

CONFRONTING FORENSIC EVIDENCE:  
IMPLICATIONS OF *MELLENDEZ-DIAZ V. MASSACHUSETTS* AND  
*BRISCOE V. VIRGINIA*

Panel I: The Admissibility of Forensic Evidence

**Richard D. Friedman** – Professor of Law, University of Michigan Law School; Counsel of Record for *Briscoe* and *Cypress*; Submitted brief of *amicus curiae* in support of Petitioner *Melendez-Diaz*

Professor Friedman, the Ralph W. Aigler Professor of Law at the University of Michigan Law School, is an expert on evidence and Supreme Court history. He is the general editor of *The New Wigmore*, a multi-volume treatise on evidence. Professor Friedman's textbook, *The Elements of Evidence*, is now in its third edition, and he is co-author of Waltz, Park & Friedman's *Evidence: Cases and Materials*, now in its eleventh edition. In *Crawford v. Washington*, 541 U.S. 36 (2004), the Supreme Court radically transformed the law governing the right of an accused to "be confronted with the witnesses against him" by adopting a "testimonial" approach, which Professor Friedman had long advocated. Professor Friedman has written numerous law review articles and essays on this topic. He now maintains the Confrontation Blog to comment on the development of related issues. Professor Friedman successfully argued a follow-up case, *Hammon v. Indiana*, in the Supreme Court, and is now scheduled to argue *Briscoe v. Virginia*, this coming January.

**Mary T. Rogers** – Attorney, Law Office of Mary T. Rogers, Salem, Massachusetts; Co-counsel for *Melendez-Diaz* in the Supreme Court; Counsel for *Melendez-Diaz* in Massachusetts

Ms. Rogers served as co-counsel with Professor Jeffrey L. Fisher in *Melendez-Diaz v. Massachusetts* before the Supreme Court. Prior to the Supreme Court case, she served as counsel for Mr. Melendez-Diaz in state court; this case is currently on remand. This fall, she argued his case in the Massachusetts Appeals Court, and she is currently awaiting the court's decision.

Ms. Rogers has practiced criminal defense for more than twenty years. As co-counsel she succeeded in representing Marlon Passley, who was wrongly convicted of murder in the first degree. She then served as lead counsel and successfully represented Mr. Passley in a civil wrongful-conviction suit.

Ms. Rogers obtained a bachelor's degree in sociology from Boston University. She graduated *cum laude* from Suffolk University Law School, receiving a legal writing award. She was a judicial law clerk for the justices of the Massachusetts Superior Court for two years. For the last twelve years, Ms. Rogers has been an activist and speaker for the Campaign to End the Death Penalty. She helped write and advocate for a Massachusetts statute that allows those wrongly convicted of serious crimes to sue civilly on the basis of innocence.

**Joseph D. King** – Partner, King and Campbell, PLLC; Counsel for Briscoe

Mr. King received his juris doctorate *cum laude* from The University of Michigan Law School in 2003. He earned a master's degree in history from George Mason University in 1996 and a bachelor's degree in physics from Mary Washington College in 1992. Prior to entering private practice, Mr. King worked at the Public Defender's Office of Alexandria, Va., for more than four years. As a fluent Spanish speaker, Mr. King represents English and Spanish-speaking clients in felony and misdemeanor criminal cases at the trial court and appellate levels. He has served as counsel or co-counsel in more than 200 trials, including a number of felony and misdemeanor cases resulting in acquittals. Mr. King has appeared and argued before the Virginia Court of Appeals and the Virginia Supreme Court. He is currently participating in the *Briscoe v. Virginia* appeal to the U.S. Supreme Court.

**Jeffrey T. Green** – Partner, Sidley Austin LLP; Counsel of Record for the National Association of Criminal Defense Lawyers; Submitted brief of *amicus curiae* in support of Petitioner Melendez-Diaz

Mr. Green is a partner in Sidley Austin's Washington, D.C., office. Mr. Green focuses on criminal defense and contested litigation matters. His experience includes extensive trial work, including first-chair criminal trial practice. He has supervised and led numerous grand jury and internal investigations, successfully challenged agency suspension and debarment decisions, defended professional liability actions, and defended adversary proceedings in bankruptcy. Mr. Green is frequently involved with criminal and civil appeals before the U.S. Supreme Court.

