

FROM THE PRESIDENT

STEVEN D. BENJAMIN

We Have Learned a Few Things Along the Way

Part of the joy of our profession is the learning that never ends. After learning the principles and foundations of the law in law school, we spend years learning how to practice law. We learn to analyze, investigate, examine, and argue. We learn our own vocabulary; we learn the language of the street. We learn the culture of the criminal defense lawyer, and because our work requires that we understand others, we learn the culture and methods of the diverse communities in which we work. We learn that the courts, prosecutors, and police have values and customs every bit as distinct as those who populate the worlds of violence, fraud, and drugs.

We confront the frailty of human nature and learn that people will lie, withhold evidence, and deny the truth. We learn that honorable professionals can act dishonorably, and that those sworn to uphold the law can break it. We learn that rules and procedures can trump innocence, and that the truth-seeking function of the criminal trial is only as good as we make it. We learn that the only meaningful rights are those that are enforced, that fair trial rights do not guarantee fair trials, and that all the rights in the world cannot protect the innocent from conviction.

We know the flaws of eyewitness identification, coerced false confessions, and testimony gained by government reward.

We know the greatest causes of injustice are human weakness, error, and greed. We know that unless we are very good at what we do, innocent people will die or go to prison. This is why we sharpen our skills; this is why we continue to learn.

This is why we need to learn science.

The problem, though, is that we often approach science like lawyers who were promised no math. That we question and challenge its admissibility and weight when it is offered as evidence by the prosecution is not only appropriate, the Supreme Court reminded us in *Melendez-Diaz* that confrontation is our job. And if we did not already know from academic writing or news reports of lab scandals that the forensic science community is as subject to human error as any other witness or profession, that message was delivered by the National Academy of Sciences in its 2009 report, "Strengthening Forensic Science in the United States: A Path Forward."

But we must not be afraid of science, for science is not the enemy. Science is neutral. Science is a body of knowledge, a method, and a means of determining the truth. Science can rebut what is false, illuminate what is true, and answer what is unknown. The scientific method rejects bias, fraud, and non-reproducible results. Science values precision, objectivity, and consistently accurate results. Science is how we learn the truth of the world that surrounds us. The scientific method confronts a hypothesis, subjects it to variables, and probes it for weakness. Surely we understand this method, for we approach an accusation just as a scientist confronts a hypothesis. What we do not appreciate is how compatible science is to what we do every day — questioning everything, studying detail, rejecting dubious proof. Science should be our ally, and the scientific method should be our common guide.

Five years ago, the NACDL Board of Directors approved a plan to meet in Washington, D.C., in February 2013, to permit a unique collaboration with the American Academy of Forensic Sciences. The Board recognized that convening next to 4,000 forensic experts would provide unique educational opportunities and a chance to meet scientists willing to help the cause of justice. That plan came together with the creation of a CLE to teach us how to conduct a scientific investigation and present a scientific defense. We will learn the scientific method, and the specifics of how to provide scientific evidence to a jury. We will learn that information typically discarded by examiners from a DNA profile can provide scientifically reliable evidence of the presence of an alternative suspect. We will hear current research on how a person's genes might be analyzed



Isaac Harrell

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and presented with other factors as potentially mitigating evidence. We will learn that data, facts, and information held by the government must be accessible to the defense and how to use those databanks to prove our case.

The Academy has welcomed us. To our first 200 registrants, AAFS will provide special complimentary access to the Academy's Scientific Sessions from Thursday to Saturday, and to the AAFS Exhibition Hall — a science fair of the newest devices, instruments, tools, and literature. Each of the 10 sections of the Academy will provide a noted speaker to teach us how their discipline can be used to prove a fact at issue in a defense. And finally, all 4,000 AAFS attendees will be encouraged to indicate their willingness to assist the defense by providing professional and contact information as a resource for our registrants.

