MACDL

Missouri Association of Criminal Defense Lawyers

Action Report

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PRESIDENT'S LETTER

Elizabeth Unger Carlyle

Not long ago, I had the privilege of hearing Morris Dees, the founder and head of the Southern Poverty Law Center, speak in Kansas City. Mr. Dees talked about his many legal battles to obtain justice and redress for victims of discrimination, and he talked about the fact that although many legal battles have been won, our society is still divided by prejudice. He said that the only way that this division will be healed is for everyone to be willing to identify with the point of view of those with whom they disagree, and to learn to love them despite the disagreement.

I was struck by these words. I had never heard Mr. Dees speak before, but I knew him to be a tireless fighter for justice. I was pleased to learn that he is a lover as well as a fighter. I think his words present a challenge to those of us in the criminal defense community as well, to be lovers as well as fighters. That doesn't mean that fighting for the rights of our clients is not our most important job. But I think we are called to even more than that. For one thing, we are called to love our clients.

Some of you are probably thinking, having read that sentence, of the last rude, ungrateful, and uncooperative person you represented. We've all had our share. But I have discovered that if I approach a client as someone I am willing to love, it is my experience that my relationship with that client is more likely to be a positive one than if I approach him or her as just another case, or as a problem. It took me a long time to come to this insight. As those who know me are probably aware, I am a thinking type, not a feeling type. For much of the first half of my practice, I prided myself on my objectivity and my ability not to let my clients' problems bother me too much. In order to maintain that distance, however, I had to avoid at all costs having a personal relationship with them. When I began to allow my clients to break through to me, and then began to make a point of having a personal relationship with them, I discovered that not only were they easier to deal with, but representing them was much more satisfying. Loving my clients helps me avoid malpractice claims and burnout at the same time!

I think that our duty to be lovers as well as fighters goes beyond loving our clients. We are also called to let our friends and the community at large know that people who are accused of or have committed crimes are not monsters, but are rather people who deserve, as all of us do, to be loved. As we are all too aware, there is a school of thought in our country today that wants to punish the wrongdoer unmercifully. I think that the desire to do this comes from two things: the inability to deal with anger, and the

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The *Action Report* is published quarterly by the **Missouri Association of Criminal Defense Lawyers.** We welcome submissions from **MACDL** members. Please send articles to: Francie Hall, Executive Director, **MACDL**, 416 E. 59th Street, KCMO 64110.

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inability to identify with people who have wronged us. As criminal defense lawyers, we are in a unique position of knowing more people who are lawyers, we are in a unique position of knowing more people who are accused of or have committed crimes than the average person. At every opportunity, we need to make people aware that our clients are just like them, people who sometimes make mistakes and sometimes get caught. They do not lose their humanity because of their wrongful acts.

Of course, taking these positions with our clients and our friends makes us vulnerable. When we love our clients, their suffering gets through to us. And when we take positions with our friends that go against the flow, we may get some criticism. The good news I have about that is, we are stronger than we thought! When our hearts are broken, like bones, they generally heal stronger than before. The other good news is that MACDL gives us a chance to support each other. The more of us there are, the more we can do that. Every member get a member!

Elizabeth Unger Carlyle
President, MACDL

CASE LAW UPDATE

Summarized by Lew Kollias, edited by Elizabeth Unger Carlyle

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Missouri cases are based on advance sheets. Federal cases are drawn from BNA Criminal Law Reporter and West Digest. Please be aware that opinions may have been updated or superseded. If you know of a case we should include in these summaries, please send it to Elizabeth Unger Carlyle.

U.S. Supreme Court

State v. Dexter, No.74398 (10/21/97)
The court reversed a conviction for first degree murder and death sentence based on the prosecutor's improper use of the defendant's post-arrest, post-Miranda silence to show defendant's consciousness of guilt which in turn may have affected the jury's decision to convict. While the defendant did initially talk with officers, he ultimately stated he did not want to answer any further questions without his attorney. This was first raised during the detective's direct examination. The prosecutor then returned to the theme and, while cross-examining the defendant, also inquired about his decision to refuse to answer further questions when he was confronted with certain incriminating evidence. The Doyle v. Ohio violation continued in the prosecutor's closing argument, where the prosecutor told the jury to reject the defendant's version, directing the jury to consider the detective's testimony, and also to remember what the defendant told the detective and what he did not tell the detective. The admission of this evidence was plain error. The evidence of guilt was far from overwhelming, and the trial court's curative efforts were minimal. Additionally, the constitutional violation here could have had a strong impact on the way the jury otherwise viewed the defendant's exculpatory testimony.

State v. Hall, No.79106 (10/21/97)
The court affirmed a death sentence, but along the way, strongly proscribed the prosecutor's closing argument involving the need to put a beloved pet to sleep when they had a disease, and likening that duty to the one confronting the jury in this case.

State v. Simmons, No. 77368 and 77439 (1997)
The supreme court affirmed convictions and death sentences, and also affirmed a $250 sanction against the postconviction counsel, under Rule 55.03(b), for alleging issues that the motion court determined were long-settled by state and federal decisions. These issues included ineffective assistance of counsel for failing to submit an alternative reasonable doubt instruction, exclusion of jurors who could consider the full range of punishment, that the death penalty was unconstitutional because of broad prosecutorial discretion, and certain claims of

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prosecutorial misconduct. The motion court also sanctioned postconviction counsel for filing post-conviction discovery motions which the motion court deemed were filed solely for the purpose of harassing or vexing the state in the defense of the post-conviction action. The supreme court held no abuse of discretion occurred in the imposition of sanctions here, since the claims noted above have been uniformly rejected by previous decisions of the Missouri Supreme Court and federal courts, and thus, arguing that these issues were raised to exhaust remedies for federal review was "unconvincing". Counsel failed to present arguments designed to confront and refute past decisions, instead merely rehashing arguments previously rejected, which does not constitute a good faith argument for the modification, extension, or reversal of existing law. Contentions of prosecutorial misconduct were not supported with any citations to the trial transcript, and no explanation of how further investigation and discovery would lead to uncover this misconduct was made. While finding no single violation warranted the sanction, taken as a whole, there was no abuse in discretion in imposing the sanction. *Note: This decision was discussed in the President's Letter in the last newsletter.*

State v. Butler, No. 74252 (8/19/97)
The court reversed and remanded for a new trial a death penalty case. The court found ineffective assistance of counsel by failing to investigate and present evidence that another person, the victim's nephew, not the defendant, was actually guilty of the murder. There was no valid trial strategy reason that could have been presented to support this inaction. (Trial counsel died shortly after the trial and could not testify at the evidentiary hearing.) Counsel was also found ineffective for failing to offer exculpatory evidence that fingernail scrapings taken from the victim and fibers taken from defendant's clothing did not match fibers compared in the expert's analysis, and failure to impeach one of the state's key witnesses regarding defendant's supposed possession and ownership of a gun similar to that used to commit the murder.

