

MACDL
Amicus Committee Report

As of March 9, 2015

I. Recent amicus projects - cases decided since January 1, 2015

A. *Commonwealth v. Santiago*

1. main issue(s) in the case: Whether the SJC should recognize target standing under Article 14.
2. source of amicus inquiry: The ACLUM was a co-signatory.
3. amicus brief writer(s): Michael K. Fee, Esq. & P.R. Goldstone, Esq. (ACLUM) and Alex G. Philipson, Esq. (MACDL)
4. status: #SJC-11619. The SJC issued its decision on February 4, 2015 (“We conclude that this is not an appropriate case in which to consider the adoption of target standing. Accordingly, we reverse the order allowing the defendant's motion to suppress.”)

B. *Commonwealth v. DiCicco*

1. main issue(s) in the case: Whether the trial court judge erred and abused his discretion in excluding the defense expert’s opinions regarding the use of a low-level DNA allele to exclude the defendant under *Daubert-Lanigan* and denying the defendant funds.
2. source of amicus inquiry: CPCS Innocence Project.
3. amicus brief writer(s): Ira Gant, Esq. & Lisa Kavanaugh, Esq. (CPCS Innocence Project) and Elizabeth Lunt, Esq. (MACDL)
4. status: #SJC-11672. The SJC issued its decision on February 26, 2015 (“[We] conclude that the motion judge did not abuse her discretion in determining that, under *Commonwealth v. Lanigan*, 419 Mass. 15, 25-26 (1994), Carita's opinion was not sufficiently reliable to be placed before a jury, and the defendant's motion for a new trial was properly denied.”)

C. *Commonwealth v. Evelyn*

1. main issue(s) in the case: Whether defense counsel's concession in opening and closing statements of a lesser-included offense that the defendant had pleaded not guilty to and had not consented to the concession, and had not had a plea colloquy regarding was a violation of his constitutional due process rights.
2. source of amicus inquiry: CPCS
3. amicus brief writer(s): Donald Harwood, Esq. (CPCS) and David Lewis, Esq. (MACDL).
4. status: #SJC-11643. The SJC issued its decision on March 2, 2015 ("We conclude that, in these circumstances, no colloquy between the judge and the defendant is required. We note that the defendant in this case expressly did not claim ineffective assistance of counsel and there is nothing in the record to suggest that the defendant did not consent to his attorney's strategic concession.")

II. Amicus briefs filed by MACDL and currently pending.

A. *Commonwealth v. Okoro*

1. main issue(s) in the case: 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.
2. source of amicus inquiry: SJC solicited amicus briefs on June 17, 2014.
3. amicus brief writer(s): Laura B. Banwarth, Esq.
4. status: #SJC-116859 The amicus brief was filed on August 16, 2014. Oral argument was held on September 3, 2014. The case remains pending.

B. *Commonwealth v. Diachenko*

1. main issue(s) in the case: Whether juveniles serving life sentence are entitled to the representation of counsel at Parole Board hearings.
2. source of amicus inquiry: The issue was not addressed in other amicus filings in the case.
3. amicus brief writer(s): Afton M. Templin, Esq.
4. status: #SJC-11688. The amicus brief was filed on October 16, 2014. Oral argument was held on November 6, 2014. Attorney Templin filed a post-argument letter on MACDL's behalf on November 26, 2014. The case remains pending.

C. *Commonwealth v. Jones*

1. main issue(s) in the case: Whether the closure of the court room to the public, including the defendant's family and friends, over the defendant's objection, during a voir dire of a witness purportedly conducted pursuant to the rape shield statute, G. L. c. 233, § 21B, was structural error that deprived the defendant of a public trial.
2. source of amicus inquiry: SJC solicited amicus briefs on December 1, 2014.
3. amicus brief writer(s): Brad A. Compston, Esq.
4. status: #SJC-11775. The amicus brief was filed on February 17, 2015. Oral argument was held on March 2, 2015. The case remains pending.

D. *Commonwelath v. Kostka*

1. main issue(s) in the case: Whether, in a prosecution for murder in the first degree, Mass. R. Crim. P. 17 (a) (2) and the Fourth Amendment permit the compelled production of a saliva sample from a third party who is the defendant's twin brother, where the Commonwealth argues that the sample is necessary to determine whether he and the defendant are fraternal or identical twins. See *Commonwealth v. Draheim*, 447 Mass. 113 (2006).
2. source of amicus inquiry: Jack Cunha, Esq.
3. amicus brief writer(s): B.J. Trach, Esq., Laura Carey, Esq., Peter Roni Goldstone, Esq., Chauncey B. Wood, Esq. (MACDL). ACLUM may sign on.
4. status: #SJC-11766. The amicus brief was filed on January 23, 2015. The Court heard oral argument on February 3, 2015. The case remains pending.