He is involved with the *pro bono* representation of nonprofit organizations and court-appointed criminal defendants, and co-chairs the National Association of Criminal Defense Lawyers' committee on amicus representation for petitions for writ of certiorari, which included submitting a brief of *amicus curiae* in support of Petitioner Melendez-Diaz. Mr. Green also co-instructs Sidley Austin's Supreme Court Practicum at the Northwestern University School of Law.

Mr. Green graduated with distinction in all subjects from Cornell University. He received a master's degree in philosophy of law from the University of Texas at Austin. He graduated from the University of California at Davis School of Law, where he tutored in constitutional law and civil procedure and served as executive editor of the law review. Mr. Green served as a law clerk to the Honorable Jerry E. Smith on the U.S. Court of Appeals for the Fifth Circuit prior to joining Sidley Austin LLP in October 1989.

**Rami S. Badawy** – Senior Attorney, National District Attorneys Association

Mr. Badawy is a Senior Attorney for the National Center for the Prosecution of Child Abuse at the National District Attorneys Association. He oversees outreach in the areas of child homicide, physical abuse, and the *Crawford* line of cases. Mr. Badawy trains on a variety of topics, including cultural competency in the investigation and prosecution of child abuse and domestic sex trafficking of minors.

As an Assistant District Attorney in Onondaga County, N.Y., Mr. Badawy prosecuted domestic assault and child sexual and physical abuse cases. Mr. Badawy also served on the Board of Directors of the McMahon-Ryan Child Advocacy Center in Syracuse, N.Y., and was a member of the Syracuse Area Domestic and Sexual Violence Coalition. In 2007, Mr. Badawy received the Sister Mary Vera Recognition award for his work with survivors of domestic violence and sexual assault. Mr. Badawy worked as an attorney for Syracuse University, where he helped to improve the institution's response to incidents of domestic violence and sexual assault on campus. He also worked briefly as an attorney for a civil law firm. Mr. Badawy received his juris doctorate from the Syracuse University College of Law, and his B.A. from Cornell University.

## **Patrick M. Haggan** – Chief Trial Counsel for the Suffolk County District Attorney’s Office

A Suffolk County prosecutor since 1995, Mr. Haggan previously served as a member of the District Attorney's Homicide Unit, where he specialized in complex, multi-defendant murder trials. Among those cases was the longest homicide trial in Suffolk County history – the six-week trial of four men accused of kidnapping, raping, beating, and stabbing a young drifter to death in 2001. Each of the defendants was convicted of all charges and sentenced to life in prison. Mr. Haggan continues to investigate and prosecute homicides while overseeing almost all trial proceedings in Boston, Chelsea, Revere, and Winthrop. In 2007, he received the Paul McLaughlin Award for a Career Marked by Courage in the Pursuit of Justice, a rare award named after the slain gang prosecutor. Mr. Haggan is a graduate of Boston College and Suffolk University Law School.

## **Honorable David Lowy** – Massachusetts Superior Court Judge; Adjunct Professor of Law, New England Law | Boston

Judge Lowy is an Associate Justice of the Superior Court of Massachusetts. He was appointed to the Trial Court Department in 2001, having first been appointed to the bench in 1997 as a Justice of the District Court, Ipswich Division. Judge Lowy served on the Supreme Judicial Court Advisory Committee on Massachusetts Evidence Law as an assistant editor; the committee’s work resulted in publication of the Massachusetts Guide to Evidence (2008). Judge Lowy was previously an assistant district attorney in Essex and Suffolk Counties (1992-1997) and served as deputy legal counsel to Governor William F. Weld (1992-1995). Following law school, Judge Lowy became an associate in the Litigation Department of Goodwin, Procter & Hoar (1987-1988 and 1989-1990), leaving for a year-long position as law clerk to Judge Edward F. Harrington of the U.S. District Court.

