

Dear Ladies and Gentlemen of the Bar of North Dakota,

Greetings from the new North Dakota Association of Criminal Defense Lawyers (NDACDL), which was issued a Certificate of Incorporation by the Secretary of State of North Dakota on January 29, 2010. NDACDL held an organizational meeting on February 13, 2010, at which time the following board members were elected: President, Michael Hoffman, Bismarck; Vice President, Nicholas Thornton, Fargo; Secretary, Mark Friese, Fargo; Treasurer, Paul Myerchin, Bismarck; and Officer at Large, Kelly Armstrong, Dickinson. The Board conducted its first meeting on March 10, 2010, at which time Bylaws of NDACDL were approved.

Attached is a membership application to join NDACDL. Lawyers who pay dues and become members by June 1, 2010, will each receive a Certificate of Membership, indicating Charter Member of the association. Thereafter, a Certificate of Membership will be issued.

NDACDL will hold its first membership meeting on June 23, 2010, at 5:15 PM, at the Alerus Center in Grand Forks, North Dakota. This meeting will be held in conjunction with the North Dakota Indigent Defense Conference. A social gathering will follow. Dinner will be provided by NDACDL.

A major topic to be addressed at the June 23, 2010, meeting is whether NDACDL should affiliate with the National Association of Criminal Defense Lawyers (NACDL). The Board decided on March 10, 2010, that this important discussion and vote should be done by the general membership of NDACDL.

In regard to NACDL, it is worthy of note that the President of NACDL, Cynthia Hujar Orr, San Antonio, Texas, will be a featured speaker at the annual spring seminar of the North Dakota Association for Justice, which is being held on May 13-14, 2010, at the Holiday Inn in Fargo, North Dakota. The North Dakota Association for Justice, as a welcome to our new organization, is providing their spring seminar to members of NDACDL at the same rate as members of the North Dakota Association for Justice. Thank you to the North Dakota Association for Justice.

Our new organization was created to provide a forum to bring together North Dakota state and federal public defenders and private criminal defense lawyers so that we may have the opportunity to learn from one another and to act as a cohesive whole on issues common to us all. We have already begun to work and act on these goals. For example, on February 25, 2010, this organization sent a letter brief to the North Dakota Supreme Court expressing our views in opposition to the new N.D.R.Ev. 707.

While Rule 707 is a North Dakota state court rule, we believe our new organization is also relevant to those who practice in our federal courts. In a recent issue of *The Champion*, NACDL's magazine, there was this quote from *United States v. Wade*: "Our interest in not convicting the innocent permits counsel to put the state's case in the worst possible light, regardless of what he thinks or knows to be the truth." The power of that statement may hit you like a sledgehammer. It should probably be on the first page of every book written on being a criminal defense lawyer and on criminal procedure. But there is more. Turning to *United States v. Wade*, that statement is contained in this larger context:

[D]efense counsel . . . must be and is interested in preventing the conviction of the innocent, but, absent a voluntary plea of guilty, we also insist that he defend his client whether he is innocent or guilty. The State has the obligation to present the evidence. Defense counsel need present nothing, even if he knows what the truth is. He need not furnish any witnesses to the police, or reveal any confidences of his client, or furnish any other information to help the prosecution's

case. If he can confuse a witness, even a truthful one, or make him appear at a disadvantage, unsure or indecisive, that will be his normal course. [Footnote omitted]. Our interest in not convicting the innocent permits counsel to put the State to its proof, to put the State's case in the worst possible light, regardless of what he thinks or knows to be the truth. Undoubtedly there are some limits which defense counsel must observe [footnote omitted] but more often than not, defense counsel will cross-examine a prosecution witness, and impeach him if he can, even if he thinks the witness is telling the truth, just as he will attempt to destroy a witness who he thinks is lying. In this respect, as part of our modified adversary system and as part of the duty imposed on the most honorable defense counsel, we countenance or require conduct which in many instances has little, if any, relation to the search for truth.

United States v. Wade, 388 U.S. 218, 256-258 (1967), Mr. Justice White, whom Mr. Justice Harlan and Mr. Justice Stewart join, dissenting in part and concurring in part. It is good to be reminded of this language. It is good to see this language in black and white. The language is part of our essence and, as such, is relevant to a myriad of situations. One such situation is the reciprocal discovery agreement used by some federal prosecutors in North Dakota. Hopefully, this language can be useful to you as a tool in fighting such forced reciprocal discovery. Hopefully, this is an issue in which this organization can lend its help. None of us need stand alone.

NDACDL's Articles of Incorporation and Bylaws are available on request, and will soon be available online. An Agenda for our June 23, 2010, meeting will be forthcoming. We intend at that time to discuss the reciprocal discovery agreement mentioned above and other issues which are of concern to us now. You may have an issue of your own you wish to voice. If you practice any criminal defense in North Dakota, we are hopeful you will join us. NDACDL is intended to be your organization, not just an organization of a few.

Mike Hoffman, President
NDACDL
March 23, 2010