

M . A . C . D . L

Massachusetts Association of Criminal Defense Lawyers

June 9, 2017

Dear MACDL Member,

Before setting out some of our organization's activities and accomplishments during the past few months, I want to first encourage you to attend our annual Spring dinner next Tuesday, June 13, 2017, at the Newton Marriott, beginning at 5:30 p.m. Our featured speaker will be Carol Rose, Executive Director of the American Civil Liberties Union of Massachusetts, who will speak on "Law, Resistance and a Freedom Agenda." We will also be presenting the Balliro award recognizing a lifetime of dedication and commitment to the rights of the accused to Peter Ettenberg; our Gideon award to Cathy Bennett in recognition of a career upholding the principle that all persons shall stand equal before the law; and our President's award to Matt Segal, Legal Director of the ACLUM, whose tremendous work on the Dookhan lab scandal cases, the Trump travel ban, and other issues has brought justice to so many of our clients. See MACDL.com for more information and tickets.

At our November meeting, I spoke about the aftermath of the presidential election and argued that the results made the mission of MACDL – to preserve the adversary system and to ensure justice and due process for the accused – more essential than ever before. I said that we would have to stand up, as an organization and individually, along with our allies, and speak out to combat authoritarianism and to struggle honorably in the name of our ideals. I am proud to say that in the past six months, along with our friends, including immigration rights attorneys, we have done so. We must continue that fight.

Some of our recent activities and accomplishments include:

CLE:

In March, we held our annual Post-Conviction Litigation Seminar. This was a well-attended event featuring a number of well-informed speakers addressing current concerns and cases. Our thanks to Wilmer Hale for hosting this event. Last month, Matt Segal led a discussion at Morgan Lewis focused on Race under the Trump/Sessions Criminal Justice Administration.

Amicus Report:

Currently pending Amicus briefs filed by MACDL include: Commonwealth v. J. Keown, which seeks to have the SJC require a judge issuing a search warrant to approve in advance a search protocol for the forensic examination of digital devices and that the 4th Amendment should not allow general, wide-ranging digital searches; Commonwealth v. Sharris, which argues that the defendant has a due process right to have his murder indictment dismissed after more than 20 years of incompetency; Weaver v. Massachusetts, a Supreme Court case where the main issue is an IAC claim where the ineffectiveness is failing to object to a closed courtroom and whether the defendant must prove prejudice from the closure to satisfy the second prong of Safarian/Strickland or whether prejudice is presumed because it is structural error; Commonwealth v. Lunn, arguing against state law enforcement or court officers holding people solely on ICE detainees; and Commonwealth v. Morin, in which MACDL is arguing that the felony murder rule should be abolished. I am happy to report that the verdict in Commonwealth v. Reason, where MACDL argued that the Commonwealth's introduction of "typical characteristics of a drug user" in order to show the defendant was instead a drug dealer was error, was recently reversed. Our thanks to all the lawyers who worked on these amicus cases.

Drug Lab Litigation:

Almost five years after Annie Dookhan's misconduct was first revealed, the efforts of attorneys from CPCS, the ACLUM, MACDL and others led the SJC to require the District Attorneys to vet their cases and dismiss with prejudice Dookhan convictions that did not warrant further prosecution. This led to the vacating of over 21,000 tainted convictions. Notices are issuing this week to Dookhan defendants who received relief and those who did not. The latter group have a right to counsel. Clients or attorneys seeking further information can call the Dookhan Case Hotline at 1-888-999-2881.

Unfortunately, out in Western Massachusetts, the litigation arising out of Sonia Farak's misconduct drags on. In reaction to the tenacious advocacy of MACDL members and others, the eleven District Attorneys agreed not to contest court findings of government conduct on Farak's part. While the government still has not produced a list of impacted defendants, it is estimated that it could be close to 10,000 individuals. Ten Farak defendants are seeking post-conviction relief based on Farak's misconduct as well as the suppression of exculpatory evidence by the Attorney General's office and deviations from forensically defensible practices by all chemists at the Amherst Drug Lab. At the conclusion of a six day hearing, the Commonwealth acknowledged that, in addition to the Scott presumption of misconduct, all Farak defendants are entitled to the "exposure cap" extended to Dookhan defendants in The Bridgeman decision. Rulings on the motions are expected soon.

Other Activities:

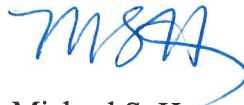
In a climate of possibility for meaningful criminal justice reform, MACDL continues to be proactive. Our representatives on the Sentencing Commission, and Shira Diner from CPCS, are working hard to bring about progressive policy changes, and have already helped to bring about a Sentencing Commission recommendation that mandatory minimum sentences (except for murder) be eliminated. . . . While recognizing that the replacement of court reporters by an electronic recording system appears inevitable, MACDL will remain vigilant in ensuring that the quality of transcripts does not suffer. If you know of any instances where the For The Record

system failed to work properly or did not produce a complete and accurate transcript, please contact us. . . . Following a meeting with legislative liasons from CPCS and the ACLU regarding how MACDL could better advocate for our interests and those of our clients, we are considering setting up a network of MACDL members who would serve as a MACDL liason to every state senator and representative in the Commonwealth. If you would be willing to serve in this capacity in your hometown, please contact me.

Next week's meeting will bring to an end my term as President of MACDL. It has been a pleasure, honor and privilege to serve as President of this great organization. My heartfelt thanks to all of the Board members and others who have worked so hard to see that we continue to be of service to our members and the clients we represent. Fortunately for all of you, I will be succeeded by the very able Derege Demissie and then by President-Elect Victoria Kelleher.

Thank you.

Sincerely,



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