In addition to this powerful CLE and the provision of expert defense resources, the NACDL Board of Directors will receive a report from the Familial DNA Task Force chaired by Second Vice President Gerry Morris. This investigative technique has been used by law enforcement to identify possible suspects of unsolved violent crimes so that, after additional screening by traditional investigative techniques, a direct comparison of the DNA of those suspects not otherwise excluded can be made with the DNA extracted from the biological sample recovered from the crime scene. The procedure has resulted in arrests of suspected serial violent offenders. Familial DNA searching has also contributed to the exoneration of at least one wrongfully convicted individual. Several of our colleagues have recently sought access to the law enforcement DNA database resources in attempts to utilize this investigative technique to exonerate defendants by developing proof of another's guilt. Greater access to these resources holds the promise of contributing to more exonerations. The task force will provide further information and guidance concerning this technique in the context of due process and the proper and fair administration of criminal justice. During the Saturday morning Board meeting — a meeting to which every member is invited — the Board will consider and decide NACDL's position on the use of familial DNA searching techniques. This will be an extraordinary debate at an extraordinary meeting.

Please join us in D.C. ■



AFFILIATE NEWS

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2013 NACDL & AFFILIATE CLE CALENDAR

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| April 5-6 | <p>NACDL & CACJ's 6th Annual Forensics Seminar 'Making Sense of Science'
 The Cosmopolitan Hotel, Las Vegas, Nevada
 Contact: NACDL's Education Manager Akvile Athanason at 202-465-7630 or email aathanason@nacdl.org. For more details, visit our meetings website at www.nacdl.org/meetings</p> |
| April 11-12 | <p>Florida: FACDL's 2013 Criminal Law Certification Review Seminar
 Renaissance Orlando Airport Hotel, Orlando, Florida
 Contact: FACDL Executive Director Kathryn L. Bradley at 850-385-5080 or email kbradley@facdl.org</p> |
| April 18 | <p>NACDL's 4th Annual Post-Conviction Seminar Co-Sponsored by the Bureau of Justice Assistance
 The Blake Hotel, Charlotte, North Carolina
 Contact: NACDL Resource Counsel Vanessa Antoun at 202-465-7663 or email vantoun@nacdl.org. For more details, visit our meetings website at www.nacdl.org/meetings</p> |
| April 19-20 | <p>Innocence Network Conference
 Charlotte Marriott City Center, Charlotte, North Carolina
 Contact: NACDL's Education Manager Akvile Athanason at 202-465-7630 or email aathanason@nacdl.org. For more details, visit our meetings website at www.nacdl.org/meetings</p> |
| April 25-27 | <p>Louisiana: LACDL's 'Law and All That Jazz' Seminar
 Hyatt French Quarter, New Orleans, Louisiana
 Contact: LACDL Executive Director David Tatman at 225-767-7640 or email david@tatmangroup.com</p> |
| May 3-4 | <p>Arizona: AACJ's DUI Seminar
 Marriott Tucson University Park Hotel, Tucson, Arizona
 Contact: AACJ Executive Director Ellen Salvesen at 480-812-1700 or email defense@aacj.org</p> |
| May 3 | <p>Texas: TCDLA's DWI Defense Project
 Arlington Sheraton Hotel, Arlington, Texas
 Contact: TCDLA Executive Director Joseph Martinez at 512-478-2514 or email jmartinez@tcdla.com</p> |
| May 16-19 | <p>NACDL's Spring Meeting & Seminar 'Suppress It! Litigating Constitutional Rights in the Quest for Victory'
 New York Marriott Downtown, New York City
 Contact: NACDL's Education Assistant Akvile Athanason at 202-465-7630 or email aathanason@nacdl.org. For more details, visit our meetings website at www.nacdl.org/meetings</p> |
| June 6-7 | <p>NACDL's 3rd Annual West Coast White Collar Conference
 Hyatt Regency Resort and Spa, Lake Tahoe, Nevada
 Contact: NACDL's Education Assistant Akvile Athanason at 202-465-7630 or email aathanason@nacdl.org. For more details, visit our meetings website at www.nacdl.org/meetings</p> |
| July 24-27 | <p>NACDL's 56th Annual Meeting & Seminar 'Real Lawyers, Real Defenses: Masters of Their Craft'
 Westin St. Francis, San Francisco, California
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