

December 21, 2007

SUPREME COURT RULES ON CRACK COCAINE SENTENCING

On December 10, 2007, the Supreme Court ruled that federal judges have discretion to impose more lenient sentences for crack cocaine crimes than those recommended by the federal sentencing guidelines. The 7-2 ruling by the court in *Kimbrough v. United States* enhances judicial discretion to reduce the disparity between sentences for crack and powder cocaine offenses. This backs an earlier decision by the court in 2005, in which it ruled that the federal guidelines are not mandatory, but rather advisory.

In the *Kimbrough v. United States* ruling, written by Justice Ruth Bader Ginsburg, the court held that federal judges must abide by the statutory mandatory minimum prison sentences established by Congress for crack cocaine offenses, but have discretion to depart from the higher sentences allowed under the U.S. Sentencing Commission's federal guidelines. Currently, the mandatory minimum sentence for simple possession of 5 grams of crack is 5 years, while it takes possession of 500 grams of powder cocaine to receive that same sentence.

In addition to the Supreme Court ruling, on November 1, 2007, the U.S. Sentencing Commission changed its guidelines to reduce the disparity in prison time for crack and powder cocaine offenses. The new guidelines lower the sentencing ranges for first-time trafficking offenses involving 5 grams of crack to include the statutory mandatory minimum penalties. The previous guideline sentencing ranges for the same offense were higher than, and did not include, the statutory mandatory minimum penalties.

While the rulings of the Supreme Court and the U.S. Sentencing Commission could potentially result in shorter prison terms for some crack offenders, Congress alone has the power to narrow the disparity between mandatory minimum sentences for crack and powder cocaine offenses.

Since the release of a U.S. Sentencing Commission report recommending the elimination of the mandatory minimum prison sentence for simple possession of

crack in May 2007, interest has been growing among lawmakers to narrow the crack cocaine sentencing disparity. Several bills have been introduced in Congress that propose to either eliminate or reduce the current 100:1 sentencing ratio, but none have made any headway. NAPO is closely monitoring the issue and remains in favor of the sentencing gap between crack and powder cocaine convictions. Crack cocaine has proved to be a greater danger to our nation's communities and law enforcement.

CONGRESS PASSES NAPO-ENDORSED LEGISLATION THAT WILL ASSIST IN THE CLEAN-UP OF METH LABS

On December 11, 2007, Congress passed a bill that requires the Environmental Protection Agency (EPA) to establish voluntary guidelines that states and localities can use when creating policies for the cleanup of methamphetamine laboratories. The "Methamphetamine Remediation Research Act of 2007," H.R. 365, aims to help states address the rapidly expanding number of meth lab sites shut down by law enforcement. It establishes a research program to develop new meth detection technologies, requires the EPA to convene a conference with state agencies and experts to provide information about the guidelines, and mandates the study of the residual effects of meth labs. The bill authorizes \$5 million over two years for the program.

According to the Drug Enforcement Agency (DEA), one pound of methamphetamine production results in up to five pounds of dangerous waste chemicals, such as lye, red phosphorus, hydriodic acid and iodine.

NAPO actively supported the efforts of Representative Bart Gordon (D-TN) and Senator Max Baucus (D-MT) to assist states and localities cleanup methamphetamine labs. NAPO pushed for the passage of this legislation because we feel that it is important to fight meth in America's neighborhoods and completely erase the mark of meth from our communities.

CONGRESS STRUGGLES TO COMPLETE FISCAL 2008 SPENDING BILLS

Facing the fast approaching holiday recess and having only passed one fiscal 2008 appropriations bill, Congress struggled to pass the eleven remaining spending bills. With a White House veto looming if Congress appropriated more than the \$933 billion requested in the President's fiscal 2008 budget and House Republicans vowing to back the President's veto, House appropriators pulled together an "omnibus" spending measure that would meet the President's spending cap. On December 17, 2007 the House took up and passed the omnibus bill that rolled all of the remaining eleven bills into one, large appropriations package.

The original House and Senate appropriations bills exceeded the President's budget request by \$22 billion, causing the White House to issue a veto threat. The White House was unwilling to compromise on the overall spending level, forcing Congress to par back its spending plan to meet the President's spending limit. Unfortunately, in order to do this, the House and Senate chose to cut into proposed funding levels for several law enforcement programs, including Department of Justice state and local law enforcement assistance grants. The grants hit the hardest are the Justice Assistance Grants (JAG) and the COPS hiring program, for which NAPO had secured significant funding after it had been zeroed out for three years. JAG will be funded at \$170 million, which is a huge decrease from the \$520 million appropriated for the program in fiscal 2007 and a 75% decrease from the proposed House and Senate fiscal 2008 levels. Funding for the COPS hiring initiative was dropped from \$100 million in the House and \$110 million in the Senate down to \$20 million.

Other state and local law enforcement assistance programs, such as COPS and the Byrne discretionary grants will be funded at a similar level to what they were in fiscal 2007, which is still well below the level at which Congress had originally proposed to fund them in fiscal 2008. The Mentally Ill Offender Treatment and Crime Reduction Act will be funded at \$6.5 million, which is \$1.5 million more than fiscal 2007, but \$3.4 million less than the original proposed fiscal 2008 level.

