

**MACDL
Amicus Projects**

As of Sep. 7, 2014

I. Recent amicus projects—cases decided

Comm. v. Cole (SJC-11316) 468 Mass. 294 (2014)	Case decided 6/11/14 Held: CPSL statute invalidated as unconstitutional violation of separation of powers, under art. 30
Comm. v. Morse (SJC-11358) 468 Mass. 360 (2014)	Case decided 6/13/14 Held: insufficient evidence defendant misled officer, per c. 268, § 13B, where, in police interview, defendant denied ingesting intoxicating substance (besides beer) on date defendant drove motorboat into kayak; insufficient evidence of defendant's specific intent
Comm. v. Gelfgatt (SJC-11358) 468 Mass. 512 (2014)	Case decided 6/25/14 Held: compelling defendant to enter encryption key in seized computers does not trigger privilege against self-incrimination

II. Amicus briefs filed since Mar. 2014—cases not yet decided

Case	Source of amicus inquiry	Main issue(s) in the case	Amicus brief writer(s)	Status
Comm. v. Sullivan SJC-11568 Comm's FAR allowed	SJC solicited amicus briefs on 11/12/13	Whether crime of accosting or annoying, c. 272, § 53(a), which proscribes	Tim St. Lawrence	Brief filed: 4/22/14 Case argued: 5/6/14

Def counsel = Dennis Shedd		offensive and disorderly acts or language [that] accost or annoy persons of the opposite sex, requires proof of sexual or sexually suggestive conduct; if so, whether conduct must be explicit.		
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Case	Source of amicus inquiry	Main issue(s) in the case	Amicus brief writer(s)	Status
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Comm. v. Gomes SJC-11537 Def's DAR allowed Def counsel = John Fennel	SJC solicited amicus briefs on 10/8/13	Whether judge erred in refusing to instruct jury, as requested by def, that (1) a witness's prior viewing of suspect in identification procedure, without making positive identification, reduces reliability of witness's later identification of same suspect; (2) human memory is not like a video recording; and (3) witnesses who are highly	Lisa Steele	Brief filed: 3/13/14 Case argued: 9/2/14
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		confident of their identifications are not therefore necessarily reliable.		
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Case	Source of amicus inquiry	Main issue(s) in the case	Amicus brief writer(s)	Status
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Comm. v. Okoro SJC-11659 Def's DAR allowed Def counsel = Ruth Greenberg	SJC solicited amicus briefs on 6/17/14	Whether juvenile charged with murder is entitled to present expert evidence on, and have jury consider, his youth as a factor negating malice; whether a juvenile convicted of murder in second degree, and sentenced to statutorily-mandated term of life with possibility of parole after 15 yrs, suffers constitutional violation because sentencing judge has no opportunity to consider juvenile's youth.	Laura B. Banwarth	Brief filed: 8/19/14 Case argued: 9/3/14
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III. Pending projects—amicus briefs yet to be filed

Case	Source of amicus inquiry	Main issue(s) in the case	Amicus brief writer(s)	Status of the case
<p>Comm. v. Santiago SJC-11619</p> <p>SJC transferred case sua sponte</p> <p>Def counsel = Frederick G. Bartmon</p>	<p>SJC solicited amicus briefs on 2/4/14</p>	<p>Whether Mass. should recognize target standing under art. 14, such that a target of a criminal investigation can challenge unconst. conduct toward a third person (e.g., an illegal search and seizure) intended to yield evidence against the target.</p>	<p>Mike Fee and Peter Goldstone (Latham & Watkins)</p> <p>(Alex is working with Mike and Peter to edit the brief; we're planning to show a draft to ACLUM to see if they wish to sign-on)</p>	<p>Argument scheduled for 10/7/14</p> <p>(Brief due Sep. 22)</p>
<p>Diatchenko v. Suffolk DA SJC-11688</p> <p>(paired with Comm. v. Roberio SJC-11689)</p> <p>Botsford, J. reserved & reported def's 211, § 3 pet.</p> <p>Def counsel = Ben Keehn</p>	<p>SJC solicited amicus briefs on 6/17/14</p>	<p>1. Whether, per Diatchenko (2013), juveniles must be afforded: (a) right to assistance of counsel at parole hearings, incl. right to appointed counsel if indigent; and (b) right to public funds, if indigent, for reasonably</p>	<p>Afton Templin (Barbara Kaban at CPCS is coordinating amicus efforts; Afton is in touch with Babara)</p>	<p>As of 8/29/14, appeal was stayed per joint motion of parties</p>

		necessary expert assistance at hearings. 2. Whether there must be opportunity for petitioner (or similarly situated individual denied parole) to obtain judicial review of parole board's decision, and, if so, what form judicial review will take.		
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