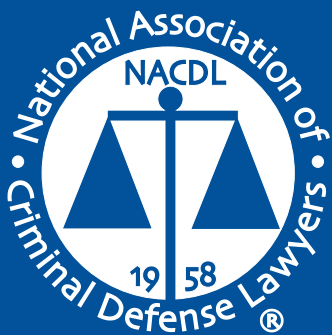




# Educating for Justice:

**Training Public Defense Providers**

**to Elevate the Sixth Amendment**

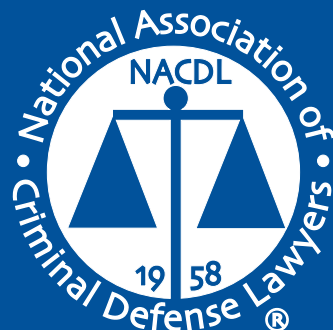


# About the National Association of Criminal Defense Lawyers and the Foundation for Criminal Justice

The National Association of Criminal Defense Lawyers (NACDL) is the preeminent organization in the United States advancing the goal of the criminal defense bar to ensure justice and due process for persons charged with a crime or wrongdoing. NACDL's core mission is to: *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.*

Founded in 1958, NACDL has a rich history of promoting education and reform through steadfast support of America's criminal defense bar, *amicus curiae* advocacy, and myriad projects designed to safeguard due process rights and promote a rational and humane criminal justice system. NACDL's many thousands of direct members — and 90 state, local and international affiliate organizations totaling up to 40,000 members — include private criminal defense lawyers, public defenders, active U.S. military defense counsel, and law professors committed to preserving fairness in America's criminal justice system. Representing thousands of criminal defense attorneys who know firsthand the inadequacies of the current system, NACDL is recognized domestically and internationally for its expertise on criminal justice policies and best practices.

The Foundation for Criminal Justice (FCJ) is a 501(c)(3) charitable non-profit organized to preserve and promote the core values of America's criminal justice system guaranteed by the Constitution — among them access to effective counsel, due process, freedom from unreasonable search and seizure, and fair sentencing. The FCJ supports NACDL's charitable efforts to improve America's public defense system, and other efforts to preserve core criminal justice values through resources, education, training, and advocacy tools for the public and the nation's criminal defense bar.



**For more information contact:**  
**National Association of Criminal Defense Lawyers®**  
1660 L Street NW, 12th Floor, Washington, DC 20036  
Phone 202-872-8600, [www.nacdl.org](http://www.nacdl.org)

# Introduction

The Sixth Amendment right to counsel is a vital cornerstone in the criminal justice system. One of the most fundamental roles of the criminal defense bar is to serve as a check on the government, ensuring that no individual stands alone when the government wields the awesome power to prosecute. This vital function cannot be fulfilled unless the defense is well-educated, well-trained, and well-resourced. As an increasing number of accused persons rely on publicly appointed counsel for representation, it is crucial that the nation's public defense system be robust and zealous, for it is against the most marginalized, most vulnerable in our communities that abuses of power often occur.

Across the country, the public defense community, made up of institutional defenders, contract attorneys, and assigned counsel, is in crisis. Lacking sufficient funding to manage burgeoning caseloads, attorneys and organizations are often forced to eliminate training to concentrate scarce resources to perform their core function of providing representation to those accused of crimes.

However, without adequate training, the defense bar cannot provide meaningful representation that fulfills the promise of the Sixth Amendment — that all those who stand accused should have at their side a zealous, capable, and ready advocate. Defense attorneys cannot challenge the latest in surveillance techniques, ferret out faulty forensic science, or call attention to racial profiling and subconscious bias if they are not taught the latest developments in these fields.

The financial support provided by generous grant partners has allowed NACDL to assure thousands of public defense providers have access to the training they need. Through webinars, scholarships, specialized training, and live on-site programs, NACDL has been able to impact communities large and small across the country.

