

# M . A . C . D . L

Massachusetts Association of Criminal Defense Lawyers

October 2013

Dear Members,

I am writing to let you know about the work MACDL is undertaking in the year ahead and to invite you to participate. I'm glad to report that **Mike Hussey** is our new Vice-President and **Pete Horstmann** continues to be our Treasurer. Our committee chairs are already moving forward with their plans for 2013-14, as follows.

## Continuing Legal Education

(Chairs **Lenore Glaser** and **Victoria Kelleher**)

MACDL is hosting its 7<sup>th</sup> Annual **Post Conviction Seminar** on **Friday, November 8, 2013** from **9:30** to **4:30** at WilmerHale (60 State Street, Boston, MA). A continental breakfast, lunch and light snacks will be provided. Topics will include (not in this order):

- prosecutorial misconduct, including improper closings
- post-conviction forensic issue spotting, including
- a primer on scientific research for lawyers,
- issue spotting,
- Dookhan lab issues
- eyewitness IDs
- communication between trial and appellate counsel and clients and jail house lawyers
- hot issues in the Supreme Court and Massachusetts
- immigration issues after Sylvian
- writs of certiorari and federal habeas
- mechanics and writing a brief, including
- persuasive fact statements,
- reconstructing the record,
- Moffett and Anders briefs

- ethics of appellate counsel
- SORB, lifetime parole and other sex offender topics
- federal sentencing

Registration information will be on the website soon. Please note, this event has reached capacity every year so please register as soon as possible. Stay tuned for a “happy hour” soon with Jay Carney and Hank Brennan who represent Whitey Bulger in his federal criminal case. In the works for early 2014 is a seminar on juries from the venire to the instructions.

If you have ideas for a CLE program or want to work on any project, please contact Lenore Glaser ([lglaser@glaser-law.com](mailto:lglaser@glaser-law.com)) or Victoria Kelleher ([vkelleher@verizon.net](mailto:vkelleher@verizon.net)).

### Amicus

(Chairs: **Jamie Sultan** and **Alex Philipson**)

The Amicus Committee continues to work productively to promote MACDL’s voice in significant cases in the Supreme Judicial Court and in the First Circuit Court of Appeals. Over the past nine months, MACDL has filed seven amicus briefs, and has signed on to two more filed by other organizations. Of these cases, MACDL enjoyed notable victories in the following cases:

***Commonwealth v. Charles*, 466 Mass. 53 (2013)** (holding that judges have authority to issue stays of execution of sentence during pendency of defendants’ motions for new trial arising from the Hinton drug-lab crisis; amicus authors were **Ryan Schiff** and **Benjamin H. Keehn**, for CPCS, and **Alex G. Philipson**, for MACDL);

***Commonwealth v. Galvin*, 466 Mass. 286 (2013)** (holding reductions in mandatory minimum sentences under the 2012 sentencing-reform act apply retroactively; amicus author was **Alex G. Philipson**);

***Commonwealth v. Sylvain*, 466 Mass. 422 (2013)** (holding that, under Massachusetts’s law of retroactivity, the principles of *Padilla v. Kentucky* apply retroactively; amicus authors were **Todd C. Pomerleau** and **Sarah Unger**, for MACDL, and **Paromita Shah** and **Sejal Zota**, for the National Immigration Project of the National Lawyers Guild).

Significant amicus projects in the pipeline, for which MACDL has filed briefs, include these:

***Diatchenko v. District Attorney for the Suffolk District*(SJC-11453)** (arguing that *Miller v. Alabama* applies retroactively to juveniles whose convictions of first-degree murder, and mandatory life sentences without parole, became final before *Miller* was decided; amicus authors were **Emily R. Schulman** and **Annie L. Owens**);

***Commonwealth v. Alebord* (SJC-11354)**(arguing that the Sixth-Amendment right to a public trial, as it relates to jury selection, *see Presley v. Georgia*, and *Commonwealth v. Cohen (No. 1)*, applies retroactively, particularly in light of the SJC’s recent decision in *Sylvain*; amicus author was **Sharon Fray-Witzer**).

