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Massachusetts Association of Criminal Defense Lawyers

July 23, 2014

Dear Members,

I am writing to give you an update on MACDL events and activities since my last letter in April.

## Spring Meeting

We had a great turnout (close to 200 members, including a large group from Western Massachusetts) at the Spring Meeting on June 18<sup>th</sup>. We presented the Balliro Award to **David Hoose**, the Speer Award to **Wendy Sibbison**, and a President's Award to the **Federal Defenders**. Our keynote speaker was **Senator Will Brownsberger**, the Senate Chair of the Joint Committee on the Judiciary.

## Amicus

Since September MACDL filed a record number of nine amicus briefs and signed on to two additional amicus briefs. The SJC adopted the position advocated by MACDL in seven important cases:

- *Commonwealth v. Alebord*: held right to public trial during jury selection is retroactive (2/12/14)
- *Commonwealth v. Augustine*: held police cannot obtain cell-site location information (CSLI), based on cell calls made and received, without obtaining a warrant (2/18/14)
- *Commonwealth v. Cole*: held community parole supervision for life statute unconstitutional (6/11/14)
- *Commonwealth v. Donald*: held a defendant entitled to DNA testing of physical evidence, using new more advanced techniques, provided requirements of *Commonwealth v. Wade* satisfied (5/16/14)
- *Commonwealth v. Scott*: held that Annie Dookhan's signature on a drug certificate creates a conclusive presumption of her misconduct (but defendant must still establish reasonable probability that knowledge of this would have materially influenced his or her decision to plead guilty) (3/15/14)

- *Doe v. SORB*: held that SORB arbitrarily ignored scientific evidence that females generally pose a much lower risk of re-offending; and that SORB abused its discretion in denying offender’s requests for funds or an expert (12/11/13)
- *Diatchenko v. District Attorney for Suffolk District*: held that *Miller* applies retroactively to Massachusetts juveniles who are serving life without parole for first degree murder; and that under Massachusetts Declaration of Rights, such life without parole sentences are unconstitutional (12/24/14)

In *Commonwealth v. Morse*, the SJC reversed a conviction of misleading a police officer because of insufficient evidence of specific intent, but avoided the constitutional issues briefed by MACDL. Only in *Commonwealth v. Gelfatt* did the SJC reject the position advocated by MACDL by holding constitutional compelled decryption or provision of an encryption key to information on defendant’s computer.

Many thanks to **Alex Philipson** and **Jamie Sultan**, MACDL’s amicus co-chairs, and to all those who wrote amicus briefs this year: **Emily Schulman, Annie Owens, Sharon Fray-Witzer, Kevin Prussia, Louis Tompros, Thaila Sundaresan, Victoria Nadel, Jeffrey Harris, Margaret Fox, Monica Shah, Lisa Steele, Tim St. Lawrence.**

### **Witness Advocacy and Representation Network (WARN)**

MACDL’s new Witness Advocacy and Representation Network has been up and running since March, providing *pro bono* representation for individuals contacted by law enforcement agents for questioning. **Derege Demissie** has set up a network of lawyers across the state who have volunteered to take one such case a year. If you are interested, please contact Derege at [dd@demissiechurch.com](mailto:dd@demissiechurch.com)

### **New Lawyer Partnership Program**

**Shira Diner**, chair of the Young Lawyers Section, is setting up a New Lawyer Partnership Program in order to better serve new members of the criminal defense bar. In this program new non- CPCS staff members of MACDL and current members with fewer than three years experience can choose to be paired up with an experienced member who will serve as a welcoming contact for the new member.

Seventeen experienced MACDL members signed up for this program at the dinner on June 18<sup>th</sup>. Shira is seeking additional volunteers. You will be asked to make an initial contact with your assigned attorney and make yourself available on a regular basis during a 12-month period. We ask you to encourage the mentee to attend MACDL events and to serve as a guide to the new lawyer by directing them to people and resources that will help them with their cases and practice. You will NOT be expected to supervise cases but instead to provide general advice, direction and support. The experienced and new lawyers will be paired up by their counties of practice.

New members and members with fewer than three years experience are invited to participate in this program. All you need to do is contact Shira at [sdiner@publiccounsel.net](mailto:sdiner@publiccounsel.net).

## CLE

**Lenore Glaser** and **Victoria Kelleher** are planning the following events for the fall:

- Wednesday, September 17<sup>th</sup> at 5:30 p.m. at Maggiano's in Park Square: a book party for **Judge Michael Ponsor**, who will read from his new novel *The Hanging Judge*. Judge Ponsor was the first judge in many years to preside over a death penalty case in Massachusetts. (Invitations will be sent by email next month.)
- in November, the annual Post-Conviction Seminar
- a discussion with former U.S. District Judge Gertner on cutting edge issues to preserve at trial and raise on appeal. (Fall date and place to be determined)

If you have ideas you want to share or want to be part of the CLE committee, please contact Lenore at [lglaser@glaser-law.com](mailto:lglaser@glaser-law.com) or Victoria at [victoriouscause@gmail.com](mailto:victoriouscause@gmail.com).

## Legislation

### **Domestic Violence Bills:**

On April 8<sup>th</sup>, the House passed a domestic violence bill which included a number of provisions that MACDL opposes. Rather than vote on this bill, the Senate referred its own bill to a conference committee (Senators Spilka, Creem, and Ross). My letter to the Senate Committee setting forth MACDL's objections to both bills is available on MACDL's website.

### **Juvenile murder 1<sup>o</sup> sentencing bills:**

MACDL was active in lobbying against both the House and the Senate bills, which called for excessively long periods before parole eligibility for juveniles convicted of first degree murder and for ten year parole setbacks. The bill passed by both houses and now on the Governor's desk still contains the excessively long parole eligibility provisions, but has dropped the ten year setback and provides for right to treatment and education and permits minimum classification. Many thanks to all who called their legislators and the Governor in response to MACDL's eblasts.

### **Parole Setback Bill:**

**Max Stern** testified against a bill providing ten year parole setbacks for adult second degree lifers. Fortunately this bill did not proceed to a vote.

### **Solitary confinement and medical release:**

These bills are now before the House Ways and Means Committee. MACDL sent an eblast to members yesterday, asking for calls to key legislators in support of these bills.

### **Proposed Rule Changes**

In May **Andy Good** drafted further comments for MACDL on proposed changes to Rule 12 of the **Rules of Criminal Procedure**.

The SJC is seeking comments on a proposed amendment to Rule 14 regarding “Discovery for the Purpose of Court-Ordered Examination.” Details are available on the SJC website.

In March, **Marty Rosenthal** drafted comments on MACDL’s behalf on proposed changes to the **Rules of Professional Responsibility**. The comments are available on MACDL’s website. Hearings on these changes are expected in the fall.

### **MBA Blue Ribbon Commission on Criminal Justice Compensation**

In March I testified on MACDL’s behalf before the MBA Blue Ribbon Commission on Criminal Justice Compensation, along with representatives of CPCS and MACAA and individual public defenders and bar advocates. The Commission’s excellent report (available on MACDL’s website) calls for substantial compensation increases. I will be working with CPCS and with Guy Larock, President of MACAA, to get the proposed increases implemented.

### **Ad Hoc Committees**

MACDL vice-present **Mike Hussey** has formed two *ad hoc* committees to look into procedural changes of concern to MACDL: the trend toward use of recording systems instead of court reporters in Superior Court criminal proceedings, and the use of videoconferencing in pre-trial proceedings.

I hope you are all having a good summer. Please get in touch with me any time if you have suggestions or comments on MACDL’s activities or if you would like to participate in any of our programs.



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