Judge Lowy’s teaching positions include adjunct professorships at New England Law | Boston (1991-present), Suffolk University Law School (1995-2005), and Boston University School of Law (2006-present). He teaches courses in evidence and trial advocacy. Judge Lowy graduated *cum laude*, *Phi Beta Kappa*, with a bachelor’s degree from the University of Massachusetts at Amherst in 1983, and graduated *magna cum laude* from Boston University School of Law in 1987. Among his many scholastic honors, Judge Lowy earned an award for Highest Grade in Evidence.

## Panel II: Fostering Effective Forensic Analysis

### **Kenneth E. Melson** – Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

On April 12, 2009, Mr. Melson was named Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives. Most recently, Mr. Melson served as the Director of the Executive Office for U.S. Attorneys, where he was responsible for administrative oversight of the ninety-four U.S. Attorneys Offices and was the liaison between the U.S. Attorneys, other federal agencies and Department of Justice components.

Mr. Melson is a graduate of the National Law Center at The George Washington University. After serving as a state prosecutor in Arlington County, Va., he joined the United States Attorney’s Office for the Eastern District of Virginia in 1983, becoming the First Assistant United States Attorney in 1986.

Mr. Melson is a past president of the American Academy of Forensic Sciences (AAFS) and in 2006 became Chair of the Council of Scientific Society Presidents. He currently represents the Department of Justice as a board member of the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), serves on the editorial board of the *Journal of Forensic Sciences*, on the Ethics Committee for the AAFS, and on the Advisory Council of the National Clearinghouse for Science, Technology and the Law at Stetson University College of Law.

**Thomas L. Bohan** – President, American Academy of Forensic Sciences; Director, MTC Forensics

Although Mr. Bohan's primary interest was forensic science, he was admitted to practice law before various state and federal trial and appellate courts, including the U.S. Supreme Court and the U.S. Patent and Trademark Office. As a forensic physicist, he has consulted with law enforcement agencies, private attorneys, and others involved in forensic investigations. Over the past 20 years, he has spoken before audiences in the United States and abroad on subjects ranging from applied physics to applied patent law and, commencing in 1995, on the developing rules of scientific evidence. He has published several forensic evidence review papers on the *Daubert* and *Frye* standards.

Mr. Bohan has been a member of the American Academy of Forensic Sciences for many years and now serves as President. He is on the editorial board of the *Journal of Forensic Sciences*, a member of the Forensic Specialties Accreditation Board, and the contributing editor of the two-volume set, *Forensic Accident Investigation*. Mr. Bohan has recently published his book, *Crashes and Collapses*, which examines the historical roots of forensic science and its application in the laboratory and courtroom.

Mr. Bohan received his juris doctorate from Pierce Law and his doctorate in physics from the University of Illinois. He is currently the director of MTC Forensics in Portland, Maine, where he assists in forensic investigations.

**Geoffrey S. Mearns** – Dean, Cleveland-Marshall College of Law, Cleveland State University; Member, National Academy of Sciences' Committee Identifying the Needs of the Forensic Science Community

Dean Mearns is the thirteenth dean in the 111-year history of the Cleveland-Marshall College of Law at Cleveland State University. Before his appointment in 2005, Dean Mearns practiced law for more than fifteen years. From 1998 to 2005, his private practice focused on federal criminal investigations and prosecutions and complex commercial litigation. Prior to private practice in 1998, Dean Mearns had a distinguished nine-year career as a prosecutor with the U.S. Department of Justice. During his tenure with the Justice Department, he was an Assistant U.S. Attorney for the Eastern District of New York, where he was chief of the Organized Crime and Racketeering Section. Dean Mearns was also the First Assistant U.S. Attorney for the Eastern District of North Carolina. From 1997 to 1998, as special assistant to the U.S. Attorney General, Dean Mearns participated in the prosecution of Terry Nichols, one of two men convicted for bombing the Oklahoma City Federal Building.

Dean Mearns received his undergraduate degree from Yale University in 1981, and he received his law degree from the University of Virginia in 1987. After graduating from law school, Dean Mearns clerked for the Honorable Boyce F. Martin, Jr., of the U.S. Court of Appeals for the Sixth Circuit.

