

M A C D L

Massachusetts Association of Criminal Defense Lawyers

June 6, 2016

Dear Members

I am writing to inform you of some of the important work MACDL has been doing over the last few months and to let you know about some upcoming events and other MACDL activities.

Spring Meeting

I hope to see many of you at our **Annual Spring Meeting**, which will be held at the **Marriott Hotel in Newton on June 14 from 5:30 to 9:00 p.m.** Our keynote speaker will be Attorney **Dean Strang**, who became a household name after being featured in the Netflix documentary series “Making a Murderer.” We will also be honoring Attorneys **Anne Goldbach** and **Robert Sheketoff** for their dedication and commitment to due process, constitutional rights, and zealous advocacy. Tickets are available at **MACDL.org**.

Continuing Legal Education

Over the past few months, MACDL has sponsored or co-sponsored a number of legal education events. In March, MACDL presented its always popular Post-Conviction Litigation Seminar to a packed house in Boston. Last month, MACDL teamed up with Suffolk Lawyers for Justice for an all-day conference at UMASS-Boston dedicated to criminal law practice. In April, MACDL sponsored a seminar, “**Police Misconduct Law for Criminal Defense Practitioners**,” in Boston hosted by Goodwin Proctor. This program will be repeated on **June 22, 2016**, in **Worcester at 4:00 p.m.** and in the fall in Springfield. See website for more details.

Amicus

The Amicus Committee continues to work zealously and productively to promote our values in cases before the Massachusetts and federal appeals courts. We have signed onto Commonwealth v. Laltaprasad arguing that judges have the power to sentence lower than the minimum

mandatory sentence. Committee Co-Chair **Chauncey Wood**, along with a team from Foley Hoag, is working on the case of Commonwealth v. Thomas, where the issue is whether a defendant is entitled to suppression of an identification where police fail to follow the I.D. procedures laid out in Silva-Santiago. The amicus brief will likely catalogue all the procedures adopted by Massachusetts police departments in order to demonstrate that the majority of them have already adopted the practices as a matter of internal policy.

FARAK Litigation/Investigation

MACDL has continued to press for a full investigation and public accountability concerning chemist Sonia Farak's misconduct due to her near daily drug use at the Amherst Drug Lab from 2003-2013, and into allegations of prosecutorial misconduct in relation to post-conviction litigation regarding Farak cases. Our thanks to Board member **Luke Ryan** for spearheading our efforts in this regard. Earlier this spring, the Attorney General's office filed a 54 page report detailing Farak's malfeasance. A second 3 page report, submitted by Special Attorney General (and former judge) Peter Velis, cleared prosecutors of any wrongdoing for the three year delay in revealing information in their possession regarding the scope of Farak's misconduct. However, other materials now make clear that former prosecutors in the Attorney General's office deliberately withheld highly exculpatory evidence pertaining to Farak's history of drug use. An evidentiary hearing on motions regarding the failure to provide the discovery is expected to take place in the coming month. MACDL will continue to monitor this situation so as to provide support for counsel on these cases and demand fuller accountability and remedies for this misconduct.

Attorney Visitor Dress Code

Acting upon complaints (almost all from women) about attorneys being denied entrance or otherwise hassled at state prisons because of the way they were dressed, MACDL has worked closely with CPCS and other groups to seek changes in DOC procedures. The result is a new and improved dress code for attorney visitors with fewer restrictions and better procedures to be followed if issues arise. A copy of the new code is on the DOC website. Thanks to MACDL members **Victoria Kelleher**, **Patty DeJuneas** and others for their efforts in bringing about these changes.

The Elimination of Court Reporters

As many of you know by now, the Trial Court has announced that it will lay off all court reporters by January of 2017 and replace them with digital recording in all courtrooms. Earlier this year, I wrote a letter (joined in by past-presidents **Max Stern**, **Liza Lunt** and **Jack Cunha**) to Chief Justice Gants and Trial Court Administrator Harry Spence expressing our serious

reservations about this development. We continue to have concerns about this new technology's ability to produce accurate transcripts and have called for delaying the use of digital recording in serious felony cases until, and only if, the assembly and production of complete and accurate transcripts through digital recording has been sufficiently demonstrated.

Other Activities, etc.

Marty Rosenthal, our representative on the Sentencing Commission, continues his tireless efforts there to advocate for major reforms in Massachusetts sentencing policies and procedures and for shifting resources away from over-criminalization and mass incarceration and toward crime prevention... Congratulations to our law school Board representative **Trevor Maloney** on receiving an award from the National Lawyers Guild recently for his volunteer efforts. Good luck on the bar exam! . . . MACDL's representative on the Working Group of the Council of State Governments, **Leslie Walker**, reports that the group has recently received and reviewed extensive data which should hopefully provide further support for reforms in three areas: incarceration levels, recidivism, and post-release supervision. . . . MACDL has been working in cooperation with the New England Center for Investigative Reporting in an ongoing series regarding the largely unaddressed problem of prosecutorial misconduct in the provision of discovery and trial argument . . . My thanks to **Dave Nathanson** and **John Thompson** for coordinating MACDL's proposals for revisions to the S.J.C.'s Model Jury Instructions on Homicide . . . MACDL has been asked to support the upcoming referendum question on the legalization of marijuana in Massachusetts. If you have a strong opinion as to whether MACDL should take a position on this issue, please contact me at mhuss3x3@gmail.com.... We recently joined with many other criminal justice reform groups in calling upon Governor Baker to fill the current Parole Board vacancy with a social worker, sociologist, psychologist or psychiatrist who is both committed to the objectives of parole and who has a background in treating mental health problems and addiction.

Thanks to all of the attorneys mentioned above for their efforts on behalf of MACDL and for many others who help to make us a strong and active organization. My best wishes to all of you for an enjoyable summer.

Mike Hussey

President