State v. Bell, No. 79186 (8/19/97)
The court reversed and remanded a death sentence for a new trial due to the impermissible introduction of hearsay evidence of several witnesses who testified at trial that the victim told them of numerous previous occasions of abuse by the defendant (her husband). The defendant was charged with throwing gasoline on his wife and setting her on fire, which ultimately caused her death. The statements concerning prior abuse did not fit the state of mind exception to the hearsay rule, because they did not indicate a contemporaneous statement of fear, emotion, or any other mental condition, but rather were statements recounting past events. Where these past acts are done by one who is not the declarant, this is not the proper subject for the state of mind exception. The error was prejudicial, because the state strongly argued these past instances of abuse to support the defendant's intent to kill the victim and deliberation in doing so.

Eastern District Decisions

State v. Halk, No. 71302 (10/21/97)
The court remanded with directions that the defendant be sentenced as a prior offender, rather than a prior and persistent offender, because the state did not prove two prior felonies committed at different times.

Holland v. State, No. 71830 (10/28/97)
The court remanded for an evidentiary hearing on the Sup. Ct. R. 24.035 motion where the movant claimed he did not know he could receive fourteen years in two consecutive sentences. The defendant was admonished that each offense carried up to seven years, but was not clearly told, on the record, that the sentences could be consecutive.

State v. Wilder, No. 69108 (11/4/97)
The court reversed for a new trial where the prosecutor impeached the defendant's alibi testimony with his post-arrest, post-Miranda silence.

State v. Hall, No. 71556 (11/11/97)
It was improper for the state to amend the information at the close of its case to allege felony murder. While Sup. Ct. R. 23.08 permits the amending or substitution at any time before verdict if no additional or different offenses are charged, and the defendant's substantial rights are not prejudiced, here, the amendment was the first notice the defendant had of the underlying felony of first degree robbery. He was therefore deprived of his

right to prepare a defense to that underlying charge. He timely objected to this late amendment. However, he may be retried. (The case also involved confessed instructional error which was not discussed in the opinion.)

State v. Laramore, No. 70852 (11/18/97)
The court dismissed charges against the defendant because of a violation of the speedy trial provision in the Uniform Mandatory Disposition of Detainers Law. Proper notice was given by the defendant, and no proper cause for delay was shown. Since defendant's case was pending before the statute was amended to require the filing of a detainer, the filing of a compliant was sufficient to trigger the protection of the detainer law and therefore discharge was required.

State v. Clampitt, No. 71769 (11/18/97)
The court reversed a conviction where the prosecutor briefly represented the defendant as a public defender before switching sides. Although the prosecutor said she had never talked to the defendant and had no access to privileged information, the appearance of impropriety required reversal. (The AG agreed that the case merited reversal, citing the Boyd case (560 S.W.2d 296) which ordered disqualification of the prosecutor who was employed in the public defender's office when that office represented the defendant.

State v. Moore, No. 71826 (10/7/97)
On the state's appeal from the trial court's order dismissing criminal charges, the dismissal was reversed, and the charges reinstated. The defendant was charged with an assault perpetrated while he was being treated at Malcolm Bliss Mental Hospital under 90 day involuntary detention and treatment order. The trial court dismissed the criminal charges based on the probate division's order appointing a guardian for the defendant, but did not first make a finding that the defendant was incompetent to stand trial and there was no substantial probability that he would be mentally fit to proceed in the reasonably foreseeable future. Under Mo. Rev. Stat. §552.020.10(6), the court should first find the accused lacks mental fitness to proceed and that there is no substantial probability that they will be mentally fit to proceed in the reasonably foreseeable future. If the court makes that finding, the criminal charges are to be dismissed and the defendant is to be discharged unless proceedings are filed in the probate division for involuntary detention or commitment. In that case, the criminal charges are dismissed when the probate division makes a finding.

State v. Lancaster, No. 69991 (10/14/97)
Numerous counts of rape and sodomy were dismissed, and the remaining counts were reversed for a new trial. The victim, a member of defendant's family, testified that she was repeatedly raped and sexually abused from the time she was three until she was in her early twenties. In the state's case in chief, two other female members of the defendant's family testified to similar acts by the defendant. Twelve counts against the defendant were barred under Mo. Rev. Stat. §556.037 because the prosecution was not commenced within ten years after commission of the offense. As to the remaining counts, evidence of other crimes was impermissibly introduced in the state's case in chief, when other family members recounted numerous uncharged incidents of sexual abuse at the hands of the defendant. The victim testified that the defendant did not act with her consent. The intent of the defendant was established by the victim's unambiguous testimony. Therefore, no evidence of other similar crimes is admissible. The state's evidence merely showed the propensity of the defendant to commit sex crimes against women, and was not admissible. A new trial is required on the four counts that were not barred by the statute of limitations.

State v. Guyon, No. 71087 (10/14/97)
The case was remanded for removal of class X offender designation because the defendant's crime occurred between August 27 and August 29, 1994, and the amendments to Mo. Rev. Stat. §558.019, which went into effect August 28, 1994, repealed the Class X classification.

Robinson v. State, No. 71353 (9/9/97)
The court reversed the denial of a 24.035 motion and remanded for an evidentiary hearing. Pursuant to a plea bargain, movant was given time to run concurrent with federal time on a previous sentence. After the plea was accepted, the court observed that they (prosecutor and court) could do all they could to accommodate this plea, but it was up to the federal system to pull him back into federal custody

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to give effect to the plea, and that the federal government "can play all those kinds of games" and not do so. In fact, the federal government refused custody of him, and he was serving his Missouri sentences, with his federal sentences yet to be served, so that his sentences in Missouri were not truly running concurrent with his federal sentences. The motion court denied a hearing based on its comments to the movant at the time of the plea that it could not control the federal government taking or refusing custody of the movant. This was reversed, finding that the court's comments were insufficient to refute movant's belief, which was not unreasonable, for him to rely on the plea bargain agreement that his sentences in Missouri would in fact run concurrent with his federal sentences. The comments by the court were offered only after it had formally accepted his guilty pleas, and movant instead relied reasonably on the positive representation of the prosecutor, his counsel, and the judge's reciting of the sentences that they would run concurrent, thereby entitling movant to an evidentiary hearing on this issue.

