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Massachusetts Association of Criminal Defense Lawyers

April 27, 2015

Dear MACDL Members,

I am writing to provide an update in MACDL's activities since my last letter to members in November.

Spring Meeting

Our spring meeting will be held at the Newton Marriot on **Tuesday, June 16th, 2015** (5:30-9:00pm). (We have reserved the large tent again.) Invitations were emailed to you on April 22nd. We will be presenting the Balliro Award to **Jonathan Shapiro** and the Speer Award to **John Thompson**. Our keynote speaker will be **Emily Rooney** Of WGBH.

Information for purchasing tickets and tables is available on www.macdl.com, as well as on the form which was emailed to you with the invitation. We will again be producing a program booklet which will provide a forum for friends and colleagues to honor Jonathan and John with congratulations and acknowledgements. We welcome firm and vendor advertisements as well.

We are organizing a **donate-a-ticket-program** so that new CPCS lawyers and bar advocates, who would not otherwise be able to attend, can join us. Please consider purchasing an additional ticket (at the CPCS/bar advocate rate of \$70) and Shira Diner will give your donated ticket to one of these new lawyers. Ticket donors will be acknowledged in the program, along with firms that purchase tables. If your firm has purchased a table and has unused tickets, please contact Shira at sdiner@publiccounsel.net and she will assign new CPCS lawyers or bar advocates to your table.

Winter Meeting

We had a great turnout for the winter meeting when the Gideon Award was presented to **Arnie Abelow** and the President's Award to **Ed Ryan**. Our keynote speaker **Kemba Smith**, the author of *Poster Child*, gave a compelling and moving account of her trial, conviction and six years in federal prison on drug charges. Her story powerfully illustrated the damage wrought by draconian drug penalties.

MACDL Meeting in Worcester

On April 9th **Mike Hussey**, MACDL President-Elect, organized a successful social and informational gathering in Worcester for MACDL Members and other lawyers interested in joining. MACDL will be holding more of these events around the state.

Post-Conviction Litigation Seminar

The annual Post-Conviction Litigation Seminar was very well attended, as always. Many thanks to **Lenore Glaser, Anne Goldbach, Lauren Banwarth** and **Victoria Kelleher** and to all the presenters for making the seminar such a success.

Amicus

Thanks to the amicus co-chairs **Chauncey Wood** and **David Lewis** and to the brief writers listed below, MACDL continues to file excellent amicus briefs on criminal justice issues in the SJC, and to sign on to briefs filed by other organizations.

Congratulations to **Afton Templin** who filed an amicus brief on MACDL's behalf in *Commonwealth v. Diatchenko* in which the SJC held that juveniles convicted of murder have the right to counsel at parole hearings and the right to funds for experts at initial parole hearings; and to **Lisa Steele** whose amicus brief contributed to the SJC's decision in *Commonwealth v. Gomes* that future jurors must be instructed on scientific principles regarding eyewitness testimony.

Since November, amicus briefs have been filed on behalf of MACDL in the following cases:

Commonwealth v. Brewer (**Kirsten Meyer**): re immunity for defense witnesses

Commonwealth v. Jones (**Brad Compston**): re closure of courtroom during voir dire of witness pursuant to rape shield statute

Commonwealth v. Kostka (**B.J. Trach, Laura Carey, Peter Roni Goldstone, Chauncey Wood**): re compelled saliva sample from defendant's twin brother

Commonwealth v. Augustine (**Kevin Prussia**): re suppression of cell site location information

MACDL has signed on to amicus briefs prepared by other organizations:

Bridgeman v. D.A. for Suffolk County (NACDL brief): re remedy for Dookhan defendants

Commonwealth v. Clark (CPCS brief): re requirements for DNA testing

Commonwealth v. Donelon (Bazelon Center for Mental Health brief): re procedural safeguards for immigration detainees

Commonwealth v. Wallace (ACLUM): re speedy trial

Johnson v. United States: MACDL signed on to an amicus brief to the Supreme Court signed by 21 defense lawyer organizations re whether restitution is a criminal penalty subject to the 6th Amendment requirement that the government allege in the indictment and prove to a jury beyond a reasonable doubt any fact that increases the amount of criminal sentences, penalties and punishments.

