

FROM THE PRESIDENT

JOHN WESLEY HALL

This Was the Year That Was

I came to the presidency of this fine organization with no preconceived notions of what the focus of “my year” would be. Likely because I never thought of it as “my year” — it was our year. So, I had no “programs” and no specific plans. Unusual. Why? Two reasons.

First, I never really believed that I would ever be NACDL president, so it never hit me that I would be until after I had already become president-elect. There was no real planning for “my year” because I was fascinated by my constant education about all that NACDL does for the criminal defense bar and on behalf of the Bill of Rights.

Second, NACDL already does a lot, and it did not need me giving it yet another project. Always so much still to do, so little time. The best thing I could do for NACDL was just always work to make it better. My plan was simply to allow NACDL to be all that it could be as the protector of the Bill of Rights and the Constitution.²

During this NACDL presidential year — August 2, 2008 to August 8, 2009 — your NACDL accomplished the following:

John Adams Project and Gitmo. Under the auspices of the John Adams Project,³ NACDL and the ACLU field five defense teams for the imprisoned “high value detainees” at Guantánamo for whom the government is seeking the death penalty. The Gitmo teams are fundamental to NACDL’s commitment to restraining governmental overreaching and a continuation of NACDL’s stand against the death penalty.

National Security. NACDL hires its first National Security Coordinator (NSC), finding a candidate with invaluable national security experience. The NSC gives NACDL a seat at the table in shaping public policy in this critical area.

Indigent Defense. Always on the forefront in support of indigent defense, NACDL under the leadership of our Indigent Defense Committee and indigent defense counsel

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SEARCH AND SEIZURE (3d ed. 2000; 4th ed. forthcoming) published by Lexis Law Publishing. Hall is listed in Best Lawyers in America in criminal defense. He writes daily on the law of search and seizure at www.FourthAmendment.com. He is also

the author of PROFESSIONAL RESPONSIBILITY IN CRIMINAL DEFENSE PRACTICE (3d ed. 2005) published by Thomson West.

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issues a major public policy report exposing the regime of injustice throughout America’s misdemeanor courts, *Minor Crimes Massive Waste: The Terrible Toll of America’s Misdemeanor Courts*.⁴ A year and a half in research and writing, this groundbreaking report issued April 28 received unprecedented news coverage, and our report was cited in several editorials calling for an end to the massive waste of jailing misdemeanants where there was no public safety concern. NACDL also supported the drive for federal funding in support of indigent defense, and I testified before the House Judiciary Committee in June. Congress gives a lot of money for police and prosecution, but scarcely a dime for defense. The committee now recognizes the imbalance and disparity.

Resource Counsel. NACDL hires its first ever resource counsel to provide assistance to small firm and solo practitioners. With the development of our new Web site, we launched our Web-based resource center before the full new Web site even went online.

CLE Programming. NACDL expands its always exemplary CLE programming, adding our first drug defense seminar and launching in-house programming with programs on attorney-client privilege, false confessions, and the criminal defense lawyer’s ethics in the age of terrorism. NACDL now holds nine annual live seminars throughout the nation, with regular in-house programming. We hope that we can maintain the level of six to 10 CLEs a year. NACDL clearly features the definitive CLE catalogue for the criminal defense practitioner.

Grand Jury Reform. We continue with our grand jury studies, this time of the states to focus on the impact of reforms in two representative states, New York and Colorado. This study nears completion.

Task Force on Problem-Solving Courts. Two presidential terms before mine, Marty Pinales created the Task Force for Problem-Solving Courts. I sat through some of the hearings in a few cities, and I’ve read the preliminary report. This committee has done extraordinary work, conducting hearings in seven cities with 130 witnesses during a two-year period, and the Board of Directors considers the report for approval at the 2009 Annual Meeting. This comprehensive report will call for fundamental reform in the operation of problem-solving courts to ensure due process of law. I predict this NACDL report will get significant press coverage, as did the Misdemeanor Report.