State v. Nelson, No. 68942 (9/9/97)
The court reversed a conviction for first degree murder based on improper argument by the prosecutor. Specifically, the prosecutor argued facts not before the jury, including informing the jury during argument that it should not believe the defendant's testimony at trial that he did not know that a co-actor was going to kill one of the victims, because he only took the stand and testified when a false statement that he gave to police was ruled inadmissible. The defendant's statements to police were kept out at the state's request, and comments by the prosecutor in closing as to the defendant's excluded statements fell within the rule which prohibits comments on excluded testimony. This, coupled with arguing facts not in evidence that the defendant had made a statement to police and the statement wasn't coming into evidence, caused reversal of the murder conviction. (Other convictions for separate crimes affirmed)

State v. Burks, No. 69213 (9/9/97)
The court reversed for specific findings of fact and conclusions of law the motion court's denial of PCR relief without an evidentiary hearing where the pro se motion was incorporated by reference in the amended motion, the pro se motion contained 27 grounds for relief, and none of these grounds were addressed by the motion court in its findings and conclusions. Since sentence in this case was entered prior to January 1, 1996, before Rule 29.15(g) was amended to prohibit incorporating in the amended motion the pro se motion, findings and conclusions were necessary on all grounds before the court, including those in the pro se motion which were incorporated into the amended motion.

State v. White, No. 67892 (9/30/97)
The court reversed a conviction for robbery, due to the improper admission into evidence of a codefendant's guilty plea to the same offense.

State v. Paro, No. 68662 (9/16/97)
The court reversed a conviction for sodomy and remanded for a new trial, as this case involved hand to genital contact, which by change in the law effective January 1, 1995, no longer constituted deviate sexual intercourse but rather constituted first degree child molestation, carrying a maximum punishment of seven years. The jury was instructed that the defendant's act constituted deviate sexual intercourse and they were authorized to give a sentence up to life, and they returned a 22 year sentence. The defendant's trial took place after the effective date of the new definition of sodomy, and Mo. Rev. Stat. §1.160 allows the defendant the benefit of the reduction of punishment for his conduct. Because the defendant was entitled to jury sentencing and the jury was given the wrong range of punishment, and he is entitled to a new trial.

State v. Davis, No. 69441 (9/16/97)
The court reversed a second degree murder conviction because of the trial court's refusal to give a lesser included offense instruction of voluntary manslaughter. The defendant received a self-defense instruction and raised this defense by his evidence, but the trial court found it would be inconsistent to give a voluntary manslaughter instruction acting under sudden passion where the defendant acted intentionally in self-defense. The appellate court disagrees, and finds that both instructions may be supported by the evidence, and they were raised here. A jury might reject self-defense if it determined the defendant's apprehension of harm was unreasonable or that the defendant used

excessive force, but could nonetheless find that the defendant could have acted under sudden passion impairing his self-control, as there is no requirement the defendant act reasonably to have his intentional killing reduced from murder to voluntary manslaughter. The victim had threatened the defendant on previous occasions and on the evening in question, and accused the defendant of stealing his drugs. Early on the evening in question, the victim displayed a gun to the defendant. Defendant then left and armed himself. When the defendant returned to tell the victim that he did not steal his drugs, the victim threatened to kill him and reached for his gun. These facts are sufficient to inject the issue of sudden passion arising from adequate cause which would cause a reasonable person to lose self-control, and the voluntary manslaughter instruction was necessary.

Southern District Decisions

State v. Revelle, No. 20879 (11/12/97)
The court reversed the first degree murder conviction due to the admission into evidence of a note written by the victim (the defendant's wife) to the defendant some time before the murder. The note described the victim's fear of the defendant's anger. This was hearsay and inadmissible.

State v. Glaese, (11/13/97)
A sodomy conviction was reversed where the state deposed an out-of-state witness, a doctor who had examined the child. Although the state provided notice to the defendant, it did not request nor obtain a hearing before the court to assure that the defendant's confrontation rights were preserved, and to determine the reasonable expenses of travel for defendant and his counsel. This is required under Mo. Const. Art. I, §18(b). Prejudice was shown.

State v. Condict, No. 21698 (9/26/97)
The evidence in this case was found insufficient to support the conviction for attempting to manufacture methamphetamine, because the defendant was arrested, with another person, inside a service station garage where a blue vinyl bag containing chemicals that could be used in the manufacture of methamphetamine was located. The defendant at best was in joint possession, and nothing was displayed to show that the defendant knowingly possessed these items. The garage was generally open to the public (although it was a Sunday and not open for business that day), and even though an officer had earlier been in the garage to look for an individual to execute an arrest warrant and did not notice the blue vinyl bag, the evidence would not support the finding that the defendant brought the bag there and was in possession of the bag and chemicals contained therein.

State v. Stanley, No. 20495 (9/12/97)
The court reversed and remanded for sufficient findings of fact and conclusions of law. The court's entire order denying relief on the post-conviction motion consisted of the following docket entry: "Ct. overrules 1st amended motion and remands [appellant] to custody of Dept. of Corrections."

Western District Decisions

State v. Smith, No. WD 52816 (10/21/97)
The court reversed a conviction for first degree murder finding that a lesser included offense instruction for second degree murder should have been given at trial. The victim in this case was killed by the defendant by two gunshot wounds. The victim had owed the defendant some money, which he was trying to repay by committing some burglaries and giving the proceeds to the defendant. The appellate court noted that it is the rare case which clearly shows only deliberation and no possibility of second degree murder, and it is better for the trial court to give the second degree murder instruction when it is requested since deliberation is such a difficult clement to prove. Additionally, the appellate court, in relying on State v. Santillan, 948 S.W.2d 574, notes the defendant is not required to put on any affirmative evidence as to lack of the essential element of deliberation. While the evidence in this case certainly would support the element of deliberation, a juror could also find that the defendant knowingly caused the death but did not deliberate on it. In another point, the court finds that while police could search the defendant's residence based on consent to search given by his live-in girlfriend, they had no authority to search his safe found in the residence, and the items seized from the safe are not admissible on retrial.

State v. Olney. No. WD 53418 (11/4/97)
The court reversed and remanded for a resentencing where the trial court indicated, on the record, its

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belief that it must run the sentence for armed criminal action consecutive to the underlying felony. The armed criminal action statute does not mandate that the sentence imposed for armed criminal action be consecutive to the underlying felony, so a remand for the trial court to exercise its discretion as to whether the sentences should run consecutive or concurrent is necessary. Also, a nunc pro tunc order was issued where the defendant was charged with a class A felony, but the jury found him guilty of a class B felony (without serious physical injury). The court's written judgment incorrectly stated he was found guilty and sentenced for a class A felony, assault in the first degree with serious injury.

State v. Kelly, No. 52869 (11/4/97)
The defendant's convictions for four counts of robbery and four counts of armed criminal action were reversed because of improper joinder of one of the robbery and ACA charges. In this case, the robbery that was improperly joined occurred ten days before the others, and with tactics that were not like the robberies that occurred later. The use of similar tactics in the commission of multiple crimes is sufficient to show the offenses are of the same or similar character, and the tactics need only resemble or correspond with one another and do not need to be identical. However, they should be similar enough that is likely the same person committed all the offenses. The only real similarity here is that the defendant was accompanied by another person when he committed the robberies. This is insufficient, and as improper joinder presumes prejudice, a new trial is necessary.

