LAWYERS IN CRIMINAL COURTS ARE NECESSITIES, NOT LUXURIES.

Gideon v. Wainwright
The mission of the NACDL Foundation for Criminal Justice™ is to preserve and promote the core values of America’s criminal justice system guaranteed by the Constitution — among them due process, freedom from unreasonable search and seizure, fair sentencing, and assistance of effective counsel — by educating the public and the legal profession to the role of these rights and values in a free society. The Foundation supports the work of the National Association of Criminal Defense Lawyers® toward these ends.

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# TABLE OF CONTENTS

A Letter from the President of the NACDL Foundation for Criminal Justice™  
A Letter from the Executive Director  
Mission Statement and Statement of Principles  
The Work of the NFCJ

- Ensuring Access to Properly Resourced Counsel  
- Rush to Judgment: How South Carolina’s Summary Courts Fail to Protect Constitutional Rights  
- State of Crisis: Chronic Neglect and Underfunding for Louisiana’s Public Defense System  
- Fulfilling Gideon’s Legacy Senate Panel  
- The Right to Counsel and the Role of the Judiciary  
- Amicus Curiae  
- Overcoming Overcriminalization, Promoting Discovery Reform, and Pushing Back Against Prosecutorial Misconduct

- Training Corporate Counsel on Criminal Justice Issues  
- The Enforcement Maze: Over-Criminalizing American Enterprise  
- Status Crimes and the Criminalization of HIV  
- Fighting the Trial Penalty  
- Preserving the Fourth Amendment

- NACDL Fourth Amendment Center  
- Body Cameras  
- Challenging Government Hacking  
- Tapping the Defense Bar to Tackle Novel Issues  
- Preserving Liberty in a National Security Era  
- Resources for the Defense Bar: Protecting Digital Devices at the Border  

Restoration of Rights

- Training and Resources for Defense Attorneys  
- First Amendment Strike Force and Mass Defense Project  
- Racial and Ethnic Bias and Disparities

- Race Matters: The Impact of Race on Criminal Justice  
- Promoting Diversity within the Defense Bar  
- Fellow Profile: Andrew Reath  

Clemency to Correct Injustice

- Clemency Project 2014  
- NACDL/FAMM State Clemency Project  
- Grantee Spotlight: Stephen Hardridge  

Strategic Planning and a New Name

- 2017 and 2018 Financial Reports  
- Awards Dinners  
- Donors  
- Notes
A Letter from the President of the NACDL Foundation for Criminal Justice™

This report covers one of the most momentous periods in the history of the NACDL Foundation for Criminal Justice (NFCJ). During a challenging period in the nation’s history, the role of the criminal defense bar is critical to checking abuse of power by the government. The following pages show just how this foundation and the criminal defense bar ably fulfill that role.

This past year is marked not just by this organization’s successes, but also its embrace of a bold plan to reform the broken criminal justice system. The NACDL Foundation for Criminal Justice spent nearly all of 2017 working on a new strategic plan to identify and reform flaws and inequities in the criminal justice system, redressing once and for all the scourge of systemic racism, and ensuring that the nation’s criminal defense bar is fully equipped to serve accused persons at the highest level and wholly prepared to safeguard the fundamental constitutional principles essential to the endurance of democracy.

The first fruit of the new strategic plan is reflected in the adoption of a new name for the foundation to underscore the nexus between the foundation and NACDL’s membership and mission. Now known as the NACDL Foundation for Criminal Justice, this foundation stands with the National Association of Criminal Defense Lawyers (NACDL) more strongly than ever in pursuit of a society where all individuals receive fair, rational, and humane treatment within the criminal justice system.

But as some things change, others are constant. The NACDL Foundation for Criminal Justice will continue to respond to threats to core constitutional rights as it always has: by standing strong in its commitment to the vital role of the criminal defense bar in the fight for meaningful criminal justice reform.

The NFCJ’s perspective is unique and invaluable. Unlike groups that focus solely on public advocacy or securing justice for the wrongly convicted, the NFCJ and its partner organization NACDL recognize that the contours of liberty are shaped by the everyday individual criminal cases that test the limits of government power in courtrooms throughout the country. While protection of those who are actually innocent is a vital concern, the question of guilt or innocence is seldom ascertainable with scientific certainty. Rather, it rests

… this foundation stands with NACDL more strongly than ever in pursuit of a society where all individuals receive fair, rational, and humane treatment within the criminal justice system.
… the NACDL Foundation for Criminal Justice will continue to respond to threats to core constitutional rights … by standing strong in its commitment to the vital role of the criminal defense bar in the fight for meaningful criminal justice reform.

in the gray areas of credibility, intent, and perception. The NFCJ’s efforts are grounded in the belief that due process, equal protection, privacy rights, free speech, and countless other rights are defined by the criminal justice system and shaped by the often prosaic but always heroic efforts of criminal defense lawyers.

But even those who violate the law still possess their fundamental human dignity. NFCJ-supported projects reflect the belief that punishment should be proportionate and individualized, and that the broad restoration of rights is essential to the health and well-being of society.

