



## NDAА STATEMENT ON THE RULE OF LAW

Since before the time of Hammurabi, mankind has struggled with defining a system of behavioral and societal rules that apply equally to all. We have not always been successful. In America, we were formed by overcoming the oppression of tyranny. We rebelled because some felt the Crown had replaced fairness and equity with unfair taxation and vexing restrictions on our liberty. We proudly proclaimed that "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness." The beauty and eloquence of those words concealed the paradoxical truth that they were written by a slave owner. We had created a nation devoted to freedom and equality where we allowed some of our people to profit from the labor of others kidnapped from the plains of Africa and we denied half our citizens the right to vote because of the happenstance of their gender.

Whatever else America is or may have been, America is not stagnant. Though much was done wrong, we never stopped trying to get it right. We freed the slaves with the Emancipation Proclamation and at a cost of 600,000 American lives. We passed the 19th Amendment granting women the basic right to vote. We passed the Civil Rights Act. We have passed numerous statutes prohibiting discrimination based on race, gender or sexual orientation. We bellow, we argue, we campaign, we vote, we resolve our disputes in court, not at the point of a gun, and amidst what to an outsider appears to be chaos, we move on, we strive to be better, to be fairer, to never stop chasing the goal of equal justice for all. We call this our embracing of the Rule of Law.

Some time ago, NDAA had the opportunity to learn about the role of legal professionals in Nazi Germany through a program titled, "Law, Justice, and the Holocaust: How the Courts Failed Germany", offered by the United States Holocaust Memorial Museum in Washington, D.C. How could it be, we asked, that a non-descript former Corporal from Austria could rise to power in Germany and in just over a decade lead a nation and its collaborators on a genocidal path resulting in the murder of 6 million Jews and millions of others? As we learned, it is in part because members of the German justice system compromised their allegiance to the Rule of Law.

In the early years of the Nazi regime, Hitler and the Nazis pushed for the suspension of key provisions of the German Constitution, removing all restraints on police investigatory power, criminalizing speech, banning free assemblies, sanctioning preventative detention and denying those accused of real or imaginary crimes the right to counsel. Abandoning all restraint, Hitler appointed himself Führer of Nazi Germany in 1934 and the parliamentary democracy of the Weimar Republic saw a sudden and tragic demise. Hitler and the Nazis then began the process of coordination -- aligning the German judicial system with Nazi goals. Only racially acceptable Germans could serve. All Jews were removed from the bar, from the judiciary and as prosecutors. Legal professionals who might have challenged the legitimacy of the Nazi regime, questioned laws that restricted political freedoms and civil rights, or upheld guarantees of property and security failed to do so. Examining this history served as a reminder for us of the important role prosecutors play in upholding the rule of law and preserving democracy, as well as the potential consequences when prosecutors abdicate this role.

And to those who say it could never happen again, we harken to the words attributed to anti-Nazi German Pastor Martin Niemöller:

*First, they came for the Socialists and I did not speak out – because I was not a Socialist.*

*Then they came for the trade unionists and I did not speak out – because I was not a trade unionist.*

*Then they came for the Jews and I did not speak out – because I was not a Jew.*

*Then they came for me – and there was no one left to speak for me.*

It can happen again, and such historical events provide a reminder of the critical role played by our profession as ongoing challenges to the Rule of Law around the globe continue. For this reason, the National District Attorneys Association adopts these principles embraced by the World Justice Project in support of the Rule of Law.

## FACTOR 8 - CRIMINAL JUSTICE

### 8.1 NDAA believes in effective criminal investigations.

*"Yes, there are monsters, and it's okay to be afraid of them, but it's not okay to let them win, and it's not okay to be one."*

## *Criminal Minds*

NDAA recognizes that wrongful convictions begin with wrongful arrests. Criminal investigations should be conducted with open minds, with critical thinking, with careful analysis of the crime scene and proper collection and testing of evidence, with concerns for the rights of the accused, with videotaping interrogations and confessions when possible, with sharing exculpatory evidence and with allowing defense testing of evidence, including DNA analysis, that is probative of guilt or innocence at any stage of the proceeding.