State v. Jones, No.50668 (10/28/97)
The court overturned the motion court's finding that no ineffective assistance of counsel occurred, and reversed for a new trial. In this case, counsel was deemed ineffective in failing to adequately investigate a deal given to the state's key witness, and to use this deal against the witness at trial to impeach him. While the motion court found that had counsel discovered the plea agreement he would have had a difficult strategic choice, since a decision to impeach the witness with the agreement would have undercut the approach counsel did take to impeach the witness, the court notes that this is not a situation where counsel was faced with making a strategic choice between two courses of action, as he failed to pursue readily available evidence of a plea agreement, thereby denying him this choice. Also, evidence of the plea agreement would have provided stronger grounds for impeachment.

Gettings v. Board of Probation and Parole, No. WD 53864 (8/5/97)
The court determined that the inmate had no right to release on parole even though he had met service of sentence deemed customary to be considered for early release, and had a perfect salient factor score. These factors simply serve as aids for consideration by the board in making parole determinations, and as the guidelines and statutes make clear, the board has the right to act outside the guidelines in an individual case.

State v. Sled, No. WD 53447 (7/29/97)
The court held that a prosecutor's application for transfer for forfeiture of property seized during a search pursuant to Mo. Rev. Stat. §513.647, was insufficient to support the transfer. Most notably, the transfer statute requires that sufficient facts be alleged in the petition to transfer and supported at a hearing to show that the activity which is alleged is a felony in Missouri, and that there is a nexus between the alleged felonious activity and the property sought to be transferred. In this case, there was a large amount of cash, but the prosecutor failed to allege or prove how it was tied to felonious activity. While the prosecutor made some broad and sweeping conclusions that the cash may have been involved with drug transactions, no evidence was presented at the hearing to substantiate a finding that an activity with a sufficient nexus to the property would be a felony under Missouri or federal law, and the prosecution bears this burden by a preponderance of the evidence that a felony under Missouri law has occurred and that the property is sufficiently connected to the felonious activity.

State v. Norton, No. WD 52497 (8/5/97)
The court affirmed the conviction, but noted a certain harmless errors. First, the prosecutor elicited during examination of its DNA expert that there was sample left over for the defense to use if it chose to have the evidence tested by its own expert. The defense opening statement only promised to attack the state's method and the results of testing and did not indicate the defense would

produce its own test result. Therefore, curative admissibility was not applicable, and it was error for the prosecution to adduce this evidence. The court also noted the prosecutor's argument that the jury should give the maximum penalty to send a message to the defendant or other persons lurking in Jackson County who would break into "our homes and rob us and sodomize us and tie us up and terrorize us and cut us up with meat cleavers", did personalize somewhat to the jury, but it was primarily a call for law enforcement, and did not ask the jurors to imagine themselves as the victims of a detailed recitation of facts.

State v. Colbert, No. WD 41114 (8/19/97). The court reversed in part the denial of a postconviction motion without an evidentiary hearing, on the movant's claim that counsel was ineffective for failing to communicate a plea offer to him. Movant alleged that if he had been told of the plea agreement, he would have accepted it and received a lesser sentence. Movant's pleading implied the allegation that the trial court would have accepted the plea agreement since movant asserted he would have received much less time than the sentence he received after trial.

In State v. Richardson, No. 53015 (9/9/97), the court reversed for a new trial where the trial court, in giving the "hammer" instruction, also told the jury that if the penalty phase was left out and the jury only decided the issue of guilt, would this assist the jury in reaching a verdict, and the foreperson responded that it would. The jury then returned a guilty verdict, leaving the issue of punishment for the court. MAI Cr. 3d 312.02, which allows the jury to defer punishment to the court but only if the jury is unable to complete the verdict form as to punishment bearing in mind its primary responsibility and duty to assess punishment was not given. Further, the court may only give this instruction if it finds on the record that the jury is unable to agree on punishment, and the court also has to advise the jury that it is their primary duty to assess punishment. As this was not done in the instant case, a new trial is necessary.

8th Circuit Decisions

U.S. v. Conner, 62 Crim.L.Rptr. 1071 (8th Cir. 1997)

Police officers received a tip that two men driving a red Fiero with a certain license plate had committed a burglary. They located the car in front of a motel room, and knocked vigorously on the door, loud enough that residents in a room a couple of doors away responded. The occupants opened the door, police saw stolen items inside, and seized them. The district court correctly concluded that the occupants did not voluntarily consent to open the door to allow police officers to look inside. They responded to an official show of force and color of authority, in opening the door to the loud and vigorous knocking and announcement that police were outside. The suppression of the evidence was affirmed.

U.S. v. Heidbur, 61 Crim.L.Rptr. 1501 (8th Cir. 1997)
Evidence that defendant sexually molested his twelve year old step-daughter should not have been admitted in his federal trial for knowing possession of sexually explicit photographs of this step-daughter, as this was proscribed by Fed. R. Evid. 404(b) concerning evidence of uncharged misconduct.

Clemmons v. Delo, No. 96-1086 WM (8/28/97)
The court granted habeas corpus relief on a death penalty case and remanded for the state to be given the opportunity to provide petitioner with a new trial. First, the court found a Brady violation by the prosecution's failure to disclose a memorandum written by Correction Officer Gross, indicating that an inmate witness named Clark told Gross shortly after the stabbing that another inmate, Bagby, had actually killed the victim. While petitioner called other inmates at trial testified to this effect, Clark's testimony would have been more credible, particularly since all of the inmate witnesses who identified an inmate named Bagby as the actual killer at trial all first made statements identifying Bagby as the killer after Bagby himself had died. The state was therefore able to argue that these witnesses were naming a person as the killer who could not come in and defend himself. The court also found a confrontation clause violation, by counsel's allowing, the state, as a courtesy to correction officer Gross whose wife had died just prior to trial, to introduce testimony through deposition. Petitioner did not agree to this waiver of confrontation, and the court found this to be a personal right that should be waived only by the client, not by counsel.

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Other Federal Circuit Court Decisions

U.S. v. Canady, 62 Crim.L.Rptr. 1046 (2nd Cir. 1997)
The mailing of a verdict to the defendant and counsel after a bench trial violated the defendant's rights under the Fifth and Sixth Amendments to a public trial and to be present at trial. While a new trial is not required, to correct the error, the defendant had to be called back into open court where the factfinder (judge) could announce its verdict in the defendant's presence.

Robbins v. Smith, 62 Crim.L.Rptr. 1050 (9th Cir. 1997)
A non-merit brief filed by appointed counsel on a state defendant's appeal of right did not meet the standards of Anders v. California, 386 U.S. 738, even though it was adequate under state standards. The brief summarized the trial record but failed to present any possible grounds for appeal. Counsel instead asked the court to review the record for arguable issues, and instead of moving to withdraw, then offered to brief any issues identified by the court. This is insufficient under Anders.