The NFCJ’s willingness and capacity to react expeditiously to every opportunity and challenge reflects the strength and ingenuity of the criminal defense bar, and the NFCJ’s steadfast commitment to meaningful criminal justice reform. No matter what challenges may arise in the coming year, the NFCJ stands ready to meet them.

Sincerely,

Lisa Monet Wayne
President
A Letter from the Executive Director

Imagine a society in which the criminal justice system is fair, humane, and restrained.

Imagine a criminal justice system free of racial and ethnic disparity, one in which every person who cannot afford to hire an attorney is provided with access to a fully-trained and resourced lawyer at the first moment when liberty is at stake or a guilty plea to any criminal charge may be entered.

Imagine that those who are presumed innocent are not routinely held in custody because they cannot afford cash bail, and that the entire criminal process has been reformed to ensure both full and fair disclosure and the ability to exercise the constitutional right to a trial without facing geometrically increased penalties.

Imagine further that the lawyers who fulfill the constitutional right to counsel are fully-supported, mass incarceration has been ended, privacy rights are respected, and every person who has fulfilled the terms of a criminal sentence is provided a clear path to the restoration of rights.

Finally, imagine a criminal justice system in which the mere assertion of fundamental rights does not risk vastly increased penalties, penalties that ruin lives, rip apart families, and destroy communities with no corresponding contribution to public safety or benefit to society.

The NFCJ exists to make these aspirations a reality.

Through its support of NACDL, and others who share a commitment to fundamentally, thoroughly, and permanently reform the U.S. criminal justice system, the NFCJ is a powerful engine for reform. Those who support the NFCJ know that the criminal justice system is far too expansive and repressive, and thus has become untethered from its moral anchor. A system that undermines rather than promotes public safety, or that fosters division instead of unity, must be changed. A system that promotes overly harsh outcomes at the expense of humanity must be reformed. And a system that fails to recognize and celebrate the human capacity for reform and redemption is not worthy of the ideals upon which the United States of America was founded.

To all the NFCJ’s supporters, I extend my heartfelt gratitude for joining in the quest to address these systemic failures and to realize the dream.

Sincerely,

Norman L. Reimer
Executive Director

. . . Imagine a criminal justice system in which the mere assertion of fundamental rights not does risk vastly increased penalties, penalties that ruin lives, rip apart families, and destroy communities with no corresponding contribution to public safety or benefit to society.
Mission Statement and Statement of Principles

The NFCJ envisions a society where all individuals receive fair, rational, and humane treatment within the criminal justice system. It is a 501(c)(3) charitable not-for-profit organization committed to identifying and reforming flaws and inequities in the criminal justice system, redressing systemic racism, and ensuring that the criminal defense bar is fully equipped to serve all accused persons at the highest level.

The NFCJ works with its counterpart, NACDL, to harness the unique perspectives of NACDL members and allies to advocate for policy and practice improvements in the criminal justice system. Because the contours of America’s core constitutional rights are shaped by the criminal justice system, the single most critical check on government excess is provided by the Sixth Amendment right to counsel and implemented by the nation’s criminal defense bar. The NFCJ supports projects that empower the criminal defense bar to fulfill its constitutional role both as zealous advocates for the individual and as foot soldiers in a national effort to promote systemic reform. The robust defense of all accused persons is the most effective means of confronting governmental overreach and abuse. In this regard, the NFCJ recognizes that justice is only possible when an adequately resourced advocate is available to test the propriety and legality of the government’s invocation of its power to prosecute; when individuals are not judged only by their worst moments; and when punishment is proportionate to the offense and the offender. Further, the NFCJ believes that even for those who have been lawfully convicted of an offense, the criminal justice system must broadly embrace the restoration of rights for those who have paid their debt to society. These beliefs are firmly rooted in the fact that the constitutional right to counsel is unconditional. It is not reserved only for the innocent. Rather it reflects an understanding that all individuals in all circumstances are entitled to an effective advocate so that no individual ever stands alone against the full might of the state.

The Work of the NFCJ

Ensuring Access to Properly Resourced Counsel

NFCJ programs support and reform public defense systems at the local, state, and federal levels. Its projects reflect the core policy that counsel must be provided to all accused persons at any court appearance at which a guilty plea to any crime may be entered or at which liberty is at risk. These efforts include training and technical assistance for front line defenders, research, field reports, and resources for stakeholders and reformers, as well as other efforts to advance the Sixth Amendment right to competent counsel.
Rush to Judgment: How South Carolina’s Summary Courts Fail to Protect Constitutional Rights

The NFCJ co-funded NACDL’s follow-up report on injustice in South Carolina’s lower courts. The report, *Rush to Judgment: How South Carolina’s Summary Courts Fail to Protect Constitutional Rights*, analyzes courts in five South Carolina counties. Egregious, repeated constitutional violations happen daily, and in hundreds of cases.