Amicus Committee. This was another successful year for our Amicus Committee. Once again one of our briefs was cited in the U.S. Supreme Court.⁵ We had numerous wins and a major, stunning state high court win in the New York car GPS case,⁶ which marshaled an unprecedented coalition of co-amici, bringing together Arabs and Jews, securing a landmark victory with the New York Court of Appeals requiring a warrant for unlimited GPS surveillance under the New York Constitution.⁷

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Education Debt Relief for Public Defenders. The John R. Justice Act, providing education debt relief for public defenders, was passed by Congress, and NACDL, of course, supported this legislation from its introduction.

Prosecutorial Misconduct. The collapse of the prosecution of former Sen. Ted Stevens for the government's blatant and covered up *Brady* violation has reinvigorated our Prosecutorial Misconduct Committee. The U.S. Attorney's Manual provides for *Brady* evidence,⁸ but it talks about "exculpatory" evidence where *Brady* actually talks about "evidence favorable to the accused."⁹ "Favorable" and "exculpatory" are hardly the same thing, so going back to basics is required.

DOJ Dialogue. We used to have a DOJ Dialogue Committee, but it died during the Bush administration because DOJ did not care what NACDL thought, unlike other Republican administrations. By the time this is published, we hope to have met for the first time with the Obama administration's DOJ and to have reopened dialogue.

And, every day, day in and day out, our wonderful committees, officers, and staff labored for justice and the organizational values expressed in our bylaws:

Ensure justice and due process for persons accused of crime.

Foster the integrity, independence and expertise of the criminal defense profession.

Promote the proper and fair administration of criminal justice.

All this occurred on my watch, but I cannot possibly take credit for it. NACDL has the finest and most committed staff, officers, board members, and members of any bar association¹⁰ because we all believe in the importance of our mission and values with all our heart and soul.¹¹

This is not my NACDL — this is our NACDL. I was just honored to have served as its president in this important year.

Notes

1. With apologies to the U.S. Army's recruiting slogan from 1986 to the mid-90s.

2. John Wesley Hall, *We Are Enforcers of the Constitution*, THE CHAMPION, August 2008 at 5.

3. <http://www.aclu.org/johnadams>.

4. <http://www.nacdl.org/misdemeanor>.

5. *Montejo v. Louisiana*, 129 S. Ct. 2079, 2101 n.8 (May 26, 2009) (Stevens, J., dissenting).

6. *People v. Weaver*, 2009 WL 1286044,

2009 N.Y. Slip Op. 03762 (N.Y. May 12, 2009).

7. Our brief was co-authored by our executive director, who asked me whether he could work on the amicus brief in his spare time (what spare time?). Anything to keep our legal skills sharp.

8. U.S. Attorney's Manual § 9-5.001, Policy Regarding Disclosure of Exculpatory and Impeachment Information (added 2006).

9. *Brady v. Maryland*, 373 U.S. 83, 88 (1963) ("We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.").

This is a perfect example of Justice Frankfurter's admonition of the Bill of Rights: "It is true also of journeys in the law that the place you reach depends on the direction you are taking. And so, where one comes out on a case depends on where one goes in." *United States v. Rabinowitz*, 339 U.S. 56, 69 (1950) (Frankfurter, J., dissenting).

10. Without our executive director, Norman L. Reimer, none of this would be possible. He makes all of us better by his presence:

11. And, we cannot forget the grant benefactors that believed in our mission and gave us the funds to do some of these things: the Foundation for Criminal Justice, the Open Society Institute, the Ford Foundation, the ACLU, the Bureau of Justice Assistance, and numerous others that anonymously supported our efforts to promote a more rational and humane criminal justice system. ■

Coming Soon In
The Champion
Wrong Door Raids,
Phantom Informants,
and the Controlled Buy
By Dennis G. Fitzgerald

The Adam Walsh Act
and Juvenile Sex
Offender Registration
By Nastassia Walsh and
Tracy Velázquez