

M . A . C . D . L

Massachusetts Association of Criminal Defense Lawyers

April 2014

Dear Members,

It was good to see so many of you at our Winter Meeting earlier this month. (Jim DiNatale tells me that it was the first time MACDL has had to postpone a meeting for a snowstorm!) We were fortunate to have Jon Rapping of Gideon's Promise as our keynote speaker. If you would like to learn more about Gideon's Promise and perhaps support the organization, check out its website: www.gideonspromise.org.

I am writing now to provide an update on MACDL's activities thus far this year.

Witness Advocacy and Representation Network (WARN)
(Chair: Derege Demissie)

MACDL has created a statewide Witness Advocacy and Representation Network (WARN) designed to provide pro bono legal representation for individuals who are contacted by law enforcement agents for questioning or interrogation. This network, the first of its kind in the United States, will make prompt referral of cases to volunteer local attorneys. This is an important and crucial step to closing the gap in the provision of legal representation in our criminal justice system. It addresses the inherent inequity of the current system where only those with adequate means are able to protect their rights when confronted by law enforcement agents. WARN has been up and in operation for less than a month and has already assigned counsel to two witnesses.

Sign up sheets are available on the MACDL website. We encourage our members to volunteer to take one case a year and provide up to ten hours of pro bono legal service.

Derege Demissie has done extraordinary work designing and implementing this program. Many thanks to Derege and to the members of the committee he assembled: **Jamie Sultan, Michael Schneider, David Hoose, Ed Ryan, Leslie Feldman-Rumpler, Mark Shea, and Carl Williams.**

Amicus Committee

(Chairs: Jamie Sultan and Alex Philipson)

The Amicus Committee continues to be extremely productive under Alex's and Jamie's leadership. Over the past year, MACDL has filed an astounding eleven *amicus* briefs in the SJC. Our volunteers also co-wrote another brief (with CPCS), and signed-on to three more (written by CPCS). All told, MACDL has been involved in 14 *amicus* projects in twelve months.

Through these efforts, MACDL has helped secure such remarkable victories as those concerning the retroactivity of *Miller v. Alabama*, which declared unconstitutional mandatory life without parole sentences for juveniles, *Diatchenko v. District Attorney for Suffolk District*, 466 Mass. 655 (2013); the authority of judges to stay executions of sentences for defendants whose convictions arose from Annie Dookhan's mishandling of drug evidence at the Hinton drug laboratory, *Commonwealth v. Charles*, 466 Mass. 63 (2010); the retroactive application of *Padilla v. Kentucky* to defendants whose guilty pleas were tainted by incorrect advice about the immigration consequences of their pleas, *Commonwealth v. Sylvian*, 366 Mass. 422 (2013); and the need for police to obtain a warrant based on probable cause before obtaining a defendant's cell phone site location information, *Commonwealth v. Augustine*, 467 Mass. 230 (2014).

Thanks are due to Alex and Jamie and to our *amicus* brief writers: **Emily Shulman, Sharon Fray-Witzer, Kevin Prussia, Louis Tompros, Thaila Sundaresan, Matthew Tokson, Victoria Nadel, Jeffrey Harris, Margaret Fox and Monica Shah.**

Please check out the most recent report on the Amicus Committee's work on the MACDL website.

Legislation Committee

(Chairs: Max Stern and Jack Cunha)

Still pending are many bills of concern to MACDL, including bills relating to mandatory minimum reform, parole reform, compassionate relief for prisoners, limitation of solitary confinement, penalties for juveniles convicted of murder, and extension of wiretap laws. On all these issues we continue to work in coalition with the ACLU, Prisoners' Legal Services, Families Against Mandatory Minimums (FAMM) and other organizations.

Comments on Proposed Revisions to the Rules of Professional Conduct

Last month, MACDL filed comments on proposed revisions to the Rules of Professional Conduct. These comments, drafted by our ethics guru **Marty Rosenthal**, are available on the MACDL website.

Comments on the Report of the SJC Study Group on Eyewitness Identification

In November, MACDL filed comments on the Report of the SJC Study Group on

Eyewitness Identification. Many thanks to **Lisa Steele** for drafting these detailed, well-analyzed comments, which are available on the MACDL website.

Ad Hoc Committee on Court Reporters versus Recording Systems

Mike Hussey has formed a committee with **Chauncey Wood, Jamie Vander Salm, Murray Kohn, and Sue Garvin** (former president of Massachusetts Court Reporters, now on national board) to report on the increasing use of recording systems instead of court reporters in Superior Court criminal proceedings.

Testimony Submitted to MBA Blue Ribbon Commission on Criminal Justice Compensation

On March 26, 2014, I testified on MACDL's behalf at a hearing before the MBA Blue Ribbon Commission on Criminal Justice Compensation. This testimony is posted on the MACDL website.

Continuing Legal Education

(Chairs: Lenore Glaser and Victoria Kelleher)

Lenore and Victoria have organized two very successful and well-attended events this year: the 8th Annual Post Conviction Seminar in November and a happy hour presentation on the Bulger trial by Hank Brennan and Jay Carney in January. If you have ideas for a CLE program, please contact Lenore (lglaser@glaser-law.com) or Victoria (vkelleher@verizon.net).

Lawyer Assistance Strike Force

(Chair: Peter Parker)

The Strike Force continues to provide emergency help to lawyers under attack who need a quick response legal advice and/or representation. Experienced lawyers throughout the state are available to provide this assistance on short notice.

Membership

(Chair: Mike Hussey)

Thanks to all who responded to the questionnaire Mike sent out. Your responses – and those of criminal defense lawyers who haven't yet joined MACDL – are helpful to MACDL's efforts to better meet the needs of the criminal defense bar and our clients.

Young Lawyers

(Chairs: Shira Diner and Eoin Bierne)

The Young Lawyers section is hard at work recruiting and supporting the newest members of MACDL. We are launching a new lawyer partnership where new lawyers will be

paired with more experienced members who will serve as a resource for them. We are also planning a spring happy hour to give our new lawyers an opportunity to connect with each other and other MACDL members.

I look forward to seeing you at the June meeting, details of which will be e-mailed to you soon. Please contact me any time with your ideas and comments on MACDL's activities.

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