8.2 NDAA believes that criminal adjudications need to be conducted in a timely manner.

*"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial... 11*

*6<sup>th</sup> Amendment to the US Constitution*

Our Constitution guarantees the accused the right to a speedy trial, a right that has been interpreted by numerous court decisions. Many times, the speed of adjudication of a case is beyond our control as prosecutors. But we owe it to the victims we serve, and the defendants we prosecute, to see that a case is adjudicated in an efficient manner.

8.3 NDAA believes that our nation's correctional institutions should be secure, humane and be effective in reducing recidivism.

*"Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."*

*Rev. Martin Luther King, Jr. Letter from a Birmingham Jail*

Few things are more frustrating to the general public than witnessing the commission of a crime by a "repeat offender", the individual who has been caught, indicted, convicted, sentenced and upon release goes back to criminal behavior. While NDAA believes prisons should be punitive and serve as a deterrent, prison should also provide opportunities for inmates to improve their lives and learn new skills. Prisons should be staffed by well trained personnel

who treat the inmates appropriately and decently. NDAA also believes in effective re-entry programs in our local communities to assist those inmates in their integration back into society.

8.4 NDAA believes that the criminal justice system must operate with fairness and impartiality.

*"The job of a judge is to figure out what the law says, not what he wants it to say. There is a difference between the role of a judge and that of a policy maker...judging requires a certain impartiality"*

*Supreme Court Justice Clarence Thomas*

There is no more important cornerstone to the Rule of Law than impartiality. Police officers should have open minds when they investigate a case; prosecutors should be critical thinkers and pursue justice without regard for the defendant's socio-economic status, gender, ethnicity, religious beliefs or sexual orientation; Judges should be, as Chief Justice Roberts has said, impartial umpires, rendering rulings based on legal precedent and the evidence before them.

8.5 NDAA believes that our nation's criminal justice system needs to be free of corruption.

During the 2000's, Assembly Speaker Sheldon Silver would routinely send a \$100 check each year to the campaign committee of legendary Manhattan DA Bob Morgenthau.

*"I knew he didn't need the money. But I wanted to see if he would cash my check. If he did, then I knew I wasn't in any trouble because if he was investigating me, he wouldn't have taken the money. "*

*Now Former NY Assembly Speaker and current convicted felon Sheldon Silver*

The notion of corruption, whether it's a prosecutor intentionally withholding exculpatory evidence or a defense lawyer knowingly suborning perjury, is a blight on the criminal justice system. While we work in an adversarial system, we fight fairly without fear or favor. We fight for victims but always bear in mind that the oath we take is to uphold the Constitution. We hold ourselves to

the highest ethical standards and we expect no less from the assistant district attorneys that we employ. We walk into courtrooms all over this country and proudly announce that we are there representing the People of our respective states.

8.6 NDAA believes in a criminal justice system that operates free of improper government influence.

*"I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It's an ideal which I hope to live for and to achieve."*

*Nelson Mandela*

We recognize that as members of NDAA, many of us are elected officials or appointed by elected officials, and many others are assistant prosecutors. We belong to political parties though few if any of us advertise that fact to our colleagues. We need to work cooperatively with other elected officials whether it be our County Executives in making budgetary requests, members of the local, state and federal legislatures to advocate for legislative reform or members of the judiciary ensuring our respective systems are working efficiently. But when all is said and done, we cherish our discretion and our independence. When we make life altering decisions, whether it be to charge or divert, to pursue or to exonerate, to seek the ultimate penalty of death or some lengthy incarceration sentence, we make those decisions free of political or governmental influence. We make those choices consistent with our obligation to protect the public and consistent with our solemn oath to preserve, protect and defend the Constitution of the United States. We come to work every day with our sole objective being to do the right thing.

8.7 NDAA believes in due process of law and protecting the rights of victims and the accused.

*"The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."*

*Supreme Court Justice Hugo Black writing in Gideon vs. Wainwright*

Our NDAA members believe in passionately and fairly pursuing justice. We

believe in the presumption of innocence and freedom from arbitrary arrest and detention. We believe that the accused should be represented by competent counsel and that those accused should have a full and fair opportunity to challenge the evidence against them. And we believe that victims of crime, particularly survivors of violence who have lost loved ones by criminal means, must have a champion in the courtroom and must have their voices heard.

We respectfully adopt these precepts and reinforce our respect for the Rule of Law in every county, every city, every state and every region of our great country and in every corner of our planet.