

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: SJ-2017-0347 & SJ-2018-M012

COMMITTEE FOR PUBLIC COUNSEL SERVICES & others

vs.

ATTORNEY GENERAL & others

OBJECTION TO SPECIAL MASTER'S NOTICE-LETTER RECOMMENDATION

On March 7, 2018, this Court appointed retired Appeals Court Justice Judd Carhart as Special Master in this case. In recent weeks, the parties and the Special Master have worked to draft a letter to Farak defendants whose relevant drug charges have been or will be dismissed. Although the parties have agreed on certain aspects of this letter, they disagree about whether the letter should notify defendants of the undisputed misconduct of the Attorney General's Office. On June 6, 2018, the Special Master recommended to the Single Justice that the notice letter *not* inform defendants about the AGO's misconduct. Petitioners respectfully object to that recommendation. For the reasons stated below and via email to the Special Master, the notice letter should inform defendants of Sonja Farak's misconduct *and* the AGO's misconduct.

Background

In May 2018, Petitioners drafted a notice letter (Exhibit 1) containing the following language concerning the AGO:

Why am I hearing about this now?

One reason why you might not have heard about Ms. Farak's role in your case is that, from 2013 to 2014, two lawyers at the Massachusetts Attorney General's Office engaged in serious misconduct by failing to turn over important evidence of

Ms. Farak's misconduct. Their actions slowed notice and the resolution of your case.

At a working group meeting on May 14, 2018, concerns were raised about this draft language, including that it specifically mentioned the two former assistant attorneys general. Petitioners then proposed revising the relevant language, as follows (Exhibit 2):

Was Sonja Farak the sole bad actor in your case?¹

No. A court has found that the Massachusetts Attorney General's Office engaged in serious misconduct by hiding important evidence of Ms. Farak's misconduct. That misconduct slowed notice and the resolution of your case.

The Respondents then argued, and the Special Master agreed, that the notice letter should not mention the AGO's misconduct *at all*. The Special Master proffered several reasons for that view, including that the misconduct of the former AAGs was merely "alleged," that Judge Carey's findings "are now pending before the SJC," that the notice letter's purpose is "to notify those affected by Farak's misconduct of the judicial remedy," and that the proposed language informing defendants of the AGO's misconduct is "irrelevant."²

Respondents have conceded that the former AAGs did, in fact, commit misconduct. AGO Br. 7-8; DAOs Br. 34. Nevertheless, they have "concur[red] in" the Special Master's view that the notice letter should not mention the AGO's "alleged misconduct."

Discussion

Over the last four years of Single Justice proceedings involving the Hinton and Amherst Labs, undersigned counsel have never formally objected to an order or recommendation by the Single Justice or Special Magistrate. But now we must. It is crucially important that the victims of

¹ The "sole bad actor" language, to which Petitioners are by no means committed, originates with the Office of the Inspector General and was quoted in *Bridgeman v. Dist. Attorney for the Suffolk Dist.*, 476 Mass. 298, 303 n.6 (2017).

² It is our understanding that the relevant email chain has been forwarded to this Court.

the AGO's misconduct are notified of that misconduct. Accordingly, Petitioners seek the inclusion of the requested language for the following reasons.

First, as a matter of fundamental fairness, one of the most important goals of the notice letter must be to tell thousands of defendants — many for the first time — about the government misconduct that was committed against them. In the drug lab litigation, the full court has repeatedly recognized “a prosecutor’s duty to learn of and disclose to a defendant any exculpatory evidence that is held by agents of the prosecution team.” *Commonwealth v. Cotto*, 471 Mass. 97, 112 (2015) (cleaned up); *see also Commonwealth v. Ware*, 471 Mass. at 85, 95-96; *Bridgeman v. Dist. Attorney for the Suffolk Dist.*, 471 Mass. 465, 481 (2015) (“*Bridgeman I*”). Consistent with that obligation, the notice letter in *Bridgeman II* expressly told defendants not only about the judicial remedy they had received as a result of the misconduct, but also about the misconduct itself.³ Chief Justice Gants’s video message to defendants contained the same information.⁴

The need to inform defendants of government misconduct does not disappear when that misconduct was committed by a government lawyer as opposed to a government chemist. Thousands of defendants were kept in the dark for far too long about the government misconduct in their cases. They must now be told what happened.

Second, the reasons proffered for sending a notice letter that does not mention the AGO do not withstand scrutiny. The AGO’s misconduct is not merely “alleged”; it is undisputed. AGO Br. 7-8; DAOs Br. 34. Neither the Hampden County DA nor the AGO appealed Judge Carey’s findings that the former AAGs committed egregious misconduct and a fraud upon the court. Thus, whether there was misconduct is not before the full court. And, as explained above, the

³ *See Drug lab cases information* (May 18, 2017), at <https://www.mass.gov/news/drug-lab-cases-information>.

⁴ *Id.*

language is not irrelevant, but necessary to shine a light on the injustice. The AGO has acknowledged its “special responsibility to ensure . . . that justice is done in every case.” AGO Br.

2. Here, that responsibility entails, and justice demands, telling the whole truth to defendants who are the victims of government misconduct.

