay engaged.)

So after this tortured journey, I take over the reigns of NDAA as your president feeling very humbled about the work that we have yet to do. There are many challenges.

We face NAC funding fights, the Webb Commission, the NAS study and other issues yet to raise their heads. Nonetheless, I look forward to the future and its challenges because I know that a strong, diverse and energetic group of prosecutors and prosecutor coordinators “have my back.” I will be calling upon all of you to help lead us into the future. And don’t forget to buy shades.

## Capital Perspective

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*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 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.

**Kagan Supreme Court Nomination.** After what turned out to be a rather dull week of hearings analyzing the past work of Supreme Court Associate Justice Nominee and current U.S. Solicitor General Elena Kagan, the Senate will remain in session one week longer than the House to designate floor time for her nomination. After passing out of the Senate Judiciary Committee favorably on a largely party-line vote, with Senator Lindsey Graham as the only Senate Republican to vote in favor of Solicitor Kagan, it is expected that Solicitor Kagan will be confirmed by the Senate in a largely partisan fashion. Expect her vote total to be in the low-to-mid 60s.

*A lot has been happening on the Hill of importance to NDAA and we continue to work hard on your behalf. 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, please feel free to reach out to me at any time by phone (703.447.1306) or e-mail (jbaker@ndaa.org). Thanks again for all that you do for America.*