The report provides five tangible recommendations that form the basis of NACDL’s advocacy in that state:

- South Carolina’s summary courts should be staffed with prosecutors and public defenders and ensure that courts are presided over by judges who are licensed attorneys;
- Caseloads of magistrate and municipal courts should be reduced by decriminalizing traffic offenses;
- Fines and fees should be reduced, and alternative sanctions should be considered for those who cannot afford to pay;
- Uniform reporting of criminal and traffic cases in summary courts should be increased and should include data regarding whether defendants had counsel and whether and how defendants were informed of their rights; and
- Uniform procedures should be enacted for magistrate and municipal courts regarding advisement of rights and plea colloquies, and all defendants should understand their rights and the direct and collateral consequences of a guilty plea or verdict.

This report exemplifies how NFCJ-funded projects often result in subsequent reform efforts spearheaded by other organizations. In October of 2017, the American Civil Liberties Union (ACLU) filed a federal class action lawsuit against two local governments in South Carolina. The suit challenged court practices in those locales that unconstitutionally deny counsel to people who can’t afford an attorney. The ACLU’s complaint cited *Rush to Judgment* as well as its 2016 predecessor report, *Summary Injustice: A Look at Constitutional Deficiencies in South Carolina’s Summary Courts.*

In the city of Beaufort and the town of Bluffton’s municipal courts, people are prosecuted, convicted, sentenced, and jailed without being provided public defenders, or even advised of their right to counsel, in violation of the Sixth and Fourteenth Amendments.
State of Crisis: Chronic Neglect and Underfunding for Louisiana’s Public Defense System

The NFCJ supported research into the public defense crisis in Louisiana, which culminated in the early 2017 report, *State of Crisis: Chronic Neglect and Underfunding for Louisiana’s Public Defense System*. Some highlights are set forth below. NACDL compiled a history of Louisiana’s public defense system from 1963 to the present, uncovering some of the structural issues that have led to a system that exists in a constant state of emergency. While acknowledging that representation in Louisiana has improved overall since 2007, the report documented several persistent deficiencies and presented several reform recommendations:

- The Louisiana Legislature should fully fund the provision of public defense services in Louisiana from general revenue;
- The Louisiana Legislature should repeal the public defender fee on convictions and public defender application fee and replace local revenue for public defense with state general revenue (if local revenue is a necessary transitional measure before sufficient state revenue is available to fully fund public defense, changes to local revenue streams that will make them more stable and equitable should be adopted);
- Louisiana should establish parity between the defense function and the prosecution;
- Louisiana judges should respect the independent professional judgment of lawyers who provide public defense services, including their determinations that a conflict prevents them from accepting or maintaining representation of a case;
- Louisiana judges should release from detention accused individuals for whom the state cannot provide counsel due to its underfunding of the public defense system; and
- The Louisiana Public Defender Board and the defender community should re-focus on improving the quality of representation rather than merely surviving the next crisis.

Fulfilling Gideon’s Legacy Senate Panel

NFCJ support allows NACDL to serve as a preeminent voice on the Sixth Amendment’s right to counsel. For example, NACDL was represented on a panel briefing at the Russell Senate Office Building on the topic of *Fulfilling Gideon’s Legacy: Exploring the Sixth Amendment & America’s Unmet Promise of the Right to Counsel*. The panel elevated awareness about the extent to which the nation has failed to ensure access to counsel for those who cannot afford it. Other panelists included representatives from the Center for American Progress, the Brennan Center for Justice, the Justice Programs Office at American University, and the Public Defender Service of the District of Columbia.
The Right to Counsel and the Role of the Judiciary

The NFCJ also supports efforts to engage the judiciary in reforming the criminal justice system, such as a conference and subsequent report on *Judicial Responsibility for Justice in Criminal Courts*. The report summarizes discussions and recommendations for specific reforms that judges can implement to improve the delivery of justice in misdemeanor courts, in numerous areas. Some of the areas included:

- Procedural justice;
- Judicial control over bail;
- Pleas at initial appearance;
- Collateral consequences;
- Courts without counsel;
- Implicit bias;
- Judicial intervention in charging decisions;
- Judicial involvement in plea bargaining and discovery;
- Control over conduct of counsel;
- Bench and jury trial issues;
- Sentencing; and
- Changing court culture.

Amicus Curiae

With support from the NFCJ, NACDL operates a robust *amicus curiae* program on criminal justice issues. NACDL is one of the most successful of the frequent *amicus* contributors to the federal courts, in part because NFCJ support helps NACDL draw upon the collected expertise of the nation’s criminal defense bar.

Between October 1, 2016, and September 30, 2017, NACDL filed 61 *amicus curiae* briefs. The briefs were filed in 17 state and federal courts, from the trial court level all the way to the United States Supreme Court, where NACDL filed 33 briefs during this period. NACDL filed in seven federal circuit courts of appeal and 9 state supreme courts. More than half of the briefs were joint briefs filed together with various organizations. Indeed, during this period NACDL filed as a co-*amicus* with more than 75 organizations, practitioners & scholars from across the political spectrum, including the American Civil Liberties Union, the Innocence Project, the National Association of Manufacturers, the Center for HIV Law and Policy, the Cause of Action Institute, and the Electronic Frontier Foundation, among numerous others. Contributing authors included attorneys from large, medium, and small firms, as well as solo practitioners, public defenders, law professors, and others — with contributions coming from nearly 40 firms and 100 attorneys. Briefs were filed during this period on topics including:
Sixth Amendment right to counsel; Overcriminalization; Racial bias in eyewitness identification; Government surveillance and the Fourth Amendment; Sentencing; Prosecutor misconduct; Forensics; Juvenile justice; Capital punishment; HIV/AIDS criminalization; and Pretrial justice

