

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJC-12157

KEVIN BRIDGEMAN,
and others

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT,
and others

**EMERGENCY MOTION FOR AN ORDER STAYING THE MAILING OF
"NOTICE LETTERS" TO DOOKHAN DEFENDANTS**

Intervener, the Committee for Public Counsel Services (CPCS), requests an order directing the respondent District Attorneys to cease the mailing out of their "notice letters" to Dookhan defendants, pending the Court's consideration of this case during its November, 2016, sitting. At a hearing held late yesterday afternoon (September 6, 2016), the District Attorneys informed the single justice (Botsford, J.) that they have begun mailing out their notices, that "a certain percentage" of them have been mailed, and that the process will continue county by county until notices have been mailed to more than 20,000 Dookhan defendants.

This unilateral action by the District Attorneys will bring this case past a point of no return, because the notice disseminates confusing, misleading, and

threatening information that will be impossible to erase from the mind of any person who has the misfortune of receiving it. Moreover, the notice is virtually guaranteed to generate a low response rate and deter Dookhan defendants from challenging their wrongful convictions. And it seeks to "pre-decide" the very questions to be addressed by the full Court in November -- viz., whether Dookhan defendants are entitled to automatic vacatur of their tainted convictions, and, if so, how that remedy should be effected. Because the precise content of the notice to be sent to Dookhan defendants is what this case is all about, and because Dookhan defendants who receive and read the District Attorneys' notice will be less likely to want the relief to which intervener believes they are entitled, the Court should enter an order directing the respondents to cease any further mailings, until further order of the Court.

In the alternative, the Court should enter an order requiring the District Attorneys to provide the parties and the Court with copies of all documents relating to any efforts by the District Attorneys to ensure that their notice will be received, read, and understood, including:

- contracts with vendors;
- documents, including e-mail communications, reflecting how the notice was translated into Spanish;

- any documents, including e-mail communications relating to content, format, and length of the notice.

In further support, CPCS states as follows:

1. This case is before the Court on reservation and report of the question whether the Court should exercise its supervisory authority to order vacatur and dismissal of about 24,000 tainted Dookhan cases which the District Attorneys have recently identified under the direction of the single justice.

2. The single justice reserved and reported the matter on August 16, 2016, the case was entered in this Court on August 24, 2016, and briefing has been scheduled so that the matter may be heard during the November sitting.

3. On August 29, 2016, the District Attorneys filed in the county court a cover letter addressed to the single justice (Attachment A), along with a sample of the notice (Attachment B), which, the respondents stated, they "will send on or before September 1, 2016." Although dated August 25, 2016, the District Attorneys' letter and sample notice was not received by the Court (or counsel for the petitioners or CPCS) until August 29, 2016.

4. On August 31, 2016, CPCS and the petitioners filed a response with the single justice stating in

part as follows:

Among other significant deficiencies, the notice fails to mention that the rights of Dookhan defendants are the subject of pending litigation in this very case; it does not mention the presumption of misconduct to which these defendants are already entitled [under the Scott case], it ominously pledges that any defendant whose conviction is vacated will have an active criminal case (as though the District Attorneys have already decided not to dismiss any case in that posture); and it is not competently translated into Spanish (Attachment C).

5. On August 31, 2016, the single justice sent the respondents an e-mail requesting that "the letter not be sent before we have a hearing or in any event conversation about the letter and its relationship to the case pending before the full court" (Attachment D).

6. On September 1, 2016, the District Attorneys responded to the single justice's request with a letter stating, in part, that the "notice process . . . is a purely executive function," and that their notice "will be sent to defendants within the week" (Attachment E).

7. On September 2, 2016, the single justice scheduled a hearing regarding the matter for September 6, 2016.

8. At that hearing, which was held as scheduled, the District Attorneys informed the single justice, petitioners, and CPCS that "a certain percentage" of their notices have in fact been mailed, and that the process would continue until mailings had been sent to

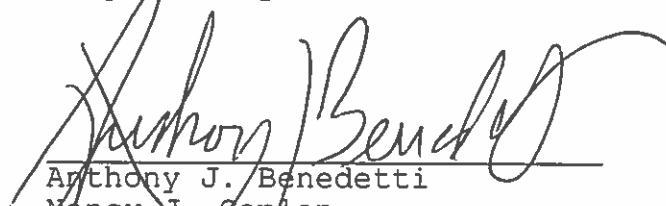
about 20,000 individuals. The District Attorneys further informed the Court that the content of their notice is identical to the sample notice provided with their letter filed on September 29, 2016, and that they had made no revisions to it in light of any of the concerns raised in the petitioners' and CPCS's letter of August 31, 2016.