The COPS Technology and Interoperability grants, however, did receive a boost in funding - almost double what it received in fiscal 2007 and double what the House and Senate proposed for the program for 2008. It will receive \$205.4 million in funds for fiscal 2008.

As for the state and local homeland security grants, in the omnibus appropriations bill they would meet the House and Senate proposed fiscal 2008 levels – \$950 million for the State Homeland Security Grants program and \$820 million for the Urban Area Security Initiative, with the Law Enforcement Terrorism Prevention program receiving 25% of each program. These funding levels are \$1.8 billion over the President’s 2008 budget request and \$613 million above fiscal 2007. This funding also flies in the face of rumors circling around the Office of Management and Budget (OMB) that say the President is looking to eliminate most or all of the state and local first responder homeland security grants in fiscal 2009.

On December 18, 2007, the Senate passed the omnibus appropriations measure. The bill was sent back to the House for final approval of the Senate-amended bill on December 19. NAPO is looking to add funding back to these important programs in an emergency supplemental spending bill in the beginning of 2008.

EXECUTIVE DIRECTOR’S REPORT

COLLECTIVE BARGAINING

On Friday, December 7, 2007, Senators Judd Gregg (R-NH), Edward Kennedy (D-MA) and Tom Harkin (D-IA) submitted the Public Safety Employer-Employee Cooperation Act (S. 2123) as an amendment to the Farm, Nutrition, and Bioenergy Act of 2007, H.R. 2419. The amendment, S.Amdt.3830, was one of only forty amendments – out of hundreds offered – that the Senate leadership allowed to be considered. Senators Gregg, Kennedy and Harkin felt strongly that the Collective Bargaining bill had a good chance of passing the Senate as part of the Farm bill.

NAPO spent the next week lobbying Senators to ensure that we had the 60 votes necessary to pass the amendment when it was scheduled to come up for a vote on the morning of Friday, December 14. We were even able to arrange for all of the Senate Democratic Presidential Candidates (Senators Joseph R. Biden, Jr., Hillary Rodham Clinton, Christopher Dodd, and Barack Obama) to fly back Thursday night after their debate in Iowa in order to vote Friday morning in favor of the amendment.

However, the night before the scheduled vote, Senators Gregg, Kennedy and Harkin were forced to withdraw their Public Safety Collective Bargaining amendment. Despite all of NAPO’s efforts and overwhelming support for the amendment, Senator Jim DeMint (R-SC) did everything in his power to ensure that it did not pass. Senator DeMint offered so called second degree amendments that would have significantly weakened our amendment and threatened to filibuster it, making a clean passage of the Collective Bargaining amendment impossible.

While it is unfortunate that we did not get the chance to have S.Amdt.3830 voted on, we did discover that the Public Safety Employer-Employee Cooperation Act has widespread, bipartisan support in the Senate. We feel that if Senator DeMint had not forced it to be withdrawn, there was a strong possibility that it would have passed.

NAPO played a large role in the passage of the Public Safety Employer-Employee Cooperation Act, H.R. 980, in the House of Representatives on July 17, 2007. The fight to pass the collective bargaining bill in the Senate is now more focused and NAPO is putting all of its efforts into ensuring its passage. Next year is a new Congressional session and we are optimistic that we can build on our broad bipartisan support and move the bill successfully in 2008.

IMMIGRATION ENFORCEMENT BILL INTRODUCED IN HOUSE

On November 6, 2007, Representative Heath Shuler (D-NC) introduced the “Secure America through Verification and Enforcement (SAVE) Act of 2007”, H.R. 4088, which aims to provide immigration reform by securing America’s borders, clarifying and enforcing existing laws, and enabling a practical employer verification program.

H.R. 4088 recognizes the increasingly important role state and local law enforcement play in thwarting illegal immigration and related criminal activity. This bill provides a necessary boost in federal support of state and local immigration enforcement efforts through the hiring of additional Border Patrol Agents and Criminal Alien Program Officers, and the expansion of federal training programs for state and local law enforcement officers. Additionally,

the legislation establishes a Border Relief Grant Program, which would aid state and local law enforcement in their fight against crime along the borders by assisting agencies in the hiring, training, and retention of additional officers to take on immigration enforcement duties. These additional federal resources would help state and local law enforcement better cooperate with and assist the Immigration and Customs Enforcement keep our nation's borders and communities secure.

Today, state and local law enforcement are facing more challenges than ever before, and officers are taking on additional duties to meet these challenges. From an increase in violent crime rates and a constant vigilance against terrorist threats to illegal immigration issues, law enforcement officers can no longer solely focus on community-oriented policing. These officers need the full support of the federal government to continue serving and protecting our neighborhoods and NAPO feels that the "SAVE Act of 2007" gives them such support.

NAPO supports the efforts of Congressman Shuler and is actively fighting to ensure that state and local law enforcement officers are fully supported in their efforts to enforce immigration laws.