One of the other significant investments arising from this grant support is in pretrial release advocacy. With over 60% of local jail populations being pretrial detainees,<sup>1</sup> arming defenders with the tools needed to pursue prompt release of those accused can have some of the most fundamental and lasting impacts on the system. Those incarcerated pretrial are more likely to be convicted and to serve longer sentences than those who are released prior to trial. Many are jailed for minor offenses, but remain incarcerated simply because they lack the resources to pay minimal bonds, forcing a plea of guilty to “buy” their release. Training defenders to make meaningful, successful challenges to pretrial detention not only restores people's liberty, but restores community resources needlessly expended on incarcerating accused persons who pose little risk to the community.

While governments should bear the cost of providing properly resourced, funded, and staffed defenders to all those who face criminal accusations, the fact remains that many jurisdictions do not devote the resources that they should to this important — and constitutionally required — function. Though litigation and legislation may eventually lead to systemic reform that results in an appropriately-resourced defense function, grant funding helps bridge the gap to ensure that those who are accused are not left unprotected.

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1. See “Bail in America: Unsafe, Unfair, Ineffective,” PRETRIAL JUSTICE INSTITUTE, available at <http://www.pretrial.org/the-problem/>.

# Training Programs for Public Defense Providers

Quality training is essential to quality public defense but is frequently the last thing funded and the first thing cut when public defense organizations must deal with increasingly tight budgets. Those public defense systems that do provide training do not always include conflict counsel in their programs, which means that private attorneys doing public defense work do so without both the oversight and education provided to institutionally employed defenders. Furthermore, because of

resource limitations, annual training provided by public defender offices is often repetitive, covering only basic trial skills and not touching on new or advanced topics for experienced attorneys, such as forensic evidence or strategies for addressing excessive caseloads.

Local training programs also frequently rely on local practitioners and are not able to include national trainers. When jurisdictions are only able to provide training with local

practitioners, new perspectives and information are often lacking. Institutional deficiencies are self-perpetuating as attorneys fail to recognize the ways in which they are complicit in unconstitutional practices within their own systems. National perspectives breathe new life into downtrodden defenders and raise the bar for public defense.

## Live Training Quick Facts

- 🎓 **9** Two-day training conferences
- 🎓 **2** Speakers provided for state conference
- 🎓 **1** Single day in-office program

**More than 1,000** defenders trained



© 2015 NACDL, Photo by Koichi Take

*Hanni Fakhoury, formerly of the Electronic Frontier Foundation, speaks to a packed room in Wilmington, DE, about digital evidence issues in May 2015.*