Barry v. Bergen County, 62 Crim.L.Rptr. 1124 (3rd Cir. 1997)
A habeas corpus petitioner sentenced to a term of community service satisfied the custody requirements to allow the habeas action to proceed..

U.S. v. Johnston, 62 Crim.L.Rptr. 1135 (5th Cir. 1997)
A prosecutor's repeated questioning, which was solely designed to bring before the jury police officers' hearsay conversations, was prosecutorial misconduct meriting a new trial. This included the prosecutor's examination of testifying officers regarding what other officers, who did not testify told those officers who testified at trial. Even though objections were sustained, the prosecutor would then follow-up with asking what these officers did after speaking with the other investigators who were not called to trial, and they would invariably testify that they focused on the defendant after those conversations.

U.S. v. Tabb, 62 Crim.L.Rptr. 1051 (7th Cir. 1997)
When counsel moves to withdraw from representing a defendant because there are no non-frivolous grounds for appeal, counsel must back up the conclusion with explanations as to why each potential ground of appeal mentioned in the brief is not arguable.

Calderon v. U.S. District Court, 62 Crim.L.Rptr. 1021 (9th Cir. 1997)
The one year time limit in the AEDPA will not be tolled as a prisoner's mental competency is evaluated. This is not an extraordinary circumstance making the filing of a timely petition impossible, as petitioner had the services of counsel for a long time, so habeas litigation could have been started and pursued even if petitioner himself was unable to assist counsel.

Brown v. Artuz, 1997 WL 471344 (2nd Cir. 1997)
While the decision to testify is for the defendant to make, counsel has a duty of effective assistance which includes the responsibility to advise the defendant as to the exercise of this constitutional right. The second part of the Strickland test of prejudice is used to assess defendant's claim that defense counsel rendered ineffective assistance by preventing defendant from testifying or by failing to advise the defendant concerning the right to testify.

U.S. v. Westmoreland, 1997 WL 473281 (7th Cir. 1997)
The defendant's passive receipt of a gun from an undercover officer in partial payment for drugs was not sufficient to support a conviction for use of a firearm in relation to a drug trafficking offense, particularly when the agent purposefully introduced the gun into the transaction to set up a conviction for the use of a firearm. The transaction did not involve any active use of a firearm by the defendant.

In re Davis, 62 Crim.L.Rptr. 1013 (5th Cir. 1997)
A state death-row inmate seeking to use a successive habeas corpus petition to raise a claim that he is incompetent to be executed is not immune from restrictions in the AEPDA (Anti-terrorism and Effective Death Penalty Act). Although the factual basis for the prisoner's Ford v. Wainwright (cannot be executed if incompetent) claim may have been unavailable to him when he filed his earlier petition, the legal basis for the claim was available.

Therefore, the inmate did not qualify under the AEDPA provision authorizing a successive petition for claims raised as "new" and previously unavailable under rules of constitutional law.

Linda v. Murphy, 62 Crim.L.Rptr. 1008 (7th Cir. 1997)
Limitations on a defendant's ability to cross-examine the state's expert witness about allegations the expert was facing concerning sexual impropriety with his patients violated the defendant's Sixth Amendment rights. The prosecution portrayed the expert as not only an exceptionally qualified professional but also a person of the highest character, despite the pending allegation that eventually cost him his professional license and teaching positions. The court noted that psychiatric testimony cannot be verified or refuted empirically, so the psychiatrist's personal and professional stature are very important to a jury. The denial of cross-examination here may have altered the jury's decision. *(Note: Decision after remand from U.S. Supreme Court. Decided under former 28 U.S.C. §2254.)*

U.S. v. Jenkins, 61 Crim.L.Rptr. 1549 (6th Cir. 1997)
Curtilage included a rural residence backyard, partially surrounded by a wire fence and set well back from the public road. Therefore, a search of this area without a warrant by officers who saw marijuana growing there was improper. The court further emphasized that officers should have recognized the private nature of the landscaped and fenced backyard when they approached and saw one of the defendants hanging laundry on a clothesline.

In Re Sealed Case, 61 Crim.L.Rptr. 1547 (D.C. Cir. 1997)
The attorney/client privilege does not extend to a deceased client's communications with counsel that are material to a grand jury investigation and are unlikely to be available from other sources. To hold otherwise would allow the privilege to obstruct the truth-finding process, and clients will not be deterred from being candid with counsel by the prospect of post-death disclosures.

U.S. v. Brown, 1997 WL 368340 (11th Cir. 1997)
A defendant must be accurately advised of all elements of an offense, and failure to do so renders a guilty plea involuntary even though the misinformation about an element was based on the then-applicable appellate precedent subsequently overruled by the supreme court. Therefore, the defendant's guilty plea to currency structuring was not voluntary as he was misinformed about elements of the offense and not informed of the true nature of the charge against him due to the change of the law by the supreme court.

U.S. v. Lacy, 1997 WL 378104 (9th Cir. 1997)
The defendant "produced" depictions of minors engaged in sex acts when he downloaded visual depictions from a child porn computer bulletin board system, as even though these were copies of the ones on a bulletin board system, they were created or produced when he used his computer to download the data. Pornography conviction affirmed.

Smith v. Horn, 61 Crim.L.Rptr. 1442 (3rd Cir. 1997)
Habeas corpus relief was granted where a state death penalty jury instruction failed to make clear to the jury what it meant by a key word in the instruction, "accomplice". The instruction could have led the jury to believe that it could convict the petitioner of first degree murder if the other man killed the victim and the petitioner was an accomplice in the robbery. This violated due process because the petitioner could only receive the death penalty if he intended to cause the death of the victim, and the state was relieved of its burden of proving his intent by the jury instruction..

Brown v. Artuz, 61 Crim.L.Rptr. 1456 (2nd Cir. 1997)
The constitutional right to testify is a right that is possessed by the defendant personally and may not be waived by defense counsel on defendant's behalf.

In re Gasery, 1997 WL 348520 (5th Cir. 1997)
The refiling of a habeas petition after dismissal of the original petition without prejudice for failure to exhaust state remedies is merely a continuation of the inmate's first collateral attack, and therefore not barred under the Anti-Terrorism and Effective Death Penalty Act (AEDPA).

U.S. v. Mills, 61 Crim.L.Rptr. 1467 (7th Cir. 1997)
A federal court's determination of whether waiver of rights guaranteed under Miranda is voluntary is subject to *de novo* review on appeal. Here, an issue

Case Law Update *(cont'd from page 11)*

of voluntariness was involved, and voluntariness of a waiver requires assessment of facts in light of a legal standard, and independent review is needed to ensure uniformity and predictability.