CPCS will contend when this case is argued in November that Dookhan defendants are entitled to have their drug convictions vacated, to notice informing them of that fact and that further prosecution, if any, is subject to strict, court-ordered guidelines designed to protect Dookhan defendants' rights. The District Attorneys' notice envisions nothing of the sort. To the contrary, it assumes that they will persuade the Court not adopt CPCS's proposed remedy, anticipates the regime that will then exist, and proceeds as if that regime -- one in which any Dookhan defendant with the temerity to challenge her conviction will have her case "returned to active status" (Attachment B1) -- is a fait accompli.

For the above-stated reasons, the Court should order that mailings be ceased until further order of the Court, or, in the alternative, that the parties and the Court be provided with copies of all documents

relating to the District Attorneys' efforts to ensure that their notice will be received, read, and understood.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anthony J. Benedetti", is written over a horizontal line. The signature is fluid and cursive.

Anthony J. Benedetti
Nancy J. Caplan
Benjamin H. Keehn
COMMITTEE FOR PUBLIC COUNSEL SERVICES
44 Bromfield Street
Boston, MA 02108
(617) 482-6212
bkeehn@publiccounsel.net

Dated: September 7, 2016.

-Attachment A-



The Commonwealth of Massachusetts

DISTRICT ATTORNEY OF SUFFOLK COUNTY
DANIEL F. CONLEY

Vincent DeMore, ADA
Suffolk County District Attorney
Chelsea District Court
120 Broadway, Room 203
Chelsea, MA 02150

Telephone: (617) 884-2200

VIA FIRST CLASS MAIL

August 25, 2016

Hon. Margot Botsford
Supreme Judicial Court for the County of Suffolk
John Adams Courthouse, 1st Floor
One Pemberton Square, Suite 1300
Boston, MA 02102-1707

Re: *Bridgeman v. District Attorney for the Suffolk District, et al* SJ-2014-0005

Dear Judge Botsford,

Attached, please find a sample of the notice letters the Commonwealth will send on or before September 1, 2016. The Commonwealth has contracted with a vendor who will send notice to best current addresses of the identified individuals and then send a second round of mailings to all individuals whose letters are returned undelivered using a next best address.

Respectfully,


Vincent DeMore
Assistant District Attorney
Suffolk County District Attorney's Office

w/ encl.

cc w/encl.

Attorney Benjamin Keehn
Attorney Nancy Caplan
Attorney Matthew Segal
Clerk Amy Stewart

cc w/o encl.

Respondent District Attorneys

IMPORTANT NOTICE REGARDING A CLOSED CRIMINAL CASE

Address 1
Address 2
Address 3

Date

Dear _____:

According to court records, you were convicted of one or more drug offenses in Suffolk County between 2003 and 2011. It has been determined that chemist Annie Dookhan tested the drugs in your case(s), _____ COURT, DOCKET NO. _____.

Ms. Dookhan admitted to misconduct in her work at the drug lab. Because Ms. Dookhan tested evidence in your case, you have certain rights:

- You have the right to challenge the drug conviction(s) listed in this notice. If your challenge succeeds, your conviction(s) will be undone or "vacated," and your case will be returned to active status.
- The District Attorney's office may decide to try you again on the vacated drug charge(s), but if you are tried and convicted again, you will not face any punishment greater than what you already received. In other words, you cannot be additionally punished for choosing to challenge your conviction(s).

If you have any questions, please contact your original lawyer on your case(s). You may also choose to speak to a new lawyer. If you do not know how to contact your original lawyer, you may get that information at the criminal clerk's office at the court where your case was handled. Addresses for all of the District and Superior courts can be found at:

<http://www.mass.gov/courts/court-info/courthouses/courthouses-by-county-gen.html>

For more information, you may contact the Suffolk County District Attorney's Office at (617) 619-4348

.....
De acuerdo con los documentos de corte, usted ha sido condenado por uno o más delitos de drogas en el Condado de Suffolk entre 2003 y 2011. Se ha determinado que la científica química Annie Dookhan examinó las drogas en su caso(s), _____ COURT, DOCKET NO. _____.

La Sra. Dookhan admitió a mala conducta de trabajo en el laboratorio de drogas. Debido a que la Sra. Dookhan examinó las drogas en su caso, usted tiene ciertos derechos:

- Usted tiene el derecho a impugnar la condena de drogas que figuran en esta notificación. Si usted tiene éxito, su condena(s) se puede deshacer o "desocupar" y su caso será devuelto a estado activo.
- La Oficina del Fiscal de Distrito puede optar en proceder con cargos criminales por los cargos de drogas que sean desasido. Pero, si usted es juzgado y condenado de nuevo, no enfrentará un castigo mayor de lo que ya había recibido por esos cargos. En otras palabras, usted no puede ser castigado adicionalmente por su elección de impugnar su condena(s).