Criminal Justice Reform

At last, sentencing reform efforts are gaining some traction in the legislature. As you know, Justice Gants spoke out strongly against mandatory minimum drug sentences at the Criminal Justice Reform Coalition Summit last month. The DAs – of course—are strongly opposed. MACDL continues to work with FAMM, the ACLU and other organizations on sentencing reform, and other criminal justice legislation.

MACDL will send out “call your representative/state senator” alerts when hearings on important criminal justice bills are held and when those bills are coming up for votes. Please respond to these alerts—you can make a difference.

Ed Masferrer and **Marty Rosenthal** are MACDL’s nominees on the Sentencing Commission. In March the Board met with Ed and Marty and with **Randy Gioia**, **Larry Tipton** and **John Redden** of CPCS for a discussion of sentencing reform strategy.

Sentencing Commission

Patty Garin, MACDL’s nominee to the Sentencing Commission, sends the following report:

The Commission members met monthly during 2014 and by December 30th had passed 18 administrative recommendations and three legislative recommendations. The recommendations will be presented to the Governor, the legislature and the various agencies involved (such as the Department of Correction, the Parole Board, the Office of Probation, the District Attorneys, the Sheriffs, the Administrative Office of the Trial Court, etc.). A report of the Commission’s work to date has been prepared and should be issued soon. The three legislative recommendations that passed are: 1) Remove mandatory minimum sentencing for drug offenses; 2) Adopt sentencing legislation providing parole eligibility at 2/3rds of the lower end of the sentence for all state prison sentences, except for sentences imposed for murder or manslaughter, and at ½ of all county houses of correction sentences of 60 days or more; 3) Adopt legislation providing for “presumptive parole” at the first parole eligibility date.

The new secretary of EOPSS, Dan Bennett, who by statute chairs the meetings, has cancelled the first four meetings scheduled for 2015. The next meeting is scheduled for May 19th. Hopefully, the Commission will resume its monthly meetings at that time.

Rules of Professional Conduct

The SJC has adopted an important change in the Rules of Professional Conduct Rule 3.5 which now permits lawyers to have post-verdict communications with jurors. Thanks to **Marty Rosenthal** who drafted MACDL comments on this and other proposed rule changes last year. Marty is now working on MACDL's behalf with representatives of CPCS and the Federal Defenders to draft proposed changes to Rule 3.8 ("Special Responsibilities of a Prosecutor").

Eyewitness Identification Instructions

Lisa Steele has been appointed to the SJC Standing Committee on Eyewitness Identification as MACDL's nominee. Lisa is drafting a response on behalf of MACDL to the provisional eyewitness identification instruction set forth in *Commonwealth v. Gomes*. Please contact Lisa if you have had a post-*Gomes* case where the new instruction was asked for or given, or if you have any thoughts on how the instruction could be better drafted.

MACDL Programs

Please contact the following MACDL Board members if you would like to participate in, or use the services of, these MACDL Programs:

Lawyers Assistance Strike Force

Peter Parker (peter@parkerslaw.com)

Witness Advocacy and Representation Network

Derege Demissie (dd@demissiechurch.com)

New Lawyer Partnership Program

Shira Diner (sdiner@publiccounsel.net)

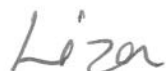
MACDL Board

We welcome **John Amabile, Laura Banwarth, Brian Murphy, Luke Ryan** and **Chauncey Wood**, who have been appointed to fill vacancies on the MACDL Board, and **Trevor Maloney** who has been appointed as law student representative on the Board.

Membership Dues

I'm pleased to announce that the Board has approved new **lower rates for CPCS lawyers and bar advocates** who have been admitted to the bar for less than ten years. (Check www.macdl.com for details.) We hope that this will make MACDL membership accessible to all members of the criminal defense bar.

I look forward to seeing you at the June meeting.



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