Thompson v. Calderon, 61 Crim.L.Rptr. 1413 (9th Cir. 1997)
A death sentence and rape conviction were set aside based on trial counsel's failure to either rebut forensic evidence or to uncover new evidence that could have impeached two prosecution witnesses. The prosecution's theory was that defendant raped the victim, killed her to cover up the rape, and listed a separately tried co-defendant's help in getting rid of the body. However, the prosecution's case that a rape occurred could have been attacked, but instead defense counsel "irrationally" pursued a theory that the defendant raped the victim. Further, counsel failed to search out evidence that could have been used to impeach two informers who testified for the state.

U.S. v. Arnold, 61 Crim.L.Rptr. 1418 (11th Cir. 1997)
A Brady violation required reversal where taped conversations between an incarcerated government witness and a government agent concerning, among other things, what the witness expected in return for his cooperation, were not turned over to the defense. At trial, the witness testified that he did not expect a reduction in sentence in return for cooperating, whereas on the tape he indicated he wanted "big time credit".

MARY CLARK MEMORIAL TRUST

Mary Clark died on December 21, 1997, from injuries resulting from a heart attack she suffered on November 28. She is survived by her beautiful 9-year-old daughter, Caitlin Clark.

At the time of her death, Mary had been an attorney with the Missouri Public Defender System in Kansas City for nine years, having devoted most of her legal career to defending the indigent accused. In an effort to care for Caitlin, secure Caitlin's future and fulfill her own love of teaching, Mary also worked two part-time jobs, including teaching English at Park College.

Mary enriched the lives of thousands of people. The Memorial Trust has been established to remember Mary, to honor her commitment to the rights of the individual, and to financially assist with Caitlin's care and education. (Now in third grade, Caitlin dreams of becoming a doctor.)

Please send your contribution, large or small, payable to the Mary Clark Memorial Trust, P.O. Box 13383, Kansas City, MO 64199-3383.

Perspectives on "Nazi Dope" and the Mythical "Nazi Patent"

Terry A. Dal Cason

©Clandestine Laboratory Investigating Chemists Association, Inc.

Dan Viets reports that prosecutors in meth trials are brandishing the term "Nazi dope" as a weapon in the courtroom. Dan submitted this article for reprint. Terry Dal Cason, the author, is a Senior Forensic Chemist with the DEA North Central Laboratory in Chicago. The author's findings undermine any justification for allowing such a prejudicial term to be used in front of a jury.

The use of metallic lithium (Li) [or sodium (Na)] and anhydrous liquid ammonia (NH_3) (b.p. -33 C) to reduce ephedrine (or pseudoephedrine, PSE) to methamphetamine was first reported by Bly and McGrath in 1990.[1] Subsequently, this method, and various modifications of it, have been encountered more and more frequently in clandestine laboratories. The methamphetamine produced by the technique has become known as "Nazi dope." That name purportedly arose from the "fact" that this process for converting ephedrine or PSE to methamphetamine HCI was detailed in a patent published during the period of the Third Reich between January 30, 1933 and May 7, 1945.[2] German patents, at least during part of this period, had changed from using the "Imperial Eagle" imprint at the top of the document to using an eagle perched on a wreath which itself contained a swastika, the symbol of the Nazi party. Although this "patent" has been referred to in various documents and oral presentations, it most certainly does not exist. Tracking down the source of this "myth" has led to two possible explanations as to its origins, neither of which can be proved and both of which are based on the supposition of miscommunication and/or misinterpretation.

The first of these possibilities involves one of the earliest groups of clandestine chemists to use this procedure. This group, located in Southwest Missouri, hid copies of this synthetic technique along with additional drug manufacturing procedures in packets at various locations away from their lab sites. In the event the clandestine laboratory was discovered and seized by law enforcement personnel, photocopies of the technique could always be recovered. The top page for the synthesis packets was a photocopy of a drawing from the cover of a video cassette case of the Third Reich propaganda film, "Triumph of the Will." This photocopy portrayed an eagle grasping a wreath which had at its center a swastika.[3] It is easy to postulate how the seizure of these packets could present an opportunity to misinterpret a relationship between the most recognizable of Nazi symbols and the reduction procedure contained in the packets. From this point, it is easy to imagine a "word of mouth" genesis of the Nazi patent myth.

A second possible source of this myth is the result of a Nazi era patent. The production of methamphetamine and methcathinone are closely related; the former is produced by reduction of ephedrine or PSE while the latter is the result of oxidation of the same precursors. In the above-cited case, the packets contained information on the synthesis of both types of drug. Finding notes or procedures in clandestine labs which detail several methods for making the same drug, or for making a variety of drugs, is quite common. Thus a second possible explanation may be formulated. Reichspatent No. 639126 (11/36) is imprinted with the previously described eagle/wreath/swastika heading and provides a technique for synthesizing racemic ephedrine and racemic methcathinone. The chemical names Ephedrine and Pseudoephedrine are easily recognized among the German wording of the patent. Misinterpretation of the patent's content, combined with a clandestine laboratory having chemicals appropriate to the Li or Na/NH_3 method might easily lead to the assumption that this process was described in the patent. It should be noted, however, that this patent is not known to have been recovered from any clandestine laboratory.

"Nazi Dope" *(cont'd from page 13)*

Communication with state and federal forensic chemists who have referenced or reported on the procedure, law enforcement officers involved with seizures of "Nazi dope" labs and a clandestine chemist operating one of the early Nazi dope labs failed to produce any evidence that this patent exists. A search of German patents in the field of sympathomimetics from 1939-45 also failed to show any reference to this procedure. Likewise, a cross-reference of British and U.S. patents from this period did not uncover any evidence of this patent. **It seems certain that reference to such a patent, however intriguing, is in error.** Regardless of the explanation of the origin of the Nazi patent myth, and the lack of an actual patent, the term "Nazi dope" seems to have become firmly entrenched in drug lexicon.

[1] Ely, R.A. and McGrath, D.C., "Lithium-Ammonia Reduction of Ephedrine to Methamphetamine: An Unusual Clandestine Synthesis," Journal of Forensic Sciences, Vol.35, No.3, May, 1990.

[2] Shirer, W.L., The Rise and Fall of the Third Reich, Simon & Schuster, NY, 1960, p. 5, 1139.

[3] U.S. District Court, Springfield, MO Case No. 96-03018-01/09, DEA File IT-95-0044.