Between October 1, 2017, and September 30, 2018, NACDL filed 56 amicus curiae briefs. The briefs were filed in 15 state, federal, and military courts, from the trial court level all the way to the United States Supreme Court, where NACDL filed 28 briefs during this period. NACDL filed in seven federal circuit courts of appeal and five state supreme courts, as well as in the U.S. Court of Appeals for the Armed Forces. More than half of the briefs were joint briefs filed together with various organizations. Indeed, during this period NACDL filed as a co-amici with more than 100 organizations, practitioners, former jurists, and legal scholars from across the political spectrum, including the Immigrant Defense Project, Reason Foundation, Families Against Mandatory Minimums, Drug Policy Alliance, Institute for Justice, and the Center for Democracy and Technology, among numerous others. Contributing authors included attorneys from large, medium, and small firms, as well as solo practitioners, public defenders, law professors, and others — with contributions coming from more than 30 firms and 100 attorneys. Briefs were filed during this period on topics including:

- Discovery and prosecutor misconduct;
- Privacy, technology, and the Fourth Amendment;
- Sixth Amendment right to counsel;
- Racial profiling;
- Science in the courtroom;
- Armed Career Criminal Act (ACCA);
- Forfeiture;
- Police misconduct;
- Plea bargaining and discovery;
- Sentencing;
- Double jeopardy;
- Criminal convictions and immigration consequences; and
- Jury bias
Overcoming Overcriminalization, Promoting Discovery Reform, and Pushing Back Against Prosecutorial Misconduct

The NFCJ works to reverse the trend of overcriminalization. In little more than a century, the number of federal crimes swelled from about 100 to approximately 5,000 today — a 50-fold expansion. And that explosion in newly-criminalized conduct only includes new laws passed by Congress; estimates put the number of federal regulatory crimes at as many as 300,000. The nation’s addiction to criminalization clogs the judicial system, produces mass incarceration, and decouples the criminal justice system from its moral anchor.

The problem is compounded by a system that unduly imbues prosecutors with an excessively disproportionate array of tools, including unbridled charging authority, mandatory minimum sentences, and largely unreviewable discretion to control the flow of information to the defense. The threat of geometrically increased penalties for those who dare to challenge the government’s case, often without access to vital information consistent with innocence, unduly burdens the right to a trial. This is known as the trial penalty. The resulting systematic imbalance impels even innocent people to waive fundamental constitutional rights.

Training Corporate Counsel on Criminal Justice Issues

With support from the NFCJ, NACDL convened its first Corporate Counsel Conclave in 2017. With the theme of Responding to Government Investigations, the event brought together white-collar defense counsel and in-house corporate attorneys who in one way or another have dealt with government investigations and the specter of criminal consequences. Attendees included senior corporate counsel of some of the nation’s largest corporate entities representing a wide range of industries, including insurance, energy, banking, technology, pharmaceuticals, defense, and consumer goods. Topics included planning for and responding to demands for documents or searches; handling grand jury subpoenas and administrative demands; controlling a crisis; civil litigation and its consequences; managing technology at the intersection of technology, privacy, and law enforcement; and the latest trends in deferred prosecution agreements and False Claims Act litigation.
The Enforcement Maze: Over-Criminalizing American Enterprise

The Enforcement Maze: Over-Criminalizing American Enterprise compiles original scholarship from key leaders from industry, the academy, law, and policy addressing the rise of overcriminalization, the inappropriate criminalizing of civil and regulatory matters, why laws need criminal intent requirements, fundamental flaws with the plea bargaining process, criminal discovery abuses and inadequacies of the grand jury process, as well as the use of certain pressures associated with enforcement against business and corporate individuals panelists on subjects ranging from deferred prosecution agreements to discovery, and from federal conspiracy law to grand jury reform. The report follows the earlier symposium of the same name at which these leaders presented the works and ideas in The Enforcement Maze.4

Status Crimes and the Criminalization of HIV

NACDL, with NFCJ support, opposes all forms of overcriminalization of conduct — and there are numerous misguided attempts to use the criminal law to fix perceived social problems. One such example is NACDL’s work to combat the criminalization of HIV status. As numerous states have laws that criminalize behavior that could not possibly lead to transmission of the HIV virus by a person who is HIV-positive, it is increasingly important for lawyers to know how to effectively challenge these efforts in litigation. NACDL co-hosted a webinar with the Center for HIV Law and Policy on the state of medicine and medical research on HIV treatment and transmission to help lawyers develop defenses, present mitigation, negotiate favorable pleas, and litigate constitutional, evidentiary, and discovery issues.

