December 4, 2015

Francis V. Kenneally, Clerk
Supreme Judicial Court For The Commonwealth
John Adams Courthouse
One Pemberton Square, Suite 1400
Boston, MA 02108-1707

RE: Commonwealth v. Wade,
SJC No. 11913
Amicus Letter Brief of the Massachusetts Bar Association

Dear Clerk Kenneally:

In response to the Court’s request for Amicus Briefs in this matter, the Massachusetts Bar Association (MBA) hereby submits an original and seventeen copies of this Amicus Letter supporting the Defendant-Appellant Robert Wade and urging reversal of the decision below.


Chapter 278A is a remedial statute that emerged from a comprehensive study by distinguished members of the bench and bar, including participants in the
criminal justice process and MBA representatives. The statute should be construed to require that testing be done when it had been unavailable at the time of trial but is available today for use on still available evidence, irrespective of the tactical or strategic decisions of counsel at the time of trial. No inquiry should now take place into the "primary reason" testing did not take place in the past or into the reasons why counsel did not seek testing in the past. The overarching legislative intent to test the accuracy of old convictions with modern forensic DNA testing should be implemented and the text of the statute supports this result.

The MBA also urges the Court to clarify that the filing of a motion under Chapter 278A does not constitute a waiver of the attorney-client privilege. Since the statute prohibits using a prior public admission of guilt to deny testing, see c.278A § 3(d), there is no basis in the text for implying any legislative intent to inquire into attorney-client communications. The MBA has long sought to preserve
and protect the privilege for communications between attorney and client, and submits that the privilege should remain inviolate in proceedings under G.L. c. 278A.

Respectfully submitted,

Martin W. Healy
BBQ #553080
Chief Legal Counsel
and Chief Operating Officer
Massachusetts Bar Association
COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
SJC No. 11913

COMMONWEALTH OF MASSACHUSETTS
Plaintiff-Appellee,
v.
ROBERT WADE
Defendant-Appellant

ON APPEAL FROM A FINAL ORDER
DENYING DNA TESTING UNDER G.L. C. 278A

MASSACHUSETTS BAR ASSOCIATION'S
MOTION FOR LEAVE TO FILE ATTACHED
AMICUS CURIAE LETTER BRIEF

The Massachusetts Bar Association requests leave
to file the attached Amicus Curiae Letter Brief in
this matter in response to the Court’s request for
Amicus Briefs and in order to address an additional
issue in the case involving the attorney-client
privilege. The House of Delegates authorized this
amicus filing at its meeting on November 19, 2015, and
it has been prepared as expeditiously as possible in
light of the Thanksgiving holiday.

The interest of the Massachusetts Bar Association
is stated in Addendum A.
Dated: December 4, 2015

Respectfully submitted,

[Signature]

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ADDENDUM A
ADDENDUM A

STATEMENT OF INTEREST OF AMICUS CURIAE

The Massachusetts Bar Association ("MBA"), founded in 1910, is a non-profit organization that serves the legal profession and the public by promoting the administration of justice, legal education, professional excellence and respect for the law. The MBA is the largest bar association in Massachusetts, with approximately 14,000 members state-wide. It is comprised of a House of Delegates that consists of a president, president-elect, a vice-president, treasurer, secretary, the two most immediate, living past presidents, 18 regional delegates, seven at-large delegates, chairs of the 20 section councils and others. The MBA is governed by a set of bylaws, which were most recently approved by the members in March of 2014.

The mission of the MBA is to provide professional support and education to members, and advocacy on behalf of lawyers, legal institutions and the public. As part of its advocacy goal, the MBA has formed an Amicus Curiae Committee ("ACC") to evaluate certain litigation in which the MBA may be interested in participating. Upon the receipt of a proposal from the ACC, the House of Delegates votes on whether the MBA should participate in the cause through the filing of an amicus curiae brief. The ACC determined that the issues raised in this case so affect the public policy of the Commonwealth of Massachusetts
that an brief amicus brief is warranted, and the House of Delegates on November 19, 2015 approved filing one in this important case involving the construction and interpretation of Chapter 278A of the General Laws.
COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
SJC No. 11913

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Defendant-Appellant

ON APPEAL FROM A FINAL ORDER
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CERTIFICATE OF SERVICE

Counsel hereby certifies under penalties of perjury that copies of the Motion to File Amicus Letter Brief and the attached Amicus Letter Brief were today, December 4, 2015, served upon the parties and other known amici, by mail, first-class, postage-prepaid, addressed to:

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[Signature]
Martin W. Healy