Si usted tiene alguna pregunta, por favor póngase en contacto con el abogado original en su caso. Usted también puede elegir en hablar con un abogado nuevo. Si usted no sabe cómo comunicarse con su primer abogado, puede obtener esa información en la oficina del secretario criminal en el tribunal donde se trató su caso. Las direcciones de todos los tribunales de distrito y superior se pueden encontrar en:

<http://www.mass.gov/courts/court-info/courthouses/courthouses-by-county-gen.html>

Para más información, usted puede contactar la oficina del fiscal del condado de Suffolk al (6174) 619-4348.

Important! Please have this notice translated immediately. [English]

Importante! Por favor haga traducir este aviso inmediatamente. [Spanish]

Importante! Fate tradurre questo avviso immediatamente. [Italian]

Pre inpotan! Fe tradui not sa a tousuit. [Haitian Creole]

Important! Faites traduire cet avis immédiatement. [French]

Importante! Mande traduzir este aviso imediatamente. [Portuguese]

Quan trong! Can dich cao thi nay lien. [Vietnamese]

Pilne! Proszę o niezwłoczne przetłumaczenie tego dokumentu. [Polish]

Vanzo! Prosim najse to obves tilo takoj prevedeti! [Slovenian]

Mahalaga! Paki-salin itong paunawa. [Tagalog]

Vanzo! Molimda da se ova obavijest odmah prevedeti! [Croatian]

Կարգաւոր. այս յայտարարութիւնը անհիշատէս թարգմանել առւէք: [Armenian]

Προσοχή! Δώστε να σας μεταφράσουν αμέσως αυτή την ανακοίνωση. [Greek]

សំខាន់! សូមបកប្រែនៅកម្រិតកាលនេះឱ្យបានឆាប់ [Cambodian]

Внимание! Немедленно обеспечьте перевод
настоящего извещения! [Russian]

ቅብቅ፡ ጭናቅቢድ ፣ እባክዎ፡ ያህንን፡ ጭናቅብ፡ እዚህ፡ ያስተርጉሙ፡፡ [Amharic]

ВАЖНО! МОЛИМ ДА СЕ ОВО ОБАВЕШТЕЊЕ ОДМАХ ПРЕВЕДЕ! [Serbian-Cyrillic]

重要! 請立即將本通知翻譯成中文。 [Chinese]

ສຳຄັນ! ຈົ່ງອີບແປກຳມະການນີ້ ໂດຍດ່ວນ [Laotian]



August 31, 2016

By Email and U.S. Mail

The Honorable Justice Margot Botsford
Associate Justice
Supreme Judicial Court
John Adams Courthouse
One Pemberton Square, Suite 2500
Boston, MA 02108

Re: *Bridgeman v. Dist. Att'y for Suffolk County*, SJ-2014-0005

Dear Justice Botsford:

This letter responds to the letter from the District Attorney for Suffolk County stating that the Commonwealth intends to send notices to Dookhan defendants before the Full Court hears this case.

Petitioners and intervener continue to believe that, following this Court's consideration of the issue, Dookhan defendants should be sent notices saying that their convictions have been vacated and that the underlying charges have been dismissed. Although we do not oppose the mailing of some sort of preliminary notice, the notice that has been shared with us will mislead and confuse its recipients, and ultimately deter them from challenging their wrongful convictions.

Among other significant deficiencies, the notice fails to mention that the rights of Dookhan defendants are the subject of pending litigation in this very case; it does not mention the presumption of misconduct to which these defendants are already entitled; it ominously pledges that any defendant whose conviction is vacated *will* have an active criminal case (as though the District Attorneys have already decided not to dismiss any case in that posture); and it is not competently translated into Spanish.

Beyond the substance of this preliminary notice, our recent affidavits have pointed to the likelihood that the District Attorneys' May 2016 lists of Dookhan defendants are missing thousands of cases, 6/29/16 Colarusso Affidavit ¶ 17, and to the difficulties of transforming them into vendor-ready lists, 6/30/16 Villarreal Affidavit ¶¶ 13-

Justice Margot Botsford
August 31, 2016
Page 2

17. Progress on these important issues could continue to be made while the Full Court considers the remedies that will ultimately be available to Dookhan defendants. If the Court deems further "working group" meetings appropriate, petitioners and intervenor are willing to attend such meetings.

Please do not hesitate to contact us with any questions or concerns.