Fighting the Trial Penalty

Perhaps the single greatest example of how the nation’s criminal justice system has morphed into a vast engine of conviction is the near extinction of the Sixth Amendment right to a trial. With NFCJ support, NACDL is determined to rescue this fundamental right, and in so doing reverse the laws, policies, and practices that impose a prohibitive cost on the assertion of fundamental constitutional rights. The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It, documents the magnitude of the trial penalty on the federal level and provides a template for national reform.5
Preserving the Fourth Amendment

The criminal defense bar plays an increasingly important role in defining individual privacy rights. The limits of the government’s power to conduct searches and seizures are tested in the context of everyday criminal cases, where the constitutional validity of the government’s surveillance and investigation methods is litigated when prosecutors offer evidence against the criminally accused.

NACDL Fourth Amendment Center

With NFCJ support, the newly-launched NACDL Fourth Amendment Center recognizes the fact that society has entered the digital age, and new surveillance technologies and programs — from GPS tracking devices to automated license plate readers to bulk data collection — pose once unimaginable challenges to personal privacy and have upended traditional law enforcement practices.

NACDL’s Fourth Amendment Center creates resources and builds a legal infrastructure to challenge outdated legal doctrine and create a new, more durable one for the digital age. Efforts include:

* Advanced education on emerging issues at the intersection of technology, privacy, and constitutional rights;
* A dynamic toolkit of resources to help lawyers identify opportunities to challenge government surveillance; and
* A tactical litigation support network to assist in cases that present an opportunity to challenge the use of new technologies that infringe on the Fourth Amendment rights of citizens.

Safeguarding the fundamental values embraced by the Fourth Amendment’s guarantee to protect the individual from government searches and seizures has created new challenges for defense lawyers. The Fourth Amendment Center will build on NACDL’s steadfast commitment to these principles.

Body Cameras

The NFCJ supported the groundbreaking Policing Body Cameras: Policies and Procedures to Safeguard the Rights of the Accused. The report, the product of more than two years of careful research and deliberation, provides policy recommendations to govern and improve the continued and wider use of body cameras. The recommendations contained in the report contribute to critical conversations and policymaking on this controversial but increasingly ubiquitous technology.

The report release was followed up with a webinar titled Policing Body Cameras — Shaping Policies and Defending Cases in Body Camera Jurisdictions.
Challenging Government Hacking

The *Challenging Government Hacking in Criminal Cases* report exemplifies NACDL’s and the NFCJ’s efforts to protect the Fourth Amendment by leveraging collaboration with other prominent reform and advocacy organizations. This report, a guide to legal arguments and strategies for challenging evidence seized by government-installed computer malware, is the result of a collaboration between NACDL, the American Civil Liberties Union, and the Electronic Frontier Foundation. The report assesses recent court decisions evaluating the government’s use of the controversial technique and makes recommendations for the most promising avenues on which to base Fourth Amendment challenges.

Tapping the Defense Bar to Tackle Novel Issues

NACDL convened NFCJ-funded task forces to study three areas in which technological growth presents novel constitutional challenges and opportunities.

NACDL’s **Predictive Policing Task Force** is studying predictive policing in a time of cutting edge computing technology. The task force is looking at issues surrounding the use of various data collection tools and analytical techniques that purport to prospectively identify where criminal activity is likely to occur and the people likely to be involved. Some of the areas of its focus include:

- The impact of these techniques on privacy and other individual constitutional rights;
- Recommendations for best practices to safeguard those rights;
- Legal and technical assistance to educate defense practitioners in addressing the use of these tools and techniques; and
- The implications of predictive policing on how individuals are surveilled, investigated, charged, and prosecuted — specifically the implications of predictive policing for racial profiling and the impact of policing and prosecution on historically overpoliced groups and communities of color.

NACDL’s **Task Force on Risk Assessment Tools** is studying the growing use of various algorithms to assist (and sometimes replace) decision-making at all levels of the criminal justice system, from making pretrial release decisions to identifying needed services to sentencing and early release decisions and more. The task force is assessing the extent to which such tools can be (or are) biased by existing disparities in the criminal justice system, and the effects of such tools on historically overpoliced groups and communities of color.

NACDL’s **Sousveillance Task Force** aims to empower citizens and communities to ensure the accountability of law enforcement officers and agencies through lawful observation, monitoring, and recording of law enforcement activity. It will also promulgate practices, regulations, laws, and guidelines that protect individuals engaged in lawful sousveillance from harassment, intimidation, and interference by law enforcement or others.
Preserving Liberty in a National Security Era

The NFCJ rejects the false notion that appeals to national security can be a legitimate excuse to erode fundamental constitutional protections and principles. The NFCJ supports several programs at the nexus of national security and criminal law. These efforts are focused on training and supporting attorneys in national security cases; monitoring the military commission proceedings at Guantánamo and providing support for the military and civilian defense counsel; and exposing abuse and distortion of the criminal justice system under “terrorism exceptions” that threaten to permanently diminish core constitutional principles.


In 2017, members of the defense team in United States v. Nashiri (also known as the USS Cole bombing case) grew increasingly concerned that the government had compromised the attorney-client privilege of their client. Late in the year, three members of the team sought leave to withdraw from the case, convinced that government monitoring of their conversations with their client created an unresolvable conflict of interest. Brig. Gen. John Baker, the Chief Defense Counsel for the Military Commissions Defense Organization, found good cause to release the three defense attorneys.