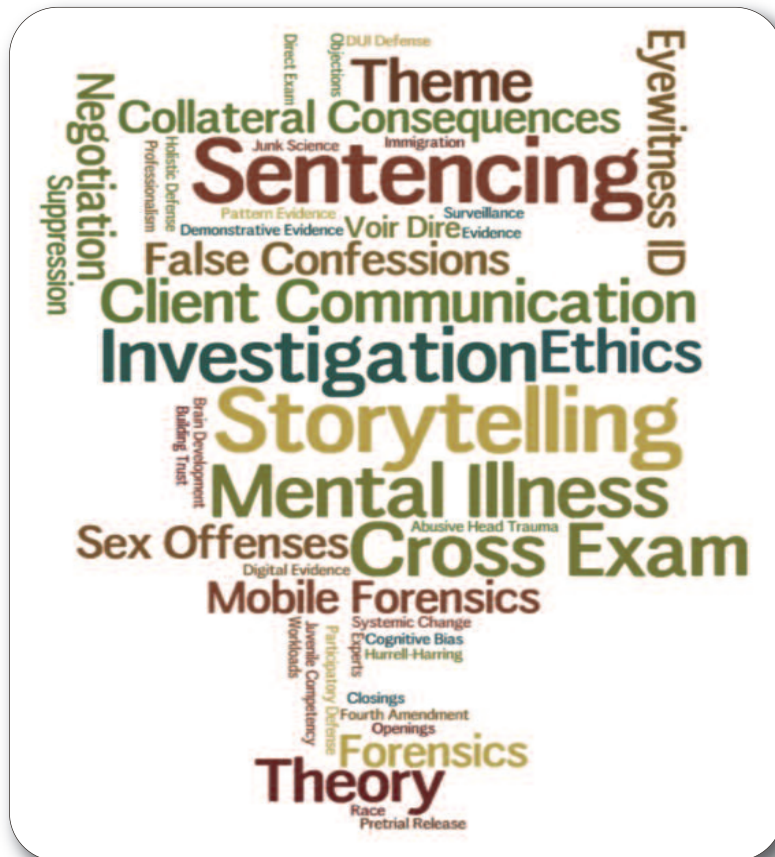




*More than 70 defenders participated in a training program in Oxford, MS, in March 2016, that coincided with Public Defense Day, the anniversary of the landmark Gideon v. Wainwright decision. The photo was shared via social media with #PublicDefenseDay.*

In fall 2014, NACDL launched a public defense training initiative to address these issues by bringing high quality national faculty directly to defenders in their own communities. Through that initiative, NACDL works with local partners to identify the most critical education needs and crafts sessions that are responsive to the jurisdictions' priorities.

Between spring 2015 and fall 2016, NACDL successfully executed nine live two-day training conferences for public defense practitioners in Austin, TX; Wilmington, DE; Seattle, WA; Syracuse, NY; Birmingham, AL; Alexandria, LA; Oxford, MS; Macon, GA; and Baton Rouge, LA. Beginning in late spring 2017, NACDL began providing additional flexible training options to fill essential knowledge gaps, including conducting a one-day in-office training program in Houston, TX, focusing on first appearance advocacy, and providing two speakers for New Mexico's annual public defender conference to cover performance standards and cross-examination of child victims in sexual assault cases. Across all of these live training opportunities, NACDL's public defense department has trained approximately 1,050 public defense attorneys on subjects including plea negotiations, representation of the mentally ill, effective case investigation, immigration and other collateral consequences, new surveillance technologies, storytelling, cross-examination, and more. Through continued grant funding, NACDL is planning seven additional programs to occur during 2017 and 2018.





## Attendee Accolades

**“It provided a window into a whole new level of practicing criminal defense. I am taking away a lot of new concepts, skills, and info I will use.”**

— Clients, not Cases: Skills for Outstanding Representation, Austin, TX, March 2015

**“It lit a fire and reminded me why this work is so important.”**

— Clients, not Cases: Skills for Outstanding Representation, Seattle, WA, June 2015

**“Great subject matter and speakers. From top to bottom, one of the best conferences I’ve been to (23 years in criminal justice).”**

— Taking the Fear out of Forensics, Oxford, MS, March 2016

**“I loved the practice tips shared by the speakers. For a newer attorney, these are like gold.”**

— “Not on My Watch!”: Protecting Your Client and Challenging the State in Juvenile and Adult Court, Macon, GA, September 2016

**“The information was actually useful and presented in a way that kept my attention and interest. The small groups were great.”**

