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NACDL News
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NACDL News *By Jack King*

Forensic science evidence presented in court is often based on speculative research, subjective interpretations and inadequate quality control procedures, according to a report just released by NACDL. Police need to be taken out of the laboratory, and the “crime labs” need to be taken out of the police station, with the goal of ensuring the scientific integrity of forensic science evidence. Neutrality and objectivity are as essential to preventing wrongful convictions and exonerating the innocent as they are to solving crimes and convicting the guilty.

A year ago, the National Research Council of the National Academies (NRC) issued a report, *Strengthening Forensic Science in the United States*, which set forth the case for forensic reform. In July 2009, NACDL formed a Task Force on the Future of Forensic Science to provide additional recommendations for the improvements in the justice system as it relates to scientific evidence and testimony.

“Cases are sometimes made or broken on scientific evidence,” said NACDL President Cynthia Hujar Orr. “But independent audits and investigations conducted in ‘crime labs’ all over the country have uncovered hundreds of cases in which mistakes, bad science, and even outright forensic fraud have resulted in defendants being convicted and sentenced to death or prison.”

In support of reform efforts in the forensic science community, NACDL has now released *Principles and Recommendations to Strengthen Forensic Evidence and Its Presentation in the Courtroom*, advocating the creation of a “culture of science” in the forensic science community and supporting the establishment of a federal entity independent of law enforcement to oversee and implement necessary reforms to forensic science and its relation to court cases. A preliminary draft of the report was circulated for public comment in November 2009. Comments were solicited from a broad array of lawyers, forensic scientists and technicians, research scientists, and academicians.

“NACDL supports the establishment of an independent science-based agency and as full and equal access to forensic science services for the accused as exists for the prosecution,” said the task force’s chairman, Edward Ungvarsky, the Capital Defender for Northern Virginia. “The NRC Report makes clear that the forensic science system is broken and needs repair. NACDL’s recommendations are needed to fulfill the promises of due process and equal justice under the law in our courts.”



The NRC Report highlighted important deficiencies that urgently need correcting, and NACDL supports the recommendations intended to remedy those deficiencies. In addition, NACDL adopted seven Principles and Recommendations to help produce accurate and reliable forensic results and encourage fair and accurate verdicts in the courtroom:

- A central, science-based federal agency;
- Creation of a culture of science, rather than a culture of conviction;
- A national code of ethics for forensic practitioners;
- A prerequisite of solid research backing evidence in the courtroom;
- Greater educational opportunity for judges, lawyers, and law students;
- Greater transparency and discovery, including complete access for the defense to forensic evidence and the underlying data in every case; and
- Full and equal access for defense counsel to forensic and scientific expertise for all defendants, no matter what their economic status.

“The search for truth cannot favor one side or the other, and neither can publicly funded forensic science labs,” Orr said. “That is why NACDL supports the National Research Council’s recommendation to establish a wholly independent federal agency to address current deficiencies and create a culture of science in the community that seeks truth rather than convictions.”

NACDL notes that the scientific validity of many currently accepted forensic techniques has never been established. According to the NRC Report, with the exception of nuclear DNA analysis, “no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source.” The NACDL Report recommends that forensic science conclusions always include information concerning the degree of uncertainty associated with results and the limitations of the opinion offered.

The NACDL Report also recommends education, training and certification of forensic science experts and lab technicians, with regular proficiency testing. Forensic science practitioners need to develop and adhere to a national professional code of ethics with disciplinary procedures for poor conduct and biased testimony.

“Where life and liberty are at stake,” Orr said, “it is not too much to ask of an expert to adhere strictly to the demands and methods of good science and truthful testimony.” A copy of the report may be read or downloaded at www.nacdl.org.

Association Sponsors Supreme Court Group Admissions Ceremony

Seven NACDL members traveled to Washington, D.C., and were sworn in to the Bar of the Supreme Court of the United States on Feb. 22. President Cynthia Hujar Orr made the motions for admission in open court before the full Court, Chief Justice John Roberts presiding. The Court’s new practitioners are Daniel L. Barton, Palo Alto, Calif.; Patrick J. Boylan, Papillion, Neb.; John L. Caviale, Kenosha, Wis.; John R. Grasso, Providence, R.I.; Gulam R. Mahmood, Pelham, Ala.; Mark A. Skipper, Orlando, Fla.; and John W. Stickels, Arlington, Texas. NACDL will organize a swearing-in ceremony for additional members next year.