Two weeks later, a military judge decided to hold Gen. Baker in contempt over Baker’s decision to release the defense attorneys and ordered him to 21 days confinement in his quarters and a $1,000 fine for nothing more than defending American principles and the Constitution. The judge also issued orders purported to void Gen. Baker’s decision to release the three defense lawyers, a decision that would have forced the three lawyers to violate their professional ethical obligations. NACDL immediately came to Gen. Baker’s defense through its Lawyers Assistance Strike Force, a project designed to support lawyers placed in legal jeopardy for their actions to zealously represent their clients.

The next day, a U.S. District Court judge in Washington, D.C., deferred the military judge’s order that Gen. Baker be fined and detained. In mid-2018, the U.S. District Court for the District of Columbia would ultimately vacate the contempt conviction.

Resources for the Defense Bar: Protecting Digital Devices at the Border

NACDL released a primer for attorneys on protecting digital devices from unwarranted search at U.S. borders. U.S. Customs and Border Patrol (CBP) asserts broad authority to search electronic devices at border crossings and ports of entry, even without a warrant. Furthermore, CBP does not guarantee protection for privileged communications between attorneys and their clients when it searches digital devices. This creates potential ethical problems for attorneys crossing the U.S. border. The primer, Protecting Your Digital Devices at the Border, educates attorneys about the implications of CBP’s claimed powers and offer strategies that will help them comply with their ethical obligations and responsibilities to their clients when entering the U.S.
In connection with the primer, NACDL produced Privileged Means Privileged: Keeping the Government Out of Your Digital Devices at the Border. The December 2017 webinar draws from Protecting Your Digital Devices at the Border to empower members of the defense community to be proactive in protecting their sensitive documents and communications when re-entering the country.9

**Restoration of Rights**

Federal, state, and local law enforcement arrest more than 10 million people annually. It is estimated that at least 70 million adults have some form of a criminal record, and at least 45,000 collateral consequences of arrest or conviction have been documented. This vast array of legal restrictions, generalized discrimination, and social stigma has become more severe, more public, and more frequently permanent. These consequences affect virtually every aspect of human endeavor, including employment and licensing, housing, education, public benefits, credit and loans, immigration status, parental rights, and even volunteer opportunities. Collateral consequences can be a criminal defendant's most serious punishment, permanently relegating a person to second class status.

The NFCJ supports NACDL’s efforts to rein in collateral consequences of arrest and conviction. NACDL partnered with the Collateral Consequences Resource Center to launch a newly expanded and fully updated Restoration of Rights Project. The project, supported by NACDL and others, is an online resource that offers state-by-state analyses of the law and practice in each U.S. jurisdiction relating to restoration of rights and status following arrest or conviction.

In August of 2018, NACDL convened its second Presidential Summit and 17th Annual State Criminal Justice Network conference, Shattering the Shackles of Collateral Consequences: Exploring Moral Principles and Economic Innovations to Restore Rights and Opportunity. The program examined the destructive effect that a vast network of penalties, debarments, and disabilities that arise from a criminal conviction has on the millions who have contact with the criminal justice system. It explored the disparate impact that these consequences have on communities of color. At the same time, the summit highlighted the ground-breaking work that is helping people break free from these shackles and map a way forward for national reform.
Training and Resources for Defense Attorneys

The NFCJ provides essential support for National Forensic Science College, which convened for the fifth time in 2018.10 The college cultivates a national network of forensic science litigators and equips the criminal defense bar to combat the misuse of forensic science by law enforcement. Over 140 trainees participated in the 2017 session, and over 180 trainees in the 2018 session. To date, over 720 lawyers have participated in the program.

NACDL produced a free DNA training video: DNA 101 and Introduction to Mixtures, featuring Kate Philpott and Jennifer Friedman. The video provided important preparation for many attendees of the National Forensic College who lacked an advanced DNA background and will continue to assist defense lawyers who encounters DNA evidence in their practice.11

First Amendment Strike Force and Mass Defense Project

The NFCJ supported the launch of NACDL’s First Amendment Strike Force and Mass Defense Unit. This project supports the exercise of First Amendment rights by recruiting and training pro bono defense counsel for those people who face criminal sanction for exercising their First Amendment right to protest, especially in large demonstrations that can draw excessive police intervention. The project mobilized for the first time in the summer of 2017 to recruit and train lawyers to represent possible arrestees in advance of protests over the 2017 Charlottesville “Unite the Right” rally.

Racial and Ethnic Bias and Disparities

The NFCJ has provided significant support to initiatives designed to address racial and ethnic disparities in the criminal justice system. The NFCJ plans to continue to support events, webinars, and other projects designed to directly address and reduce these disparities and their impact.