III. Amicus briefs signed onto by MACDL and currently pending.

A. *Lavrinenko v. Horgan, et al.*

1. main issue(s) in the case: Whether due process requires that detained noncitizens be provided with: (1) a hearing where the government must justify detention by clear and convincing evidence; (2) subsequent periodic hearings to consider whether continued detention is justified; and (3) adequate procedural safeguards to make these hearings meaningful.
2. source of amicus inquiry: NACDL and Center for Public Representation.
3. amicus brief writer(s): James J. Farrell, Esq., James H. Moon, Esq., and Nathan M. Saper (NACDL), Robert Fleischner, Esq (Center for Public Representation), and Chauncey M. Wood, Esq. (MACDL).
4. status: First Circuit, #14-1627. The amicus brief was filed in the First Circuit on October 14, 2014. Oral argument is scheduled for February 2, 2015.

B. *Kevin Bridgeman v. District Attorney for Suffolk County*

1. main issue(s) in the case: When, on behalf of the Commonwealth, one of its employees repeatedly, systematically, and in bad faith falsifies evidence against criminal defendants to induce plea agreements or guilty verdicts, is the Commonwealth required to timely disclose its misconduct to the affected defendants, or their counsel, if it wants to avoid having the convictions vacated and the underlying charges dismissed with prejudice?
2. source of amicus inquiry: NACDL and Center for Public Representation.
3. amicus brief writer(s): Jean-Jacques Cabou , Esq. (NACDL) and Liza Lunt, Esq. (MACDL).
4. status: #SJC-11764. The amicus brief was filed on December 23, 2014. The Court heard oral argument on January 8, 2015. The case remains pending.

C. *Commonwealth v. Clark*

1. main issue(s) in the case: whether the judge erred in interpreting G.L. c. 278A, § 7(b) to require proof of a reasonable possibility that biological material is present on the crime scene item, where neither the plain language nor the legislative history of the statute support such a requirement and where imposing such a requirement ignores important scientific and policy lessons gleaned from cold case investigations and past DNA exonerations.
2. source of amicus inquiry: CPCS Innocence Project.
3. amicus brief writer(s): Lisa Kavanaugh, Esq., Ira Gant, Esq. (CPCS IP) and Chauncey M. Wood, Esq. (MACDL).
4. status: #SJC-11815. The amicus brief was filed on February 17, 2015. The Court heard oral argument on March 2, 2015. The case remains pending.

D. *Reid v. Donelon*

1. main issue(s) in the case: Whether the immigration system provides constitutionally mandated procedural safeguards required under common principles of due process to the class of individuals who are or will be detained within the Commonwealth of Massachusetts pursuant to 8 U.S.C. § 1226(c) for over six months without an individualized bond hearing.
2. source of amicus inquiry: CPCS Innocence Project.
3. amicus brief writer(s): James Farrell, Esq., James H. Moon, Esq., and Nathan M. Saper, Esq. (Bazelon Center for Mental Health) and Chauncey Wood, Esq. (MACDL).
4. status: #14-1270, 14-1803, and 14-1823. The amicus brief was filed on March 5, 2015. The case remains pending.

E. *Commonwealth v. Wallace*

1. main issue(s) in the case: (1) whether the Court should presume prejudice for a violation of the defendants' speedy trial rights, and (2) whether defendants' failure to demand a speedy trial can be held against them when they were neither informed of the pending indictment nor informed of their right to request a speedy trial. The case is related to the ACLUM amicus in *Commonwealth v. Arzola*, SJC-11679 (argument heard in Nov. 2014): Whether the extraction of DNA evidence from an item seized without a warrant constitutes a separate search for which a warrant is required prior to conducting any testing of the DNA evidence.
2. source of amicus inquiry: ACLUM.
3. amicus brief writer(s): Jesse Rosman, Esq. (ACLUM).
4. status: #SJC-11705 & SJC-11707. The amicus brief was filed on January 16, 2015. The Court heard oral argument on February 4, 2015. The case remains pending.

IV. Pending projects - amicus briefs not yet filed.

A. *Commonwealth v. Brewer*

1. main issue(s) in the case: Whether a defendant is deprived of due process and his right to present a defense when the prosecutor obtains a grant of immunity for a witness whose testimony is important to the prosecution, but refuses to request immunity for a potential defense witness whose testimony allegedly would have directly contradicted that of the immunized prosecution witness; whether this case presents unique circumstances that required the granting of some form of defense witness immunity.
2. source of amicus inquiry: SJC amicus announcements.
3. amicus brief writer(s):
4. status: #SJC-11819.

B. *Commonwealth v. Augustine*

1. main issue(s) in the case: Whether the motion judge erred in allowing the defendant's motion to suppress cell site location information.
2. source of amicus inquiry:
3. amicus brief writer(s): Kevin S. Prussia, Esq.
4. status: #SJC-11803.