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2015 MACDL ADVANCED POST-CONVICTION LITIGATION SEMINAR

Friday, January 16, 2015

Hosted by WilmerHale
Co-Sponsored by CPCS

Registration and Introduction

9:30 – 10:00

What's New in Innocence Work

Lisa Kavanaugh & Denise Williams

10:00 – 11:00

State Law Updates

- **State Criminal Law Updates:** Emily Cardy, Rebecca Kiley & Rebecca Jacobstein
- **SORB: The Young, the Old, and the Moderately Dangerous:** Michael Nam-Krane
- **Crim-Imm Updates:** Wendy Wayne

11:00 – 11:15

Break

11:15 – 11:45

Supreme Court Law Update

Steve Maidman

11:45 – 12:15

Introduction to Federal Habeas Review of State Convictions

John Thompson

12:15 – 12:45

Effective Use of Amicus Briefs in the Appellate Process

Chauncey Wood & David Lewis

12:45 – 1:30

Lunch

1:30 – 2:00

How to Fit Your 65 Page Brief into 50 Pages;

and

Making a Silk Purse Out of a Sow's Ear: Taking the Stink Out of the Facts

Esther Horwich

2:00 – 2:45

Evidentiary Hearings: Strategic Considerations for the Post-Conviction Practitioner

Ben Selman & Amy Belger

2:45 – 3:00

Break

3:00 – 3:30

FARs and DARs: How to Get the Justices to Pay Attention

Dave Nathanson, Jennifer Sunderland & Laura Banwarth

3:30 – 3:50

Speaking Their Language: Writing for the Justices

Sandy Lundy

3:50 – 4:15

Legal Challenges to GPS Monitoring

Hayne Barnwell, Ryan Schiff, Bonnie Allen & Bill Newman

4:15 – 4:45

Unpreserved Issues of Racial Discrimination in Jury Selection: How to Help Your Client Let Go

Ruth Greenberg

Program Coordinators: Lenore Glaser, Anne Goldbach, Jim DiNatale, Laura Banwarth

Presenters

Bonnie Allen is in private practice in Northampton, specializing in criminal defense, civil rights and education law. Attorney Allen graduated from UMass, Amherst/University Without Walls in 1990, and Western New England College School of Law in 1993. She was a judicial intern for the Hon. Michael M. Ponsor, U.S. District Court, after which she joined the CPCS Springfield Superior Court Trial Unit from 1994 to 1998 and served as Supervising Attorney for Bar Advocates in Hampden County from 2005 to 2010. In 2006, she was awarded the CPCS Thurgood Marshall Award for "zealous advocacy of the poor and the right to effective assistance of counsel."

Laura Banwarth has a small firm in Plymouth that focuses on criminal appeals and post-conviction motions, as well as SORB hearings and appeals. During law school she interned with the CPCS Boston district court office and volunteered with the New England Innocence Project, and after graduating worked as an associate at Shea & LaRocque. Laura is a graduate of New England Law | Boston and Kalamazoo College.

Hayne Barnwell is a sole practitioner focused on civil and criminal appeals as well as criminal defense in North Andover. She has worked for Shea, LaRocque & Wood (now Shea & LaRocque), Wood & Nathanson and Carney & Bassil. She was named an "Up and Coming Lawyer" by Massachusetts Lawyers Weekly in 2011 and a "Rising Star" by Super Lawyers from 2012-2014.

Amy Belger is a 1993 Boston College Law School graduate. She began her career with the Manhattan DA's Office, prosecuting homicides of victims under the age of 14 and homicides that involved sexual assault. She later joined a large Manhattan firm and handled white-collar criminal matters and corporate internal investigations for clients who became the focus of state and federal government inquiry. She currently maintains a practice focused on state and federal appellate criminal matters.

Emily Cardy is a staff appellate attorney at CPCS. Prior to joining CPCS in 2011, Emily clerked for Justice James McHugh in the Massachusetts Appeals Court and for U.S. Magistrate Judge Charles B. Day in the U.S. District Court, District of Maryland. Emily is a graduate of Yale University and Boston University School of Law.

Ruth Greenberg, a graduate of the University of Chicago and the University of California at Berkeley, has been practicing criminal law in Massachusetts since 1989, but not winning much.

Esther Horwich graduated from M.I.T. with a B.A.S. in electrical engineering and computers. She attended Boston University School of Law and has had her own practice in Boston since 1980 focusing on criminal law. She enjoys writing 65 page briefs, and hates to edit them as much as anyone else does, and can spin facts to make the unlikable almost likable.

Rebecca Jacobstein joined the CPCS Appeals Unit in April 2014. Before that, she was an appellate attorney at the Office of the Appellate Defender in New York City, as a trial attorney at the New Hampshire Public Defender's Office, and as a sole practitioner focusing on post-conviction in Massachusetts and federal courts. In 2012, Lawyers Weekly named her an Up & Coming Lawyer.

Lisa Kavanaugh is the director of the CPCS Innocence Program, which aims to identify potentially meritorious Massachusetts innocence claims, assign experienced attorneys to litigate such claims, and administer funds to support post-conviction investigation. Ms. Kavanaugh joined CPCS in 2002 as a staff attorney in the Somerville Superior Court trial unit. From 2007-2009, she worked in the Appeals Unit and litigated numerous felony appeals. She is a graduate of Yale University ('96) and Harvard Law School ('00).