Race Matters: The Impact of Race on Criminal Justice

In 2017, the NFCJ supported NACDL’s inaugural Presidential Summit and Seminar, Race Matters: The Impact of Race on Criminal Justice. The program, held in Detroit in September of 2017, examined how race affects what happens in the criminal justice system from initial contact with police on the street to the end of the case, and everything in between. This inaugural Presidential Summit was designed to help practitioners identify and confront issues of racial bias in our courts, the law enforcement community, by prosecutors, and yes, even the defense team. Attendees heard from trial lawyers, academics, and formerly incarcerated individuals who offered their personal perspectives, strategies, and ideas on why Race Matters.12
Promoting Diversity within the Defense Bar

With support from the NFCJ, NACDL instituted a Diversity Fellowship program in criminal defense law. The fellowship places law students from historically underrepresented backgrounds with exceptional and experienced criminal defense attorneys, and the fellows experience criminal defense practice firsthand during their eight-week placements. Through this program, 25 law students have received these fellowships. The fellowship program entered its ninth year in 2018. It is representative of a unique contribution to improving the criminal defense bar that has a powerful and positive impact on the careers of its alumni.

Fellow Profile: Andrew Reath

Andrew Reath, a 2018 Summer Fellow, represents the exceptionally talented individuals that both participated in the program and use it to start their careers in criminal defense. Andrew spent his summer with the San Francisco Public Defender’s Office (SFPDO) in San Francisco, California. At the SFPDO, he worked on several felony cases under the supervision of deputy public defender and senior trial attorney, Phoenix Streets. Andrew gained wide-ranging and substantive legal experience, drafting pretrial motions, writing research memos, conducting jail interviews, and assisting in trial preparation. Before this fellowship, Andrew interned with the Florida Capital Resource Center and Community Legal Services of Mid-Florida. Andrew is passionate about criminal justice reform and is interested in a legal career committed to speaking truth to power. Originally from Miramar, Florida, Andrew received his undergraduate degree from the University of Florida, with a triple major in Philosophy, Linguistics, and English. He expects to graduate from the University of Florida Levin College of Law in May 2019. Since his time at the SFPDO, Andrew has continued to excel in law school, serving on the executive board of the Asian Pacific American Law Student Association and clerking for the Hon. Anthony M. Tatti, Circuit Judge for the Fifth Judicial Circuit of Florida.
Clemency to Correct Injustice

The NFCJ has supported and continues to support efforts to correct prior injustices via executive clemency. It is entirely too common that people sentenced under outdated policy are prevented from benefiting when reform happens. These efforts fall under two projects: Clemency Project 2014 (now completed), and the ongoing NACDL/FAMM State Clemency Project.

Clemency Project 2014

The NFCJ was among the first supporters of Clemency Project 2014™. A working group including the American Bar Association, the American Civil Liberties Union, Families Against Mandatory Minimums, many federal public and community defenders, and NACDL, the project continued its NFCJ-supported efforts in 2016 to identify potential clemency petitioners and to recruit and train volunteer lawyers to assist them in securing clemency, and completed its work in the final days of the Obama administration.

The scope of Clemency Project 2014 was unprecedented. The project received over 36,000 requests from federal prisoners for volunteer assistance. The project set out to ensure that every applicant who potentially met the administration’s criteria had a volunteer lawyer to prepare and submit a timely clemency petition. The Project reviewed more than 36,000 applicants, supported 2,571 clemency petitions, and President Obama granted clemency to 894 of those project-supported petitions. Of those, 314 individuals were serving life sentences; another 132 were serving sentences over 30 years. These grantees received over 13,500 years of sentence reductions, saving the United States over $436,000,000 in the cost of incarceration.

NACDL/FAMM State Clemency Project

The NFCJ has provided significant support for the NACDL/FAMM State Clemency Project, with the goal of replicating the federal clemency project in states where there is a favorable environment for potential sentence commutations. The project helps to recruit, train, and provide resource support to pro bono attorneys who are assisting state prisoners to submit petitions to have their sentences commuted. New York was the first state to participate in the program.
The United States has the largest prison population in the world, and the federal prison population has exploded over the past several decades. Numerous changes to both law and policy have relaxed the complicated network of provisions that required severe mandatory sentences for various categories of nonviolent offenders. Unfortunately, however, those ameliorating changes do not apply to federal inmates sentenced under prior law. Their only avenue for relief is a presidential commutation.

The work of Clemency Project 2014™ concluded with the end of the Obama Administration in the early days of 2017. By January 20, 2017; the project had supported 2,571 applicant petitions, and President Obama had granted clemency to 894. From those petitions supported by the project, 314 individuals were serving life sentences, and another 132 were serving sentences over 30 years. These grantees received over 13,500 years of sentence reductions, saving the United States over $436,000,000 in the cost of incarceration.

The project has recruited over 200 volunteers. It has completed the review of 500 cases and submitted nearly 100 applications for executive clemency.

Grantee Spotlight: Stephen Hardridge
“I am grateful to have a second chance. To be considered for the opportunity was a blessing, but to receive clemency really put things in perspective. I work very hard to ensure that I do not waste this opportunity. I work long hours at an energy business and I have successfully financed a car. That may seem simple to those who have not been incarcerated for many years, but I am very proud of my accomplishments thus far. I am happy and peaceful — two feelings I have not experienced in a very long time. I hope others have the opportunity to have a second chance at life. My faith has been restored.”
Strategic Planning and a New Name

Throughout 2017, NACDL and the NFCJ partnered to engage in an extensive strategic planning process for both organizations. The process involved primary and secondary research on the organizations’ values, goals, structure, and operating environments from the perspective of an extensive variety of internal and external stakeholders. The plan identifies two overarching policy goals for the organizations: first, to enhance the capacity of the criminal defense bar to safeguard fundamental constitutional rights; and second, to harness the unique perspectives of NACDL members to advocate for policy and practice improvements in the criminal justice system.

