

The Commonwealth of Massachusetts

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VIA ELECTRONIC MAIL & IN HAND DELIVERY

December 22, 2015

Honorable Margot Botsford
Associate Justice
Supreme Judicial Court
John Adams Courthouse
One Pemberton Square
Boston, MA 02108-1707

Re: *Bridgeman, et al. v. District Attorneys for the Suffolk and Eastern Districts* SJ-2014-0005

To The Honorable Margot Botsford,

As discussed at the December 1, 2015 status conference on the captioned case, and after consultation with the District Attorneys in the other effected counties, the District Attorneys for the Suffolk and Eastern Districts submit the following proposal.

I. Objective

To identify cases where Annie Dookhan was an assistant analyst, locate current addresses for those defendants, and provide reasonable notice to those defendants.

II. Identification

A. Identification Efforts

a. First Run Identification

As part of the discovery process prior to the disposition of these cases, the Commonwealth has provided notice that Dookhan was the chemist in the case to each of those defendants through the production of the certificate of analysis.

It is the understanding of the District Attorneys that the Committee for Public Counsel Services ("CPCS") and the county bar advocate programs called for each of their attorneys to review their files and determine which of their clients were so-called "Dookhan defendants". This call to action was made in the autumn of 2012. CPCS has a record retention policy which requires staff attorneys to keep and maintain hard copies for six years before the records are scanned and stored electronically. The county bar advocates are required to keep and maintain their files for

seven years. Accordingly, at the time the Hinton Laboratory was closed, defendants who represented indigent defendants were in possession of 7 of the 9 years' worth of case files.

b. Identification of Defendants in Custody

After the closing of the Hinton Laboratory at the end of August 2012, the District Attorneys, Department of Correction, and Sheriff's Departments worked in a coordinated fashion to identify all defendants then held in custody and established, in conjunction with the Courts, expedited sessions to address motions to stay the execution of sentences. Approximately 10,000 "priority" individuals were identified and case information provided to the Committee for Public Counsel Services.¹

c. Identification Efforts Following the Closing of the Hinton Laboratory

To date, the District Attorneys have diligently searched their records and data and produced lists with tens of thousands of docket numbers. In order to confirm the data produced to date and in the hopes that existing gaps may be filled, Mark Prior of the Trial Court's information technology division will produce a report listing all cases which included a charge alleging a violation of G.L. c. 94C. Each of the counties will then utilize that data to perfect the existing lists—including filtering out any case which resulted in a non-conviction.

B. Locating Present Addresses

The list of cases generated from the trial court's data pursuant to II.A.c. will also provide the biographical data necessary to locate these defendants' last known addresses. While the initial concept behind this plan involved using databases kept and maintained by executive agencies such as the Department of Revenue, Department of Transitional Assistance, or Registry of Motor Vehicles, their data will only capture individuals who still reside in the Commonwealth or are voluntary participants in civil society (e.g. pay taxes, receive government benefits, or lawfully operate a motor vehicle).

CPCS has previously voiced objection to utilizing these agencies for fear that disclosure of the biographical data will violate the privacy of the defendants. The executive agencies have expressed their willingness to assist, but have concerns with regards to running afoul of their own enabling legislation, or creating "legislative catch-22s" (for instance, if the Department of Revenue were to disclose this information pursuant to a court order, it must first notify individual tax-payers and give them an opportunity to be heard prior to disclosure). These concerns could be addressed through protective orders or the enactment of session laws, but present roadblocks nonetheless.

In order to find the best last known address a better alternative involves providing the data to a private vendor already under contract with CPCS. This vendor, Thompson Reuters, utilizing CLEAR searches of utility and cell phone providers, can determine last known addresses. This

¹ See D.E. Meier, *The Identification of Individuals Potentially Affected by the Alleged Conduct of Chemist Annie Dookhan at the Hinton Drug Laboratory: Final Report to Governor Deval Patrick*, 7-8 (Aug. 2013).

will be a superior source since CLEAR searches are more likely to yield current addresses and may also yield additional contact information which CPCS can utilize should it see fit.

C. Form of Data Collection

To the extent possible, the data should be compiled in a uniform way which will permit for a single information technology approach to notice.