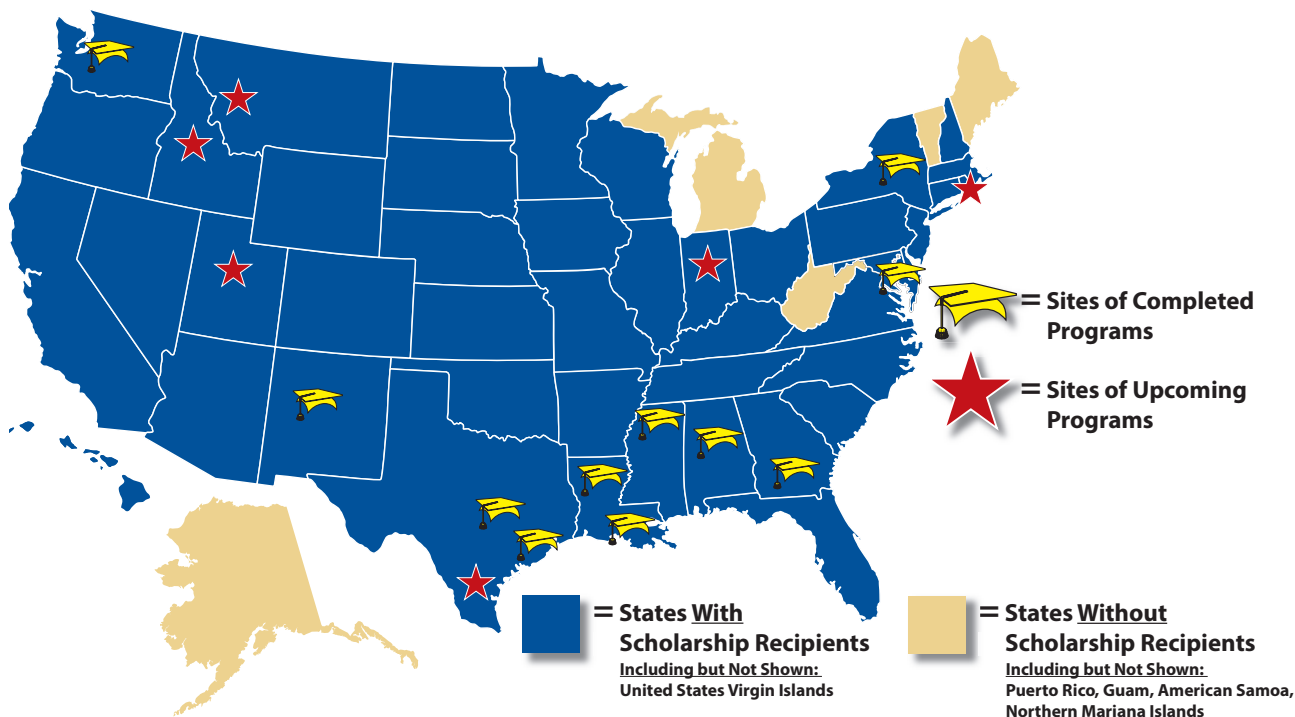
— Louisiana Trial Skills Re-Boot Camp, Baton Rouge, LA, November 2016



© 2015 NACDL, Photo by Koichi Take

*Participants work in small groups at a program in Seattle in June 2015.*

# Training and Scholarships: NACDL's Reach



## Scholarships to CLE Programs

There are several fine national organizations — including NACDL — that provide quality continuing legal education programs, but the fees associated with those programs sometimes place them out of reach for public defense practitioners. Even defender offices that have substantial training budgets often use those funds for in-house training only and do not provide financial support to attorneys who want to attend national programs, instead requiring them to pay all costs out of their own pockets. Additionally, although programs sometimes offer special public defender pricing, few if any organizations are able to offer special pricing to attorneys who take on a substantial amount of public defense work through contracts or court appointment but who are not institutionally employed.

NACDL has long provided scholarship opportunities for its members to attend NACDL programs. Beginning in fall 2014, the scholarship program was expanded to provide additional opportunities for defenders to take advantage of specialized training programs conducted by NACDL and a number of other national organizations, regardless of membership status. Assistance is awarded through reimbursement of registration fees and/or travel expenses for qualifying individuals, including full-time public defenders and private assigned counsel.

### Scholarship Quick Facts

 **583** Recipients

 **43** Programs attended

 **46** States and territories represented

**\$311,923** In aid awarded



Since October 2014, across all of NACDL's scholarship programs, nearly 600 attorneys have been given aid to attend programs through reimbursement, tuition waivers or reductions, and travel assistance. Awards were made to attorneys from 44 states, the District of Columbia, and the U.S. Virgin Islands to attend 43 different programs hosted by NACDL and a half dozen other nationally-recognized organizations. In total, more than \$300,000 in aid has been granted.