The process began in February of 2017 and culminated with the adoption of the new plan a year later. The new plan leverages the insights of NACDL’s members and amplifies NACDL’s own ability to convene and collaborate with partner organizations to promote criminal justice reform. The plan also identifies ways in which NACDL and the NFCJ must evolve organizationally to reach the two overall policy goals.

The strategic plan and the actions that have been and will be undertaken around it are centered around a unique vision of a society where all individuals receive fair, rational, and humane treatment within the criminal justice system; and a mission to serve as a leader, alongside diverse coalitions, in identifying and reforming flaws and inequities in the criminal justice system, and redressing systemic racism, and ensuring that its members and others in the criminal defense bar are fully equipped to serve all accused persons at the highest level.

Pursuant to one of the strategic goals of the plan, in early 2018 the NFCJ formally changed its name from the Foundation for Criminal Justice (FCJ) to the NACDL Foundation for Criminal Justice (NFCJ).
NACDL Foundation for Criminal Justice™
2017 Financial Report
September 30, 2017

Assets
Cash and Cash Equivalents $283,324
Accounts Receivable and Promises to Give 32,317
Investments 1,518,189
Prepaid Expenses 21,073
Total Assets $1,854,903

Liabilities and Net Assets
Liabilities:
Accounts Payable and Accrued Expenses $9,302
Grants Payable and Amounts Due to NACDL 224,883
Total liabilities 234,185

Net Assets:
Unrestricted:
Undesignated 500,150
Trustee designated:
Gala fund 411,160
Capital Campaign Fund 70,523
Gideon Fund 132,010
First Amendment Project 17,952
Total unrestricted net assets 1,131,795
Temporarily restricted net assets 475,268
Permanently restricted net assets 13,655
Total Net Assets 1,620,718

NFCJ Annual Report
**NACDL Foundation for Criminal Justice™**

**2018 Financial Report**

September 30, 2018

**Assets**

- Cash and Cash Equivalents $558,500
- Accounts Receivable and Promises to Give 95,234
- Investments 1,651,211
- Prepaid Expenses 3,212

**Total Assets** $2,308,157

**Liabilities and Net Assets**

**Liabilities:**

- Accounts Payable and Accrued Expenses $10,915
- Grants Payable and Amounts Due to NACDL 55,967

**Total liabilities** 66,882

**Net Assets:**

**Unrestricted:**

- Undesignated 546,254

**Trustee designated:**

- Gala fund 911,029
- Capital Campaign Fund 70,523
- Gideon Fund 72,010
- First Amendment Project 15,856

**Total unrestricted net assets** 1,615,672

**Temporarily restricted net assets** 611,948

**Permanently restricted net assets** 13,655

**Total Net Assets** 2,241,275

**Total Liabilities and Net Assets** $2,308,157
Awards Dinners: Celebrating Pro Bono and NACDL’s 60th Anniversary

The NFCJ gratefully acknowledges the sponsors and supporters of its two recent awards dinners: 2017’s *For the Public Good: Pro Bono and Liberty’s Last Champion™*, and 2018’s *Foundation of the Defense Bar: Celebrating NACDL at 60*.

*For the Public Good: Pro Bono and Liberty’s Last Champion™* took place on July 28, 2017, at the Fairmont San Francisco. It celebrated the commitment among the legal profession to *pro bono* service; i.e., to service *for the public good*. Because of this commitment, the bar, unique among professions, can mobilize to stand against injustice by advocating for people who cannot advocate for themselves. Vanita Gupta was honored and gave remarks.

*Foundation of the Defense Bar: Celebrating NACDL at 60* took place on April 20, 2018, at Cipriani 42nd Street in New York City. The event celebrated NACDL at its 60th anniversary. Honorees included Michelle Alexander (Champion of Justice Civic & Humanitarian Award); Quintin Chatman (Executive Director’s Award); Malika Saada Saar (Champion of Justice Legal Award); and Theodore V. Wells Jr. (Lifetime Achievement Award).

For the Public Good: Pro Bono and Liberty’s Last Champions™

The NACDL Foundation For Criminal Justice thanks those whose support made its 2017 awards dinner, *For the Public Good: Pro Bono and Liberty’s Last Champions™*, such a success.

Sentinels of Truth
Anonymous Sentinel of Truth

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Sentinels of Truth
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Diamond Jubilee Defenders
The NFCJ and NACDL thank those who supported this event as Diamond Jubilee Defenders. This special category is a core group of sponsors whose support for this event will almost entirely benefit the charitable efforts of the NFCJ.

NACDL enters its seventh decade with a vision of a society where all individuals receive fair, rational, and humane treatment within the criminal justice system. Thanks to the support of this core group of high-impact sponsors, NACDL and the NFCJ are better situated than ever before to make this vision a reality.

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