

- Barry Wilson. *Todd Pomerleau* and *Sara Unger* did an amicus brief in support of Barry Wilson's appeal of a summary contempt finding and ninety day sentence for statements he made to Judge Peter Brady during jury selection in a first degree murder case. Our brief argues that the use of summary contempt procedure was improper. Barry was ably represented by *Peter Parker*.
- Com. v. Pugh. *McKenzie Webster* submitted an amicus brief for MACDL in this case. The issue presented was whether a pregnant woman owes a duty in the criminal law with respect to her own viable fetus, such that she may be found criminally liable for manslaughter for her wanton or reckless conduct during childbirth that causes the fetus's death. The gravamen of the prosecution was that the defendant chose to have an unassisted childbirth. MACDL argued that a woman did not owe such a duty and that a finding a duty in this case would essentially impose strict criminal liability for the death of a fetus on any woman who chooses to exercise her right to an unassisted birth. *Peter Ettenberg* and *Jaclyn R. Greenhalgh* did an excellent job on behalf of the defendant.
- Souza v. Registrar of Motor Vehicles. *Brian E. Simoneau* is working on an amicus brief which will argue that a CWOFF is not a conviction for purposes determining the duration of a license suspension for failure to submit to a breathalyzer.

Continuing Legal Education: Under the leadership of *Lenore Glaser*, the Continuing Legal Education committee, along with Professor Workman of the University of Massachusetts Law School, hosted two seminars this Fall. Fred Whitehurst, a former FBI chemist discussed the various strategies to challenge the weight and even the composition of drug analyses. Amy Driver, a forensic scientist, discussed the accreditation and protocols of forensic laboratories as a guide to challenge their conclusions.

Looking ahead, we will begin our "happy hours" in January with a program, co-hosted with the Young Lawyers division, on drunk driving cases. In the works are a Spring conference on the cutting edge of forensics. The committee is in the process of collecting materials on over-incarceration, as a policy issue, to equip our members for the ongoing public debate. Of course, in the Spring, we will also have our stellar seminar on Post Conviction Remedies, chaired by *Steven Maidman*. We are trying to get CPCS credit for our training sessions. Other than our own programs, members of MACDL receive a discount on certain criminal law trainings sponsored by MCLE.

If there is a topic that interests you for a training, or you would like to volunteer for the committee, please contact Lenore at lglaser@glaser-law.com

Lawyers' Assistance Strike Force: The Strike Force has continued to represent member attorneys confronted by threats, and worse, for their aggressive representation. Currently, the committee is in the process of updating its membership list to ensure excellent and expedient representation in all areas of the state. If you are interested in serving, please contact co-chair *Victoria Kelleher*, vkelleher@verizon.net. The committee is also in the process of

putting together a brochure, for the use of MACDL members, with the latest substantive and procedural arguments for attorneys facing contempt proceedings. And it is expanding its role to assist defense attorneys faced with BBO complaints, by both judges and prosecutors, based solely on their zealous representation of their clients.

Young Lawyers Group: Under the leadership of *McKenzie Webster*, MACDL's YLG is continuing its recruitment efforts and will be again recruiting at local CPCS and bar trainings. We encourage everyone in firms, big and small, to recruit internally and encourage their associates to join MACDL and join its YLG. The YLG is also planning another social event after the annual winter meeting and a separate happy hour around a fall or winter MACDL training. Please pass on McKenzie Webster's information (mwebster@mintz.com) to anyone who is interested in joining the YLG. As its membership grows, we hope to soon offer MACDL events tailored to those in the earlier stages of their careers.

Events: Departing from prior practice, we have scheduled the coming Winter meeting to take place January 19, at Pier Four, in Boston, with the notion of escaping the Christmas rush. We have not yet selected a speaker. *Any ideas for speaker and subject matter will be most welcome.*

SJC Committees: This Fall the SJC requested that we submit names for possible appointment to two committees. We did. I am pleased to inform that *Bruce Ferg* has been appointed to a three year term on the Standing Advisory Committee on the Rules of Criminal Procedure, replacing *Randy Chapman* (whom we thank for a consistent job well done.)

In addition, the Court has organized a new study committee to consider how courts "can most effectively deter unnecessarily suggestive identification procedures and minimize the risk of a wrongful conviction." The Court has stated that among the issues the committee will consider are:

- whether the SJC should require protocols beyond those required in *Com. v. Walker*, 460 Mass. 590, 604 (2011);
- what consequences are appropriate for the failure of police to adhere to these protocols;
- whether pretrial evidentiary hearings should be conducted where the reliability of a pretrial identification is challenged for reasons other than an unnecessarily suggestive identification procedure and, if so, what remedy, if any, is appropriate;
- whether existing model jury instructions adequately assist juries in evaluating eyewitness testimony and, if they do not, propose instructions that would better assist juries.

We nominated *Jim Doyle* as the defense attorney representative and he has been appointed by the Court.

Massachusetts Bar Association: We now have a permanent seat on the MBA House of Delegates. *James Dilday*, a former MBA President, will be our representative.

Wishing you all the best for the holidays.

Sincerely,

Max Stern
President

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