



# Virginia State Crime Commission

Melendez-Diaz v. Massachusetts

December 15, 2009

# Overview



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- Discussion

# Melendez-Diaz v. Massachusetts



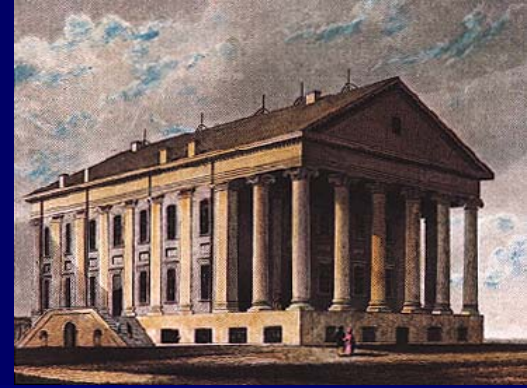
- In Melendez-Diaz v. Massachusetts, 557 U.S. \_\_\_, 129 S. Ct. 2527 (2009), the Supreme Court held that certificates of analysis prepared by laboratories in drug cases are testimonial.
- Therefore, they cannot be admitted into evidence in criminal cases without the presence of the person who prepared or attested to the facts contained in the certificate.

# Virginia's Recent Legislation



- For Virginia, the Melendez-Diaz decision had its greatest impact on DUI cases (breath test certificates) and drug cases (certificates of analysis from the State Lab).
  - Also affected are affidavits issued by the State Police stating that a sex offender has failed to register as required.
- Prosecutors are now forced to issue subpoenas for almost all of these cases if the defendant does not waive his Sixth Amendment rights.
- To accommodate the resulting delays, Virginia's speedy trial statute, Va. Code § 19.2-243, was recently amended.

# Virginia's Recent Legislation



- The new “notice and demand” procedures, combined with the tolling of the speedy trial statute if a continuance is needed, should take care of the procedural problems the Commonwealth faced as a result of Melendez-Diaz.
- It remains to be seen how much more frequently lab analysts will be required to testify in court.
- If the amount of time analysts spend in court becomes too great, this will still create enormous practical problems for Virginia’s criminal justice system.
- The legislature will have to monitor the situation around the state in the coming years.

# Video Testimony



- It has been suggested that one solution to ease the burden on the State Lab is to allow analysts to testify at trial via two-way video conferencing.

# Video Testimony



- The constitutionality of allowing an adverse witness to testify via closed circuit camera is unclear.
- The United States Supreme Court has allowed the use of one-way video testimony in child abuse cases. Maryland v. Craig, 497 U.S. 836 (1990).
  - Note that Maryland v. Craig based some of its reasoning on the earlier case of Ohio v. Roberts, 448 U.S. 56 (1980). The reasoning in Roberts has now been completely overturned by Crawford and Melendez-Diaz.

# Video Testimony



- In Maryland v. Craig, the Supreme Court held that the Sixth Amendment right of a defendant to confront his accusers in open court may only be modified by allowing one-way video testimony if:
  - It is necessary to further an important public policy; and,
  - There has been a specific determination in an individual case that not requiring the witness to have a face to face confrontation with the defendant is necessary.
- Note: Scalia dissented in Craig, writing, “For good or bad, the Sixth Amendment requires confrontation, and we [the Court] are not at liberty to ignore it.”

# Video Testimony



- The use of two-way video testimony would seem to be more in accordance with the requirements of the Sixth Amendment than the one-way video testimony allowed in Maryland v. Craig.
- However, most federal courts have applied a Craig standard when ruling on the issue of whether two-way video testimony is permissible.
- The cases where video testimony has been permitted have involved either child witnesses, or witnesses who could not be brought very easily to the courtroom (e.g. cancer patient in hospital).

# Video Testimony



- Virginia would be taking a risk that federal courts or the Virginia appellate courts might rule unconstitutional the use of two-way video testimony for lab analysts.
- If Virginia were to proceed anyway, there are also substantial costs involved.
- Based on information received from the Office of the Executive Secretary of the Supreme Court, the rough estimates of the costs to install suitable equipment in all of the courts throughout the state are:
  - Four to six million dollars for the initial installation; and
  - Two to three million dollars annually thereafter for maintenance, staff support, etc.
  - The equipment will probably also need to be updated every four to six years.

# Discussion