Third, Petitioners are not insisting on any particular phrasing. For example, if the “bad actor” formulation from Petitioners’ revised draft is causing concern, *see supra* n.1, the notice letter could instead track the DAOs’ formulation. Their brief to the full court states that “prosecutorial misconduct by two former assistant attorneys general . . . resulted in the delayed disclosure of exculpatory evidence.” DAOs Br. 34. Defendants deserve to hear what courts have already been told.

Conclusion

Petitioners have been working in good faith to resolve this issue, but cannot agree that those wronged by government misconduct, people who were imprisoned or suffered collateral consequences for longer than they otherwise would have because the Attorney General’s Office hid exculpatory evidence, need not be made aware of the impact of the AGO’s actions on their lives. This case is a direct result of the government hiding things that defendants had a right to know — and it needs to stop. Petitioners respectfully ask that the Single Justice order the notice letter to include language about the AGO’s undisputed misconduct.

Respectfully submitted,

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By its attorneys,



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Dear _____:

I am a judge on the Supreme Judicial Court, the highest court in Massachusetts. I am writing to tell you that **the court has dismissed certain conviction(s) against you**. The dismissed convictions are shown on the attached page(s), listed by court, docket number, count, and charge.

Why is the court dismissing these convictions?

A chemist named Sonja Farak engaged in serious misconduct involving her work at a state drug lab. Your case was one of the cases affected by Ms. Farak. In September 2017, the Massachusetts public defender agency (known as the Committee for Public Counsel Services), the American Civil Liberties Union of Massachusetts, and a civil rights law firm filed a lawsuit about these cases. The lawsuit is called *Committee for Public Counsel Services v. Attorney General*. After this lawsuit was filed, the District Attorney's Office agreed to undo the conviction(s) on the attached page(s), and the court has permanently dismissed them. This dismissal is final.

Why am I hearing about this now?

One reason why you might not have heard about Ms. Farak's role in your case is that, from 2013 to 2014, two lawyers at the Massachusetts Attorney General's Office engaged in serious misconduct by failing to turn over important evidence of Ms. Farak's misconduct. Their actions slowed notice and the resolution of your case.

What happens next?

In about two to three months, your criminal record will be updated to remove the conviction(s). The removal of a conviction may provide important benefits to you related to employment, housing, immigration, and more.

However, your record has not been sealed. You can find more information about sealing your record at www.masslegalhelp.org/cori.

Also, you might have other convictions in the same case that were not dismissed and that remain on your record. Those convictions are also shown on the attached page(s). You may want to speak with a lawyer about whether these convictions can also be undone.

You might also have paid money because of these convictions, such as fines, court fees, probation fees, or restitution. Your money or property might also have been taken by forfeiture. You may want to speak with a lawyer about whether any money or property can be returned to you.

If you have any questions about this letter, including how to get a lawyer to help you, you may contact the Committee for Public Counsel Services (the state public defender agency) by calling its confidential Drug Lab Case Hotline at **888-999-2881**, or by visiting its web site: www.publiccounsel.net/dlclu/client-resources. You may also find information on the court's web site: www.mass.gov/courts/druglab.

Sincerely,

Dear _____:

I am a judge on the Supreme Judicial Court, the highest court in Massachusetts. I am writing to tell you that **the court has dismissed certain conviction(s) against you**. The dismissed convictions are shown on the attached page(s), listed by court, docket number, count, and charge.

Why is the court dismissing these convictions?

A chemist named Sonja Farak engaged in serious misconduct involving her work at a state drug lab. Your case includes one or more drug convictions affected by Ms. Farak. The court has now dismissed the conviction(s). This dismissal is final and permanent, which means you cannot be prosecuted again for any charge that has been dismissed.

Was Sonja Farak the sole bad actor in your case?

No. A court has found that the Massachusetts Attorney General's Office engaged in serious misconduct by hiding important evidence of Ms. Farak's misconduct. That misconduct slowed notice and the resolution of your case.

What happens next?

In about two to three months, your criminal record will be updated to remove the conviction(s). The removal of a conviction may provide important benefits to you related to employment, housing, immigration, and more.

However, your record has not been sealed. You can find more information about sealing your record at www.masslegalhelp.org/cori.

In addition, you might have other convictions in the same case that were not dismissed and that remain on your record. If you have other convictions in the same case, those convictions are also shown on the attached page(s). You may want to speak with a lawyer about whether these convictions can also be undone.

You might also have paid money because of these convictions, such as fines, court fees, probation fees, or restitution. You may want to speak with a lawyer about whether you are entitled to have any money returned to you.

If you have any questions about this letter, including how to get a lawyer to help you, you may contact the Committee for Public Counsel Services (the state public defender agency) by calling its confidential Drug Lab Case Hotline at **888-999-2881**, or by visiting its web site: www.publiccounsel.net/dlclu. You may also find information on the court's web site: www.mass.gov/courts/druglab.

Sincerely,

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CERTIFICATE OF SERVICE

I certify that on June 8, 2018, I served a copy of this Objection to Special Master's Notice-Letter Recommendation by mailing via the United States Post Office, First Class mail postage paid, and via email, to the parties on the attached list.


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