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MNPA ANNUAL MEETING 2019 LEGAL RECAP TO OCTOBER 10, 2019

ACCESS:

Access: Birth and marriage records in electronic form denied to The Globe's Todd Wallack has reached the SJC. *Boston Globe Media Partners vs, Department of Public Health* was ruled on June 17, 2019. Although these records are available to the public at the Registry of Vital Statistics, the Department refused to give Wallack the birth and marriage data claiming it would be an invasion of privacy – marital status, family relations, names of parents. Superior Court ruled the Department did not have to release this data. This aggregation would not release privileged data of intimate highly personal nature. MNPA joined brief. SJC remanded back to Superior Court to weight the privacy interests of the public versus disclosure. Balancing that the press ought to be aware and counsel its reporters as access may in some circumstances be challenged.

Access: Judge sealed a search warrant in girl's death in Haverhill. Judge cited the release might taint the grand jury. No media challenge.

Access: Atty. General Maura sued three DA offices, Plymouth, Worcester, and the Cape for refusing data on criminal cases they have filled, including the outcome of these cases. First time in many many years that SOPR has been supported by an AG!

Impoundment: Two cases were challenged in the Lawrence District Court as the DA routinely portions of what should be public documents immediately be impounded, such as search warrants; however almost never do the courts or DA follow the Massachusetts Uniform Rules of Impoundment which are very specific on how a written request from the DA must be presented (not oral) and how a judge must file written findings before impounding any public document. The Lawrence *Eagle-Tribune* challenged these impoundments. As a direct result the court reporter has seen latest usual requests not presented. Good result.

Jurors: Jurors' names and home addresses are public records decided the U.S. Court of Appeals for the First Circuit on January 18. *USA v. Glenn A. Chin, WBUR Intervenor*. MNPA joined the brief. WBUR was denied by a federal judge the home addresses, only the names and hometowns allowed.

Wiretapping: Mass. 50-year-old wiretapping law is unconstitutional when "secret audio recording of government officials, including law enforcement officials, performing their duties in public is protected by the First Amendment, subject only to reasonable time, place, manner restrictions.:" ruled US District Court Judge Patti Saris in December 2018.

Access: North Andover and Andover High Schools block media from school grounds outside of buildings when students protest administration decisions. North Andover on sexual harassment policies against the victim student; Andover firing of hockey coach.

Sealing: SJC heard arguments stemming from Todd Wallack's report on secret Clerk Magistrate Hearings. The *Eagle-Tribune* has the leading and really only court ruling on this and was cited throughout in brief and in oral argument. As part of his argument, which can be viewed on the internet, Jon Albano for the *Globe* at times fell back on redaction as possible solutions to identities of litigants. Over 3000 cases were found to have probable cause yet no process (a criminal complaint) was issued (recommended) by the Clerk-Magistrate. Wallack found this odd. Some of course were public officials as parties. ACLU filed brief to retain secrecy (privacy) in Clerk Hearings. Only one-third of the hearings are recorded – makes those not recorded difficult for a re-hearing (no appeal available). Also, discussed impounding the proceedings, with all the law's complex procedures in Mass. to Motion for Impoundment under the MUIA. A working court group (oxymoron) reported findings of not to find yet; and 10 legislators have filed bills to open these secret hearings – all of which are stuck in committee.

SJC on September 9, 2019 ruled still presumptively closed, but must now record all hearings and upon request, under certain limited circumstances decided by the Clerk or Judge, the records may be released. Also, the Court is to create a data base relating to cases found *with cause* but no penalty resulted.

Access. Secret Courtroom. Hospital arraignment was not recorded, and the press and photographers stopped from going in. Lawrence District Court Judge determined it was not a good idea to have reporters witness an arraignment of a murder suspect at Lawrence General Hospital; and yes, forgot to bring along any recording devices. Really secret. Press vehemently complained – but no legal action followed.

PUBLIC RECORDS:

Public Records: Mug Shots and Police Reports NOT exempt under CORI ruled Superior Court J. Wilkins on December 4, 2017, however, the Boston Police, DCJIS, and State Police appealed the ruling to the SJC.

Public Records. State Police No Way. “Hey Captain -I have a question about Lt. Gov. Polito’s security detail. This is about the request to take Polito’s house off the Shrewsbury (Massachusetts) assessor’s website. I have a public records request from a man named Colman Herman If we have something tangible, I will be denying the request.” MSP lawyer Alycia DeAngelis hadn’t even seen the records before making up her mind.

Public Records/Privacy. *Globe v. DPH*, SJC-12622. No birth and marriage data held by DPH via electronic copy of this public database. However, the SJC DID expand the balancing Courts must consider to release secret documents. (1) don’t contain highly personal or intimate information; (2) don’t implicate privacy interests on their own, but only in combination with other documents; (3) are already available to the public in another form.

Public Records. Non-Disclosure Agreements signed by state officials secret. State Senator Diana DiZoglio and Rep. Alyson Sullivan called on the State auditor to produce these reports. Non-Disclosure of a Non-Disclosure. DiZoglio once forced to sign a secret NDA as a Beacon Hill aide in 2011.

Public Records. Bodycam and Dashcam footage in jeopardy. House Bill 2120 would make police-worn body camera footage exempt from Mass public records law – privacy! A new public records law exemption.

DEFAMATION:

Defamation: The Lowell Sun was successful in dismissing a defamation action before filing their Answer by submitting a Motion to Dismiss with an oral hearing before the Superior Court Judge.

Defamation. A photo with: “Have you seen this man.” UMass Boston student newspaper headline. A routine story from the police blotter that campus police were looking for an unidentified man allegedly taking photos of women around the university. Appeals Court agreed that since the police never arrested the man or issued a search warrant, the information is not protected, and the newspaper is liable. Under appeal to the SJC who will hear this case in November. GateHouse Media filed the brief on this fair reporting privilege case. MNPA will file an *Amicus* in *Butcher v. University of Massachusetts*.

BODY-CAMS: Boston finally rolled out program despite opposition from the police officers’ union. Roll out was in the first week of May.