## Pretrial Release Advocacy Manuals

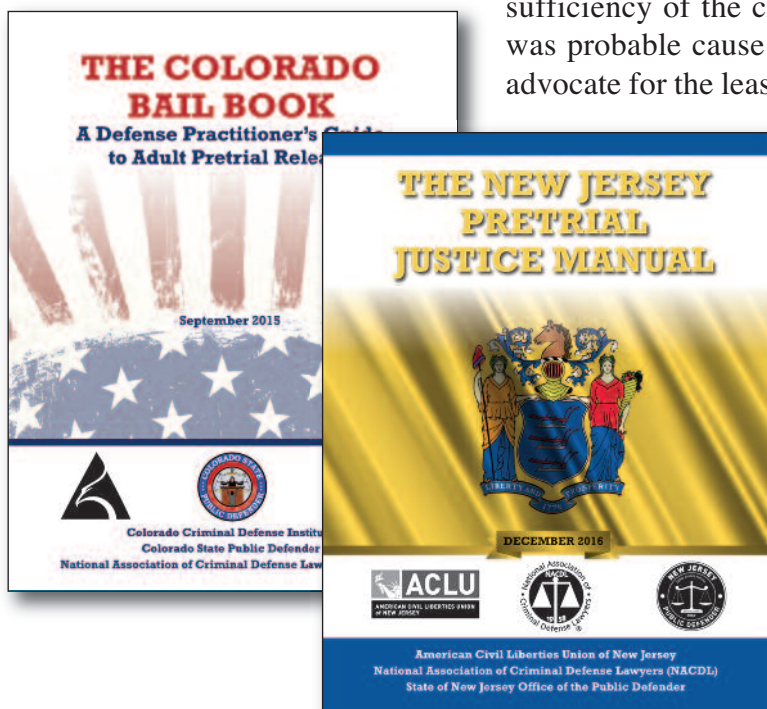
As pretrial release reform gains ground nationwide, jurisdictions are increasingly employing risk assessments to inform the pretrial release decision and involving defense attorneys in the court proceedings during which initial release decisions are made. Defense attorneys can have a significant impact on whether individuals are released pretrial. When defense attorneys are present, defendants are more likely to be able to present favorable and verified information to the court establishing that a defendant is not a flight risk and will return to court if released. Defense attorneys are able to identify potential legal defenses, raise issues regarding the

sufficiency of the charges, and challenge whether there was probable cause for the defendant's arrest. They can advocate for the least restrictive conditions of release that

will reasonably ensure a defendant's attendance at court proceedings and protect the community. In short, defense attorneys can have a tremendous impact on whether and under what conditions an individual is released from custody in the pretrial stage.


However, to be effective advocates, defense attorneys must understand how risk assessments work and be prepared to make compelling arguments in support of their clients' release. NACDL's pretrial release manuals present

research regarding pretrial release, information about how risk assessments are developed and what they take into consideration, clear explanations of statutory and case law, and important tips for client interviews and courtroom arguments that increase the likelihood of a favorable outcome. In addition to printed materials, NACDL provides live training to defenders on pretrial release advocacy.



### Pretrial Quick Facts

 **2** Manuals written

 **5** Live training sessions conducted

**569** Defenders trained





## Recipient Reviews

**“But for the scholarship program, I would not be here. My district does not have the resources to send us to conferences like these or always get the experts we need. It was great to be able to attend.”**

— *Vanessa Williams, NACDL's Making Sense of Science VIII, Las Vegas, NV, April 2015*

**“The scholarship program is great. Without it, the attorneys in my office would not be able to attend trainings with such outstanding presenters. National conferences expose Oregon lawyers to nationally recognized experts and creative ideas from criminal defense lawyers outside of Oregon. I hope that the funding continues.”**

— *Dawn Andrews, NACDL's Science of the Mind, Austin, TX, February 2016*

**“I think the scholarship program is great! It really allows public defenders who don't receive office funding to expand their practice, learn new skills, and bring new information back to the office.”**

— *Nadia Hojjat, NACDL's The Voo Doo of Voir Dire, New Orleans, LA, March 2017*

**“This may have been the most valuable seminar I have ever attended. It was superbly organized. Obviously, if I am successful in using the skill and knowledge taught to me at this seminar, I may save the life of my client.”**

— *Abner Burnett, National College of Capital Voir Dire, Boulder, CO, May 2017*







© 2016 NACDL, Photo by Koichi Take

*Attendees listen at NACDL's 2016 Midwinter meeting in Austin, TX, where 44 defenders were able to attend with scholarship assistance.*