Offers of Proof

Craig Johnston and Lew Kollias

The proponent of evidence must attempt to present excluded evidence at trial and, if objection to proffered evidence is sustained, the proponent must then make an offer of proof in order to preserve the matter for appellate review. State v. Purlee, 839 SW2d 584 (Mo. banc 1992); Stat v. Schneider, 735 SW2d 392, 401 (Mo. banc 1987); State v. Naucke, 829 SW2d 445 (Mo. banc 1992). The offer of proof must be made at the time of the objection to the proposed evidence. State v. Foulk, 725 SW2d 56, 66 (Mo. App. ED 1987). The offering party must show its relevance and materiality. Id. It also must show what evidence will be given, the purpose and the object of the testimony sought to be introduced, and all of the facts necessary to establish the admissibility of the evidence in sufficient detail to demonstrate its relevancy and materiality. Id. **But**, if several facts are included in an offer of proof, some admissible and others inadmissible, then the whole offer of proof is properly excluded. State v. Raine, 829 SW2d 506 (Mo. App. WD 1992) (insufficient offer of proof regarding mental condition of defendant which consisted in part of evidence relevant to his condition and in part of irrelevant evidence). Also, defense cannot broaden on appeal the stated purpose for the offer of proof made at trial. State v. Woodland, 768 SW 2d 617 (Mo.App.ED 1989).

The offer of proof must state facts which are specific and sufficient in detail to establish the admissibility of the proposed evidence. State v. Clay, 763 SW 2d 265, 270 (Mo.App.ED 1988). The preferable way to make an offer of proof is to place the witness upon the stand, ask questions and secure answers, outside the jury's presence. Id; State v. Townsend, 737 SW2d 191, 192 (Mo. banc 1987); State v. Dixon, 655 SW2d 547, 557 (Mo.App.ED 1983). An offer maybe made in narrative form, so long as the offer is definite, specific, not mere conclusions of counsel, and sets out sufficient facts to demonstrate the admissibility of the evidence. Clay at 270; Townsend at 192. Mere statements and conclusions of counsel are not sufficient. State v. Hurtt, 836 SW2d 56, 59 (Mo.App.SD 1992). But, when a party does not make the offer in question and answer form, the party runs a greater risk that the court will find the offer insufficient. Townsend at 192; Clay at 270. Compare State v. Joiner, 823 SW2d 50, 50 (Mo.App.ED 1991) (narrative supplied by defense counsel was sufficient) with State v. McKee, 856 SW2d 685, 692 (Mo.App.SD 1993) (narrative insufficient) and State v. White, 835 SW2d 942, 947 (Mo.App.ED 1992) (narrative insufficient). First two offers revealed nothing concerning purported reason for defendant's possession of handgun and although in third

offer defendant offered to prove why gun was in his car, nowhere did defendant specify the alleged reason).

Some other examples of insufficient offers of proof: State v. Molitor, 729 SW2d 551 (Mo.App.ED 1987) (expert testimony that fantasy game "desensitized" its players, limiting their ability to appreciate danger and harm of their violent acts was properly excluded where offer of proof made no showing that defendant was in fact desensitized); State v. Dixon, 668 SW2d 123 (Mo.App.SD 1984) (offer that complaining witness in sodomy prosecution had "oral sexual intercourse" with defendant near the date of the charged offense did not establish relevance and admissibility of the testimony absent facts showing that act was voluntary); State v. Graham, 906 SW2d 771 (Mo.App.WD 1995) (offer failed to demonstrate that counsel intended to show good character reputation as opposed to specific acts); Clay, 763 SW2d at 270 (The first offer did not identify the business record the custodian would introduce, or its mode of preparation, or state that it was made in the regular course of business or near the time of the act, condition or event. The second offer, regarding an alleged prior inconsistent statement of the victim, was insufficient, because it did not indicate when these statements were made, and was insufficient to establish a proper foundation.)

Regarding affidavits: reference is not sufficient, you must file it and make it part of the record. State v. Starks, 820 SW2d 527 (Mo.App.ED 1991). Regarding taped statements: need offer as to contents. Have tapes marked as exhibits and admitted as an offer. State v. Jennings, 815 SW2d 434 (Mo.App.ED 1991); State v. Richardson, 838 SW2d 122 (Mo.App.ED 1992) (offer of proof for videotape of crime scene was adequate where defendant informed court that witnesses were prepared to testify that scene displayed in videotape was exactly the same as scene on date of defendant's arrest).

There have been some situations where it has been said that an offer of proof is not necessary. **But it would be foolish to rely on this; an offer of proof should be made in all cases.** Nevertheless, here are the situations: (1) where it is clearly evident what the testimony will probably be if the witness is allowed to testify, State v. Williams, 724 SW2d 652, 656 (Mo.App.ED 1986) (offer of proof is unnecessary when it has been identified and its relevance explained); White, 835 SW2d at 947 (noting that an offer would be unnecessary on direct examination if a "question itself disclosed the materiality of the evidence" **but** holding that an offer was necessary because "the question's relevance was not readily apparent"); (2) where it would be futile and serve no purpose, State v. Bowlin, 850 SW2d 116, 118 (Mo.App.SD 1993) (basis for excluding testimony was the oath to be administered, not the content of the testimony); (3) when (a) there is a complete understanding, based on the record, of the excluded testimony, and (b) the objection is to a category of evidence rather than to specific testimony, and (c) the record reveals the evidence would have helped its proponent, Barnes v. Kissell, 861 SW2d 614, 618 (Mo.App.1993; (4) where the relevance is clear and where a party seeks to obtain evidence through cross-examination, Williams, 724 SW2d at 656, but, Cf, State v. Brown, 847 SW2d 79, 80-81 (Mo.App. 1992) (claim of similarity between charged assault and another assault previously suffered by the victim, was insufficient to establish the relevance of the prior assault).

Checklist for Offers of Proof:

1. Try to introduce evidence at trial; do not rely on pretrial rulings.
2. Make offer at time of objection; don't wait until later in trial.
3. Try to adduce evidence by question and answer of the witness.
4. If court refuses to let witness testify, you may make a narrative summary. If so:
(a) Be specific and detailed.
(b) Don't include non-relevant matters;
(c) Have narrative outlined and ready to read into record before the time to admit it;
(d) Keep out conclusions of counsel; be factual in narrative.
5. Mark as exhibits to offer any affidavits, taped statements (video/audio, etc.), or other matters. Do not merely describe in the narrative what is in these items.
6. Make sure the proper foundation is laid to support the evidence which is the subject of the offer of proof (i.e., business record exception, prior inconsistent statements, etc.)
7. Follow up on the offer and the court's refusal to admit the evidence in your new trial motion.

People With Mental Retardation Are Dying, Legally

Denis Keys, William Edwards & Robert Perske

Excerpted from ©MENTAL RETARDATION, February 1997

People with mental retardation should not be subject to the death sentence when convicted of a crime. This statement does not suggest that people with mental retardation should not be punished when they break the law, nor that they are not responsible for their actions. It does suggest they cannot be held culpable for crimes to the extent that death is an appropriate punishment.