Sincerely,

COMMITTEE FOR PUBLIC
COUNSEL SERVICES

KEVIN BRIDGEMAN, YASIR CREACH, and
MIGUEL CUEVAS,

by its Attorneys

by their Attorneys





Benjamin H. Keehn, BBO #542006

Matthew R. Segal, BBO #654489

Nancy J. Caplan, BBO #072750

Carlton E. Williams, BBO #600973

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cc: Assistant District Attorney Vincent J. DeMore, Esq.
Assistant District Attorney Quentin R. Weld, Esq.
Assistant District Attorney Robert Kidd, Esq.
Assistant District Attorney Brian S. Glenny, Esq.
Assistant District Attorney Robert J. Bender, Esq.
Assistant District Attorney Susanne M. O'Neil, Esq.
Assistant District Attorney Gail McKenna, Esq.
Assistant District Attorney Karen O'Sullivan, Esq.
Jean-Jacques Cabou, Esq.

Benjamin Keehn

Subject: FW: DA letter

From: Margot Botsford [mailto:margot.botsford@jud.state.ma.us]

Sent: Wednesday, August 31, 2016 5:56 PM

To: DeMore, Vincent (DAA); Weld, Quentin (DAA); 'b.keehn@publiccounsel.org'; 'msegal@aclum.org'

Cc: 'Amy Stewart'

Subject: DA letter

Greetings -

I just received a short while ago this afternoon a copy of the letter that the District Attorneys intend to send out tomorrow, as well as a response from counsel for the defendants. I appreciate that this is late in the game, but I would like to request that the letter not be sent before we have a hearing or in any event conversation about the letter and its relationship to the case pending before the full court. I know I have not included everyone involved in this litigation on this email, but the clerk's office is closed for the day, and I am not sure I have a complete email address list. Accordingly, I am hoping that you will forward the message to those concerned.

I look forward to hearing from you.

Best,

Margot Botsford

-Attachment E1-

THE COMMONWEALTH OF MASSACHUSETTS
ESSEX DISTRICT ATTORNEY



SALEM

NEWBURYPORT

LAWRENCE



Jonathan W. Blodgett
District Attorney

Ten Federal Street
Salem, Massachusetts 01970

SALEM: (978) 745-6610
FAX: (978) 741-4971
TTY: (978) 741-3163

September 1, 2016

The Honorable Justice Margot Botsford
Associate Justice
Supreme Judicial Court
John Adams Courthouse
One Pemberton Square, Suite 2500
Boston, MA 02108

Dear Justice Botsford,

This letter responds to your email of yesterday, August 31, regarding the mailing of notice to Dookhan defendants. We wish to inform the Court that we have finalized a contract with the vendor to complete the mailing, and that the physical mailing will be sent to defendants within the week.

The mailing will effectively complete the process which all parties cooperatively began in January of this year. The District Attorneys have collectively committed approximately \$30,000 out of their operating budgets to complete the notice process, which all parties agree is a purely executive function. In June, the petitioners and intervenors elected not to pursue a cooperative approach to notice, thereby resulting in the sacrifice of nearly \$70,000 from the FY16 operating budget of MDAA. The District Attorneys clearly stated our intent to send this notice in the affidavits filed on August 5, 2016. See 8/5/16 DeMore affidavit ¶ 51; 8/5/16 McKenna Affidavit ¶ 28; 8/5/16 Weld Affidavit ¶ 13. We also voiced our intent to complete the notice process at the last Single Justice hearing, on June 1, 2016, at which the Court announced it would report the case to the full bench. On that date, the District Attorneys agreed to send a copy of the notice letter to the Court, and we have done so.

As CPCS requested at the June 1 hearing, the letter is silent as to appointment of counsel and any role which CPCS may take in the litigation of these cases going forward. The letter does provide the notified defendants with all of the information they need to file a motion to challenge their conviction. As always, we will happily work with CPCS going forward to ensure a speedy and fair disposition of any motions defendants may file as a result of the notice mailing.

Please do not hesitate to contact us with any questions or concerns.

Sincerely,

The District Attorneys

by their Attorney



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cc:

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Assistant District Attorney Vincent J. DeMore, Esq.
Assistant District Attorney Robert Kidd, Esq.
Assistant District Attorney Brian S. Glenny, Esq.
Assistant District Attorney Robert J. Bender, Esq.
Assistant District Attorney Susanne M. O'Neil, Esq.
Assistant District Attorney Gail McKenna, Esq.

CERTIFICATE OF SERVICE

I, Benjamin H. Keehn, counsel for the Committee for Public Counsel Services, certify that on this 7th day of September, 2016, I caused a true copy of the foregoing motion and attachments thereto to be served by electronic mail and first-class mail, postage prepaid, to the following counsel for the other parties:

ADA Robert Bender
Middlesex County District Attorney's Office
15 Commonwealth Avenue
Woburn, MA 01801

ADA Vincent J. DeMore
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ADA Susanne M. O'Neil
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Canton, MA 02021

ADA Karen O'Sullivan
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211 Congress Street
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ADA Quentin R. Weld
Essex County District Attorney's Office
10 Federal Street
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