***Commonwealth v. Augustine* (SJC-11482)**(in a case challenging the seizure of cellular-telephone site-location information without probable cause, the amicus brief urges the SJC to reject the third-party doctrine, under which a defendant is deemed to have no privacy interest in a third party's recordsundefinedhere, a telephone-service provider's records; amicus authors were **Louis W. Tompros, Kevin S. Prussia, Thaila K. Sundaresan, andMatthew J. Tokson**).

Grateful thanks go to Alex and Jamie and to all of MACDL's amicus writers for their generous and valuable efforts.

### **Legislation**

(Chairs: **Max Stern** and **Jack Cunha**)

MACDL continues working in coalition with the ACLU, Prisoners' Legal Services, Families Against Mandatory Minimums and other organizations to promote legislation and policies that combat over-incarceration and protect the constitutional rights of criminal defendants and all citizens. As you know, the bill expanding juvenile court jurisdiction to include 17 year olds has been enacted. MACDL is opposing expansion of the wiretap laws and is promoting bills providing for mandatory minimum reform, parole reform, compassionate relief for prisoners, limitation on solitary confinement time, and age-appropriate sentencing options for juveniles convicted of first-degree murder.

### **Membership**

(Chairs: **Mike Hussey** and **Kelli Porges**)

The Membership Committee is developing a plan for expanding our membership (and retaining our existing membership) throughout the Commonwealth and is coordinating its efforts with the Young Lawyers and Continuing Legal Education Committees.

### **Young Lawyers**

(Chairs: **Shira Diner** and **Eoin Beirne**)

Shira and Eoin are planning to continue the "happy hour" meetings that McKenzie Webster started, and are actively recruiting younger (and/or newer) criminal defense lawyers from both CPCS and the private bar to our organization.

### **Lawyer Assistance Strike Force**

(Chairs: **Peter Parker** and **Jay Carney**)

The Strike Force continues to provide emergency help to members under attack who need a quick response, legal advice and/or representation on short notice. This past year, the Strike Force has responded to in-court contempt proceedings, prosecutorial attempts to disqualify counsel, subpoenas to defense investigations, and even the attempted indictment of defense counsel for zealously advocating for her client.

## **Events**

(Chair: **McKenzie Webster**)

We're already making plans for the Winter Meeting in mid to late January.

## **Joint Bar Committee on Judicial Appointments**

**Randy Chapman**, MACDL's representative on the MBA House of Delegates, has been appointed to the MBA/BBA joint committee which vets nominees before they are presented to the Governor's Council.

## **NACDL Council of Affiliates**

**Tracy Miner** is MACDL's representative on NACDL's Council of Affiliates. Tracy is also a member of NACDL's Board.

## **Criminal Justice Commission**

**Patty Garin** is MACDL's appointee on this committee, and serves on the Commission's Subcommittee on Incarcerated Persons. (The other subcommittees are Pre-sentencing and Pretrial, and Reentry and Post Release Supervision.) The Commission's work is ongoing. Meetings are open to the public.

## **SJC Study Group on Eyewitness Evidence**

Comments on the Report and Recommendations of this study group are due on or before December 1, 2013. The Report was forwarded to all members by email and is available on [www.macdl.com](http://www.macdl.com). Please note that **Jim Doyle**, whom MACDL nominated for the study group, has written a compelling minority report. **Lisa Steele** is drafting comments to the SJC on behalf of MACDL.

## **SJC Standing Advising Committee on the Rules of Criminal Procedure**

**Bruce Ferg** serves on this Advisory Committee, having been nominated by MACDL. In June 2012 MACDL submitted a letter opposing proposed amendments to Rules 12 and 29 which would make the terms of plea agreements binding on the sentencing judge and would permit lobby conferences on sentencing only if recorded and only if requested by both the Commonwealth and the defense. The next step is for the Court's own committee (Cordy, Botsford, and Duffly) to issue amendments, if any, for public comment. We will keep you posted.

I look forward to seeing you at the January meeting. In the meantime, please feel free to contact me with any ideas or input you have on MACDL's work.

Liza Lunt

President