

FROM THE PRESIDENT

STEVEN D. BENJAMIN

The Power of Science, the Preservation of the Fourth Amendment, and the Strength of *Gideon*

As I begin my term as president, I have three goals for NACDL. The first goal is to increase our use of science, a field criminal defense lawyers approach with fear and distrust. That we question and challenge its admissibility and weight when it is offered as evidence by the prosecution is appropriate. Our training seminars so far have focused on how to do just that.

But our training on confrontation must be supplemented with training our lawyers how to use science to prove their case. The scientific method values objectivity, peer review, protocols, testing, and the avoidance of bias — the very factors that by their absence can render eyewitness and other lay testimony so unreliable. Whether our defense is one of reasonable doubt, actual innocence, an affirmative defense, or a mitigating circumstance, scientific evidence is the most powerful proof available. Next February, in Washington, D.C., in collaboration with our best trial lawyers and the American Academy of Forensic Sciences, we will present a unique CLE, “Reasonable Doubt and Actual Innocence: Winning Your Case with Cutting-Edge Science.” (See page 56.) We will meet across the street from the 4,000 forensic scientists attending the annual meeting of the Academy; enjoy a science fair of new technologies, exhibits, and techniques; and network with experts from every discipline willing to help the defense.

A second goal this year is the preservation of the Fourth Amendment. At the Executive Committee retreat in Washington, experts gave a full day’s presentation on the threat to the Fourth Amendment and exclusionary rule. One scholar said, “The Fourth Amendment isn’t dead, but it’s at grave risk of being murdered.” He’s right. If we don’t act immediately, a right that defines this

country — the right to be free of drones and constant government surveillance — will become a meaningless ideal we are powerless to enforce. We will spend this year in study and discussion, and next May, in New York City, we will train defense lawyers to protect this fundamental liberty.

My third goal during this 50th anniversary of *Gideon v. Wainwright* is to inspire and renew the strength of that promise. After 50 years, defenders still struggle with paltry resources, low pay, and crushing caseloads. The promise of *Gideon*, it seems, might be the promise of a warm body with a law license and not much more. But it is because of who we are that the promise of *Gideon* has meaning and strength.

We did not become lawyers to lie down. We became lawyers because we believe in freedom, the inherent worth of the individual, and the fair and equal protection of the law. We became lawyers because we fear the unchecked power of government just as we fear the irrational hatred and blood lust of an angry mob. We became lawyers because we are incapable of walking away from injustice and because we believe the rallying cry against abuse of power that appears on the Virginia State Seal — Sic Semper Tyrannis. That is why we became lawyers: to do battle, to slay tyrants, to protect liberty.

The strength of *Gideon* is in what we do. We come forward to confront injustice when no one else will. We speak for those who have no voice, sacrifice for those who have no money, and defend with every ounce of our being those who have no means to answer an accusation that would take their freedom or extinguish their life. We do this not for recognition or reward. We do this because of what unites us: an understanding of our moral obligation to stand up so that tyranny will not prevail.

We know the hardships. We know the anguish of responsibility for another person’s life, the nights of fitful sleep and trial dreams, the days of eking out an existence on court-appointed pay. We know the threats and hatred to which we and our families are exposed. We know that anyone else would quit, but the strength of *Gideon* is that we will not. We are liberty’s last champion, so we return to those courts, we fight another day, and another day after that, for our clients, our rights, the freedoms of us all, and we do this until we are depleted, our objections, arguments and pleas exhausted, our passions spent, and we have quite simply nothing more to give.

That is why we come to NACDL. Here we welcome each other, our brothers and sisters, and draw strength from the shared experience, defeats, and victories we sustain in a world that no one else can understand. The strength of *Gideon* is the strength of us all. The longest and most honored tradition at NACDL Board meetings is the introduction of every person present in the room. This tradition says it all. We are equal here. We are family. We do not stand alone.

I am deeply honored to be your president. ■



Isaac Harrell

Steven D. Benjamin is an attorney in private practice with the firm of Benjamin & DesPortes. In addition, he serves as Special Counsel to the Virginia Senate Courts of Justice Committee. He has led criminal justice reform throughout his career, including as counsel in the landmark Virginia Supreme Court decision recognizing a constitutional right to forensic expert assistance at state expense for indigent defendants. He is a recipient of the Virginia State Bar’s Lewis F. Powell Pro Bono Award.

STEVEN D. BENJAMIN

Benjamin & DesPortes, PC
P.O. Box 2464
Richmond, VA 23218
804-788-4444
Fax 804-644-4512

E-MAIL sdbenjamin@aol.com



Sign up for Twitter
to follow President
Steven D. Benjamin
(@Stevebenjaminva).