Rebecca Kiley has been a CPCS attorney for 6 years, first in the Roxbury/Dorchester Office and now in the Appeals Unit. Prior to joining CPCS, she clerked for the Hon. Eric Clay of the U.S. 6th Circuit Court of Appeals and spent 3 years at the Equal Justice Initiative of Alabama working on post-conviction capital cases. She is a graduate of Harvard College and New York University School of Law.

David Lewis, founder of the Cambridge law firm of David A.F. Lewis, LLC., is a graduate of the University of Denver College of Law and is licensed to practice law in Massachusetts and Colorado. His practice has specialized on civil and criminal appeals in state and federal court since 1997.

Sandra (Sandy) Lundy practices appellate and family law from her office in Brookline. From 2001-2013 she served as an Administrative Attorney, then Senior Attorney, at the SJC, where she assisted the Justices in drafting opinions. In 2009 she was appointed Deputy Special Advisor to the Trial Court for Access to Justice Initiatives. Sandy received her JD from Yale Law School a PhD in English Literature from Columbia University.

Steve Maidman is engaged in private practice in Springfield. His practice is devoted primarily to criminal appeals and related collateral proceedings in the state and federal courts. He is on the CPCS post-conviction murder list. He is the 2010 recipient of the CPCS Carol A. Donovan Award for Exceptional Advocacy.

Denise McWilliams is the Executive Director of the New England Innocence Project, which outreaches to prisons throughout New England to identify and provide legal representation through its Network attorneys to viable innocence claims, and works to reform systemic causes of wrongful convictions at the administrative and legislative level. She is a 1979 graduate of Northeastern School of Law. She has previously worked as the director of the Gay and Lesbian Advocates and Defenders' AIDS Law project, the director of the Health Law Institute at JRIHealth, and General Counsel at the AIDS Action Committee.

Michael Nam-Krane specializes in appellate practice and the collateral consequences of criminal convictions. Michael graduated from Northeastern University School of Law in 1995. In 1997 he opened his own practice. In 2007 Michael joined CPCS to coordinate, educate and advise the private appellate attorneys representing clients in SORB and sexually dangerous person litigation. In 2009 Michael reentered private practice.

David Nathanson has specialized in post-conviction defense since 1997 and has also provided representation at the trial level from trespassing to double-murder. In 2005 he became the only Massachusetts public defender to win a case in the U.S. Supreme Court. *Smith v. Massachusetts*, 543 U.S. 462 (2005). He left CPCS to form Wood & Nathanson in December, 2007.

Bill Newman has been the director of the Western Regional Office of the American Civil Liberties Union of Massachusetts since its founding in 1987. He has been practicing criminal defense and civil rights law in trial and appellate courts, both state and federal, since 1976. His recent book, *When the War Came Home*, looks at a number of those cases.

Ryan Schiff is a staff attorney in the Special Litigation Unit at CPCS, based out of the Northampton office. Prior to joining CPCS, Ryan was an associate at the Boston law firm of Salsberg & Schneider, where his practice focused on state and federal trial and appellate litigation. He graduated from Northeastern University School of Law in 2003.

Ben Selman is a staff attorney with the CPCS Drug Lab Crisis Litigation Unit. Previously, he was a staff attorney for seven years in the CPCS Somerville Superior Court office, and a staff attorney with the New Hampshire Public Defender in Manchester, NH. Mr. Selman is a graduate of Oberlin College (B.A., 1998); the University of Toronto (M.A., 1999); Boston University School of Law (J.D., 2004); and the National Criminal Defense College Trial Practice Institute (certificate, 2012).

Jennifer Sunderland worked at CPCS for 4 years as a trial attorney in Brockton. Prior to joining CPCS, she clerked for the Superior Court and the SJC. She is currently employed at Gonzalez, Saggio and Harlan, LLP in Boston and is a trial court panel member for the Pilgrim Advocates.

John Thompson graduated from the University of Iowa College of Law in 1974 and has worked as a law school teacher and private lawyer, primarily doing criminal trials, appeals, and post-conviction litigation. Since 2000 he has been partners with Linda J. Thompson, a premier criminal defense lawyer in the Commonwealth; their shared professional achievements include winning *Shepard v. United States*, 544 U.S. 13 (2005) and, with the Centurion Ministries of Princeton, NJ, winning exoneration for Mark Schand in 2013, following his wrongful first degree murder conviction in 1987. John has made many CLE presentations through MACDL, MCLC and CPCS over the past 30 years, and is a long-standing member of MACDL and NACDL.

Wendy Wayne is the Director of the Immigration Impact Unit at CPCS where she advises, trains and provides litigation support to criminal defense attorneys. Ms. Wayne lectures frequently on the interplay between immigration and criminal law. She was lead counsel in *Commonwealth v. Sylvain*, 466 Mass. 422 (2013), in which Massachusetts' highest appellate court held that *Padilla v. Kentucky* is retroactive under state law.

Chauncey Wood, a partner in the Boston law firm of Wood & Nathanson, LLP, is a criminal defense attorney with over 20 years' experience. Mr. Wood has extensive experience in criminal appeals and post-conviction proceedings and has overturned the convictions of clients in multiple homicide cases. Mr. Wood received his Bachelor's Degree in English from Harvard College in 1989 and graduated with high honors from Boston University School of Law in 1994. He is currently the co-chair of the MACDL amicus committee.