

Amicus Committee

The Amicus Committee continues to respond to requests by defense counsel and the court for amicus filings on appellate issues of importance to the criminal defense community:

Over the last six months, we have received several favorable decisions by the SJC in cases in which we have participated:

Souza v. Registrar of Motor Vehicles (decided May 17, 2012). **Brian E. Simoneau** drafted our brief successfully arguing that a CWOFF is not a conviction for purposes of determining the duration of a license suspension for failure to submit to a breathalyzer.

Commonwealth v. Pugh (decided June 15, 2012). **McKenzie Webster** drafted our brief arguing that a woman did not owe a duty of care to her viable fetus, such that she may be found criminally liable for manslaughter or wanton and reckless conduct in not calling for medical assistance during home childbirth.

We have also filed briefs in the following pending cases:

Commonwealth v. Bright. **Alex G. Philipson** submitted an amicus for MACDL to the SJC. MACDL argued that hearsay statements of a defendant's coventurers should not be admitted against the defendant if the jury finds the existence of a joint venture only by a "fair inference" as the trial court instructed, but rather such evidence should be considered only if the jury finds the existence of the joint venture "beyond a reasonable doubt," as required by current authority.

In re: Subpoena. **Barry S. Pollack, Joshua L. Solomon, Phillip Rakhunov** and **Gretchen S. Silver** filed an amicus for MACDL to the SJC. MACDL argued that a Commission on Judicial Conduct subpoena went too far when it sought discovery of a judge's bench books and sought to depose the judge about his internal deliberations; and, to safeguard the independence of the judiciary, urged the Court to recognize in the Commonwealth a judicial privilege over deliberative processes. After the Boston Globe criticized Judge Dougan for resisting the subpoena, Barry and I published an Op-Ed defending the judge's actions, and the importance of an independent judiciary.

In re: Jeffrey Auerhahn. **Peter B. Krupp** and I authored an amicus for MACDL to the U.S. Court of Appeals for the First Circuit. MACDL argued that a federal prosecutor's actions in failing to turn over Brady material violated the Massachusetts ethical rules and warranted a sanction by the district court.

The Amicus Committee continues to look for MACDL members interested in writing as amicus as new cases and issues arise. If you are interested, contact Peter Krupp at pkrupp@luriekrupp.com.

CLE and Young Lawyer's Division

The CLE committee and the Young Lawyer's Division have coordinated number of after-work CLE seminars. Board members **Edward Sharkansky**, in February, and **Stephen Jones**, in April, made very useful presentations on OUI defense. In May, we had an exciting conversation with **John Amabile** and **Jack Cunha** on their work in the murder trial popularly known as "the Mattapan Massacre" in which Jack's client was acquitted and John's, a hung jury and mistrial.

This month the CLE committee held a seminar at the Brockton courthouse on "Post-conviction Considerations for Trial Attorneys." The session was primarily organized by member **Laura Manion Banwarth** and included presentations by her and **Michael Nam-Krane** on sex offender registration. **Wendy Wayne** discussed the obligations of defense counsel to assist post-conviction attorneys in *Padilla* and other motions. **Jason Benzaken** addressed objections and jury instructions. **Patricia Downey** and **Joan McDonough** made an amusing and instructive interactive presentation on "Prosecutor's Closing Arguments: When to Object."

On June 22nd, **Jack Cunha** and **Michael Doolin** will participate in an MCLE training on "Recent Developments in Criminal Evidence." MACDL members are invited to attend.

In the works for the fall is our annual Post-Conviction Seminar. Thanks to Committee member **Kristen McLaughlin**, our CLE sessions receive credit from CPCS.

If you have an idea for a CLE subject, please email **Lenore Glaser** at: lglaser@glaser-law.com. If you would like to join the Young Lawyer's Division or have an idea for YLD event, please email mwebster@mintz.com.

Federal Practice

The newly constituted Federal Practice Committee, under the leadership of **Joe Savage** and **Tracy Miner**, has begun organizing itself into subcommittees, including Sentencing/Disposition, Court Relations/Procedural Reforms, Discovery, Amicus and CLE with a goal toward giving a voice to the issues of particular concern to the criminal defense bar in MA. As reflected by the subcommittees, members of the MACDL Federal Practice Committee are particularly focused on improving communication and continuing education in the defense bar about prosecution policies and defense best practices while also attempting to improve detainee conditions, promote fairer and more open discovery practices, and resist Court mandated CJA cost cutting rules and certain prosecution policies that infringe upon defendants opportunity for a fair resolution to their charges. The Committee plans to be active in amicus briefing and support of legislative action. In that regard, the Committee is preparing testimony in support of the Fairness in Disclosure of Evidence Act now pending in the U.S. Senate. The Committee anticipates a busy Fall and welcomes any MACDL member to join the Committee at whatever level they are able to participate. If you are interested in joining please let **Tracy Miner** at tminer@mintz.com know and you'll be added to the list and notified of the next

meeting. The meetings are actually fun and a nice way to catch up with your talented and entertaining colleagues. They last one hour maximum.

Strike Force

MACDL continues its commitment to providing emergency help to members under attack who need a quick response, legal advice, and/or a body in a courtroom on short notice. This past year, the Strike Force has responded to in-court contempt proceedings, prosecutorial attempts to disqualify defense counsel, subpoenas to defense investigators, and even the attempted indictment of defense counsel for zealously advocating for her client. We hope to make the Strike Force even more accessible by identifying and recruiting highly-respected lawyers in each county, so that local counsel is readily available. These lists of Strike Force lawyers will then be distributed through our web links and through county coordinators in order to assure a fast response when needed. Related information, such as key contempt cases, will also be accessible through our website and other social media outlets.

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I hope to see you all next Wednesday at our Spring/Summer meeting.

Max Stern