Facts:

- Individuals with mental retardation are more prevalent in the criminal justice system than in the population at large.
- People with mental retardation function at lower levels, both adaptively and intellectually, than individuals in the general population.
- Characteristics associated with mental retardation often put these individuals at higher risk of unjust conviction and incarceration.
- People with mental retardation may be impulsive, which can result in acts that people of average abilities would refrain from committing.
- Individuals with mental retardation will often attempt to hide their disability to avoid the likely stigma associated with it.
- Three people with mental retardation have been executed in the United States within the past year.
- The death penalty is disproportionate to the level of culpability possible for people with mental retardation.
- People with mental retardation often exhibit low self-esteem, poor tolerance for frustration and a desire to please authority figures; they will often acquiesce to the wishes of those they perceive as authority figures.
- Executing these people does not serve justice, and key polls indicate the majority of Americans agree with this premise.

The U.S. Supreme Court has acknowledged that the majority of citizens are in favor of the death penalty, but **against** executing people who are mentally retarded. Penry v. Lynaugh, 1989 *(citation omitted in original)*. This did not alter the court's opinion that a clear consensus on the issue must come from state legislative action.

Since Penry, 11 of the 40 death penalty states have enacted legislation to prohibit the execution of people with mental retardation. In addition, the Federal Anti-Drug Abuse Act of 1988 and the Federal Death Penalty Act of 1994 prohibit execution of people with mental retardation.

The purpose of the death penalty is to exact justice in the form of punishment and retribution, and to act as a deterrent. Since 1976, at least 29 people with various forms of mental disabilities have been executed for capital crimes. In 1995, the U.S. executed over 30 people, two of whom had documented mental disabilities. One must ask if capital punishment in these cases served its purposes.

In those states where there is still no ban on the execution of people with mental retardation, an effort must be made to prohibit such executions. The enactment of laws designed to prohibit such executions by 11 state legislatures may not yet constitute sufficient evidence of the national consensus suggested in Penry, but it does show an important and distinct national trend. Before Penry, only 3 states had such legislation. The momentum is there, and the need for state action is more important now than ever!

New Members & Membership Renewals

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Welcome to our new members, noted with an (*) asterisk, and sincere thanks to renewing members who support *MACDL*'s efforts year after year. **Please check the expiration date on your mailing label. You'll find a renewal form is inside the back cover of this *Action Report*. Feel free to copy it for friends and colleagues, as well.**

Dues paid to *MACDL* are not deductible as a charitable contribution, but may be deductible as an ordinary and necessary business expense. A portion is not deductible as an ordinary business expense because it is used to support lobbying by the Association. **Pursuant to the Revenue Reconciliation Act of 1993, the estimated deductible portion of MACDL dues for the 1997 tax year is 65%.**

Bulletin Board

Defending Criminal Cases - April 16-17 - The Downtown Marriott, Kansas City

MACDL's Annual Meeting & Seminar is a high point of every year, featuring top-notch speakers with informative presentations as well as the informal fellowship so necessary to recharge our batteries. This year's topics and speakers will include: Elizabeth Unger Carlyle with an evidence update; Shawn Askinosie on ethics; Pat Berrigan on *voir dire*; the ever-popular Milton Hirsch, *MACDL's* favorite Florida member; a demonstrative exhibit on meth labs (no free samples!); a panel on health care fraud; and the impact of immigration law on criminal defense. We particularly look forward to welcoming Judy Clarke of Spokane, WA, immediate past president of the National Association of Criminal Defense Lawyers and fresh off the Unabomber defense team, as our speaker at the Annual Awards Luncheon on Friday, April 16.

The schedule on Saturday, the 17th, will include *MACDL*'s Annual Membership Meeting, at which all officer positions and five of the fifteen director positions will be filled by vote of the membership.

Plan to join us in Kansas City on April 16-17. Registration brochures for the seminar will be mailed shortly by our CLE co-sponsor, THE MISSOURI BAR.

Second Annual Winter Retreat & Legislative Planning Session

Last winter, *MACDL*'s Board met at the Holiday Inn in Lake Ozark, primarily to plan legislative strategy. We did it again on February 14, following a joke-filled dinner on Friday evening. Larry Pace, *MACDL*'s newest director (elected in December along with John Simon of Lake Ozark to fill vacancies on the board) took his seat on the board for the first time. Randy Scherr, our hard-working lobbyist, filled us in on the early days of the 1998 Legislative Session, and plans were made to respond to bills now in committee. The board also attempted to take a long-range view of our association's goals, activities and resources. Some changes are planned for this year, particularly regarding membership and dues payments, which should help *MACDL* better serve the needs of its members.

MACDL's Student Outreach Program

Dan Viets (Columbia), Scott Turner (K.C.), and Scott Rosenblum (St. Louis) have continued with their efforts to introduce *MACDL* to Missouri law students by hosting pizza parties at law schools in Kansas City, St. Louis and Columbia. If you're interested in working on this project, please contact Dan, Scott T. or Scott R. A year's student membership is only $10. Why not present your favorite law student with a MACDL membership as a bonus or gift? As you can see from page 16, seven new student members have joined *MACDL* in the past three months. Help us reach out to more Missouri law students!

MACDL

Membership Application/Renewal Form

To join the Missouri Association of Criminal Defense Lawyers, or to renew your membership, take a moment to complete this form and mail today, with your check, to:

Francie Hall, Executive Director
MACDL
416 East 59th Street, Kansas City, MO 64110

Annual Dues Schedule (effective 1/1/97)

Sustaining Member:
Officers, Board Members & Past Presidents $300.00

Regular Member:
Licensed 5 years or more $150.00
Licensed less than 5 years $75.00

Public Defender:
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____ **Check here and add $10.00 (or more) to the amount of your dues check to contribute to MACDL's PAC Fund.** ***(Note: A PAC contribution is not a requirement of membership in the Missouri Association of Criminal Defense Lawyers.)***

Dues paid to MACDL are not deductible as a charitable contribution, but may be deductible as an ordinary and necessary business expense. A portion is not deductible because it is used to support lobbying by the Association. Pursuant to the Revenue Reconciliation Act of 1993, the estimated deductible portion of MACDL dues for the 1997 tax year is 65%.

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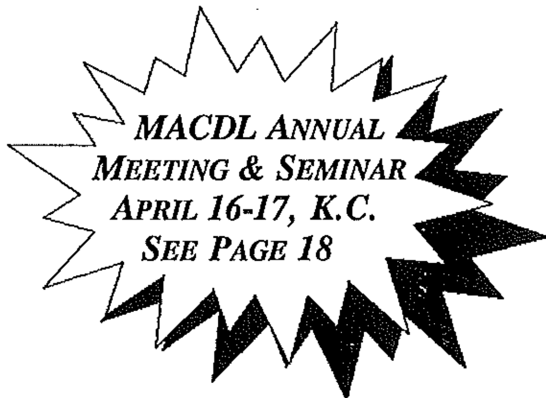

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