## Additional Training Initiatives

**NACDL's commitment to public defense does not end with the activities highlighted in this document. In addition to substantial research and policy work in the area of public defense, NACDL conducts a number of other grant-funded programs that benefit defenders, including:**

-  **Free webinars on topics of interest.** Since October 2014, NACDL has conducted more than 20 free webinars, reaching more than 4,500 defense attorneys, including live and recorded views. Many of these individuals are public defense providers.
-  **Post-conviction training.** NACDL plans an annual in-person training program for lawyers handling post-conviction innocence claims, focusing on unreliable forensic evidence, legal avenues for post-conviction relief, and other instruction needed to address and prevent wrongful conviction. Three programs in the spring of 2015, 2016, and 2017 trained a total of 562 attorneys.
-  **Training for death penalty lawyers.** NACDL works with the National Consortium for Capital Defense Training to convene regional training programs for capital defense team members. The training programs use the evidence-based, acclaimed bring-your-own-case format. Since 2011, NACDL has conducted roughly two programs per year and trained over 120 teams from more than a dozen states. NACDL works with leading experts both to conduct the training programs and to provide ongoing training and technical assistance to trainees.
-  **The National Forensic College.** NACDL and Cardozo School of Law partner with the Administrative Office of the U.S. Courts, Defender Services Training Division, to hold a week-long, intensive training program for supervisors, trainers, and experienced litigators who are or will be the forensic science experts or point people in their jurisdictions. The college prepares attorneys to litigate complex forensic science issues strategically and with the support of the nation's leading law firms and experts. Almost 450 lawyers were trained at the college during the three programs in 2015, 2016, and 2017.

# Acknowledgements

The National Association of Criminal Defense Lawyers (NACDL) thanks the Association's Public Defense Committee and its leadership over the years, as well as the following staff members for helping plan program logistics and/or participating as instructors: Norman L. Reimer, Executive Director; Bonnie Hoffman, Director of Public Defense Reform and Training; Diane DePietropaolo Price, Public Defense Training Manager; Colette Tvedt, former Director of Public Defense Training and Reform; Tamara Kalacevic, Director of Events; Akvile Athanason, Education Manager; and Koichi Take, Manager, Multimedia Production and Sales.

NACDL would also like to thank those staff members who assisted with related public defense initiatives, such as webinars, scholarships, pretrial release manuals, and other programs referenced in this publication: Kyle O'Dowd, Associate Executive Director for Policy; Gerald Lippert, Associate Executive Director for Programs, Business Services, and Technology; Ivan Dominguez, Director of Public Affairs and Communications; Vanessa Antoun, Senior Resource Counsel; Daniel Weir, Foundation Manager and Executive Assistant; Quintin Chatman, Editor of The Champion Magazine; Jumana Musa, Sr. Privacy and National Security Counsel; Cathy Zlomek, Art Director; Nelle Sandridge, Member Services Assistant; Lisa Schrade, National Affairs Assistant; Ezra Dunkle-Polier, Public Affairs and Communications Assistant; and Tatum Brooks, Administrative Assistant.

Additionally, NACDL is appreciative to the following staff for providing insightful feedback and assistance throughout the creation and publication of this brochure: Norman L. Reimer, Executive Director; Kyle O'Dowd, Associate Executive Director for Policy; Bonnie Hoffman, Director of Public Defense Reform and Training; Diane DePietropaolo Price, Public Defense Training Manager; Ivan Dominguez, Director of Public Affairs and Communications; Cathy Zlomek, Art Director; and Alexandra Funk, Public Affairs and Communications Assistant.

NACDL could not provide such vital and quality public defense training, scholarships, research, policy work, and other initiatives without generous funding and support from its donors. In that regard, NACDL thanks the Foundation for Criminal Justice and its donors, as well as donors to the Gideon Fund; the Bureau of Justice Assistance; and Koch Industries for their support of these critically important programs.

**For more information contact:**  
**National Association of Criminal Defense Lawyers®**  
1660 L Street NW, 12th Floor, Washington, DC 20036, Phone 202-872-8600, [www.NACDL.org](http://www.NACDL.org)