III. Notice

The final stage of this effort will be to provide notice to “Dookhan defendants”. The written notice should be short and simply written.

A. Case-Specific Notice

Where a defendant has been identified as being a “Dookhan defendant” he will be sent a letter to his last known address notifying him of the same. That letter will be generated using a simple mail merge. The letter should contain the docket number(s) of their case(s), a brief description of the claims they may have, and a method by which they can contact CPCS in order to be appointed an attorney to investigate their claims if they so desire. CPCS should draft, and this Court should approve, the language of the letter.

B. General Notice

Recognizing that it is impossible to guarantee 100% accuracy in the identification process, and therefore defendants will be “missed”, a second-tier notice should be sent to the balance of individuals who were convicted of an offense alleging a violation of G.L. c. 94C. This tier of notice should inform defendants of the docket number(s) of their case(s), a brief description of the claims which may be available to them, and a method by which they can contact CPCS to be appointed an attorney to investigate their claim if they so desire. The method used to contact CPCS should be different for those receiving the general notice—this will facilitate prioritization at CPCS.

IV. Judicial Finding Relative to Reasonableness of Identification and Notification Efforts

This Court will review this plan of action and determine whether or not these efforts constitute reasonable efforts to identify and notify defendants. Upon endorsement by the Court, the parties will move swiftly to implement the plan of action. Concurrent with the court’s deliberation on the proposed plan, the parties will continue to work with the data which Mr. Prior is expected to produce.

V. Alternative Proposals Relative to Notice

The District Attorneys' also propose alternative means of notice based on concerns that mailing letters to persons convicted of drug offenses has privacy implications and may cause other consequences for individuals, including but not limited to the unintended disclosure of a criminal history to family, landlords, or employers.

A. Notice through Public Posting

An expressed concern of the stakeholders addressing Dookhan's misconduct is that individuals have experienced collateral consequences of narcotics convictions and vacatur of their convictions may provide some relief. Therefore, the Norfolk District Attorney proposes that to achieve notice to potentially affected individuals in a manner that does not expose a person to additional, unforeseen consequences, it is appropriate to post notice in the locations where collateral consequences are or may be encountered, such as:

1. Registry of Motor Vehicles;
2. Department of Children and Families;
3. Local, State and Federal Housing Agencies;
4. Rehabilitation centers, halfway houses, and addiction service programs;
5. District, Superior, Family, and Housing Courts;
6. Correctional facilities;
7. Local offices of CPCS where clients meet with counsel; or
8. Websites for CPCS, the District Attorneys, Trial Court, and Sheriff's Departments

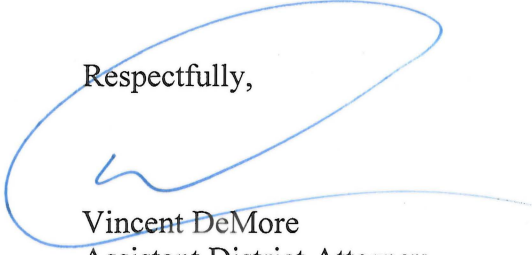
The notice would state that if a person had been charged with a drug offense in Bristol, Essex, Middlesex, Norfolk, Suffolk, or Plymouth Counties between November 2003 and August 2012, the case may be impacted by chemist Annie Dookhan's wrongdoing. Any person potentially affected should contact his or her attorney from the plea or CPCS for additional information.

In order to expedite the response from CPCS and to minimize the burden, CPCS would be equipped with the list of docket numbers provided by the District Attorneys. The list would also include the date of testing, the substances reported, and the date of plea so that CPCS could screen out cases in which the defendant plead before the evidence was tested and cases in which the defendant was not charged with the tested substance. In addition, the District Attorneys would continue to provide copies of certificates of analysis, and other case information where and when available, to expedite case evaluation.

B. Notice to Plea Counsel

As a final alternative, the Plymouth District Attorney suggests, consistent with the course of action taken by the United States' Attorney's Office, notice could be provided directly to the last attorney of record on each case as reflected in the data provided by Mr. Prior's efforts.

Respectfully,



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cc

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