**John A. Grossman** – Undersecretary of Forensic Science and Technology, Massachusetts Executive Office of Public Safety and Security

Mr. Grossman has served as the Undersecretary for Forensic Science and Technology, within the Massachusetts Executive Office of Public Safety and Security since September 2007. In this role, Mr. Grossman is responsible for providing strategic leadership to the State Crime Lab, the Office of the Chief Medical Examiner, the Criminal Justice Information System, the Massachusetts 911 Department, and the Witness Protection Program. Additionally, he has led the Governor's Criminal Offender Record Information reform efforts and supervises the development and implementation of a Secretariat-wide information technology and information sharing strategy.

Before joining the Office of Public Safety and Security, Mr. Grossman served twelve years in the Office of the Massachusetts Attorney General, leaving the office as the deputy chief of the Criminal Bureau. One of his many accomplishments at the Attorney General's Office was leading the in-house team investigation of the fatal collapse of a Big Dig tunnel. This investigation led to the recovery of more than \$450 million and a manslaughter indictment. Mr. Grossman also established the office's High Tech and Computer Crimes Division in 1999 and later founded the Corruption, Fraud and Computer Crime Division, an integrated team of lawyers and investigators. Before joining the Attorney General's Office, Mr. Grossman was a litigation associate with the New York City law firm of Debevoise & Plimpton, and a law clerk to Judge Bailey Aldrich of the First Circuit Court of Appeals.

Mr. Grossman has served as the President of InfraGard Boston, as a member of the Commonwealth's Enterprise Security Board, and on the Board of Directors and Audit Committee of Search for Common Ground, a Washington, D.C. based international NGO focused on conflict transformation. Mr. Grossman is a *summa cum laude* graduate of Boston University School of Law.

**Jessica D. Gabel** – Assistant Professor, Georgia State University College of Law

Ms. Gabel is an assistant professor of law at Georgia State University's College of Law, where she teaches courses on bankruptcy, scientific and forensic evidence, and co-directs the externship program. She graduated *magna cum laude* from the University of Miami School of Law and *summa cum laude* from the University of Central Florida. While in law school, Professor Gabel co-founded and served as the executive director for the Wrongful Convictions Project, which assisted defendants with claims of actual innocence. The Project continues its work in Florida.

Professor Gabel has given national and regional presentations on various issues in business law, bankruptcy, trial strategy, criminal law, and forensic science. She has written on a wide-range of topics, among them: the validity of forensic evidence, DNA accuracy, trial and jury tactics, international human rights, bioethics, bankruptcy reform, and international bankruptcy. Professor Gabel is also co-author of the *Bankruptcy Appeals Manual*, published by the American Bankruptcy Institute. In addition, Professor Gabel serves as the vice-chair of membership for the ABA Business Bankruptcy Committee.

Prior to joining Georgia State University College of Law, Professor Gabel clerked for the Honorable Peter T. Fay, Circuit Judge for the U.S. Court of Appeals for the Eleventh Circuit. While clerking, Professor Gabel also taught legal research and writing at the University of Miami and coordinated the Bankruptcy Assistance Clinic. She then practiced law with Covington & Burling LLP in San Francisco, Ca., focusing on bankruptcy and criminal defense.

**David M. Siegel** – Professor of Law and Co-Director of the Center for Law and Social Responsibility

Professor Siegel teaches Comparative Criminal Procedure, Criminal Advocacy, Criminal Law, Criminal Procedure, Clinical Evidence, Evidence, and Mental Health Issues in the Criminal Process. He has written articles on the history of mental health defenses in criminal law, the ethical obligations of criminal defense lawyers and prosecutors, and involuntary medication of criminal defendants. He is a founding member of the New England Innocence Project and serves on its Case Review Committee. He directs the Criminal Justice Project of the law school's Center for Law and Social Responsibility. Before joining the New England Law faculty in 1996, he was a senior assistant public defender for the Office of the Metropolitan Public Defender in Nashville, Tennessee. He served as a clerk for the Hon. E. Grady Jolly, Jr., of the U.S. Court of Appeals for the Fifth Circuit.