NACDL Sounds Alarm Concerning Proposed Changes to NYC’s Indigent Defense System

Mayor Bloomberg’s Office of the Criminal Justice Coordinator for the City of New York issued a request for proposals in February, with a short March 15, 2010, deadline, that contemplates a sudden and severe change abolishing the role of appointed assigned counsel in the city’s indigent defense delivery system. NACDL, through its indigent defense project, is concerned that without adequate study, consultation and public hearings, such a significant disruption in the manner by which indigent defense counsel is provided in the City of New York may contribute to, rather than ameliorate, a system already at the breaking point.

At its quarterly meeting in February, NACDL’s Board of Directors passed a resolution opposing any swift change to the city’s current, balanced indigent defense system and urged studies, consultations, and hearings on any such proposed changes. The board resolution points out

that in connection with any proposed change to the current system, it is critical to examine matters such as excessive caseloads, compensation, protection against conflicts of interest, training for lawyers, and proper oversight.

“Any significant change to the indigent defense system in the City of New York, particularly one as radical as that now being contemplated by Mayor Bloomberg’s office, should come only after careful study, consultation, and hearings,” explained William P. Wolf, a Cook County Assistant Public Defender in Chicago and co-chair of NACDL’s Indigent Defense Committee. “This is about much more than a budget line item in a challenging economic environment. What’s at stake are the well-established constitutional rights of the rapidly growing ranks of poor persons and the unambiguous constitutional responsibility of New York to ensure that indigent persons accused of a crime enjoy their Sixth Amendment right to effective assistance of counsel. It is critical to acknowledge that increasing defender caseloads will lead to overworked lawyers and increased risk of conviction for the innocent, a cost that society cannot afford.”

Added NACDL President Cynthia Hujar Orr, “Across the nation, we are witnessing a deeply troubling squeeze of constitutional dimensions on already overburdened indigent defense delivery systems. In all their forms, programs everywhere are in a state of crisis with overwhelming demand and unacceptable cuts in resources. Mayor Bloomberg’s proposal to abolish the role of appointed counsel in the City of New York, in what has historically been a dual system that relied on both the private bar and public defender offices, without the benefit of any serious investigation and public discussion, risks degrading further an already overburdened system.”

NACDL, the nation’s largest criminal bar association, has urged the City of New York not to change course without a meaningful study of the proposed changes, including substantive consultations and hearings exploring the range of critical issues implicated by the proposal.

Texas Sen. Rodney Ellis Honored With NACDL’s Champion of Justice Legislative Award

Sen. Rodney Ellis (Houston) was honored with the NACDL’s prestigious Champion of Justice Legislative Award on Feb. 24, 2010. NACDL President Cynthia Hujar Orr presented the award to Sen. Ellis at the State Capitol in Austin, Texas, during the Texas Indigent Defense Summit, organized by Sen. Ellis with support and participation from NACDL, the Texas Criminal Defense Lawyers Association, and the Constitution Project. NACDL recognized Sen. Ellis for two decades of tireless work to improve the criminal justice system and provide adequate legal representation to poor persons charged with crimes in Texas state courts.

Sen. Ellis is the author of the Texas Fair Defense Act, which requires that appointment of counsel be made promptly, from a list of qualified attorneys, not just “warm bodies.” Alternatively, the Fair Defense Act also allows a county or groups of counties to create a public defender office if they so choose. If a county does not choose a plan on its own, the default attorney selection method (a “rotation system”) comes into play. In order to avoid the charges made in the past of favoritism by judges in some courts, the judge must appoint an attorney from among the first five names appearing on a rotating public appointment list of attorneys qualified for the level of offense charged. The law adopted statewide attorney qualification standards for handling death penalty cases, including minimum capital trial experience requirements.

The Fair Defense Act clarifies and strengthens attorneys’ ability to obtain reimbursement for reasonable and necessary expenses for investigation and experts. It also established a statewide agency, the Texas Task Force on Indigent Defense, to develop further minimum quality standards for indigent defense across the state, assist and monitor counties in meeting the law’s objectives, bring accountability to indigent defense practices in Texas, and administer state grants to counties.

Rodney Ellis won a seat in the Texas Senate in 1990. During his tenure, he has earned praise as a leader on economic development, education, civil rights, responsible environmental policy, tax cuts for the middle class, criminal justice, and workforce development issues.

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